



Terms and Conditions

Updated: 8th January, 2019

1. Definitions

1.1 In these terms and conditions, unless the context otherwise requires:

Consumer means any individual who acquires TNM's services wholly or predominantly for personal, domestic or commercial use.

Customer means any person or entity requesting TNM to provide Services.

TNM means The Now Media (58 163 641 653) of PO Box 693, Lidcombe NSW 1825.

Agreed Fee means the fees estimated by TNM in any quotation once accepted by the Customer.

Materials means any goods, chattels, items or things, including but not limited to any photographs, documents (whether digital or hard copy), tapes, videos, films, footage, props and equipment provided by the Customer to TNM for the purposes of TNM supplying the Services.

Raw Footage means master footage recorded by TNM as part of provision of the Services.

Services means video production and/or post production services.

2. Application

2.1 These Terms and Conditions apply to and are incorporated into all contracts, agreements, arrangements, transactions and dealings entered into by TNM with any Customer in relation to the provision of Services by TNM.

2.2 All work carried out by TNM is on the basis that the Customer has agreed to these Terms and Conditions.

3. Consumer Contract

3.1 If the Customer is a Consumer:

3.1.1 These conditions do not affect any rights the Customer has under Schedule 2 of the Competition and Consumer Act 2010 (Cth); and

3.1.2 These conditions do not affect the laws in force in the place in which the contract is made prior to the contract.

4. Quotations

4.1 Quotations are calculated by estimating how long it will take to provide the Services under typical circumstances and are based on an hourly rate. One round of Customer changes and/or revision is included in each quotation.

4.2 If the Customer instructs TNM that significant changes and/or revisions to the scope of the Services described in a quotation are required then TNM shall be entitled to charge an additional Agreed Fee based on a further quotation.

5. Cancellation

5.1 If the Customer has engaged TNM to provide Services on a specified date, the Customer may notify TNM in writing (during normal business hours) that the Customer does not require the Services to be provided on that date ("the cancellation").

5.2 If notification of the cancellation is provided outside of normal business hours, it is deemed to have been provided at the commencement of the following business day.

5.3 If the cancellation is made more than 48 hours prior to the day on which TNM has been

engaged to provide the Services, the Customer must reimburse TNM for any expenses incurred by TNM in preparation for provision of the Services.

5.4 If the cancellation is made between 48 and 24 hours prior to the day on which TNM has been engaged to provide the Services, the Customer must pay 50% of the Agreed Fee.

5.5 If the cancellation is made within 24 hours of the time at which TNM has been engaged to provide the Services, the Customer must pay the Agreed Fee in full.

5.6 If the cancellation is made while TNM is providing Services to the Customer, the Customer must pay the Agreed Fee in full.

5.7 Any amount payable pursuant to clauses 5.3, 5.4, 5.5 or 5.6 must be paid by the Customer within 30 days of the cancellation.

6. Payment

6.1 The Customer will pay to TNM the Agreed Fee in the following manner:

6.1.1 50% of the Agreed Fee will be payable prior to the commencement of the Services (“the Deposit”); and

6.1.2 The balance will be payable within 30 days of the date of any interim or final invoices submitted in respect of the Services; and

6.2 TNM will not commence any pre-production activities until the Customer has paid the Deposit.

6.3 If any TNM invoice or part thereof is not paid within 30 days of the date of the invoice, then the Customer agrees that interest will accrue on the outstanding amount at the rate specified pursuant to Schedule 5 of the Uniform Civil Procedure Rules 2005 (NSW).

7. Variations (additional quotation applies)

7.1 TNM will provide the Customer with one (1) ‘draft copy’ of an initial edited video file. The Customer must notify TNM of all proposed changes within fourteen (14) days of receipt of the draft copy by the Customer.

7.2 Once the proposed changes have been made, TNM will provide the Customer with a ‘final draft copy’ which is to be used solely for the

purpose of verifying that the proposed changes have been correctly implemented.

7.3 No new changes may be requested unless the Customer purchases another variation.

7.4 The Customer must notify TNM of any errors in the final draft copy within fourteen (14) days.

7.5 Once the fourteen (14) day review period for both the ‘draft copy’ and ‘final draft copy’ has elapsed, TNM may refuse to make any further changes.

7.6 The Customer acknowledges that some changes may not be possible.

8. Venue Location Fees & Permissions

8.1 The Customer must obtain any necessary consent or permission and pay any fees which may apply for TNM to film at a particular venue, location or event.

9. Artistic Licence

9.1 The Customer acknowledges and agrees that editing an event and the production of finished works may include elements of artistic expression and interpretation. TNM reserves the right to use ‘Artistic Licence’ in any commissioned works that require editing or the production of finished works. The re-editing of commissioned works is offered as an optional extra by prior arrangement. A quotation for re-editing will be provided by TNM on request (see clause 7 - variations above).

10. Customer’s Materials

10.1 All Materials are used and stored by TNM solely at the Customer’s risk and TNM is under no obligation to insure any Materials.

10.2 Neither TNM nor any of its officers, employees, agents or subcontractors will be liable for any loss, destruction or damage (“Loss”) of the Materials other than loss caused by their negligence but any liability for such loss will be limited to replacement of the Materials;

10.3 TNM will not be liable in respect of any Loss of the Materials arising out of the action of any person not employed or engaged by or associated with TNM even though such person is present during and involved with the performance of the Services; and

10.4 The Customer must retain a master copy of each and every recording delivered to TNM for the purposes of the Contract.

11. Customer Acknowledgements

11.1 The Customer acknowledges and agrees that:

11.1.1 TNM will have a lien on Materials provided by the Customer; and

11.1.2 No title (including any copyright) in the Services manufactured, produced, duplicated or otherwise provided by TNM will be transferred to the Customer until the Customer pays all amounts due to TNM in full.

11.2 The Customer acknowledges and agrees that upon payment of all outstanding invoices due to TNM, the Customer is entitled to receive the finished works, but has no entitlement to the working files of TNM.

11.3 The Customer acknowledges and agrees that the content, views and opinions expressed in the finished works produced for the Customer by TNM are solely those of the Customer. The finished works are intended to represent the opinion of the Customer and in no way reflect the views and opinions of TNM, its employees and subcontractors.

12. Customer Undertakings and Warranties

12.1 The Customer must obtain all necessary permissions and authorities in respect of the use of the Materials which are to be included in the Customer video.

12.2 The Customer indemnifies and holds TNM harmless from any claims or legal actions related to the content of the Customer's video. The Customer hereby indemnifies and holds harmless TNM against all loss, damage, costs or expenses suffered or incurred by TNM as a result of any breach of clauses 12.1 and 12.2..

13. Project Delays and Client Liability

13.1 Any estimate of the date by which TNM will complete any part of the Services is contingent upon the Customer providing complete instructions to TNM and fully cooperating with

TNM until TNM has ceased providing Services to the Customer.

13.2 The Customer must appoint a person who has complete authority to provide instructions to TNM and respond to requests for feedback until TNM has ceased providing Services to the Customer.

13.3 The person appointed pursuant to clause 13.2 must be available to respond to communications from TNM on every day which is a business day in New South Wales.

14. Sub-Contracting

14.1 TNM reserves the right to subcontract any Services that TNM has agreed to perform for the Customer as it sees fit.

15. Recorded Material

15.1 Ownership

15.1.1 The Raw Footage, video files, audio files and edited video files including all copyright remain the property of TNM until full payment is made for the Services.

15.1.2 Where Services remain unpaid or in the event that a final agreed payment is not made, TNM reserves the right to withhold all recordings and finished works and use all or portions of the recordings and finished works for display, promotional or commercial purposes.

15.1.3 Copyright in all video, images, audio, lyrics or musical composition included or recorded in the edited video or recorded by equipment used by TNM will remain the property of the author or legal entity owning the copyright.

15.2 Special Provisions for Ownership

15.2.1 TNM reserves the right to retain ownership of any recorded material of an anomalous nature once discovered in post production. The copyright of such recordings will belong to TNM.

15.2.2 TNM has the right to use edited or unedited video files produced pursuant to these Terms and Conditions for promotional or commercial purposes, unless an alternative arrangement is made between TNM and the Customer. The copyright of such segments will belong exclusively to TNM.

15.3 Disposal

15.3.1 Raw Footage, video files, audio files and edited video files will be retained for up to twelve (12) months only and will then be disposed of, deleted or erased. If at the end of twelve (12) months Services have not been paid for, TNM reserves the right to dispose of all Raw Footage, video files, audio files, edited video files, recorded materials and finished works.

15.4 Raw Footage

15.4.1 The Customer may purchase Raw Footage in viewable format for an additional fee of \$200.00 per day of footage. If the Customer requires any Raw Footage to be provided by way of a separate hard disk, then Customer must pay TNM an additional fee of \$250.00.

16. Failure of Equipment or illness of TNM employees and contractors

16.1 Whilst all reasonable care and preparation is taken for videography and editing, TNM will not be liable for any compensation except for return of any deposit paid, should a failure occur in all or any of the electronic equipment used or due to illness of the operators or person(s) employed or engaged by TNM or because of an unforeseen event or any dispute regarding the ownership of recorded materials.

17. Right of Refusal or Termination

17.1 TNM reserves the right to terminate the provision of Services, if:

17.1.1 the videographer, or any person(s) employed or contracted by TNM is placed in a position where there is an actual or apparent risk of injury;

or

17.1.2 there is a risk that any of the equipment used may be damaged.

17.2 If TNM terminates the provision of Services pursuant to clause 18.1 then any Deposit paid by the Customer is non-refundable.

17.3 Should any of the circumstances outlined in clause 18.1 occur, TNM may seek compensation from the Customer for any loss or damage suffered.

18. Limitation of Liability

18.1 The parties acknowledge that, under applicable State and Commonwealth law, certain clauses, conditions, guarantees and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of goods or of services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights").

18.2 Except to the extent of Non-excludable Rights, TNM will not be liable for:

18.2.1 Any claim by the Customer or any person, including without limitation any claim relating to or arising from all clauses, conditions, guarantees and warranties express or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom, usage or otherwise; and

18.2.2 Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by TNM in writing, and the liability of TNM for any such matters is hereby excluded.

18.3 Where (and to the extent) permitted by law the liability of TNM for a breach of a Non-excludable Right can be limited, TNM's liability is limited, at TNM's option, to one of the following:

18.3.1 The supply of the service again; or

18.3.2 Payment for the cost of having the services supplied again.

18.4 Notwithstanding any other provision, TNM is in no circumstance (whatever the cause) liable in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise to compensate the Customer for:

18.4.1 Any increased costs or expenses;

18.4.2 Any loss of profit, revenue, business, contracts or anticipated savings;

18.4.3 Any loss or expense resulting from a claim by a third party; or

18.4.4 Any special, indirect or consequential injury, loss, damage or expense whatsoever and howsoever arising.

19. Rescheduling/Cancelled Events

19.1 In case TMN reschedules an on-site location recording for any given reason, the options available to the client's are:

19.1.1 100% refund, if the rescheduled dates do not fit into the client's schedule.

19.1.2 The client would have the privilege of rescheduling to a date in future at his/her convenience.

19.2 If a rescheduling request from the client to TMN is received 7 days prior (or more), 5% of the total fee will be charged.

19.2.1 Please note that rescheduling will be subject to availability of resources and available booking times.

19.2.2 If the request of rescheduling is received within 48 hours or less, no rescheduling will be allowed. However, the client can choose to cancel and any amount paid to TNM will be forfeited.

19.3 Occasionally, events are postponed by TNM due to weather conditions or other situations which may affect the staff or the Client's performance. If an event is postponed, unless indicated otherwise in the Production Agreement Form between TNM and the Client, TNM will negotiate with the Client to reschedule the event to a later date. In the event that a reschedule does not take place and a cancellation is agreed upon, any amount paid to TNM will be forfeited.

19.4 Depending on the circumstances in each case, if TNM begins but cannot complete an on-site location recording, a partial refund may be given. Contact TNM for exact instructions if an on-site event is cancelled or rescheduled.

19.5 In the event TNM begins and the Client cannot complete an on-site location recording, the options available to the client are:

19.5.1 The client can reschedule an alternate on-site location recording date. A 15% rebooking fee of the total will be charged.

19.5.2 In any case, contact TNM for exact instructions if an on-site event is cancelled or rescheduled.

20. Identification marks

20.1 TNM shall be entitled to make reference to the Customer, if applicable, on all advertising means and in any advertising and promotion measures, without the Customer being entitled to any payment in this respect.

20.2 TNM shall be entitled to make reference to its current or former business relationship with the Customer on its own advertising media, including but not limited to its website and social media channels, by referring to the Customer's business name and business logo, with the Customer having the right to revoke his consent in writing at any time.

21. Quality

21.1 It is the essence of this agreement that all completed media and services supplied by TNM shall be of applicable production standards. TNM agrees that the media shall be of quality, artistically produced with direction, photography, sound, art, animation, synchronisation and other physical and aesthetic content as agreed upon.

22. Force Majeure

22.1 If TNM cannot carry out an obligation under the Contract either in whole or in part because of anything outside its reasonable control, including without limitation, fire, flood, storm, earthquake, explosion, accident, road or rail closures, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, labour dispute or shortage, act or omission of any third person or public authority, then TNM's obligations under the Contract will be suspended for the duration of the event or waived to the extent applicable.

23. Legal Costs

23.1 The Customer will be liable for any legal costs incurred by TNM in the recovery of unpaid invoices on an indemnity basis.

24. Privacy

24.1 All information received by TNM from the Customer, written or otherwise, will be kept confidential. Any private information will not be divulged or distributed to any third party without the Customer's consent.

25. Other Matters which Affect the Contract

25.1 The laws of New South Wales apply to the Contract and the Customer must bring any proceedings against TNM in a New South Wales Court.

25.2 If a condition or part of a condition is unenforceable, it must be severed from the Contract and does not make the rest of the Contract unenforceable.

25.3 TNM is not bound by any waiver, discharge or release of a condition or any agreement which changes the Contract unless it is in writing and signed by or for TNM.

26. Amendment

26.1 TNM reserves the right to amend these Terms and Conditions at any time. Amendments will be effective after the Customer has been given 7 days written notice.