

General production and delivery terms of the Trade Association of Film and Music in Austria (FAMA) for sound studios

from 1 January, 1998

1 GENERAL

1.1 The general production and delivery terms of FAMA for sound studios shall apply to all commissioned productions. They are the basis for legal transactions between businesses and are an essential part of every offer and every contract.

1.2 In the event of legal transactions with consumers within the meaning of the current version of the Consumer Protection Act BGBl Nr 140/1979, these are only valid insofar as they do not contradict the first main part of that law.

1.3 A legal obligation of the sound studio shall come into existence only as the result of the official confirmation of the offer or contract signed by both parties.

2 COSTS

2.1 The contractually agreed price shall include all the production costs, respectively, the services shall be invoiced according to the valid price list available from the individual sound studio plus VAT (currently 20%). Packaging, freight, tariffs and any insurance are not included in the net price. If prices are calculated per hourly rate, the time as measured by the sound studio shall be determinative, whereby every new hour shall be charged in full.

2.2 An additional contract can be concluded for special services conducted upon request by the client (organisation, choice of speaker, etc.). The herein contractually agreed price shall also be paid by the client if the production of the phonogram should not materialise for whatever reason.

2.3 The client shall bear the costs for any expert advice requested by him/her.

3 PRODUCTION, MODIFICATION, APPROVAL, DELIVERY DATE

3.1 The production shall begin earliest after the signing of the production agreement.

3.2 Booked dates that are not cancelled latest 24 hours prior to the beginning of the appointment shall be invoiced in full.

3.3 The technical design of the phonogram shall be up to the sound studio. The client shall be permitted to be present during the production, if so requested. The sound studio shall inform the client of the completion of the production work and shall agree on an appointment for the approval of the demo.

3.4 The approval shall mean the acceptance of the technical quality. After the demonstration of the phonogram, the client or an authorised agent shall confirm the sound studio of the approval in writing without delay. Any objections that may arise shall be made known to the sound studio with indication of the grounds for refusal latest within 3 working days after delivery or service. Later notices of defects shall be precluded. The disputed phonograms shall be made available to the sound studio at the same time as the notice of defects.

3.5 If the client requests modifications after approval of the phonograms, these requests shall be made in writing, and the sound studio shall be obligated and solely entitled to make the changes. Such modifications shall be at the expense of the client. The same shall be valid for modification suggestions made by the client which result in a different price calculation than approved before the start of the production.

3.6 Delivery deadlines or dates shall not be binding. Non-compliance with deadlines or dates shall not release the client from the obligation to accept.

Delivery costs and risks shall be borne by the client.

The sound studio shall not be obligated to store the original sound material.

4 LIABILITY

4.1 The sound studio commits itself to produce a technically perfect product.

4.2 Should circumstances occur which make the commissioned production of the phonogram impossible, the sound studio shall only be liable for malice and gross negligence. This shall be equally valid for delayed completion. The impossibility of the production or the delayed completion of the phonogram, for which neither the client nor the sound studio are at fault, shall permit the client to withdraw from the contract, however all services performed to date by the sound studio must be remunerated.

4.3 Defects recognised by the sound studio shall be removed by the studio. If the corrections cannot be carried out without the participation of the client and the client fails to respond accordingly within a time period set at minimum two weeks, the sound studio shall consider the contract as fulfilled. The sound studio shall be entitled to refuse the removal of the defects until any payments due up until the point in time of the corrections have been settled.

4.4 In case of loss and/or negligent damage of the material intended for adaptation that is provided by the client, the sound studio shall only be responsible for the replacement of the audio and/or video material in the amount and length of the lost or damaged parts. No substitution shall be provided for damaged computer data-storage-media. The sound studio shall not be obligated to take out insurance.

5 PAYMENT

5.1 Unless otherwise agreed, the following payment conditions shall apply:

- 1/2 when the order is placed
- 1/2 when the phonogram is delivered

6 COPYRIGHT, ASSOCIATED RIGHTS

6.1 The client shall be liable for having the necessary authorisation to commission the production, adaptation, duplication of audio recordings for any purpose, in particular for commercial use. Further, the client declares to be authorised or hold licences to the copyright and associated rights and/or have adequate authorisation from the author or rightholder.

6.2 The client shall bear liability for any claims from third parties against the sound studio as a result of its performance of the contract, and the client shall be obligated to indemnify and hold harmless the sound studio.

6.3 The client explicitly declares agreement with the statutorily mandated notification of the relevant collecting societies by the sound studio.

7 OTHER PROVISIONS

7.1 In case several clients commission the sound studio for the order, before commencing performance, it shall be stipulated in writing which client has the power of attorney over the other clients for making declarations in connection with previous items. Especially the person shall be named who is responsible for the approval of the phonogram.

7.2 Changes to the production contract and/or production conditions shall require written confirmation. In the event that a provision in the production contract should nullify any of the provisions of these production and delivery terms, it shall not affect the validity of the remaining provisions.

7.3 Phonograms that have been adapted and/or delivered by the sound studio shall remain the property of the sound studio until full payment of all outstanding accounts in connection with the commissioning of the work by the client - including interest and ancillary costs - is effected. During the reservation of proprietary rights, a resale or other disposition by the client without written permission from the sound studio shall be inadmissible and void.

The sound studio shall reserve the right to retain any objects the client has ceded to or stored at the sound studio, including material produced for the client, until all outstanding accounts in connection with the commissioning of the work are settled.

The sound studio shall bear no liability for left objects; these shall be stored at the expense and risk of the client at the sound studio, which shall be entitled, upon advance written notification, to store such objects on the premises of a third party at the expense of the client.

7.4 The place of performance shall be the registered place of business of the sound studio.

7.5 The parties agree that in the event of disputes, the place of jurisdiction shall be the court at the registered place of business of the sound studio. That court shall apply Austrian law.