

CSS Studios Terms And Conditions

Effective September 17, 2008

1. DEFINITIONS. In these Terms and Conditions (“**TERMS**”): “**CUSTOMER**” means the individual, corporation or other business entity, and each of its respective employees, agents and subcontractors, or any party represented by CUSTOMER, that submits **ELEMENTS** to, or receives services from, FACILITY; “**DELIVERABLES**” means the final deliverable(s) provided by FACILITY to CUSTOMER created in the performance of any of FACILITY’s services; “**ELEMENTS**” means all film negatives, master positives, master videotapes, submaster videotapes, submaster positives, sound tracks, reversal originals, reversal intermediates, cuts and trims, positive prints or video dubs, separations, audiotapes, sprocketed magnetic film, sound track optical negatives, striped film prints and film prints, digital files, and all **IP RIGHTS** in all of the foregoing, and in each case, that are delivered to or deposited with FACILITY by CUSTOMER or on CUSTOMER’S behalf; “**FACILITY**” means CSS Studios, LLC (“**CSS STUDIOS**”) and its subsidiaries, affiliates, divisions, successors and assigns; “**IP RIGHTS**” means any and all intellectual property rights now known or hereafter existing throughout the world (including but not limited to patents, copyrights, trademarks and trade secrets); “**METHODS**” means the methods, systems, know-how, concepts, ideas, technology, information, materials, processes, and the like used by FACILITY in rendering the services; and “**WORK PRODUCT**” means preliminary or incomplete versions of the Deliverables, products developed by the FACILITY that are not delivered to CUSTOMER, and METHODS.

2. ORDERS. FACILITY is entitled to rely on instructions given to FACILITY by any third party purportedly on the CUSTOMER’s behalf. All orders shall be placed using the CUSTOMER’s authorized purchase order and such order shall be binding on CUSTOMER only if FACILITY accepts such order. FACILITY may accept verbal orders at its discretion. Each order will create a separate contract governed by these **TERMS**.

3. CUSTOMER OBLIGATIONS. CUSTOMER represents and warrants that (i) it is the sole owner of, or has the right to possess, use and direct FACILITY to use, all **ELEMENTS**, (ii) it has made a security (back up or second) copy of the **ELEMENTS** and any master copy, (iii) as long as CUSTOMER is indebted to the FACILITY, CUSTOMER shall not to pledge, hypothecate, assign or otherwise encumber **ELEMENTS** without the prior written consent of FACILITY, and (iv) **ELEMENTS** shall be suitable for use by the usual methods employed by FACILITY in its operations. CUSTOMER shall indemnify, hold harmless and defend FACILITY from any and all liability, claims, losses, damages and expenses, including without limitation, reasonable attorneys’ fees, arising out of or in connection with (i) the publication, processing, use, distribution, contents or exhibition of **ELEMENTS** and **DELIVERABLES**, including and without limitation, any liability for libel, slander, defamation, invasion of right to privacy, misappropriation, or infringement of patent, copyright, trademark, or other proprietary right, (ii) any act or omission of CUSTOMER, including the breach of CUSTOMER’S representation or warranty contained herein, or (iii) any property damage or injury caused by CUSTOMER’S agents or employees at FACILITY. FACILITY will have the right to

retain separate counsel at CUSTOMER'S expense. CUSTOMER shall pay for repairs to all equipment that was damaged at FACILITY as a result of CUSTOMER'S negligence. Payment for said repairs is due upon presentation of repair bill and both parties agree that the ELEMENTS and DELIVERABLES will not be released until the subject repair bill is paid in full.

4. PAYMENT.

A. Rates; Quotations: Work will be done at FACILITY's rate card current on the date an order is received from CUSTOMER, unless FACILITY has submitted alternative rates to CUSTOMER in a written quotation, which shall be valid for thirty (30) days from the date of submission. Oral quotations are provided as an estimate only and shall not constitute a binding contract. All prices are subject to any applicable taxes. Rate cards are subject to change without notice.

B. Foreign Customers: All work for non-U.S. customers will be accepted on a U.S. currency cash basis only, which includes travelers' checks, bank drafts and funds deposited by wire. CUSTOMER shall pay any costs associated with payment by non-U.S. customers.

C. Cancellation Fees: All Cancellations must be made directly to the customer service department. If CUSTOMER cancels services or products, Customer shall pay for services rendered, or products ordered or produced, prior to cancellation. CUSTOMER shall pay any cancellation charges (up to 100% of the estimated costs for the period booked) that may apply, based on FACILITY's cancellation policy at the time of cancellation.

D. Terms of Payment: All work shall be accepted on a C.O.D. basis unless credit has been established in advance. Payment of all invoices is due net thirty (30) days from the date of the invoice. If a payment is not made when due, a service charge of one and half percent (1-1/2%) per month will be charged on all outstanding balances. In the event that the invoices are not paid in accordance with the terms set forth, any discount provided by FACILITY shall be revoked and the fee due for the work performed will be based upon the normal rate card in effect at the time the work was performed. CUSTOMER may not deduct from any payment due to FACILITY in respect of any set-off or counterclaim. Any communications written or oral regarding any dispute and/or payments relative to any invoice or account which is the subject of any dispute must be sent within ten (10) days from the date of such invoice to CSS Studios, LLC, Attn: Senior Vice President, Feature Film Operations and Business Development, 7080 Hollywood Blvd., Hollywood, CA 90028 and not to the payment remittance address.

E. Possession: FACILITY may retain possession of any DELIVERABLES until FACILITY has received payment in cleared funds for the services. Until such payment has been made, legal title to all DELIVERABLES shall remain with FACILITY (notwithstanding delivery or the passing of risk to CUSTOMER), the license granted to CUSTOMER in Section 11 below shall not take effect; and FACILITY may repossess any DELIVERABLES in order to effect such payment, and CUSTOMER grants FACILITY an irrevocable license to entire CUSTOMER's premises to effect such repossession.

5. RIGHT TO REFUSE PERFORMANCE: FACILITY may, without liability, refuse or cease to perform services if FACILITY, in its sole discretion: (a) deems an ELEMENT to be unlawful, pornographic or degrading or when it seems as tending to incite prejudice or passion; (b) FACILITY might subject itself to criminal or civil proceedings or to liability of any kind; (c) finds that ELEMENTS are not of the necessary technical standard to enable FACILITY to perform its work; (d) deems that Customer is in material breach of any of these Terms; or (e) deems that Customer is unable to pay its debts.

6. LIMITATION OF LIABILITY:

A. Generally: EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, (A) FACILITY GIVES NO WARRANTY EXPRESS OR IMPLIED AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, TITLE, NON-INFRINGEMENT, QUALITY OR OTHERWISE WITH RESPECT TO THE DEVELOPMENT, PRINTING, DUBBING, TRANSFERRING, AND PROCESSING OF THE ELEMENT OR ANY OTHER LABORATORY SERVICES PROVIDED BY FACILITY; AND (B) FACILITY MAKES NO WARRANTY AND ASSUMES NO RESPONSIBILITY FOR THE CHARACTER OR QUALITY OF THE MATERIAL, FILM PROCESSING, DUBBING, LOSS OF QUALITY ATTRIBUTABLE ANY PROCESS CARRIED OUT DURING THE PERFORMANCE OF SERVICES, OR SERVICES PROVIDED BY IT HEREUNDER.

B. Limitations of Responsibilities of Facility: It is understood and agreed that FACILITY is not an insurer and that payments made for service provided by FACILITY are based solely on the value of such services. The ELEMENTS and DELIVERABLES are received, processed and stored solely at the risk of the CUSTOMER. FACILITY reserves the right to assign or subcontract all or any part of the work ordered. FACILITY may hold ELEMENTS at any place(s) that FACILITY deems appropriate, there being no promise or representation, expressed or implied, that the ELEMENTS and DELIVERABLES will be retained or stored at any particular location or by under particular conditions.

C. Limitations for Damage to or Loss of Elements: In the event that the ELEMENTS are lost, destroyed or damaged by reason of gross negligence of the FACILITY, its employees, subcontractors or agents, or for any other reason, FACILITY liability shall be limited to the replacement of unexposed/unrecorded raw stock. CUSTOMER agrees that it shall test all materials that may be supplied by FACILITY before such materials are used in postproduction work or duplication or in any broadcasting of CUSTOMER'S production. If such ELEMENTS contain SMPTE time coding, CUSTOMER specifically agrees to test such time coding for accuracy before relying on such time coding. CUSTOMER agrees to notify FACILITY of any inaccuracies in such time coding, and, if directed to do so, FACILITY agrees promptly to correct such inaccuracies. FACILITY'S obligation shall be limited to correcting any such inaccuracies in time coding, and FACILITY shall not be liable for any loss, injury, or damage, direct or consequential, that may be incurred as a result of any inaccuracies in any time coding.

D. Limitations for Defects in Delivery, Services or Materials: If any DELIVERABLE is defective or is erroneously labeled or shipped or if non-conforming FACILITY services or materials furnished by FACILITY, FACILITY'S liability therefore shall be

limited to replacement or repair of such defective DELIVERABLE, the correction of such errors in shipment or labeling or the providing of conforming FACILITY services or material at FACILITY'S expense; provided that the defective DELIVERABLE is returned and written notice of such imperfection or error in labeling or shipment is received by FACILITY within ninety (90) days after shipment.

E. Limitations for Delay in Delivery: FACILITY shall use reasonable efforts to deliver in accordance with delivery dates, but FACILITY is not liable for any loss or damages caused by FACILITY's failure to meet any delivery date or times, or failure to give notice of delay.

F. Force Majeure: Without limiting the generality of the foregoing, FACILITY shall not be liable for any delay or loss due to delays or failures in performance caused directly or indirectly by the ELEMENTS; acts of God, CUSTOMER, civil or military authorities or terrorism; civil unrest; fires; floods; epidemics; quarantine restrictions; wars; riots; strikes; lock outs; labor difficulties; failures of equipment or transportation; inability to obtain, or the failure of others to deliver, ELEMENTS, machinery, equipment or qualified personnel; or any other cause beyond FACILITY'S reasonable control. In the event of a delay, the delivery or shipping date, as appropriate, shall be deemed extended for a period equal to the delay.

G. DAMAGES: FACILITY's total liability for any and all loss or damage arising out of or in connection with any contract for services shall be limited to the total sums paid by CUSTOMER to FACILITY under such contract. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL FACILITY BE LIABLE TO ANYONE FOR ANY LOST PROFITS OR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER: (a) RESULTING FROM ANY DEFECTIVE ELEMENTS, DELIVERABLES, SERVICES, PRODUCTS OR EQUIPMENT; OR (b) RESULTING FROM DAMAGES TO, OR DESTRUCTION OF ELEMENTS OR DELIVERABLES BY FACILITY, WHETHER OR NOT SUCH DAMAGES ARE CAUSED BY THE NEGLIGENCE OF FACILITY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; OR (c) RESULTING FROM ANY NEGLIGENCE OR BREACH OF DUTY (CONTRACTUAL OR OTHERWISE) BY FACILITY, INCLUDING, WITHOUT LIMITATION, IMPROPER STORAGE OR RETENTION, PROCESSING, PACKING, DELAY IN DELIVERY OR SHIPMENT, OR ERRORS IN SHIPMENT, OR LABELING.

7. FACILITY LIENS; SECURITY INTEREST: In addition to any other liens, rights or remedies given to FACILITY under applicable law herein, CUSTOMER hereby grants, assigns and transfers to FACILITY a security interest in and lien on any and all ELEMENTS and DELIVERABLES in the possession of FACILITY as security for payment of any and all services and materials furnished to CUSTOMER by FACILITY. The parties agree that if the ELEMENTS or DELIVERABLES are voluntarily restored or delivered to CUSTOMER or some third person prior to payment to FACILITY for such materials and services, the lien and security interest therein shall not be extinguished but shall survive, and upon request by FACILITY, CUSTOMER shall execute such documents including a Financing Statement, as may be required to protect such security interest.

- A. Additional Payments:** In the event FACILITY exercises its rights hereunder by selling the ELEMENTS or DELIVERABLES at public or private sale, then CUSTOMER agrees to pay FACILITY on written demand whatever deficiency may be due after the proceeds are applied to payment of the indebtedness, including, without limitation, all legal and other costs, expenses and charges incurred in the collection, sale, delivery or preservation of the ELEMENTS or DELIVERABLES
- B. Title After Sale:** CUSTOMER agrees that if FACILITY shall enforce its rights under any law, it or any other person acquiring title or interest in or to any ELEMENTS or DELIVERABLES at public or private sale, shall have and is hereby granted, all right, title and interest of CUSTOMER in the ELEMENTS or DELIVERABLES.

8. RETENTION AND DISPOSAL OF INACTIVE ELEMENTS: Provided that all obligations that may arise hereunder have been paid to FACILITY, CUSTOMER shall remove from FACILITY'S premises all ELEMENTS and DELIVERABLES within three (3) months after the last work thereon. If CUSTOMER fails to remove said ELEMENTS or DELIVERABLES as herein provided, FACILITY may at any time, without further notice or liability to CUSTOMER or any other person, begin charging CUSTOMER a storage/retention fee per ELEMENT, destroy, erase, reuse or make any disposition of said ELEMENTS or DELIVERABLES as FACILITY sees fit. CUSTOMER agrees to indemnify, hold harmless and defend FACILITY harmless from all liability arising out of or connected with FACILITY'S destruction or disposition of said ELEMENTS or DELIVERABLES as provided herein. FACILITY will have the right to retain separate counsel at CUSTOMER'S expense.

9. INSURANCE. CUSTOMER agrees to insure fully, at its own expense, ELEMENTS and DELIVERABLES against all insurable risk, including damage or destruction of such ELEMENTS and DELIVERABLES through the negligence of FACILITY. Such insurance against any and all losses (including incidental and consequential losses) for which insurance is available and the policy and the policy of insurance shall provide that the insurer waives all claims of subrogation against FACILITY. FACILITY shall not insure any ELEMENTS or DELIVERABLES.

10. TECHNICAL CALIBRATION AND EXHIBITION. CUSTOMER hereby grants FACILITY the right to use the ELEMENTS for technical calibration to adjust the system used to process the ELEMENTS. CUSTOMER also hereby grants FACILITY the limited right to exhibit excerpts of the DELIVERABLES to others for limited purpose of demonstrations of FACILITY'S work.

11. DELIVERY. Delivery shall be at FACILITY'S premises. Risk shall pass to CUSTOMER on delivery. On instruction from CUSTOMER, FACILITY will cause ELEMENTS and DELIVERABLES to be transported to any destination (whether by courier, satellite, fiber, posted to an Internet site or server, or email) requested at the expense and risk of the CUSTOMER. Customer hereby consents to FACILITY posting ELEMENTS and DELIVERABLES on a FTP site and providing access (via a user identification and password) to CUSTOMER'S vendors that are working on the same project as FACILITY and that have a need for the content on such site. Unless otherwise

requested, FACILITY will ship all physical materials collect, via a carrier of its selection, and a handling charge will be added to all prepaid shipments.

12. PROPRIETARY RIGHTS.

A. CUSTOMER Ownership: As between CUSTOMER and FACILITY and subject to these Terms, CUSTOMER owns and shall retain all right, title and interest, including, without limitation, all IP RIGHTS, in and to (i) the ELEMENTS, and (ii) upon full payment of the services, the DELIVERABLES, except for the WORK PRODUCT used therein for which Customer has a license as set forth below.

B. LICENSE TO WORK PRODUCT: FACILITY hereby grants CUSTOMER a nonexclusive, irrevocable, royalty-free, fully paid-up license, throughout the universe and in perpetuity, to use the WORK PRODUCT only as contained in the DELIVERABLES solely as necessary in the distribution of the CUSTOMER products into which such DELIVERABLES are incorporated.

C. FACILITY Ownership: As between CUSTOMER and FACILITY, FACILITY owns and shall retain all right, title, and interest, including, without limitation, IP RIGHTS in and to the WORK PRODUCT (“FACILITY IP”). CUSTOMER acknowledges and agrees that: (i) FACILITY shall have the right to use the FACILITY IP in performing services for third parties and (ii) the work product and deliverables rendered as the result of such services may be substantially similar to the DELIVERABLES, provided that FACILITY does not use any CUSTOMER IP; and (iii) the METHODS are FACILITY’S trade secrets.

D. Additional rights. Each party hereby expressly reserves all rights in and to its IP, and the other party shall not acquire any such rights, whether by virtue of these Terms, operation of law, estoppel, or otherwise. Each party shall not contest, directly or indirectly, the validity or ownership of the other party’s IP. Each party shall not, and shall not permit any other third parties to: (a) create derivative works from the other party’s IP, (b) disassemble, decompile, reverse engineer, or otherwise attempt to discern any aspects of the other party’s IP, (c) sublicense, lease, rent, loan or distribute or otherwise transfer or grant access to the other party’s IP, or (d) otherwise use or attempt to exploit the other party’s IP in a manner not expressly authorized by these Terms.

13. MISCELLANEOUS.

A. Governing law; Venue: These TERMS and each contract between FACILITY and CUSTOMER shall be governed by California law. The exclusive venue for all legal proceedings shall be the County of Los Angeles, California.

B. Modification: These TERMS constitute the entire agreement between FACILITY and CUSTOMER with respect to the subject matter contained herein. These terms apply to every contract for the provision of services by FACILITY to the CUSTOMER and the supply of services by FACILITY shall not constitute acceptance of any other terms and conditions. These TERMS may be amended, altered, waived or modified by written agreement, signed by an officer of CSS Studios. Sales personnel are not authorized to amend alter, waive, or modify the terms of these Terms.

C. Notices. All notices and communications hereunder to FACILITY shall be sent to CSS Studios, 1619 Broadway, 8th Floor, New York, NY 10019, Attn: Legal Department, unless notified otherwise in writing. Any notice or communication hereunder to FACILITY shall be deemed to have been duly given when in writing and actually received by FACILITY. All notices or communications hereunder to CUSTOMER shall be deemed to have been duly given when in writing and personally deposited in the United States Mail with postage prepaid to CUSTOMER at the last known address of CUSTOMER.

D. Waiver. No failure or delay by FACILITY in exercising any of its rights under these Terms shall be deemed to be a waiver of any term, CUSTOMER's breach or any subsequent breach of the same.

E. Severability. The invalidity of any one of these Terms shall not affect the validity of the remaining Terms.

F. Other CSS Studio Entities. CUSTOMER is responsible for obtaining and reviewing terms and conditions for all entities and companies within CSS Studios.

G. Assignment; Subcontracting. These Terms shall bind and inure to the benefit of the respective heirs, principal representatives, successors, and assigns of the parties; provided that any credit extended to CUSTOMER shall not be extended to its successors and assigns without successful completion of a new credit application. FACILITY may assign these TERMS or subcontract its services at its discretion and without notice to CUSTOMER.

H. Parties. These Terms shall not constitute a partnership or employment relationship between the parties.

I. Rights and Remedies. FACILITY'S rights and remedies shall be cumulative and not exclusive, and the exercise of any right or remedy shall not affect its right to enforce one or more other remedies.