

SPENCE-THOMAS PRODUCTIONS LIMITED

70 RICHMOND STREET EAST
SUITE 300
TORONTO, ONTARIO
M5C 1N8

Customer Agreement Terms and Conditions

1. **Orders and Acceptance.** Submitting any materials to Spence-Thomas Productions for processing or handling, or ordering any services or materials from Spence-Thomas Productions, constitutes Customer's agreement that such processing, services and materials shall be furnished on these Terms and Conditions. Customer's order is effective only when accepted in writing by an authorized representative of Spence-Thomas Productions and an accepted order may be varied only upon the written consent of Spence-Thomas Productions.
2. **Prices; Special Handling; Subcontracting.** Customer agrees to pay for all services and materials pursuant to an accepted order at Spence-Thomas Productions' prices in effect at the date of delivery of materials and provision of services to Customer. All prices are subject to change without notice. Published prices are for services and materials requiring standard processing based upon the use of Spence-Thomas Productions' facilities and the employment of Spence-Thomas Productions' personnel during normal working hours. Additional costs for processing Customer materials requiring special handling and/or processing shall be borne by Customer and added to the prices charged to Customer. All prices are FOB, Spence-Thomas Productions' place of business where the services and materials are furnished. Spence-Thomas Productions reserves the right to subcontract Customer's order or parts thereof to third party contractors in its discretion. All services and materials supplied by other contractors will be billed at cost plus 15% handling charge.
3. **Taxes and Duties.** Spence-Thomas Productions' prices do not include taxes such as sales, goods and services, value added, use, manufacturing, excise, processing, or other applicable taxes, or import or export duties, either presently existing or which may be imposed in the future. Any such taxes and duties shall be added to the prices charged to the Customer.
4. **Shipment and Delivery.** Shipment of materials to and from Spence-Thomas Productions' facilities shall be at Customer's risk and expense. Delivery dates are approximate, and are subject to timely delivery to Spence-Thomas Productions of materials by Customer, the type of services or materials ordered by Customer, Spence-Thomas Productions' obligations to other customers and Spence-Thomas Productions' facility capacity. Spence-Thomas Productions shall not be liable to Customer or to any other person for any losses or damages arising out of delay in delivery nor shall Spence-Thomas Productions be liable for failure to give notice of any such delay. Any delay in delivery shall not constitute grounds for termination or cancellation of Customer's order, whether such delay arises from causes within or beyond Spence-Thomas Productions' control. All materials manufactured and used by Spence-Thomas Productions in connection with Customer's order become the property of Customer immediately upon their manufacture and Customer becomes liable for payment of the cost thereof.
5. **Limitation of Liability; Customer Responsibility for Insurance; Subrogation Waiver.**
 - (a) Customer's materials are received, processed, used and stored by Spence-Thomas Productions solely at Customer's risk. Spence-Thomas Productions will NOT insure any of Customer's film materials while in the possession of Spence-Thomas Productions or while in transit. Spence-Thomas Productions recommends that Customer maintain in full force and effect sufficient and appropriate insurance covering Customer's materials to full replacement cost (including re-shoot, re-recording and re-production costs). Customer is reminded that freight carriers' insurance is limited. Customer waives all subrogation rights of its underwriters and insurers against Spence-Thomas Productions and its insurers under any policy of insurance covering Customer or Customer's materials.
 - (b) For Customer's protection, Spence-Thomas Productions recommends that Customer make use of secondary cameras, videotape and sound recording units during filming or recording and to process materials in separate batches, and to order a protection element (i.e. a digital clone) of each master tape.
 - (c) Spence-Thomas Productions shall not be liable for any lost profits or other damages caused by the loss, damage or destruction of any materials belonging to Customer or to any other person howsoever caused including by the negligence of Spence-Thomas Productions, its employees, agents or subcontractors. In the event Spence-Thomas Productions is found liable for such damage, its liability shall be limited to the replacement of a similar quantity of raw film or tape stock for the quantity of material which is lost, damaged or destroyed. Except for such replacement, Spence-Thomas Productions shall have no further liability regarding the loss, damage or destruction of such materials.
 - (d) Spence-Thomas Productions shall not be liable to Customer nor to any other person for any act or omission of any person selected by Spence-Thomas Productions to perform services or furnish materials for Customer. In no event shall Spence-Thomas Productions be liable for any lost profits or other direct, indirect or consequential loss or damages whatsoever resulting from any act or omission of Spence-Thomas Productions, its employees, agents or subcontractors, whether such loss results from any negligence or breach of duty (contractual or otherwise) by Spence-Thomas Productions, its employees, agents or subcontractors.

- (e) If materials furnished by Spence-Thomas Productions are found to be defective in manufacture, Spence-Thomas Productions shall replace such materials with a similar quantity of raw film or tape stock, provided Customer notifies Spence-Thomas Productions in writing of such defect, and returns such defective material to Spence-Thomas Productions, within thirty days after shipment. Except for such replacement, Spence-Thomas Productions shall have no further liability in connection with such defective materials. Should a tape or film reel be labeled or shipped in error, Spence-Thomas Productions will promptly correct such error by replacement of the tape or film reel at Spence-Thomas Production's expense, provided a written notice of error in labeling or shipping is given to Spence-Thomas Productions within twenty days after shipment.
6. **Limitation of Warranty.** Subject to paragraph 5 and subject also to the quality and condition of the materials furnished by Customer, Spence-Thomas Productions warrants that materials furnished by Spence-Thomas Productions shall be free of defects in materials and workmanship. Except for the foregoing warranty, Spence-Thomas Productions makes no other warranty, express or implied, with respect to the materials or services provided by it and Spence-Thomas Productions assumes no responsibility for the content, condition or quality of materials or services provided by it. Spence-Thomas Productions expressly disclaims all other warranties, express or implied, statutory or otherwise, including any implied warranty of merchantability or fitness for a particular purpose.
7. **Terms of Payment; Cost of Collection.** Payment shall be cash-in-advance or COD, as Spence-Thomas Productions may direct, unless otherwise agreed in writing by Spence-Thomas Productions' credit manager. If services and materials are furnished to Customer on open account, Customer shall pay Spence-Thomas Productions the amount invoiced to Customer within thirty (30) days of the date of invoice. Any claims for adjustment in connection with an invoice must be presented to Spence-Thomas Productions in writing within thirty days from the date of the invoice in question or such claim shall be deemed waived by Customer. Customer agrees to pay Spence-Thomas Productions interest at the rate of 2.5% per month on all amounts which are not paid when due, interest to accrue from the date payment is due. Customer agrees to pay Spence-Thomas Productions all costs and expenses (including legal fees and disbursements) incurred by Spence-Thomas Productions in connection with the collection of past due amounts owed by Customer.
8. **Spence-Thomas Productions Lien; Disposal of Customer's Materials; Waiver of Notice.** In addition to any other rights or remedies Spence-Thomas Productions may have under the law, or under any other agreement with Customer, Customer grants Spence-Thomas Productions a lien on Customer's materials to secure payment of any amounts owed Spence-Thomas Productions by Customer from time to time and Spence-Thomas Productions shall have the right to withhold delivery and retain possession of, and to refuse access to, any such materials in its possession. If the materials are surrendered to Customer or a third person and thereafter reacquired by Spence-Thomas Productions prior to payment in full of the amounts owed by Customer, such lien shall continue in effect as if the materials had never been surrendered by Spence-Thomas Productions. In the event that the amounts owing by Customer to Spence-Thomas Productions are not paid within 90 days of the due date, Spence-Thomas Productions may dispose of Customer's materials as it sees fit, including the sale, destruction or other disposition of the said materials and Spence-Thomas shall not be liable to Customer for any loss or damages arising from such sale, destruction or disposition. Customer waives notice of Spence-Thomas Productions' intention to disposal of Customer's materials as aforesaid.
9. **Customer's Materials; Customer Warranties.**
- (a) All materials supplied by Customer to Spence-Thomas Productions shall be of the highest quality and meet the requirements for processing in accordance with the manufacturer's recommended standards and shall be acceptable to Spence-Thomas Productions for its use.
- (b) Customer represents and warrants that it has the right to engage Spence-Thomas Productions to provide the services and materials ordered by Customer; that Customer's materials do not infringe any personal, literary, copyright or property right of any person, film, corporation or association; that such materials do not contain anything which is defamatory, or which invades the privacy, of any third party; and that such materials are not obscene and do not violate any criminal, civil or other laws.
10. **Storage and Disposal of Customer's Materials.**
- (a) Spence-Thomas Productions will store Customer's materials without charge during the performance of Customer's order and for a reasonable period thereafter not to exceed three months. Thereafter, Customer agrees to pay Spence-Thomas Productions' standard storage charges for all materials stored by Spence-Thomas Productions. Any materials held for the Customer may be kept at such place or places as Spence-Thomas Productions may determine.
- (b) At any time Spence-Thomas Productions may require Customer to take possession of any or all of Customer's materials and to pay all Spence-Thomas Productions storage charges, upon 30 day's written notice to Customer at Customer's last known address as it appears on the records of Spence-Thomas Productions. Upon failure of Customer to remove such materials and pay outstanding storage and other charges following such notice, Spence-Thomas Productions, at its option, may destroy or dispose of Customer's materials as it sees fit. Customer agrees that, because of the impracticability of Spence-Thomas Productions' storing inactive materials and because Customer has the ultimate responsibility for its materials, these provisions for disposition or destruction of Customer's materials are reasonable. Customer agrees that Spence-Thomas Productions shall have no liability to Customer or any other person in connection with the disposition or destruction of Customer's materials in accordance with this paragraph.
11. **Indemnification.** Customer shall indemnify Spence-Thomas Productions from all claims, actions, liabilities, costs and damages arising out of or based upon (i) the publication, use, distribution or exhibition of Customer's materials; (ii) Spence-Thomas Productions' carrying out Customer's order or following the instructions of Customer; (iii) the breach of any of Customer's warranties in paragraph 9 hereunder; (iv) Spence-Thomas Productions' disposition or destruction of Customer's materials in accordance with the provisions of paragraphs 8 and 10 herein; and (v) any other cause or reason relating

- to Customers material and Spence-Thomas Productions use thereof.
12. **Force Majeure.** Spence-Thomas Productions shall not be liable to Customer for loss or damage of any kind due to Spence-Thomas Productions' performance being prevented, hindered or delayed or rendered uneconomic by reason of circumstances or events beyond the control of Spence-Thomas Productions.
 13. **Right of Refusal.** Spence-Thomas Productions may refuse to provide services or materials which require processing by methods other than those usually employed by Spence-Thomas Productions. If, upon inspection of materials furnished by Customer, Spence-Thomas Productions determines that such materials contain obscene or prohibited material, or that further services in connection with such materials might subject Spence-Thomas Productions or its employees to criminal or civil liability, Spence-Thomas Productions may, without incurring any liability to Customer, cancel Customer's order and may retain in its possession all materials of Customer until Spence-Thomas Productions has been paid in full for the services and materials theretofore furnished by Spence-Thomas Productions.
 14. **Termination.** If Customer becomes insolvent, files a voluntary petition in bankruptcy (or has filed against it an involuntary petition in bankruptcy), becomes subject to the appointment of a receiver or trustee in respect to its assets, makes a general assignment for the benefit of its creditors, institutes dissolution or liquidation proceedings, or is in breach of any of these Terms and Conditions, Spence-Thomas Productions may, forthwith on written notice to Customer, terminate the contract between Spence-Thomas Productions and Customer without incurring any liability to Customer whatsoever and without prejudice to Spence-Thomas Productions' rights under the law and hereunder (including Spence-Thomas Productions' lien rights under paragraph 8 above).
 15. **Publicity.** Spence-Thomas Productions shall have the right to use Customer's name to publicize or advertise Customer's purchase of materials or services from Spence-Thomas Productions in connection with a particular project or otherwise.
 16. **Notices.** Any notices or communications to Customer by Spence-Thomas Productions shall be deemed to have been duly given five days after mailing such notice by ordinary prepaid mail to Customer at Customer's last known address as shown in Spence-Thomas Productions records, or immediately upon transmission by telecopier or facsimile to Customer's telecopier or facsimile number shown in Spence-Thomas Productions' records, or immediately upon personal service on Customer. Customer may change the address at which it desires to receive such notices by giving written notice of such change to Spence-Thomas Productions.
 17. **Partial Invalidity.** In the event that any portion of these Terms and Conditions shall be held to be invalid or unenforceable, the remaining Terms and Conditions shall nevertheless remain in full force and effect as though the invalid or unenforceable portion were not included.
 18. **Captions for Convenience.** All headings or captions used in these terms and conditions are for convenient reference only and shall not be used in any way in connection with the interpretation, construction or enforcement of these Terms and Conditions.
 19. **No Other Provisions.** Except as Customer and Spence-Thomas Productions may subsequently agree by a separate written agreement, these Terms and Conditions constitute all the terms and conditions agreed upon by Customer and Spence-Thomas Productions in connection with the furnishing of services or materials to Customer. In addition, these Terms and Conditions supersede any prior terms and conditions or agreements, any provisions contained in, or accompanying, any purchase order, correspondence or other writing previously or hereinafter submitted by Customer, or otherwise implied by trade, custom and practice, or course of dealing between Spence-Thomas Productions and Customer.
 20. **No Waiver.** The failure by Spence-Thomas Productions to exercise or enforce any rights or remedies hereunder shall not be deemed to be a waiver of any such right or remedy nor operate so as to bar Spence-Thomas Productions' exercise or enforcement thereof at any time thereafter.
 21. **Cumulative Remedies; Governing Law.** Any right and remedy belonging to Spence-Thomas Productions hereunder or under the law shall be deemed cumulative and not exclusive of one another and the exercise by Spence-Thomas Productions of any such right or remedy shall not preclude Spence-Thomas Productions from exercising or enforcing any other right or remedy it may have. The interpretation and enforcement of the contract between Spence-Thomas Productions and Customer, and the rights of the parties hereunder, shall be governed by and enforced pursuant to the law of Ontario.
 22. **Modification.** These Terms and Conditions can only be modified by an instrument in writing signed by an authorized representative of Spence-Thomas Productions.

CUSTOMER ACKNOWLEDGES THAT THE CUSTOMER HAS READ THE TERMS AND CONDITIONS ATTACHED HERETO AND AGREES THAT ALL WORK PERFORMED, SERVICES RENDERED AND MATERIALS FURNISHED FOR THE CUSTOMER SHALL BE GOVERNED BY THE ABOVE TERMS AND CONDITIONS AND THAT THESE TERMS AND CONDITIONS CAN BE MODIFIED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY SPENCE-THOMAS PRODUCTIONS AND THE CUSTOMER.

CUSTOMER REPRESENTS THAT THE INFORMATION FURNISHED IN THE CREDIT APPLICATION SUBMITTED BY THE CUSTOMER, INCLUDING ANY FINANCIAL STATEMENTS, ARE TRUE AND CORRECT. IF NOT RATED IN DUN & BRADSTREET AND CUSTOMER REQUIRES A CREDIT LIMIT IN EXCESS OF \$1,000, PLEASE ATTACH A CURRENT FINANCIAL STATEMENT OR SUCH CREDIT INFORMATION AS SPENCE-THOMAS PRODUCTIONS MAY REQUEST. IF PURCHASES BY CUSTOMER ARE FOR RESALE, PLEASE SUBMIT CUSTOMER'S SALES PERMIT WITH THIS APPLICATION.

CUSTOMER HEREBY AUTHORIZES SPENCE-THOMAS PRODUCTIONS TO REQUEST ALL NECESSARY CREDIT INFORMATION FROM CUSTOMER'S BANKS AND CREDIT REFERENCES LISTED ON THE ATTACHED AGREEMENT AND APPLICATION FOR CREDIT TO ASSIST IN SPENCE-THOMAS PRODUCTIONS'S EVALUATION OF CUSTOMER'S CREDIT. EACH BANK AND CREDIT REFERENCE IS HEREBY AUTHORIZED AND DIRECTED TO RELEASE SUCH INFORMATION TO SPENCE-THOMAS PRODUCTIONS UPON REQUEST. IN THE EVENT SUCH BANK AND/OR CREDIT REFERENCE RECEIVES A PHOTOCOPY OF THIS AUTHORIZATION IT SHOULD BE TREATED AS AN ORIGINAL AND THE REQUESTED INFORMATION SHOULD BE RELEASED. CUSTOMER'S SIGNATURE IN THE SPACE BELOW CONFIRMS ITS AGREEMENT AND AUTHORIZATION AS SET FORTH ABOVE.

PLEASE RETURN THE SIGNED AGREEMENT AND APPLICATION FOR CREDIT TO THE ATTENTION OF THE CREDIT MANAGER.

PRINT CUSTOMER NAME _____

SIGNATURE* _____

PRINT NAME AND TITLE*
OF PERSON SIGNING _____

DATE SIGNED _____

CUSTOMER'S ADDRESS

*The Owner (if a sole proprietorship), a partner (if a partnership or LLP), or the president, a vice president or other authorized representative of the corporation (if a corporation or limited liability company)