



## VIDEO MOTION PHOTOGRAPHY

- 1. DEFINITIONS.** In these terms and conditions ("Terms"): "Customer" means the individual, corporation or other business entity, and each of its respective employees, agents and subcontractors, or any party represented by Customer, that submit Elements to, or receives services from, Facility; "Deliverables" means the final deliverable(s) provided by Facility to Customer created in the performance of any of Facility's services; "Element" means all film negatives, master positives, master videotapes, submaster videotapes, submaster positives, sound tracks, reversal originals, reversal intermediates, cuts and trims, positive prints or video dubs, separations, audiotapes, sprocketed magnetic film, sound track optical negatives, striped film prints and film prints, digital files (including but not limited to still image files, image file sequences and digital media files), and all IP Rights in all of the foregoing, and in each case, that are delivered to or deposited with Facility by Customer or on Customer's behalf; "Facility" means T3Media (T3M) and its subsidiaries, affiliates, successors and assigns; "IP Rights" means any and all intellectual property rights now known or hereafter existing throughout the world (including but not limited to patents, copyrights, trademarks and trade secrets); and "Methods" means the methods, systems, know-how, concepts, ideas, technology, information, materials, processes, and the like used by Facility in rendering the services.
- 2. ORDERS.** Facility is entitled to rely on instructions given to Facility by any third party purportedly on the Customer's behalf. All orders shall be placed using the Customer's authorized purchase order and such order shall be binding on Facility only if Facility accepts such order. Facility may accept verbal orders at its discretion. Each order will create a separate contract governed by these Terms, irrespective of any other terms that the Customer may include in its purchase order. Unless otherwise specified by Customer, Facility may, in its sole discretion, select the brand, type and quality of raw stock to be used for services.
- 3. CUSTOMER OBLIGATIONS.** Customer represents and warrants that he/she is the sole owner of, or has the right to possess, use and direct Facility to use, all Elements and its use does not and will not infringe on or misappropriate any copyrights, trademarks, privacy rights, publicity rights, or any other proprietary or personal rights of any person or entity, (ii) it has made a security (or second) copy of the Elements and any master copy, (iii) as long as Customer is indebted to the Facility, Customer shall not to pledge, hypothecate, assign or otherwise encumber Elements without the prior written consent of Facility, and (iv) Elements shall be suitable for use by the usual methods employed by Facility in its operations. Customer shall indemnify, hold harmless and defend Facility from any and all liability, claims, losses, damages and expenses, including without limitation, reasonable attorney's fees, arising out of or in connection with the publication, processing, use, distribution, contents or exhibition of Elements and Deliverables, including and without limitation, any liability for libel, slander, defamation, invasion of right to privacy, misappropriation, or infringement of patent, copyright, trademark, or other proprietary right, (ii) any act or omission of Customer, including the breach of Customer's representation or warranty contained herein, or (iii) any property damage or injury caused by Customer's agents or employees at Facility. Facility will have the right to retain separate counsel at Customer's expense. Customer

shall pay for repairs to all equipment that was damaged at Facility as a result of Customer's negligence. Payment for said repairs is due upon presentation of repair bill and both parties agree that the Elements and Deliverables will not be released until the subject repair bill is paid in full. In the event Customer requests access to its content, Customer agrees to the following conditions: any information contained in the email notifying Customer of such access is proprietary and confidential information intended solely for the addressee(s) and is not to be disseminated, disclosed, forwarded or distributed to any other parties, publicly or privately. Acting on, accessing and/or receiving the content/material referenced therein constitutes Customer's acceptance of these conditions and any liability arising from the unintentional or intentional misuse of the proprietary and confidential information or content. If Customer has received such email in error, or it is not the intended recipient, Customer shall contact the sender immediately and delete the email.

#### 4. **PAYMENT.**

- A. **Rates; Quotations.** Work will be done at Facility's rate card current at the date an order is received from Customer, unless Facility has submitted alternative rates to Customer in a written quotation, which shall be valid for thirty (30) days from the date of submission. Oral quotations are provided as an estimate only and shall not constitute a binding contract. All prices are subject to any applicable taxes. Rate cards are subject to change without notice.
- B. **Foreign Customers.** All work for non-U.S. customers will be accepted on a U.S. currency cash basis only, which includes travelers' checks, bank drafts and funds deposited by wire. Customer shall pay any costs associated with payment by non-U.S. customers.
- C. **Cancellation Fees.** All Cancellations must be made directly to the customer service department. If Customer cancels services or products, Customer shall pay for services rendered, or products ordered or produced, prior to cancellation. Customer shall pay any cancellation charges (up to 100% of the estimated costs for the period booked) that may apply, based on Facility's cancellation policy at the time of cancellation.
- D. **Terms of Payment.** All work shall be accepted on a C.O.D. basis unless credit has been established in advance. Payment of all invoices is due upfront and in full. If a payment is not made when due, a service charge of the less of one and half percent (1-1/2%) per month or the maximum allowable by law will be charged on all outstanding balances. In the event that the invoices are not paid in accordance with the terms set forth, any discount provided by Facility shall be revoked and the fee due for the work performed will be based upon the normal rate card in effect at the time the work was performed. Customer may not deduct from any payment due to Facility in respect of any set-off or counterclaim. Any communications written or oral regarding any dispute and/or payments relative to any invoice or account which is the subject of any dispute must be sent within ten (10) days from the date of such invoice to T3Media, Attn: Credit Manager, 1011 Calle Margarita, Santa Fe, NM. Customer will also pay Facility's costs of collection including but not limited to, reasonable attorney's fees.
- E. **Possession.** Facility may retain possession of any Deliverables until Facility has received payment in cleared funds for the services. Until such payment has been made, legal title to all Deliverables shall remain with Facility

(notwithstanding delivery or the passing of risk to Customer), the license granted to Customer in Section 12 below shall not take effect; and Facility may repossess any Deliverables in order to effect such payment, and Customer grants Facility an irrevocable license to entire Customer's premises to effect such repossession.

5. **RIGHT TO REFUSE PERFORMANCE.** Facility may, without liability, refuse or cease to perform services if Facility, in its sole discretion: (a) deems an Element to be unlawful, infringing, pornographic or degrading or otherwise objectionable, defamatory, libelous, or offensive with respect to applicable standards, customs, or practices; (b) Facility might subject itself to criminal or civil proceedings or to liability of any kind; (c) finds that Elements are not of the necessary technical standard to enable Facility to perform its work; (d) deems that Customer is in material breach of any of these Terms; or (e) deems that Customer is unable to pay its debts.

6. **LIMITATION OF LIABILITY.**

A. **Generally.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, (A) FACILITY GIVES NO WARRANTY EXPRESS OR IMPLIED AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, TITLE, NON-INFRINGEMENT, QUALITY OR OTHERWISE WITH RESPECT TO THE DEVELOPMENT, PRINTING, DUBBING, TRANSFERRING, AND PROCESSING OF THE ELEMENT OR ANY OTHER LABORATORY SERVICES PROVIDED BY FACILITY; AND (B) FACILITY MAKES NO WARRANTY AND ASSUMES NO RESPONSIBILITY FOR THE CHARACTER OR QUALITY OF THE MATERIAL, FILM PROCESSING, DUBBING, LOSS OF QUALITY ATTRIBUTABLE ANY PROCESS CARRIED OUT DURING THE PERFORMANCE OF SERVICES, OR SERVICES PROVIDED BY IT HEREUNDER.

B. **Limitations of Responsibilities of Facility.** It is understood and agreed that Facility is not an insurer and that payments made for service provided by Facility are based solely on the value of such services. The Elements and Deliverables are received, processed and stored solely at the risk of the Customer. Facility reserves the right to assign or subcontract all or any part of the work ordered. Facility may hold Elements at any place(s) that Facility deems appropriate, there being no promise or representation, expressed or implied, that the Elements and Deliverables will be retained or stored at any particular location or by under particular conditions.

C. **Limitations for Damage to or Loss of Elements.** In the event that the Elements are lost, destroyed or damaged for any reason, including through negligence of the Facility, its employees, subcontractors or agents, Facility liability shall be limited to the replacement of unexposed/unrecorded raw stock. If such Elements contain time coding, Customer specifically agrees to test such time coding for accuracy before relying on such time coding, Customer agrees to notify Facility of any inaccuracies in such time coding, and Facility agrees to correct such inaccuracies at Customer's expense. Facility's obligation shall be limited to correcting any such inaccuracies in time coding, and Facility shall not be liable for any loss, injury, or damage, direct, indirect or consequential, that may be incurred as a result of any inaccuracies in any time coding.

D. **Limitations for Defects in Delivery, Services or Materials.** If any Deliverable is defective or is erroneously labeled or shipped or if non-conforming services or materials are furnished by Facility, Facility's liability therefore shall be limited to replacement or repair of such defective Deliverable (at the option of Facility), and the correction of such

errors in shipment or labeling or the providing of conforming Facility services or material at Facility's expense; provided that the defective Deliverable is returned and written notice of such imperfection or error in labeling or shipment is received by Facility within ninety (90) days after shipment.

- E. **Limitations for Delay in Delivery.** Facility shall use reasonable efforts to deliver in accordance with delivery dates, but Facility is not liable for any loss or damages caused by Facility's failure to meet any delivery date or times, or failure to give notice of delay.
  - F. **Force Majeure.** T3M shall not be under any liability to the Client as a result of T3M being unable to perform any of its obligations due to circumstances beyond its reasonable control including without limitation industrial action, act of God, fire, flood, storm, acts of civil or military authorities, war, terrorism, shortages of material or acts, omissions or failures of third parties or the Client. T3M shall at its sole option be entitled to either perform such obligations as and when it is reasonably able to do so or to treat itself as wholly or partly released from all such obligations or instructions without liability.
  - G. **Damages.** Facility's total liability for any and all loss or damage arising out of or in connection with any contract for services shall be limited to the total sums paid by Customer to Facility under such contract. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL FACILITY BE LIABLE TO ANY PARTY FOR ANY LOST PROFITS OR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DAMAGES RESULTING FROM: (a) ANY DEFECTIVE ELEMENT, DELIVERABLES, SERVICES, PRODUCTS OR EQUIPMENT; OR (b) DAMAGES TO, OR DESTRUCTION OF ELEMENTS OR DELIVERABLE BY FACILITY, WHETHER OR NOT SUCH DAMAGES ARE CAUSED BY THE NEGLIGENCE OF FACILITY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; OR (c) ANY NEGLIGENCE OR BREACH OF DUTY (CONTRACTUAL OR OTHERWISE) BY FACILITY, INCLUDING, WITHOUT LIMITATION, IMPROPER STORAGE OR RETENTION, PROCESSING, PACKING, DELAY IN DELIVERY OR SHIPMENT, OR ERRORS IN SHIPMENT, OR LABELING.
7. **FACILITY LIENS; SECURITY INTEREST.** In addition to any other liens, rights or remedies given to Facility under applicable law herein, Customer hereby grants, assigns and transfers to Facility a security interest in and lien on any and all Elements and Deliverables in the possession of Facility as security for payment of any and all services and materials furnished to Customer by Facility. The parties agree that if the Elements or Deliverables are voluntarily restored or delivered to Customer or some third person prior to payment to Facility for such materials and services, the lien and security interest therein shall not be extinguished but shall survive, and upon request by Facility, Customer shall execute such documents including a Financing Statement, as may be required to protect such security interest.
- A. **Additional Payments.** In the event Facility exercises its rights hereunder by selling the Elements or Deliverables at public or private sale, then Customer agrees to pay Facility on written demand whatever deficiency may be due after the proceeds are applied to payment of the indebtedness, including, without limitation, all legal and other costs, expenses and charges incurred in the collection, sale, delivery or preservation of the Elements or Deliverables.

- B. **Title After Sale.** Customer agrees that if Facility shall enforce its rights under any law, it or any other person acquiring title or interest in or to any Elements or Deliverables at public or private sale, shall have and is hereby granted, all right, title and interest of Customer in the Elements or Deliverables.
8. **RETENTION AND DISPOSAL OF INACTIVE ELEMENTS.** Provided that all obligations that may arise hereunder have been paid to Facility, Customer shall remove from Facility's premises all Elements and Deliverables within three (3) months after the last work thereon. If Customer fails to remove said Elements or Deliverables as herein provided, Facility may at any time, without further notice or liability to Customer or any other person, begin charging Customer a storage/retention fee per Element, destroy, erase, reuse or make any disposition of said Elements or Deliverables as Facility sees fit. Customer agrees to indemnify, hold harmless and defend Facility harmless from all liability arising out of or connected with Facility's destruction or disposition of said Elements or Deliverables as provided herein. Facility will have the right to retain separate counsel at Customer's expense.
9. **INSURANCE.** Customer agrees to insure fully, at its own expense, Elements and Deliverables against all insurable risk, including damage or destruction of such Elements and Deliverables through the negligence of Facility. Such insurance against any and all losses (including incidental and consequential losses) for which insurance is available and the policy and the policy of insurance shall provide that the insurer waives all claims of subrogation against Facility. Facility shall not insure any Elements or Deliverables.
10. **TECHNICAL CALIBRATION AND EXHIBITION.** Customer hereby grants Facility the right to use the Elements for technical calibration to adjust the system used to process the Element. Customer also hereby grants Facility the limited right to exhibit the Deliverables, or excerpts thereof, on the Facility websites, in press releases, or in "demo reels" for the limited purpose of demonstrations of Facility's work in accordance with standard industry practice.
11. **COMPLETION AND DELIVERY.**
- A. In all cases, delivery shall be at T3M's premises. Risk shall pass to the Client on delivery.
- B. At T3M's sole discretion, T3M may agree (at the Client's sole expense and risk) to pack and dispatch Materials to any address specified by the Client.
- C. T3M shall use all reasonable efforts to deliver in accordance with delivery dates but T3M shall not be liable for any loss or damages of any nature caused by any failure of T3M to meet any delivery date and time of completion and delivery shall not be of the essence.
12. **PROPRIETARY RIGHTS.**
- A. **Customer Ownership.** As between Customer and Facility and subject to these Terms, Customer owns and shall retain all right, title and interest, including, without limitation, all IP Rights, in and to (i) the Elements, and (ii) upon full payment of the services, the Deliverables, except for the Methods used therein for which Customer has a license as set forth below ("Customer IP").

- B. **License to Methods.** Facility hereby grants Customer a non-exclusive, irrevocable, royalty-free, fully paid-up license, throughout the universe and in perpetuity, to use the Methods only as contained in the Deliverables solely as necessary in the distribution of the Customer products into which such Deliverables are incorporated.
- C. **Facility Ownership.** As between Customer and Facility, Facility owns and shall retain all right, title, and interest, including, without limitation, IP Rights in and to the Methods ("Facility IP"). Customer acknowledges and agrees that: (i) Facility shall have the right to use the Facility IP in performing services for third parties and (ii) the work product and deliverables rendered as the result of such services may be substantially similar to the Deliverables, provided that Facility does not use any Customer IP; and (iii) the Methods are Facility's trade secrets.
- D. **Additional rights.** Each party hereby expressly reserves all rights in and to its IP Rights, and the other party shall not acquire any such rights, whether by virtue of these Terms, operation of law, estoppels, or otherwise. Each party shall not contest, directly or indirectly, the validity or ownership of the other party's IP Rights. Each party shall not permit any other third parties to: (a) create derivative works from the other party's IP Rights, (b) disassemble, decompile, reverse engineer, or otherwise attempt to discern any aspects of the other party's IP Rights, (c) sublicense, lease, rent, loan or distribute or otherwise transfer or grant access to the other party's IP Rights, or (d) otherwise use or attempt to exploit the other party's IP Rights in a manner not expressly authorized by these Terms.

### 13. **INTELLECTUAL PROPERTY.**

- A. All copyright and other intellectual property rights of whatever nature resulting from the Services and/or any Materials shall remain vested in and be the exclusive property of T3M.
- B. Subject to T3M having received payment in full of all monies due, T3M grants the Client an exclusive license to publish, copy, transmit, broadcast and otherwise use the Materials in an unmodified form (save that T3M shall have a right to publish, copy, transmit, broadcast and otherwise use the Materials for the purposes of promoting T3M).
- C. The Client grants to T3M a non-exclusive license to edit, adapt, reproduce ,receive, store, transmit or otherwise process or use in any way whatsoever the Client Materials for the purpose of providing the Services and refer to the Client and the title of the relevant Client project in T3M advertising and/or promotions.
- D. Client also hereby grants T3M the limited right to exhibit the Client Materials, or excerpts thereof, on the T3M websites, in press releases, or in "demo reels" for the limited purpose of demonstration of T3M's work in accordance with standard industry practice.
- E. The Client shall ensure that T3M is given screen credits in respect of the Services in a form approved in advance by T3M.

14. **MISCELLANEOUS.**

- A. **Governing law; Venue.** These shall be governed by New Mexico law. The exclusive venue for all legal proceedings shall be the County of Santa Fe, New Mexico.
- B. **Modification.** These Terms constitute the entire agreement between Facility and Customer with respect to the subject matter contained herein. These Terms apply to every contract for the provision of services by Facility to the Customer and the supply of services by Facility shall not constitute acceptance of any other terms and conditions. Facility reserves the right to make changes to these Terms from time to time. An up-to-date copy will be available at [www.t3media.co](http://www.t3media.co) or on request. Sales personnel are not authorized to amend, alter, waive or modify the terms of these Terms.
- C. **Notices.** All notices and communications hereunder to Facility shall be sent to Tercero Photography Studios, 1011 Calle Margarita, Attn: Legal Department, unless notified otherwise in writing. Any notice or communication hereunder to Facility shall be deemed to have been duly given when in writing and actually received by Facility. All notices or communications hereunder to Customer shall be deemed to have been duly given when in writing and personally deposited in the United States Mail with postage prepaid to Customer at the last known address of Customer.
- D. **Waiver.** No failure or delay by Facility in exercising any of its rights under these Terms shall be deemed to be a waiver of any term, Customer's breach or any subsequent breach of the same.
- E. **Severability.** The invalidity of any one of these Terms shall not affect the validity of the remaining Terms.
- F. **Assignment; Subcontracting.** These Terms shall bind and inure to the benefit of the respective heirs, principal representatives, successors, and assigns of the parties; provided that any credit extended to Customer shall not be extended to its successors and assigns without successful completion of a new credit application. Facility may assign these Terms or subcontract its services at its discretion and without notice to Customer.
- G. **Parties.** These Terms shall not constitute a partnership or employment relationship between the parties.
- H. **Rights and Remedies.** Facility's rights and remedies shall be cumulative and not exclusive, and the exercise of any right or remedy shall not affect its right to enforce one or more other remedies.

15. **WARRANTIES AND LIABILITY.**

- A. T3M shall use reasonable skill and care in performing the Services.
- B. T3M hereby excludes to the fullest extent permitted by law any and all warranties, terms and conditions other than those set out expressly herein (whether express, implied by statute, contract, course of dealing or otherwise) including without limitation any implied warranties as to fitness for purpose or satisfactory quality.
- C. T3M shall not in any circumstance be liable for:

1. any loss of business, goodwill, reputation, contracts, opportunities or profits (in each case whether arising in the normal course of events or T3M knew of the possibility of such loss);
  2. any indirect, consequential or special loss or damage;
  3. or any loss of quality attributable to any process carried out during the performance of the Services.
- D. The Client's particular attention is drawn to the fact that prices quoted for the work undertaken by T3M do not take any account of any special value of any Client Materials passed to, or stored by, T3M. Client acknowledges that the cost of insuring Client Materials against all risks to its full value (if such insurance could be obtained) would result in a substantial increase in T3M's prices for Services. Client will insure all Client Materials passed to T3M against all risks to their full replacement value (including any consequential loss they may suffer as a result of its loss or damage) and T3M accepts no liability whatsoever for any loss or damage caused by the default or negligence of its servants, agents, sub-contractors or equipment save that T3M shall on request refund the current purchase cost of any blank film stock or video tapes damaged or lost in its possession by reason of T3M's negligence or default.
- E. Save as set out above, T3M's total liability for any and all loss or damage arising out of or in connection with any contract for Services with the Client shall be limited to the total sums paid by the Client to T3M under such contract.
- F. Nothing herein shall be construed as excluding or limiting T3M's liability for death or personal injury caused by T3M's negligence.
- G. The Client shall indemnify T3M, its directors, employees, contractors and agents against any and all liability, costs, expenses, claims and demands of any nature whatsoever, arising out of or in connection with the Client's Materials and any acts or omissions of the Client, its employees or representatives, including without limitation any breach of these Terms.
- H. The Client warrants that:
1. where T3M uses the Client Materials, such use will not give rise to a breach of copyright trademark or any other proprietary interest of any third party; and
  2. the Client has made a security copy or second copy of the Client Materials and any master copy.
  3. in the event Client requests access to its content: any information contained in the email notifying Client of such access is proprietary and confidential information intended solely for the addressee(s) and is not to be disseminated, disclosed, forwarded or distributed to any other parties, publicly or privately. Acting on, accessing and/or receiving the content/material referenced therein constitutes Client's acceptance of these conditions and any liability arising from the unintentional or intentional misuse of the proprietary and confidential information or content. If Client has received such email in error, or it is not the intended recipient, Client shall contact the sender immediately and delete the email.



16. **STORAGE OF CLIENT MATERIALS.**

- A. T3M shall be entitled to destroy or dispose of any Client Materials not collected from T3M within six months after the completion of any Services and, until collected, such Client Materials shall be held by T3M at the Client's sole risk and liability.
- B. T3M will only store Client Materials on the written instructions of the Client subject to the Client paying (unless otherwise agreed in writing) monthly in advance storage charges at the rates published from time to time by T3M ("Storage Charges") and any Client Materials so stored will be stored at the Client's sole risk and liability.
- C. If the Client fails to take delivery of the Services and/or Customer Materials within 21 days of notification of completion of the Services, T3M will be entitled to charge and the Client obliged to pay Storage Charges.

17. **CONFIDENTIAL INFORMATION.** The Client shall keep confidential and secure all information relating to T3M and the Services (the "Group Information") and shall not disclose such Group Information to any third party (other than its employees or professional advisors who need to know the same) without T3M's prior written consent save to the extent that any Group Information is a) in the public domain not through any fault of or disclosure by or on behalf of the Client; or b) required by law to be disclosed.

18. **SUB-CONTRACT.** T3M reserves the right to sub-contract at its discretion and without notice to the Client.

19. **LICENCE TO OCCUPY.** Any occupation of T3M's premises by the Client will:

- A. not confer exclusive occupation on the Client who shall occupy as licensee only;
- B. not create any relationship of Landlord and Tenant;
- C. be personal to the Client; and
- D. (unless otherwise agreed) be subject to the payment of a license fee as imposed by T3M.



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