



**KODAK LABORATORY GENERAL TERMS OF
SERVICE**



Kodak Laboratory General Terms of Service

General

All Laboratory Services (“Services”) for film material (“Material”) are performed by either Kodak Limited at its film lab located in London or by Eastman Kodak Company at its film labs located in New York City and Atlanta, Ga. (collectively, “Kodak”) according to these Kodak Laboratory General Terms of Service (“General Terms”). Any provisions in or referred to in the Customer’s order form, correspondence or in other Customer documentation which conflict with, or are in addition to, these General Terms are void unless expressly agreed in writing by an authorized Kodak manager.

Orders shall be in written form and include the necessary instructions for the provision of the Services. Orders are subject to acceptance by Kodak.

Price

All prices will be those in effect on the date of delivery of the Materials to Kodak. Kodak price lists do not in effect constitute an offer.

All prices are exclusive of any applicable customs or other duties and value-added tax or other taxes, which the Customer shall be additionally liable to pay to Kodak.

Payment

Fees for Services are payable to Kodak as stated on the invoice. Payment may not be made in a currency other than that specified in the invoice. Unless otherwise agreed by Kodak, payment shall be made by electronic funds transfer.

Until a credit account is established, all business with new Customers is on a cash basis unless otherwise agreed in writing. Any grant of credit is conditional on Kodak receiving payment on or before the date set forth on Kodak’s invoice and Kodak may withdraw credit forthwith if this condition is not observed in which case payment of all outstanding amounts will immediately become due and payable.

Non-payment on the due date entitles Kodak to cancel the Services or to suspend deliveries without further notice. Any other amounts outstanding from the Customer to Kodak shall also become due and payable immediately.

Customer agrees to pay interest on any overdue amounts from the date payment is due until the date of actual payment at the monthly rate of 1.5 % of the overdue balance or the maximum amount permitted by law if lower.



Consents

The Customer warrants that it owns or has the authority of the owner to deliver the Materials to Kodak and to instruct Kodak to carry out the Services. The Customer further warrants that it has the consent, where applicable, from all copyright and photographic rights owners of all Material supplied to Kodak to carry out the order for the Services. The Customer shall indemnify Kodak for any third party claims, demands, liabilities, losses, damages and costs whether for breach of copyright or otherwise howsoever arising from the use, handling, processing or return of the Material supplied by the Customer.

Packing

The Material supplied by the Customer must be packed in accordance with industry standards and safely to avoid exposure to light or any other damages. All packages must be marked with the Customer name and address, type of Material and the required treatment.

Collection and Delivery

Materials can be collected at the laboratory address specified by Kodak. In the absence of written agreement Kodak shall not be required to deliver the processed Materials to the Customer but any such delivery shall be at the cost and risk of the Customer.

Delivery and collection dates negotiated with Kodak are not binding. Kodak will use commercially reasonable efforts to meet the requested delivery date, but will not be liable for delays arising from any cause outside of Kodak's control.

Disclaimer of Warranty

Except as expressly provided in these General Terms all Services are provided "As Is" with no warranty whatsoever. All express, implied and statutory warranties, including without limitation, the warranties of merchantability, fitness for a particular purpose and non-infringement, are expressly disclaimed to the fullest extent permitted by law. Kodak will provide its Services in a professional manner in accordance with the customary practices in its industry and shall abide by all applicable laws, statutes, rules and regulations of any applicable regulatory agencies governing the rendering of Services in the location where the Services are provided.

Limitations of Liability

Kodak's exclusive liability for loss of or damage it causes to photographic and imaging Materials sent for Services, is limited to refund of Kodak's charges for processing, copying or printing those Materials and their replacement with an equal amount of unexposed Material. While in transit to or from Kodak, Customer shall bear all risk of loss or damage to all Material.



Other than expressly stated in a Custody Agreement, in no case shall Kodak, its directors, officers, employees, affiliates, agents, contractors, interns, suppliers, service providers or licensors be liable for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, arising from the Service delivered by Kodak or for any other claim related in any way to your use of the Service or any content posted, transmitted, or otherwise made available via the Service, even if advised of their possibility. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, Kodak's liability shall be limited to the maximum extent permitted by law. The Customer shall have no claims other than those expressly stated in these General Terms, irrespective of the grounds they may be based on. If Customer believes that its Material has or will have any value that exceeds the cost of unexposed film, then it is solely Customer's responsibility to obtain relevant insurance from an outside vendor. Kodak does not provide any insurance of any kind covering the Material delivered to Kodak.

Custody Agreements

In the event Kodak enters into any custody, pledgeholder, bailee or similar agreement with any lender(s) or guarantor(s) of Customer in connection with the services provided by Kodak under this Contract, (each, a "Custody Agreement"), Customer agrees to indemnify Kodak and its employees, officers, directors, shareholders and agents, affiliates, successors and assigns (each, a "Kodak Indemnified Party") for, hold each Kodak Indemnified Party harmless from, and defend each Kodak Indemnified Party against, any and all claims, losses, actions, liabilities, costs, damages or expenses of any nature incurred by any Kodak Indemnified Party arising out of or in connection with the Custody Agreement or with the administration of Kodak's duties thereunder, including but not limited to reasonable out-of-pocket attorney's fees, tax liabilities (including any taxes, interest and penalties but excluding any income tax liabilities associated with Kodak's charges for services), and other reasonable out-of-pocket costs and expenses of defending or preparing to defend against, any claim of liability, except to the extent such loss, liability, damage, cost or expense shall have been finally adjudicated by a court of competent jurisdiction to have resulted solely from the Kodak Indemnified Party's own gross negligence, fraud or willful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Contract and the completion of the performance of the services hereunder.

Representations

As an inducement to the execution of this Contract, each party hereby represents and warrants to the other that, as to itself:

- (i) This Contract has been duly executed and delivered by it and constitutes its valid and legally binding obligation, enforceable against it in accordance with its terms provided, however, that such



enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law) or by an implied covenant of good faith and fair dealing; and

- (ii) The execution, delivery and performance of this Contract and the consummation of the transactions contemplated hereby, with or without the giving of notice or the lapse of time or both, will not (a) violate any provision of its certificate of incorporation or by-laws, (b) require any consent, approval or notice under, and will not conflict with, or result in the breach or termination of, or violate any provision of any obligation under, any agreement, instrument, order, arbitration award, judgment or decree to which it is a party or by which it is bound, or (c) require any consent or approval of, or filing with or notice to, any governmental or regulatory authority under any provision of law applicable to it.

Indemnification

From and after the effective date of this Contract, each party shall indemnify and hold the other party harmless from and against any losses, claims, damages, judgments, assessments, reasonable verified costs and other liabilities, and shall reimburse the other party for all reasonable and verified fees and expenses (including the reasonable and verified fees and expenses of outside counsel) caused by, or arising out of or in connection with any of the following: (i) any uncured material breach of any representation, warranty or agreement made by indemnifying party under this Contract; and (ii) the negligence or intentional misconduct of the indemnifying party.

Screen Credits

The Customer shall procure whenever practicable that Kodak shall be granted a screen credit for any Services supplied by Kodak.

Examination of Film Rolls

Kodak reserves the right without notice to Customer to inspect and examine random rolls of Customer's Material directly off the processing machines to verify that picture quality satisfies industry standards. Kodak agrees on its behalf and on behalf of all of its employees and independent contractors assigned to provide Services hereunder ("Assigned Staff") that it, and each member of the Assigned Staff, shall guard in the strictest confidence and not disclose to any third party and not use for any reason except to provide Services pursuant to this Agreement, any of Customer's confidential information disclosed to Contractor or to which Contractor or any of the Assigned Staff may otherwise gain access to (including by visual inspection or otherwise) by virtue of the provision of Services under this Agreement (including blog, tweet, social media or the like) or in any way participate in any dissemination of information regarding Customer's activities hereunder. Kodak acknowledges and agrees that Customer's confidential information includes



without limitation all details regarding its motion picture, the identities of the cast and crew, the locations and any of the terms of this Agreement.

Customer's access to Kodak Premises

The Customer shall require that its employees, agents and subcontractors observe all Kodak fire, safety and security regulations when on Kodak premises and shall follow Kodak instructions in the event that they are permitted to operate or use any Kodak equipment or facilities. Customer shall indemnify Kodak in the event of any liability or loss arising from such presence on or use of Kodak premises.

Force Majeure

In case of delays caused by circumstances beyond its control, Kodak shall have the right either to suspend delivery of Service or cancel the Contract after good faith negotiations with Customer. By way of illustration and not of limitation, governmental act, war, strike, earthquake, flood, storm, fire, fault or irregularity of raw material, false or late delivery from a supplier, embargo, unpredictable breakdown of machinery, failure of power supply or similar incidents shall be circumstances beyond Kodak control.

Prohibited Uses

In addition to other prohibitions as set forth in these General Terms, Customer is prohibited from using Kodak's Services: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (d) to infringe upon or violate Kodak's intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Services or of any related website, other websites, or the Internet; (h) to collect or track the personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl or scrape; or (j) for any obscene or immoral purpose. Kodak reserves the right to terminate the Services for violating any of the prohibited uses.

Complaints

The Customer shall examine the returned Materials immediately after delivery from Kodak. Complaints shall be in written form and sent within thirty (30) days from delivery, and Kodak shall have no legal liability for any complaint made after that period.

Failure to Collect Material

Material that has not been collected by the Customer within 7 days of completion of the Services by Kodak



may be stored at the Customer's cost and risk. Kodak may require the Customer to collect the Material at any time thereafter by written notice and in the event of Customer's failure to collect such Material following such written notice and a reasonable time to collect, Kodak may destroy the Material without any liability to the Customer.

Ownership

Except as otherwise stated in any Custody Agreement, Kodak hereby acknowledges and agrees that Customer, its assignees, successors, and licensees shall exclusively own all rights in and to the Material and any photographs, motion pictures and recordings captured on the Materials (collectively, the "Recordings") and that Customer shall enjoy the irrevocable and perpetual right to, throughout the universe, use such Recordings in and in connection with the production, broadcasting, promotion and exploitation of the program (the "Program") and any programming services which broadcast or distribute the Program.

After completion of the Services, Kodak will discuss with Customer how to handle any and all intermediate Material produced in the treatment of the consigned Material; provided, however, that Customer shall at all times hereunder own all rights in and to the Recordings and all elements thereof captured on the Material.

Results and Proceeds; Droit Moral.

Customer shall be the sole and exclusive owner, in perpetuity in all media whether now known or hereafter devised and throughout the universe, of the results and proceeds of Kodak's Services hereunder which shall be a "work made for hire" for Customer under U.S. copyright laws, prepared within the scope of Kodak's engagement and/or as a work specially ordered or commissioned for use as a part of a motion picture or other audio-visual work. Without limiting the generality of the foregoing, in the event the results and proceeds of Kodak's Services hereunder are not deemed to be a "work made for hire" for Customer, Kodak hereby irrevocably and exclusively grants and assigns all right, title and interest in and to such results and proceeds to Customer, including all rights of every kind and nature (whether now known or hereafter devised, including all copyrights therein and thereto and all renewals and extensions thereof), throughout the universe, in perpetuity, in any and all media, whether now known or hereafter devised. Kodak hereby waives any so-called "moral rights of authors" or "droit moral" rights Kodak may have in connection with the Program and agrees not to institute, support, maintain or permit any action or proceeding on the ground that any such rights have been infringed or that any of the results and proceeds have been mutilated or defamed.

Lien

Kodak shall have a lien on all consigned Material and all Material produced in conjunction therewith until full payment has been made for all claims that Kodak may have against the Customer.



Trade Marks

Nothing herein grants Customer the right to use Kodak trademarks without previous authority in writing from Kodak. Nothing in these General Terms shall imply such authority.

Amendments

No amendments to these General Terms shall have any effect unless made in writing and signed by the duly authorized representatives of both parties.

No Set-off

All amounts due to Kodak shall be paid in full without any deduction or withholding and the Customer shall not be entitled to assert any set-off or counterclaim against Kodak to justify withholding payment of any such amount in whole or in part

Waiver

Any failure of any party to enforce any of the provisions of these General Terms or to exercise any right under them shall not constitute a waiver of the provision or right, or prejudice its rights to enforce the provision or term at a later date.

Assignment

Kodak and/or Customer may assign any of its rights or obligations hereunder to any corporate affiliate, parent or subsidiary upon notice to the other party.

Severability

If any provision of these General Terms are held to be illegal, invalid or unenforceable under present or future laws effective while these General Terms remains in effect, the legality, validity and enforceability of the remaining provisions shall not in any way be affected or impaired, and in lieu of each such illegal, invalid or unenforceable provision the parties shall negotiate in good faith to add a provision having an effect as near as legally permissible to the one found to be illegal, invalid or unenforceable.

Entire Agreement

These General Terms and any policies or operating rules posted by us on Kodak's website constitute the entire agreement and understanding between Customer and Kodak and govern your use of the Service, superseding any prior or contemporaneous agreements, communications and proposals, whether oral or written, between Customer and Kodak (including, but not limited to, any prior versions of the General Terms).



Any ambiguities in the interpretation of these General Terms shall not be construed against the drafting party.

Law and Jurisdiction for Services Delivered by Kodak Limited

If Services were delivered by Kodak Limited, these General Terms are governed by English Law. The application of the United Nations Convention on contracts for the International Sale of Goods is excluded. All disputes arising out of or in connection with these General Terms shall be submitted to the exclusive jurisdiction of the courts of England. Kodak shall however be entitled to bring action against the Customer before any other court of competent jurisdiction.

Law and Jurisdiction for Services Delivered by Eastman Kodak Company

If Services were delivered by Eastman Kodak Company, these General Terms are governed by the laws of the State of New York without regard to its choice of law principles. The application of the United Nations Convention on contracts for the International Sale of Goods is excluded. All disputes arising out of or in connection with these General Terms shall be submitted to the exclusive jurisdiction of the courts of the State of New York. Kodak shall however be entitled to bring action against the Customer before any other court of competent jurisdiction.

No Injunctive Relief

Except in connection with specific terms of a Custody Agreement or Customer's unlicensed use of Kodak intellectual property, including but not limited to Kodak trademarks, in no event shall Kodak be entitled to enjoin, restrain, or interfere with the production, distribution, exhibition or exploitation of any of the Customer's productions, including in connection with the distribution, exhibition or exploitation of the Materials or any Recordings.