

## **General Terms and Conditions of AGMA, the Association of Agents and Managers In Creative Industries**

### **1. Scope of application**

The present General Terms and Conditions are applied to the agency, manager, productisation and broking operations in creative industries, as well as to other business operations involving agency, manager and productisation activities.

“Broking” generally refers to externalized operations to assist the Principal, helping the Principal to sell and/or secure the deal.

“Creative industries” refer to the sectors defined in the Creative Industries Strategy of the Ministry of Employment and the Economy.

“Agent” refers to a person or company with the task, based on an assignment, of selling or promoting the rights, the products or services of the entrepreneur or person in the creative industries. Mainly, the product or service is ready to be launched on the market at the time of closing of the contract.

“Manager” refers to a person or company with the task of assisting in the comprehensive development of the rights, products or services of a creative industry company, working group or person, including those of authors or producers, to be prepared for the market.

“Principal” refers to a company or person whose rights, products or services are the object of the agency, manager or productisation agreement.

“Cooperation Agreement” refers to an agreement between the Principal and Agent or Manager regarding the sale or promotion of the Principal’s rights, products or services.

“Customer” refers to the party to whom the rights, products or services are sold.

Productisation refers to the measures

1) to finalize, in view of selling, the contents constituted by the rights, product or service still at the planning stage; or

2) to extend the potential utilization of the existing rights, product or service.

The present General Terms and Services are followed in addition to the specific terms of the Cooperation Agreement between the Agent/Manager and the Principal. To the extent that the Cooperation Agreement and the present General Terms and Conditions have conflicting terms, the Cooperation Agreement has precedence.



## **2. Specification of an assignment**

The Cooperation Agreement contains an understanding of the products or services that constitute the object of sales promotion. The Cooperation Agreement must contain a detailed description of the aspects and measures related to the assignment. The assignment may include limitations related to time, geography, sector, customers or similar. The responsibilities and obligations of the Parties only relate to the issues and measures defined in the Agreement.

The existing Customer relationships of the Principal as well as other parties outside the Cooperation Agreement are defined in the Agreement. Otherwise, they will be covered by the Cooperation Agreement.

The Cooperation Agreement may include a definition of sales objectives if they can be determined and verified in concrete and sufficiently unambiguous terms.

The Agent/Manager may have, as per the Cooperation Agreement,

- the right to represent, negotiate, market and sell the Principal's rights, products or services
  - the right to conclude contracts on behalf of the Principal
  - the right to invoice the Customer for the sale of the Principal's rights, products or services
- if so defined in the Agreement.

Should the Agent/Manager have the right to conclude binding agreements with the Customer on behalf of the Principal, the Agent/Manager also has the right to cancel or change, without any cost, the contents of the assignment from the Customer applying the same terms of amendment or cancellation (approved by the Principal) as agreed with the Customer if the case at hand concerns the contents made of rights, product or service produced or sold upon a separate assignment or order by the Customer. The terms covering cancellation and amendment must be contained in the Cooperation Agreement.

## **3. Contact persons**

In the Cooperation Agreement, both Parties appoint a contact person with the authorization to receive and give orders regarding the cooperation. The change of the contact person must be communicated to the other Party's contact person as soon as possible.

## **4. Exclusive rights**

Based on the Cooperation Agreement, the Agent's/Manager's right to represent the Principal is exclusive unless otherwise agreed in the Cooperation Agreement. The exclusive character of the right means that the Principal is not entitled to take any action referred to in the Cooperation Agreement or conclude a competing representation agreement with a third party. The Agent/Manager has the right to conclude other cooperation agreements similar to the Cooperation Agreement with several different Principals.



## **5. Duties and responsibilities of the Parties**

Both Parties are responsible for their own operations and for the respect of good business practices. The Agent/Manager is responsible for the tasks and measures taken to promote the Principal's business. The Principal is responsible for delivering the sold rights, product or service to the Customer in the time and form agreed. If the Principal cannot deliver the sold rights, product or service as agreed within the agreed deadline, the Agent/Manager will have the right to charge a penalty from the Principal, quantified in the Cooperation Agreement.

The Agent's/Manager's duty is to promote the sale and marketing of the Principal's rights, products or services defined in the Cooperation Agreement or their development to suit the market. Furthermore, it is the Agent's/Manager's duty to negotiate and draft the necessary agreements with the Customer, take care of invoicing and reporting as well as forward the agreed compensations to the Principal and to performed any other duties defined in the Cooperation Agreement.

The Cooperation Agreement can also include a definition of tasks not included in an assignment. The aspects to be agreed separately may include, for example, presence at trade fairs, PR events at the Principal's premises, travels and development projects with an importance for the indirect sales of the Principal's rights, products and services. In addition, the Principal is responsible for providing the Agent/Manager with sufficient information on the price, quality and other rights, product or service as well as with the necessary informative and other materials. The Principal must communicate, without delay, any changes that might relate to the rights, products or services that constitute the object of the Cooperation Agreement.


Both Parties are responsible for the work and services of their subcontractors and cooperation partners in the same manner as they are for their own work. Both Parties are responsible for not having concluded any other agreement that would be in conflict with the Cooperation Agreement or would prevent or complicate the materialization of the rights and obligations thereunder.

## **6. Pricing**

The Principal and the Agent/Manager jointly price the rights, products or services offered. The Agent/Manager is entitled to deviate from the set prices if, and to the extent that, this has been agreed upon in the Cooperation Agreement.

## **7. Product and service quality**

The Principal is responsible for the quality and contents of the rights, products and services provided. If the quality of the products or services is not of a professional level, the Principal is obliged to supply new replacing products or services at its own expense. The Principal has the liability for the protection of its trademarks and other IPRs on the markets covered by the Agreement, taking care that the rights, product or the service do not infringe third party rights. The Agent/Manager will inform the Principal, without delay, on any flaws or shortcomings



noticed in the contents constituted by the rights, product or service that the Agent/Manager has become aware of. In this case, the Parties will collaborate to find the best solution to remedy the situation and to provide the Customer with impeccable contents constituted by the rights, product or service.

## **8. Employer liabilities**

The Cooperation Agreement does not constitute an employment relationship between the Agent/Manager and the Principal. The Parties are responsible for their respective statutory employer liabilities. The Parties are entitled to request that the other Party provide a certificate of their tax liabilities. The Parties are liable to maintain their company in the VAT (in case of VAT liability), withholding tax and trade registers throughout the validity of the Agreement.


## **9. Rights**

The Agent/Manager has the right to use the Principal's trademark, name and other corporate symbol throughout the validity of the Cooperation Agreement for the performance of the duties under the Agreement, to the extent that the Agreement so requires. This right expires immediately upon the termination of the Cooperation Agreement. The Cooperation Agreement does not cause any copyrights or other IPRs to be transferred from one Party to another, unless the Cooperation Agreement otherwise stipulates, but the said rights remain the property of the Party, or a third party, who is their holder or who has obtained them through a transfer. If the copyrights or other IPRs are generated as a result of the cooperation by the Parties, the Cooperation Agreement must specify the aspects related to the ownership and management of the rights and the compensations thereunder as well as any issues related to the exercise of such rights.

## **10. Fee**

The Agent/Manager has the right to obtain a commission or other fee for any sales and other measures related to Principal's products or services as per the Cooperation Agreement and performed during the validity of the Cooperation Agreement. The amount and the quantification criteria of the commission and fee are agreed upon in the Cooperation Agreement. Likewise, the Agent/Manager has the right to obtain a commission or other fee for any offers forwarded to the Principal, resulting in an agreement prior to the end of the Cooperation Agreement or within six (6) months from its termination. The Agent/Manager also has the right to receive a Commission for any leads or prospects (non-materialized deals) initiated by the Agent prior to the end of the Cooperation Agreement. In their Cooperation Agreement, the Parties Agree on how long the Agent's/Manager's right to commission survives after the end of the Cooperation Agreement.

The Agent/Manager is entitled to a separate reimbursement for the expenses incurred for the execution of the cooperation, related to the marketing and trade fair attendance on behalf of the Principal, as well as for any extraordinary expenses (such as printing or transportation costs). Such expenses and their reimbursement are subject to a separate written agreement



prior to any measures taken. The Agent/Manager has the right to invoice the commission or other fee agreed upon in the Cooperation Agreement also for the direct deals concluded between the Principal and the Customer in case the Agent/Manager has contributed to the creation of the customer relationship. The Agent/Manager has the right to invoice a commission or other fee (post-agreement commission) for the deals between the Principal and the Customer, implemented after the expiry of the Cooperation Agreement, to be agreed upon in detail in the Cooperation Agreement. The VAT as per the valid VAT rate will be added to the commission and other fees upon invoicing or rendering of account and forwarding of payments.

## **11. Reporting**

The Agent/Manager is responsible for providing the Principal with a 6-month report on the measures related to the sales of the Principal's products or services, to the extent agreed upon in detail in the Cooperation Agreement. At request, the Agent/Manager shall provide the Principal with copies of the sales invoiced.

## **12. Rendering of account and forwarding payments**


In case the Agent/Manager can receive payments on behalf of the Principal, the Agent/Manager is responsible for rendering account of and forwarding such payments to the Principal. On that occasion, the Principal has the right to have a report on the sales and accounted for payments, showing the itemized sales of rights, products or services, sales proceeds, eventual tax or other deductions, the commission or other fees deducted by the Agent/Manager under the Cooperation Agreement, fees paid to subagents as well as the net amount payable to the Principal. All payments will be made on the banking account indicated by the Principal, within the time defined in the Cooperation Agreement from the date in which the Agent/Manager has received payment from the Customer. The Agent is obliged to give the Principal a report within the period from the end of the reporting period defined in the Cooperation Agreement. The Principal is entitled to check, once a year or following a separately agreed timetable, the accounts of the Agent, and if the difference between the accounted sums and the net sales reported by the Agents exceeds 5%, the Agent must compensate for the difference not accounted and paid.

## **13. Insurance**

Both Parties are responsible for having sufficient insurance policies covering their operations as required by the performance of the Cooperation Agreement, also covering personal injuries and liability damages.

## **14. Subcontractors and assignment of the Agreement**

The Agent/Manager has the right to use subcontractors or other assistants/helpers of its choice when performing the duties under the Cooperation Agreement. Such parties include, for example, subagents. The Agent/Manager is responsible for the assistants/helpers in the same way as for its own work. As a main rule, the Agent is responsible for paying the fees to the



subagents, unless the Cooperation Agreement otherwise prescribes. The Cooperation Agreement and the rights and duties thereunder cannot be transferred to third parties without a written consent from the other Party. As an exception to the above, the Cooperation Agreement can be transferred in the event of a transfer of business to the party taking over the business of a Party, unless the Cooperation Agreement otherwise prescribes. In the event of a business transfer as described above, the Party must notify the other Party in writing. The Cooperation Agreement can be transferred, in the event of a transfer of business, on the condition that the rights and obligations thereunder will be binding to the transferee after the transfer, in the same manner as to the signatory Parties.

#### **15. Compensation for damages**

Both Parties are liable for compensating the other Party for any direct damages caused. The maximum compensation is the commission or other fee obtained by the Agent/Manager based on the Cooperation Agreement, during the year (one year) preceding the damage. If the damage was caused intentionally or through gross negligence, or if it is a question of infringement of IPRs related to the rights, product or service under the Cooperation Agreement, the Party causing the damage is obliged to compensate for the full amount of the damage, also as concern indirect damages and losses.


#### **16. Force majeure**

Neither Party will be responsible vis-à-vis the other Party for damages caused by force majeure. If a force majeure prevents the Party from fulfilling its contractual obligations and its impacts cannot be removed without unreasonable additional costs, the Parties have the right to abstain from performing their duties under the Cooperation Agreement to the extent and during the period in which the force majeure prevents the full satisfaction of the contractual duties. If the force majeure persist for longer than two (2) months, the other Party has the right to terminate the Cooperation Agreement with immediate effect.

#### **17. Duty of non-disclosure**

All information qualifying as business or professional secrets received by one Party from the other Party, irrespective of the form, is considered confidential. Both Parties are responsible for maintaining secrecy of the confidential information, for not disclosing such information to third parties or for not using the information for uses other than to fulfil their rights and obligations under the Cooperation Agreement. The contents of the Cooperation Agreement are covered by the duty of non-disclosure while the Parties are entitled to disclose the existence of the Cooperation Agreement. The duty of non-disclosure is in force during the period of validity of the Cooperation Agreement and survives after its expiry as long as agreed in the Cooperation Agreement. When the Cooperation Agreement expires, the Parties are responsible for either returning the confidential information to the other Party or, if this is not possible, to destroy such information at their own expense.

Confidential information does not include information which the recipient can prove:

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- a) to have been in the public domain without the recipient having contributed to it through their own action, or
  - b) to have been legally held by the recipient already prior to the signing of the present agreement, or
  - c) to have been legally received by the recipient from a third party, or
  - d) to have been independently developed by the recipient or a person acting on their behalf on the basis of information given.

## **18. Amendments and notifications**

All amendments to the Cooperation Agreement must be made in writing, and no amendment will enter into force until the Parties have approved it by an appropriate signature.

The notifications under the Cooperation Agreement can be made by registered mail, signed email message or in other verifiable manner to the address given by the Party in the Cooperation Agreement or otherwise communicated by the Party in writing.

## **19. Validity of the Agreement**

The Cooperation Agreement enters into force upon the signature by both Parties, and will remain in force until further notice. The period of notice of the Cooperation Agreement is prescribed in the Agreement. The notice must be given in writing. In case a Party materially violates the Cooperation Agreement, the other Party has the right to terminate the Cooperation Agreement with immediate effect, if the Party violating it does not remedy the violation within fourteen (14) days from being invited to do so by the other Party.

## **20. Partial invalidity or unenforceability of the Agreement**

Should any Clause of the Cooperation Agreement be found invalid or unenforceable, it shall not have an impact on the validity or enforceability of any other Clauses. In such cases, the Parties will amicably negotiate to substitute the Clause in question. The failure by the Parties to substitute any such Clause of the Cooperation Agreement shall have no impact on the validity or enforceability of other terms of the Cooperation Agreement.

## **21. Solving of disputes and applicable Law**

The Parties seek to resolve any disputes related to the Cooperation Agreement through negotiations. Should such negotiations not lead to a solution, the issues will be solved in arbitration. The Cooperation Agreement and these General Terms and Conditions will be construed under Finnish Law, with the exception of the connecting factor rule.

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