

Terms & Conditions of Business

INTERPRETATION

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

"Agreement" means the Quote, these Terms and any Contract for Services.

'Client' means the person, SPV, company or other entity who has instructed The Refinery to carry out the Services (as defined below) as set out in this Agreement (also a "party").

"Client Materials" means any goods, products and materials in whatever form (including all Intellectual Property Rights in the same) provided or made available by the Client to The Refinery for use in connection with this Agreement, and including any master tapes, film negative prints, sound tapes, video tapes or visual images or sound held in any media.

'Confidential Information' means such information as The Refinery may from time to time provide to the Client (in whatever form including orally, written, in electronic, tape, disk, physical or visual form) relating to this Agreement and the Works, and all know-how, trade secrets, tactical, scientific, statistical, financial, commercial or technical information of any kind disclosed by The Refinery to the Client whether in existence prior to the parties entering into this Agreement or which subsequently comes into existence, including any copies, reproductions, duplicates or notes in any form whatsoever.

'Contract for Services' means any subsequent contract for the provision of Services entered into between The Refinery and the Client pursuant to these Terms.

'Intellectual Property Rights' means copyright (including rights in computer software), database rights, design rights, moral rights, patents, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, and topography rights, know-how, secret formula and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licenses and consents in respect of any of the rights and forms of protection mentioned in this definition.

'Quote' means a quote presented by The Refinery in respect of Services to be provided to the Client.

'Services' means the services to be provided by The Refinery for the Client pursuant to this Agreement, and includes the Works (as defined below) arising out of the Services.

'Terms' means these terms and conditions of business.

'The Refinery' means The Refinery, a South African company (also a "party").

'The Refinery Intellectual Property' means all rights, including Intellectual Property Rights, in and to (i) The Refinery's proprietary underlying software, project files, working files, libraries, plugins, workflows, engines, subroutines and development tools and utilities (in source code and object code form), including underlying models, rigging, animation data and all pre-existing intellectual property rights therein, which in each case are of general use or applicability in VFX and which were in existence prior to the parties entering into this Agreement or developed independently of this Agreement; and (ii) any other materials, in whatever form (including documents, information, data and software), which were in existence prior to the parties entering into this Agreement or developed independently of this Agreement.

'Works' means the products and materials created, developed and produced by The Refinery for the Client pursuant to this Agreement.

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

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

1.4: Any reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

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FORMATION OF CONTRACT

2.1: The Services will be carried out in accordance with these Terms, any Quote, and any subsequent Contract for Services to the exclusion of any other terms and conditions the Client seeks to impose whether orally or in writing, unless agreed otherwise in writing by the parties.

2.2: All representations, conditions or warranties, or other terms concerning the Services which might otherwise be implied or incorporated in this Agreement, whether by statute, common law or otherwise are, to the maximum extent permitted by law, excluded from this Agreement or any variation thereof, unless expressly accepted and executed by The Refinery in writing.

2.3: No employee, consultant or agent of The Refinery has the power to vary these Terms orally or in writing, or to make any statement or representation about the Services offered, their fitness for any purpose or any other matter.

2.4: Upon requesting Services from The Refinery, the Client shall be deemed to have accepted these Terms and these Terms shall become binding as between the Client and The Refinery, notwithstanding the absence of any formal acknowledgement.

2.5: The Client and The Refinery may enter into a Contract for Services which will constitute a separate binding contract between the parties which shall incorporate (with any necessary changes) these Terms. In the case of any conflict or inconsistency between these Terms and any subsequent Contract for Services, these Terms shall take precedence.

PRICES AND TERMS OF PAYMENT

3.1: The Refinery will invoice the Client for the prices quoted in respect of Services to be provided at the times set out in the relevant Quote or Contract for Services.

3.2: The Refinery shall be entitled to make an adjustment to any quoted prices in the event that additional costs are incurred, or likely to be incurred, by reason of:

(a) the Client Materials (or any part thereof) being, in the reasonable opinion of The Refinery, in any way defective, in an unsuitable format (or a different format to that which The Refinery is expecting to receive the same) or of unsuitable quality for normal processing;

(b) any information supplied by the Client or any third party in connection with this Agreement and the Services being inaccurate or incomplete, or failing to give The Refinery a full and accurate indication of the work involved and/or time and resources required;

(c) changes by the Client or any third party in its requirements for the Services or Works;

(d) The Refinery stipulating that accurate costing for Visual Effects (VFX) services can only be determined and finalised upon receipt of the locked cut from the Client. Prior to the provision of the locked cut, any quotes or estimations provided for VFX services are preliminary and subject to adjustment;

(e) The Refinery not being held responsible or liable for any alterations or discrepancies arising from physical production, including but not limited to continuity errors, wire removals, or any elements that were not explicitly discussed or adequately budgeted for during the pre-production phase;

(f) Exceptional circumstances outside the control of The Refinery, including currency fluctuations and changes in third-party costs.

3.3: Subject to clause 3.4 and unless otherwise agreed by The Refinery in writing, all invoices rendered by The Refinery are payable within 30 days of the date of invoice and any interim invoices are payable within 7 days of the date of invoice.

3.4: The Refinery expressly reserves the right, at its sole option, to require payment by instalments during the performance of this Agreement and/or to require payment of all amounts due to The Refinery in respect of Works to be provided prior to delivery of such Works.

3.5: The Client shall pay all amounts owing to The Refinery in full and shall not exercise any rights of set off against invoices submitted.

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3.6: Payment of all amounts shall only be made in the currency in which they are invoiced and shall not be subject to any deductions or charges whatsoever.

3.7: In the event of default in payment by the Client under this Agreement, The Refinery shall be entitled, without prejudice to any of its other rights or remedies, to suspend any further performance of the Services without notice and to charge interest on any amount outstanding at the rate of the lesser of one and one-half percent (1.5 percent) per month or the highest amount permitted by law, from the due date of payment to the actual date of payment.

3.8: All amounts stated in this Agreement for the services provided are exclusive of Value Added Tax (VAT). For clients within applicable jurisdictions, VAT will be added to the final invoice at the prevailing rate as per current legislation. For international or foreign clients, where VAT does not apply, the quoted amounts will not include VAT.

3.9: Payment for services rendered by The Refinery is due as agreed upon and is independent of the client's ability to secure funding from external sources, including but not limited to the Department of Trade, Industry and Competition (DTIC), the National Film and Video Foundation (NFVF), the Industrial Development Corporation (IDC), investors, grants, or any other third-party funds.

3.10: The quotes provided by The Refinery do not include the following:

- Music composition, clearances, licensing, and related fees.
- International Automated Dialogue Replacement (ADR) and Studio recordings.
- Dolby License fees.
- Music mixing and composition services. It is expected that music cues will be provided by the production team and/or the composer.

3.11: Quotes are valid for thirty (30) days.

3.12: To initiate the commencement of any work under this agreement, The Refinery may require a deposit of up to 50% of the total quoted amount. This deposit is a precondition for beginning any work related to the project. The specific percentage and terms of the deposit will be determined based on the project's scope and requirements, and will be clearly outlined in the project-specific quotation provided to the Client.

PERFORMANCE AND DELIVERY

4.1: Unless otherwise agreed in writing between the parties, all times specified in a Quote or Contract for Services for performance of the Services and delivery of the Works are given in good faith but are not guaranteed by The Refinery.

4.2: Notwithstanding that the parties may have agreed that time is of the essence in respect of specified Services or Works, the time for performance of the Services or delivery of the Works shall in every case be dependent upon prompt receipt of all necessary information, materials (including Client Materials), final instructions and/or approvals from the Client. The Client acknowledges and agrees that any changes to its requirements and/or the occurrence of any of the circumstances in clause 3.2 may result in delay in performance or delivery, for which The Refinery shall not be liable.

4.3: Where the Works are to be delivered electronically, the Client acknowledges and agrees that:

Electronic delivery is not a completely secure medium of communication and that an unauthorised third party may intercept, tamper with, or delete the Works to be delivered electronically;

and

Electronic delivery may involve reliance upon third-party providers and data carriers, over which The Refinery has no control.

4.4: The Refinery shall not be responsible for and shall have no liability to the Client or any third party for:

- Any delay in delivery or any non-receipt of any Works delivered electronically;

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- Any loss or damage (including loss of data) that results from any person gaining unauthorised access to any Works delivered electronically;
- Use or disclosure of any data obtained by any third party as a result of that third party gaining unauthorised access to any Works delivered electronically; and
- 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 Works delivered electronically.

4.5: The Refinery's foremost intention is to always deliver services of the highest standard and within agreed timelines. However, it is important to recognize that when a discount exceeding 30% on the quoted price is applied, the reduced financial allocation may impact available manpower and man-hours. As a result, this could necessitate adjustments to the project's timelines and the scope of quality assurances. The Refinery commits to transparently and promptly communicating any such adjustments to the Client. Furthermore, services quoted by The Refinery include hard costs, and therefore, in cases of substantial discounts, projects with standard pricing may take precedence in terms of scheduling and resource allocation. This approach is crucial to ensure operational efficiency and maintain the quality of service for all clients of The Refinery.

INTELLECTUAL PROPERTY

5.1: The Client acknowledges that The Refinery (or its third-party licensors) owns, and shall retain ownership of, The Refinery Intellectual Property, and The Refinery shall not at any time be required to deliver to the Client any of The Refinery Intellectual Property whatsoever.

5.2: The Client acknowledges and agrees that if in the course of performing the Services (including any processing or production of materials on behalf of the Client) The Refinery discovers or devises any techniques or know-how, all rights of every kind in and to such techniques and know-how shall belong to and vest in The Refinery and shall be deemed to be The Refinery's Intellectual Property for the purposes of this Agreement.

5.3: The Refinery shall retain ownership and possession of, and all rights (including all Intellectual Property Rights) in and to, any original character design, ideas, or concepts presented or created by The Refinery in relation to this Agreement, unless otherwise agreed in writing by the parties. Where the Client requires a license to use any such original character design, ideas, or concepts, for whatever purpose, the terms of such license shall be agreed by the parties in writing pursuant to a Quote and/or any subsequent Contract for Services.

5.4: Intellectual Property and Working Files: The Refinery shall retain ownership, possession, and all rights, including all Intellectual Property Rights, in and to any original character design, ideas, concepts, and working files (such as After Effects, Pro Tools, Nuke, etc.) created or presented by The Refinery in relation to this Agreement, unless otherwise agreed upon in writing by both parties. These working files constitute proprietary information, revealing the methodologies and inner workings of The Refinery. Should the Client require access to or a license to use any such original character designs, ideas, concepts, or working files for any purpose, the terms and conditions, including any applicable fees for such access or license, shall be mutually agreed upon by the parties in writing, pursuant to a Quote and/or any subsequent Contract for Services.

5.5: The Client hereby grants to The Refinery a perpetual, non-exclusive, transferable, sub-licensable, royalty-free license to use the Client Materials to the extent necessary for The Refinery and/or its suppliers to provide the Services and the Works.

CONFIDENTIALITY

6.1: Where Confidential Information has been disclosed to the Client, the Client acknowledges that such Confidential Information has been disclosed in confidence, may have considerable value and is of significant importance to The Refinery.

6.2: The Client further acknowledges that The Refinery makes no representation with respect to the accuracy or completeness of any Confidential Information, except to the extent agreed by and executed by The Refinery in writing.

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6.3: The Client agrees to keep the Confidential Information, including The Refinery Intellectual Property provided to the Client pursuant to clause 5, in complete confidence and not to disclose it to any third party. Except as expressly permitted under this Agreement, the Client shall not use, copy in whole or in part, modify or adapt the Confidential Information in any way without The Refinery's prior written consent, which may be given or withheld in its absolute discretion.

6.4: The Client may use the Confidential Information only for the purposes contemplated by this Agreement and for no other purpose. The Client may disclose the Confidential Information to such of its officers, employees, and agents to whom disclosure is necessary for the performance of its obligations under this Agreement provided the Client shall ensure such officers, employees, and agents observe the obligations of confidentiality imposed by this clause 6 and the Client shall be liable for any failure by them to do so.

6.5: The Client shall not be in breach of this clause 6 if it discloses Confidential Information where such disclosure is required by law, regulation, or order of a competent authority provided that The Refinery is given, where possible, reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

6.6: The Client acknowledges that any breach of its confidentiality obligations under this clause 6 would cause The Refinery irreparable and unquantifiable damage and that The Refinery shall be entitled to seek and obtain (without prejudice to any other rights or remedies available to it in contract or at law) injunctive or other equitable relief against or in respect of any actual or threatened breach of this clause 6 by the Client.

6.7: On receipt of a written demand, the Client shall return to The Refinery, or destroy at The Refinery's option, any and all written documents or materials containing Confidential Information, together with all copies thereof, and if The Refinery should so require the Client shall, when returning documents or materials, provide to The Refinery a certification duly executed by an officer of the Client confirming that the Client has complied with all of its obligations under this clause 6.

TERMINATION

7.1: Except where otherwise stated in a Quote or Contract for Services, this Agreement will expire on completion of the Services to be provided pursuant to it.

7.2: This Agreement (and any Services to be provided under it) may only be terminated with The Refinery's written consent and in accordance with these Terms (and if applicable, the terms of any subsequent Contract for Services). The giving of consent shall not in any way prejudice The Refinery's right to recover from the Client full compensation for any loss or expense arising from such termination of this Agreement.

7.3: Notwithstanding clause 7.2 and without prejudice to any other rights or remedies available to The Refinery, the Client may give The Refinery written notice of termination of this Agreement (and any Services to be provided thereunder), provided that where such notice is received by The Refinery:

- less than 24 hours prior to the date for performance or the commencement of performance of the relevant Services (the "Start Date"), The Refinery shall be entitled to charge the Client the full price specified in the Quote or the relevant Contract for Services or, if none is stated, the applicable amount chargeable to the Client based on The Refinery's ordinary rate current at the Target Date; and
- less than five working days but more than 24 hours prior to the applicable Start Date, The Refinery shall be entitled to charge the Client one half of the full price specified in the Quote or the relevant Contract for Services or, if none is stated, one half of the applicable amount that chargeable to the Client based on The Refinery's ordinary rate current at the Target Date,
- in each case reflecting the fact that The Refinery is unlikely to be able to secure an order for the Services and/or to reallocate the resources allocated to the Client's order within the specified timeframes.

7.4: The Refinery may terminate this Agreement (and any Services to be provided under it) at any time on written notice to the Client. Termination under this clause shall be without prejudice to any other rights or remedies available to The Refinery (including The Refinery's right to recover payment from the Client for any Services provided).

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7.5: Any provisions of this Agreement which by their nature are intended to survive termination or expiration (including clause 6 (Confidentiality) and clause 8 (Liability and Indemnity)) shall remain in full force and effect notwithstanding any termination or expiration of this Agreement.

LIABILITY AND INDEMNITY

8.1: Nothing in this Agreement shall exclude or in any way limit either party's liability for death or personal injury caused by its negligence.

8.2: Subject to clause 8.1 and without prejudice to any other provision of these Terms, the Client agrees that:

- This Agreement states the full extent of The Refinery's obligations and liabilities in respect of the Works and performance of the Services;
- Under no circumstances shall The Refinery be liable for any indirect, special, punitive, incidental or consequential loss or damage whatsoever, including but not limited to any loss of profits, business interruption, loss of goodwill, loss of use or corruption of data or software;
- The Refinery's entire liability for any direct loss suffered by the Client under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall be limited to the fees paid by the Client in accordance with this Agreement.

8.3: The Client shall indemnify and hold harmless The Refinery and its officers, directors, employees and agents from and against all claims or proceedings and all loss and damage of any kind, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, The Refinery as a result of or in connection with:

- any defamatory or libellous matter or any infringement or alleged infringement of a third party's Intellectual Property Rights or other rights arising out of the supply or use of the Client Materials in relation to the Works and/or in the course of carrying out the Services;
- any damage to property caused by The Refinery in the course of carrying out the Services as a result of any act or omission of the Client (including its officers, employees, consultants and agents); and
- any breach by the Client, including its officers, employees, consultants and agents, of any of these Terms or the terms of any Contract for Services.
- THE REFINERY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

INSURANCE

9.1: The Client shall maintain and keep effective at all times insurance policies with reputable insurers as are sufficient to protect the Client against any loss or liability which it may incur or suffer arising out of this Agreement, including insurance which covers the Client for any damage or loss for which The Refinery is not liable pursuant to these Terms, and which protects the Client against any accidental loss, damage or destruction to any Client Materials or any other materials of any kind supplied by the Client to The Refinery while in its possession or control. The Refinery may at any time request the Client to provide copies or certificates of insurance or other evidence to prove compliance with this clause.

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STORAGE OF CLIENT MATERIALS

10.1: The Refinery shall be under no liability whatsoever in respect of any loss or damage to or destruction of the Client Materials (whether such Client Materials are in The Refinery's possession or otherwise) and it is the Client's responsibility to ensure that it has appropriate back-up copies of all Client Materials.

10.2: In accordance with clause 9 above, the Client shall insure all Client Materials to their full value against all risks.

10.3: The Client shall provide details to The Refinery for the return of the Client Materials within two months from the date of confirmation of a Quote or Contract for Services, as applicable. If the Client does not provide The Refinery with details for the return of the Client Materials, The Refinery shall send the Client Materials to its archive upon completion of the Services and The Refinery shall be entitled to charge the Client reasonable storage charges for doing so.

10.4: Where Client Materials are supplied or specific instructions are given by the Client, The Refinery accepts no liability for any reduction in the quality of the Services caused by defects or errors in or the unsuitability of such Client Materials or by The Refinery's use of the Client Materials or adherence to any of the Client's specific instructions.

CUSTOMER INPUT AND ACCESS TO/USE OF THE REFINERY'S PREMISES AND CONTENT

11.1: The Client shall be solely responsible for ensuring that all information, advice and recommendations given to The Refinery either directly or indirectly by the Client or by the Client's employees, consultants or agents are accurate, correct and suitable. Acceptance of or use by The Refinery of such information, advice or recommendations shall in no way limit the Client's responsibility hereunder, unless The Refinery specifically agrees in writing to accept responsibility.

11.2: The Client hereby undertakes to The Refinery to ensure that all of its personnel (including its employees, consultants and agents) who at any time have access to any premises occupied by The Refinery or at which any of The Refinery's equipment shall be kept, shall at all times:

- observe all rules, policies and regulations in force at the applicable premises, including all health and safety regulations and any rules governing the use of equipment and/or facilities at the applicable premises;
- keep confidential and not divulge or communicate or make any use of any Confidential Information which the applicable person shall become aware of as a result of being present at the applicable premises.

PUBLICITY

12.1: The Refinery reserves the right to publicise, advertise, and market the Works on its website(s), social media site(s), blog(s), in pitches to third parties, in connection with any appropriate industry awards, or through any other channels it deems appropriate, as The Refinery may in its sole discretion decide, without the prior written consent of the Client. However, such publicity activities by The Refinery shall only commence after the Works have been aired for the first time.

12.2: The Client hereby grants to The Refinery a perpetual and royalty-free license to use the Works throughout the world for the purposes of clause 12.1 above and in order for The Refinery to promote its business by whatever means it sees fit.

FORCE MAJEURE

13.1: In the event of the Services 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, pandemic, health emergency or by any other cause beyond The Refinery's control, The Refinery may, at its option, suspend performance of or terminate this Agreement, without liability to the Client for any resulting damage or loss, such suspension or termination being without prejudice to The Refinery's right to recover all sums owing to it in respect of Services and Works delivered and costs incurred up to the date of suspension or termination.

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SUBCONTRACTORS

14.1: The Refinery shall be entitled to appoint subcontractors to carry out all or any of its obligations under this Agreement.

GENERAL

15.1: Modification: No modification of this Agreement (including any of the Services or Works to be provided hereunder) shall be valid unless it is in writing and executed by both parties.

15.2: Waiver: A waiver of any right or remedy under this Agreement is effective only if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy.

15.3: Severance: If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

15.4: Independent Contractor: The parties acknowledge that The Refinery is acting as an independent contractor. Nothing in this Agreement will be construed to constitute or appoint either party as the agent, partner, joint venturer or representative of the other party for any purpose whatsoever, or to grant to either party any right or authority to assume or create any obligation or responsibility, express or implied, for or on behalf of or in the name of the other, or to bind the other in any way or manner whatsoever.

15.5: No Third Party Beneficiaries: This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

15.6: Assignment: The Client may not assign this Agreement, by operation of law or otherwise, without The Refinery's prior written consent.

15.7: Entire Agreement: This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter.

15.8: Notices: Any notice or other communication required to be given under this Agreement, or otherwise in writing, may be sent by email to the following address: Ariye@thefirstorder.tv, for the attention of Ariye Mahdeb. Any notice sent by email shall be deemed received on the next business day after the date of delivery.

15.9: Governing Law and Jurisdiction: This Agreement or any dispute relating to its subject matter shall be governed by and construed exclusively in accordance with the laws of South Africa and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts located in South Africa for the purposes of adjudicating any matter arising from or in connection with this Agreement.

15.10: Counterparts/Electronic Signatures: This Agreement may be signed in counterparts and by electronic means, including, without limitation, PDF, Docu-sign, facsimile transmission, and when taken together shall constitute an original document.

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