



KOALA TERMS & CONDITIONS

EFFECTIVE SEPTEMBER 1ST 2010

1. GENERAL TERMS.

- A. In these terms and conditions ("Terms"), "Client" means the person, firm or company to whom any work or process and/or the supply of materials are being provided ("Services"); "Koala" means Koala Limited.
- B. These Terms apply to every contract for the provision of Services by Koala Limited to the Client to the exclusion of any other terms and conditions proposed or referred to by the Client (unless specifically agreed in writing by Koala) and the supply of Services by Koala shall not constitute acceptance of any other terms and conditions. For the avoidance of doubt, the acceptance by Koala of a Client's purchase order which contains different terms and conditions does not constitute acceptance of those terms and conditions. Unless otherwise specified by the Client, Koala may, in its sole discretion, select the brand, type and quality of raw stock to be used for Services.
- C. These Terms constitute the entire agreement between Koala and the Client and shall apply to the exclusion of any non-fraudulent representation, whether express or implied, written or oral made by or on behalf of Koala.
- D. In these Terms, unless notified to the contrary in writing, Koala shall be entitled to rely on instructions given to Koala by any third party (including without limitation any advertising agency) purportedly on the Client's behalf.

2. ORDERS, CANCELLATION AND QUOTATIONS.

- A. All orders shall be placed using the Client's authorised Purchase Order and no order will be binding on Koala unless or until such order has been accepted by Koala in writing, save that verbal orders may be accepted at Koala's discretion. Once accepted, an order may not be cancelled other than with Koala's written consent and each order placed will create a separate contract which will be automatically governed by these Terms.
- B. In the event of any cancellation request being received and permitted by Koala more than 7 days prior to the date the Services are due to commence, Koala shall be entitled to payment of 80% of the estimated fees for such Service. Any cancellation received and permitted less than 7 days before the date the Services are due to commence shall be charged in full.
- C. Unless expressly stated otherwise, a quotation is valid for 30 days only from the date of the quotation.

3. PRICE AND PAYMENT.

- A. Unless Koala has given a written quotation, all work will be done at Koala's rate card current at the date an order is received from Client. Whilst given in good faith, Koala shall not be bound by any estimate of price. All prices are subject to value added tax payable by the Client at the appropriate rate.
- B. Unless Koala has agreed in writing, Client shall be required to pay (in Pounds Sterling by Bankers Automatic Clearing Service) 50% of the estimated fees on acceptance of the order and the final balance on delivery or, if earlier, notification that the goods are ready for delivery.
- C. Koala may in its sole discretion agree to grant the Client credit. Koala shall be entitled to trade and/or bank references to consider any credit application. Where Koala has agreed in writing to a credit arrangement, the Client shall pay all charges in full within 30 days of the date of the invoice. Credit card details should not be provided unless requested. Koala complies with all relevant data protection legislation but unsolicited information is provided at Client's own risk.
- D. If any sum payable by the Client shall not be paid by the due date for payment, Koala shall be entitled to:

1. interest on all outstanding sums at the rate of 3% per annum above the base rate of Lloyds TSB plc from the due date until the date of payment and such interest shall be payable on demand
 2. withdraw any applicable discounts and to charge the full amount in accordance with the current rate card; and
 3. vary any credit limit going forward.
- E. Any query alleging a defect in the Services must be raised in writing within 7 days of the Client becoming aware of the alleged defect. Any query relating to an invoice (or pre-invoice) must be raised in writing within 14 days of such invoice (or pre-invoice). Queries will only be considered where Client acts in good faith.
- F. Koala shall be entitled to retain possession of any materials created by Koala in the course of providing the Services ("Materials") until payment has been received in full from the Client.
- G. Until Koala has received payment in cleared funds for the Services:
1. legal title to all Materials produced in the course of such Services shall remain with Koala (notwithstanding delivery or the passing of risk to the Client);
 2. Koala shall have a general lien over all materials in its possession belonging to the Client ("Client Materials"); and
 3. the licence granted by Koala to the Client pursuant to Clause 5(B) shall not take effect.
- H. Furthermore, legal title to the Material shall remain with Koala until Koala has received payment in cleared funds of all charges due for all Services rendered by Koala to the Client.
- I. In the event of any monies remaining outstanding from the Client to Koala after the expiry of 14 days after such monies becoming due or if any step is taken by or against the Client pursuant to the Insolvency Act 1986:
1. Koala shall be entitled to exploit or dispose of all Materials and Client Materials in its possession, retain the net proceeds of sale against such outstanding monies, and shall account to the Client for the balance (if any) remaining; and/or
 2. the Client shall forthwith upon demand deliver to Koala any Materials, ownership of which remains with Koala and in any event Koala shall be entitled to repossess the same and for such purpose the Client grants to Koala an irrevocable

licence to enter into the premises of the Client, without being liable for any damage caused thereby

- J. The Client shall not be entitled to make any deduction from any payment due to Koala in respect of any set-off or counterclaim.

4. COMPLETION AND DELIVERY.

- A. Risk shall pass to the Client on delivery.
- B. At Koala's sole discretion, Koala may agree (at the Client's sole expense and risk) to pack and despatch Materials to any address specified by the Client.
- C. Koala shall use all reasonable efforts to deliver in accordance with delivery dates but Koala shall not be liable for any loss or damages of any nature caused by any failure of Koala to meet any delivery date and time of completion and delivery shall not be of the essence.

5. INTELLECTUAL PROPERTY.

- A. All copyright and other intellectual property rights of whatever nature resulting from the Services and/or any Materials shall remain vested in and be the exclusive property of Koala.
- B. Subject to Koala having received payment in full of all monies due, Koala grants the Client an exclusive licence to publish, copy, transmit, broadcast and otherwise use the Materials in an unmodified form as stated on the Purchase Order or invoice (save that Koala shall have a right to publish, copy, transmit, broadcast and otherwise use the Materials for the purposes of promoting Koala).
- C. The Client grants to Koala a non-exclusive licence to edit, adapt, reproduce, receive, store, transmit or otherwise process or use in any way whatsoever the Client Materials for the purpose of providing the Services and refer to the Client and the title of the relevant Client project in Koala's advertising and/or promotions.
- D. Client also hereby grants Koala the limited right to exhibit the Client Materials, or excerpts thereof, on the Koala websites, in press releases, or in "demo reels" for the limited purpose of demonstration of Koala's work in accordance with standard industry practice.
- E. The Client shall ensure that Koala is given screen credits in respect of the Services in a form approved in advance by Koala.

6. **FORCE MAJEURE.** Koala shall not be under any liability to the Client as a result of Koala being unable to perform any of its obligations due to circumstances beyond its reasonable control including without limitation industrial action, act of God, fire, flood, storm, acts of civil or military authorities, war, terrorism, shortages of material or acts, omissions or failures of third parties or the Client. Koala shall at its sole option be entitled to either perform such obligations 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 without liability.

7. **TERMINATION.**

A. Without prejudice to any other right or remedy which it may have, Koala shall be entitled to terminate its agreement for the provision of Services with the Client if:

1. the Client is at any time in material or persistent breach of any of these Terms or any sum owing to Koala by the Client is overdue for 21 days or more;
2. the Client is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or has a trustee, receiver or an administrative receiver appointed over it or over any substantial part of its assets or has an order made or passes a resolution for its liquidation, dissolution or winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation, takeover or reconstruction) or enters into any voluntary agreement with its creditors or becomes bankrupt or files for voluntary bankruptcy or ceases or threatens to cease to carry on business or any analogous situation to any of the above occurs under the law of any jurisdiction; or
3. The Client Materials are not of the necessary technical standards to enable Koala to perform the Services.

B. Upon termination for any reason whatsoever:

1. the Client shall pay to Koala all sums owing in respect of Services already performed; and
2. Clauses 1, 3, 5, 7(B), 8, 9, 10, 12, and 13 shall survive.

8. **WARRANTIES AND LIABILITY.**

A. Koala shall use reasonable skill and care in performing the Services.

B. Koala hereby excludes to the fullest extent permitted by law any and all warranties, terms and conditions other than those set out expressly herein (whether express, implied by

statute, contract, course of dealing or otherwise) including without limitation any implied warranties as to fitness for purpose or satisfactory quality.

- C. Koala shall not in any circumstance be liable for:
1. any loss of business, goodwill, reputation, contracts, opportunities or profits (in each case whether arising in the normal course of events or Koala knew of the possibility of such loss);
 2. any indirect, consequential or special loss or damage;
 3. or any loss of quality attributable to any process carried out during the performance of the Services.
- D. The Client's particular attention is drawn to the fact that prices quoted for the work undertaken by Koala do not take any account of any special value of any Client Materials passed to, or stored by, Koala. Client acknowledges that the cost of insuring Client Materials against all risks to its full value (if such insurance could be obtained) would result in a substantial increase in Koala's prices for Services. Client will insure all Client Materials passed to Koala against all risks to their full replacement value (including any consequential loss they may suffer as a result of its loss or damage) and Koala accepts no liability whatsoever for any loss or damage caused by the default or negligence of its servants, agents, sub-contractors or equipment save that Koala shall on request refund the current purchase cost of any blank film stock or video tapes damaged or lost in its possession by reason of Koala's negligence or default.
- E. Save as set out above, Koala's total liability for any and all loss or damage arising out of or in connection with any contract for Services with the Client shall be limited to the total sums paid by the Client to Koala under such contract.
- F. Nothing herein shall be construed as excluding or limiting Koala's liability for death or personal injury caused by Koala's negligence.
- G. The Client shall indemnify Koala, its directors, employees, contractors and agents against any and all liability, costs, expenses, claims and demands of any nature whatsoever, arising out of or in connection with the Client's Materials and any acts or omissions of the Client, its employees or representatives, including without limitation any breach of these Terms.
- H. The Client warrants that:
1. where Koala uses the Client Materials, such use will not give rise to a breach of copyright trademark or any other proprietary interest of any third party; and

2. the Client has made a security copy or second copy of the Client Materials and any master copy.

9. **STORAGE OF CLIENT MATERIALS.**

- A. Koala shall be entitled to destroy or dispose of any Client Materials not collected from Koala within six months after the completion of any Services and, until collected, such Client Materials shall be held by Koala at the Client's sole risk and liability.
- B. Koala will only store Client Materials on the written instructions of the Client subject to the Client paying (unless otherwise agreed in writing) monthly in advance storage charges at the rates published from time to time by Koala ("Storage Charges") and any Client Materials so stored will be stored at the Client's sole risk and liability.
- C. If the Client fails to take delivery of the Services and/or Customer Materials within 21 days of notification of completion of the Services, Koala will be entitled to charge and the Client obliged to pay Storage Charges.

10. **CONFIDENTIAL INFORMATION.** The Client shall keep confidential and secure all information relating to Koala and the Services (the "Group Information") and shall not disclose such Group Information to any third party (other than its employees or professional advisors who need to know the same) without Koala's prior written consent save to the extent that any Group Information is a) in the public domain not through any fault of or disclosure by or on behalf of the Client; or b) required by law to be disclosed.

11. **SUB-CONTRACT.** Koala reserves the right to sub-contract at its discretion and without notice to the Client.

12. **LICENCE TO OCCUPY.** Any occupation of Koala's premises by the Client will:

- A. not confer exclusive occupation on the Client who shall occupy as licensee only;
- B. not create any relationship of Landlord and Tenant;
- C. be personal to the Client; and
- D. (unless otherwise agreed) be subject to the payment of a licence fee as imposed by Koala.

13. **MISCELLANEOUS.**

- A. Any notice given under these Terms may be served by posting the same by ordinary recorded delivery or registered mail, in an envelope pre-paid and addressed to the recipient at the address of the recipient last known to the sending party. Such notice so posted shall be deemed to be served on the 2nd day after the same was posted.
- B. Koala reserves the right to make changes to these Terms from time to time. An up-to-date copy will be available at www.koalatv.com or on request.
- C. The invalidity of any of these Terms shall not affect the continuing enforceability of the remaining Terms.
- D. No failure or delay by Koala in exercising any of its rights under these Terms shall be deemed to be a waiver of such breach or any subsequent breach of the same or any other term.
- E. These Terms shall not be taken to constitute a partnership or the relationship of employer and employee.
- F. Subject to clause 13(G), a person who is not a party to these Terms has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms but this does not affect any right or remedy of any third party which exists apart from that Act.
- G. Each Group Company may enforce these Terms to the extent that it has provided Service and or Materials to the Client.
- H. These Terms and each contract between Koala and the Client shall be governed by English law and subject to the exclusive jurisdiction of the English courts.