



## ABSTRACT OF

### TERMS AND CONDITIONS OF CONTENT SALES AND SERVICE CONTRACTS SIGNED BY MEDIA SERVICE SUPPORT AND ASSET MANAGEMENT FUND

#### ***TERMS AND CONDITIONS OF CONTRACTS FOR CONTENTS OF THE FILM AND SOUND ARCHIVE***

#### **1. DEFINITIONS**

- 1.1. Provider: the entity that provides the Services and delivers the Contents specified in the contract which, for the purposes of this contract, means the Media Service Support and Asset Management Fund in all cases.
- 1.2. Client: the natural or legal person that uses or receives the Contents delivered by Provider or takes or uses the Services provided by Provider and pays consideration for such Contents or Services.
- 1.3. Third party: all natural or legal persons or business associations without legal personality who/which use the Service originating from this contract that was received or accepted from Client for their own purposes or for providing additional services, as well as all other natural or legal persons or business associations without legal personality unspecified in the contract that are distinct or separate from Provider and Client.
- 1.4. Service: any obligation undertaken by Provider in the contract.
  - 1.4.1. Film archive service: all archive or real-time motion picture or technical services that are provided or supplied by Provider to Client from the Film Archive Database of the public media assets managed by Provider or the television media service of Duna Médiaszolgáltató Nonprofit Zrt.
  - 1.4.2. Sound archive service: all archive or real-time sound, audio or technical services that are provided or supplied by Provider to Client from the Sound Archive Database of the public media assets managed by Provider or the radio media service of Duna Médiaszolgáltató Nonprofit Zrt.
- 1.5. Content: all motion pictures or sound recordings delivered or made available by Provider to Client that constitute the Service.

#### **2. SERVICES FEES**

- 2.1. The fees listed in the contract do not include value added tax.

#### **3. PROCESS AND FORM OF MAKING ORDERS**

- 3.1. Provider only accepts written orders sent by fax, e-mail or postal mail. For foreign clients, Provider uses an English-language order form (so-called Deal Memorandum). By sending the order, Client accepts and agrees to be bound by the provisions of these Terms and Conditions and Provider's Privacy Policy.



### 3.2. The order must include

- a) If Client has not yet had a contractual relationship with Provider and the necessary data is not available to Provider, then: Client's full name (full corporate name), address (registered office) company registration number or registration number, name of the registering court/authority, in case of sole proprietor or natural person: name, mother's name, identity card number, address, registration number of the sole proprietor, and - in the case of non-natural person - tax number and bank account number as well;
- b) name, title and exact contact details of the person tasked with administering the order;
- c) in case of framework agreement or co-production relationship: the registration number given when the prior contract was registered by Provider (if Client has a framework agreement and a co-production relationship with Provider, then the registration number based on which Client requests the ordered service);
- d) regarding the specifications of the content or the service:
  - the title of the ordered program and other information necessary for identification,
  - the purpose of ordering the program or program segment, the duration of usage and the number of presentations,
  - if the program is ordered for television or radio broadcasting then the name of the broadcasting channel or station,
  - the specification of the technical medium (VHS, Beta, CD, cassette, etc);
- e) the exact description of the purpose of using the ordered content.

3.3. Provider will send a confirmation to the order in the form of a quotation no later than within five (5) business days to Client's contact address provided by Client.

### 3.4. The confirmation includes:

- the total of value of the consideration to be provided by Client –in case a co-production relationship that of Provider's contribution-, and in case of continuous performance, the periodic fee of the service (monthly, quarterly, yearly, etc);
- the payment frequency;
- the expected delivery deadline or service duration;
- in case of archive service, the duration and form of possessing and using the archive material;
- if the archive service requires preliminary research, its fee and payment terms and other administrative terms related thereto (e.g. need for presentation of payment receipt, etc);
- in case of film and sound materials, the number of uses and other conditions (e.g. exact name of broadcasting channels).



- 3.5. Client acknowledges that the order is only deemed accepted by Provider, if Client signs and returns it to the contact person designated in the contract or to the production liaison.
- 3.6. In case of Film or Sound Archive service, at Client's relevant request, Provider will allow Client to view –after prior appointment consultations– the material connected to the archive service before making an order, without charging addition expenses.
- 3.7. In the event that
- the requested archive material or its segment is not exactly identifiable from the order
- or
- Client is otherwise unable to unambiguously specify his order
- and does not request preliminary viewing, Provider shall be entitled to add extra research costs to the usual expenses and shall not accept any content-related performance complaints.

#### 4. PAYMENT TERMS

- 4.1. In case of contracts performed continuously, Provider shall bill the subscription fee of the services on a monthly basis in the month in question.
- 4.2. In case of contracts or orders for a one-time performance, Provider may bill the fee of the services in advance, or can demand advance payment before performance, based on the parties' agreement,
- for the fulfillment of orders made by natural persons,
  - if Client defaulted in paying former invoices,
  - if the parties' other agreement contains such a provision.
- 4.3. If the service fee items do not include royalties subject to collective right management, such as royalties payable to collective right manager, and royalties not subject to collective right management, such as royalties directly payable to right-holders, royalties shall be paid by Client to right-holders.
- 4.3. Service fees shall in all cases be applied to the whole content made available or provided for use (in case of film and sound service, the length of the actually copied recording), regardless of how much of the delivered material Client uses.
- 4.4. The invoice issued by Provider
- 4.4.1. shall be paid by Client with registered office in Hungary within 15 banking days of issuing the invoice, by bank transfer, to Provider's account managed by OTP Bank Nyrt., account no. 11794008-20541884-00000000;



- 4.4.2. shall be paid by foreign Client in the currency consistent with the order. The payment deadline of export invoices is 30 (thirty) days, unless otherwise provided in the ad hoc contract/order confirmation, or in case of international sale, the Deal Memorandum used as confirmation. Client agrees to pay the counter-value of the due invoice by bank transfer to Provider's bank account provided in the contract, depending on the used currency.
- 4.5. Payment is settled on the date when Provider's account is credited by the counter-value of the invoice. In payment has been made in advance, Provider shall indicate this fact in the invoice.
- 4.6. All expenses related to settling the invoice shall be borne by Client.
- 4.7. Invoice complains are accepted by Provider if made in writing within 5 (five) business days of the receipt of the invoice. Complain received after the deadline or made verbally are not accepted by Provider.
- 4.8. Late payment of an invoice shall result in an obligation to pay default interest with the rate provided for in the Civil Code, payable from the date of default.
- 4.9. In the event that Client fails to settle by the payment deadline any fees due, Provider may promptly send payment demand to Client. If the invoice is not paid for reasons attributable to Client within five (5) banking days following the receipt of the demand –or in the absence of that within 30 (thirty) days of the original due date of the invoice- then Provider shall be entitled to refuse continuing the fulfillment of the order, or the fulfillment of another order, or suspend service that are being provided, or terminate the contract with immediate effect.

## 5. RIGHTS AND OBLIGATIONS OF THE CONTRACTING PARTIES

- 5.1. Provider agrees to manage all data concerning Client that was acquired by Provider by observing all statutory regulations as amended from time to time. Provider agrees not to pass on such data to third parties and shall only use those to the extent absolutely necessary for operating the service or inform Client.
- 5.2. Provider only provide warranty of non-infringement relevant to the ordered archive material –provided that the use manner of the ordered material specified in the order is subject to license pursuant to Act LXXVI of 1999 on Copyright (Copyright Act)– and with the conditions specified below, if Provider has the relevant property rights or is otherwise entitled to pass on such rights. Otherwise Provider provides no warranty of non-infringement.
- 5.3. Client is required to obtain license for any intended use from third party right-holders. Provider disclaims all liability whatsoever to third parties for Client's failure of meeting the above obligation; Client is directly responsible for all claims arising out of the above failure and for claims relating to use. At Client's relevant written request, Provider will provide information based on available data whether the intended use requires third-party consent, and according to Provider's best knowledge, who is entitled to give authorization.



Provider is only responsible for the content of the information provided this way (upon Client's written request).

- 5.4. Provider's activity related to the archive and technical services shall be carried out by its designated organizational unit, or –if the order was made under a coproduction contract based on which Provider provides archive service and/or technical service contribution– the appointed production liaison.
- 5.5. Archive and technical services may only be used based on a written order sent to the designated organizational unit, or -if a coproduction contract was concluded- to the appointed production liaison. Orders may be submitted on the basis of a prior legal relationship between the parties, such as framework agreement or a coproduction agreement that (also) includes archive service and/or technical service contribution.
- 5.6. Client must notify Provider if he becomes aware that use of the Content by any Third Persons infringes intellectual property rights. Client must also assist in the prevention of such infringements and in securing Provider's rights pertinent to the Content.
- 5.7. Specific rules applicable to film and sound archive services and real-time motion picture and audio services:
  - 5.7.1. Client acknowledges that in case of ordering full-length program, Provider shall not cut or reedit the program, e.g. to remove any commercials included in the program or the breaks of sport events. At the express written request of Client, Provider will execute any ordered editing or cutting works –subject to the free capacities- by charging for any extra costs incurred.
  - 5.7.2. Provider is entitled to reject orders in writing, or restrict the duration and/or scope of the use, or refuse or suspend the provision of the ordered service –with the appropriate amendment of the consideration payable by Client- even if the order was already confirmed, with special regard to Provider's program editing principles and needs and Client's payment default. This section shall also apply in case of prior program production or coproduction contracts, with the provision that Provider will only be entitled to the rights defined herein, if Client has breached a contract -stemming from any relationships whatsoever- signed with Provider, when the order is submitted.
  - 5.7.3. Prior to performance Provider may request from Client preliminary statements affecting the circumstances of performance. In such cases, the performance deadline shall be extended with the period between submitting the request for statement and making the statement. Should the statement be refused or fail to arrive by the deadline set in the request, Provider's obligation to fulfill the order shall also be discharged in program production or coproduction relationships.
  - 5.7.4. Client shall be required to verify that performance connected to archive materials has been rendered -by signing the "Acknowledgment of receipt" form introduced for this purpose- upon delivery.



5.7.5. Client acknowledges that in the event of cancelling the order, provided that confirmation was returned signed, he shall be required to pay a cancellation charge. The cancellation charge is the maximum of the technical and research fees included in the confirmation that was signed and returned by Client. Client shall be obligated to pay Provider research and use fees, even if Client accepted the archive materials specified in the signed Deal Memo or the contract but did not use those in the manner specified previously in the Deal Memorandum and/or contract.

The cancellation charge – in accordance with the date of the performance indicated in the confirmation receipt signed and returned to the Provider by Client – is the following:

- in event of cancellation within 3 (three) days, 30 (thirty) percent of the archive technical costs and of the counter value of the technical service costs indicated in the confirmation receipt,
- in event of cancellation within 2 (two) days, 40 (forty) percent of the archive technical costs and of the counter value of the technical service costs indicated in the confirmation receipt,
- in event of cancellation on the previous day, 50 (fifty) percent of the archive technical costs and of the counter value of the technical service costs indicated in the confirmation receipt,
- in event of cancellation on the due date, 100 (hundred) percent of the archive technical costs and of the counter value of the technical service costs indicated in the confirmation receipt.

5.7.6. Provider will accept complaints made in connection with the performance of the archive service within 5 (five) business days counted from acceptance in writing. Provider will investigate whether the complaint is substantiated within 5 (five) business days and notify Client of its result in writing. Should Provider fulfill the order deficiently, it shall correct the error within 3 (three) business days at its own cost. If Partner accepts MTVA's performance knowing of its breach of contract, it shall not be entitled to bring any claims against MTVA later based on the breach of contract.

5.7.7. Client acknowledges that it must provide the data carrier necessary for transferring the content at its own cost, and if Client fails to do so, Provider only provides data carrier for a charge.

5.7.8. In case of Archive service, Client shall be obliged to delete the received archive materials and issue a written statement thereon within 48 (forty-eight) hours following the deadline specified in the order-confirmation or the authorized number of presentations. If the above obligations are breached, Provider shall be entitled to –on the grounds of penalty- the difference of the amount billed for the service and the sum of the highest fee of the price list, depending on the nature of the



order (full program, segment, sport event etc.) and the costs, and if no such difference is available, then to 20 (twenty) % of the billed amount. In addition, Provider shall be entitled to the total amount that Client received as gross income (income includes any support received in connection with the use) relating to the unauthorized use on any grounds. Furthermore, if the deletion statement is not given, Provider may reject further performance until the missing statement is produced.

5.7.9. When ordering archive materials kept in the Archive, Provider reserves the right to only fulfill the order if an “access letter” issued for the name of Provider and naming Client as authorized user, for the use manner specified in the order, is produced.

5.7.10. In case dubbing, voice-over or subtitling, this provision shall apply with the deviation that an „access letter” must always be obtained from the right-holder of the film in question. Provider` failure of asking for an “access letter” shall not affect in any manner the provisions on warranty of non-infringement and liability disclaimers included in these Terms and Conditions.

5.7.11. Provider`s archive service for other purposes means in particular: reproducing archive materials, using their particular titles, commercially exploiting their distinct and original forms, and delivering -for purposes other than broadcasting- full length materials and their segments that were ordered for non-broadcast purposes. Provider may condition the performance of such other archive service on signing a contract with specific terms, even if Provider otherwise concluded a framework agreement with Client.

## 6. LIABILITY FOR DAMAGES

6.1. The parties recognize that they shall be obligated to indemnify the other party for all material and non-material damages caused by breach of contract.

6.2. Provider shall not be held accountable for any losses or damages sustained by Client that are caused by misunderstanding, misinterpretation or improper use of the Content.

6.3. Provider shall not be liable for occasional technical failures. These include for example: power outage, operating disturbance caused by the defect of the telecommunication network (cable water damage, line breaks), natural disasters, system downtime attributable to Client, other coding or updating (synchronization) delays caused by technical reasons or any damage stemming from the above, and any other events that neither contracting parties have influence on.

6.4. Client must report all defects that occur in connection with the service without any delay. Provider shall not be liable for damages stemming from performance deficiencies caused by the delay or failure of reporting defects, and shall be entitled to bill the total service fee.

6.5. Should the operation of the service be frustrated for more than 1 calendar



day by any events attributable to Provider, Provider will not charge the commensurate fees that apply to missed period.

## 7. TERMINATION

- 7.1. The contract, provided that it has been concluded for an indefinite period, may be terminated in writing by either party by applying a 30-day notice period without providing reasons. In other cases, if other conditions not specified before in these Terms and Conditions do not occur, the contract may not be rescinded. The contract may only be terminated with the mutual agreement of the Parties.
- 7.2. The contract may be terminated with immediate effect by either party and Provider may stop the service, if the other contracting party willfully or negligently breaches any obligation arising out of the contract.
- 7.3. The contracting parties agree that the termination of this contract for any reasons, or any change in the Client's person –including the transfer of the ownership or publishing right- shall not impact the Parties' rights and obligations created under this contract prior to the time of the termination or the change.

## 8. MISCELLANEOUS PROVISIONS

- 8.1. Provider reserves the right to amend the content of the service and the manner of providing the service, without any deterioration to the quality of the service, in scope of its continuous developing activities.
- 8.2. The parties may only amend the contract with their mutual agreement in writing.
- 8.3. The present excerpt of the General Terms and Conditions (GTC) constitute the legal conditionalities of the sale of the items of the Moving-image archive managed by the Media Service Support and Asset Management Fund. In the absence of any different provision of a legal regulation or any provision of a general and/or special contractual relationship with MTVA, the present provisions (as general contractual terms) shall be applied.  
MTVA is obliged to notify Client on the modification of the present GTC or the Price List 15 calendar days prior to the entering into force of the new GTC or Price List (The publication on the corporate website of MTVA (currently: [www.mtva.hu](http://www.mtva.hu)) shall be also considered as an effective notice). The Client may cancel or modify its order affected by the modification in writing - without any additional penalty charge payment - in fifteen (15) calendar days as from the entering into force of the modified GTC. The provisions of subparagraph a/ of paragraph 3 of the present Chapter shall be applied to any other cancellation (modification) following the expiry of the above period. In the absence of the Client's representation within the 15 (fifteen) days deadline starting from the entering into force of the modified GTC, the modification shall be deemed to be accepted by Client.