



## Terms and Conditions of Business

The following terms and conditions shall apply to doing business with Brown Bag Films LTD unless expressly agreed otherwise in writing

### TERMS OF PAYMENT

**BROWN BAG FILMS LIMITED** of 1<sup>st</sup> Floor, Block F, Smithfield Market, Dublin 7 (**BBF**)

The Client has engaged BBF to produce an animation work and BBF has agreed to produce the Work for the fee subject to the general terms and conditions contained overleaf.

1. Unless agreed otherwise, payment of the Fee shall occur in two installments of 50%.
2. An invoice for 50% of the Fee shall be issued by BBF upon the commencement of the Work and shall be payable immediately.
3. An invoice for the balance of the Fee shall be issued upon completion of the Work and shall be payable within 30 days of the date on the invoice.
4. Where the Client wishes to use the Work outside of the Territory of Ireland it shall make a payment to BBF equal to 10% of the Fee for each year of use in respect of each additional Territory.
5. Where the Client wishes to use the Work after the expiration of the Licence Period it shall make a payment to BBF equal to ten per cent 10% of the Fee for each additional year of use after the expiration of the Licence Period.
6. Payment options include cheque or electronic funds transfer
7. Failure to pay invoices in full will entitle BBF to take such actions as it may deem necessary.

### GENERAL TERMS AND CONDITIONS

#### **1. DEFINITIONS**

**BBF** Brown Bags Films Limited, its employees, representatives, agents and assigns.

**Work** The work to be produced by BBF and all literary, dramatic, artistic and musical works, cinematograph films, sound recordings, photographs, drawings, logos, captions, titles and other materials created or used in the production of that work.

#### **2. PRODUCTION OF THE WORK**

- 2.1 In consideration of the Fee to be paid by the Client as set out in the Terms of Payment, BBF agrees to produce the Work in accordance with the approved treatment, script, artwork, storyboard or other written particulars provided by the Client on or before the date hereof subject to these terms and conditions (except as may be otherwise agreed in writing by each of the parties on or before the date hereof) and the Client agrees to accept the Work.
- 2.2 The Client will obtain all necessary licences or consents in respect of the treatment, script, artwork, storyboard or other written particulars and all films, video tapes, sound recordings and other literary, musical, dramatic and artistic materials in any medium as it may provide to BBF for use in relation to the Work (the **Materials**) and agrees to indemnify BBF against all costs, claims and demands arising in any manner as a result of BBF's use of such Materials. Furthermore, the Client warrants and undertakes to BBF that none of the Materials shall infringe the copyright or any other rights of any third party and will not contain any defamatory matter or breach any contract or duty of confidence or right of privacy.
- 2.3 BBF will obtain all necessary licences or consents in respect of such materials as it may create, obtain or procure for use in relation to the completed Work and will indemnify the Client against all costs, claims and demands in respect of the use of such materials for the purposes contemplated in these general terms and conditions, performing rights excepted.
- 2.4 If during the course of production of the Work the Client requires BBF to carry out additional work arising from any alterations or modifications to or any departure from the approved treatment, script, artwork, storyboard or other written particulars or from any other additions to, revisions of or other changes in the Work made at the request of the Client, the Client agrees to pay all reasonable costs and expenses relating thereto. Where possible, and in advance of such changes, a written estimate for the additional work shall be prepared by BBF and agreed to by the Client and if this is not possible the verbal approval of the Client shall be obtained for the payment of such additional charges and such approval shall be binding on both parties. After completion of the Work has taken place any subsequent alterations, additions or revisions required by the Client shall be made by BBF at a price to be agreed between BBF and the Client at that time.
- 2.5 BBF shall be responsible for ensuring that every transmission tape of the Work meets broadcast specifications and shall be immediately obliged to remedy any outstanding problems once notified of the problem.

#### **3. TIMEFRAME FOR PRODUCTION**

- 3.1 BBF shall indicate a timeframe for production of the Work to the Client as soon as is practicable.
- 3.2 The estimated timeframe should be considered to constitute guidance only. Should the actual time spent on the production of the Work exceed the estimated timeframe this delay shall not constitute a breach of contract nor shall the Client be entitled to repudiate or rescind the contract in whole or in part or claim compensation for such delay or for any consequential loss or damage resulting therefrom.



#### **4. USE OF THE WORK**

- 4.1 The Client shall be entitled to use and authorise the use of the Work in its entirety or otherwise as delivered by BBF as an advertising commercial through television transmission and through cinematic exhibition in the Republic of Ireland for a period of two years from the date of delivery of the Work to the Client without payment to BBF of any further sum in relation thereto.
- 4.2 The Client shall only be entitled to use the Work in its entirety or otherwise in territories outside of the Republic of Ireland upon payment of a fee expressed in the Terms of Payment as a proportion of the Fee for each year of use.
- 4.3 Upon expiration of the 2 year period mentioned in clause 4.1 above the Client shall be entitled to use the Work in its entirety or otherwise in the Republic of Ireland upon payment of a fee expressed in the Terms of Payment as a proportion of the Fee for each year of use.

#### **5. COPYRIGHT**

- 5.1.1 Subject to these general terms and conditions and for the consideration described in the Terms of Payment, BBF hereby assigns the copyright in and to the Work (such assignment, in the case of works and materials not yet in existence, being by way of present assignment of future copyright) to the Client absolutely.
- 5.2 The assignment provided for in clause 5.1 is subject to full compliance by the Client, and all persons deriving title thereto through or from the Client, with these general terms and conditions. In the event that these general terms or conditions are not so fully complied with the Client shall forthwith re-assign (or procure suitable assignments of) all rights title and interests in and to the Work assigned hereunder at no cost to BBF.
- 5.3 The assignment of copyright described in clause 5.1 above shall be without prejudice to BBF's right to use excerpts from the Work for advertising, promotional and publicity purposes.

#### **6. REPEAT AND RE-USE FEES**

- 6.1 The Client shall be responsible for such repeat or re-use fees or other amounts as may be payable to voice over artistes and other contributors to the production of the Work (if any) calculated by reference to the number or period of transmissions or method, scope or area of use.

#### **7. WARRANTIES**

- 7.1 The entry into this agreement by BBF and the Client and any exercise by either of them of any rights granted under this Agreement shall be without warranties of any kind either express or implied, other than those warranties expressly set out in this Agreement and any warranties which are implied by and incapable of exclusion, restriction on modification under applicable law.

#### **8. INDEMNITY**

- 8.1 Each of the Client and BBF hereby covenants with the other to indemnify and keep the other fully and effectively indemnified from and against all claims, costs, proceedings, demands, losses, damages, expenses, or liability arising directly or reasonably foreseeable from any breach by the Client or BBF (as the case may be) of its obligations hereunder. The Client and BBF hereby expressly acknowledge that this indemnity shall survive the completion of the Work.

#### **9. CONFIDENTIALITY**

- 9.1 In relation to all information disclosed to the Client by BBF pursuant to or in connection with the production of the Work (whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such) the Client agrees to keep such information confidential and accordingly not disclose it to any other person up to and after completion of the Work.

#### **10. SEVERABILITY**

- 10.1 If at any time, any one or more of the provisions in these general terms and conditions (or any paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed to be omitted from these standard terms and conditions and the validity and or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### **11. FORCE MAJEURE**

- 11.1 If BBF is prevented or hindered from producing the Work or any part thereof by any circumstances beyond its reasonable control including, but without limiting the generality of the foregoing, strikes, lockouts or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, fire or other natural disasters, further performance shall be suspended for so long as BBF is so prevented or hindered.

#### **12. CANCELLATION**

- 12.1 Cancellation by the Client of the production of the Work will only be accepted after written approval from BBF. BBF reserves the right to refuse cancellation of the production of the Work if it has been partly or wholly made or, alternatively, to claim from the Client the cost of production already completed.



**13. TERMINATION**

13.1 Without prejudice to any other remedies, either party may terminate this agreement with immediate effect if the other party (a) is in material breach of these general terms and conditions and, if the breach is remediable, has failed to remedy it within 30 days of being put on notice to do so; (b) becomes bankrupt or insolvent or has a receiver or liquidator appointed or is subject of a petition to wind it up, or is struck off the register of companies; or (c) has committed any fraudulent act or criminal activity.

**14. GOVERNING LAW**

14.1 These general terms and conditions and the Terms of Payment contained overleaf shall be governed by and construed in accordance with the laws of Ireland and the parties hereto expressly and irrevocably submit to the exclusive jurisdiction of the Irish Courts.

**15. ENTIRE AGREEMENT**

15.1 These general terms and conditions and the Terms of Payment contained overleaf constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties.

Last Updated: 13 May 2007