

AFL VIDEO PRODUCTION TERMS AND CONDITIONS

Last updated on 7 May 2018.

1. APPLICATION

These terms and conditions (“**Terms**”) apply to (a) all Services and Works provided or produced by the Australian Football League (ACN 004 155 211) (“**AFL**”, “**We**” or “**Us**”) for any customer (“**You**”); and (b) all contracts, agreements, arrangements, transactions and dealings entered into by Us with You in relation to the Services or the Works. These terms are available on the AFL website and AFL reserves the right to change these Terms at any time, effective upon the posting of modifies Terms on the AFL website.

These Terms and any documents referred to in them, including Briefs and Quotes, together form a binding agreement between You and Us (“**Agreement**”) that binds You from the earlier of (a) Your acceptance of a Quote from Us (including electronic acceptance); or (b) the time that We provide You with any Services.

You acknowledge and warrant that You have understood these Terms and have the legal power to act on behalf of any person or entity for whom You are acting. If You are agreeing to these Terms as an individual, “You” refers to You individually. If You are agreeing to these Terms as a representative of an entity, “You” refers to that entity and You represent and warrant that You have the authority to bind that entity.

2. OBLIGATIONS AND ACKNOWLEDGEMENTS

You agree and acknowledge the following in respect of Your use of Our Services:

- a. Valid briefing:** To request Our Services, You must submit a valid Brief. To be valid, Your Brief must set out the name and contact details of Your Nominee and contain sufficient information to enable Us to scope Your Project and generate a Quote. Please be advised that if We consider the information provided in Your Brief to be incomplete or insufficient, We may reject Your Brief as invalid. You may revise and resubmit invalid Briefs.
- b. Nominee:** Your Brief must appoint a Nominee who has Your full authority to instruct Us regarding the delivery of Your Project and to confirm Your acceptance of the Works at Completion. You agree to ensure that Your Nominee has full legal power and authority to perform these functions. You further agree that You will ensure that Your Nominee cooperates with Us and responds to Our requests for

feedback or further instructions regarding the Project within five (5) business days.

- c. Cooperation and communication:** You must follow the briefing process set out at clause 3 in order to use Our Services.
- d. Artistic Licence:** You acknowledge and agree that production and editing processes relating to the Services and the Works involve elements of artistic expression and interpretation. You further acknowledge and agree that differences in artistic opinion may arise between You and Us in respect of the Services and/or the Works and that such differences in artistic opinion are not grounds for seeking further variations to the Works in addition to the Unpaid Variation. Under no circumstances will AFL be required to make variations to the Works in addition to the Unpaid Variation on grounds of a difference in artistic opinion between Us and You alone, unless such variations are Paid Variations.

Your alleged or actual failure to meet any obligation set out above does not entitle You to a refund of any deposit or Fees paid by You to-date and does not release You from the obligation to pay any Fees or Project-Related Expenses incurred to-date.

We will notify You if We consider that You have failed to meet any obligation set out above. If You have not remedied such failure within five (5) business days following receipt of Our notice: (i) We may refuse to provide or cease providing the Services to You (as applicable); (ii) any Project-Related Expenses We have incurred to-date are non-refundable and payable by You and We will invoice You for these expenses within 30 days; and (iii) any deposit or Fees paid by You to-date are non-refundable.

3. BRIEFING PROCESS

The process that You must follow in order to use Our Services is as follows:

- a. Submission:** Your valid Brief must be submitted to Us via the System. Our standard response time in respect of any valid Brief We receive is 72 hours.
- b. Scoping:** AFL staff may contact You directly after You submit a Brief to gather more information in relation to Your Project.
- c. Quote:** Following Our acceptance of Your Brief, AFL will generate a Quote for Your consideration. You may accept a Quote either in writing or electronically. The Quote is valid for 30 days. Your acceptance of Our Quote confirms Your engagement of AFL to provide Services to

You, as outlined in the relevant Quote and Brief.

- d. Production:** Upon Your acceptance of a Quote, AFL will use reasonable endeavours to commence production on Your Project as soon as practicable. Production may take up to two (2) weeks to commence during AFL's peak times. We will assign an AFL producer to work on Your Project, who will liaise with You to agree a production schedule following Your acceptance of Our Quote.
- e. Editing:** AFL will provide You with one (1) draft copy of an Initial Preview File for Your review. You must instruct AFL in respect of all edits or changes You wish Us to make to the Initial Preview File within seven days of Your receipt of the Initial Preview File ("**Initial Review Period**"). On receipt of Your instructions, We will use reasonable endeavours to make the required edits or changes within seven days. If We do not receive any instructions from You by close of the Initial Review Period, You will be taken to have accepted the Initial Preview File as-is, clause 3(f) will not apply to You and Your Works will be deemed Complete.
- f. Finalising:** If You requested edits or changes at clause 3(e), AFL will provide You with a Final Preview File which is to be used solely for the purpose of You verifying that We have implemented the edits or changes You requested. You must inform AFL in respect of any problems with the Final Preview File within seven days of Your receipt of the Final Preview File ("**Final Review Period**"). Once the Final Review Period has elapsed, Your Works will be deemed Complete and AFL may refuse to make any further edits or changes to the Final Preview File, other than Paid Variations.
- g. Sign-off:** Your Nominee must confirm Your acceptance of the Final Preview File in writing before We will release the Master File to You. Once Your Nominee has confirmed acceptance, We will enact any delivery instructions You have provided in Your Brief in respect of the Master File. The Master File constitutes Completed Works and AFL will under any circumstances make any edits or changes to the Master File unless those edits or changes are Paid Variations.

4. ADDITIONAL SERVICES

Paid Variations: Each Quote budgets for an Unpaid Variation to Your Project. You may purchase unlimited Paid Variations at any stage of the briefing process set out at clause 3. If You instruct Us to make more than one variation to the Works, or You instruct Us to make a Major Variation, AFL is entitled

to revise Your Quote and charge You additional Fees. We will consult with You before charging You additional Fees.

Urgent Projects: If Your Project is urgent, You may request in Your Brief that We expedite Completion of Your Works. We will confirm in the Quote whether We are able to expedite Your Works. Please note that We apply a higher Rate Card to service urgent Works, which will be reflected in the Quote.

5. PAYMENT

Fees: In return for Our supply of the Services to You, You must pay Us the Fees set out in Our Quote, subject to You first receiving a valid tax invoice from Us. You acknowledge that if the scope of the Services becomes broader than outlined in Your Brief and Our Quote, including any increase in the production hours required to complete Your Works, We may revise Your Quote and charge You additional Fees.

Payment terms: You agree to pay all Fees in accordance with these Terms and any Quote. If no payment terms are specified in a Quote, the Fees must be paid within 30 days from the date of Your receipt of a valid tax invoice from Us. Except as expressly provided in these Terms or in any Quote and to the extent permitted by law, all Fees and any other amounts paid or payable under these Terms or any Quote are non-refundable, non-cancellable and not subject to any credits.

No set off: All amounts payable under these Terms must be paid in full without set-off, deduction or other withholding of any amount. Should You be required by any law or regulation to make any deduction on account of tax or otherwise on any sum payable under these Terms, the sum payable will be increased by the amount of such tax to ensure that We receive a sum equal to amount to be paid under these Terms.

Sales tax: If any sales tax, value added tax or goods and services tax ("**Sales Tax**") is payable on any supply made under these Terms by Us to You, You must pay to Us the amount of the Sales Tax, subject to receipt of a valid tax invoice from Us.

6. CANCELLATION, DELAY AND LIABILITY

Delay: AFL will use reasonable endeavours to meet any Project deadlines agreed with You in a production schedule. You acknowledge that agreed deadlines applicable to the whole or any part of Your Project are subject to change in accordance with any agreed changes in scope of the Project or any Paid Variations You request. Any Project-Related Expenses we incur as a result of a delay caused by

You are non-refundable and payable by You and We will invoice You for these expenses.

Cancellation: If You wish to cancel any Services which You have retained Us to provide, You may do so by written notice to AFL ("**Cancellation**"). Any Project-Related Expenses we have incurred up to the point of Your Cancellation (including booking fees, equipment rental, non-refundable deposits or cancellation fees paid or payable to third parties) are non-refundable and payable by You. We will invoice You for these expenses within 30 days of Cancellation.

Right of Refusal or Termination: AFL may cease providing any or all Services to You without notice if, in the course of Us performing the Services: (i) an actual or apparent risk of injury to any AFL staff or any persons contracted by AFL to perform the Services arises; or (ii) a risk that any of AFL's equipment or Material may be damaged arises. If AFL ceases providing Services to You on these grounds then any Deposit paid by You in respect of those Services is non-refundable. Should any of the circumstances outlined above arise as a result of Your fault or the fault of any of Your officers, employees, agents, contractors or representatives (including via breach of contract, negligence or any other tort, misrepresentation, statutory breach or otherwise), AFL may seek compensation from You for any loss or damage suffered by Us, Our employees, officers, agents or contractors.

Liability Cap: To the extent permitted by law, AFL's cumulative liability to You in respect of all claims made by You under or in connection with these Terms, whether arising out of breach of contract, negligence or any other tort, misrepresentation, under statute or otherwise, will not exceed in the aggregate the amount paid by You to Us for the Services in the 12 months immediately preceding the claim. In these Terms, "claim" means claim, cause of action, suit, proceedings, judgment, debt, fine, penalty, damage, loss, cost, expense or liability of any kind.

No Consequential Loss Liability: In no event shall either party have any liability to the other party for any lost profits or revenues, loss of data, loss arising from interruption to business, loss of goodwill or for any indirect, special, incidental, consequential or punitive damages however caused, whether in contract, tort, misrepresentation or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages.

Materials: AFL will use reasonable endeavours to store Materials safely and securely and keep Materials free from harm or damage. Materials are provided to AFL at Your risk and AFL is under no obligation to insure any Materials. Neither AFL nor

any of its agents, officers, employees or sub-contractors will be liable for any loss, destruction or damage of the Materials other than loss caused by their negligence but any liability for such loss, destruction or damage will be limited to replacement of Materials. AFL will not be liable in respect of any loss, destruction or damage of the Materials arising out of the action of any person not employed or engaged by or associated with AFL even though such person is present during and involved with our performance of the Services. You must retain a master copy of each and every video and audio recording delivered to AFL in the course of using the Services.

7. RIGHTS IN RELATION TO RECORDED MATERIAL

Ownership: The Raw Footage, video files, audio files and edited video files including all copyright in those files remain the property of AFL until You make full payment for the Services and the Works. Where Services or Works remain unpaid or in an event that an invoice from Us to You remains unpaid, AFL reserves the right to withhold all recordings and Works and use all or portions of the recordings and Works for display, promotional or commercial purposes. Copyright in all video, images, audio, lyrics or musical composition included or recorded by equipment used by AFL will remain the property of AFL (or such other author or legal entity owning the copyright).

Disposal: We will retain Raw Footage, video files, audio files and edited files relating to Your Project for up to six (6) months only and We may then dispose of, delete or erase it. You may purchase Raw Footage relating to Your Project in a viewable format for an additional fee based on a further Quote. We can provide Raw Footage by way of a separate hard drive to You for an additional Fee of \$250.00 plus GST.

8. INTELLECTUAL PROPERTY

IP Rights: Notwithstanding any other provision in these Terms, You acknowledge that all Intellectual Property and other proprietary rights arising in or in relation to AFL Content in any Works that are produced, developed, derived, modified or otherwise used or created by AFL in connection with Your Project (including any and all deliverables, products, Raw Footage, films, programs, reports, content or other data) shall be owned by AFL and shall automatically vest in AFL upon creation. AFL grants You a royalty free, non-exclusive, non-transferable licence for the use of the AFL Content for the purposes of Your Project only.

Liability: You warrant that You own any Intellectual Property which You permit AFL to use for the

purpose of providing the Services or that, if You are not the owner of such Intellectual Property, then that You have the right to utilise and permit other parties to utilise that Intellectual Property. You indemnify AFL from and against all claims, demands and proceedings which may be brought against or suffered or incurred by AFL alleging that Intellectual Property which You permitted Us to use infringes a third party's Intellectual Property rights. You acknowledge and agree that AFL's liability in respect of any individual claim and all claims in the aggregate in connection with the infringement or alleged infringement of third party Intellectual Property rights will be limited to the amount of the Fees payable by You in respect of Your Project and will exclude all liability for consequential loss.

9. PRIVACY

The AFL collects personal information about You when You provide Briefs and other material to us for the purpose of delivering the Services to and producing the Works for You. This information may include Your name, email address and location data. We will not disclose Your personal information to third parties without Your consent except to the extent necessary to perform the Services as contemplated by these Terms. AFL's Privacy Policy contains information on how You can access personal information that is held by AFL and seek correction of such information. If You would like to make a complaint about a breach of the Australian Privacy Principles please contact AFL's Privacy Officer at privacy@afl.com.au.

Music Rights: You hereby agree and acknowledge that AFL will not produce any Works for You that feature commercial music unless You can provide a valid, executed copy of a license agreement in respect of Your right to use the relevant music.

10. GENERAL

Notices: Notices (including Your instructions to Us) under these Terms may be delivered by hand, by mail or electronic communication to the addresses specified in a Quote and/or Your Brief. A notice will be deemed given: (i) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party; (ii) in the case of posting, three days after dispatch; or (iii) in the case of electronic mail, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission.

Sub-Contracting: AFL reserves the right to sub-contract the performance of any Services that AFL has agreed to perform for You as it sees fit, without notice to You.

Force Majeure: Where AFL is unable, wholly or in part, by reason of Force Majeure Event to carry out any obligation under these Terms, any such non-performance will not be considered a breach of these Terms and AFL's affected obligation will be immediately suspended until such time as AFL is able to carry out that obligation.

Disclaimer: Except as expressly provided herein, neither party makes any representations, warranties, conditions or guarantees of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied representations, warranties, conditions and guarantees including any representations, warranties, conditions or guarantees of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law.

Governing Law: This Agreement and its formation is governed by and must be construed in accordance with the laws of Victoria and the Commonwealth of Australia. The parties submit to the exclusive jurisdiction of the Courts of that State and the Commonwealth of Australia in respect of all matters or things arising out of this Agreement.

11. DEFINITIONS

AFL Content means images, footage and recordings of AFL grounds, AFL matches or associated match day events.

Brief means the written brief You submit to Us via the System relating to Your Project.

Completion means the completion of Your Works as described at clauses 3(e) and 3(f) of these Terms.

Fees means Our professional fees for Our Services as set out in Our Quote and calculated based on the hourly rates on Our Rate Card.

Final Preview File means the final preview file We produce for You, as defined in clause 3(f) of these Terms, solely for the purpose of You verifying that any changes to the Initial Preview File have been implemented.

Force Majeure Event means (i) an act of war, terror, hostility or sabotage, (ii) an act of God, flood, fire or earthquake, (iii) electrical, Internet, or telecommunication outage or any other problem that is not caused by the obligated party, (iv) government restrictions (including the denial or cancellation of any license), and/or any other event outside the reasonable control of the party with that obligation.

Initial Preview File means the initial preview file We produce for You, as defined in clause 3(e) of these Terms.

Intellectual Property means all rights in or to any patent, invention, copyright, work, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including

any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

Major Variation means an Unpaid Variation or a Paid Variation which significantly changes the scope of Your Project as described in Your Brief.

Master File means the master file constituting the Completed Works We release to You following Your Nominee's approval of the Works under clause 3(g).

Materials means any and all of the following: recordings of video and audio, assets, scripts, hardware, software, backdrops, sets, props and equipment belonging to You which You provide to Us so that We can provide the Services.

Nominee means a person who You appoint in Your Brief to approve the Works and to provide instructions and feedback regarding the Project, the Works and the Services to AFL.

Paid Variation means any edit, change or revision to the Works which You request from Us of after You have accepted a Quote and used the single Unpaid Variation You are entitled to pursuant to that Quote.

Project means any Project in respect of which You instruct us to provide Services in relation to, as described in Briefs submitted by You to Us from time-to-time.

Project-Related Expenses means expenses We incur relating to Your Project including booking fees, equipment rental, non-refundable deposits or cancellation fees paid or payable to third parties.

Quote means the written quote for the Works and the Services that that We provide to You via the System in response to a Quote submitted by You.

Rate Card means the document setting out the rates applicable to Our Services.

Raw Footage means all raw footage and source material that We have created for the purposes of providing Services to You and/or delivering the Works to You.

Services means those of Our Services that You have requested in Your Brief, which We have confirmed in a Quote, which may include filming, editing and production services.

System means the cloud-based media production management, resource planning, scheduling and accounting software system called "ShowMGR" via which You submit Briefs to Us and We provide Quotes to You.

Unpaid Variation means one set of edits, changes or revisions to the Works pursuant to clause 3(e), or which You otherwise request from us on a single occasion following Your acceptance of a Quote.

Works means all Project deliverables We produce for You, as agreed between Us and You in Your

Brief and Our Quote, including an Initial Preview File, a Final Preview File and a Master File.