

Glassworks London Limited

Terms and Conditions of Business

The following terms and conditions shall apply in relation to the supply of any services or goods, Facilities and Materials by Glassworks London Limited or any of its subsidiary or associated companies or divisions to include but not be limited to Glassworks Amsterdam, Glassworks Barcelona S.L, Heartworks an Wireworks (in each case, '**Glassworks**') and to all contracts for the same entered into between Glassworks and the Customer into all of which such contracts these terms and conditions are incorporated. They supersede all previous conditions and override any alternative conditions stipulated or referred to by the Customer and constitute the entire terms and conditions applicable to all or any agreement between Glassworks and the Customer.

1. Definitions

1.1 Unless inconsistent with the context, in these terms and conditions:

'Booking' means the booking period for which Glassworks has agreed to provide the Facilities to the Customer;

'Customer' means the person, firm or company using the services of Glassworks;

'Customer's Property' means any of the Customer's works, tapes, films or other materials, equipment or other property which is the subject of the Facilities and is provided to Glassworks;

'Facilities' means the pre/post-production equipment, personnel, creative and production facilities and services which Glassworks is providing to the Customer in accordance with these terms and conditions;

'Materials' means all forms of audio or visual material including without limitation tapes, films, advertisements or other materials processed, produced or otherwise provided by Glassworks pursuant to a Booking.

2. Rates and Fees and Charges

2.1 The rates charged by Glassworks are those that are published from time to time in Glassworks' rate card. Publication by Glassworks of its rate card and the supply of any quotations or estimates to any person constitute an invitation to treat. The Customer's order is an offer and shall become binding only upon Glassworks' acceptance.

The rates quoted do not include Value Added Tax, all media stock, courier and delivery charges, currency fluctuations, meals and long distance telecommunications expenses or any additional costs incurred by Glassworks as a result of

- (i) Materials supplied by the Customer being in the opinion of Glassworks in any way defective or in an unsuitable format or of an unsuitable quality or
- (ii) The information supplied by the Customer or any third party in connection with the its requirements does not provide a full and accurate indication of the work involved or if such requirements are altered or added to by the Customer subsequent to the date of the Booking, and any such VAT or such further or additional costs or expenses shall be paid by the Customer.

- 2.2 Glassworks reserves the right to change the rates quoted in the rate card at any time without prior notice, or by specific written agreement with the Customer to agree to charge rates different from those specified in the rate card in respect of a specific Booking.

3. Estimates

- 3.1 Whilst all the time and prices estimates given by Glassworks are given in good faith and Glassworks will endeavour to adhere to such estimates, time shall not be of the essence and is not guaranteed and Glassworks will not be bound by such estimates where they are not met due to the Customer's changes, failure to provide information or materials in a timely fashion or other circumstances outside Glassworks' control and Glassworks will not be liable for any failure to meet such estimates. Glassworks will not be responsible for any costs, charges or expenses incurred by the Customer as a result of such failure.

4. Payment

- 4.1 Except where these terms and conditions provide otherwise, and subject to paragraph (4.3) below, payment of all fees and charges incurred shall be made to Glassworks within 28 days of the date of invoice and Glassworks reserves the right to charge interest at a rate 4% in excess of the then-prevailing Bank Base Rate or LIBOR (at Glassworks' option) on late payment from the due date for payment until the actual date of payment.
- 4.2 All sums payable by the Customer shall be paid in full and in the currency in which they are invoiced without any deduction whatsoever, whether by way of set-off, counterclaim or otherwise and for the avoidance of doubt the Customer shall not be entitled to the benefit of any such deduction to which it might otherwise be entitled in law or in equity. Glassworks shall be entitled in the event of non-payment in whole or in part to enforce any judgment obtained in relation thereto without any stay of execution pending the determination of any claim by the Customer against Glassworks.
- 4.3 Glassworks reserves the right to require payment of all fees and charges, in full or in part, in advance of, or in installments during, the performance of the Booking or the provision of the Facilities.
- 4.4 Any queries on the invoice must be raised within 7 days of the date of the invoice.

5. Cancellation

- 5.1 In its absolute discretion, Glassworks may at any time permit cancellation by the Customer of a booking or order and reserves the right to cancel any booking or order in the event of any breach of these terms and conditions by the Customer.
- 5.2 In the event of any such cancellation being permitted or instigated by Glassworks less than one full 24 hour working day before the start of the Booking Period, the booking will be charged at the full rate under Glassworks' rate card current at the date of cancellation or, if greater, at the agreed rate for the Booking.
- 5.3 In the event of such cancellation being permitted or instigated by Glassworks between five and one full 24 hour working days before the start of the Booking Period, the booking will be charged at 50% of the full rate under Glassworks' rate card current at the date of cancellation.

- 5.4 In addition to the above mentioned cancellation charges, Glassworks will be entitled to be reimbursed with any costs or expenses which it may have incurred arising from the cancellation of the Booking.

6. Lien and Delivery

- 6.1 Until payment in cash or cleared funds of all monies due from the Customer to Glassworks pursuant to a particular booking:
- 6.1.1 The physical property in all Materials shall, notwithstanding delivery, remain vested in Glassworks, and the Customer shall hold the same as a bailee of Glassworks and shall store the Materials separately from its other goods and keep full records of any third parties to whom it sells or disposes of the same;
- 6.1.2 Glassworks shall have a general lien over any property of the Customer in Glassworks' possession for such monies due: and
- 6.1.3 The licence granted by Glassworks to the Customer pursuant to clause (8.2) shall not take effect.
- 6.2 Furthermore, such property shall not pass to the Customer until Glassworks has also received payment in cash or cleared funds of all monies due from the Customer to Glassworks under any other Bookings or business transaction.
- 6.3 The Customer hereby grants an irrevocable licence to Glassworks so that it may enter upon any premises where any material are stored or where they are reasonably thought to be stored, during normal business hours, and repossess the same.
- 6.4 If the Customer fails to make payment within 14 days of such monies becoming due, Glassworks at its discretion shall be entitled to exploit or dispose of such property and apply any proceeds towards the monies due and any expenses in respect of such exploitation or disposal and shall, upon accounting to the Customer for the balance (if any) remaining, be discharged from all liability in respect of any such property.
- 6.5 Glassworks will endeavour to deliver any Materials as soon as practicable after receipt of all sums due to Glassworks from the Customer but Glassworks shall not be responsible for any loss suffered by the Customer due to delay in delivery unless such loss shall have been caused by the gross negligence of Glassworks.

7. Insurance

- 7.1 Risk of damage to or loss of the Materials shall pass to the Customer at the time when the Materials leave the premises of Glassworks save where the Customer has specified and Glassworks has specifically agreed in writing to make delivery itself or arrange for delivery through a third party at a particular time and to a particular place, when the Materials are actually delivered to that place, or if the Customer fails to take delivery, when delivery is tendered.
- 7.2 The Customer acknowledges that it is not possible for Glassworks to obtain insurance against any lost costs of production arising from loss or damage to the Customer's property.
- 7.3 Accordingly, the Customer shall take out and maintain such insurance cover against all risks as is necessary or usual in connection with production (including pre/post production), including lost production costs caused on loss or damage to the Customer's property (and its content) whilst under the custody or control of Glassworks.

8. Intellectual Property in Materials

- 8.1 All Copyright in any recordings or other works resulting from the provision of the Facilities and/or embodied in any materials shall vested in, and be exclusive property of, Glassworks.
- 8.2 Subject to Glassworks having received payment in cash or cleared funds of all monies due from the Customer to Glassworks pursuant to a Booking. Glassworks grants the Customer an exclusive licence to publish and transmit the finished Materials as a whole in their final form as supplied by Glassworks for the purpose originally contemplated.
- 8.3 The Customer shall have no rights whatsoever (and undertakes not) to use any Materials or intellectual property rights of any type whatsoever contained in them separately from the finished product of the provision of the Facilities as a whole or for any other purpose whatsoever.
- 8.4 Notwithstanding anything to the contrary contained herein, Glassworks shall retain ownership and possession of, and shall not be required to deliver to the Customer, any mechanical devices, processes, contractor's know how, source or object code or application software which are used as tools to create the Materials ("**Contractor Technology**"). Glassworks shall own the Contractor Technology, as well as all intellectual property rights related to the Contractor Technology, including but not limited to, any copyrights, trademarks, trade secrets or patents in connection therewith. Notwithstanding the foregoing, Glassworks hereby grants to the Customer a non-exclusive licence in and to the Contractor Technology in perpetuity, to the extent only that the same is necessary for the exploitation of the Materials and all ancillary and allied rights therein and thereto by the Customer as envisaged by the parties hereunder.

9. Confidential Information

- 9.1 The Customer shall take proper steps to keep confidential all confidential information relating to Glassworks or its business or financial affairs or the Facilities or other services provided by it, including any computer programs, production techniques, Contractor Technology, databases and any original ideas and concepts, knowhow, designs and processes incorporated in or inherent in the materials, which information is disclosed to or obtained by the Customer pursuant to or as a result of the provision of the facilities (other than information in the public domain other than by reason of a breach by the Customer of this provision) ("**Confidential Information**")
- 9.2 The Customer will not use or divulge any Confidential Information to any person (other than its professional advisers) and upon the termination of the booking period, the Customer will return to Glassworks any Confidential Information (without retaining copies thereof) and any equipment or other goods provided by Glassworks (other than, for the avoidance of doubt, the Materials).

10. Glassworks' Liability

- 10.1 Save as otherwise expressly provided in these terms and conditions and to the fullest extent permitted by law:
- 10.1.1 The supply to any Customer of Materials and facilities is entirely at the Customer's risk and Glassworks shall be under no liability to the Customer or any other person for any direct, indirect or consequential loss or damage arising from any defect in the Facilities and the Materials or any equipment or tapes used in

relation thereto;

- 10.1.2 If the use of the Facilities for the Booking is delayed, postponed, curtailed or cancelled for any reason affecting Glassworks, then unless such delay, postponement, curtailment or cancellation shall have been caused by the gross negligence of Glassworks, Glassworks shall not be liable for any loss or damage suffered by the Customer by reason thereof;
- 10.1.3 Glassworks shall not in any event be liable for economic loss (including loss of profit or goodwill) or any indirect or consequential loss or damage; and
- 10.1.4 All warranties, conditions, terms and representations relating to goods or services supplied by Glassworks (whether expressly or implied by statute, common law, use or otherwise) are hereby excluded.

Nothing herein shall be construed as excluding or limiting (or seeking to do so) any liability on the part of Glassworks by reason of death or bodily injury caused by Glassworks' negligence.

10.2

- 10.2.1 Save as otherwise expressly provided in these terms and conditions and to the fullest extent permitted by law, Glassworks will not be responsible for any damage to or loss of any Customer's property held by Glassworks nor any loss (consequential or otherwise) arising in respect thereof, unless caused by Glassworks' negligence in which case paragraphs (10.2.2) and (10.2.3) shall apply;
- 10.2.2 In the event of loss or damage to the Customer's property caused by Glassworks' negligence during the booking period Glassworks' liability shall be limited to the cost expended by the Customer in fees and charges charged by Glassworks and shall not exceed £10,000 in respect of any one job subject to paragraph (10.2.3).
- 10.2.3 If the Customer shall notify Glassworks during the Booking that its property is valued by the Customer at a sum which exceeds the figure stated in paragraph (10.2.2) and shall agree to reimburse Glassworks with the cost of effecting special insurance cover for such property during the Booking period in the sum stated by the Customer then, from the date on which such insurance is actually effected by Glassworks, the limitation of liability shall be the sum actually insured and the figure in paragraph (10.2.2) shall not apply.
- 10.2.4 Subject to the above provisions of this paragraph (10.2), all of the Customer's property and all Materials held by Glassworks will be held by Glassworks entirely at the risk of the Customer, irrespective of the cause of any loss or damage and the Customer should insure the Customer's property to its full value against all risks and take and retain copies of all Customer's property before providing them to Glassworks.

10.3

Glassworks shall make available its equipment and the personnel it deems necessary to operate such equipment but the Customer shall satisfy itself that the facilities are suitable for its purpose and while Glassworks will use its best endeavours to ensure that all equipment and facilities perform in accordance with the specification for such equipment and facilities unless expressly agreed in writing at the time of the acceptance of the booking, Glassworks shall not be responsible for ensuring that its equipment and the facilities provided by it are suitable for the Customer's purpose.

- 10.4 Glassworks shall not be liable for any reduction in the quality of its services that may be caused by the quality of the Customer's property or Glassworks' adherence to the Customer's instructions.
- 10.5 (a) The Customer shall indemnify Glassworks, its directors, and employees, servants, sub-contractors and agents all liabilities, actions and losses, claim, proceedings, judgement, damages, obligations, costs and expenses of any nature what-so ever (including, but not limited to, legal fees, costs and expenses) arising directly or indirectly out of Glassworks' provision of services hereunder or in connection with the Customer's property or the acts or omissions of the Customer, its servants, agents or representatives, or any breach by the Customer of any of its representations, warranties other obligations in these terms and conditions (including, but not limited to, claims by any third party for breach of copyright or defamation relating to any materials or Customer's property or any failure by the Customer to observe the provisions and requirements of any applicable agreements).
- (b) Each of the parties acknowledge and agree that copyright in underlying materials processed by Glassworks in the performance of its services and / or embodied in the Materials may be owned by third parties and that the use by the Customer of the Materials shall always be subject to the Customer obtaining all and any necessary consents and licences from those third party owners.

11. Non-Collection

- 11.1 Glassworks shall be entitled to destroy, erase or otherwise dispose of as it thinks fit any materials or Customer's property in its possession and uncollected by the Customer after the expiration of three months from the end of the booking period, and while uncollected by the Customer, such materials or Customer's property shall be held by Glassworks at the Customer's risk as stated above.

12. Transfer of Obligations

- 12.1 Glassworks reserves the right to assign or sub-contract all or any part of its obligations to the Customer.
- 12.2 Any contract which is made between Glassworks and the Customer is personal to the Customer, who shall not assign or charge the benefit thereof without the express prior written consent of Glassworks.

13. Credits

- 13.1 The Customer shall ensure that Glassworks is given screen credits in respect of the Facilities supplied by Glassworks in a form approved in advance by Glassworks. The Customer hereby grants to Glassworks a perpetual and royalty-free licence to refer to the Customer and to use all or any part of the Materials processed or produced by Glassworks on the Customer's behalf in order to promote or advertise Glassworks' business.

14. Representations and Warranties

The Customer represents and warrants to Glassworks that:

- 14.1 Before the commencement of the booking period it will obtain all consents licences and clearances required from the performers, copyright owners and any other person having any right or interest in connection with any of the Customer's property; and

- 14.2 Nothing contained in the Customer's property will be defamatory, offensive, obscene or otherwise unlawful or in breach of any intellectual property or any other right of any third party.

15. Force Majeure

- 15.1 Glassworks shall not be under any liability to the Customer as a result of Glassworks being unable to perform any of its obligations or comply with any of the Customer's instructions due to circumstances beyond its reasonable control, including but not limited to, industrial action taken by any person or persons, and if Glassworks is so unable, it shall at its option either be entitled to perform such obligations or comply with such instructions as and when it is reasonably able to do so or to treat itself as wholly or partly released from all such obligations or instructions liability.

16. Termination by Glassworks

Glassworks shall, without prejudice to any other right or remedy which it may have, be entitled to terminate all of its obligations to the Customer upon the happening of any of the following events:

- 16.1 If the Customer is at any time in breach of any obligation or representation or warranty to Glassworks, or any sum owing to Glassworks by the Customer is overdue by more 14 days; or
- 16.2 If the Customer makes or offers to make any compensation with creditors or enters into a voluntary arrangement or if a bankruptcy petition is served on the Customer or (if the Customer is a limited company) any resolution or petition to wind up the Customer's business is presented or if a receiver or administrative receiver is appointed to deal with any part of the Customer's assets. Upon any such termination, the Customer will pay to Glassworks on demand all sums owing in respect of services already performed by Glassworks, together with relating to instructions given by the Customer before termination. So as to fully indemnify Glassworks in respect of all liabilities incurred in consequence of compliance with the Customer's instructions.

17. General

- 17.1 All notices given in accordance with these terms and conditions shall be in writing and may be delivered personally or sent by pre-paid first class post to the usual or last known address of Glassworks or the Customer. A notice shall be deemed to have been properly served if personally delivered, at the time of delivery, and if posted, forty-eight hours after posting. In providing service it shall be sufficient to show that the notice was delivered to the correct address or that the envelope containing the notice was properly addressed, pre-paid and posted.
- 17.2 No variation of these terms and conditions shall be effective unless made in writing and signed by a duly authorised director of Glassworks and the Customer.
- 17.3 If any provision of the terms shall be adjudged by a Court to be void or unenforceable, the same shall in no way affect any other provision of this contract or the validity or enforceability of the contract generally.
- 17.4 Any failure or delay by Glassworks in exercising or enforcing any rights conferred by these terms and conditions shall not be deemed to be a waiver thereof or operate so as to bar the exercise or enforcement of such rights at any time.

- 17.5 The contract between Glassworks and the Customer shall be governed by and construed in accordance with English law and Glassworks and the Customer agrees for the exclusive benefit of the Glassworks that the English Courts shall have jurisdiction to settle any dispute relating thereto.