



## **TERMS AND CONDITIONS OF COMMISSIONING VIDEO PRODUCTION SERVICES FROM TIN PAN LIMITED.**

Thank you for choosing Tin Pan. These Terms and Conditions apply to all video and associated audio services and products created by Tin Pan Productions, including all associated moving and still images and sound recordings of whatever form. Please read these Terms and Conditions carefully. Your full acceptance of these Terms and Conditions is a condition of us working with you. Where applicable, we may agree a written 'Statement of Work' or 'Production Brief' (we use the term 'Production Brief' in these Terms and Conditions to refer to both) to describe the specific details of a project or services to be provided, commercial terms and other relevant terms. These Terms and Conditions shall apply to any services provided pursuant to a Production Brief. To the extent of any inconsistency, the provisions of the Production Brief shall override these Terms and Conditions. We may change these Terms and Conditions at any time by publishing revisions on our website, after which the new Terms and Conditions shall take effect in respect of any further Services commissioned.

### **Definitions & General Terms**

In these Terms and Conditions, the words 'Tin Pan,' 'we' 'us' 'our' and 'ours' refer to Tin Pan Productions Limited, a private limited company incorporated in England and Wales under number 14658519. The word 'Client' refers to the party who is named as our Client in a Production Brief and/or the party who commissioned and/or funded the services and any person or organisation acting on their behalf.

### **Pre-production requirements**

Unless otherwise agreed in writing by the parties, for instructions, personnel, images, audio, scripts, props, locations and other assets provided by the Client ("Client Assets") it is the Client's responsibility to obtain all necessary permissions including but not limited to performances, branding, trademarked goods and logos, use of third party intellectual property including but not limited to imagery, sound recordings and any other copyrighted material which will form part of the final video production.

Where third party copyright material is provided by the Client within the Client Assets for incorporation into a Tin Pan product, permission must be obtained by the Client from the original copyright owner / material provider. The Client undertakes to indemnify Tin Pan against any future possible claims, disputes, expenses or costs arising from the use of such material, without time limit.

Unless otherwise agreed in writing by the parties, for assets provided by Tin Pan it is Tin Pan's responsibility to obtain all necessary permissions including but not limited to performances, branding, trademarked goods and logos, use of third party intellectual property including but not limited to imagery, sound recordings and any other copyrighted material which will form part of the final video production. Tin Pan hereby indemnifies and holds the Client harmless against any future possible claims, disputes, expenses or costs arising from the use of such material, without time limit.

### **Production Arrangements**

All works undertaken will be as per Tin Pan's written quotation based upon the agreed Production Brief. It is the Client's responsibility to ensure that this is thoroughly read and understood prior to booking. Any amendments, additional days filming or other additional requirements will be charged at our current daily rates.

Both parties shall use reasonable efforts to comply with agreed schedules, but no liability will be accepted by Tin Pan for any delays or failure to deliver the agreed product to the extent caused by the Client. Clear access for video and sound capture shall be arranged and managed by the Client. If filming venues are being organised by the Client, it is the Client's responsibility to ensure that our production crew and supporting personnel have clear access to all relevant locations required throughout the day. Delays in production as a result of inadequate access to facilities may incur additional charges.

Tin Pan takes Health & Safety matters seriously and we reserve the right in all instances to remove any of our personnel and / or equipment from a location if we deem it to be unsafe or if our crew are subjected to abusive or aggressive behaviour. In such circumstances the Client will be fully liable for any costs incurred or subsequently arising as a result. Tin Pan will observe the site safety rules at all times and will liaise with the appropriate Responsible Person(s) named in the Production Brief.

### **Insurance**

Tin Pan carries public liability insurance cover of ten million pounds. A copy of our insurance certificate can be provided on receipt of a request to our offices. Extended or upgraded specific project insurance cover can be provided at additional cost if required upon request, provided this is agreed at the time of booking and included in the Production Brief.

### **Adverse weather conditions**

In the event of inclement weather which in our opinion would pose a risk to health & safety of our personnel or equipment or has the potential to prevent successful video or audio

capture, we reserve the right to change the date or time of filming to a more suitable date or time.

### **Client delays**

In the event of filming being delayed or aborted due to the Client's failure to adhere to the agreed dates, times, access, facilities, organisation or any other matter specified in the Production Brief, we reserve the right to reschedule the affected days of filming and to charge for any additional costs which arise. No refund or credit will be given in respect of costs associated with the delayed or aborted original filming day(s) attributable to the Client.

### **Changes to the filming schedule**

In the event of the Client wishing to change or cancel the filming date we require a minimum of seven days' notice in writing (which can be by email to the producer.) Failure to comply will result in the Client becoming 50% liable for all costs associated with the originally scheduled dates and 100% liable for all costs where the cancellation is less than 48 hours prior to the filming date. For filming rescheduled with less than 48 hours notice, the cost of the crew booked and pre production work is payable.

### **Equipment substitution**

In the event that Tin Pan experiences equipment failure or technical difficulties, all efforts will be made to find suitable replacement equipment and/or personnel so as not to delay filming or adversely impact upon the project quality or delivery. The equipment used on the day of filming will be at the discretion of the senior member of the film crew, and no further claims or liability will be accepted.

### **Performers Release usage**

Where the Client takes responsibility for selecting or engaging individuals to appear in Tin Pan's filming ("Performers"), it will be the Client's responsibility to ensure that it uses Performers Release Forms and/or obtains appropriate permission from the Performers to use the filming of them for the Client's required purposes. No discounts or liability will be accepted by Tin Pan if the production must be reedited due to a Performer refusing permission to show their image or use their audio in whatever form.

Where Tin Pan provides or directly contracts specific Performers, Tin Pan shall ensure that appropriate Performers Release Forms or appropriate permissions are obtained for the Client's stated purposes. Obtaining permission for any additional usage requirements shall be the Client's sole responsibility.

### **Data Protection**

With any people or places provided by the Client for the purposes of filming, the Client must ensure that all necessary arrangements have been made with, and permissions obtained, so

that these people and places, may be recorded on video as a result of the Tin Pan providing its service and that such recording is in compliance with applicable data protection law and regulation.

Tin Pan can advise and provide appropriate documents as location release forms if required by the Client.

### **Care and Damage to Client property**

Whilst every care is taken in the handling of the Client's property, Tin Pan accepts no responsibility whatsoever for any loss or damage, howsoever caused, or any other loss by unforeseen circumstances whilst they are in our custody. Liability for such loss or damage will be limited to the replacement cost of the materials or media and in no circumstances will any liability attach to any claim for the value of the content.

### **Expenses**

Production fees may be exclusive of disbursements and expense items related to the agreed project unless otherwise noted in the Production Brief. These include fees such as messenger services, postage, overseas telephone charges, colour photocopying, photography and prints, disc or file duplications, creation of audio and video streaming files, travel, accommodation, subsistence, and similar items which will be invoiced to the Client on the relevant project, or separately as necessary.

### **Approval / amendments of draft footage**

Unless otherwise stated in the Production Brief, under normal circumstances up to three rounds of edits will be made available for the Client for review and comment within the agreed project cost provided that any revisions or amendments fall within the original agreed brief and are requested promptly on initial review. Subsequent revisions or significant re-edits will be charged at a rate of £400 + VAT per day or part thereof (minimum being half day costs). Additional express editing charges apply if you require editing to be completed more quickly than scheduled and we will advise you if this is the case.

Alternatively, the Production Brief may provide a provisional estimate outlining how many days editing it is estimated for completion of the brief. Three rounds of edits will be provided within this time frame. The Client will be notified when one quarter of the time allocated is remaining. If it is likely further major revisions will be required then a new estimate will be provided and any required adjustments to the Production Brief can be made by mutual agreement.

Once you have approved our work, any further amendments or changes will be fully chargeable.

### **Project duration and delivery**

Any indication given by Tin Pan of a project's duration is to be considered by the Client to be an estimation. Tin Pan will do everything possible to meet specific deadlines, providing there is clear communication, prompt payment and regular feedback from the Client.

### **Non-interactive video – Post-production**

We recommend that you obtain your own Vimeo account in order to host non-interactive video created by Tin Pan, unless alternative arrangements are specified in the Production Brief. Once finalised, non-interactive video will be provided to the Client for uploading to your own Vimeo account or otherwise onto your website. Your use of the Final Deliverables is at your own discretion and risk.

### **Interactive video - Post-production**

Interactive video is different to non-interactive, as it is hosted via Tin Pan's Vimeo account. It is your responsibility to ensure that your website will allow embedding of the finished video. Tin Pan can provide a test video for this to be checked before the start of production.

An additional Production Brief is required for interactive video projects if complex issues are involved such as dynamic links within the video project.

Ongoing hosting fees will also be incurred if the video is to be hosted by Tin Pan, as set out below.

A condition of us hosting your video via our Vimeo account is also that you read and accept the Vimeo Terms of Service and Privacy Policy on Vimeo.com (<https://vimeo.com/terms> and <https://vimeo.com/privacy>) and warrant that you shall fully comply with such terms.

As standard practice, Tin Pan turns off the analytics associated with interactive video on Vimeo to avoid the complexities of personal data processing. If you require analytics to be activated, a further Production Brief will be required to be entered into and, where applicable, required data protection terms agreed at additional cost to cover our additional responsibilities, administrative and legal review costs.

### **Copyright, legal and rights clearance**

Tin Pan asserts its full rights as copyright owner and/or licensee of all material that has been captured, processed and/or produced or provided by us, whether or not such material forms part of a finished project ("**Tin Pan IP**"). This includes all forms of intellectual property in our interactive video designs, formatting, layout, look-and-feel, music, interactive design, graphics and structural architecture. The copyright of all Tin Pan IP shall in the first instance be solely owned by Tin Pan or its licensors and is protected under UK law.

In respect of any Tin Pan IP provided by Tin Pan for inclusion in any project, Tin Pan hereby indemnifies and holds the Client harmless against any claims, disputes, expenses or similar that may arise from breaching any copyright laws, pre-existing terms and conditions or legal restrictions attributed to such material.

Where the Client provides material for inclusion in any project, including but not limited to logos, images, trademarks and branding, graphics and content, interviews, footage and audio (together, “**Client Content**”), the relevant permission must be obtained by the Client in advance from the applicable rights holder. Tin Pan will only use Client Content for the purposes of providing its services to the Client. The Client hereby indemnifies and holds Tin Pan harmless against any claims, disputes, expenses or similar that may arise from breaching any copyright laws, pre-existing terms and conditions or legal restrictions attributed to the material. The Client warrants that all information supplied for the project is a true and honest representation of its business and any comments from personnel featured in the filming are not: obscene, threatening, menacing, offensive, defamatory, abusive, in breach of confidence, in breach of any intellectual property right (including, without limitation, copyright) or otherwise in breach of or in violation of any applicable law or regulation or code.

### **Usage licence – rights to use Final Deliverables**

In relation to the number and type of videos outlined in the Production Brief or otherwise agreed in writing, upon the Client making the applicable full payment following acceptance for any final edited deliverable, Tin Pan hereby grants a royalty-free, perpetual, worldwide copyright license for use of the final approved deliverables provided to the Client in final format (“**Final Deliverables**”) on the Client’s main website and in any Client marketing or promotional activity online, mobile-based services or via email, subject to these Terms and Conditions.

The above usage licence includes the right to:

- Shorten (but not otherwise substantively edit) and annotate the Final Deliverables for use on social media;
- Share the Final Deliverables across the Client’s own social media and main website;
- Share the Final Deliverables with the Client’s customers for sharing across their own social media channels.

The above usage licence excludes the right to:

- Use component elements provided by Tin Pan (e.g. music and audio, voiceover, animations, images, icons and branded designs, graphics, designs, animations, video footage or other raw or edited elements) of the Final Deliverables (other than Client Content) for other projects or purposes or otherwise independently of Tin Pan;
- Create copies or derivative works of the Final Deliverables;
- Re-use Tin Pan’s proprietary video techniques or interactive formats, technical architecture, techniques and designs;
- Use any other Tin Pan IP not included in the Final Deliverables; or
- Use the Final Deliverables in the case of non-payment of the related production fees.

The Client acknowledges that wider use of the Final Deliverables than permitted above may infringe the intellectual property rights of Tin Pan and/or its licensees and other contributors. Should the Client require wider use of the Final Deliverables or other Tin Pan IP than permitted, such rights must be negotiated by separate written agreement and additional charges may apply.

## **Publicity**

Tin Pan shall be entitled to name the Client as being its client. Tin Pan shall also have the right to use any footage and related files from any Client-commissioned project in Tin Pan's own showreels and for other reasonable promotional purposes in any media once such footage has been published by the Client in the public domain and provided that such footage does not contain any sensitive information (e.g. customer case studies) which would require third party consents. Tin Pan's usage of the footage will be subject to the Client's prior approval if commissioned project is only to be used for internal communications purposes by the client.

## **Payment Terms**

The Production Brief will set out the payments due for our services and when they are payable. Unless otherwise stated or agreed:

- We will invoice 50% of our project fees for a project on signature of the Production Brief;
- After 3 months from signature of the Production Brief, all project fees incurred to date will be invoiced irrespective of whether the project has been completed and thereafter fees shall be invoiced monthly in arrears.

VAT is payable in addition to all sums payable hereunder.

Interactive video hosting fees (where applicable) will be charged on an ongoing basis for as long as you wish to utilise this service as follows:

- An initial setup fee (currently £150) for each embedded video payable in advance within the initial invoice;
- A monthly licence fee for each embedded video (currently £100 per month) payable every three months in advance from the start of hosting.

As we are reliant on our third party software provider for interactive hosting, our charges stated above are subject to change over time. We will advise you of any changes applicable to you and they shall become effective in relation to any subsequent invoices. You will have the choice of renewing on the new pricing or removing your videos.

Clients will be provided with a three-month notice period in the event of their interactive video being removed from the software provider's hosting platform. Any hosting payments that have been made beyond this notice period will be refunded.

If you wish to host your own videos via your own hosting service provider, we will provide the video files for you on request, but you may require specialist hosting facilities to enable, in particular, interactive videos to work effectively. We do not warrant that our videos will work effectively on third party hosting platforms and you take full responsibility if you independently host the Final Deliverables.

## **Late Payment**

Unless otherwise stated in a Production Brief, our payment terms are strictly 14 days from date of invoice and in the event of an order being confirmed the Client accepts these terms. We reserve the right to suspend our services if our invoices are not paid on time and to charge for wasted time and resources at our standard rates. Tin Pan reserves the right to withhold delivery and any granting or continuation of usage licence of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any licence to use our copyright material under these Terms and Conditions are conditional upon receipt of payment in full which shall be inclusive of any and all outstanding additional costs, taxes, expenses, and fees, charges or the costs of administration of changes. We shall not be responsible for any delays to your project for these reasons.

We also reserve the right to charge further interest and late payment fees on all overdue invoices as set out under the Late Payment of Commercial Debts (Interest) Act, 1998. E & OE. The Client shall be responsible for all collection or legal fees necessitated by late or default in payment.

### **Payment - Interactive Video**

Where we have agreed to host your videos, unless otherwise specified in the Production Brief, our payment terms for this service are strictly 14 days from date of invoice and in the event of an order being confirmed the Client accepts these terms. If the final payment is not received on time, the interactive video will be removed from our hosting platform until payment is received. This remedy is in addition to our other rights under these Terms and Conditions.

### **Limitation of Liability**

In all cases Tin Pan's liability will be limited to direct loss suffered by the Client up to the lower of agreed total cost of the project or £50,000, less any costs incurred by us for any work already done on the project, provided such work is within the agreed Production Brief.

Tin Pan accepts no liability for special, indirect, consequential loss, loss of profit or damage to reputation.

Nothing in these Terms and Conditions shall limit the parties' liability for death, personal injury or for any other matters that may not be excluded or limited at law.

### **Force majeure and termination**

In the event that any part of the outlined responsibilities cannot be carried out because of fire, accident, action of the elements, war, riot, civil disturbance, sickness, epidemic, pandemic, pestilence, national calamity, act of god or any labour disputes, or illness or incapacity of the director, principle artist or principle crew or any other cause not reasonably within the control of the production manager or Tin Pan ('force majeure') then the project may be suspended until the time that the production can be resumed. If the event of force majeure continues or is likely to continue for more than 14 days either party may by written notice to you terminate the agreement formed under these Terms and Conditions with immediate effect.



Either party shall be entitled by notice to the other forthwith to terminate this agreement (without prejudice to the parties' other rights and remedies hereunder) if:

- Either party shall fail to comply with their obligations hereunder and fail to rectify such failure within 28 days of written notice from the other;
- If the other party is made bankrupt, becomes insolvent or otherwise ceases trading.

Termination shall be without prejudice to the accrued rights and remedies of the parties.

### **Dispute resolution**

In the event of a dispute or disagreement the parties agree to attempt to resolve the dispute in the first instance by reasonable discussion and then by formal non-binding mediation if unsuccessful, except in relation to a non-payment dispute, for which proceedings may be issued at the claimant's option.

### **Confidentiality**

Both parties shall keep as confidential the provisions of and any information which may come to their attention in connection with these Terms and Conditions or at any time during the project except in relation to information that the receiving party can document (i) was in their possession before disclosure to them or (ii) which other than through breach of contract enters the public domain lawfully or (iii) is required by a court or tribunal with jurisdiction to be disclosed.

### **Miscellaneous**

Nothing contained in these Terms and Conditions shall be deemed to constitute or create a partnership or joint venture between the parties and neither party shall hold itself out as the agent of the other.

No waiver by the parties of any failure by them to perform any covenant or condition shall be deemed to be a waiver of any preceding or succeeding breach of any covenant or condition.

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms and Conditions and no term or condition shall confer or be construed as conferring any right on any third party.

If any clause or any part of these Terms and Conditions or their application to any party shall for any reason be adjudged by a court or other legal authority of competent jurisdiction to be invalid, this judgement shall not affect the remainder of these Terms and Conditions, the terms of which shall remain in full force and effect.

These Terms and Conditions, including any documents referred to within them (including but not limited to the applicable Production Brief) represent the entire agreement between the parties in respect of its subject matter and replaces any previous agreement(s) relating to the subject matter and may be varied only in writing signed by the parties.

The laws of England and Wales shall govern these Terms and Conditions and the English courts shall have non-exclusive jurisdiction over any dispute relating to them.