

DELUXE LABORATORIES STANDARD TERMS & CONDITIONS

DEFINITION:

The following definitions shall apply throughout this document for Deluxe North America:

The term "Laboratory" is defined to mean Deluxe Laboratories, Inc. and/or Deluxe Toronto Ltd. The term "Laboratory liability" is defined to mean any and all liabilities, losses, damages, demands, claims, causes of action, judgements, and all costs and expenses incurred in connection therewith, including attorneys' fees.

The terms "Element" and "Elements" are defined herein to include all film negatives, master positives, sound tracks, reversal originals, reversal intermediates, cuts and trims, positive prints or separations, audio tapes, sprocket magnetic film, sound track optical negatives, striped film prints, film prints. All video tapes, masters, DAT's, DA-88's, and hard drives.

The term "Customer" is defined to mean either the person or persons or entity applying for credit herein.

RESPONSIBILITY OF LABORATORY AND LIABILITY LIMITATIONS:

It is understood and agreed that Laboratory is not an insurer and that the payments made for the services provided by Laboratory are based solely on the value of such services. Any/all Element(s) received, processed and stored are solely at the risk of Customer. Laboratory reserves the right to assign or subcontract all or any part of the work ordered. All claims hereunder shall be delivered to Laboratory in writing within ninety (90) days after Customer's knowledge of loss, damage, or destruction. In the event that such notice is not furnished and unless suit, if necessary, is instituted within one (1) year thereafter, Laboratory shall be released from all liability.

DAMAGE TO OR LOSS OF ELEMENTS:

1. In the event that the Elements of Customer, which are delivered to or deposited, with Laboratory are lost, destroyed or damaged by reason of the negligence of Laboratory, its employees, subcontractors or agents, Laboratory liability therefore shall be limited to the replacement of unexposed film rawstock.

INSURANCE:

1. Customer agrees to fully insure all Elements delivered to or deposited with Laboratory against all insurable risks including damage to or destruction of such Elements by the negligence of Laboratory or its employees and including but not limiting to the transportation of any Element to and/or from the Laboratory. Customer agrees that such insurance is available, and that the policy of insurance shall provide that the insurer waives all claims of subrogation against Laboratory and its employees and subcontractors. Laboratory shall in no event be liable for any loss or damage, which was, or could have been, covered by insurance.

DEFECTS IN DELIVERY:

1. If an Element produced by Laboratory is defective or is erroneously labeled or shipped or if nonconforming Laboratory services or materials are furnished by Laboratory, Laboratory liability therefore shall be limited to the replacement or repair of such defective Element, the correction of such errors in shipment or labeling or the providing of conforming Laboratory services or materials at Laboratory's expense; provided that the defective Element is returned and written notice of such imperfection or error in labeling or shipment is given Laboratory within ninety (90) days after shipment.

DELAY IN DELIVERY:

1. Delivery dates and/or shipping dates are approximate. Laboratory shall not be liable to Customer or any other person or entity for any losses, damage (incidental or consequential), liability, loss of profits, or delay in delivery or shipping, or for failure to give notice of delay.

PAYMENT:

TERMS AND ADJUSTMENTS:

1. Customer agrees to pay Laboratory for all services performed including Finance charges, if any, and invoiced to Customer within thirty (30) days of the date of invoice on approved accounts. Any special terms for payment must be negotiated with and agreed to by the Credit Manager prior to any work being brought in to the Laboratory and before the account is opened up. Customer agrees to comply with all credit terms hereof.
2. All invoices not paid within the agreed terms will be subject to a late charge of 2. % Per month (24% per year) on the unpaid balance, provided however, that Customer shall not be required to pay a late charge in excess of the maximum charge allowed by law. A \$40.00 charge will be levied for all NSF check/cheque payments.
3. Customer agrees to pay all costs and expenses, including but not limited to attorneys' fees, collection agency costs and court costs incurred by Laboratory, in connection with the enforcement of Laboratory's rights hereunder. Any claim for adjustment in connection with an invoice must be presented to Laboratory in writing within fourteen (14) days from the date of the invoice in question. Customer hereby waives any claim for adjustment in billing which is not presented to Laboratory in a timely fashion according to the provisions of this paragraph.
4. It is understood and agreed that Laboratory has a lien on all elements until fully paid for. Title to all work performed by Laboratory will pass to the customer upon completion of manufacture of each item of the order, and the receipt of payment in full for all charges incurred in the manufacturing of any elements. The customer will be responsible for all charges, including any applicable State/Provincial/Federal taxes unless exempt by a valid governmental certificate.

SHIPPING AND SHIPPING CHARGES:

1. On instructions from Customer, Laboratory will cause Elements to be transported to any destination requested at the expense and risk of Customer. In the absence of the receipt of written instructions from Customer, Laboratory will make all shipments of Elements via carrier of its selection. In its sole discretion, Laboratory may insure shipments of Elements at Customer's expense.

PRICE CHANGES:

1. In the event that the prices of film, chemicals, other materials being used by Laboratory or direct costs of manufacturing or the cost of labor (which shall include fringe benefits) to Laboratory be increased above those in effect on the date of this application then the prices to be paid by Customer may be increased to reflect such changed prices to the extent that they are not already included on Laboratory's standard price list. Laboratory shall give prompt notice to Customer of any such increases. Customer agrees that any price increase as provided for hereunder shall likewise be retroactive to the date of such increase.

LABORATORY LIENS:

In addition to any other liens, rights, or remedies given to Laboratory under applicable law herein, Customer hereby grants, assigns and transfers to Laboratory a security interest in and lien on any and all Elements of Customer in the possession of Laboratory as security for the payment of any and all services and materials furnished to Customer by Laboratory. The parties agree that if the Elements are voluntarily restored or delivered to Customer or some third person prior to payment to Laboratory for

such materials and services, the lien and security interest therein shall not be extinguished but shall survive, and upon request by Laboratory, Customer shall execute such documents, including a Financing Statement or PPSA, as may be required to protect and perfect such security interest.

ALL LIENS, RIGHTS, AND REMEDIES OF LABORATORY SHALL BE DEEMED CUMULATIVE AND NOT EXCLUSIVE OF ONE ANOTHER. THE EXERCISE BY LABORATORY OF ANY RIGHT OR REMEDY SHALL NOT PRECLUDE ITS RIGHT HEREUNDER BY SELLING THE ELEMENTS AT A PUBLIC OR PRIVATE SALE, THEN CUSTOMER AGREES TO PAY TO LABORATORY ON WRITTEN DEMAND WHATEVER DEFICIENCY MAY BE DUE AFTER THE PROCEEDS ARE APPLIED TO PAYMENT OF THE INDEBTEDNESS, INCLUDING, WITHOUT LIMITATION, ALL LEGAL AND OTHER COSTS, EXPENSES AND CHARGES INCURRED IN THE COLLECTION, SALE, DELIVERY OR PRESERVATION OF THE ELEMENTS.

- A. Customer agrees that if Laboratory shall enforce its rights under any law, it or any other party acquiring any right, title or interest in or to any Elements at public or private sale, shall have and is hereby granted, all right, title and interest of Customer, including, without limitation, the unrestricted license to distribute, exhibit and otherwise exploit such Elements by all media for its own account.
- B. It is understood and agreed that Deluxe will not surrender any original Element or any printing Element held by us or under our control until such time as all of its charges for work performed have been paid in full. Charges as defined may include but not limited to the following: Laboratory work, materials, finance charges, storage fees, shipping charges, (if applicable).

OWNERSHIP OF ELEMENTS:

1. Unless Customer gives Laboratory prior written notice contrary to contents of this paragraph, Customer warrants and represents that it is the sole owner of all Elements delivered to Laboratory by Customer or for Customer's account for storage, development, printing, dubbing, transferring or processing of any kind; that Customer has the right to engage Laboratory and is now and at the time Laboratory services are rendered, prints manufactured and materials furnished hereunder, and continuing until such time as all indebtedness of Customer hereunder is paid to Laboratory, Customer will be the sole owner of all rights to possession, use, exhibition and distribution of the Elements including without limitation, the copyright, trademark and trade name therein, the music, television, motion picture, literary, paperback, book and dramatic rights. As long as Customer is indebted to Laboratory, Customer agrees not to pledge, hypothecate, assign or otherwise encumber said Elements or rights without the prior written consent of Laboratory.
2. STANDARD SYNCHRONIZATION LEADERS: Customer must supply negative and videotape with standard leaders bearing clear proper synchronization marks. Any errors in synchronization shall be the responsibility of Customer and Laboratory shall bear no liability. Customer agrees to indemnify and hold Laboratory harmless from any Laboratory liability arising out of or connected with errors in synchronization.

STORAGE, DISPOSITION AND REMOVAL OF ELEMENTS:

1. After 30 days of the completion of principal photography, the sound mix or episodic season, and provided that Deluxe has been paid in full for all of its charges, any original **Element** must be picked up by Customer or moved to a satellite location for temporary storage until further required, at the Customers expense.

2. If Customer fails to remove said Elements as herein provided, Laboratory may, upon thirty (30) days written notice to Customer, return said Element to Customer's last known address as it appears on the records of Laboratory, without liability to Customer or any other person destroy, reuse or make any disposition of said Elements as Laboratory sees fit.
3. Customer agrees to indemnify and hold Laboratory harmless from all Laboratory liability arising out of or connected with Laboratory's destruction or disposition of said Elements as provided herein.
4. Elements will be stored with Laboratory or under its control at a satellite vault location for up to six (6) months at no charge; any Elements still left with Deluxe or under its control after this period of time will be subject to storage charges at the prevailing rates determined by the Laboratory and/or the storage facilities used.
5. **Laboratory** has the right to dispose of any Elements as it sees fit if Elements in question are deemed abandoned or if the Laboratory is still owed any money for materials or services rendered for said Elements. Laboratory has the right to sell off any Elements in its possession to satisfy the outstanding debt. Customer is still responsible to Deluxe for any shortfall that may occur.
6. Laboratory does not store Prints of any kind for longer than 6 months on its premises. Prints will not be moved to an off site long term storage facility by the Laboratory under any Access Letter or Pledgeholder Agreement. Prints will be returned to the Producer of record for further archiving. Producer will be notified to pick up their prints from Laboratory after the 6-month period and failure to do so may result in the destruction of said elements by the Laboratory.
7. Deluxe does not store Trims & Outs. These will be returned to the Producer of record when Deluxe is finished working on the project.

It is understood and agreed that any elements held by Deluxe Laboratories for storage under a Pledgeholder Agreement or Access letter are subject to storage fees at the prevailing rate. The owner of the said materials is liable for the payment of any storage fees incurred.

Elements include, but are not limited to the following, original camera negative, sound Element(s), all video materials, post production sound materials, any and all printing Elements.

RIGHT TO REFUSE PERFORMANCE:

1. **GENERALLY:** Laboratory may refuse to print, dub, transfer or process without liability to Customer any Elements which Laboratory, in its sole discretion, deems unlawful, pornographic or degrading or which it deems as tending to incite prejudice or passion. Materials will be returned to the Customer and the Customer will pay any and all charges incurred thus far.
2. **IMPERFECTION OR OLD ELEMENTS:** Laboratory, in its sole discretion, may refuse to accept for processing old or shrunken Elements or Elements showing any imperfections, unusual photographic or physical condition. In the event that such Elements are accepted for printing, dubbing, transferring, re-recording or processing of any kind, Laboratory shall not be responsible for quality resulting from such Element conditions and it is understood that Laboratory will make an additional charge to Customer for lost time and additional materials used, whether or not a satisfactory Element is ultimately produced by Laboratory. Customer understands that it is Laboratory's policy not to accept or process any nitrate material.

ENTIRE, CONTRACT, SEVERABILITY AND NON-WAIVER:

These Terms and Conditions apply to all Laboratory work performed, services rendered and material furnished for the account of Customer until rescinded, terminated or modified by a subsequent written agreement and, along with any written agreement executed by the parties concurrently constitute all the terms and conditions, including, without limitation, all representations and warranties agreed upon by Customer or any attachment thereto or any prior general agreement inconsistent with the provisions hereof. There are no terms and conditions, either oral or written, between the parties, except as

contained herein. No modification or waiver hereof shall be valid unless in writing and duly signed by an officer or duly authorized agent of Laboratory. The invalidity or unenforceability of any one or more terms or conditions shall not affect the validity of enforceability of the remaining terms or conditions. The failure of Laboratory in any one or more instances to insist upon performance of any of these terms or conditions or to exercise any right or privilege given to Laboratory in these terms and conditions shall not be construed as a waiver of the breach of any other terms, conditions, rights or privileges herein provided. Captions of the paragraphs of these terms and conditions are for convenience only and shall have no effect on the interpretation of the terms and conditions as written.

1. ATTORNEYS' FEES: Customer agrees to pay all reasonable attorneys' fees, and any other costs and espouses in full as incurred by Laboratory in connection with the enforcement of the terms and conditions of this Agreement.
2. EXECUTION: If a faxed copy of the Credit Application/Agreement with the terms & conditions are received by Laboratory, then it is deemed to be the equivalent of the original. The faxed copy will be permitted as evidence in any court of law as evidence, if required. **By signing the Deluxe Credit application/agreement we understand and agree to the Deluxe terms & conditions as set forth above.**
3. Deluxe has the right to modify, amend or change the terms and conditions as conditions change. The most current terms & conditions will be binding and in effect until further notice. **These Terms and Conditions will supercede any and all other contracts and/or documents unless expressly agreed to in writing by all parties to the contract.**
4. NOTICES AND COMMUNICATIONS: All notices and communications hereunder to Laboratory shall be sent to:

**Deluxe North America administrative offices at
350 Evans Ave, Toronto, Ontario Canada M8Z 1K5**

Any notices or communications hereunder shall be deemed to have been dully given when in writing and personally delivered, or faxed or when deposited in the United States Mail, Canada Post, Certified Mail, Return Receipt Requested, with postage prepaid to Laboratory at the above address or to Customer at the address shown as Customer's address in Laboratory's records, or at such other address a either specifies by written notice given in accordance with this paragraph.