



## Post Production

*The AICP stresses that the use of an AICP Guideline (in whole or in part), fee or percentage amounts, business costs and components, and the terms of bid submissions or contract terms, are strictly a matter of independent determination by each post production company. These guidelines are intended for informational purposes only and not as legal advice and does not represent AICP policy or agreement with respect to any business practices.*

### **BIDDING & ESTIMATES**

The bid provided by the post production company is an estimate based on the project specifications provided by the contracting client. The final deliverables required by the contracting client (including versions and aspect ratios) should be included as part of the project specifications. Upon award of the bid all terms and conditions of the awarded bid shall apply to the project unless terms to the contrary are agreed upon in a purchase order or contract.

In the event the scope of the project changes, such overage, including modifications to the schedule or deliverables, should be confirmed in writing by both the post production company and the contracting client. Approval of such change of specifications by a producer or other representative of the contracting client shall constitute contracting client's agreement to pay any additional costs occasioned by the change.

If costs for a specification change are not approved by the contracting client, the post production company shall not be obligated to provide such additional services or deliverables.

In instances where the contracting client's representative has instructed the post production company to begin incurring costs prior to the execution of the overage, contracting-client's verbal approval shall be considered binding.

### **Post Production Firm Bid**

Under this system, post production companies submit a bid that includes a summary of fees, the number of hours/days to be booked, and an estimate of outside costs, including mark up on those costs. Once details of the approach and the parameters of the expected work are agreed upon and the proposed bid is accepted, it becomes the minimum contract price for the job. As the project days/hours are used, the contracting client and post production company shall consult on additional days/hours needed to complete the project. When the job is completed, the contract price becomes: the fees, mark up, and outside costs as bid; charges for hours actually incurred (but not less than time booked); and approved overages for specification changes, if any.

Under a Firm Bid scenario, there are no accounting obligations to the contracting client by the post production company for the actual outside costs incurred and contracting client shall not be entitled to audit post production company's books and records.

It is standard industry practice that contracting client producers have the authority to approve changes in specifications and corresponding adjustments to the contract price (overages).



## Post Production

### **Post Production Cost Plus Expenses**

Under this system, post production companies submit a bid in the same fashion as described above. When the job is completed and actualized, the contract price becomes: the fees and mark up as bid; charges for hours actually incurred (but not less than time booked); the amount of actual out of pocket/outside costs incurred or committed; and approved overages for specification changes, if any.

### **INTERMEDIATE MATERIALS**

The fundamental engagement of the post production company in marketing is to create, assemble and deliver one or more finished commercials, spots or other media to the agency or advertiser.

Using today's digital tools, the creation of the final product necessarily generates hundreds of working files which may include elements, sketches, mattes, misfires, 3D models and rigs, editorial select bins and working edit files, working animation, pipeline tools, code, intermediate composites, and other work that represent the process required to create the final product. These pieces often contain or represent the thinking and working tools of artists and companies who have spent decades honing their craft and have developed methods and systems for organizing their creative thoughts independent of the project for which these intermediate materials have been generated. These intermediate materials are considered the intellectual property ("IP") of the post production company and are not included in the price of the project. Standard pricing guidelines make no allowance for passing on this valuable IP.

The AICP recommends that its members strenuously object to the inclusion of *any* contractual language from agencies or advertisers deeming these tools, systems or other IP be considered part of the contracted work product of any project or any work for hire agreement. Furthermore, unless this work is specifically paid for, no Master Services Agreement, Statement of Work or contract should, under any circumstances, be signed by member companies that does not include the following language or provision of similar effect:

*"Notwithstanding anything to the contrary contained herein, Supplier shall at all times maintain ownership of its "Intermediate Materials," defined to include the proprietary tools, methods or methodologies, software (in object code and source code form), systems, know how, concepts, technology, information, materials, techniques, expertise, methodologies, 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."*



# Post Production

## **CANCELLATION/POSTPONEMENT**

When the contracting client awards the project, the contracting client has “booked” or “bought” that time. The post production company then blocks out that specific period of time and labor, and this represents an agreement with the contracting client that the post production company will make no further attempt to sell that block of time/labor. If within the framework of the guideline times specified below, e.g., less than five working days, etc., a job is cancelled or postponed, then it is unlikely that the time/labor can be resold.

The post production company acknowledges, however, that it should make all reasonable efforts to sell canceled or postponed time/labor to another contracting client. If time/labor is resold, then there is an obvious area for discussion regarding the extent of cancellation/postponement charges to be assessed.

1. If notice of cancellation or postponement occurs DURING or is given ONE TO FIVE BUSINESS DAYS prior to the scheduled start date, the contracting client will be liable to the post production company for:
  - 100% of the awarded bid, except outside costs which shall only be paid if incurred or committed as of the date of cancellation/postponement.
  - All overages approved prior to the cancellation/postponement.
2. If notice of cancellation or postponement is given SIX TO TEN BUSINESS DAYS prior to the scheduled start date, the contracting client will be liable to the post production company for:
  - 50% of the awarded bid, except outside costs which shall be paid at 100% if incurred or committed as of the date of cancellation/postponement.
  - All overages approved prior to the cancellation/postponement.
3. If notice of cancellation or postponement is given MORE THAN TEN BUSINESS DAYS prior to the scheduled start date, the contracting client will be liable to the post production company for:
  - 25% of the awarded bid, except outside costs which shall be paid at 100% if incurred or committed as of the date of cancellation/postponement.
  - All overages approved prior to the cancellation/postponement.

In the event of cancellation, the contracting-client shall pay the post production company in accordance with paragraphs 1 - 3 above. Invoices for cancellation shall be due and payable upon receipt of the invoice.

The post production company shall have the right to cancel the project without penalty in the event the contracting-client has breached the post production agreement or defaulted on payment to the post production company.



# Post Production

## **PAYMENT GUIDELINES**

Each post production company should consider adoption of a payment policy consistent with good-faith business practices that works for your company. Post production is a labor-intensive process that demands substantial resources, infrastructure, and upfront investment, as well as a highly specialized skill set. Timely payment for services rendered is therefore essential in order to meet obligations and support the resources required to service each job, no matter what the agreed upon contracted payment terms are. The payment plan described below is designed so that the purchase order is issued, and first payment is made, to the post production company prior to initiate the onset of the work. Unless other payment terms are agreed to in advance, subsequent invoices shall be paid in full not later than 30 days after the invoice date. Invoices that are not paid by the due date should bear interest on the unpaid balance at the rate; many have reported using “prime” + 2%\* per month from the date of the invoice until paid in full. The post production company’s payment terms should be included on the face of the invoice and in any other written documents exchanged between the post production company and the contracting client, to avoid any confusion regarding the expectations of entering into an agreement.

It is recommended that if payment is not made as agreed, the post production company may reevaluate the ability of the contracting client to meet its contractual obligations. Failure to make prompt payment, as set forth in the contract between the post production company and the contracting client, may be a breach of contract. In the event that the contracting client is an agency and is in default of any payment, the agency shall provide the advertiser’s billing and contact information so that the post production company may notify and forward duplicate invoices to the advertiser.

### **The 75-25 plan\*\***

This is an addition to other options laid out in the previous versions of the guidelines base on reports of members using this in many instances that require timeliness of delivery, practicality of resources applied and intensive overhead required to fulfill contracted obligations.

- 75% of the contract price is due upon award of the project and prior to the onset of the work
- 25% of the contract price is due and payable upon delivery

### **In all cases**

- A purchase order for the awarded amount is required upon award.
- Overages are due upon agency receipt & approval.
- Deliverables should not be released prior to receipt of 1st 75% of contract price.

*\* The post production company determines the actual rate of interest. The rate tied to “prime” is used as an example.*

*\*\* The post production company determines the actual ratio of first to last payments, subject to follow up negotiations with the advertiser, which may take into account such factors as up-front costs to the post production company, full payment risks, applicable labor law requirements, final payment risks and scope of work requested by the advertiser. The 75%/25% illustrated above is shown as an example, is only a reference point to assist the post production company and is not a recommendation by, or agreement by members of, AIOP to adopt any particular payment terms or payment plan. Individual companies must negotiate their own payment terms, price and other terms directly with the contracting client.*



## Post Production

### **OVERAGES**

An overage is incurred when there is a change in the project specifications, including scope and/or schedule, and will be billable to the contracting-client as a change order to the contract price. The contracting-client shall designate a representative with the authority to approve all overages. In instances where the contracting-client is an advertising agency, by executing the overage, the agency is binding the advertiser to payment.

All overages should be negotiated and executed prior to the commencement of the work contemplated by the overage. A verbal approval shall be considered binding in instances where the contracting-client's representative has instructed the post producer to begin incurring costs prior to the execution of the overage, however both parties shall promptly confirm the overage in writing as soon as practicable. All payments for overages shall be due at the same time as the final contracted payment.

\* \* \*

*AICP has prepared these Guidelines for consideration by its individual member companies as a working tool to be used at that company's option. While the Guidelines do not represent agreement among Association members to apply any particular terms, through adoption by individual producers, the Guidelines reflect, and have over time become, part of the industry's "custom and usage."*