



Terms and Conditions of Business of “THE FILM LAB”

1. Interpretation

In these terms and conditions “The Film Lab” means a division of Sasani (Pty) Limited (1996/012855/07), “the customer” means that party with whom The Film Lab is contracting, “the products” and/or “the services” means the products and/or the processing services which The Film Lab contracts to supply to the customer and “the materials” means the film(s) and/or other materials delivered into The Film Lab’s custody by or on behalf of the customer.

2. Application

Except as otherwise agreed in writing by a duly authorised officer of The Film Lab, all quotations, orders, offers to contract and contracts (whether oral or written) for the supply of the products and services by the Film Lab shall be subject to these terms and conditions. These terms and conditions shall apply in place of and prevail over anything contained in The Film Lab’s handbook, brochures, price lists or other documents and anything contained or referred to in the customer’s order or elsewhere or implied by trade custom practice or course of dealing.

3. Quotations and Orders

- 3.1. All quotations made by The Film Lab in writing shall be valid for a period of 30 days, unless otherwise stated by the Film Lab. Any order placed by the customer shall be placed using The Film Lab’s order form or an order form acceptable to The Film Lab.
- 3.2. No contract shall come into existence until the earliest of: (i) The Film Lab’s [written] quotation being accepted in writing by the customer; (ii) the customer’s order being accepted in writing by The Film Lab, (iii) The Film Lab accepting a customer’s camera sheet or written instructions by way of opening and completing a job sheet; or (iv) The Film Lab commencing any service or supplying any products as requested by the customer.
- 3.3. No accepted quotation, order, camera sheet or written instruction may be varied or cancelled by the customer without The Film Lab’s prior written consent and The Film Lab shall be entitled to recover full compensation from the customer for any loss or expense arising from such variation or cancellation.

4. Prices

- 4.1. The price payable for all products and services shall be as set out in The Film Lab's quotation or as confirmed in The Film Lab's written acceptance of an order made by the customer or, where no price has been quoted, where the quoted price is no longer valid or where The Film Lab does not provide written acceptance of an order, the price set out in The Film Lab's price list current as at the date the of delivery of the products pursuant to clause 6.
- 4.2. The Film Lab shall be entitled at its discretion and from time to time to amend its price list applying to any or all of the products and services supplied.
- 4.3. The Film Lab reserves the right to adjust the prices stipulated in its quotation or its acceptance of an order to reflect any increase The Film Lab's costs which is due to any factor beyond the control of The Film Lab including without limitation any foreign exchange fluctuations, currency regulations, increase in custom or other duties or the imposition of additional rates, taxes or duties or which is due to any change in delivery dates, quantities or requirements of the products and services requested by the customer, or any delay caused by any instruction or information received from the customer or by the failure of the customer to provide any information.
- 4.4. The Film Lab's quoted prices and the prices included in its price list do not include value added tax or any other sales tax or duty, the cost of packaging or delivery pursuant to clause 6, or any additional costs arising from the quality of the materials rendering the same unsuitable for normal processing including without limitation where negatives are old, faded or shrunken, have damaged perforations or are badly spoiled or from any special requirements specifically requested by the customer, all of which shall be an additional charge to be paid by the customer.

5. Payment

- 5.1. The price payable in respect of all products and services shall be paid in cash on delivery unless a customer has a credit account with The Film Lab in which case the following provisions shall apply:
- 5.2. unless otherwise agreed in writing each invoice issued by The Film Lab to the Customer shall be paid in full within 30 days from the date of the relevant invoice;
- 5.3. The Film Lab shall be entitled to charge the customer interest on overdue accounts at the rate of 1% above the prime overdraft rate charged by The Film Lab's bankers from time to time to its prime clients as certified by any manager of that bank, whose authority it shall not be necessary to prove;
- 5.4. the customer shall fully indemnify The Film Lab against all costs and expenses including without limitation attorneys and court fees (on an attorney and own client basis) incurred in connection with the collection of any monies owed by the customer to The Film Lab;

5.5. should, in the sole discretion of The Film Lab, a customer's financial position at any time become unsatisfactory, The Film Lab shall be entitled to require either payment in advance and/or payment of any outstanding amounts owing to The Film Lab and/or the provision of adequate security for payment and pending the provision thereof shall be entitled to suspend its obligations in terms of these terms and conditions.

5.6. All payments made in terms of these terms and conditions shall be made in South African rand, free of deduction and set off.

6. Delivery

6.1. Whilst The Film Lab shall use all reasonable endeavours to comply with a customer's request for delivery on specific dates and/or times, time for delivery shall not be of the essence and The Film Lab shall not be liable for any loss or damage of any kind including without limitation pre-booked telecine arrangements arising directly or indirectly out of any failure to deliver on any particular date or at any particular time or for failure to give notice of any delay in delivery.

6.2. Delivery shall be made at The Film Lab's premises as stated on these terms and conditions. At the customer's request, expense and risk The Film Lab shall arrange to deliver the materials and/or the products to an address specified by the customer. In such circumstances it shall be the customer's sole obligation to insure the materials and/or the products.

6.3. At the customer's request and expense The Film Lab shall supply packaging for the materials and/or the products where delivery is other than at The Film Lab's premises.

6.4. At its sole discretion The Film Lab may effect and invoice deliveries in one or more instalments.

7. Warranties

7.1. The Film Lab hereby excludes and disclaims all warranties, whether expressed or implied, statutory or otherwise, except those warranties expressly made in this Agreement.

8. Risk and Liability

8.1. The customer acknowledges and agrees that the materials and/or products shall be received, developed, printed, treated, used and/or stored by The Film Lab solely at the customer's risk and that, except as provided in clause 8.2, in no event and under no circumstances will The Film Lab be liable for any lost profits or other direct, indirect, special or consequential loss whatsoever resulting from any act or omission of The Film Lab, its employees, sub-contractors or agents, whether such loss results from any negligence or breach of duty (contractual or otherwise) by The Film Lab, its employees or sub-contractors or agents.

8.2. If The Film Lab shall by reason of its negligent act or default or breach of contract, cause loss, damage or destruction to the materials and/or products or any part thereof, then The Film Lab shall:

- 8.2.1. in the event of reparable damage to the materials and/or products, use its reasonable endeavours to repair any such damage at its own expense, without any obligation to engage third parties including without limitation the use of third parties offering digital restoration or optical techniques or similar processes;
- 8.2.2. in the event of loss, destruction or irreparable damage to the customer's negative and/or sound track, provide a replacement of a similar quantity of unexposed film and raw stock for the quantity of such lost, destroyed or irreparably damaged negative and/or sound track;
- 8.2.3. in the event of loss, destruction or irreparable damage to a customer's print and/or sound track, re-print at its own cost such part of the print and/or sound track as shall have been so lost, destroyed or irreparably damaged.
- 8.3. The customer undertakes to ensure that all of the materials are delivered into The Film Lab's custody in a good and sound condition and free from defect including without limitation to dirt scratches, nicks, cuts, damage to perforations, and exposure defects and of first class quality suitable for processing by The Film Lab in accordance with the customer's requirements. The Film Lab shall not be liable for any loss, damage or destruction caused to the customer's goods during processing by The Film Lab arising from any such defect.
- 8.4. In no event and under no circumstances shall The Film Lab be liable for the cost of digital restoration techniques or other similar processes.

9. Insurance

- 9.1. The customer acknowledges and agrees that it is solely responsible for insuring the materials and the products and their content against any loss or damage while they are in The Film Lab's possession or in transit to or from The Film Lab.

10. Reservation of ownership and cession

- 10.1. Notwithstanding the delivery of the materials and/or the products until all amounts payable by the customer hereunder have been paid:
- 10.1.1. ownership of the materials and/or the products, including any copyright therein, shall not pass to the customer; and
- 10.1.2. any claim which the customer may have at any time arising wholly or partially out of or in connection with the disposal by it of the materials and/or the products, shall be deemed to have been ceded to The Film Lab as security for the customer's obligations hereunder.

11.Storage and Disposal

- 11.1. At the customer's request, cost and risk The Film Lab shall supply storage space for master copies of the materials and/or products.
- 11.2. Notwithstanding clause 11.1, The Film Lab shall be entitled at any time to return any master copies of the customer's materials and/or products and to recover any indebtedness in respect of such storage and the costs incurred in returning such masters from the customer.
- 11.3. The customer acknowledges and agrees that if The Film Lab is unable to trace the customer or the owner of any stored master copies of the customer's materials and/or products The Film Lab shall be entitled to dispose of the stored master copies of the customer's materials and/or products at its discretion and the customer hereby indemnifies The Film Lab against and waives any claim against The Film Lab arising from or as a consequence of the said disposal.
- 11.4. The customer undertakes to remove all cuts, trims, and other unused material or material of a like nature from The Film Lab's premises within 6 (six) weeks of delivery of the materials and/or products. If the customer fails so to do within the period or any period extended in The Film Lab's discretion, The Film Lab shall be entitled, at the cost of the customer, to dispose of and/or destroy such aforementioned materials and the customer hereby indemnifies The Film Lab against and waives any claim against The Film Lab arising from or as a consequence of the said disposal and/or destruction.

12.Customer Warranties

- 12.1. The customer warrants that:
 - 12.1.1. it has the right to authorise The Film Lab to make copies and duplicates of the materials and/or the products;
 - 12.1.2. any person who places any order, accepts any quotation or in any way purports to represent the customer, or who is allowed voluntarily by the customer or by omission to purport to represent the customer, is so authorised;
 - 12.1.3. The Film Lab's provision of the products and services will not constitute an infringement of any patent, copyright, design, trade mark or otherwise;
 - 12.1.4. the customer's materials do not contain any defamatory material;
 - 12.1.5. the customer's materials do not contain anything which is obscene or which in any way infringes any statute, and the customer hereby indemnifies The Film Lab against any loss, liability, cost, damage or claim that may be brought against The Film Lab by any person whomsoever, arising from a breach of any of these warranties.

13.Breach

- 13.1. If the customer is in breach of any of these terms or conditions or if the customer is placed in liquidation or judicial management The Film Lab shall be entitled, without prejudice to any other remedies to which it may be entitled, including any rights to security hereunder:
 - 13.1.1. to claim immediate payment of all amounts payable by the customer to The Film Lab, whether then due and payable or not;
 - 13.1.2. to suspend the performance of any obligation owed by it; and/or
 - 13.1.3. to terminate this Agreement immediately upon notice.

14.General

- 14.1. In the absence of an express agreement to the contrary, these terms and conditions shall apply to all future contracts between The Film Lab and the customer relating to the products and services.
- 14.2. These terms and conditions constitute the entire agreement between the parties with regard to the matters dealt with herein and no representations, term, conditions or warranties not contained in these terms and conditions shall be binding on the parties.
- 14.3. No agreement varying, adding to, deleting from or cancelling these terms and conditions shall be effective unless reduced to writing and signed by or on behalf of the parties.
- 14.4. No indulgence granted by a party shall constitute a waiver that that party's rights under these terms and conditions and accordingly that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.
- 14.5. These terms and conditions shall be governed in all respects by, and shall be construed according to, the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the South African courts.

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