

FENG☆YUN TERMS & CONDITIONS

1 DEFINITIONS

1.1 'FENG☆YUN' means 'Culture Communication Co., Ltd. Shanghai FENG☆YUN' trading as 'FENG☆YUN'.

'Booked Date' means the day on which a Client requires FENG☆YUN to first provide Facilities; 'Business Day' means Monday to Friday inclusive but excluding all Public Holidays;

'Conditions' means these Terms and Conditions;

'Contract' means any written or oral contract, agreement, arrangement, transaction or dealing entered into or made by FENG☆YUN with any Client;

'Client' means, in respect of each Contract entered into by FENG☆YUN, the person with whom FENG☆YUN so contracts and where there is more than one person contracting with FENG☆YUN under a Contract shall mean each person so contracting and each such person shall be bound jointly and severally by these Conditions;

'Client Materials' means any goods, chattels, items or things (including but not only any documents, media, props and equipment) made available by a Client to FENG☆YUN for the purposes of a Contract;

'Facilities' means any studio, recording area or space, suite, office, room, space, equipment, goods or thing hired, supplied or provided and any and all services of FENG☆YUN personnel made available by FENG☆YUN to a Client under or for the purposes of a Contract;

'Media' means any article or thing in on or by means of which visual images and/or sound or sounds is or are recorded, reproduced, stored or embodied and without limiting the generality of the foregoing includes tape, master tape, computer discs and compact discs or any similar article howsoever described;

'Work' means finished product the Client has ordered;

'Person' includes a corporation and a firm;

The singular shall mean and include the plural and vice versa.

2 APPLICATION

2.1 These Conditions apply to all Contracts save for:

(i) Any provision of Facilities by FENG☆YUN under any other written terms and conditions which expressly exclude these Conditions; and

(ii) Any Contract which is recorded in writing and by its terms expressly excludes these Conditions.

2.2 Subject always to Condition 2.1 these conditions shall apply to and are deemed to be incorporated into all Contracts. FENG☆YUN is only prepared to provide facilities upon these Conditions and no Contract shall exist between FENG☆YUN and the Client except upon these Conditions. Any order placed by a Client is deemed to be an order incorporating these Conditions notwithstanding any inconsistencies in the Client's order. Where the Client places an order with FENG☆YUN and such order contains terms and/or conditions conflicting with or differing from these Conditions the subsequent provision of Facilities to the Client under that order shall be deemed to be counter-offer to provide such Facilities on these Conditions and such counter-offer shall be deemed to have been accepted by the Client on the date on which such Facilities are first provided to the Client.

3 BOOKINGS & CANCELLATIONS

3.1 FENG☆YUN will accept bookings either by telephone, fax, email, online or mail but all bookings must be accompanied by the Client's official order number or the JOB number written in the offering.

3.2 All bookings must specify a booked date.

3.3 A Client may cancel a job booking but:

(i) in respect of any cancellation made between 48 and 24 hours prior to the Booked Date, the Client shall pay a charge equal to 50% of the full rate applicable to the provision of facilities ordered;

(ii) in respect of cancellations made after 10.00am on the Business Day preceding the Booked Date, the Client shall pay a charge equal to the full rate applicable on the Booked Date to the provision of the Facilities ordered;

3.4 FENG☆YUN will only accept cancellations made between the hours of 8.00am and 6.00pm on Business Days.

4 PAYMENT

4.1 FENG☆YUN's terms of payment are 60% deposit on contract sign; final net cash within 10 work days from the date of the invoice to which such payment relates. Production starts after receiving the deposit.

4.2 In addition to and without limiting FENG☆YUN's other remedies for late payment, FENG☆YUN shall be entitled to charge and the Client shall be liable to pay interest on any payment that is overdue pursuant to Condition 4.1 calculated at a rate equal to 10% per annum from the date of the relevant invoice and up to and including the date of payment in full of the due amount (including any interest incurred thereon). In addition any costs incurred by FENG☆YUN in enforcing a payment or other obligation of the Client will be reimbursed to FENG☆YUN upon demand. FENG☆YUN has an immediate right to sue for a complete recovery of any costs, payments, interest and VAT not paid when due.

4.3 The Client acknowledges that FENG☆YUN shall have a lien on any and all Client's materials until such time as all monies due under the Contract are paid to FENG☆YUN.

5 RATES

5.1 The Client acknowledges that any quotation given by FENG☆YUN to the Client (whether in writing or otherwise) is indicative and approximate only and that FENG☆YUN is in no way bound by any such quotation. Rates are subject to change without notice.

5.2 Any work commissioned or extended beyond the scope of the initial contract by the Client, be it written or verbal, will be binding and it is the Client's sole responsibility to ensure this work is appropriately documented and approved within their Company.

6 PASSING OF PROPERTY & COPYRIGHT

6.1 The property and copyright in any goods, chattels or things produced, duplicated or otherwise created by FENG☆YUN under the Contract shall not pass to the Client until the Client pays to FENG☆YUN all monies due to FENG☆YUN under that Contract.

6.2 It is understood that the Client is engaging FENG☆YUN on a 'Work For Hire' basis to produce the Work. The Client has a right to the finished Work upon final payment, but this does not imply or absolve any copyright FENG☆YUN reserves for original image making, character design, product design, proprietary software, hardware or source files.

6.3 The Client does not have the right to manipulate the finished Work in any way without express permission of FENG☆YUN unless required by applicable laws governing the broadcast or exhibition of the Work.

6.4 When Work or finished Works are approved by the Client any errors, be they graphic, typographic, informational, factual or otherwise will be the Client's sole responsibility and the remedy of those errors at their sole cost.

6.5 The Client is only entitled to use the Work for the purpose, in the media and in the territory agreed before production commenced.

6.6 FENG☆YUN shall not be responsible beyond the cost of re-supply for any incorrect version of Work being supplied.

7 CLIENT'S COVENANT, WARRANTIES & INDEMNITY

7.1 The Client covenants and warrants with and to FENG☆YUN that no act or thing required to be done or omitted to be done by FENG☆YUN under the Contract or at the request or direction of the Client pursuant to the Contract:

(i) will infringe the copyright of any person or render FENG☆YUN liable or expose FENG☆YUN to any action, suit, proceeding, claim or demand for infringement of copyright; or

(ii) will infringe the privacy of any person or render FENG☆YUN liable or expose FENG☆YUN to any action, suit, proceeding, claim or demand for breach of privacy; or

(iii) will be defamatory of any person or render FENG☆YUN liable or expose FENG☆YUN to any action, suit, proceeding, claim or demand under the law of defamation; or

(iv) will render FENG☆YUN liable or expose FENG☆YUN to prosecution in respect of the production and distribution of any obscene article or thing; or

(v) will render FENG☆YUN liable or expose FENG☆YUN to prosecution or other action under any Federal, State or Territory legislation or at common law.

7.2 The Client hereby indemnifies FENG☆YUN and holds FENG☆YUN harmless against any and all fines, penalties, damages, loss, costs or expenses (including but not only legal expenses of any nature and payable to or on behalf of any person whatsoever) suffered or incurred by FENG☆YUN as a result of or arising from or in connection with any breach of the covenants and warranties given and made by the Client under Condition 7.1.

8 CLIENT'S MATERIALS

8.1 The Client acknowledges that any Client's Materials are delivered to and used and stored by FENG☆YUN solely at the Client's risk and that FENG☆YUN shall be under no obligation to insure Client's Materials.

8.2 The Client acknowledges to FENG☆YUN that the Client holds a security copy of each and every master tape/data/film delivered to FENG☆YUN for the purposes of the Contract.

8.3 Neither FENG☆YUN nor any of its officers, employees or agents shall be liable for the loss, destruction or damage of Client's Materials unless such loss, destruction or damage was caused by the negligence of FENG☆YUN or any of its officers, employees or agents in which event the liability of FENG☆YUN and any of its officers, employees or agents shall be limited to the cost of replacement of the Client's Materials so lost, destroyed or damaged provided always that where the Client's Materials lost, destroyed or damaged is in the form of Media, FENG☆YUN's liability shall be limited to the cost of replacing such Media with unexposed raw-stock or blank Media in the same quantity as that which was lost, destroyed or damaged. This stipulation is made on behalf of each of the officers, employees and agents of FENG☆YUN.

9 USE OF MATERIAL

9.1 The Client hereby grants to FENG☆YUN the non-exclusive right to use any or all of the Work in media, throughout the world in perpetuity for the purpose of publicity and promotion of FENG☆YUN's involvement in the production of the Work.

9.2 FENG☆YUN may claim credit, in perpetuity, in its own promotional material for FENG☆YUN's involvement in the production of the Work.

9.3 Where appropriate, the Client shall acknowledge FENG☆YUN in all media, press releases and award shows as production company noting director and executive producer.

10 GENERAL

10.1 Waiver. Any failure or delay on the part of FENG☆YUN in insisting upon strict performance by the Client of any provision of the Contract (including these Conditions) shall not be taken to be a waiver of such provision or of any rights of FENG☆YUN under or in relation there to and in particular but without limiting the generality of the foregoing shall not be taken to be a waiver of the same provision on any subsequent occasion.

10.2 Termination. FENG☆YUN reserves the right to end the contract at anytime, for any reason.

10.3 Notice. Any notice required to be given by FENG☆YUN to the Client pursuant to the Contract (including these Conditions) shall be in writing and shall be given by FENG☆YUN to the Client by delivering or posting such notice to the address of the Client last known to FENG☆YUN and shall be deemed to have been properly given, if delivered, on the day of such delivery or, if posted, on the day being two days after the day on which such notice was posted to the address of the Client.

10.4 Governing Law. The Contract (of which these Conditions form part) shall be governed by and construed in accordance with the laws of PR China.