

CREATIVE BEAST

Terms and Conditions

DEFINITIONS

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

Customer means any individual or entity who acquires CREATIVE BEAST's Services wholly or predominantly for personal, domestic or commercial use.

CB means CREATIVE BEAST of 6 Allen Road GREY LYNN 1021 AUCKLAND NEW ZEALAND.

Agreed Fee means the fees estimated by CB 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, DVDs, films, footage, props and equipment provided by the customer to CB for the purposes of CB supplying the Services.

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

Services means video production and/or post production services.

APPLICATION

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

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

QUOTATIONS

Quotations are calculated by estimating how long it will take to provide the Services under typical circumstances and are based on an hourly rate. The first revision of or revisions is included in each quotation.

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

All prices quoted by CB are not subject to GST.

CANCELLATION

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

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.

If the cancellation is made more than 48 hours prior to the day on which CB has been engaged to provide the Services, the Customer must reimburse CB for any expenses incurred by CB in preparation for provision of the Services.

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

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

Any amount payable pursuant to the above conditions must be paid by the Customer within 7 days of the cancellation.

PAYMENT

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

The Agreed Fee will be payable within 7 days of the date of any interim or final invoices submitted in respect of the Services.

VARIATIONS (additional quotation applies)

CB will provide the Customer with one (1) 'draft copy' of an initial edited video file. The Customer must notify CB of any proposed changes within three (3) days of receipt of the draft copy by the Customer.

Upon receipt of the second edited video file, the Customer must notify CB of any proposed changes within three (3) days.

Once all of the proposed changes have been made, CB will provide the Customer with a 'final copy' which will include the proposed changes as discussed between CB and the Customer. No new changes may be requested unless the Customer pays the agreed fee for the requested variation.

The Customer acknowledges that some changes may not be possible.

ARTISTIC LICENSE

The Customer acknowledges and agrees that the production of finished works may include elements of artistic expression and interpretation. CB reserves the right to use 'Artistic License' in any commissioned works that require editing or the production of finished works.

CUSTOMER'S MATERIALS

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

Neither CB nor any of its employees 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.

The Customer must retain a master copy of each, and every recording delivered to CB for the duration of the Contract.

CUSTOMER ACKNOWLEDGEMENTS

The customer acknowledges and agrees that:

- CB will have lien on Materials provided by the Customer; and
- No title (including any copyright) in the Services manufactured, produced, duplicated or otherwise provided by CB will be transferred to the Customer until the Customer pays all amounts due to CB in full.

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

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

CUSTOMER UNDERTAKINGS AND WARRANTIES

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.

The Customer indemnifies and holds CB harmless from any claims or legal actions related to the content of the Customer's video.

The Customer hereby indemnifies and holds harmless CB against all loss, damage, costs or expenses suffered or incurred by CB as a result of any breach of the above conditions.

RECORDED MATERIAL

Ownership

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

Where Services remain unpaid or in the event that a final agreed payment is not made, CB 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.

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

Special Provisions for Ownership

CB 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 CB.

CB 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 CB and the Customer. The copyright of such segments will belong exclusively to CB.

Disposal

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, CB reserves the right to dispose of Raw Footage, video files, audio files, edited video files, recorded materials and finished works.

Raw Footage

The Customer may purchase Raw Footage in a viewable format from CB at an additional fee which can be negotiated at the time of request.

FAILURE OF EQUIPMENT OR ILLNESS OF CB EMPLOYEES

Whilst all reasonable care and preparation is taken for videography and editing, CB 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 employee/s of CB or because of an unforeseen event or any dispute regarding the ownership of recorded materials.

RIGHT OF REFUSAL OR TERMINATION

CB reserves the right to terminate provision of Services, if:

- an employee of CB is placed in a position where there is an actual or apparent risk of injury.

or

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

LIMIT OF LIABILITY

The parties acknowledge that, under applicable New Zealand 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").

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

- Any claim by the Customer or any person, including without limitation any claim relating to or arising from clauses, conditions, guarantees or warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom, usage or otherwise; and
- Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by CB in writing, and the liability of CB for any such matters is hereby excluded.

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

- The supply of the service again; or
- Payment for the cost of having the services supplied again.

Notwithstanding any other provision, CB 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:

- Any increased costs or expenses;
- Any loss of profit, revenue, business, contracts or anticipated savings;
- Any loss or expense resulting from a claim of a third party; or
- Any special, indirect or consequential injury, loss, damage or expense whatsoever or howsoever arising.

FORCE MAJEURE

If CB 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/pandemic, quarantine restriction, labour dispute or shortage, act or commission of any third person or public authority, then CB's obligations under the Contract will be suspended for the duration of the event or waived to the extent applicable.

LEGAL COSTS

The Customer will be liable for any legal costs incurred

by CB in the recovery of unpaid invoices on an indemnity basis.

PRIVACY

All information received by CB 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.

COPYRIGHT, TRADEMARKS AND INTELLECTUAL PROPERTY

CB will create temporary and/or permanent copy and content. In some cases, CB will explicitly ask for your approval before continuing with a component of a service. Otherwise, it is your responsibility to check all copy and content, and inform CB of any errors, typos, infringements and/or other copy or content that needs to be edited or removed.

You agree to inform CB of any copyright and trademarks that should or should not be used in creating your website(s), advertisement(s) and/or other products. CB is not responsible for any copyright, trademark or intellectual property infringements in your products. Any content provided by you must not be plagiarised, misleading or inaccurate.

OTHER MATTERS WHICH MAY AFFECT THE CONTRACT

The laws of New Zealand apply to the contract and the Customer must bring any proceeding against CB in a New Zealand court.

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.

CB 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 and for CB.

AMENDMENT

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