

## **FRAME, SET & MATCH PTY LIMITED (“FSM”)**

### **TERMS AND CONDITIONS OF TRADING**

#### **General Terms**

1. All services provided by FSM to all Customers are subject to the current terms and conditions of trading of FSM, as set out herein.
2. For the purpose of these terms and conditions:
  - (a) “Data Drives” means any form of disk drive dedicated to storing data and includes but is not limited to USB sticks, portable hard drives, firewire drives and compact flash cards;
  - (b) “FSM Works” means all products, services and other works created, produced or arranged by FSM on behalf of a Customer pursuant to these terms and conditions;
  - (c) “Materials” means all videotapes, Data Drives and other media and items (including their contents) given by the Customer to FSM pursuant to these terms and conditions;
  - (d) any reference to:
    - (i) “Customer” includes a reference to the Customer, its servants, agents, its own customers, clients and sub-contractors; and
    - (ii) “FSM” includes a reference to FSM, its servants, agents and sub-contractors.
3. These terms and conditions shall be governed by and construed in accordance with the laws for the time being in force in the State of New South Wales.

#### **Charges and Credit**

4. All rates:
  - (a) are subject to change from time to time without prior notice to the Customer; and
  - (b) quoted are in Australian Dollars.
5. If GST is payable on any supply pursuant to these terms and conditions, the fee payable for the supply will be considered to be exclusive of GST. Unless the parties otherwise agree in writing, the Customer undertakes to pay FSM the amount of such GST in addition to any fee for that supply at the time the fee is payable, subject to FSM issuing a valid tax invoice to the Customer in accordance with the relevant GST legislation.
6. The Customer acknowledges that:
  - (a) all charges for the use of the facilities provided by FSM for use and operation by the Customer shall be in accordance with the standard price list of FSM in effect at the time that the facilities are so provided;
  - (b) the charges as shown on the standard price list are based upon the use and operation of the facilities and the employment of personnel during the hours stated on the standard price list;
  - (c) charges are subject to increase in the event that such facilities are used during periods other than those stated in the standard price list; and
  - (d) if, at the Customer’s request or with the Customer’s consent, meal penalties, short turnaround or longship penalties are incurred, the Customer will pay FSM the additional expenses thereof.
7. Credit accounts can only be arranged by prior negotiation with FSM. The credit facilities are automatically suspended by FSM if the account is not paid within

- sixty (60) days of the date of the invoice, and this clause 7 will be strictly adhered to unless previous arrangements have been made by the Customer with FSM.
8. Cancellations of facilities booked by a Customer are subject to cancellation fees at:
- (a) 50% of the scheduled rate if a notice of cancellation is given to FSM less than twenty four (24) hours but more than twelve (12) hours prior to the scheduled start time; and
  - (b) 100% of the scheduled rate if a notice of cancellation is given to FSM less than twelve (12) hours prior to the scheduled start time.
9. FSM is at liberty to charge a Customer for the full time booked by the Customer for the use of the facilities even if the Customer does not use the facilities for the entire booked time.
10. The Customer acknowledges that FSM has a lien in respect of all Material made available to FSM by the Customer in relation to any monies owing to FSM from time to time whether in respect of services provided pursuant to these terms and conditions, rental, storage charges or otherwise.

## Storage

11. (a) Master tapes and Data Drives will become the property of the Customer after receipt of all outstanding monies owed by the Customer to FSM. If any of these tapes or Data Drives are stored by FSM, they will be stored at the Customer's risk.
- (b) The Customer is deemed to be the party making the booking at FSM. It is only with the authority of the Customer that dubs will be produced from those Master tapes and Data Drives.
- (c) All Master tapes and Data Drives will be held for a period of eighteen (18) months. If the Master tapes or Data Drives are not used in this eighteen (18) month period, they will be referred to the Customer for dispatch information and authority to erase.
- (d) Sub-Master tapes and Data Drives and wild reel or transfer material will be held for eighteen (18) months after their last use and returned to the Customer or erased, subject to FSM previously notifying the Customer of its intention to erase them.
- (e) FSM will use all reasonable endeavours to contact the Customer to seek consent to have any such tapes, Data Drives or material erased pursuant to this clause 11, but in the event that these endeavours prove fruitless in the reasonable opinion of FSM, FSM will be at liberty to erase such tapes, Data Drives or material without obtaining the prior consent of the Customer.
- (f) Sub-clauses, (c), (d) and (e) of this clause 11 will not apply where the Customer engages FSM to provide data back up facilities involving the back up and storage of data. Where the customer engages FSM to provide the data back up facilities, the parties will agree in advance on the charges or rates which will apply and the nature and extent of the facilities to be provided by FSM.

## FSM's Liability to the Customer

12. All implied conditions and warranties which may be excluded by law are hereby excluded from these terms and conditions.
13. To the extent that conditions or warranties:

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- (a) the exclusion of which would render these terms and conditions in whole or in part void or voidable, or the exclusion of which would result in FSM being liable to any penalty; or
  - (b) may not, by the terms of the Trade Practices Act or relevant State Legislation, be excluded or modified;
- such conditions or warranties shall apply to the services to be supplied by FSM to the Customer.
14. Where any such legislation provides for limited remedies in the event of a breach by FSM of an implied condition or warranty, then the Customer's sole remedy for any such breach shall, at the option of FSM, be limited to:
- (a) the remedy provided for in the legislation; or
  - (b) the repair or replacement of any defective video tape or Data Drive (excluding its contents); or
  - (c) the payment of the cost of having the defective video tape or Data Drive (excluding its contents) repaired or replaced. The defective video tape or Data Drive must be returned to FSM within fourteen (14) days of receipt by the Customer, together with a written notice of the alleged defect.
15. In no event shall FSM be liable to the Customer for any:
- (a) indirect, incidental or consequential loss or damage:
    - (i) whether in tort or in contract;
    - (ii) including but not limited to damage to or loss of any data, contents of the Material, lost revenue, lost profits, loss of opportunity or damages sustained or incurred as a result of a claim by a third person;
    - (iii) whether it arises from some act of omission on the part of FSM, negligent or wilful;
    - (iv) whether or not it arises from a breach by FSM of any of these terms and conditions (fundamental or otherwise);
    - (v) even if FSM has been advised of the possibility of such damages;
  - (b) delays suffered by the Customer arising out of any breach by FSM of these terms and conditions or in any way arising out of any other act or omission of FSM. In the event of equipment failure, FSM will allow the Customer a credit against future charges for an amount equal to the chargeable time lost, and the Customer will not be entitled to seek any other remedy against FSM in this regard; or
  - (c) damage to, erasure or loss of any camera original film negative, film print, video masters or original Data Drives caused in any manner, including but not limited to corrupt data, power failure, electric power surges, any computer virus, worm or similar disabling code or failure to maintain, manufacturer recommended temperature or humidity levels nor for any consequential losses or damages arising therefrom and the Customer:
    - (i) acknowledges that it gives possession of any such camera original film negative, video masters or any Data Drives to FSM at its own risk; and
    - (ii) will ensure that it has in place adequate replacement and other insurance cover pertaining to all such camera original film negative, video masters or original Data Drives.
16. The Customer acknowledges that:
- (a) the rates charged pursuant to these terms and conditions are not reflective of the value of the Material made available to FSM by the Customer;

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- (b) that all the Material received, completed and stored by FSM on behalf of the Customer is at the Customer's own risk;
  - (c) FSM shall not be liable to the Customer in any manner for any loss of, or damage to, such Material;
  - (d) the Customer must insure all such Material entrusted to FSM against all risks; and
  - (e) this clause 16 also extends to all possible damage which may result from the Material being retained by FSM after completion of the services provided by FSM.
17. FSM shall have the right, without first obtaining the Customer's consent, to engage subcontractors to fulfil its obligations to the Customer, and all disclaimers of liability contained in these terms and conditions in favour of FSM will also extend to all such work carried out by any such subcontractors.
18. Subject to the Customer complying with clause 21, FSM warrants to the Customer that it will not knowingly use the Material or any portion thereof in any manner which may infringe any copyright without the prior written consent of the Customer.
19. The Customer acknowledges that it is the sole responsibility of the Customer to ensure that all FSM Works are correct and satisfactory to the Customer and do not breach any laws. The Customer further acknowledges that all FSM Works which are aired, broadcast, published, televised, promoted or exposed to the public in any manner are done so at the sole risk of the Customer. The Customer is to hold FSM harmless from and against all losses, claims, actions, suits, demands, damages, liabilities and costs from either the Customer or any third party as to the content or accuracy or legality of any such FSM Works.

### **Customer's Warranties**

20. The Customer warrants to FSM that:
- (a) it has kept for itself at least one (1) back up copy of the Material; and
  - (b) the Material is in good condition as at the date that it was made available to FSM (except to the extent of any defects notified to FSM in writing).
21. The Customer warrants to FSM that:
- (a) it is either the sole and unencumbered owner of copyright in the Material or alternatively has the benefit of a licence to use the Material as envisaged by these terms and conditions; and
  - (b) the Material does not and its reproduction by FSM will not infringe the rights (including copyright) of any other person or any censorship regulations.
22. The Customer acknowledges that the copyright for all purposes in any and all FSM Works including, without limitation, ideas, designs, concepts, original compositions, artwork, finished advertisements, radio and television commercials and all trade marks, trade names, brand names, trade symbols, logos, slogans or other trade indicia purchased, prepared or developed by FSM on behalf of a Customer, vests in FSM.
23. (a) The Customer hereby authorises FSM, at no consideration to FSM, to:
- (i) exhibit the Customer's Materials to others for the limited purposes of demonstrating the work of FSM or as may be incidental to the business operations of FSM; and
  - (ii) make duplicates of the Customer's Materials for demonstration purposes.

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- (b) The Customer indemnifies and holds FSM harmless in respect of any damages or losses suffered or incurred by FSM arising from the inadvertent exhibition of the Customer's Materials to third parties.
24. The Customer indemnifies and keeps FSM indemnified from and against all losses, claims, actions, suits, demands, damages, liabilities and costs incurred or suffered by FSM as a direct or indirect result of any breach by the Customer of any of these terms and conditions.