



Absolute Post Terms and Conditions

Definitions

1. In these conditions, the following terms shall have the following meanings: “Absolute” means Absolute Post Inc., 118 West 22nd Street 8th Floor, New York, New York 10011. The “Client” means the person, firm or entity contracting with Absolute to purchase Absolute’s services. “These Conditions” means the terms and conditions set forth herein and the “Contract” means the particular contract to which these Conditions apply and which incorporates by reference these Conditions and makes them a part thereof. “Direct Delivery” means delivery by electronic means or any form of telephony.

Formation of Contract

2.1 All goods, services or facilities are offered and all contracts are entered into subject to these Conditions, unless otherwise agreed to between Absolute and Client in writing. No servant or agent of Absolute has the power to vary these conditions orally or to make any statement or representation about the goods, services or facilities offered, their fitness for any purpose or any other matter whatsoever. **ABSOLUTE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

2.2 Any dealings between Absolute and Client following receipt by the Client of notice of these Conditions shall automatically be deemed acceptance thereof notwithstanding the absence of a formal acknowledgement.

2.3 Unless otherwise expressly stated in writing, all quotations and estimates supplied by Absolute are invitations to bargain. The Client’s order is an offer and shall become binding upon acceptance by Absolute.

Prices

3.1 All prices quoted are exclusive of applicable taxes. Absolute shall further be entitled to make an adjustment to the quoted price in the event that:-

3.1.1 additional costs are incurred by Absolute due to materials supplied by the Client or any third party being in the opinion of Absolute, in any way defective, in an unsuitable format (or a different format to that which Absolute is expecting to receive the same) or of unsuitable quality for normal processing; or

3.1.2 the information supplied by the Client or any third party in connection with its order does not provide a full and accurate indication of the work involved; or

3.1.3 additional costs are incurred by Absolute, due to alterations by the Client or any third party in its requirements.

3.1.4 additional costs are incurred by Absolute due to exceptional circumstances outside the control of Absolute, including currency fluctuations and changes in third party costs.

Performance, Delivery or Collection

4.1 Unless otherwise agreed in writing, all times quoted for performance or delivery or availability for collection are given in good faith but are not guaranteed.

Notwithstanding that Absolute and the Client may have agreed that time is of the essence, the time for performance or delivery or availability for collection shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Client. Alteration by the Client of its requirements may result in delay in performance, delivery or availability for collection.

4.2 Any packaging supplied by Absolute, unless otherwise expressly agreed, is intended to provide adequate protection throughout normal conditions of transport by the means specified in the contract or as may be otherwise agreed. If the Client (or the intended recipient) fails to take delivery on the agreed delivery date or to collect on the agreed collection date or, if no specific delivery or collection date has been agreed, when the goods are ready for dispatch, Absolute shall be entitled to store the goods and to charge the Client the reasonable costs of so doing and to tender its account for such charges in accordance with Condition 5, below. Notwithstanding the terms of Condition 7.1 below, Absolute shall be under no liability in respect of any loss or damage following the dispatch of any goods from Absolute's premises.

4.3 If Absolute and the Client agree that any goods shall be delivered electronically or via Direct Delivery, then the following provisions shall as applicable apply:

4.3.1 the Client acknowledges that Direct Delivery is not or may not be a completely secure medium of communication and that an unauthorized third party may intercept, tamper with or delete goods delivered by Direct Delivery and that Direct Delivery may involve reliance upon third party data carriers over which Absolute has no control; and

4.3.2 Absolute shall not be responsible for and shall have no liability to the Client or any third party for:

4.3.2.1 any delay to any Direct Delivery or any non-receipt of any goods delivered by Direct Delivery;

4.3.2.2 any loss or damage that results from any person gaining unauthorized access to any Direct Delivery of any goods;

4.3.2.3 use or disclosure of any data obtained by any third party as a result of the same having gained unauthorized access to any Direct Delivery; and

4.3.2.4 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 or other intrusions to or upon any equipment and/or software used to effect and/or receive any Direct Delivery.

Terms of Payment

5.1 Subject to condition **5.2** and unless otherwise agreed by Absolute in writing, all invoices rendered by Absolute are payable as follows: first 50% of invoice due within seven days following the date of invoice and balance within 30 days of the date of invoice.

5.2 Absolute expressly reserves the right at its sole option and discretion to require payment in installments during the performance of the contract and/or payment of all amounts owing to Absolute immediately prior to delivery.

5.3 The Client shall pay all amounts owing to Absolute in full and shall have no right of set off or counterclaim against invoices submitted.

5.4 In the event of a default in payment by the Client, Absolute may exercise any right or remedy available to it under any applicable law, including, without limitation, suspending any further performance of or deliveries under any Contract or Contracts between Absolute and the Client without notice and to charge interest at the New York statutory prejudgment interest rate then in effect on all overdue invoices, from the date any such invoice(s) became due and for Absolute's costs including reasonable attorney's fees in connection with any action to recover outstanding sums due thereon.

Cancellation

6.1 Any contract between Absolute and the Client may be terminated or modified only upon the written consent of Absolute and upon the terms of these Conditions. The giving of Absolute's consent shall not in any way prejudice Absolute's right to recover from the Client damages for any loss or expense arising from such termination or modification and shall not constitute a waiver of any other rights or remedies Absolute may have.

6.2 If notwithstanding Condition 6.1 and without prejudice to any other rights or remedies available to Absolute, the Client shall give Absolute notice of cancellation of an order which notice is received by Absolute:

6.2.1 less than 24 hours prior to, as applicable, the date for performance or the commencement of performance or the date on which the applicable facilities were to be utilized by or on behalf of the Client (the "Contract Date"), the Client shall be liable to Absolute for the full Contract price or, if none is stated, the applicable amount under Absolute's rate card current at the Contract Date; and

6.2.2 less than five working days but more than 24 hours prior to the Contract Date, the Client shall be liable to Absolute one half of the Contract price or, if none is stated, one half of the applicable amount under Absolute's rate card current at the Contract Date in each case reflecting the fact that Absolute is unlikely to be able to secure an order for the facilities that had been allocated to the processing of the Client's order from a third party within the time available.

Liability

7.1 The Client hereby agrees that without limiting any other provision of these Conditions:

7.1.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, ABSOLUTE'S ENTIRE LIABILITY FOR BREACH OF ANY PROVISIONS OF A CONTRACT, OR ANY TERMS, WARRANTIES OR CONDITIONS IMPLIED IN A CONTRACT BY OPERATION OF LAW, INCLUDING ABSOLUTE'S LIABILITY FOR NEGLIGENCE (EXCEPT WHERE SUCH NEGLIGENCE RESULTS IN DEATH OR PERSONAL INJURY) ARE EXCLUDED.

7.1.2 under no circumstances shall Absolute be liable for any consequential loss whatsoever (including damages for lost profits, business interruption or other indirect pecuniary loss of any kind);

7.1.3 Absolute's entire liability for any direct loss suffered by the Client, as a result of

Absolute's breach of the contract and for which Absolute shall notwithstanding any other provision of the Contract be liable, shall (subject to the terms of conditions 4.2, 4.3 above and 9.1 below) be limited to the amount actually paid by the Client in accordance with the contract;

7.1.4 the price to be paid by the Client under the contract reflects the limitation on the liability accepted by Absolute; and

7.1.5 this condition 7.1 is reasonable and necessary under the circumstances and does not work harshly or unreasonably against the Client.

7.2 The Client shall indemnify Absolute from and against:-

7.2.1 all claims or proceedings brought against Absolute by any third party including any client of the Client, Absolute's employees, the Client's employees or the employees of any contractor employed by the Client or Absolute or the personal representatives or dependents of any such employee or other third party in respect of personal injury or damage to property caused by or arising out of any act or omission of Absolute in the course of carrying out the specific instructions of the Client;

7.2.2 all claims or proceedings brought against Absolute arising out of the acts and/or omissions of the Client, its agents or sub-contractors or any of their respective employees, whether negligent or otherwise.

7.3 The Client expressly agrees that it will at all times maintain and keep effective insurance policies with reputable insurers with sufficient coverage which protect the Client against any loss or liability which it may incur or suffer arising out of the contract or any act or default of Absolute in the performance by Absolute of its obligations to the Client. Such insurance shall include insurance for any damage or loss for which Absolute is not liable pursuant to the conditions hereof, insurance which protects the Client against any accidental loss, damage or destruction to any master tapes, film negative prints, sound tapes, video tapes or visual images or sound held in any media or any other materials of any kind supplied to Absolute while in the possession or control of Absolute. Absolute accepts no liability for any liability or loss which arises from any failure by the Client to maintain and keep effective such insurances.

7.4 Any recommendations or suggestions relating to the use of any goods supplied by Absolute are given in good faith but it is the responsibility of the Client to satisfy itself with the suitability of the goods for its own particular purpose. Accordingly unless otherwise expressly agreed in writing and notwithstanding and without limiting condition 7.1, **ABSOLUTE GIVES NO WARRANTY AS TO THE FITNESS OF THE GOODS FOR ANY PARTICULAR PURPOSE EVEN THOUGH THAT PURPOSE MAY BE SPECIFIED IN THE CLIENT'S ORDER AND ANY IMPLIED WARRANTY OR CONDITION (STATUTORY OR OTHERWISE) TO THAT EFFECT IS EXPRESSLY EXCLUDED.**

7.5 In the case of goods or component parts of goods supplied but not manufactured by Absolute, Absolute shall be entitled to assign to the Client its rights against its supplier and such rights shall be taken in extinction of and in substitution for any rights which the Client would otherwise have had against Absolute.

Intellectual Property and Data Protection

8.1 The Client shall indemnify Absolute from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any actual or alleged defamation or any infringement or alleged infringement of any patent, trademark, copyright, registered design or design copyright or other exclusive right including any moral right claim or any other title of any third party in respect of any work carried out for the Client by Absolute.

8.2 Each of Absolute and the Client acknowledge and agree that copyright in underlying materials processed by Absolute in the performance of its services and/or embodied in materials produced by Absolute may be owned by third parties and that the use by the Client of all materials processed and/or produced by Absolute shall be subject always to the Client obtaining any and all necessary licenses and consents from the relevant underlying rights owner(s). The Client hereby grants to Absolute a perpetual and royalty free license to use all materials processed and/or produced by Absolute on the Client's behalf to promote Absolute's business and in connection with appropriate industry awards.

8.3 Without limitation to the rights of Absolute, the Client acknowledges and agrees that if, in the course of fulfilling the Client's order and/or processing or producing materials on behalf of the Client, Absolute discovers or devises any techniques or know-how, all rights of every kind in and to such techniques and know-how, shall vest absolutely in Absolute.

8.4 [Reserved]

8.5 The Client acknowledges that in the course of its dealings with Absolute, Absolute may acquire personal data which relates to the Client and/or any of its officers, employees or contractors and the Client hereby consents to Absolute collecting, storing, processing and transferring to third parties such personal data. The Client further consents to the sale or transfer by Absolute of such personal data in connection with an assignment or transfer of any of its assets and its disclosure in compliance with any rule of law or order of competent authority.

8.6 The Client 's consents pursuant to this condition 8 are given by it for itself and on behalf of (if any) its officers, employees and contractors and the Client hereby warrants to Absolute that it has the authority to give such consent on behalf of those persons.

8.7 [Reserved]

Client's Materials

9.1 Where the Client supplies any materials to Absolute or where any materials or goods in whatever tangible, electronic or other form, including without limitation, graded or ungraded footage, which are the property of the Client are otherwise left in Absolute's possession:-

9.1.1 notwithstanding the terms of condition **7.1**. above, Absolute shall be under no liability in respect of any loss or damage or otherwise arising as a result of damage to or the loss or destruction of such materials or goods;

9.1.2 without limiting the terms of condition **7.3** above, the Client shall insure all such materials or goods to their full value against all risks; and

9.1.3 the Client shall remove all such materials or goods within six months of the

date of issue of Absolute's invoice relating to such materials or goods in respect of which the materials have been utilized and in default, Absolute shall be entitled to return all such materials or goods to the Client and to charge the Client for any costs and expenses incurred by Absolute in so delivering such materials or goods. Until the removal or return of the materials or goods, Absolute shall be entitled to store the materials and goods and to charge the Client the reasonable costs of so doing and to tender its account for such charges under condition 5. In the event that Absolute does not so return such materials or goods, Absolute shall be under no liability whatsoever for any loss or damage to such materials or goods while they are in the possession of Absolute and the Client is advised to store properly any such materials or goods and back-up in appropriate secure and climate-controlled facilities and to maintain insurance to the full value of such materials or goods against all risks.

Risk and Title

10.1 Risk shall pass to the Client so that the Client is responsible for all loss, damage or deterioration to the goods the subject of the contract:-

10.1.1 If Absolute delivers the goods by its own transport or, in accordance with a specific contractual obligation, arranges transport for the goods at the time when the goods or a relevant part thereof arrive at the place of delivery; or

10.1.2 In all other circumstances, at the time when the goods or a relevant part thereof leave the premises of Absolute, or

10.1.3 If risk otherwise passes in accordance with the conditions hereof.

10.2 Title to the goods the subject of the contract or any relevant part thereof shall only pass to the Client upon the Client paying to Absolute all sums due and payable by it to Absolute under the contract and all other prior contracts between Absolute and the Client.

10.3 Absolute may recover goods in respect of which title has not passed to the Client at any time.

10.4 Until title to the goods has passed to the Client pursuant to the terms hereof:

10.4.1 It shall possess the goods as a bailee of Absolute on the terms of these conditions;

10.4.2 If Absolute so requires the Client shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to Absolute;

10.4.3 The Client shall be entitled to re-sell or use the goods in the ordinary course of its business but shall account to Absolute in respect of the proceeds of sale or otherwise of such goods;

10.4.4 The Client shall maintain records of the persons to whom it sells or disposes of the goods and of the payments made by such persons for such goods and will allow Absolute to inspect those records on request; and

10.4.5 Absolute shall be entitled to trace the proceeds of sale or otherwise of the goods.

10.5 the Client hereby irrevocably authorizes Absolute, its officers, employees and agents to enter upon any premises of the Client for the purpose of repossessing any goods in respect of which title has not passed to the Client and/or to ensure that the provisions of this condition **10** are being complied with.

Client input and access to/use of Absolute's premises and equipment

11.1 The Client shall be solely responsible for ensuring that all information, advice and recommendations given to Absolute either directly or indirectly by the Client or

by the Client's agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by Absolute of such information advice or recommendations shall in no way limit the Client 's responsibility hereunder unless Absolute specifically agrees in writing to accept responsibility.

11.2 The Client hereby undertakes to Absolute to ensure that all of its personnel (including without limitation all employees and agents of the Client) that shall at any time have access to any premises occupied by Absolute or at which any of Absolute's equipment shall be kept all such persons shall at all times:

11.2.1 observe all rules and regulations in force at the applicable premises including without limitation health and safety regulations and any rules governing the use of equipment and/or facilities at the applicable premises;

11.2 keep confidential and not divulge or communicate or make any use of any Confidential Information (defined below) which the applicable person shall become aware of as a result of being present at the applicable premises. In these conditions, "Confidential Information" shall mean any and all information which relates to and/or concerns the business or activities of Absolute and/or any Client of Absolute

11.3 The Client shall indemnify Absolute from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any breach or non-observance of any provision of condition **11.2** by any of the Client's personnel.

Insolvency

12. With respect to the Client, in the event of (a) the filing of a petition under any of the provisions of the federal bankruptcy act or amendments thereto or the commencement of any proceeding under any foreign bankruptcy, insolvency, debtor relief or other similar statute or body of law, by or against a creditor; (b) the making of an assignment by a creditor for the benefit of its creditors; (c) the application for the appointment, or the appointment, of any receiver of, or of any of the property of a creditor; d) the issuance of any execution against any of the property of a creditor; (e) the issuance of a subpoena or order, in supplementary proceedings, against or with respect to any of the property of a creditor; (f) the issuance of a warrant of attachment against any of the property of a creditor; or (g) Client shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due, Absolute shall be entitled to cancel the contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to Absolute.

Force Majeure

13. In the event of the performance of any obligation accepted by Absolute 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 Absolute's control, Absolute may at its option suspend performance or cancel its obligations under the contract without liability for any damage or consequential loss resulting there from, such suspension or cancellation being without prejudice to Absolute's right to recover all sums owing to it in respect of goods delivered and costs incurred up to the date of the suspension or cancellation.

Sub-contractors

14. Absolute shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any contract between Absolute and the Client.

General

15.1 The Client shall observe the provisions and requirements of all applicable trade union agreements and shall indemnify Absolute against any costs, expenses or loss incurred by it as a result of any failure by the Client to do so.

15.2 Where appropriate and required by Absolute (but not otherwise), screen credits shall be given to Absolute and nominated individuals for all goods, services or facilities supplied by Absolute.

15.3 Headings used in these conditions are purely for ease of reference and do not form any part of or affect the interpretation of these conditions.

15.4 Nothing in these conditions shall operate to relieve Absolute from any liability for any fraudulent misrepresentation made to the Client at any time.

15.5 If any provision of this contract as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this contract or the validity or enforceability of this contract generally.

15.6 References to Absolute shall, as the context permits, include its licensees, sub-contractors and assigns.

15.7 References to goods shall include any and all forms of audio and audio visual material processed and/or produced by Absolute on the Client's behalf such as advertisements.

15.8 The words 'include' and 'including' shall not be construed restrictively.

15.9 Unless otherwise notified in writing, the Client allows Absolute to use finished projects for all PR & marketing purposes after the first date of transmission.

Choice of Law/Jurisdiction

16. The contract shall be governed by and construed in accordance with the substantive laws of the State of New York without giving effect to principles of conflicts of law. The federal and state courts located in the County of New York, State of New York, will have exclusive jurisdiction over any disputes arising in connection with this contract and each of the parties hereby consents to the personal jurisdiction of such courts.