

Agreement



Production Agreement advertising films full transfer of rights

Produced by Sveriges Annonsörer and
Film & TV-Producenterna.

Sveriges
Annonsörer



PRODUCTION AGREEMENT COMMERCIAL FILMS

Between

..... corporate identity nr (the "Production Company")

and

..... corporate identity nr (the "Advertiser")

The Production Company is a member of the Swedish Film & TV Producers' Association (*Sw: Film & TV-Producenterna*) and the Advertiser is a member of the Association of Swedish Advertisers (*Sw: Sveriges Annonsörer*).

1. Scope of the Agreement

This agreement aims to regulate the order and production of commercial film, and a transfer of rights to such commercial film.

2. Assignment, production of a storyboard etc.

- 2.1 The Production Company shall develop and create a synopsis/storyboard in accordance with the brief presented by the Advertiser or, where applicable, by the Production Company ("Storyboard"). The Storyboard created by the Production Company shall be approved by the Advertiser before the shooting of the commercial film begins. Such approval shall be given by the Advertiser as soon as practically possible, however at the latest within 15 business days from receipt of the Storyboard if not otherwise agreed between the parties.

When the Storyboard has been approved, it shall be enclosed to this agreement as Exhibit 1. The budget and the time schedule shall be enclosed as Exhibit 2 and Exhibit 3.

- 2.2 Should the Advertiser not approve the Storyboard within the time frame set out above, or if the parties cannot agree on a new/adjusted Storyboard, each party is entitled to terminate this agreement immediately. If a fixed fee has been agreed for the Production Company's creation of the Storyboard, the Advertiser shall pay such fee upon termination.

If a fixed fee has not been agreed for the Production Company's creation of the Storyboard, the Production Company shall be entitled to a market oriented fee on a current account basis. The Production Company shall however not be entitled to any remuneration if the Production Company has neglected the assignment. The Advertiser shall only be entitled to use the Storyboard (or any parts thereof) if the Production Company produces the commercial film, if not otherwise agreed between the parties.

3. Description of the commercial film, time schedule etc.

The Production Company shall produce commercial film/s.

If not otherwise agreed in writing between the parties, the commercial film shall be ready for on-line approval no later than

The shooting shall occur during shooting days on the following dates and locations if not otherwise agreed in writing between the parties after the execution of this agreement.

The title of the commercial film:

The length of the commercial film:

Editing versions:

Language versions:

Recording format:

Director:

Producer:

Other key persons:

Advertiser's contact person:

Production company's contact person:

Representatives of the Advertiser, other than those mentioned above, who is responsible for final approval:

.....

4. Right of disposal and copyright

- 4.1 Subject to payment of the total remuneration set out in this agreement the Advertiser acquires all rights, in relation to the Production Company, to the commercial film and all other material (including the master) recorded in connection with the assignment under this agreement, including the exclusive right to reproduce the commercial film in all media, without any territorial restrictions and in perpetuity exhibit, communicate, distribute or otherwise make the commercial film available to the public.

- 4.2 The rights acquisition under section 4.1 applies in relation to the Production Company. In relation to external rights holders, including but not limited to actors, speakers, record companies and music publishers, restrictions may apply as set out further in section 6.2 regarding rights clearances.
- 4.3 The Advertiser is, upon delivery and upon full payment of remuneration, entitled to license or transfer the rights acquired under this agreement to a third party. Such license or transfer shall however not affect the Advertiser's liability or obligations towards the Production Company under this agreement.
- 4.4 The Advertiser shall also be entitled to edit the commercial film provided that the Advertiser has obtained consent from external rights holders (such as actors) and that such editing is always made with respect to the moral rights of any author concerned.
- 4.5 Notwithstanding the Advertiser's acquisition of all rights, the Production Company shall have the right to exhibit/make the commercial film (including stills) available to the public for the purpose of marketing the Production Company (such as in a reel or on the Production Company's website) and for festival/competition purposes.

5. Ownership and archiving

The Advertiser's acquisition of all rights under section 4.1 includes the physical ownership to all recorded material including the master. The Production Company is obligated to deliver all such material without delay to the address designated by the Advertiser when the commercial film is approved and the Advertiser has paid full remuneration under this agreement.

Upon delivery of the master and other material all responsibility for archiving is transferred to the Advertiser.

6. Clearance of rights and liability for the content of the commercial film

- 6.1 The Production Company shall from its staff (which for the avoidance of doubt includes not only employees but also independent consultants/contractors engaged by the Production Company such as a director) acquire and pay for all rights necessary for the transfer of rights under section 4.1.
- 6.2 The Production Company, or the Advertiser in case that is agreed between the Parties, shall acquire and pay for rights from external rights holders to the extent specifically set out in Exhibit 4.

External rights holders shall in this agreement mean other rights holders than the Production Company's staff, including but not limited to: actors, speakers, image agencies, record companies, music publishers, vfx/animator studios, and rights holders to archive material, props, trademarks etc.

If music is included in the commercial film the Advertiser shall however always be responsible for obtaining permission from and making payments to the applicable collecting societies such as STIM to exhibit, communicate, distribute or otherwise make the commercial film available to the public. The Production Company is obligated to state in Exhibit 5 which music is included in the commercial film.

- 6.3 The Production Company undertakes to, at its own expense, handle and respond to third party claims which are, due to the Production Company's non-fulfilment of section 6.2 above, made towards the Advertiser because of the Advertiser's use of the commercial film, regardless of whether such third party claim is based on law or an agreement with such third party.

The Production Company further undertakes to reimburse the Advertiser for its costs for such claims including the remuneration/damages which the Advertiser through a settlement or a court judgment may be obligated to pay under this section 6.3.

The Production Company's liability under this section however only applies provided that the Advertiser informs the Production Company of any such third party claim without delay, the Advertiser to a reasonable extent assists the Production Company (in other ways than by financial contribution), the Parties jointly agree on how to respond to the claim and the Production Company is entitled to approve any settlement as regards the terms relevant for the Production Company's liability to reimburse the Advertiser.

- 6.4 The Advertiser shall own all purchased or produced props included in the budget, if not otherwise agreed between the Parties.
- 6.5 The Advertiser is liable for the content of the commercial film should such content be in breach of laws or regulations, ethical rules or business practice that applies in each territory where the commercial film is intended to be exhibited.
- 6.7 The Advertiser is liable for the commercial film should the film be used in breach of this agreement, such as if the commercial film is used in other media, other territories or otherwise in another manner than what has been agreed in writing through this agreement or in any succeeding written amendment hereto.

7. PPM

A PPM (Pre Production Meeting) where both Parties attend shall be held upon request of either Party. The Production Company shall keep minutes at such meeting, and such minutes shall be sent to the Advertiser as soon as possible. At the PPM the Parties shall inter alia discuss to what extent the commercial film affects any third party rights and is consistent with certain laws, ethical rules or business practice.

If the Parties lack the competence to make a legal assessment of the content the Parties shall, upon the Advertiser's request, obtain legal advice. Any costs for such advice shall be borne by the Advertiser. Should such advice be provided by/through the Production Company the Advertiser shall pre-approve such cost.

8. Complaints and final approval

The Advertiser is obligated to give its final approval of the commercial film in connection with the on-line approval. Should the Advertiser at this occasion have any objections regarding that the completed commercial film is not consistent with the Storyboard, or with any changes agreed after the approval of the Storyboard or with what has been agreed when cutting the commercial film, such objections shall be presented to the Production Company.

Should the Advertiser;

- (a) not present any objections at the online-presentation; or
- (b) not present any objections referring to the technical quality of the film within a period of seven (7) work days from the Advertiser's receipt of a copy of the master, or:
- (c) exhibit the commercial film

the commercial film shall always be deemed as approved by the Advertiser, meaning that the Advertiser has lost its right to make any claims based on faults. Should however objections have been presented within the time frame stated above, the Production Company shall without unreasonable delay and without additional charges take reasonable measures to rectify such faults notified by the Advertiser, for which the Production Company is responsible.

If the Production Company does not rectify the fault notified by the Advertiser with the speed required by the circumstances, the Advertiser may provide the Production Company with a final and reasonable deadline for correction. If the fault has not been rectified within such period the Advertiser is entitled to a deduction from the agreed remuneration, and if the Production Company has been acting negligent and the fault is material, the Advertiser is entitled to terminate the agreement immediately and is in addition thereto entitled to damages.

Further, the Production Company shall also, without undue delay, make changes to the commercial film which cannot be considered technical faults or faults in relation to the latest Storyboard agreed between the Parties. Such changes shall however always be made at the Advertiser's expense. The same shall apply if the Advertiser requests cutting changes after the off-line version has been approved by the Advertiser.

9. Delay

- 9.1 The Production Company understands that it is of major importance that the commercial film is delivered in accordance with the agreed time schedule. The Production Company undertakes to immediately notify the Advertiser of any occurrence that causes the delivery of the commercial film to be delayed.

If the Production Company cannot deliver the commercial film on time and the delay is caused by the Production Company, the Advertiser is entitled to a reasonable price reduction provided that the delay is not caused by any circumstance set out in section 15.

- 9.2 If the Advertiser does not pay the agreed production remuneration in accordance with the payment plan the Production Company is not obliged to deliver the commercial film in accordance with the time schedule (and is subsequently not liable for the delay in such case). In such case the Production Company shall also be entitled to cancel the production in accordance with section 11.1 below.

10. Remuneration

- 10.1 The Production Company shall receive a total production fee for the assignment, and for the transfer of rights. The fee shall either be:
- ☐ **a fixed fee** of kronor, (excl. VAT), based on an approved budget, of which a fixed fee of or kronor per hour on a current account basis constitutes remuneration for the creation of the Storyboard, and the concept when applicable. Generally, the fixed fee shall include a specific reasonable remuneration to the Production Company for the transfer of rights, or
 - ☐ **variable fee** where the Production Company is entitled to a production margin, a so-called mark-up, of 30 percent of the final budget/final production cost.
- The Production Company's remuneration based on the estimated budget amounts to kronor (excl. VAT), of which a fixed fee of or kronor per hour on a current account basis constitutes a fee for the creation of the Storyboard, and the concept when applicable. Thereto, generally, the Advertiser shall pay a specific reasonable remuneration to the Production Company for the transfer of rights.
- If a variable fee has been agreed the enclosed budget shall constitute an estimate of the total production cost. If, once the production is started, the final production cost is expected to exceed ten percent (10 %) of the estimated production cost, the Production Company shall obtain the Advertiser's written approval in order to be able to claim reimbursement for such additional costs.
- 10.2 The fee shall be paid as follows: 40 percent within five (5) days from the execution of the agreement, 40 percent at the first day of shooting and 20 percent at final approval of the commercial film under this agreement.
- If a variable fee has been agreed the final fee for the Production Agreement shall be determined in connection with the final payment. If a fixed fee has been agreed the Production Company shall bear the cost for any production overlay in relation to the agreed budget and have a right to absorb any savings, provided that section 10.3 below is not applicable.
- 10.3 The fee is based on the conditions set out in the Storyboard 1. If such conditions are changed, the fee shall in joint consultation be adapted to such conditions/changes, whereby any additional costs and/or savings made due to the changes shall be taken into account.
- 10.4 The Advertiser's acquisition of rights to the commercial film do not arise until full payment has been made and the Production Company's obligation to deliver the master arises at the same point in time.
- 10.5 In case of delayed payment a penalty interest shall be added to the outstanding amount in accordance with the Interest Act as applicable from time to time.
- 11. Stopped and postponed production**
- 11.1 If the Advertiser does not pay the production fee at the time set out above the Production Company is entitled to stop the production. In case of a cancelled or postponed production the following shall apply.

If the Production Company stops the production due to non-payment of the production fee, or if the Advertiser cancels or postpones the production after the Advertiser has notified the Production Company of a production decision, for reasons not caused by fault or negligence from the Production Company, the Advertiser shall pay all costs accrued by the Production Company, including costs which are not due for payment at the time of the termination (or the decision to postpone the production) but for which the Production Company has entered into binding commitments (including but not limited to full payment to director, producer and the Production Company's mark-up according to the agreed budget).

The Production Company undertakes to use reasonable efforts to limit the Advertiser's costs in case of a stopped production.

If the production is stopped as set out above the fee set out in section 10, less any cost savings, shall be due for payment twenty (20) days after the decision to stop the production.

If the Production Company stops the production for reasons not caused by the Advertiser's fault or negligence, the Production Company shall repay the part of the fee paid to the Production Company by the Advertiser.

- 11.2 In case the production is cancelled (regardless for what reason) the Advertiser is not entitled to use, in whole or in part, the Storyboard and/or where applicable the advertising concept created by the Production Company, unless otherwise agreed between the Parties.

12. Non - Exclusivity

This agreement is non-exclusive, meaning that the Production Company is free to work with products/services competing with the Advertiser's products/services. The Parties may however agree separately that the Production Company, during a specified period and provided that the Advertiser guarantees a certain volume or agrees on other kinds of setups, undertakes not to work with competing products/services.

13. Insurance

The Production Company is obliged to take out production insurance including negative insurance or equivalent relevant insurance for digital recordings and to bear the costs for such insurance throughout the production period.

Any weather insurance shall be taken out and paid for by the Advertiser. The Advertiser is thereby economically liable to the Production Company for the Production Company's internal and external costs relating to the period up until the postponement or cancellation of the shoot due to inappropriate weather for shooting. Decisions regarding postponement/cancellation according to the above shall be taken by the parties in joint consultation.

14. Limitation of liability

Except for the Parties' undertakings set out in section 6.1, 6.2 and 6.5, or if a party has acted with gross negligence or wilfully and thereby has caused the other party damage or loss, each party's liability under this agreement shall be limited to the agreed production fee.

15. Force majeure

If a party's fulfilment of its obligations under this agreement is severely aggravated or hindered due to circumstances beyond such party's control which the Party could not have foreseen or taken into account when entering into the agreement and with consequences such party could not reasonably have avoided or overcome, this shall constitute grounds for release from liability for delay and from damages and other sanctions.

16. Confidentiality

The parties shall keep the content of this agreement, including its exhibits, confidential. The parties further undertake to treat all information received regarding the other party's business confidential. This section shall apply both during and upon expiration of the term of this agreement.

17. Amendments

This agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof, and replaces any and all previous agreements between the parties related to the subject matter hereof.

Any amendments of this agreement shall be made in writing and signed by both parties. For changes of ongoing matters relating to the production, such as changes to the time schedule, recording location, smaller budget adjustments etc, it is sufficient that the changes are confirmed via e-mail by both parties' appointed contact persons.

18. Governing law and disputes

This agreement shall be governed by Swedish law. Any dispute arising out of or in connection with this agreement, which cannot be solved by the Parties, shall, if the Parties so wish, be referred to each Party's organisations for mediation. A mediator shall be appointed by each organisation. The mediators shall act to solve the dispute outside the court when mediating between the Parties. Any and all information emerging during the mediation shall be treated as confidential by the mediators and the Parties. If the Parties despite mediation cannot solve the dispute, each party is free take the matter to court.

Exhibits: Exhibit 1 Storyboard/Synopsis
 Exhibit 2 Approved Budget
 Exhibit 3 Time schedule
 Exhibit 4 The Production Company's acquisition of rights from external rights
 holders (template enclosed)
 Exhibit 5 Music_cue sheet (template enclosed)

This Agreement has been executed in two identical copies of which the Parties have taken one each.

Place and date

Place and date



For the Production Company

For the Advertiser**EXHIBIT 4: ACQUISITION OF RIGHTS**

The title of the commercial film: [name]

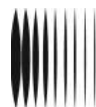
The Advertiser acquires all rights to the commercial film as set out in section 4.1 in the agreement.

The Production Company undertakes to acquire and pay for limited rights from external rights holders as follows:

Rights holder	License period	Media	Territory

The Advertiser shall clear rights from the following external rights holders:

Rights holder	License period	Media	Territory
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Clearance of music rights is regulated specifically in Exhibit 5.

EXHIBIT 5: MUSIC REPORT

Title of the commercial film: [name]

The Production company undertakes to acquire and clear the rights set out below for use (so-called synchronizing) in the commercial film:

Song title	Composer	Publisher	Record label	length

The Production Company the Production Company shall acquire and clear use of the music set out above during the following period and in the following media and territories:

License period	Media	Territory
