Producing Commercials
The Universal Principles of Engagement

The universal principles on which commercials production companies should be engaged

Production companies are engaged by marketers and their agencies for the express purpose of applying their artistry, unique skills and specialised talent to produce a commercial that fully realises the potential of the creative idea to and enhance and breathe life into marketing concepts. Production companies are driven and committed to consistently find new and innovate ways to improve the creative product, find efficient solutions and keep the talent pool available in the advertising industry fresh and strong.

In order to keep focused on these core areas of expertise, business issues should be as standardised and predictable as possible. The following points outline basic principles of contracting a production company to produce a commercial. The topics discussed ensure that advertisers and agencies receive the highest quality product possible, and that production companies are treated fairly in the execution of each project.

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1. Meeting the client’s objectives
It is in every party's best interest that client expectations are met, as the goal of commercial production is to deliver the highest artistic and technical quality commercial to the client within their expectations regarding cost, time and policy. To this end, it is important that all of the client expectations are realistic, fair, fully disclosed and contemplated in the production contract from the start of the project.

The agency, when engaged as agent for the client, should assume the role and as such should be empowered to make decisions, voice concerns and approve changes during production.

Mutual respect, collaborative spirit and professionalism in the end will determine the success of each project.

2. Try to establish a common vision for all parties
It sounds obvious, but sometimes misaligned expectations are the route all problems that can arise in a production. With as many business entities collaborating, this can be the most important fundamental building block to having a successful project.

3. Non-Disclosure Agreements (NDAs).
It has become customary for advertisers and agencies to request NDAs as part of the contract. Such NDAs should be reciprocal as the production company’s approach, bidding information, and intellectual enhancements are specific to that project and should also be kept confidential by those entities soliciting their input, and ultimately any entity working on behalf of the buyer.

4. Maximum of three bids
There should be a maximum of three production companies invited to bid for a commercial project. The bidding entities should be advised of others they are bidding against, as it helps shape the expectation of the desired outcome. In the situation where there will be more than three companies asked to bid on the same project, all participants should be notified in advance (or as this situation arises) so that companies can better assess whether they would like to participate in the bidding pool.

5. Contract in writing
A production company should be contracted in writing, so that there is a clear understanding of what the production company is producing for the advertising agency (on behalf of the advertiser)*. The contract should clearly establish the rights and responsibilities of each party. The contract ensures that what the agency is expecting of the production company and what the production company is expecting to deliver to the agency are the same thing. The parties are then legally obligated to the terms they have agreed. The contract should provide a mediation and arbitration process in respect of disputes that arise under it.

*For the purposes of this document, the assumption is that an advertising agency is working as agent for the advertiser, in cases where an agency is not involved, or the agency is involved but working in a capacity other than "agent", the roles may change, but the essence of "buyer" and "seller" remain constant.

6. Production companies should be contracted on a fixed bid or cost plus basis
A fixed bid is an agreed upon price for the work produced payable by the agency (or advertiser) to the production company.

Under a fixed bid, the production company accepts all of the risk of the production (with exceptions for items/personnel the agency has elected to provide which are spelled out in the contract, weather risks and force majeure) and the fee remains the same - a fixed amount.

When there are many unknown variables that make it difficult to estimate a job, the agency or the production company may recommend using "cost plus fixed fee' (known as cost plus). Under cost plus, the agency pays the actual cost of making the commercial (which may be more or less than the original estimate) and a pre-determined production fee (usually a percentage "mark up" on the best estimate of costs). In each of these scenarios both entities are protected from pieces that cannot accurately be estimated.

Under either system, there should be a payment schedule that is agreed to and guaranteed by all parties involved, recognising that timely payment is a contractual term.

A note on a cost plus scenario: if an audit of costs is performed (and an audit is only appropriate to a cost plus bid), the costs of such audit, and time frame for final payment, should be reflected and factored into the cost of the production.

7. Up-front payment
Production companies should receive a significant proportion (50 percent to 75 percent) of the budget at least seven days prior to the first shoot date. This reflects the fact that most of the budget has to be paid out prior to production, or immediately thereafter in order to meet all commitments.

8. Interest on late payments
Contracts should provide that interest is payable if the agency fails to pay the production company in accordance with the contract, to reflect the fact that the production company will have to finance the production for the personnel and equipment it has paid for or committed to. Terms of the interest rate should be clearly articulated and understood by each party.

9. Cancellation provisions should be clearly spelled out.
Cancellation provisions should be agreed upon in advance so that in the event of a cancellation by the agency (which does not result from any default on the part of the production company), the production company should be paid all the costs it is committed to and fees and mark up that fairly compensate the production company with respect to work performed, time committed and other opportunities lost.

10. Choice of suppliers
Since the production company is responsible for the services the supplier provides, and ultimately the finished product, the production company should have full control of choosing its suppliers, including service and facilities companies. The production company should not be responsible for suppliers the agency provides (when certain product or brand specifications require such.

The Universal Principles of Engagement was launched and endorsed by commercial producers associations around the world at the World Producers Summit 19th June 2013.

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