



## **malt. TERMS AND CONDITIONS**

### **Definitions**

0.1. The following definitions shall apply to these terms and conditions:

"**malt.**" means MALT FILMS LIMITED;

"**Contract**" means the contract to which these terms and conditions apply;

"**Client**" means the party contracting to purchase Services from malt. under the Contract;

"**Client Materials**" means all materials, data, documents, and information within the control of the Client and relevant to malt.'s provision of the Services;

"**Deliverables**" means all reports, documents and other materials (including, but not limited to, all audio, visual or physical materials and software), data or information created exclusively for the Client by malt. under the Contract and required to be delivered to the Client;

"**Disbursements**" means costs reasonably incurred by malt., its employees or subcontractors in connection with the Services for any ancillary expenses including but not limited to accommodation, travel and food, and the cost of any materials and services reasonably procured by malt. from third parties in the provision of the Services;

"**IPR**" means any and all copyright, trade marks, design rights, moral rights, domain names, service marks, know-how, confidential information and without limitation, all or any other intellectual property rights whether capable of registration or not, and whether or not registered and including all applications (and rights to apply) for such rights together with all or any goodwill relating thereto;

"**Price**" means the price of the Services and the Deliverables provided under the Contract, excluding Disbursements;

"**Services**" means services to be provided by malt. under the Contract.

### **Incorporation**

- 1.1. These terms and conditions shall apply to every contract made by malt. for malt.'s provision of services of any description whether or not they are expressly stated in the contract to apply to it or to be incorporated in it.
- 1.2. These terms and conditions may not be varied, overridden or excluded except by written agreement signed by an authorized signatory of malt.
- 1.3. Notwithstanding anything to the contrary in any terms and conditions or other communications, no terms and conditions shall apply to the Contract except:
  - 1.3.1. these terms and conditions; and
  - 1.3.2. any production assumptions as written at the top of a quote document; and
  - 1.3.3. such other provisions as may be signed by an authorised signatory of malt.

### **Supply of Services**

- 2.1. malt. shall perform the Services with reasonable skill and care subject to the Clients compliance with the contract.
- 2.2. In order to carry out the Services malt. will require a satisfactory brief to be supplied to them by the client, whether the brief is deemed satisfactory or not is at the opinion of malt.
- 2.3. The Client must provide to malt. the contact details of a contact at the client's organisation who has the authority to make Approval decisions on behalf of the client.
- 2.4. Both the client and malt. will co-operate fully with each other on all matters relating to the Services including but not limited to –
  - a. Providing a satisfactory brief as per 1.2 above.
  - b. Approvals. The Client shall review Approval items (proofs, drafts and other items) and respond promptly to malt. This response should be clear and unequivocal and if approval is not given, shall indicate which alterations are required in order to meet with an approval. malt. shall be entitled to consider any person responding to the approval as being duly authorized to do so. If requested by malt. this shall be required in writing but in any case a verbal approval shall be sufficient. Once an approval is given this shall be deemed final and any changes to an approved portion of the service may be deemed as an additional service as set out in clause 4.3 at the discretion of malt.
  - c. Materials. The client shall provide malt. with any materials reasonably requested by malt. or considered useful by the Client for the purposes of providing the Services. This shall be accompanied with all sufficient licenses to use the materials for these purposes and where possible, in the formats and/or to the specifications recommended by malt. Materials shall be supplied at the Clients expense.
- 2.5. The client understands that in the event of delays to the Services caused by Client delays in providing malt. with the required information as requested by malt. these delays shall not be deemed a breach of contract on the part of malt. and in the event that this results in additional costs to malt. in order to provide the Services then this will be deemed to be additional Services as per 4.3 below at malt.'s discretion.
- 2.6. The Services shall be deemed to have been supplied at the time that final approval has been given or after 14 days of delivery of a version that malt. believes to be the final works.
- 2.7. As unlikely as it is, In the event that malt. fails to deliver as per this contract then the Client shall provide to malt. a grace period of 30 days or 10% of duration of the Services, whichever is greater, starting from notification of such failure by the Client in order to put right and deliver the Services.



### Third Party Services

3.1. Where malt. instructs a third party, at the request or with the approval of the Client, to provide goods or Services directly or indirectly for the Client's benefit, it does so as agent for the Client. malt. shall not be responsible for the goods or Services provided by that third party, including but not limited to the delivery, timing of delivery, quality or accuracy of the same.

### Pricing and Payment

- 4.1. A budget will be provided at the commencement of the job, which will be given on the basis of malt.'s charges and disbursements as at the date of the contract. This budget is a good faith estimate of the Price based on the information supplied to malt. by the client about what is required.
- 4.2. malt. will stick to this budget insofar as what is requested during the course of providing the Services remains the same as originally quoted for.
- 4.3. If malt. is requested to provide additional Services or agrees to vary the Services, the Client shall pay for the additional or varied work which will be given on the basis of malt.'s charges and disbursements as at the date these additional or varied Services are requested.
- 4.4. In the event that the Client changes their mind on an approval already given and as a result this increases the quantity of work or creates additional work to be carried out, then this additional work or time shall be deemed to be an additional service as per 4.3 above at malt.s discretion.
- 4.5. The Client shall pay fifty percent (50%) of the Price in advance and the remainder within 30 days of completion of the Services. Additionally, if requested by malt. the Client shall pay for any disbursements in advance. All payments shall be in pounds sterling.
- 4.6. In addition to 1.5 above, the Client shall pay within 30 days any invoices in relation to the Services that malt. may raise from time to time on a regular basis (normally one monthly) or at certain milestones.
- 4.7. All Prices are quoted exclusive of disbursements and VAT.
- 4.8. malt.'s charges and disbursements are subject to change.

### Copyrights

- 5.1. malt. reserves all rights, interest and title in the works including any preliminary works.
- 5.2. malt. shall grant to the Client an irrevocable worldwide Exclusive license to distribute, broadcast and use in any way whatsoever any copyrights owned by malt. that subsist through the provisions of these Services so long as all amounts have been paid under contract. malt. would like to use the works for promotional purposes and as such, the above mentioned Exclusivity does not prohibit malt. from distributing, broadcasting and using the works for the purposes of marketing and promotion unless specifically requested in writing by the Client.
- 5.3. If the Client requires that they own the copyrights in the works, they shall request this in writing prior to delivery of the works, upon which, malt. shall assign all copyrights owned by them that subsist through the provision of these services to the Client and will exclude paragraphs 5.1 and 5.2 above so long as all amounts have been paid under contract. The Client understands that third party copyrights cannot be assigned to them, such as music, as they are not owned by malt. In the event that malt. assigns these copyrights to the Client, the Client shall grant a license to malt. to use, broadcast and distribute the works for the purposes of marketing and promotion unless specifically denied in writing by the Client.
- 5.4. malt. shall endeavor to obtain licenses on behalf of the client for copyrights owned by third parties with respect to music and stock footage. The terms of these licenses may vary and malt. will instruct the client as to their scope and it shall remain the responsibility of the Client to use the works in accordance with these licenses and to renew them where necessary. In the event that these licenses cannot be obtained by malt. and the client requests that the properties in question are incorporated in the works, then malt. will do so in good faith on the understanding that the Client will obtain all licenses required to ensure they use the works in accordance with all rights as required by law. The Client indemnifies malt. against all claims arising from any breach of third party rights.
- 5.5. Any Client materials delivered to malt. as per 2.4(c) shall remain the property of the Client.
- 5.6. Physical property in Deliverables including but not limited to DVDs, CDs and tapes remain the property of malt. and malt. reserves the right to exclusive possession of these Deliverables until such time that the contract has been paid in full, at which time ownership and possession shall be given to the Client.
- 5.7. malt. shall be granted a license by the Client to use their name and logo on promotional and marketing materials including but not limited to malt.'s website, unless otherwise specified in writing.

### Delivery

- 6.1. It is in malt.'s business practice to hit deadlines and make the supply in a timely manner. However any date provided by malt. for delivery is merely an estimate made in good faith of the delivery or supply date. Time shall not be of the essence for the provision of Services or the delivery of Deliverables.
- 6.2. In the event that the Client requires an expedited completion of the Services or delivery that will incur additional costs such as overtime that was not included as part of the initial brief, or that has become required as a result of delays beyond the control of malt. then this will be considered an additional service as per 4.3 above at malt.'s discretion.

### Dispute Resolution

- 7.1. Although unlikely, in the event of a dispute between the contracted parties, the parties agree to negotiate a settlement for a period of 12 hours within a period of two weeks. In the event that the dispute is not settled at this time, both parties agree to attempt to settle the disagreement through mediation.



### Liability

- 8.1. This clause 8 sets out malt.'s entire aggregate financial liability for loss and damage suffered by the Client resulting from any breach of the Contract or other legal wrong (including contractual and tortious liability for negligence) by malt. connected in any way with the Services or the Deliverables. malt.'s liability as aforesaid is strictly limited to an amount not exceeding £2,000,000.
- 8.2. malt. shall have no liability for indirect or consequential loss or damage, loss of business, loss of income or revenue, loss of profits or contracts, depletion of reputation or goodwill, or waste of management or office time however arising, and even if malt. could have foreseen the loss or the possibility of the loss was brought to malt.'s attention.
- 8.3. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract, except where repeated as express term in the Contract.
- 8.4. This does not limit malt.'s liability for death or personal injury resulting from negligence, for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by malt. or for any liability incurred by the Client as a result of any breach by malt. of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 8.5. The Client shall indemnify malt. without limitation against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by malt. as a result of or in connection with any claim for libel, trade libel or similar wrong, infringement of any copyright, trade mark right or other IPRs or breach of any relevant press, public relations, marketing, sales promotion, market research, advertising or other applicable code anywhere in the world arising from or relating to any Client Materials or its content or any other material which the Client requests malt. to use or commission for the purposes of the Contract.

### Archiving

- 9.1. At the request of the Client, malt. may agree to retain an electronic, tape or disk based archive of Client materials for twelve (12) months unless a different duration is specifically requested in writing, after which these materials may be destroyed at any time. In the event that malt. agrees to do so, this shall be regarded as part of the contract and service and (without limitation) clause xx(liability) above shall apply. The Client may be given access to these materials and malt. reserves the right to charge a standard fee in accordance with the current rates at the time of the request for access. The Client agrees that at all times it will retain its own master copy of any materials archived by malt. to ensure it can readily replace any material held on malt.'s archive.

### General

- 10.1. The Client shall notify malt. of any potential cash flow problems and if there are any material changes in circumstance relating to the client at the time that they arise or become aware that they may arise.
- 10.2. The Client shall keep confidential all information concerning the methods, IPR and associated infrastructure (including but not limited to, software, hardware and systems) owned or under license by malt. unless such information is already in the public domain. Further the client shall not disclose any preliminary work, including but not limited to concepts, treatments, budgets, pitches and scripts to any other person, organisation, partnership or company that may be construed as operating in competition with malt.
- 10.3. The Contract contains the entire agreement between the parties in relation to the purchase by the Client of the Services. It supersedes any prior agreements, arrangements, representations or undertakings in relation to such subject matter. This clause shall not exclude or limit liability for fraudulent misrepresentation.
- 10.4. Failure or neglect by either party to enforce any provision of the Contract shall not be construed as or deemed to be a waiver of that party's rights under the Contract and shall not prejudice that party's rights to take subsequent action.
- 10.5. In the event that any provision (including any distinct sub-condition) of the Contract is held to be illegal, invalid, void or unenforceable, it shall be severed from the remaining provisions of the Contract, which shall continue in full force and effect.
- 10.6. Performance of the contract is subject to such variation as malt. may find necessary due to inability to secure materials, labour or supplies or due to any act of God, strike, war, lockout or other labour dispute, flood, drought, fire, legislation or other cause beyond malt.'s reasonable control..
- 10.7. The headings of these terms and conditions shall not affect interpretation and are used for convenience only.
- 10.8. Any notice required or permitted to be given under the contract shall be in writing addressed to the other party at its principal place of business or registered office or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice
- 10.9. This Contract shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts
- 10.10. The Contract is made for the benefit of malt. and the Client and is not intended to benefit, or be enforceable by, anyone else.