

AICP Virtual Town Hall

Amending the Agency Purchase Order for Post Production

Thursday, November 13, 2025

Agency Purchase Orders for Post Production

While provisions in agency purchase orders may vary, the following presentation addresses common issues that post production companies may want to address.

Definitions

“Materials” shall mean all goods and services including but not limited to the following: artwork, drawings, sketches, writings, photographs, ideas, concepts, source and object code, and other property created and/or supplied hereunder, including without limitation all Materials incorporated therein and all preliminary or other copies thereof except as otherwise set forth herein regarding Supplier’s “Intermediate Materials” (as hereinafter defined), any third party materials, if any, supplied by Supplier that are subject to licenses or releases, and if not ordered by Purchaser, and set forth in the Notes section above (and Purchaser has agreed to pay Supplier therefor), a tool kit;

Approval Rights

The Materials shall be to Purchaser's reasonable satisfaction and subject to Purchaser's reasonable approval based on the specifications on which Supplier's awarded bid was based. Purchaser shall be entitled to return, at Supplier's expense, any Materials which Purchaser deems to be unsatisfactory, based on the standard set forth in the immediately preceding sentence in ~~Purchaser's sole discretion.~~

Warranties

For the avoidance of any doubt, Supplier makes no representation or warranty whatsoever regarding the materials, elements, content, and services provided by or on behalf of Purchaser or Client, including without limitation, the live action footage delivered to Supplier with which Supplier is performing editorial/post production services hereunder. Purchaser represents and warrants that (a) it has the full right and power to enter into and perform its obligations under this agreement, (b) the materials, elements, content, and services supplied by or on behalf of Purchaser and/or Client shall not infringe the rights of any third party, (c) if Purchaser or Client is supplying the insurance for the project, it is insured in the manner specified in the applicable insurance addendum, if any, and (d) each of Purchaser and Client shall abide by all applicable laws, rules, regulations and applicable union agreements, if any.

Ownership and Rights in Materials

Except for materials licensed or released for use in the Materials, if any, all Materials shall become and remain the property of Purchaser and shall be considered specially ordered for Purchaser as a “work made for hire”.

Ownership and Rights in Materials

Notwithstanding the foregoing ownership provision, Supplier shall at all times maintain ownership of its Intermediate Materials, defined to include but not be limited to, the proprietary tools, methods or methodologies, software (in object code and source code form), systems, know how, concepts, technology, information, materials, techniques, expertise, equipment, workflows, and processes, project files, bins, transcodes, 3D data, non-essential code and all other metadata files, all used or improved by the Supplier in rendering the services and/or providing the Material.

Cancellation

It is agreed that the time of completion and delivery of the Materials is of the essence and that Purchaser may, at its election, cancel this Order if it or any part thereof is not fulfilled within the time specified; provided however that Purchaser may not cancel this Order for delays in delivery if caused by Purchaser (e.g., if Purchaser fails to provide approvals on a timely basis, etc.) or for a force majeure event or, if no time is specified, within a reasonable time.

Cancellation

In the event Purchaser cancels this Order for any reason other than on account of Supplier's breach, Purchaser shall be liable to pay Supplier, ~~in lieu of the price specified herein, only the verified direct costs incurred by Supplier in the performance of its obligations prior to such cancellation~~ in accordance with the AICP Cancellation and Postponement Guidelines applicable to editorial/post production services; provided, however, that the total amount of such costs and fees shall not exceed the price specified herein plus approved overages, if any.

Releases

~~On or before completion of Supplier's services hereunder, Supplier must furnish Purchaser with valid and adequate releases necessary for the unrestricted use of the Materials for advertising or trade purposes, including without limitation model and property releases relating to the Materials and releases from any persons whose names, voices, or likenesses are incorporated or used in the Materials.~~

Confidentiality

Supplier acknowledges and agrees that the details of this transaction, this Order, and all information or materials supplied by Purchaser for Supplier's performance hereunder are confidential and proprietary and shall be kept in strict confidence and except to provide the services or Materials hereunder will not be used or disclosed to any third party. Upon completion or earlier termination of this Order, Supplier will promptly return to Purchaser all such information or materials; provided, however, that the Supplier shall be entitled to retain one copy of the Confidential Information of the Purchaser for legal, accounting and/or archival purposes, subject to the confidentiality provisions hereof.

Confidentiality

The provisions of this section entitled “Confidentiality” shall apply reciprocally to protect Supplier’s Confidential Information, which shall include, but not be limited to, bids, budgets, and pricing, relationships with employees, independent contractors, and suppliers, methods, know-how, techniques, processes, trade secrets, and Intermediate Materials.

Remedies for Breach

Failure to comply with the material ~~each and every~~ terms and condition of this Order and each warranty herein shall be grounds for the exercise by Purchaser of any one or more of the following remedies:

- Cancellation of all or any part of this Order on written ~~without~~ notice and pay to Supplier its costs incurred or irrevocably committed as of the effective date of such a termination for breach, and a pro rata sum for Materials completed, and upon such payment, Supplier shall deliver the Materials completed as of the termination for breach; ~~and~~
- ~~Rejection of all or any part of any delivery by Purchaser, which may return the Materials or hold them at Supplier's risk and expense. Purchaser's right to reject and return or hold Materials at Supplier's expense and risk shall extend to Materials covered by this Order which are returned by Purchaser's customers for any reason entitling Purchaser to reject.~~

Indemnification

Purchaser shall indemnify, defend, and hold harmless Supplier and its owners, subsidiaries, affiliates, officers, directors, employees, contractors and agents from and against all claims, damages, losses and expenses, including attorneys' fees and disbursements arising out of, resulting from or relating to...

Indemnification

- (i) the breach or alleged breach by Purchaser or Client of any of their respective representations, warranties, duties or covenants contained herein;
- (ii) any scripts, services, elements and materials provided by or on behalf of Purchaser or Client for incorporation in or use in connection with the materials to be provided hereunder by Supplier, including, without limitation the live action footage delivered to Supplier;
- (iii) Purchaser's and/or Client's negligence and willful misconduct;

Indemnification

- (iv) the failure by either the Purchaser, Client or live action production company providing the footage to Supplier, to provide insurance coverage through post-production;
- (v) claims covered or which should have been covered had the Purchaser/Client/applicable production company maintained adequate insurance coverage through post-production; and
- (vi) the distribution, exhibition and/or other exploitation of the materials delivered by Supplier hereunder in violation of the rights granted to Purchaser and Client herein or in the applicable production contract for the project related to such materials.

Insurance

Supplier will maintain statutory workers' compensation insurance limits and coverages as required by applicable law, employers' liability with a minimum of US \$1 Million each accident and disease, Commercial General Liability of US \$2 Million per occurrence, US \$2 Million aggregate (the required limits will not be eroded by defense costs), covering the business of Supplier apart from the project that is the subject of this Order, and E&O of at least \$5 Million each claim.

~~At Purchaser's request, Supplier will furnish to Purchaser a certificate of Insurance completed by its insurance carrier(s) certifying the required coverages are in effect, with waiver of subrogation, naming Client as an additional insured, and containing a covenant that such coverage will not be canceled or materially changed until 10 days after prior written notice has been delivered to Purchaser.~~

Payment

~~Invoices for Supplier's services must be rendered within thirty (30) days after acceptance of such services.~~ Payments shall be made by Purchaser at such time as Purchaser is in receipt of satisfactory Materials, releases and invoices, as hereinabove described as follows: XX% of the total contract price set forth on the cover page hereof prior to the commencement of services by Supplier, and XX% of the total contract price set forth on the cover page hereof plus overages approved pursuant hereto no later than XX days from delivery by Supplier and Purchaser's receipt of invoice and only after receipt of payment for this Order by Purchaser from the client listed on the front of this Order (unless Purchaser is NOT acting as a known agent of a disclosed principal).

Payment

The final payment for any Materials shall ~~not~~ constitute acceptance. Materials shall be subject to inspection and approval and shall be returned at Supplier's expense if not satisfactory. If not accepted sooner, use of the Materials shall constitute acceptance. ~~All applicable taxes including without limitation sales tax, if any, should be computed and added to the Supplier's invoice covering the Materials. All charges shown on Supplier's invoice must be included in making such computation.~~

Sequential Liability

Purchaser shall diligently seek payment from its Client. In the event the Purchaser has not received payment from its Client as of the due date for payment to Supplier hereunder, Purchaser shall provide to Supplier the Client's contact information to enable Supplier to seek payment directly from the Client. Further, Purchaser represents and warrants that it has in house the funds sufficient to make the first payment owed to Supplier hereunder.

Sales Tax

~~Supplier assumes full responsibility for collecting and remitting sales or use tax applicable to this transaction. Purchaser and Client shall be held harmless for any failure by Supplier to collect and remit such taxes.~~

Set-off

~~Purchaser may set-off against amounts payable under this Order all present and future indebtedness of the Supplier to Purchaser arising from this or any other transaction whether or not related thereto.~~

Assignment

Supplier shall not assign the obligation to perform this Order or any part hereof, and Purchaser shall not be obligated to accept a tender or performance by any assignee, unless Purchaser shall have previously expressly consented in writing to such an assignment; provided that nothing herein shall prevent Supplier from subcontracting in the ordinary course of Supplier's business.

Publicity

Supplier shall not refer to Purchaser ~~or any company affiliated with Purchaser~~ in publication form in connection with materials or services rendered by Supplier without prior written approval of Purchaser, which ~~may be withheld at Purchaser's sole discretion after the initial exhibition of the final Materials by Purchaser, shall not be~~ unreasonably withheld.

Further and notwithstanding anything in this PO or otherwise, where Purchaser is listing credits for the final finished Materials/Commercial(s), Supplier at all times shall be credited as the sole [editorial company/post production company], including, but not limited to, in the event Purchaser submits the Materials/Commercial(s) to any awards shows or contests, issues any press and/or publicity, posts on any social media platforms, and/or on YouTube.

From AICP's Legal Counsel:

This presentation is designed as a service to AICP Members and is intended only to provide general information on the subject covered and not as a comprehensive or exhaustive treatment of that subject, legal advice or a legal opinion. Members are advised to consult with legal counsel and other professionals with respect to the application of the subject covered to any specific production or other factual situation. The AICP recognizes and encourages the fact that each company exercises its own independent business judgement regarding the terms and conditions under which it operates, and this presentation is intended to inform and assist the independent decision process.