

## NINE CREATIVE SERVICES TERMS

These creative services terms and conditions apply to the development, creation, production and/or post-production of audio-visual material by Nine for customers' use in advertising campaigns. By accepting an Estimate, You agreed to bound by these terms and conditions.

### Production Services

1. Nine will provide to You the Production Services to produce the Final Product, in accordance with the Production Schedule. Nine will not commence provision of the Production Services unless and until Nine receives an Estimate signed and dated by You.
2. You may request Nine to provide services in addition to those detailed in an Estimate in respect of a particular Final Product (in which case, such additional services will be treated as 'Production Services' under these Creative Services Terms in respect of that Final Product) and Nine will notify You of the variation in the Charges payable by You to Nine for such Production Services by providing to You a revised Estimate.
3. If any overtime is/will be caused by factors beyond the reasonable control of Nine (including, without limitation, the non-performance of talent) or caused or contributed by You, Nine will notify you that such costs will be incurred, and the parties will discuss in good faith how such additional costs will be billed to You in addition to the Charges.
4. If You direct or request Nine to engage the services of any person not referred to in an Estimate, You acknowledge and agree that Nine will be acting as agent for You in engaging such services and You must pay all monies due to such person for the provision of such services (unless otherwise agreed).

### Client Material

5. You must provide to Nine the Client Material set out in the Estimate or as otherwise agreed.
6. If Nine submits to You for Your approval any material for inclusion in the Final Product, and You fail to notify Nine of Your approval or disapproval of such material on or before any deadline made known by

Nine to You, such material will be deemed to have been approved by You.

### Payment

7. Nine will provide You with an Estimate setting out the Charges for the provision of its Production Services in connection with the Final Product.
8. Unless otherwise agreed in writing by Nine and You, all payments for Production Services will be due and payable in accordance with the Estimate and these Nine Creative Services Terms.
9. You must pay to Nine 50% of the Charges at the time You provide a signed Estimate to Nine in accordance with clause 10(a). You must pay the remaining 50% of the Charges to Nine on delivery by Nine to You of the Final Product in accordance with the Production Schedule.
10. Nine will not commence the provision of the Production Services to You unless and until Nine receives:
  - (a) an Estimate signed and dated by You ; and
  - (b) 50% of the Charges from You in accordance with clause 9.
11. All charges for the Production Services, other than the Charges, that may be or become payable by You to Nine will be invoiced separately and will be payable within 30 days after the date of issue of an invoice by Nine to You for those charges. This may include charges incurred by Nine in respect of any unforeseen alterations and changes that may be required.
12. You acknowledge that Nine may receive, and is entitled to retain for its own use and benefit, any and all commissions and rebates paid or allowed by any supplier of services to Nine and You expressly authorise Nine to retain such commissions and rebates for its own benefit.

13. The parties acknowledge that all amounts payable in accordance with an Estimate or under these terms are exclusive of GST.
14. In the event that You fail to pay Nine in accordance with these Creative Services Terms, Nine may, at its option, cease to provide the Production Services to You.

#### **Lien**

15. You agree that Nine has a lien on all Client Material and the Final Product until such time as You pay to Nine in full all monies due to Nine for the provision of Production Services (including, without limitation, all applicable cancellation and overtime charges) in relation to the Final Product and Client Material.

#### **Variation or cancellation**

16. If:

- (a) You direct Nine to:
- i. cancel the production of any Final Product;
  - ii. change the specification or requirements of any Final Product in the course of production; or
  - iii. cancel or alter any scheduled exploitation of the Final Product; or
- (b) the production or part of the production of the Final Product is cancelled due to bad weather or other event outside of Nine's reasonable control,

then:

- (c) where applicable, Nine will take all reasonable steps to comply with Your request unless to do so would breach any obligation to any third party, in which case Nine will advise You of that obligation; and
- (d) You must reimburse Nine for any cost or expense incurred by Nine in relation to the production of any Final Product prior to the change or cancellation of that production at Your direction and any cost or expense incurred by Nine as a consequence of Nine complying with any direction issued by You under this clause.

17. Without limiting clause 16 if the Production Services are cancelled by You and You give Nine:

- (a) more than 2 full Business Days' notice of cancellation prior to the date that production commences as specified in the Production Schedule, You must pay the costs actually incurred by Nine in connection with the Production Services (including labour and materials) to a maximum of 50% of the Charges;
- (b) less than 2 Business Days' but more than 1 full Business Day's notice of cancellation prior to the date that production commences, You must pay 50% of the Charges; or
- (c) less than 1 full Business Day's notice of cancellation prior to the date that production commences, You must pay 100% of the Charges.

18. Without limiting clauses 16 and 17, if the Production Services are postponed for any reason beyond the reasonable control of Nine (including, without limitation, due to unfavourable weather) and cannot be rescheduled or the Production Services are postponed at Your direction and You give less than 7 full Business Days' notice, You must pay all costs actually incurred by Nine in connection with the Production Services (including labour and materials) to a maximum of 50% of the Charges.

19. Upon cancellation or postponement:

- (a) Nine will render an invoice for all charges due to Nine up to the date of cancellation or postponement;
- (b) You must pay the invoice referred to in clause 19(a), and any other amounts owing to Nine, within 30 days after the date of cancellation or postponement; and
- (c) in the event of cancellation, Nine will deliver to You everything in its possession that is Your property.

#### **Intellectual property**

20. Nine will obtain for Your benefit the intellectual property rights in the Final Product that are detailed in the Estimate, at Your cost as set out in the Estimate.

21. If You wish Nine to obtain additional intellectual property rights to those set out in the Estimate, Nine will use its reasonable endeavours to do so, and if Nine does obtain those additional intellectual property rights, You must pay all additional costs incurred by Nine in obtaining those rights.
22. All other intellectual property rights in or in connection with the Final Product that are not set out in the Estimate must be obtained by You, at Your cost, and Nine is not obliged to secure or clear any such intellectual property rights in the Client Material.
23. Subject to Your payment of all charges (including the Charges) to Nine in accordance with these Nine Creative Services Terms in respect the Final Product, Nine assigns all intellectual property rights it has obtained as contemplated in clauses 20 and 21 to You.
24. Nine will use reasonable endeavours to obtain for Your benefit, from each contributor to any copyright material in the Final Product, a consent to all acts or omissions by Nine and/or You, and any person authorised by Nine or You, which would otherwise infringe any moral rights in any copyright material in the Final Product including the right to edit, change, copy, add to, take from, adapt and/or translate such material in any manner or context.
25. You agree that Nine may reproduce the Final Product for the purpose of promoting its business, including by reproducing the Final Product, in whole or in part, on Nine's websites and in show reels, and submitting the Final Product to industry competitions and awards. Where possible and upon Nine's request, You will provide sales results deriving from or in connection with, or which can reasonably be attributed to, the Final Product, so that Nine may use such results for the purposes set out in this clause.
26. Nothing herein transfers any right, title or interest in any pitch materials prepared by Nine for You except for those pitch materials that are included in the Final Product.

## Definitions

27. Unless context clearly indicates otherwise:
  - (a) **Charges** means all fees and charges payable by You to Nine for the provision of the Production Services as set out in the Estimate or otherwise as contemplated in these Nine Creative Services Terms;
  - (b) **Client Material** means all information and materials (including, without limitation, television commercials, commercial content, print materials, audio-visual content, scripts and artwork, provided by You or on Your behalf to Nine);
  - (c) **Estimate** means a price estimate for the Production Services provided by Nine to You (and includes any revised Estimate as referred to in clause 2);
  - (d) **Final Product** means any final material resulting from the provision of the Production Services by Nine (including, without limitation, a television commercial or other audio-visual content);
  - (e) **Production Schedule** means the production schedule for the Final Product provided by Nine to You in conjunction with the Estimate;
  - (f) **Production Services** means the development, production and/or post-production of audio-visual material (which may include, without limitation, television commercials, print materials, artwork, scripts and any other audio-visual content), as detailed in an Estimate, and any other services or facilities provided or to be provided by Nine to You; but excludes Nine procuring the services of talent on Your behalf for the purpose of the talent's inclusion in the Final Product, the details of which will be outlined in a separate talent agreement between Nine and You.
28. All other capitalised terms used but not defined in this Annexure have the same meaning given to them in the Agreement.