

Joy Inc

Terms & conditions

1. Definitions and Nature of Agreement

Upon acceptance of Joy Inc's quotation by endorsement or otherwise, you agree to be bound by the following terms & conditions of engagement for any work quoted or undertaken by Joy Inc unless there has been a written variation of these terms and conditions agreed by the parties. In these terms and conditions, Joy Inc here shall mean Joy Inc Limited and is deemed to include any Joy Inc associated company providing services for the production not covered by a separate agreement.

Joy Inc will produce and deliver to you a finished film, together with any other agreed deliverables. That film will constitute part or all of a television commercial or long-form production for the goods or services of your client, or part or all of any other agreed audiovisual program, as the case may be. In these terms and conditions, a reference to the "Production" is a reference to the particular film in question. Unless expressly agreed to the contrary in writing, Joy Inc will be deemed to have delivered the Production to you if a completed and reasonably acceptable master is made available to you at a post-production facility nominated by Joy Inc. The expression "Special Production Elements" includes, without limitation, substantial animation, computer graphics or post-production.

These terms and conditions are intended to apply to all productions undertaken for you by Joy Inc. You are deemed to have accepted these terms and conditions if you deal with Joy Inc after receiving notice of these terms and conditions. These terms and conditions may only be amended by a document executed by a duly authorised representative of Joy Inc.

These terms and conditions prevail to the extent of any inconsistency with any other terms of your agreement with Joy Inc and the terms of any document issued by you at any time.

2. Quotation & production

The price quoted will remain valid for thirty (30) days. Joy Inc reserves the right to re-quote should the script, concept, or original specification from the Agency alter in any way. Acceptance of the quotation will be considered as acceptance of Joy Inc's terms & conditions. All prices quoted are exclusive of any applicable Goods & Services Tax.

3. Fixed Cost Basis

Unless expressly agreed to the contrary in writing, all productions are made on a fixed cost basis and not on a cost plus basis. Cost breakdowns and budgets are provided for information purposes only and are to be considered estimates and not quotations. They are supplied merely to illustrate assumptions by which the agreed total is calculated. Joy Inc does not warrant or represent that particular costs will be incurred or that costs will be incurred at particular levels. A failure by Joy Inc to incur a particular cost does not prevent Joy Inc from allowing for that cost when charging the agreed or estimated total. Joy Inc is entitled to adjust and reallocate the costs which make up the agreed or estimated total. Wherever applicable, estimates provided by the Joy Inc will include, as separate items, estimates of GST and any other charges or levies.

4. Extra Costs

You acknowledge and agree that Joy Inc is entitled to charge extra production costs if you change your specifications or requirements for the Production. The changes which may attract extra production costs include, but are not limited to, changes to approved production schedules, treatments, scripts, artwork or storyboards. Certain previously available goods and services may cease to be available if production schedules change. Whenever reasonably practicable Joy Inc will provide you with an estimate of extra production costs. Any such estimate does not have the force of a quotation.

5. Cancellation

If you cancel production, in circumstances where Joy Inc has committed no material breach of the agreement, (including changes to Covid 19 Alert level changes), you must in all cases:

(a) reimburse Joy Inc for direct costs incurred prior to cancellation;



(b) pay to Joy Inc the total agreed or estimated fees of all directors and producers; and

(c) pay Joy Inc all, or a proportion of, the production mark-up and, where applicable, creative fees specified by Joy Inc in advance. The proportion of production mark-up and creative fees payable depends on the notice period and the type of production but is always additional to the direct costs. Where:

- i) you give 15 or more business days notice of cancellation of a production, which does not involve Special Production Elements, you must pay 25% of the production mark-up.
- ii) you give less than 15 but more than 10 business days notice of cancellation of such a production you must pay 50% of the production mark-up.
- iii) you give 10 or less business days notice of cancellation of such a production you must pay 100% of the mark-up.
- iv) the production involves Special Production Elements, and you cancel during the first quarter of the scheduled production period, you must pay 50% of the creative fees and 50% of the production mark-up.
- v) the production involves Special Production Elements, and you cancel during or after the second quarter of that period, you must pay 100% of the creative fees and 100% of the production mark-up.

(d) For the purposes of this clause, „business day“ means any day Monday to Friday, excluding public holidays.

6. Delay, Postpone, Frustration, Contingency and Weather Cover

In accordance with normal industry practise, you must pay Joy Inc further fees if a production is frustrated or delayed by bad weather, a contingency beyond the control of Joy Inc (including delays caused by Covid19 Alert level changes) or some other force majeure event. Such contingencies or events include, but are not limited to, earthquakes, wars, floods, injury, illness or non-appearance of key talent and delay, non-receipt of fees in accordance with clause 7 below or failure of delivery of goods or services to be supplied by you, whether on-camera product, vehicles or otherwise. In such circumstances, you must, in addition to all other agreed or stipulated payments, pay Joy Inc:

- (a) in the case of weather, the daily weather cost specified by Joy Inc in advance or
- (b) all other cases, the direct costs incurred by Joy Inc in respect of the delay in question.

In either case, the costs may include mark-ups and other fees under clause 5.

A delay or postponement to the post production process for more than 5 days, which is not caused by a force Majeure event, will be subject to charges per 6 (b) which may include mark ups.

A delay or postponement to production for more than 30 days, which is not caused by a force majeure event, is deemed to be a cancellation.

7. Terms of payment

You must issue a purchase order to Joy Inc before Joy Inc is required to commence work on the production. Your purchase order should state the entire Production cost as quoted by or agreed with Joy Inc. If you issue a purchase order for less than the entire Production cost you will nevertheless be deemed to have accepted the entire Production cost as quoted by Joy Inc. Whenever a supply is made by Joy Inc the applicable amounts payable will be increased by the amount of the GST payable on that supply.

Depending on your New Zealand residency status, and the type of production, you must pay the following proportions of estimated or agreed production costs (including any extra costs as applicable) before the following corresponding events occur:

(a) If you are not a New Zealand resident:

- 25% before pre-production;
- 50% before shooting commences; and
- 25% before delivery.

(b) If you are a New Zealand resident and the Production involves Special Production Elements:

- 50% not later than five clear working days prior to the first scheduled shooting day;
- 25% not later than the date on which you provide approval of the pencil/motion test or other key approval indicator; and



- 25% upon delivery.

(c) If you are a New Zealand resident and the Production does not involve Special Production Elements:

- One third of the budget will be accepted of this quote and is payable immediately.
- One third will be invoiced seven days prior to commencement of photography and is payable prior to first day of shoot. Where photography commences within seven days of acceptance one invoice for two thirds of budget will be generated and is payable prior to the first day of shoot. No filming will commence without payment being received.
- The final third of budget will be invoiced, including any extra charges and/or weather cover due, on Client/Agency offline approval and will be payable on the 20th of the month following invoice.

You must pay interest on all amounts outstanding for more than 30 days at the rate of 2% per annum above the annual overdraft interest rate charged by the Joy Inc's bank compounded on a daily basis.

8. Insurance

Joy Inc will provide insurance cover under its film and public liability policy for all aspects of the shoot and costs will be included in the quote accordingly. Talent and rental vehicle insurance is additional and if required will be included in the quote. Any claims excess will be recoverable from the agency as part of the job and will be considered in an extra charge.

9. Indemnity

The Agency/Client indemnifies Joy Inc against any claims for damages and associated costs made as a result of failure to meet delivery schedules, arrival times or broadcast dates of materials prepared for the agency or claims made as a result of non compliance with any statutory or other legal standards (including standards imposed by the Advertising Standards Authority Inc Codes of Practice) and in particular any false, misleading, deceptive or inaccurate information contained in the production material which may contravene the Fair Trading Act 1986. The Agency further indemnifies Joy Inc against any claim for breach of copyright including breach of moral rights, intellectual property rights, defamation or any other claim arising from the material comprised on the film, videotape or audiotape produced by Joy Inc. If data, documents and tapes are stored by Joy Inc it is solely at the Agency's risk.

10. Limitations of liability

Joy Inc shall not be liable or responsible for any consequential loss or damage, other than covered by insurance, suffered by the Agency or its clients or its employees, including costs, claims, compensation, reimbursement, loss of profit or goodwill arising out of or in connection with Joy Inc's work. The Agency hereby acknowledges the supply of services by Joy Inc is a supply for "Business Purposes" in terms of sections 2 and 53 of the Consumer Guarantees Act 1993, and accordingly the provisions of that Act do not apply to the provision of services by Joy Inc. In any event the total liability howsoever arising by Joy Inc shall be limited to the total value of the specific job undertaken or the payments made at the date of the event giving rise to such liability, whichever is the lesser sum.

11. Ownership and Usage

Ownership of copyright in the Production, and other intellectual property rights created in the course of production, remains with Joy Inc until full payment has been received. Upon full payment, ownership is transferred to you subject to all bona fide third party rights attaching to the Production and to the various materials and copyright subject matter comprising or depicted in the Production (the "Components"). The Components may include, but are not limited to, computer software, models, armature, characters, artistic works and sound recordings. You are not entitled to deal with the Components or the relevant chattels separately from the Production as a whole. You must not edit, manipulate, re-sequence or otherwise alter the Production after delivery unless required by applicable laws governing the broadcast or exhibition of the Production. Despite any ownership of copyright in the Production, you are only entitled to use the Production for the purpose, in the media and in the territory agreed before production commenced. Without limiting Joy Inc's rights, if your use of the Production is contrary to that agreed you must pay such further fees as Joy Inc may reasonably charge in the circumstances.

12. Right of exhibition

You licence Joy Inc to do all of the acts comprising the copyright in the Production, throughout the world, for the purposes of:

- a) entering the Production in competitions and industry awards;
- b) promoting Joy Inc, its contractors and employees to potential clients, including by making the Production available for use in Joy Inc show reels, promotions and on the web-site of Joy Inc or the director concerned



Until paid for in full in cleared funds, the ownership of the negative / work in final digital format (including any digital tapes / hard drives, etc) shall remain with Joy Inc

13. Talent and Licenses

You must arrange for the provision of the services of all actors and other talent who are to appear in the commercial. You must obtain all necessary licences and clearances in respect of the production and broadcast of the Production, including without limitation, all music synchronisation licences, master use licences, and moral rights consents.

14. Disputes & Non-Payment of Fees

The agency and Joy Inc agree to use their best efforts to resolve any disputes arising from these terms and conditions or the content of the production material through good faith negotiations. In the event that any dispute is unable to be settled by such negotiations, then the dispute shall be submitted to mediation before either party commences any litigation or arbitration. Either party may initiate mediation by giving written notice to the other. If the parties are unable to agree on a mediator within 2 working days of such notice, then the President of LEADR New Zealand Inc will select a mediator.

15. Governing law

These terms & conditions and any agreement with Joy Inc shall be governed by and construed in accordance with the law of New Zealand.

16. Good faith

The Agency and Joy Inc shall in all dealings with each other act in good faith and in particular will neither:

- 1) Unilaterally enter into any agreement affecting the other party's rights or obligations without first consulting that other party; nor
- 2) Engage in conduct that is misleading, or deceptive, or knowingly contrary to the provisions of this Agreement.

17. Entire agreement

These terms & conditions, the quotation letter, any relevant correspondence (including by email, fax or otherwise) and any acceptance document constitute the entire agreement between the other Production company and Joy Inc and supersede all prior communications, representations, agreement or understandings, either verbal or written with respect to the subject matter of this invoice / estimation.

18. Termination

Joy Inc reserves the right to immediately terminate, withdraw, suspend or modify its services without notice at any time if, in Joy Inc's reasonable opinion, the agency is in material breach of its obligations under these terms & conditions or any agreement with Joy Inc.

19. Waiver

The waiver or failure by Joy Inc to exercise any of their rights shall not be deemed to be a waiver of any further or future right.

20. Severability

If any provision of these terms & conditions or any agreement between the agency and Joy Inc is held to be illegal or contrary to public policy or otherwise unenforceable, such as invalidity or unenforceability shall be deemed to be eliminated or modified to the extent determined in an Arbitrator's / Court opinion, it is necessary to make the remainder of the provisions enforceable.

