

INTERPRETATION

In these Conditions:

“**Client**” means the buyer of Goods and/or Services from DADC;
 “**Conditions**” means these Standard Terms and Conditions of Business;
 “**Contract**” means the agreement between the Client and DADC for the supply of Goods and/or Services;
 “**Force Majeure Event**” shall have the meaning given in clause 14.4;
 “**Goods**” means the goods (which may include Media Products) that DADC has agreed to supply to the Client;
 “**Materials**” means the materials (which may include content) provided by, or on behalf of the Client, to DADC for the performance of the Services and/or the provision of the Goods;
 “**Media Products**” shall mean all recorded material and any other goods and materials (including but not limited to vinyl, compact discs, DVDs and videos) together with their packaging;
 “**Order**” means the order, including any applicable specification, submitted by the Client to DADC for Goods and/or Services;
 “**Services**” means the services that DADC has agreed to provide to the Client;
 “**DADC**” means Sony DADC Europe GmbH and/or Sony DADC Czech Republic s.r.o., as is/are applicable in the context;
 “**Supplies**” means the Goods and/or Services to be supplied under the Contract;
 “**Working Day**” means a day which is not a Saturday, Sunday or public holiday in either Salzburg, Austria and/or Pilsen, Czech Republic (as applicable in the context) and “**Working Hour**” means an hour between 9am and 5pm during a Working Day.

1. BASIS OF SALE

- 1.1. DADC shall sell and the Client shall purchase the Supplies in accordance with Orders accepted by DADC subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such Order is made or purported to be made by the Client.
- 1.2. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Client and DADC
- 1.3. DADC’s employees or agents are not authorised to make any representations concerning the Supplies unless confirmed by DADC in writing. In entering into the Contract, the Client acknowledges that it does not rely on any such representations which are not so confirmed
- 1.4. Any typographical, clerical or other error or omission in any document or information issued by DADC shall be subject to correction without any liability on the part of DADC.
- 1.5. Clause headings shall be ignored in interpretation.

2. ORDERS AND SPECIFICATIONS

- 2.1. No Order shall be deemed to be accepted by DADC unless and until confirmed in writing by DADC’s authorised representative.
- 2.2. The Client shall be responsible to DADC for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Client, and for giving DADC any and all necessary information, items or Materials relating to the Supplies within a sufficient time to enable DADC to perform the Contract in accordance with its terms.
- 2.3. The quantity, quality and description of and any specification for the Supplies shall be those set out in DADC’s confirmation of Order.
- 2.4. If the Goods are to be manufactured or any process is to be applied to the Goods or any Services are to be provided by DADC in accordance with a specification submitted by the Client, the Client shall indemnify DADC against all loss, damages, costs and expenses awarded against or incurred by DADC in connection with or paid or agreed to be paid by DADC in settlement of any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from DADC’s use of the Client’s specification
- 2.5. DADC reserves the right to make any changes in the specification of the Supplies which are required to conform to any applicable legal requirements or, where the Supplies are to be supplied to DADC’s specification, which do not materially affect their quality or performance. If any variation in the Supplies or the Contract terms is agreed or is required for compliance with any applicable law, regulation or safety recommendation, the Client shall pay such additional amount as is fair and reasonable and DADC shall have reasonable additional time to perform the Contract.
- 2.6. No Order which has been accepted by DADC may be cancelled by the Client except with the agreement in writing of DADC and on terms that the Client shall indemnify DADC in full against all loss (including loss of profit), costs (including the cost of all labour and materials used or appropriated to the Contract), damages,

charges and expenses incurred by DADC as a result of cancellation.

3. DELIVERY

- 3.1. DADC shall effect delivery by making the Goods available for collection from its premises and so informing the Client or, if some other place for delivery is stated in DADC’s written confirmation of Order, by DADC despatching the Goods from its premises in accordance with the Client’s instructions.
- 3.2. Delivery times are approximate and shall not be of the essence. The Goods may be delivered by DADC in advance of the quoted delivery date upon giving reasonable notice to the Client.
- 3.3. If the Client fails to take delivery or to give adequate delivery instructions then, without prejudice to its other rights and at the Client’s expense, DADC may store and/or dispose of the Goods or any goods the subject of any Services performed by DADC. Any shortfall in disposal proceeds below the Contract price shall be paid by the Client to DADC
- 3.4. DADC may deliver the quantity of Goods contracted for within a range of up to +/- 10% without thereby being in breach, subject to an appropriate price adjustment being made.
- 3.5. DADC may deliver in instalments constituting separate Contracts and any delay in delivery or termination of any instalment will not entitle the Client to terminate the Contract as a whole, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery whether under one Contract or any related contract. Where Goods are delivered in instalments DADC may issue separate invoices.

4. INSPECTION AND ACCEPTANCE

- 4.1. In any event, immediately upon receipt of the Goods and/or completion of the Services the Client shall note clearly on the proof of delivery (POD) any visible damage (to boxes and/or cellophane wrapping); and (b) Within five (5) Working Days of delivery of the Goods and/or completion of the Services the Client shall inspect and test the same and immediately give notice to DADC of any damage or non-conformity with the Contract.
- 4.2. In the absence of such notice pursuant to clause 4.1(a) or (b), the Supplies shall be deemed to comply with the terms of the Contract and the Client bound to accept them.
- 4.3. The Client will indemnify DADC against any loss which it suffers because any notification pursuant to clause 4.1 is received too late to enable it to claim against carriers or insurers in respect of such damage or loss in transit.

5. RISK AND PROPERTY

- 5.1. Risk of damage to or loss of the Goods shall pass to the Client at the earlier of the time when DADC notifies the Client that the Goods are available for collection or upon DADC first despatching the Goods from its premises in accordance with the Client’s instructions.
- 5.2. All other Materials, including but not limited to items referred to in clause 12.4, in the possession of DADC or otherwise shall be held, worked on and carried at the Client’s risk in every respect and the Client is advised to retain duplicates or copies of Materials (including for example any master artwork, files, films, tapes or discs) provided to DADC
- 5.3. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Contract, title to and ownership of the Goods shall not pass to the Client until DADC has received in cleared funds payment in full of the price of the Goods.
- 5.4. If at the date that payment in full for the Goods is made any other monies then due for payment by the Client to DADC on any account have not been paid, title to the Goods shall not in any event pass to the Client until DADC has received in cash or cleared funds payment in full of the monies overdue
- 5.5. Until such time as property in the Goods passes to the Client, the Client shall:
 - 5.5.1. hold the Goods as DADC’s fiduciary agent and bailee;
 - 5.5.2. keep the Goods separate from those belonging to the Client and third parties and properly stored, insured and identified as DADC’s property; and
 - 5.5.3. DADC shall have a lien over any of the Client’s assets in its possession or control.

6. PROVISION OF SERVICES

- 6.1. DADC shall use reasonable endeavours to supply the Services and deliver any deliverables to the Client in accordance with an Order in all material respects.
- 6.2. DADC shall exercise reasonable skill and care in providing the Services.
- 6.3. DADC shall use reasonable endeavours to meet any agreed performance dates, but any such dates shall be estimates only

and time for performance by DADC shall not be of the essence of this agreement.

7. PRICE OF THE GOODS AND SERVICES

- 7.1. The price of the Supplies shall be that stated in DADC's confirmation of Order which is exclusive of value added tax and any other sales tax or excise duties. DADC reserves the right to make an additional charge for packaging, carriage, insurance and other such items as are not listed on the Order.
- 7.2. DADC reserves the right prior to delivery or final performance to increase the price of Supplies to reflect any increase in labour, freight or material costs or other costs of production, any foreign exchange fluctuation, currency regulation, alteration of duties or any change in delivery dates, quantities or specifications for the Supplies which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give DADC adequate information or instructions or to perform its obligations in respect of the Supplies.

8. TERMS OF PAYMENT

- 8.1. Unless otherwise stated in the Order, or otherwise agreed in writing between the Client and DADC, payment shall be made in the invoiced currency in cleared funds within thirty (30) days of invoice and without any withholding, deduction, set-off, counterclaim or cross demand (whether in respect of the Contract or any other contract whatsoever)
- 8.2. The time of payment of the price shall be of the essence.
- 8.3. Invoices shall be subject to correction or amendment by DADC at any time.
- 8.4. If the Client has a bona fide reason to dispute any invoice:
- 8.4.1. the Client shall notify DADC in writing within the credit period stated on the face of the invoice, such notice specifying in reasonable detail the reason for the dispute;
- 8.4.2. each of DADC and the Client shall use its reasonable endeavours in good faith promptly to resolve a dispute concerning any invoice; and
- 8.4.3. the Client shall pay the undisputed amount of such invoice in accordance with clause 8.1.
- 8.5. An invoice shall be deemed conclusively correct and binding on the Client in respect of the Supplies to which the invoice relates if the Client has not in good faith queried the invoice by notice in writing to DADC within the credit period as defined in clause 8.1, such notice specifying the reason claimed for non-payment together with reasonable evidence to authenticate that claim.
- 8.6. If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to DADC, DADC shall be entitled to:
- 8.6.1. cancel the Contract in whole or in part or suspend any further deliveries to the Client or other performance;
- 8.6.2. appropriate any payment made by the Client to such of the Goods or Services (or the goods or services supplied under any other contract between the Client and DADC) as DADC may think fit (notwithstanding any purported appropriation by the Client); and
- 8.6.3. charge the Client interest (both before and after any judgment) on the amount unpaid, at the rate of four percentage points (4%) above the European Central Bank base rate from time to time or at such rate as is the maximum permissible by statute until payment in full is made.

9. TERMINATION OF CONTRACT

- 9.1. DADC shall be entitled to terminate a Contract forthwith by notice in writing to the Client if:
- 9.1.1. the Client fails to pay to DADC any sum when due; or
- 9.1.2. the Client fails to remedy any breach or non-performance within fourteen (14) days of notice from DADC so to do; or
- 9.1.3. the Client is, or is deemed to be insolvent or steps are taken to:
- a. propose any composition, scheme or arrangement involving the Client and its creditors;
- b. obtain an administration order or appoint any administrative or other receiver or manager of the Client or any of its property or otherwise enforce any security over the Client's property, or repossess its assets; or
- c. wind up or dissolve the Client; or
- d. anything corresponding to any of the above occurs in an alternative jurisdiction.
- 9.2. If the Contract is terminated, DADC (without prejudice to its other rights but subject to any relevant mandatory laws) may do any of the following:

- 9.2.1. declare immediately payable (and so interest-bearing under clause 4) any sums owed by the Client, proceed against the Client for the same and/or damages, and appropriate any payment by the Client as DADC thinks fit (notwithstanding any purported appropriation by the Client);
- 9.2.2. suspend further performance of any Contract and/or any credit granted to the Client on any account (and the time for delivery by DADC shall be extended by the period of such suspension); and/or
- 9.2.3. take possession of and deal with (including the sale of) any Materials and other assets of the Client held by or on behalf of DADC and apply any proceeds of sale in payment of any sums owing under or damages arising in connection with any Contract including any interest and costs arising thereon. Without limitation to the generality of the foregoing DADC may retain any original or copy artwork films tapes discs and Materials of the Client and produce duplicates of and from the same (whether in whole or in part) for resale at such price as DADC shall in its discretion determine and in such quantities so as to realise sufficient funds to compensate DADC for all loss and damage suffered by it (including interest and costs thereon) by reason of the Client's breach, the Client hereby grants DADC an irrevocable non-exclusive royalty-free licence to copy use produce sell and distribute such works and materials and shall indemnify DADC against any claim loss damage cost or expense suffered by it as a result of any such actions being in breach of the Client's or a third party's rights or entitlements.

10. RIGHTS CLEARANCES AND MECHANICAL LICENCES

- 10.1. The Client shall obtain in writing in good time and hereby warrants that it has so obtained any and all necessary licences (including mechanical licences from an internationally recognised rights authority or collection society), permits, consents or approvals for the import/export, copying, use, production, reproduction, distribution or sale of the Goods or the provision of the Services (including without limitation all necessary copyright, design right, registered design, trade mark, patents and other applicable intellectual property rights, consents, clearances, licences or approvals and any necessary waivers of moral rights) and will indemnify DADC and keep it fully and effectively indemnified on demand against any cost, claim, liability or expense DADC incurs as a result of any failure or delay so to do
- 10.2. DADC it may require:
- a. the Client to provide, and/or
- b. the Client to obtain from any other person,
- such confirmations, consents and approvals as may be necessary to demonstrate that the Client has the necessary rights clearances and/or mechanical licences to enable the Contract to be fulfilled without issue.
- 10.3. DADC shall not be liable to perform all or any part of the Contract if it considers the Client does not have the necessary rights clearances and/or mechanical licences to enable the Contract to be fulfilled without issue.
- 10.4. DADC may (without incurring liability) withhold performance of the Contract until such consents or approvals are provided and/or such registration or specific licence is complete and shall be entitled to further time for performance in the event of delay.
- 10.5. DADC may at any time refuse to produce any Goods or provide any Services which it considers may be illegal or defamatory or might infringe any third party's rights or create any criminal or civil liability or otherwise bring DADC into disrepute in the minds of right-thinking people.
- 10.6. If any claim is made or action brought against DADC concerning the Supplies (and whether settled, litigated, discontinued or otherwise dealt with by DADC) and DADC thereby incurs any cost, loss, liability or penalty of any kind the Client shall upon demand pay to DADC on a full indemnity basis the full amount of such cost, loss, liability, expense or penalty without enquiry, deduction, withholding, set-off, counterclaim or cross demand (whether in respect of the Contract or any other contract whatsoever).
- 10.7. The Client agrees that DADC may include the Supplies, the Contract and the Client's name and marks in its promotional material. The Client shall not use the name or any trade marks of DADC (or any part thereof) for any purpose (including without limitation in relation to the Client's products, notices, business or advertising materials, unless and to the extent expressly agreed by DADC in writing.

- 10.8. For the avoidance of any doubt DADC may retain any or all Materials (including without limitation entry components) for the purpose of documenting any alleged breach (whether substantiated or otherwise) of the Client's obligations under this clause 10 and the Contract and DADC may provide the same to any relevant governing institution.
- 11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**
- 11.1. DADC retains ownership of all inventions, designs, copyrights and processes relevant to the Supplies and not provided by the Client. Copyright exists in all documents, designs, programs, or other material issued by or on behalf of DADC, which the Client shall keep confidential and not disclose or use the same (other than for the particular purpose for which it was disclosed) for his or another's benefit without DADC's prior written consent.
- 11.2. All film negatives and positives, discs, sketches, samples and original designs of any kind, moulds, tapes, designs and other materials created or acquired for the performance of a Contract shall remain the exclusive property of DADC including any items subject to an extra charge. DADC shall not be obliged to preserve any of the same unless expressly agreed in DADC's confirmation of Order and the cost of storage of which shall be an extra charge unless otherwise stated in such confirmation to be included within the price.
- 11.3. The Client hereby agrees and acknowledges that DADC may use any images, designs or similar of or relating to any and/or all of the Supplies (including Media Products and any mock-ups or early samples thereof) for its marketing purposes including, but without limitation, presentations (internal and external), pitches and on its website and other marketing material.
- 12. CLIENT'S MATERIALS AND OTHER ITEMS**
- 12.1. DADC may reject any Materials and other items supplied or specified by the Client but acceptance of them shall not constitute a warranty that they are suitable or comply with the Contract.
- 12.2. DADC shall not be liable for any defect, wastage or other loss whatsoever arising from such Materials, or other items, which shall be held and used at the Client's risk. Quantities of Materials or other items supplied by the Client shall allow for normal spoilage.
- 12.3. DADC shall not be responsible for any loss, damage, cost or expense arising from, or from any mistake, defect or inaccuracy in, any artwork, tapes, films, discs, or other materials or items specified or supplied by the Client. Any loss, damage, cost or expense arising therefrom or from DADC's reproduction of such mistakes, defects or inaccuracies shall be for the sole account of the Client who shall indemnify DADC accordingly.
- 12.4. DADC's liability for discs, tapes, films, artwork and other materials or items specified or provided to DADC by or otherwise held by DADC on behalf of the Client shall be limited to the basic raw material cost of the media and not any production, artistic, aesthetic or rarity cost or value in the material.
- 12.5. Prior to their delivery to DADC, the Client shall notify DADC of the nature of any materials or other items to be held by DADC on the Client's behalf, shall provide adequate warnings and instructions and shall ensure that they comply with any requirements or descriptions in the Contract or Contract documents.
- 12.6. The Client shall indemnify DADC for any loss, damage or claim which arises from or relates to materials or items referred to in clause 12.5 whilst in DADC's possession and which could not have been prevented by DADC acting in accordance with the Client's reasonable written instructions and which was not caused by the negligence or wilful default of DADC or its employees
- 12.7. Any physical or digital production material(s) furnished by the Client in relation to Supplies may be stored by DADC for up to twelve (12) months after the first order submitted in relation to the relevant Supplies and will then be destroyed/deleted without advance notice or returned at the Client's express request and expense; the Client should retain copies of all physical and digital production materials submitted to DADC.
- 13. PROOFS AND SAMPLES**
- DADC may submit proofs, master discs and/or samples for the Client's approval and shall not be liable for any error not corrected by the Client. The Client's corrections (including alterations in style, composition and layout) and the costs in relation thereto (including without limitation as to any additional proofs) shall be an extra charge. Every effort will be made to see that the Supplies comply substantially with any samples previously supplied but DADC shall not be liable if they do not comply save in circumstances where there is a material non-compliance by DADC.
- 14. LIMITATION OF LIABILITY**
- 14.1. Nothing in these Conditions shall limit or exclude DADC's liability for:
- 14.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 14.1.2. fraud or fraudulent misrepresentation; or
- 14.1.3. any matter in respect of which it would be unlawful for DADC to exclude or restrict liability.
- 14.2. Subject to clause 14.1, DADC's liability to the Client for breach of any Contract, these Conditions or otherwise in connection with the supply of Supplies (arising for whatever reason including without limitation by way of negligence or any other tort, breach of contract, misrepresentation, breach of statutory duty, indemnity or otherwise) shall be limited to the price paid by the Client for the Supplies to which such liability relates or (as applicable) shall be limited to their repair or, replacement or if this is not possible. Without limiting the foregoing DADC shall not be liable for any lost or anticipated profits or savings or any special incidental or consequential losses or damages (including without limitation loss of value of any Goods packaged by DADC on behalf of the Client, loss of data, loss of use of any asset, loss of revenue, profit or goodwill, business interruption, management costs or third party liability).
- 14.3. Subject to clause 14.1, DADC shall not be liable for any loss of general profit, loss of anticipated benefit, loss of revenue, damage to reputation, loss of goodwill, business interruption, management time, third party liability, loss of use of any asset or for any consequential, special, punitive or indirect loss.
- 14.4. Neither party shall be liable for any failure or delay in performing any or all of its obligations under any Contract to the extent that such failure or delay is caused by a Force Majeure Event. A 'Force Majeure Event' means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors caused by an event described herein.
- 14.5. Any claim related to the Supplies or these Conditions must be brought by the Client within 12 months of the completion of the Contract.
- 15. MISCELLANEOUS**
- 15.1. In the event of a Force Majeure Event, DADC may terminate the Contract whereupon the Client shall pay a sum equal to the costs to DADC to date of performing the Contract and DADC's liability shall be limited to repayment of any sums paid for undelivered Goods or unperformed Services, less such costs.
- 15.2. DADC's rights shall not be prejudiced by any indulgence, forbearance or previous waiver extended to the Client. The Client shall not assign, charge, or otherwise dispose of any Contract or any of its rights thereunder without DADC's prior written consent.
- 15.3. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 15.4. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter
- 15.5. If any provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Conditions.
- 15.6. All notices or other communications under a Contract shall be in writing in English addressed to the addressee's registered office or address stated in the Order (or other address notified to the other party) and shall be sent by hand (and thereby be deemed served when properly left at such address) or by first class pre-paid post (and thereby be deemed served 48 hours after posting)
- 15.7. No person who is not a party to the Contract shall have any right under the to enforce any term of the Contract.

- 15.8. Whenever the due date for payment of any amount under this Agreement is not a Working Day that payment shall instead be due on the next following day which is a Working Day
- 15.9. Not more frequently than once in any calendar year DADC by written notice to the Client may change any provisions of these Conditions; any such change will have effect in respect of all Orders issued more than thirty (30) days after the date upon which such notice is given by DADC to the Client
- 15.10. The obligations of the Client and the rights of DADC under these Conditions are independent of and shall not be affected by any other rights or securities from time to time held by DADC or any affiliate of DADC from the Client or any other person.
- 15.11. If a dispute arises out of or in connection with these Conditions or the performance, validity or enforceability of them (**Dispute**) then senior representatives of the parties shall attempt in good faith to resolve the Dispute.
- 15.12. The Contract shall be governed and construed in all respects in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England & Wales provided that (and without prejudice thereto) DADC shall be entitled to apply for interim relief in any other court having jurisdiction.

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