

## **STAPLES MEDIA AUSTRALIA**

### **Terms and Conditions - Video, Audio and/or Photography Services**

#### **Definitions**

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

Consumer means any individual who acquires STAPLES MEDIA AUSTRALIA's services wholly or predominately for personal, domestic or commercial use. Customer means any person or entity requesting STAPLES MEDIA AUSTRALIA to provide Services.

**STAPLES MEDIA AUSTRALIA** means Lighting Matters Pty Ltd trading as STAPLES MEDIA AUSTRALIA (ACN 151 452 149) of 11 Clarke Drive, Gladstone Park, VICTORIA 3043.

**Agreed Fee** means the fees estimated by STAPLES MEDIA AUSTRALIA 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, films, footage, props and equipment provided by the Customer to STAPLES MEDIA AUSTRALIA for the purposes of STAPLES MEDIA AUSTRALIA supplying the Services.

**Raw Footage** means any master footage recorded in any format by STAPLES MEDIA AUSTRALIA as part of provision of the Services.

**Services** means video and audio production, photography, 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 STAPLES MEDIA AUSTRALIA with any Customer in relation to the provision of Services by STAPLES MEDIA AUSTRALIA.

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

#### **Consumer Contract**

If the Customer is a Consumer:

These conditions do not affect any rights the Customer has under Schedule 2 of the Competition and Consumer Act 2010 (Cth); and

These conditions do not affect the laws in force in the place in which the contract is made prior to the contract.

#### **Quotations**

Quotations are calculated by estimating how long it will take to provide the Services under typical circumstances and are based on an hourly or daily rate. One round of Customer changes and/or revisions is included in each quotation.

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

#### **Cancellation**

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

If the cancellation is made more than 48 hours prior to the day on which STAPLES MEDIA AUSTRALIA has been engaged to provide the Services, the Customer must reimburse STAPLES MEDIA AUSTRALIA for any expenses incurred by STAPLES MEDIA AUSTRALIA in preparation for provision of the Services including but not limited to any fees for permits, approvals, permissions, document preparation and any time spent on pre-production components.

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

If the cancellation is made within 24 hours of the time at which STAPLES MEDIA AUSTRALIA has been engaged to provide the Services, the Customer must pay the Agreed Fee in full.

If the cancellation is made while STAPLES MEDIA AUSTRALIA is providing Services to the Customer, the Customer must pay the Agreed Fee in full.

Any amount payable pursuant to above clauses must be paid by the Customer within 30 days of the cancellation.

### **Payment**

The Customer will pay to STAPLES MEDIA AUSTRALIA the Agreed Fee in the following manner: 50% of the Agreed Fee will be payable prior to the commencement of the Services ("the Deposit"); and the balance will be payable within 14 days of the date of any interim or final invoices submitted in respect of the Services; and STAPLES MEDIA AUSTRALIA will not commence any pre-production activities until the Customer has paid the Deposit unless otherwise specified in writing.

If any STAPLES MEDIA AUSTRALIA invoice or part thereof is not paid within 30 days of the date of the invoice, then the Customer agrees that interest will accrue on the outstanding amount at the rate specified pursuant to Section 2 of the Penalty Interest Rates Act 1983 (Vic).

Payments made to STAPLES MEDIA AUSTRALIA are to be the specified bank account as follows:

BANK: Commonwealth Bank of Australia (CBA)

ACC NAME: STAPLES MEDIA

BSB: 063145

ACC: 10335609

REF: *Please include the quote, invoice or other reference number as seen on official documentation only.*

### **Operating Hours**

Hourly Rate means any operation undertaken billed by the hour.

Travel Rate means any time or vehicle costs incurred to prepare, pack, unpack, drive, waiting in traffic or parking areas, tolls, parking costs or fees.

Half Day means a payment rate based on up to 5 hours at location and includes 1 hour of travel.

Full Day means a payment rate based on up to 9 hours at location and includes 1 hour of travel.

Overtime Rate is billed at the hourly rate multiplied by 1.5 for any and every extra hour or part thereof outside of the original Agreed Fee.

Any Hourly, Half Day or Full Day Rate amount starts the moment of arrive at the proposed location, including any time spent waiting in queues, for traffic management directions, parking spaces to become available.

### **Variations** (additional quotation applies)

STAPLES MEDIA AUSTRALIA will provide the Customer with one (1) 'draft copy' of an initial edited video file. The Customer must notify STAPLES MEDIA AUSTRALIA of all proposed changes within fourteen (14) days of receipt of the draft copy by the Customer.

Once the proposed changes have been made, STAPLES MEDIA AUSTRALIA will provide the Customer with a 'final draft copy' which is to be used solely for the purpose of verifying that the proposed changes have been correctly implemented. No new changes may be requested unless the Customer purchases another variation.

The Customer must notify STAPLES MEDIA AUSTRALIA of any errors in the final draft copy within fourteen (14) days.

Once the fourteen (14) day review period for both the 'draft copy' and 'final draft copy' has elapsed, STAPLES MEDIA AUSTRALIA may refuse to make any further changes.

The Customer acknowledges that some changes may not be possible.

**Venue Location Fees & Permissions**

The Customer must obtain any necessary consent or permission and pay any fees which may apply for STAPLES MEDIA AUSTRALIA to film at a particular venue, location or event. The Customer agrees to pay any fees or costs that may be incurred for the use of remotely piloted aircraft used in production.

**Artistic Licence**

The Customer acknowledges and agrees that editing an event and the production of finished works may include elements of artistic expression and interpretation. STAPLES MEDIA AUSTRALIA reserves the right to use 'Artistic Licence' in any commissioned works that require editing or the production of finished works.

The re-editing of commissioned works is offered as an optional extra by prior arrangement.

A quotation for re-editing will be provided by STAPLES MEDIA AUSTRALIA on request.

**Customer's Materials**

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

Neither STAPLES MEDIA AUSTRALIA nor any of its officers, employees, agents or sub- contractors 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; STAPLES MEDIA AUSTRALIA will not be liable in respect of any Loss of the Materials arising out of the action of any person not employed or engaged by or associated with STAPLES MEDIA AUSTRALIA even though such person is present during and involved with the performance of the Services; and The Customer must retain a master copy of each and every recording delivered to STAPLES MEDIA AUSTRALIA for the purposes of the Contract.

**Customer Acknowledgements**

The Customer acknowledges and agrees that:

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

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

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

**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 STAPLES MEDIA AUSTRALIA harmless from any claims or legal actions related to the content of the Customer's video.

The Customer hereby indemnifies and holds harmless STAPLES MEDIA AUSTRALIA against all loss, damage, costs or expenses suffered or incurred by STAPLES MEDIA AUSTRALIA as a result of any breach of above clauses.

**Project Delays and Client Liability**

Any estimate of the date by which STAPLES MEDIA AUSTRALIA will complete any part of the Services is contingent upon the Customer providing complete instructions to STAPLES MEDIA AUSTRALIA and fully co-operating with STAPLES MEDIA AUSTRALIA until STAPLES MEDIA AUSTRALIA has ceased providing Services to the Customer.

The Customer must appoint a person who has complete authority to provide instructions to STAPLES MEDIA AUSTRALIA and respond to requests for feedback until STAPLES MEDIA AUSTRALIA has ceased providing Services to the Customer.

The person appointed must be available to respond to communications from STAPLES MEDIA AUSTRALIA on every day which is a business day in Victoria.

Any lack of communications resulting in stagnated or halted production of any kind will result in the project being ceased and terminated after three (3) months of non-communication.

**Sub-Contracting**

STAPLES MEDIA AUSTRALIA reserves the right to sub-contract any Services that STAPLES MEDIA AUSTRALIA has agreed to perform for the Customer as it sees fit.

**Recorded Material****Ownership**

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

Where Services remain unpaid or in the event that a final agreed payment is not made, STAPLES MEDIA AUSTRALIA 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 STAPLES MEDIA AUSTRALIA will remain the property of the author or legal entity owning the copyright.

**Special Provisions for Ownership**

STAPLES MEDIA AUSTRALIA 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 STAPLES MEDIA AUSTRALIA.

STAPLES MEDIA AUSTRALIA 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 STAPLES MEDIA AUSTRALIA and the Customer. The copyright of such segments will belong exclusively to STAPLES MEDIA AUSTRALIA.

**Disposal**

Raw Footage, video files, audio files and edited video files will be retained for up to six (6) months only and will then be disposed of, deleted or erased. If at the end of six (6) months Services have not been paid for, STAPLES MEDIA AUSTRALIA reserves the right to dispose of all Raw Footage, video files, audio files, edited video files, recorded materials and finished works.

**Backups**

Back-ups of any master, raw, edited or final media are not created unless otherwise agreed in writing.

**Filming Conditions**

The Customer agrees that filming or photography must be under suitable environmental conditions for the operator, crew and equipment. The Customer agrees that any loss or liability incurred due to inability of STAPLES MEDIA AUSTRALIA to fulfil the Service due to changing environmental conditions are strictly refused.

### **Raw Footage**

The Customer may purchase Raw Footage or Photographs in their recorded format for an additional fee determined by STAPLES MEDIA AUSTRALIA unless otherwise specified in writing. If the Customer requires any Raw Footage to be provided by way of a separate hard disk or cloud transfer, then Customer must pay STAPLES MEDIA AUSTRALIA an additional fee relevant to the data size. The Customer acknowledges that Raw Footage or Photographs may only be viewable and/or edited in particular licensed software and STAPLES MEDIA AUSTRALIA has no requirement to provide Raw Footage or Photographs in any format other than the master file recorded. An additional Agreed Fee may be required for viewing or edit ready conversions of Raw files.

### **Failure of Equipment or illness of STAPLES MEDIA AUSTRALIA employees and contractors**

Whilst all reasonable care and preparation is taken for videography and editing, STAPLES MEDIA AUSTRALIA 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 operators or person(s) employed or engaged by STAPLES MEDIA AUSTRALIA or because of an unforeseen event or any dispute regarding the ownership of recorded materials. This may include but not limited to, lack of available recording space, inability to stream video and audio files due to limited connectivity or bandwidth, lack of physical light.

### **Right of Refusal or Termination**

STAPLES MEDIA AUSTRALIA reserves the right to terminate the provision of Services, if: the videographer, or any person(s) employed or contracted by STAPLES MEDIA AUSTRALIA 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; or any illegal activity.

If STAPLES MEDIA AUSTRALIA terminates the provision of Services pursuant to the above clause then any Deposit paid by the Customer is non-refundable. Should any of the circumstances outlined above occur, STAPLES MEDIA AUSTRALIA may seek compensation from the Customer for any loss or damage suffered.

### **Limitation of Liability**

The parties acknowledge that, under applicable State and Commonwealth 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, STAPLES MEDIA AUSTRALIA will not be liable for: Any claim by the Customer or any person, including without limitation any claim relating to or arising from all clauses, conditions, guarantees and warranties express 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 STAPLES MEDIA AUSTRALIA in writing, and the liability of STAPLES MEDIA AUSTRALIA for any such matters is hereby excluded. Where (and to the extent) permitted by law the liability of STAPLES MEDIA AUSTRALIA for a breach of a Non-excludable Right can be limited, STAPLES MEDIA AUSTRALIA's liability is limited, at STAPLES MEDIA AUSTRALIA'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, STAPLES MEDIA AUSTRALIA 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 by a third party; or

Any special, indirect or consequential injury, loss, damage or expense whatsoever and howsoever arising.

### **Force Majeure**

If STAPLES MEDIA AUSTRALIA 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, quarantine restriction, labour dispute or shortage, act or omission of any third person or public authority, then STAPLES MEDIA AUSTRALIA'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 STAPLES MEDIA AUSTRALIA in the recovery of unpaid invoices on an indemnity basis.

**Privacy**

All information received by STAPLES MEDIA AUSTRALIA 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.

**Other Matters which Affect the Contract**

The laws of Victoria apply to the Contract and the Customer must bring any proceedings against STAPLES MEDIA AUSTRALIA in a Victorian 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.

STAPLES MEDIA AUSTRALIA 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 or for STAPLES MEDIA AUSTRALIA.

**Amendment**

STAPLES MEDIA AUSTRALIA reserves the right to amend these Terms and Conditions at any time. Amendments will be effective after the Customer has been given 7 days written notice.