

Finish TV Ltd

Terms & Conditions of Business.

1. DEFINITIONS

1.1 In these conditions, the following terms shall have the following meanings:

“ Conditions ”	means these conditions of business;
“ Contract ”	means the contract to be entered into between a Customer and Finish TV to which these Conditions apply and which incorporates these Conditions and to which these Conditions are annexed;
“ Customer ”	means the person, firm, company or other body to whom such document is addressed;
“ Facilities ”	means the facilities as referred to in the Contract (including any instalment of the facilities or any parts for them) which Finish TV is to supply in accordance with these Conditions;
“ Finish TV ”	means Finish TV Limited of 6a Poland Street, London, W1F 8PT upon whose document these Conditions are endorsed;
“ Goods ”	means the goods as referred to in the Contract (including any instalment of the goods or any parts for them) which Finish TV is to supply in accordance with these Conditions and shall include any and all forms of audio and audio visual material processed and/or produced by Finish TV on the Customer’s behalf include advertisements; and
“ Services ”	means the services as referred to in the Contract (including any instalment of the services or any parts for them) which Finish TV is to supply in accordance with these Conditions.

2. FORMATION OF CONTRACT

2.1 All Goods, Services or Facilities are offered and all Contracts are entered into subject to the Conditions. Subject to condition 15.4 all other terms, conditions or warranties are, to the maximum extent permitted by law, excluded from the Contract or any variation thereof unless expressly accepted by Finish TV in writing. No servant or agent of Finish TV has the power to vary these Conditions orally or to make any statement or representation about the goods, services or facilities offered, their fitness for any purpose or any other matter whatsoever unless such variation is agreed in writing between the authorised representatives of Finish TV and the Customer.

2.2 These Conditions shall be incorporated into any Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer. Any dealings with Finish TV following receipt by the Customer of notice of these Conditions shall automatically be deemed acceptance thereof notwithstanding the absence of formal acknowledgement.

2.3 Unless otherwise expressly stated in writing, all quotations and estimates supplied by Finish TV are invitations to treat. The Customer’s order is an offer and shall become binding upon acceptance by Finish TV.

3. PRICES

3.1 All prices quoted in the Contract are exclusive of VAT. Finish TV shall further be entitled to make an adjustment to the quoted price in the event that:-

3.1.1 additional costs are incurred by Finish TV due to materials supplied by the Customer or any third party being in the opinion of Finish TV, in any way defective, in an unsuitable format (or a different format to that which Finish TV is expecting to receive the same) or of unsuitable quality for normal processing; or

3.1.2 the information supplied by the Customer or any third party in connection with its order does not provide a full and accurate indication of the work involved; or

3.1.3 additional costs are incurred by Finish TV, due to alterations by the Customer or any third party in its requirements; or

3.1.4 additional costs are incurred by Finish TV due to exceptional circumstances outside the control of Finish TV, including currency fluctuations and changes in third party costs.

4. PERFORMANCE, DELIVERY OR COLLECTION

4.1 Unless otherwise agreed in writing, all times quoted for performance or delivery or availability for collection are given in good faith but are not guaranteed by Finish TV. The time for performance or delivery or availability for collection shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Alteration by the Customer of its requirements may result in delay in performance, delivery or availability for collection.

4.2 Any packaging supplied by Finish TV, unless otherwise expressly agreed, is intended to provide adequate protection throughout normal conditions of transport by the means specified in the Contract or as may be otherwise agreed. If the Customer (or the intended recipient) fails to take delivery on the agreed delivery date or to collect on the agreed collection date or, if no specific delivery or collection date has been agreed, when the goods are ready for despatch, Finish TV shall be entitled to store the goods and to charge the Customer the reasonable costs of so doing and to tender its account for such charges under condition 5. Notwithstanding the terms of condition 7.1 below, Finish TV shall be under no liability in respect of any loss or damage following the despatch of any goods from Finish TV's premises.

4.3 If Finish TV and the Customer shall agree that any goods shall be delivered electronically or via any form of telephony ("Direct Delivery") the following provisions shall as applicable apply:

4.3.1 the Customer acknowledges that Direct Delivery is not or may not be a completely secure medium of communication and that an unauthorised third party may intercept, tamper with or delete goods delivered by Direct Delivery and that Direct Delivery may involve reliance upon third party data carriers over which Finish TV has no control; and

4.3.2 Finish TV shall not be responsible for and shall have no liability to the Customer or any third party for:

- (a) any delay to any Direct Delivery or any non receipt of any goods delivered by Direct Delivery;
- (b) any loss or damage that results from any person gaining unauthorised access to any Direct Delivery of any goods;
- (c) use or disclosure of any data obtained by any third party as a result of the same having gained unauthorised access to any Direct Delivery; and
- (d) any loss or damage resulting from any malfunction of or the introduction of any viruses, worms, logic bombs, time locks, time bombs, Trojan horses and/or bugs to any equipment and/or software used to effect and/or receive any Direct Delivery.

5. TERMS OF PAYMENT

5.1 Subject to condition 5.2 and unless otherwise agreed by Finish TV in writing, all invoices rendered by Finish TV are payable by the Customer no later than 30 days following receipt of such invoice by the Customer.

5.2 Finish TV expressly reserves the right at its sole option to require payment by instalments during the performance of the contract and/or payment of all amounts owing to Finish TV immediately prior to delivery or making goods available for collection.

5.3 The Customer shall pay all amounts owing to Finish TV in full and shall not exercise any rights of set off or counterclaim against invoices submitted. Payment of all amounts shall only be made in the currency in which they are invoiced and shall not be subject to any deductions/charges whatsoever.

5.4 In the event of a failure by the Customer to pay Finish TV in accordance with the terms of the Contract or an invoice, Finish TV shall be entitled, without prejudice to any other right or remedy, to suspend any further performance of or deliveries under such Contract without notice and shall be entitled but not obliged to charge the Customer interest on the overdue amount, payable by the Customer immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 5% per annum above the base rate for the time being of Barclays Bank Plc. Such interest shall accrue on a daily basis and be compounded quarterly. If the Customer fails to pay any amount payable by it under the Contract, Finish TV reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5.5 All prices quoted or agreed are exclusive of any applicable value added tax, which the Customer shall be liable to pay in addition.

6. CANCELLATION/TERMINATION

6.1 Any contract between Finish TV and the Customer may only be cancelled or varied with the written consent of Finish TV, such consent not to be unreasonably withheld, and upon the terms of these Conditions. The giving of Finish TV's consent shall not in any way prejudice Finish TV's right to recover from the Customer full compensation for any loss or expense arising from such cancellation or variation.

- 6.2 Either party shall be entitled forthwith to terminate a Contract if the other party commits any continuing or material breach of any of the provisions of the Contract or these Conditions, as the case may be, and in the case of such breach which is capable of remedy, fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
- 6.3 If the Customer shall (i) become bankrupt (under the provisions of Section 123 of the Insolvency Act 1986); or (ii) be deemed to be unable to pay its debts or compounds with its creditors; or (iii) in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer; or (iv) if a Receiver or Manager or Administrative Receiver is appointed over all or any part of its assets or undertakings; or (v) an encumbrancer takes possession over any of the property or assets of the Customer; or (vi) the Customer makes any composition or voluntary arrangement with its creditors or enters into administration; or (vii) a moratorium comes into force in respect of the other party (within the meaning of the Insolvency Act 1986); or (viii) the Customer ceases, or threatens to cease to carry on business, Finish TV shall be entitled to terminate the Contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to Finish TV.
- 6.4 If, notwithstanding condition 6.1, and without prejudice to any other rights or remedies available to Finish TV, the Customer gives Finish TV notice of cancellation of an order which notice is received by Finish TV:
- 6.4.1 less than 24 hours prior to, as applicable, the date for performance or the commencement of performance or the date on which the Facilities were to be utilised by or on behalf of the Customer (the “**Contract Date**”), Finish TV shall be entitled to charge the Customer the full value of the Contract or, if no value is stated, the applicable amount under Finish TV’s rate card current at the Contract Date; and
- 6.4.2 less than five working days but more than 24 hours prior to the Contract Date, Finish TV shall be entitled to charge the Customer one half of the full value of the Contract or, if no value is stated, one half of the applicable amount under Finish TV’s rate card current at the Contract Date in each case reflecting the fact that Finish TV is unlikely to be able to secure an order for the Facilities that had been allocated to the processing of the Customer’s order from a third party within the time available.
- 7. LIABILITY**
- 7.1 The Customer hereby agrees that without limiting any other provision of these Conditions:
- 7.1.1 to the maximum extent permitted by law Finish TV’s entire liability for breach of any provisions of a Contract, or any terms, warranties or conditions implied in such Contract by operation of law, including Finish TV’s liability for negligence (except where such negligence results in death or personal injury) are excluded;
- 7.1.2 under no circumstances shall Finish TV be liable for any consequential loss whatsoever, including damages for loss of business profits, business interruption or other indirect pecuniary loss of any kind or for any economic loss, loss of profit, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, however caused, which arise out of or in connection with the Contract;
- 7.1.3 Finish TV’s entire liability for any direct loss suffered by the Customer, as a result of Finish TV’s breach of the Contract and for which Finish TV shall, notwithstanding any other provision of the Contract, be liable, shall (subject to the terms of conditions 4.2 and 4.3 above and condition 9.1 below) be limited to the amount actually paid by the Customer in accordance with the Contract; and
- 7.1.4 the price to be paid by the Customer under the Contract reflects the limitation on the liability accepted by Finish TV.
- 7.2 The Customer shall indemnify Finish TV from and against:-
- 7.2.1 all claims or proceedings taken against Finish TV by any third party including any client of the Customer, Finish TV’s employees, the Customer’s employees or the employees of any contractor employed by the Customer or Finish TV or the personal representatives or dependants of any such employee or other third party in respect of personal injury or damage to property caused by or arising out of any act or omission of Finish TV in the course of carrying out the specific instructions of the Customer;
- 7.2.2 all claims or proceedings taken against Finish TV by any third party arising out of the acts and/or omissions of the Customer, its agents or sub-contractors or any of their respective employees, whether negligent or otherwise.
- 7.3 The Customer expressly agrees that it will at all times maintain and keep effective insurance policies with reputable insurers with sufficient cover which protect the Customer against any loss or liability which it may incur or suffer arising out of the Contract or any act or default of Finish TV in the performance by Finish TV of its obligations to the Customer. Such insurance shall include insurance for any damage or loss for which Finish TV is not liable pursuant to the Conditions hereof, insurance which protects the Customer against any accidental loss, damage or destruction to any master tapes, film negative prints, sound tapes, video tapes or visual images or sound held in any media or any other materials of any kind supplied to Finish TV whilst in the possession or control of Finish TV. Finish TV accepts no liability for any loss which arises from any failure by the Customer to maintain and keep effective such insurances.

7.4 Any recommendations or suggestions relating to the use of any goods supplied by Finish TV are given in good faith but it is for the Customer to satisfy itself of the suitability of the Goods for its own particular purpose. Accordingly unless otherwise expressly agreed in writing and notwithstanding and without limiting condition 7.1, Finish TV gives no warranty as to the fitness of the Goods for any particular purpose even though that purpose may be specified in the Customer's order and any implied warranty or condition (statutory or otherwise) to that effect is excluded to the extent permissible by law.

7.5 In the case of goods or component parts of goods supplied by Finish TV but not of Finish TV's manufacture, Finish TV shall be entitled to assign to the Customer its rights against its supplier and such rights shall be taken in extinction of and in substitution for any rights which the Customer would otherwise have had against Finish TV.

8. INTELLECTUAL PROPERTY AND DATA PROTECTION

8.1 The Customer shall indemnify Finish TV from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any defamatory or libellous matter or any infringement or alleged infringement of any patent, trademark, copyright, registered design or design copyright or other intellectual property right including any moral right claim or any other title of any third party in respect of any work carried out for the Customer by Finish TV.

8.2 Each of Finish TV and the Customer acknowledge and agree that copyright in underlying materials processed by Finish TV in the performance of its services and/or embodied in materials produced by Finish TV may be owned by third parties and that the use by the Customer of all materials processed and/or produced by Finish TV shall be subject always to the Customer obtaining any and all necessary licenses and consents from the relevant underlying rights owner(s). The Customer hereby grants to Finish TV a perpetual and royalty free license to use all materials processed and/or produced by Finish TV on the Customer's behalf to promote Finish TV's business and in connection with appropriate industry awards.

8.3 Without limitation to the legal rights of Finish TV, the Customer acknowledges and agrees that if, in the course of fulfilling the Customer's order and/or processing or producing materials on behalf of the Customer, Finish TV discovers or devises any techniques or know how, all rights of every kind in and to such techniques and know how, shall vest absolutely in Finish TV.

8.4 The Customer acknowledges that in the course of its dealings with Finish TV, Finish TV may acquire personal data which relates to the Customer and/or any of its officers, employees or contractors and the Customer hereby consents to Finish TV, in accordance with the UK Data Protection Act and fulfilment of its obligations under this Agreement, collecting, storing, processing and transferring to third parties such personal data. The Customer further consents to the sale or transfer by Finish TV of such personal data in connection with an assignment or transfer of any of its assets and its disclosure in compliance with any rule of law or order of competent authority.

9. CUSTOMER'S MATERIALS

9.1 Where the Customer supplies any materials to Finish TV or where any materials or Goods which are the property of the Customer are otherwise left in Finish TV's possession:-

9.1.1 notwithstanding the terms of condition 7.1. above, Finish TV shall be under no liability in respect of any loss or damage or otherwise arising as a result of damage to or the loss or destruction of such materials or goods;

9.1.2 without limiting the terms of condition 7.3 above, the Customer shall insure all such materials or Goods to their full value against all risks; and

9.1.3 the Customer shall remove all such materials or Goods within six months of the date of issue of Finish TV's invoice relating to such materials or goods in respect of which the materials have been utilised and in default, Finish TV shall be entitled to return all such materials or Goods to the Customer and to charge the Customer for any costs and expenses incurred by Finish TV in so delivering such materials or goods. Until the removal or return of the materials or Goods, Finish TV shall be entitled to store the materials and Goods and to charge the Customer the reasonable costs of so doing and to tender its account for such charges under condition 5. In the event that Finish TV does not so return such materials or Goods, Finish TV shall be under no liability whatsoever for any loss or damage to such materials or Goods whilst they are in the possession of Finish TV and the Customer is advised to maintain insurance to the full value of such materials or goods against all risks.

9.2 Where materials are supplied or specific instructions are given by the Customer, Finish TV accepts no liability for any reduction in the quality of Finish TV's services caused by defects in or the unsuitability of such materials so supplied or by Finish TV's adherence to such specific instructions.

10. RISK AND TITLE

10.1 The Customer shall be responsible for all loss, damage or deterioration to the Goods:-

10.1.1 if Finish TV delivers the Goods by its own transport or, in accordance with a specific contractual obligation, arranges transport for the Goods at the time when the Goods or a relevant part thereof arrive at the place of delivery; or

10.1.2 in all other circumstances, at the time when the Goods or a relevant part thereof leave the premises of Finish TV; or

- 10.1.3 if risk otherwise passes in accordance with the Conditions hereof.
- 10.2 Title to the Goods the subject of the Contract or any relevant part thereof shall only pass to the Customer upon the Customer paying to Finish TV all sums due and payable by it to Finish TV under such Contract and all other prior contracts entered into, from time to time, between Finish TV and the Customer.
- 10.3 Finish TV may recover Goods in respect of which title has not passed to the Customer at any time.
- 10.4 Until title to the Goods has passed to the Customer pursuant to the terms hereof:
- 10.4.1 it shall possess the Goods as a trustee of Finish TV on the terms of these Conditions;
- 10.4.2 if Finish TV so requires, the Customer shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to Finish TV;
- 10.4.3 the Customer shall be entitled to re-sell or use the Goods in the ordinary course of its business but shall account to Finish TV in respect of the proceeds of sale or otherwise of such Goods;
- 10.4.4 the Customer shall maintain records of the persons to whom it sells or disposes of the Goods and of the payments made by such persons for such Goods and will allow Finish TV to inspect those records on request; and
- 10.4.5 Finish TV shall be entitled to trace the proceeds of sale or otherwise of the Goods.
- 10.5 The Customer hereby irrevocably authorises Finish TV, its officers, employees and agents to enter upon any premises of the Customer for the purpose of repossessing any Goods in respect of which title has not passed to the Customer and/or to ensure that the provisions of this condition 10 are being complied with.
- 11. CUSTOMER INPUT AND ACCESS TO OR USE OF FINISH TV'S PREMISES AND EQUIPMENT**
- 11.1 The Customer shall be solely responsible for ensuring that all information, advice and recommendations given to Finish TV either directly or indirectly by the Customer or by the Customer's agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by Finish TV of such information advice or recommendations shall in no way limit the Customer's responsibility hereunder unless Finish TV specifically agrees in writing to accept responsibility.
- 11.2 The Customer hereby undertakes to Finish TV to ensure that all of its personnel (to include all employees and agents of the Customer) that at any time have access to any premises occupied by Finish TV or at any premises which any of Finish TV's equipment shall be kept, shall at all times:
- 11.2.1 observe all rules and regulations in force at the applicable premises to include health and safety regulations and any rules governing the use of equipment and/or facilities at the applicable premises; and
- 11.2.2 keep confidential and not divulge or communicate or make any use of any confidential information (being any and all information which relates to and/or concerns the business or activities of Finish TV and/or any customer of Finish TV) which the applicable person shall become aware of as a result of being present at the applicable premises.
- 11.3 The Customer shall indemnify Finish TV from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any breach or non observance of any provision of condition 11.2 by any of the Customer's personnel.
- 12. FORCE MAJEURE**
- 12.1 In the event of the performance of any obligation accepted by Finish TV being prevented, delayed, or in any way interfered with by any act of government, war, industrial dispute, strike, breakdown of machinery or equipment, accident, fire or by any other cause beyond Finish TV's control, Finish TV may at its option suspend performance or cancel its obligations under the Contract without liability for any damage or consequential loss resulting there from, such suspension or cancellation being without prejudice to Finish TV's right at all times to recover all sums owing to it in respect of Goods delivered and costs incurred up to the date of the suspension or cancellation.
- 13. ASSIGNMENT**
- 13.1 Finish TV may assign the Contract or any part of it to any person, firm or company.
- 13.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

14. CONFIDENTIALITY

14.1 Each of Finish TV and the Customer undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of the other party or of any member of the group of companies to which the other party belongs which may have or may in future come to its knowledge and each of Finish TV and the Customer shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

15. GENERAL

15.1 The Customer shall observe the provisions and requirements of all applicable trade union agreements and shall indemnify Finish TV against any costs, expenses or loss incurred by it as a result of any failure by the Customer to do so.

15.2 Where appropriate and required by Finish TV (but not otherwise), screen credits shall be given to Finish TV and nominated individuals for all goods, services or facilities supplied by Finish TV.

15.3 Headings used in these Conditions are purely for ease of reference and do not form any part of or affect the interpretation of these Conditions.

15.4 Nothing in these Conditions shall operate to relieve Finish TV from any liability for any fraudulent misrepresentation made to the Customer at any time.

15.5 If any provision of this contract as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this contract or the validity or enforceability of this contract generally.

15.6 References to Finish TV shall, as the context permits, include its licensees, sub contractors and assigns.

15.7 The words "include" and "including" shall not be construed restrictively.

15.8 The Contract (to which the Conditions are annexed) contains the entire agreement between Finish TV and the Customer with respect to its subject matter, supersedes all previous agreements and understandings between Finish TV and the Customer, and may not be modified except by an instrument in writing signed by the duly authorised representatives of Finish TV and the Customer.

15.9 Finish TV and the Customer acknowledge that it is not their intention that any third party shall be entitled to enforce any term of the Contract or these Conditions which may confer a benefit on that third party, whether any such entitlement would, but for this provision, arise under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

15.10 If any provision of these Conditions or of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Conditions or of the Contract, as the case may be, and the remainder of the affected provisions shall continue to be valid.

15.11 These Conditions and the Contract shall be governed by and construed in all respects in accordance with the laws of England, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.