



## **1440 Productions Pty Ltd – TERMS AND CONDITIONS**

All clients of 1440 Productions Pty Ltd (the “**Client**”) shall be bound by the following terms and conditions.

### **1. DEFINITIONS**

“ <b>Delivery Date</b> ”	shall mean the date set out in the Quote upon which the Production is scheduled to finish and the Project completed.
“ <b>Production</b> ”	shall mean the work undertaken by 1440 Productions in order to complete the Project.
“ <b>Project</b> ”	shall mean the production created by 1440 Productions for the Client.
“ <b>Quote</b> ”	shall mean the quotation signed by the Client in accordance with any Production Agreement which outlines 1440 Productions charges, time frames and other details for completing the Project.

### **2. OFFER AND ACCEPTANCE**

- (a) These Terms and Conditions constitute a part of the contract between 1440 Productions and the Client. The Terms and Conditions overrule any term of any Production Agreement between 1440 Productions and the Client.
- (b) No term or condition contained in the Quote shall add to, amend or delete the Terms and Conditions. Any amendments to the Terms and Conditions must be made in writing and signed by both 1440 Productions and the Client.
- (c) The Client must submit to 1440 Productions the details of the Production *in writing* which are then subject to review and acceptance by 1440 Productions.
- (d) 1440 Productions will only approve commencement of a Production once 1440 Productions have received from the Client a signed Quote and a deposit payment amounting to 50% of the total Production budget (“**Deposit**”).
- (e) Before a Production commences, the Client must nominate a representative, to ‘sign off’ and approve all stages of the Production (“**Representative**”). 1440 must approve in writing any change to the Representative.

### **3. PRICES AND PAYMENTS**

- (a) All charges set out by 1440 Productions in the Quote are approximate only (“**Charges**”). 1440 Productions shall not be bound by the Charges and reserves the right to adjust the Charges as reasonably required and to charge additional fees should 1440 Productions be required to undertake a greater amount of work than was originally provided for in the Quote.
- (b) All prices are in Australian currency and shall be payable without discount upon the terms stated on the invoice supplied by 1440 Productions.
- (c) The Client shall be required to pay 1440 Productions the Deposit prior to the commencement of Production unless prior payment arrangements have been made with and approved by 1440 Productions. 1440 Productions shall not be required to refund the Deposit in the event the Production is cancelled for any reason.
- (d) Signed Quotes for a standard corporate production received less than 48 hours before the scheduled commencement of the Production (“**Commencement Date**”) shall be subject to a 20% surcharge which must be paid prior to the Commencement Date.
- (e) Signed Quotes for an outside broadcast production or a production involving more than one week of shooting received less than one week before the scheduled commencement of the Production (“**Commencement Date**”) shall be subject to a 20% surcharge which must be paid prior to the Commencement Date.
- (f) All prices inclusive of GST at rate applicable at time invoice is issued
- (g) 1440 Productions are only required to provide the Client with the items and services that are specified on the Quote for the quoted price. Should the Client require any additional items and services other than those set out in the Quote, the Client shall receive an invoice for these items and services at the end of the production.
- (h) Any unpaid invoice shall incur a penalty of 2% of the total amount owing on the invoice per week the invoice remains in arrears

#### **4. GST**

- (a) Should the occasion arise that a shortfall in GST remittance on this sale has occurred, or an additional payment is required to be made as a result of an adjustment, this payment shall be met by the Client.

#### **5. DELIVERY RISK PROPERTY**

- (a) Delivery Dates are estimates only and may be changed by 1440 Productions as 1440 Productions determine necessary.
- (b) 1440 Productions reserves the right to miss a Delivery Date or any other deadline set out in the Quote or Production Agreement ("**Deadlines**") if the Client has not fulfilled its obligations under the Quote or Production Agreement and/or has failed to adequately provide items and/or services to 1440 Productions which are necessary for 1440 Productions to meet the scheduled Delivery Dates and/or Deadlines.

#### **6. COPYRIGHT AND INTELLECTUAL PROPERTY**

- (a) 1440 Productions retain ownership of all rights associated with the Production and the Project (including all copyright) until such time as the Client has paid for the Production in full (as determined by 1440 Productions). At such time, 1440 Productions will assign in perpetuity all rights in the Project (including all copyright) to the Client subject to clause 6(b) below.
- (b) To ensure the highest and ongoing quality of the client's project, the Client agrees that it shall not make any re-edits, amendments and/or alterations to the Project unless they have obtained the prior written consent of 1440 Productions or if the reedits, amendments and/or alterations are completed by 1440 Productions. For the avoidance of doubt, third parties must not undertake any reedits, amendments and/or alterations to the Project without the prior written consent of 1440 Productions.
- (c) 1440 Productions reserves all rights of ownership and control over the 1440 Productions logo, name, and associated branding.
- (d) The Client shall give 1440 Productions the following credit for Projects: "Produced by 1440 Productions Pty Ltd". In the event the Project is edited by a third party, the Client shall still be required to credit 1440 Productions with the foregoing credit.

#### **7. PRODUCTION**

- (a) The Client acknowledges that work undertaken by 1440 Productions with respect to the Production/Project shall take place at normal working hours, unless otherwise agreed upon by 1440 Productions. In the event, the Client wishes 1440 Productions to work outside normal working hours or if the Client requires 1440 Productions to undertake urgent work on the Production, then 1440 Productions may charge additional fees for such work.
- (b) 1440 Productions are solely responsible for the management of all persons working on the Production ("**Crew**"). All Crew are hired by 1440 Productions and are subject to individual workplace agreements with 1440 Productions. In the event, the Client has an issue with a member of the Crew; the Client shall be required to contact the managing director of 1440 Productions to discuss the matter. The Client shall not be permitted to discipline Crew, hire and/or dismiss Crew.
- (c) Once a Production is completed, the Client agrees that any duplication of Project may only be undertaken by 1440 Productions, unless otherwise agreed by 1440 Productions.
- (d) 1440 Productions reserves the right to use any footage taken from the Project for any promotional purposes, including entries into industry awards and competitions.

#### **8. CANCELLATION OF PRODUCTION**

- (a) The Client is not permitted to cancel a Production after the Commencement Date and prior to completion of the Project unless 1440 Productions grants written consent and if given, the Client shall be required to fully reimburse 1440 Productions for all actual and prospective loss, damages and expenses.
- (b) If the Client re-schedules a shoot day for whatever reason, 1440 Productions will be within their rights to charge the client a cancellation fee if less than 24 hours notice is given. The cancellation fee may be up to 60% of the production budget (excludes any post production fees associated with the project).
- (c) 1440 Productions reserves the right to cancel an outdoor shoot if the weather reaches in excess of 40 degree Celsius, or if the weather conditions deem it inappropriate to shoot (ie. Excessive rain) If the shoot is cancelled due to weather reasons the Client may have to contribute some monies to a cancellation fee determined by 1440 Productions.

#### **9. WARRANTIES AND INDEMNITIES**

- (a) The Client warrants that:
  - (i) it shall obtain the necessary clearances and approvals in writing for all third party material that it provides to 1440 Productions to be used by 1440 Productions during the Production or in the Project.

- (ii) it will indemnify and keep indemnified 1440 Productions against any loss, damage, claims, costs (including reasonable legal costs) or demands sustained by, or made against 1440 Productions by any person, arising out of, or relating to, a breach by the Client of any of the terms of this Agreement.

**10. TERMINATION**

- (a) 1440 Productions shall be entitled to cease work on the Production before it is completed in the event the Client breaches the Terms and Conditions and/or the Production Agreement and the Client fails to remedy the breach within 7 working days of receiving written notice from 1440 Productions;
- (b) In the event of the bankruptcy of either party or in the event that either party shall make an assignment for the benefit of creditors or in the event that either party shall fail to fulfil any of its material obligations under this agreement for any other reason then, at any time after the occurrence of any such event, in addition to any other remedies which may be available, the aggrieved party shall have the option by notice in writing to terminate , which termination shall be effective as of the date of such notice.
- (c) If 1440 Productions elects to cease work on the Production pursuant to clause 10(a) above or if the Client cancels the Production for any reason following the Commencement Date, the Client shall not be entitled to any refund of money paid to 1440 Productions under this Agreement and shall be liable to 1440 Productions for all work undertaken to the date of termination.

**11. FORCE MAJEURE**

- (a) 1440 Productions Pty Ltd shall not be liable for any delay in or failure to perform any of its obligations hereunder in a timely manner.
- (b) The Production schedule will be extended to the extent of any time lost through causes beyond 1440 Productions' control.

**12. MISCELLANEOUS**

- (a) This Agreement has been entered into and shall be construed and take effect in accordance with the laws of Victoria.
- (b) If any part of this Agreement shall be determined invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect, provided determined invalid or unenforceable is not essential to the intended operation of this Agreement.
- (c) All notice statements or payments to be given hereunder shall be in writing and shall be sufficiently given, delivered, or served if hand delivered or if posted by certified or registered mail addressed to that party at his address set out herein or such other address as may be notified in writing or to the registered office of that party or if left for him at that address. Any such notice if posted shall be deemed to have been received on the day that it would have arrived in the normal course of mail.