



SANDSTORM - TERMS AND CONDITIONS OF TRADING

Regardless of booking method any work carried out by Sandstorm will be subject to these terms and conditions regardless of circumstance unless otherwise agreed in the form of a non-disclosure agreement provided by the client.

1. GENERAL

- i) Sandstorm are engaged in the business of providing certain facilities and services including:- a) The making, recording and copying of any type of motion, audio and still media. The provision of facilities, services and consultancy in connection with advertising and media content creation, production, post-production and re-purposing. b) Sandstorm provide facilities and services including (but not limited to) those specified above on the basis of these Conditions which shall apply to all bookings, however made or accepted, shall form part of every contract between a customer and Sandstorm; and shall prevail over any terms and conditions contained or referred to in any communication from the customer, except insofar as otherwise expressly agreed in writing by a Director of Sandstorm.
- ii) Sandstorm's responsibility are restricted to the supply of the facilities and services ordered only. The customer is responsible for ensuring that any media material is correct, operationally sound and complete in all respects as regards both form and content before use is made thereof or the same is removed from Sandstorm's premises.
- iii) Where Sandstorm agrees to provide additional services and facilities including the services of a producer or director or production crew the respective rights and obligations of Sandstorm toward the customer will be altered to suit the specific project.

2. INTERRUPTION TO BUSINESS / FORCE MAJEURE

- i) Sandstorm take every possible action to guarantee the smooth running of all services and facilities undertaken by the company when working on your project. These include:- a) Full UPS battery backup of all suites, facilities and servers within Sandstorm's studio facilities to reduce risk of damage to equipment and data. b) Competent maintenance and regular update of all software, hardware and working environments including operating air temperature for all machinery and hardware. c) On-site (studio only, unless otherwise requested by the customer) power backup through industrial diesel engine generated power source for the entire facility. d) All media, rushes or data acquired for projects are procedurally triple backed up, unless specifically requested by the customer, across three separate locations. e) Sandstorm aim to archive each and every project in their entirety to tape backup.
- ii) Sandstorm do not insure against customers media loss as standard and do not cover weather insurance or interruption to business outside of our studio facilities without prior instruction from a customer.
- iii) In the event of the Services being prevented, delayed, or in any way interfered with by any act of government, war, industrial dispute, strike, breakdown of machinery or equipment, accident, fire or by any other cause beyond Sandstorm's control, Sandstorm may, at its option, suspend performance of or terminate this Agreement, without liability to the Client for any resulting damage or loss, such suspension or termination being without prejudice to Sandstorm's right to recover all sums owing to it in respect of Services and Works delivered and costs incurred up to the date of suspension or termination.

3. MEDIA USE AND STORAGE

- (i) Sandstorm are not liable for the loss or damage of material or property kept on Sandstorm's premises or in transport from a location to Sandstorm or other location while left in trust with Sandstorm; regardless of circumstance.
- (ii) If the customer requests in writing that any materials supplied to Sandstorm be insured against loss, damage, fire, theft and flooding, they should inform Sandstorm of the period for which the material should be insured and to what value including any information that will affect a suitable policy of insurance through Sandstorm's insurers.
- (iii) Sandstorm shall not be liable for any failure to affect such a policy of insurance nor for the sufficiency of any policy arranged either as regards to the risks insured against or the amount covered. Unless the customer makes such a request and such a policy of insurance is arranged the value of the material shall not be deemed in any way the responsibility of Sandstorm without any account being taken of the intellectual value of the material recorded thereon. If such a policy is arranged then Sandstorm will hold the proceeds thereof in respect of any loss or damage to the material insured for the benefit of the customer in respect of such loss or damage. The customer shall reimburse Sandstorm for any cost including any handling charge, administration and insurance costs appropriate that are incurred by Sandstorm in engaging any such policy of insurance.
- (iv) The making and reproduction of material may involve the use of material belonging to the customer or Sandstorm, all at the discretion of Sandstorm.
- (v) Upon the completion of services for the customer by Sandstorm all media used to create the output material and the output material itself becomes the sole responsibility of the customer. Any physical material not collected within one month of the completion of the project will accrue a storage charge – all materials should be requested by the customer on completion of the project and may occur additional costs if the supply of data masters was not quoted by Sandstorm before commencing work on the project.
- (vi) a) Property in any form including intellectual property belonging to Sandstorm shall remain the property of Sandstorm as legal and equitable owner and will not pass to the customer. b) Sandstorm shall also be entitled to restrict the customer by way of an injunction from using or dealing with any such material in any manner until the full payment as aforesaid has been received by Sandstorm.
- (vii) Sandstorm shall have a general lien upon all materials and other goods of the customer in the possession of Sandstorm up until the full payment for services and facilities supplied by Sandstorm.
- (viii) All media created or edited by Sandstorm are done so on a usage limitation of one year unless specifically stated otherwise.
- (ix) Sandstorm back-up and/or archive some projects into digital storage on the specific request of the customer. Recovery of these back-ups as and where they have been made is undertaken at the cost of the customer. With this responsibility Sandstorm will create back-up versions of all output and at the instruction and cost of the customer will also back-up all the material used to create the output at the stated Sandstorm archiving rate together with Value Added Tax.

4. PERFORMANCE & DELIVERY

- i) Where the materials (in any such format – for example: masters, projects or data) are to be delivered electronically, the customer acknowledges and agrees that: a) electronic delivery is not a completely secure medium of communication and that an unauthorized third party could intercept, tamper with or delete the materials to be delivered electronically; and b) electronic delivery may involve reliance upon third party providers and data carriers, over which Sandstorm has no control.
- ii) Sandstorm shall not be responsible for and shall have no liability to the customer or any third party for: a) any delay in delivery or any non-receipt of any materials delivered electronically; b) any loss or damage (including loss of data) that results from any person gaining unauthorized access to any materials delivered electronically; c) use or disclosure of any data obtained by any third party as a result of that third party gaining unauthorized access to any materials delivered electronically; and d) any loss or damage resulting from any malfunction of or the introduction of any viruses, worms, logic bombs, time locks, time bombs, trojan horses and/or bugs to any equipment and/or software used to effect and/or receive any materials delivered electronically.

5. BOOKINGS AND CANCELLATIONS

- i) Bookings may be made verbally (including by telephone) or in writing (including e-mail). Every booking made shall be subject to these conditions of trading and the facilities and services shall be provided at the rates specified ("the agreed rates").
- ii) a) Once a project is booked with Sandstorm we reserve the right to charge a fee up to or equal to that of the full production to cover our costs and overheads for any work undertaken or booked on the project. If notice of cancellation of a booking is received by Sandstorm less than two working days prior to the scheduled first day of work, the customer must pay Sandstorm a cancellation fee equivalent to the rates payable for all facilities and services booked, regardless of whether any facilities or services had been rendered in respect of the project. For the purpose of this sub-paragraph the scheduled start time will be the hour at which the provision of the facilities and services is first scheduled by Sandstorm to commence – for all productions this is 08:00GMT unless otherwise stated on the issued call-sheet. b) In addition to any cancellation charge under sub-paragraph above, Sandstorm shall in the event of cancellation of the booking (whenever occurring) be entitled to reimbursement by the customer for any amounts payable to cover any costs in connection with the booking together with any handling charge or costs incurred by Sandstorm as seen fit. c) Where a client or Sandstorm sets a specific deadline for provision of facilities or services it is the customer's responsibility to ensure all approvals are completed in good time to meet the deadlines and should be pre-agreed before the project begins. d) Any customer who fails to meet deadlines or approval deadlines will incur the costs of overtime required for Sandstorm to make further changes to the project or booking.
- iii) Should Sandstorm feel the client has not requested the correct services, has removed necessary services from the budget or has forfeited the instruction from Sandstorm of specific services required to correctly and fully complete the project the customer remains financially liable to cover all costs related to these facilities and services should they consequently be required.
- iv) Sandstorm shall not be liable for any costs required for additional services to be rendered in order to complete a project to the satisfactory level required if a client incorrectly books facilities and/or services with Sandstorm - unless Sandstorm have incorrectly specified the facilities and/or services required after full and complete brief-in from the customer.

6. CUSTOMER'S WARRANTY

- i) Where Sandstorm create or copy data, film or any other type of material, physical or otherwise which has been provided by the customer; the customer warrants:- a) that any copy made by Sandstorm of media will not infringe any copyright or trademark or other proprietary right or interest of any third party; b) that the material does not contain any matter defamatory of any person; c) that the material is not offensive or obscene; d) that the copying of the material is not illegal or tortious or otherwise gives rise to any liability on the part of the customer or Sandstorm.
- ii) The customer warrants that it has or has obtained all rights, licenses, permissions or consents necessary for the facilities or services required to be provided to it by Sandstorm. Written proof is requested in such circumstances.
- iii) Sandstorm expressly reserves the right in its sole discretion and without prejudice to its other rights to refuse to supply facilities and services to the customer if it is discovered that any of the matters the subject of this warranty have occurred or Sandstorm has reasonable grounds to suspect that any such matter is likely to occur and in such circumstances the refusal to supply or any cancellation of any booking consequent thereon shall be treated as a cancellation of a booking by the customer and the customer will become liable for payment of all services booked regardless of whether they were received.

7. PAYMENT

- i) Subject to the further provisions contained in this condition the customer shall pay for the facilities and services supplied to it at the rate set out in Sandstorm's current price list together with any Value Added Tax.
- ii) In certain circumstances the rates set out in Sandstorm's current price list may be subject to adjustment as follows:- a) If an agreement is reached between Sandstorm and the customer to vary Sandstorm's current price list at the time the booking is made or subsequently, written confirmation from Sandstorm must be received by the customer and the customer must present this with any payments. b) If at any time between the acceptance of a booking and its execution the charges of any sub-contractor engaged by Sandstorm to supply any of the facilities and services shall be increased the amount payable by the customer shall be increased by an equivalent amount. c) If the facilities and services are provided by Sandstorm outside normal working hours (08:00 – 18:00 on weekdays excluding any public holidays), the customer shall have to pay a rate of twice the standard Sandstorm hourly rate. d) All rates agreed by Sandstorm are only valued for 30 days from any quotation made by Sandstorm for the customer. e) If Sandstorm in its sole discretion considers this necessary to take account of any unusual or special circumstances this can be taken without any written notice to the customer.
- iii) a) A customer who has established a credit account with Sandstorm shall pay the full amount of any invoice in respect of the agreed rates, overtime hourly rates, expenses and the charges and costs referred to in the condition below (together with all VAT thereon) within the agreed payment terms (normally 30 days) of the invoice issue date without any deduction unless returned with written instruction from Sandstorm instructing such modifications to the invoice amount. b) A customer who does not have an established credit account with Sandstorm shall pay the full amount of any invoice prior to the provisions of facilities and services without any deduction or deferment in respect of any disputes or claims. c) For all full productions we operate the standard terms of 50% of the total project, including postproduction upfront regardless of credit status. All upfront fees must be received at least 10 days before principle photography. The final 50% will become payable within the standard terms above respectively. d) Where full payment is not received by Sandstorm before or on the date due, interest shall accrue on the sum outstanding at the rate of 10% per month, without prejudice to Sandstorm to receive payment on the due date. The customer shall reimburse Sandstorm for any costs incurred in the course of recovering late payment. e) Sandstorm reserves the right to withdraw credit facilities at any time without notice if any amounts due to Sandstorm remain unpaid beyond the due date. In such circumstances the customer shall be treated as not having an established credit account as in condition iii) b) above.

8. EXEMPTION AND LIMITATION OF LIABILITY

- (i) All implied conditions and warranties, statutory or otherwise are hereby excluded unless agreed separately in writing.
- ii) Sandstorm shall not in any way be liable to the customer if it is unable to provide any of the facilities or services as a result of any circumstances whatsoever outside the control of Sandstorm; this includes where Sandstorm could have supplied the correct facilities but has not been booked to do so.
- iii) In the event of the defective materials, work stoppage or a breakdown of any equipment hired to the customer or in the event of any other failure by Sandstorm to perform its obligations hereunder due to circumstances within its control, Sandstorm will use its best endeavours to remedy the situation without delay. Save as aforesaid Sandstorm shall be under no liability whatsoever in respect of such breakdown, stoppage or defective working or other failure to perform its obligations.
- iv) Sandstorm shall not be liable for any loss of or damage to any property of the customer howsoever arising, whether or not the same is caused by negligence of Sandstorm or its servants, agents or subcontractors or other persons for whom Sandstorm is vicariously liable.
- v) Sandstorm aggregate liability (if any) to the customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the total of the agreed rates (adjusted where appropriate) and in no circumstances shall Sandstorm be liable for any loss, damage or injury direct or indirect resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of Sandstorm, its servants or contractors or agents save that Sandstorm shall accept liability for death or personal injury caused by the negligence of Sandstorm.

9. INDEMNITIES BY CUSTOMER

- i) The customer shall fully indemnify Sandstorm against all actions, proceedings, claims, demands, damages, fees, costs, losses and expenses or other liabilities whatsoever made against or incurred or suffered by Sandstorm by reason of or in respect of:- a) Any infringement of copyright or trademark or any passing off or any other infringement of or interference with any proprietary right or interest of any third party or any liability for defamation or obscenity arising out of any materials made or reproduced by or on behalf of the customer or any other of the facilities and services provided by Sandstorm for the customer. b) Any breach by the customer of any of these conditions c) Any personal injury or death or loss or damage to property caused by or arising out of or in connection with the use by the customer, its servants, agents or sub-contractors for the purpose of or in connection with the provision hereunder of facilities or services by Sandstorm except where the same is attributable to the negligence or breach of contract of Sandstorm or its servants.
- ii) The customer shall fully indemnify Sandstorm for any loss of or damage to any equipment belonging to or hired out by Sandstorm or its sub-contractor caused by or arising out of or in connection with the use thereof by the customer, whether or not the same is attributable to any negligence or breach of contract by the customer with the exception of fair wear and tear.
- iii) No equipment may be removed by the customer from Sandstorm's premises without express consent of Sandstorm in writing.
- iv) For the purpose of this condition Sandstorm contracts for itself as trustee for its sub-contractors.



10. TERMINATION

If the customer shall default in or commit a breach of any contract with Sandstorm or any other of their obligations to Sandstorm, or if any distress or execution shall be levied upon the customer's property or assets, or if the customer shall make or offer to make any arrangement or composition with creditors, or commit any act of bankruptcy shall be presented or made against them, or if the customer is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of such company's undertaking, property or assets or any part thereof shall be appointed or if any circumstances or events shall occur which in Sandstorm's opinion indicate that it is likely that any of the foregoing may occur, or that the customer may not perform its obligations under any contract with Sandstorm. Sandstorm shall have the right without prejudice to any other claim, right or remedy forthwith to terminate in whole or in part any contract(s) then subsisting. Sandstorm may exercise such right to terminate upon notice of such termination being posted or delivered by hand to the customer's last known address or sent by email to the suitable electronic address. Notices sent by either format (writing or email) will be given seven days after dispatch or any part thereof shall be deemed to have been so terminated. Sandstorm shall be entitled to payment in respect of the facilities and services rendered prior to such termination and/or declare immediately due and payable any account and/or withdraw the customer's right to credit or shorten the applicable credit period and/or repossess any materials or equipment belonging to Sandstorm in the possession of the customer and for this purpose enter upon premises of the customer and Sandstorm reserves the right at its election to call upon the customer and the customer agrees to assign to Sandstorm any and all copyright in any materials recorded on the medium pursuant to these conditions of trading or to grant to Sandstorm full right title and license to use such material for such purposes as Sandstorm shall deem fit.

11. CREDITS AND USE OF MATERIAL BY SANDSTORM.

(i) The customer shall ensure that appropriate screen credits are given in respect of the facilities and services supplied by Sandstorm unless specifically requested by Sandstorm. (ii) In consideration of the supply of the facilities and services to the customer by Sandstorm the customer hereby grants Sandstorm the right to utilise such part or parts of the materials produced by or in connection with the supply of the facilities and services by Sandstorm for the customer as Sandstorm may in sole discretion consider necessary or desirable for its own advertising and promotional purposes (including, but not limited to, use on websites and showreels).

12. SUB-CONTRACTING

Sandstorm shall be entitled to procure the performance of the whole or any part of any contract with the customer by a sub-contract.

13. PROPER LAW AND JURISDICTION

These conditions shall be read and construed in accordance with the laws of England and the customer agrees to submit to the jurisdiction of the English courts. The rights of Sandstorm hereunder shall be additional to any rights arising at common law or otherwise.

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