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TERMS AND CONDITIONS OF ENGAGEMENT

A. Introduction

1. The purpose of these Terms and Conditions is to record the basis upon which The Sweet Shop will deliver services or sell goods to the Agency. Except as agreed otherwise, these Terms and Conditions are implied into every Contract. From time to time particular terms and conditions for Work will be recorded separately, and to the extent that any separate written agreement signed by appropriately authorised personnel of both The Sweet Shop and the Agency records any variation to these Terms and Conditions, then the varied Terms and Conditions in the separate document will prevail over any conflicting provision herein. In all other cases these Terms and Conditions will override any other document or agreement between The Sweet Shop and the Agency, and no other alleged representation or warranty will be deemed to form part of a Contract.
2. Acceptance by the Agency of a Quote, or commencement of any Work with the acquiescence of the Agency, will signify acceptance of these Terms and Conditions (and/or those contained in any other document of the nature referred to in clause A 1).
3. Because The Sweet Shop is a New Zealand registered company these Terms and Conditions are written with reference to New Zealand laws. The laws applying in all cases to any Contract will be New Zealand laws. In some instances however Local Laws may impose obligations or limitations irrespective of this choice of law. If in any case the effect of a Local Law is to regard any part of this Contract to be illegal or unenforceable, then the offending part will be deemed severed from these Terms and Conditions, or if necessary modified, but only to the extent required to render the remaining parts fully enforceable as they are written.

B. Definitions

1. In these Terms and Conditions the following words will have the meanings ascribed below. Whenever these words are used herein (identified in text by commencing with capital letters) the meanings ascribed in this clause B1 shall apply:
 - 1.1 “Agency” means any Entity, or any person or persons with whom The Sweet Shop has contracted to perform the Work.
 - 1.2 “Commercial” means the end product of Work, being an agreed production, art work, or other media representation.
 - 1.3 “Contract” means any document (or combination of documents) which fully describes all elements of the Work agreed to be performed by The Sweet Shop for the Agency. A Production and Insurance Briefing Specification in The Sweet Shop’s standard format together with a Quote will often (but not always) form the basis of the Contract. A new Contract will be deemed to arise whenever new Work, not being the subject of any existing Contract, has been agreed to and/or commenced.

- 1.4 “Entity” means any company, a trust, or any other recognised legal entity within the Jurisdiction where Work will be undertaken, other than a natural person.
- 1.5 “Force Majeure Event” means any event which is beyond the reasonable control of The Sweet Shop and is not reasonably insurable including, but not limited to, strikes insurrection riots terrorism or hostilities civil commotion or imposition of martial law and official days of mourning. Also adverse weather events under clause F4.
- 1.6 “GST” means Goods and Services Tax (as defined by the Goods and Services Tax Act 1985 of New Zealand), and also any other goods and services tax, value added tax, or similar tax which may be payable by The Sweet Shop, or chargeable to the Agency in the Jurisdiction in respect of the Work, or any aspect of it.
- 1.7 “Intellectual Property Rights” include copyright, patents, trademarks, names, know-how confidential information and all similar rights.
- 1.8 “Jurisdiction” means the territory or district the boundaries of which contain the laws applying to the location where the work is carried out. Usually the Jurisdiction will be the country or state where the work is carried out, however notwithstanding this, in accordance with clause A3, New Zealand laws will always govern a Contract.
- 1.9 “Local Law” means any law which applies in the Jurisdiction and affects the Work in any way.
- 1.10 “Quote” means any written quotation for the Work provided by The Sweet Shop.
- 1.11 “Quote Price” means the price specified for the Work in the Quote.
- 1.12 “The Sweet Shop” means The Sweet Shop Limited, a company incorporated in New Zealand under company number 1163508.
- 1.13 “Work” means services and any goods, supplied or agreed to be supplied, carried out or performed by The Sweet Shop for the Agency.

In interpreting these Terms and Conditions:

- 1.14 References to the singular in number shall be deemed also to refer to the plural in number and vice versa.
- 1.15 Masculine, feminine and neutral genders will be used interchangeably without altering meaning or context.
- 1.16 References to currency shall be to the currency nominated in the Quote (budget on the front page).
- 1.17 A reference to a “party” is to The Sweet Shop or to the Agency as the context requires, and a reference to the “parties” is to both of them.

C. Quoting and Pricing

1. The process for negotiating a Contract will not necessarily follow a strict or consistent path, however it will in most instances be initiated by the Agency requesting The Sweet Shop to quote for Work. In order to assess this request, and to provide a Quote, The Sweet Shop will require a detailed brief, including a

description of the Agency's desired outcome, anticipated work type and location, and special requirements (if any).

2. There may then follow an interactive discussion between The Sweet Shop and the Agency seeking further information, refining the brief, and/or discussing budgets and price.
3. When The Sweet Shop has what it considers to be sufficient information to prepare a Quote it will do so and will communicate this information to the Agency. The Quote will be accompanied by form of Contract proposed by The Sweet Shop for the Work.
4. Once a Quote has been provided to the Agency it will remain valid for thirty (30) days.
5. The Sweet Shop reserves the right to re-quote should the script, concept, or original specification from the Agency alter in any way.
6. Unless a Quote is expressed to be inclusive of GST (if any), it will be exclusive of GST, which means that whenever GST is payable by The Sweet Shop on any supply the Agency will pay The Sweet Shop in addition to the Quote Price an amount equal to the GST liability, upon demand.
7. All payments under any Contract will be made to The Sweet Shop in New Zealand currency, unless agreed otherwise. If a payment is made other than in New Zealand currency, and there has been an exchange rate fluctuation between the date of the Quote and the date of payment with effect that the amount received by The Sweet Shop when converted into New Zealand currency is less than the Quote Price the Agency will top up the payment by paying The Sweet Shop an additional amount sufficient to ensure the Quote Price is received by The Sweet Shop in full.
8. Where a variation to a Quote is agreed to ("Variation"), then the Quote Price will adjust in accordance with that Variation. Any Variation will, unless otherwise agreed, include a mark-up at the Sweet Shop's usual rate.
9. In addition to the Quote Price the Agency will also pay any additional charges or costs incurred by The Sweet Shop on behalf of the Agency to complete the Contract, including (but not limited to) weather cover, if agreed. These additional costs will incur a mark-up, in the same manner as in clause C8 and GST (if any) will be paid in addition.
10. The Sweet Shop and the Agency will together discuss any necessary permits, licences, official authorisations, visas, work permits or other requirements to cover any personnel required to complete the Work. If The Sweet Shop incurs any cost to arrange these things clause C9 will apply to that cost. The Sweet Shop will not be responsible for delays or difficulties or inability to obtain visas or work permits for any artists employed by the Agency in connection with the Work.

D. Progress of Contract

1. Once a Quote has been accepted, a Contract will be prepared detailing (amongst other things) practical aspects of the Work, as outlined in the Quote. The Quote Price, and agreed method of payment, and proposed time schedule will be detailed in the Contract.
2. The Sweet Shop will then exercise every reasonable endeavour to proceed with the Contract in accordance with the agreed time schedule. This is subject however to any delays caused by the Agency, by a Force Majeure Event, or by any other outcome beyond the control of The Sweet Shop (such as by way of example adverse weather, non-appearance of artists, unavailability of facilities or equipment).
3. (Approval process):
 - 3.1 Once the Agency approves work offline it may then proceed to online

- 3.2 Once work is approved online it may then proceed to completion.
- 3.3 Notice of approval and notice of completion must be given in writing.
4. The Work will progress in accordance with agreed processes, subject to The Sweet Shop's production quality standards, operating procedures, contractual commitments and agreements, which shall be maintained to professional broadcasting standards at all times unless alternative standards are specifically agreed to.
5. Upon completion the Work will be delivered to the Agency, in the manner agreed in the Contract, subject however to prior payment whenever required.
6. Variations will only be carried out in the manner agreed between The Sweet Shop and the Agency. The Sweet Shop has no obligation to carry out a Variation unless it is paid for in the manner agreed to and recorded in the documents recording the agreed Variation.
7. In respect of any other delay (not caused by The Sweet Shop), the Agency will meet all of The Sweet Shop's additional costs incurred in connection with the delay, including re-scheduling costs and expenses.
8. In the case of delays caused by a Force Majeure Event The Sweet Shop has no obligation to complete the Work where any such delay postpones the Work for more than thirty (30) days. In such event the Contract may be cancelled by The Sweet Shop and the Agency will pay to The Sweet Shop all costs incurred by, and charges payable to, the Agency to the date when this event has occurred. Upon payment of this amount The Sweet Shop will deliver the uncompleted Work to the Agency, and all obligations of either the Agency or The Sweet Shop under the Contract will end.
9. In the event of any Work or Contract being cancelled then the Agency will pay The Sweet Shop for all its losses and expenses as follows:
 - 9.1 if cancellation of the production occurs after a purchase order is assigned and production has commenced, the Agency is liable for all costs as set out in the budget. Wherever reasonably possible The Sweet Shop will try to mitigate any costs which may have not been incurred, such as post-production costs, but if The Sweet Shop is bound by the terms and conditions of its relevant supplier that may not be possible.
 - 9.2 if cancellation of the production is given within the seven day period prior to the shoot, the Agency will be liable to The Sweet Shop for all out of pocket expenses, cancellation fees to equipment contractors, staff and freelance crew based on the 'Guidelines for the Engagement of Crew (the "Blue Book" – refer clause K5) and full mark-up on the production.
 - 9.3 if cancellation of the production is given within eight to fourteen days prior to the shoot, the Agency will be liable to The Sweet Shop for all out of pocket expenses, cancellation fees to equipment contractors, staff and freelance crew based on the Blue Book and 50% of mark-up on the production, plus 50% of directors and producers fees.
 - 9.4 if cancellation of the production is given more than fourteen days before shooting commences, the Agency will be liable to The Sweet Shop for all out of pocket expenses, cancellation fees to equipment contractors, staff and freelance crew and mark-up.
10. The Agency will be responsible for ensuring that Work complies with any legal or regulatory requirements concerning content. This includes ensuring commercials contain no defamatory illegal or misleading information or statements.

E. Payment

1. Payment for the Work will be made by the Agency strictly in accordance with the Contract, unless agreed otherwise.
2. The Quote Price recorded in the Contract, together also with any Variations, additional payments or Agency costs currency fluctuations and GST (as provided in Section C) will be made on due dates.
3. If any payment is not made when due, then interest will accrue and be payable on the overdue amount at a rate of 5% above The Sweet Shop's overdraft facility with its trading bank calculated daily for the period between the date when the payment was due, until the date when it has been paid in full. In addition any costs incurred by The Sweet Shop in enforcing a payment or other obligation of the Agency will be reimbursed to The Sweet Shop upon demand.
4. The Sweet Shop has an immediate right to sue for a complete recovery of any costs, payments, interest and GST not paid when due.

The Agency will reimburse the Sweet Shop for any costs or expenses incurred in enforcing any right or entitlement hereunder. To secure payment or performance of any obligations herein The Sweet Shop may hold the master copy of the work, as a possessory lien until payment in full.

F. Insurances/Weather Events

1. At the time the terms of the Contract are negotiated, prior to provision of the Quote, the Agency and The Sweet Shop will discuss insurance. In particular they will agree on whether weather insurance cover will be taken out and who will pay any premiums.
2. Insurance cover will be taken out in the joint names of The Sweet Shop and the Agency, with any losses incurred as a consequence of weather delays being reimbursed in accordance with the policy.
3. Any delays incurred as a consequence of adverse weather events will be deemed to extend the estimated date for completion of the Work by, and to the extent of, the period of delay and the Agency will reimburse The Sweet Shop for any additional costs losses or expenses incurred as a consequence of the delay.
4. If the Work is unable to be continued within thirty (30) days of an adverse weather event, or if the expected date of completion is extended by a total of more than sixty (60) days due to adverse weather, then such event shall be deemed to be a Force Majeure event for the purposes of clause C8.
5. If the Agency/Client choose to take responsibility for the insurance of a project, and not pay or utilize the Sweetshop's insurance, the Agency/Client must take full responsibility and risk associated with taking care of this. The Sweetshop cannot take any responsibility for any unsuccessful claims associated with the project and shall not be liable for any financial loss due to unpaid claims by the Agency/Client's insurers.

G. Limitation of Liability and Indemnity

1. If The Sweet Shop identifies any technical errors or malfunction of equipment or materials or if the Agency notifies The Sweet Shop of any alleged such failures and The Sweet Shop accepts these errors, then (provided the Agency has not previously accepted the completed production material), The Sweet Shop will correct all such errors at its own expense. In any such event correction will be the Agency's sole and exclusive remedy.
2. The Sweet Shop is not liable or responsible for any consequential loss or damage allegedly suffered or incurred by the Agency or its clients or its employees as a consequence of carrying out or completing the Work. The maximum liability of The Sweet Shop for any Work undertaken or completed for the Agency is reimbursement of monies actually received by The Sweet Shop for that Work. To the extent permitted by law any warranties implied by law or statutes are expressly negative.

3. All data, documents and tapes are received and stored by The Sweet Shop solely at the Agency's risk.
4. The Agency will indemnify The Sweet Shop against any claims for damages or associated costs made as a result of failure to meet delivery schedules, arrival times, or broadcast dates. Also any claims made as a result of actual or alleged non-compliance with any statutory or other legal standards (including standards imposed by the Advertising Standards Authority of New Zealand or similar authority in any relevant Jurisdiction). In particular in respect of any false, misleading, deceptive or inaccurate information contained in the production material which may contravene or be alleged to contravene the Fair Trading Act 1986.
5. The Agency further indemnifies The Sweet Shop against any claim for breach of copyright, including breach of moral rights, Intellectual Property Rights, defamation, or any other claim arising from the material comprised on film, video tape or audio tape produced by The Sweet Shop.

H. Suspension/Termination

1. If the Agency does not make a payment due under a Contract when it is required to be paid, and that default continues for thirty (30) days then The Sweet Shop may at any time thereafter without a requirement for notice suspend the Work until payment is made in full. In doing so The Sweet Shop is not liable to the Agency for any consequence of delays caused by that suspension, and clause D7 shall otherwise apply.
2. If (whether or not the Work has been suspended in accordance with clause H1), any payment due under a Contract is not made within forty five (45) days of its due date, The Sweet Shop may cancel the Contract, in which event clause D9 will apply.

I. Intellectual Property Rights

1. All Intellectual Property Rights in the Work belong to The Sweet Shop until such time as the Contract has been paid for in full. Upon full payment Intellectual Property Rights in the Work (but excluding any such rights in any process or method of producing the Work which shall remain with The Sweet Shop) will then be transferred to the Agency, subject however to the specific provisions of the Contract.
2. The Sweet Shop nevertheless retains a right to utilise materials used in or produced as a consequence of the Work without the Agency being entitled to compensation. These may be used for the purposes of The Sweet Shop's Show Reels, Industry Awards, and promotions in any media (including internet formats).
3. The Sweet Shop will within one year of production return to the Agency any negatives or production materials used in connection with the Work, where copyright and ownership in them has transferred to the Agency.
4. Confidential Information belonging either to The Sweet Shop or to the Agency shall not be disclosed to any third party nor used for any purpose other than in connection with completion of a Contract. Any Confidential Information shall be returned (without retaining copies) to its owner when no longer required for any Work.

J. Disputes

1. If any dispute arises between the Agency and The Sweet Shop out of or in connection with a Contract they will use their best endeavours to negotiate in good faith a mutually satisfactory resolution. If they are unable to do so within ten (10) days after the date when the dispute is first raised then either The Sweet Shop or the Agency may refer the dispute to mediation. If they are unable to agree on a mediator or process then a mediator and process will be nominated by the President for the time being of the Auckland District Law Society. If within ninety (90) days after the dispute is first raised a resolution by mediation is not achieved to the satisfaction of both parties either of them may then seek redress through the Courts.

2. Nothing in this Section prevents either The Sweet Shop or the Agency from enforcing payment of an amount undisputedly due, from seeking specific performance nor from undertaking urgent interlocutory proceedings, through the Courts.
3. In connection with any dispute, or enforcement of any provision under any Contract, the laws of New Zealand will apply and (except as provided in sub-clause J1) to determine a dispute the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

K. Additional Provisions

1. Where the Agency intends to produce a new Commercial using material produced in any Work, or to undertake further production or post-production work including transfers for use for cinema exhibition, then whenever practicable the Agency will give The Sweet Shop the first right to undertake this further Work.
2. The Sweet Shop may assign or sub-contract any of its rights under a Contract. In such event an assignee will be entitled to claim direct from the Agency for all of the assigned rights of The Sweet Shop under the Contract. If, in connection with business restructure or the sale of its business, the Agency wishes to assign its rights under a Contract The Sweet Shop may agree to this assignment, but only if it can be satisfied that the assignee can properly carry out all of the obligations of the Agency and provided also that the Agency is at such time not in default of its own obligations. The Sweet Shop may impose any terms or conditions to any such assignment which in its opinion are justified under the circumstances.

3. Information and Privacy Act 1993

The Privacy Act 1993 of New Zealand regulates the collection, storage and use of Personal Information. "Personal Information" is information about individuals (natural persons). Under the Privacy Act The Sweet Shop may only deal with personal information (of any individual) in a certain way if it is authorised to do so. In respect of the Privacy Act the Agency authorises The Sweet Shop to:

- 3.1 collect all Personal Information (as defined in the Privacy Act 1993) of the Agency it may require from third parties and authorises those third parties to release that information to The Sweet Shop; and
- 3.2 hold all information given to it by the Agency, or by any third parties; and
- 3.3 use that information, including giving it to any other person.

The information will be collected, held and used on the condition that:

- 3.4 it will be held securely at The Sweet Shop's registered office or place of business; and
- 3.5 it will be accessible to any of The Sweet Shop's employees and agents who need access to it for the efficient running of The Sweet Shop's business; and
- 3.6 the Agency may request access to and correction of it at any time.

4. Waiver

- 4.1 All The Sweet Shop's rights under any Contract will remain in full force despite any delay in enforcement. The Sweet Shop will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of The Sweet Shop.
- 4.2 Any waiver will apply only to the particular matter in respect of which it is given.

5. "Blue Book"

- 5.1 The Blue Book is the Code of Practice for the Engagement of Crew in the New Zealand Screen Production Industry, published by the New Zealand Film and Video Technicians Guild (Inc) and The Screen Production and Development Association (Inc).
- 5.2 The Agency acknowledges that The Sweet Shop is obliged to comply with the Blue Book in respect of any Crew it hires. Accordingly, to the extent that any obligation of The Sweet Shop hereunder or under any Contract conflicts with its obligations under the Blue Book at the time, The Sweet Shop's contractual obligations will be deemed modified to the extent necessary for it to comply with the Blue Book.
- 5.3 It is noted that there is also a Blue Book in force in Australia. Reference in this document is to the Blue Book from time to time in force in New Zealand. However to the extent that meeting the New Zealand Blue Book requirements would offend against the Australian Blue Book (in respect of work carried out in Australia), but only to that extent, references in clause 5.0 to the Blue Book are instead references to the Blue Book of Australia.