



Financial Definitions & Audit Clause

A reference document on net profits, producer's profits, and final budget, with a proposed audit clause for inclusion on contracts.



Net Profits

As they are as computed, determined and paid in accordance with the Company's agreement(s) with any person, firm or company providing the finance for and/or distributing the Film and Net Profits shall be defined, computed, accounted for and paid on the most favourable basis afforded any other party that participates in Net Profits of the Film.

Producer's Profits

That share of Net Profits remaining to the Company after deduction of the participation therein granted, paid to or retained by any person, firm or company (including if appropriate the Company) in consideration (partly or wholly) of such person, firm or company providing finance for and/or distributing the Film.

This means that this is the share which the producing pool is allocated for itself and for sharing with talent, as opposed to the pool allocated to the financiers. For independent feature films in Ireland and England, the standard split is 50% to financiers and 50% to the producer. 2% of Net Profits would be 4% of Producer's Profits in this case. It comes out of the producer's share no matter what it is called and financiers do not care. It does not affect them except in rare cases where talent comes "off the top" before the financiers and the producer divide the balance and then only if it is an unusually high percentage of Net Profits.

Note the definition. It is frequently **called** Producer's Net Profits and may be **defined** in the same way as Producer's Profits; the terms are often interchangeable BUT TAKE CARE that it is not Producer's Profits after deductions are made from what the Producer receives, whatever it is called; Producer's Profits or Producer's Net Profits.

Final Budget

The final estimated cash cost of production of the Film approved by the principal financiers of the Film excluding any overhead charged by a third party financier, completion guarantee fees, [deferred payments,] legal fees, audit fees, finance costs (being interest, commitment and finders' fees and the like), contingency and all payments to the Writer. **This clause is not applicable in a Director's Agreement; it is for writers. If a director's fee is related to the budget it is the total budget. Ask for the budget top sheet or a confirmation of the budget by a reputable party if this is applicable and there is any doubt about it.**



Audit Clause

There needs to be an accounting clause; when statements will be rendered and payments made. In addition you need an audit clause or sub-clause as part of this. Here is the one recommended by the SDGI use, but note that the last long sentence is not included unless asked for. Nobody should mind giving it in the form it is here since there is no liability if third parties wrongly account to the producer.

Here is a proposed audit clause:

The Director shall not have any independent right of audit or objection to the statements of account rendered by such financier and/or distributor but at the Director's expense an accountant (to be reasonably approved by the Company) may within [12] months from receipt of any statement of account examine the records and accounts of the Company relating to such statement and take copies or extracts therefrom but only insofar as such records and accounts relate to the Film and to the accuracy of such statement. In the absence of such an audit, such statement shall be deemed to have been agreed and any claim relating to the statement of account or any item covered thereby shall be deemed to have been waived and the inclusion of information or items in an accounting or statement which had appeared in a previous accounting or statement shall not render any such information or item contestable or recommence the running of the period of [12] months with respect thereto. In the event that such audit reveals and in fact there has been an underpayment to the Director of the greater of [10%] or more of the amount which should have been paid to the Director or €[] and this is in respect of monies the Company has received but not paid to the Director (but not if the Company itself has not withheld such amounts) the Company shall pay to the Director the reasonable audit fees paid by the Director in respect of such audit and shall promptly make good any deficit. In the absence of an audit, such statement shall be deemed to have been agreed and any claim relating to the statement of account or any item covered thereby shall be deemed to have been waived and the inclusion of information or items in an accounting or statement which had appeared in a previous accounting or statement shall not render any such information or item contestable or recommence the running of the period of [12] months with respect thereto.

(Square brackets denote items which may be different/changed/negotiable.)

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