



## GENERAL TERMS AND CONDITIONS

### WEST4MEDIA Filmproduktions GmbH

#### 1. General – Scope of application

- 1.1. WEST4MEDIA Filmproduktions GmbH – hereinafter referred to as WEST4MEDIA – provides its services exclusively on the basis of these General Terms and Conditions (short “GTC”). These GTC shall also be applicable to all such future transactions, whereby their applicability does not need to be agreed upon in each single case.
- 1.2. Ancillary agreements, amendments or additions to these GTC shall only be valid if made in writing; this also applies to a deviation from the written form requirement.
- 1.3. Contractual terms contrary or divergent to these GTC, in particular in the customer’s business terms or other contract forms, are – even if WEST4MEDIA is aware of them – only effective if WEST4MEDIA expressly and in writing approves them.
- 1.4. Nullity or invalidity of individual provisions in this GTC do not affect the binding nature of the remaining conditions or the contracts concluded on the basis of them. The ineffective provision shall be replaced by an effective provision which comes as close as possible to its meaning and purpose.

#### 2. Conclusion of contract

- 2.1. The basis for concluding a contract shall be the respective offer of WEST4MEDIA and/or the customer’s order, in which the scope of services and the remuneration are specified. Offers made by WEST4MEDIA shall be subject to change and non-binding.
- 2.2. If the Principal issues an order, he shall be bound by this order for a period of two weeks after the order has been received by WEST4MEDIA. The contract shall come into effect through the acceptance of the order by WEST4MEDIA or through execution of the order. Acceptance must be made in writing (e.g. by means of an order confirmation) unless WEST4MEDIA indicates without doubt that it accepts the order (e.g. by undertaking activities on the basis of the order). Fax or e-mail shall suffice to meet the written form requirement.
- 2.3. Upon request by WEST4MEDIA the signing authority or right of representation, the identity as well as the legal capacity and the capacity to contract of the principal has to be supported by documents, an Austrian bank connection has to be proven as well as an Austrian mailing address and an Austrian cashier’s office has to be disclosed. WEST4MEDIA is entitled to check the creditworthiness as well as other data of the principal.

#### 3. Scope of services, order processing and the Principal’s duties of participation

- 3.1. The scope of the services to be provided shall derive from the Principal’s order and/or the specification of services, or from the details in the contract.
- 3.2. The production, cutting and/or shooting starts after the conclusion of the contract only. The artistic and technical creation is reserved to WEST4MEDIA.
- 3.3. Subsequent amendments to the contents of services need the written consent of WEST4MEDIA and separate agreements on deadlines and fees; in the case of doubt an adequate additional reimbursement is due. The Principal will be immediately notified in writing if after conclusion of the contract artistically or technically necessary amendments to the screenplay cause add-on costs. With the approval of the changes by the Principal the Principal undertakes to compensate WEST4MEDIA for such add-on costs.
- 3.4. All services by WEST4MEDIA (in particular preliminary drafts, suggestions, concepts, picture editings) must be checked by the Principal and released within three days. If not released in time, they will be assumed to have been approved by the Principal.



- 3.5. The Principal will immediately provide WEST4MEDIA with all information and documents which are necessary for the production. He will inform WEST4MEDIA of all events which are of significance for carrying out the order, even if these circumstances only become known when the order is already being carried out. The Principal shall bear any costs which arise as a result of incorrect, incomplete or subsequently changed information.
- 3.6. The Principal is further obliged to check all documents made available for undertaking the order (photos, logos etc.) for any existing copyright, personal rights, trademark rights or any other third party rights. WEST4MEDIA shall not be liable for any breach of such rights. If any claim is made against WEST4MEDIA on account of any such breach of rights, the Principal shall indemnify and hold harmless WEST4MEDIA; the Principal shall compensate WEST4MEDIA for all disadvantages arising from any claim by a third party.
- 3.7. The services of WEST4MEDIA are divisible.

#### **4. Subsequent changes / Adaptations**

- 4.1. The Principal has to inform WEST4MEDIA of requests for modifications after completion of the production in writing. The reimbursement of such changes shall be regulated in a separate agreement. In the absence of such an agreement an adequate reimbursement is due.
- 4.2. Subsequent changes and treatments (including e.g. dubbings/synchronizations of film works produced by WEST4MEDIA have to be approved by WEST4MEDIA.

#### **5. Treatment / Screenplay**

- 5.1. A separate contract can be concluded for the production of a treatment or screenplay. The price agreed in this contract has to be paid by the Principal even if he does not picture the treatment or screenplay or withdraws from the order.
- 5.2. If for the production a screenplay or an already existing film work is made available by the Principal, the Principal has to ensure that all necessary rights are available. The Principal indemnifies and holds harmless WEST4MEDIA in this respect.

#### **6. External services / Instructing third parties**

- 6.1. WEST4MEDIA has full discretion to decide whether to carry out the service itself, to involve third parties in providing the contractual services and/or to substitute such services.
- 6.2. WEST4MEDIA at its sole discretion assigns third persons either in its own name and at its own expense or in the name and at the expense of the Principal.
- 6.3. WEST4MEDIA will select such third parties with care and will take care that they have the necessary professional qualifications. If services are contracted out in the way of substitution, WEST4MEDIA is only liable for a careful choice of the third person, but not for the fulfilment or bad fulfilment of the service.

#### **7. Deadlines**

- 7.1. All agreements on deadlines and time limits are to be recorded and confirmed in writing. WEST4MEDIA will make every effort to meet deadlines. However, if a deadline is not met by WEST4MEDIA, this shall only entitle the Principal to enforce his/her statutory rights if he grants WEST4MEDIA an appropriate period of grace, which shall be at least 14 days. This period shall start when a reminder letter is received by WEST4MEDIA.
- 7.2. If the period of grace expires unproductively, the Principal may withdraw from the contract. An obligation to provide compensation in case of default shall exist only in the event of intent or gross negligence by WEST4MEDIA.
- 7.3. Unavoidable or unforeseeable events as well as events for which WEST4MEDIA is not culpable – in particular delays by WEST4MEDIA's subcontractors – shall in any case release WEST4MEDIA from complying with the agreed delivery deadline. The same shall apply if the Principal is late in meeting his obligations which are necessary for carrying out the order (e.g. providing documents or information). In this case the agreed deadline shall be postponed at least for the extent of the Principal's delay.



## **8. Withdrawal from the contract**

- 8.1. WEST4MEDIA is entitled to withdraw from the contract for cause, in particular if
- a) it is impossible to carry out the service for reasons for which WEST4MEDIA is not responsible or if it is further delayed despite a period of grace being set;
  - b) justified concerns exist as to the Principal's creditworthiness and the latter provides neither payment in advance nor a valid security at the request of the WEST4MEDIA;
  - c) the Principal infringes essential contract duties.
- 8.2. In case of withdrawal WEST4MEDIA is entitled to claim the whole agreed remuneration less actually saved expenditures which do not occur any more as a result of the omitted services.

## **9. Fee**

- 9.1. WEST4MEDIA and the Principal agree on the fee for the services and the intellectual property rights in advance. The agreed fee excludes VAT. In case of doubt an adequate fee is due.
- 9.2. WEST4MEDIA is in any case entitled to request advance payments to cover its costs.
- 9.3. If after conclusion of the contract additional services are instructed or requests for modifications are disclosed which lead to additional expenditures, the Principal is obliged to compensate for this additional expenditure appropriately. The reimbursement is agreed between the parties in a separate contract.
- 9.4. All services by WEST4MEDIA which are not expressly compensated by the agreed fee are to be paid for separately. Unless otherwise agreed, all cash expenditures, third party charges and expenses (e.g. postal charges, travel expenses, copies, etc.) incurred by WEST4MEDIA shall be reimbursed by the Principal.
- 9.5. Disarrangements of shooting dates due to weather conditions (weather risk), not negligent caused delays or other difficulties are not included in the calculated production costs. The Principal is obliged to substitute WEST4MEDIA for all add-on costs supported by documents.
- 9.6. Estimates of costs by WEST4MEDIA are strictly non-binding. If it is conceivable that the actual costs will exceed those estimated by WEST4MEDIA in writing by more than 15 % due to an unforeseeable additional expenditure, WEST4MEDIA will notify the Principal of the higher costs. The increased costs will be assumed to have been approved by the Principal unless the Principal expressly objects within one week in writing.
- 9.7. WEST4MEDIA shall receive the agreed fee in full for all services agreed with the Principle which for reasons whereby WEST4MEDIA is not culpable were not carried out. With the payment of this reimbursement the Principal acquires no rights of whatever nature to suggestions, ideas, preliminary drafts, concepts and their content created by WEST4MEDIA within the scope of the order which were not realised. In this regard, material and documents (concepts, drafts and the like) delivered to the Principle have to be returned to WEST4MEDIA immediately.

## **10. Payment**

- 10.1. Invoices shall become due for payment without any charges within seven days of invoicing.
- 10.2. In case the agreed fee for the services exceeds € 10,000.00 a third of the fee is due for payment at the conclusion of the respective agreement, a third at the beginning of the shooting and the last third at completion of the project. Goods, productions, cinematographic work, services, transferred rights of use as well as concepts, drafts and templates of any kind delivered by WEST4MEDIA shall remain property of WEST4MEDIA until full payment.

WEST4MEDIA is entitled to a right of retention for all goods provided by the principle for the production (data, data storage, drafts, templates, raw material and other items) as well as a contractual lien for the items attained as a result of the order until the complete fulfilment of all outstanding claims of the business transaction.

- 10.3. Principal shall be obliged to reimburse any and all costs and efforts relating to the collection of due payments, in particular expenses of collection and other costs for the necessary and adequate assertion of WEST4MEDIA's rights.



- 10.4. In case of default of payment through Principal WEST4MEDIA shall be entitled to demand immediate payment of any and all fees relating to all other performed services for the Principal in the framework of this and other agreements. Furthermore WEST4MEDIA shall be entitled to discontinue with any and all services until the due payments are paid or secured.
- 10.5. Principal shall not be entitled to set off any counterclaims which he might have against WEST4MEDIA except such counterclaim is expressly acknowledged in written form by WEST4MEDIA or ascertained by court. Principal's lien shall be expressly excluded.

## **11. Intellectual Property**

- 11.1. Through payment of the fees Principal – subject to a differing agreement in writing – acquires the non-transferable right to use all works to the necessary extent for the purpose agreed on when placing the order for one year from the handover of the production. Without written agreement to the contrary and separate reimbursement the Principal shall not acquire any further rights, in particular the right to reproduce, change, edit, amend, dub in a foreign-language and the right to use extracts in picture and/or tone. Any and all rights shall be deemed to be acquired solely with full payment of any fees invoiced by WEST4MEDIA; any and all rights to use are good till cancelled.
- 11.2. All rights of WEST4MEDIA to any and all proposals, ideas, preliminary drafts, concepts and their content brought in by WEST4MEDIA but not realized are expressly reserved. Principal shall not be entitled to use or exploit them; such documents have to be returned to WEST4MEDIA immediately. The aforementioned documents and works shall neither be made available nor transferred to third parties, nor be published, reproduced, or in any other way passed on or exploited without the express prior approval of WEST4MEDIA. Furthermore the Principal shall not be entitled to utilize any and all proposals, ideas, preliminary drafts, concepts and their content brought in by WEST4MEDIA but not realized in any other form, irrespective whether the ideas and concepts are protected by copyright or not. Even with the payment of the fees Principal does not acquire any rights in those ideas and concepts not realized. WEST4MEDIA shall be entitled to use and exploit such ideas and concepts not realized in the respective works in its sole discretion.
- 11.3. Any and all amendments of works provided by WEST4MEDIA, in particular any and all enhancements through the Principal or third parties assigned by the Principal, are subject to the express prior approval of WEST4MEDIA and – insofar as these works are protected by copyright – the creator.
- 11.4. Any use and exploitation of the works provided by WEST4MEDIA beyond the purpose and extent agreed on when placing the order shall be – irrespective of the protection by copyright – subject to the prior approval of WEST4MEDIA. In such a case WEST4MEDIA and the creator shall be entitled to a separate and adequate reimbursement.
- 11.5. The Principal does not acquire the right to receive open sourced data which is suitable for processing.
- 11.6. The Principle herewith agrees that it must submit the statutory notifications to the respective collecting societies. The associated taxes, fees and copyright payments (fees for the use of music and the like subject to licence) are borne by the Principle. The Principle is obliged to pay these taxes, fees, costs and payments promptly following the notification of fees and in this respect to indemnify and hold harmless WEST4MEDIA.
- 11.7. For protection of any and all rights, in particular copyrights, the basic material (picture and tone), including but not limited to negatives, master tapes and as well residual material shall stay with WEST4MEDIA.

## **12. Labelling / Advertising**

- 12.1. WEST4MEDIA shall be entitled to show its company name and logo as copyright notice in the cinematographic work produced (e.g. in the credits); Principal shall not be entitled to any compensation whatsoever therefore.
- 12.2. WEST4MEDIA shall be entitled to use and exploit the production/cinematographic work produced for the Principal for self-advertising and communication as well as to name it as reference-project and to show it or have it show at competitions and festivals. For the purpose of self-advertising and communication use of the complete or extracts of the production/cinematographic work produced or other picture footage on the webpage and in presentations of WEST4MEDIA shall be permitted.

### **13. Guarantee**

- 13.1. WEST4MEDIA guarantees that its services comply with the industry standard (impeccable sound and picture quality).
- 13.2. Principal shall be obliged to prove the goods and services provided by WEST4MEDIA immediately and inform WEST4MEDIA about possible defects in writing. In case of a justified claim in time Principal has at first the right to repair or replacement through WEST4MEDIA. Defects will be repaired within a reasonable time. Principal shall be obliged to allow WEST4MEDIA any and all measures necessary for the check and repair of the claimed defects. WEST4MEDIA has the right to refuse to repair if it is impossible or if a reparation would cause disproportionately high effort.
- 13.3. The shifting of the burden of proof according to § 924 Austrian Civil Law Code (ABGB) shall expressly be excluded. The existence of a defect at the time of handover, the point of time of the discovery of the defect and the timeliness of the claim of defect are to be proven by the Principal.

### **14. Liability**

- 14.1. Any and all claims for damages of Principal, including but not limited to claims due to delay, impossibility of performance, breach of contract, default at concluding the agreement, poor or incomplete service, consequential harm caused by a defect or because of unauthorized acts are expressly excluded, as far as they are not verifiably caused by WEST4MEDIA in gross negligence or wilful intention. Intent or gross negligence has to be proven by the Principal.
- 14.2. Any and all liability of WEST4MEDIA for the loss of profit, consequential harm or claims of third persons shall be expressly excluded. Principal shall indemnify and hold harmless WEST4MEDIA in case WEST4MEDIA is claimed by a third party in such title.
- 14.3. Any and all goods provided by the principal for the production (data, data storage, drafts, templates, raw material and other items) are not covered by the insurance of WEST4MEDIA.
- 14.4. Any and all actions have to be filed within six months after knowledge of the defect, the latest one year after finalizing the respective service or the respective part thereof.
- 14.5. The liability of WEST4MEDIA for damages and losses per order is limited to the insurance sum of the liability-insurance concluded by WEST4MEDIA, in the absence of such a liability-insurance the liability is limited to € 30,000.00 or, if the total damage is higher with the order value.

### **15. Applicable law**

- 15.1. Austrian substantive law shall apply exclusively. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

### **16. Place of performance / venue**

- 16.1. The corporate seat of WEST4MEDIA shall be the place of performance with respect to all duties and obligations resulting from the business relationship.
- 16.2. For all disputes arising from or in connection with the business relationship the court in Vienna's Inner City, which is competent, shall have exclusive jurisdiction. WEST4MEDIA shall, however, remain entitled, to sue the Supplier at his general domicile.