

## **TERMS AND CONDITIONS FOR HIRE OF GOODS AND SERVICES**

### **1. Definitions**

<b>Owner</b>	means 3D Productions Ltd of Unit 8, Lotherton Way, Garforth, Leeds, LS25 2JY.
<b>Hirer</b>	the person, company or organisation who hires or agrees to hire the Goods and/or Services from the Owner.
<b>Conditions</b>	the terms and conditions of hire as set out in this document and any special terms and conditions agreed in writing by the Owner.
<b>Agreement Period</b>	the period for the provision of Goods and/or Services set out in the Owner's Quotation.
<b>Goods</b>	the items which the Hirer agrees to hire from the Owner as set out in the Order.
<b>Price</b>	the price for the Goods and/or Services, excluding VAT and any carriage, packaging and insurance costs.
<b>Force Majeure Event</b>	has the meaning set out in clause 15.
<b>Intellectual Property Rights</b>	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Quotation</b>	the Owner's written quotation for the supply of Goods and/or Services.
<b>Order</b>	the Hirer's order for the supply of Goods and/or Services, as set out in the Hirer's written acceptance of the Owner's quotation.
<b>Services</b>	the services supplied by the Owner to the Hirer as set out in the Order.
<b>Owner Materials</b>	has the meaning set out in clause 11.1.6.

### **2. Conditions**

- 2.1 These Conditions shall form the basis of the contract between the Owner and the Hirer in relation to the hire of Goods and/or Services, to the exclusion of all other terms and conditions including the Hirer's standard conditions of purchase or any other conditions which the Hirer may purport to apply under any purchase order or confirmation of order or any other document.

- 2.2 All orders for Goods and/or Services shall be deemed to be an offer by the Hirer to hire Goods and/or Services from the Owner pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods or commencement of the Services shall be deemed to be conclusive evidence of the Hirer's acceptance of these Conditions.
- 2.4 These Conditions may not be varied except by the written agreement of a Director of the Owner.
- 2.5 These Conditions represent the whole of the agreement between the Owner and the Hirer. They supersede any other conditions previously issued.
- 2.6 Quotations are valid for a period of 30 days from date of issue, unless stated otherwise in the Quotation.
- 2.7 Orders issued by the Hirer are only binding when confirmed in writing by the Owner.

**3. Price**

- 3.1 The Price shall be the amount quoted on the Quotation.
- 3.2 Additional hire charges accrue at the daily rate, as set out in the Owners standard price list, on equipment not returned by the dates and times agreed in the Quotation.

**4. Payment and Interest**

- 4.1 Payment of the Price and VAT shall be due according to the terms set out in the Quotation.
- 4.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of 8% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.
- 4.3 The Hirer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Owner. The Hirer shall not be entitled to withhold payment of any amount payable to the Owner because of any disputed claim of the Hirer in respect of faulty equipment or any other alleged breach of this or any other contract between the Hirer and the Owners, nor shall the Hirer be entitled to set off against any amount payable under this contract any monies which are not then presently payable by the Owner or for which the Owner dispute liability.
- 4.4 Payments sent by post are at risk of the Hirer. The Owner will not accept any liability or accept payment in the event of loss.
- 4.5 The Owner reserves the right to alter the credit terms at any time when in the Owner's opinion the Hirer's financial condition or previous payment record so warrants.
- 4.6 No payment is deemed to be made until received in the Owner's bank account.

**5. Goods**

- 5.1 The Goods are described in the Quotation.
- 5.2 The Owner reserves the right to amend or change the specification of the Goods if required by any applicable statutory or regulatory requirements.

**6. Owner's Obligations**

- 6.1 The Owner will maintain the functionality Goods at no cost to the Hirer and will provide such service at the Owner's premises during normal business hours save that the Hirer will be liable for the cost of any repairs necessary as a result of clause 11.
- 6.2 In the event of failure of any item of equipment whilst on hire, the Owners shall use reasonable endeavours to supply free of charge an identical or similar item of equipment within 24 hours of notification for UK based equipment, further outlined in clause 8.
- 6.3 The Owner guarantees that the Goods and/or Services:
  - 6.3.1 conform with their description;
  - 6.3.2 be fit for any purpose held out by the Owner; and
  - 6.3.3 be carried out in accordance with the Supply of Goods and Services Act 1982.

**7. Delivery of Goods**

- 7.1 Delivery of the Goods shall be made to the Hirer's delivery address, unless otherwise agreed in writing by the Owner and Hirer. The Hirer shall make all arrangements necessary to take delivery of the Goods on the day notified by the Owner for delivery.
- 7.2 The Owner undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date, but does not guarantee to do so. Time of delivery shall not be of the essence of the contract.
- 7.3 The Owner shall not be liable to the Hirer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods. If short delivery does take place, the Hirer may not reject the Goods but shall accept the Goods delivered as part performance of the contract, and a pro-rata adjustment to the Price shall be made.
- 7.4 If the Hirer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch, the Owner shall be entitled to store and insure the Goods and to charge the Hirer the reasonable costs of so doing.

**8. Acceptance of the Goods**

- 8.1 Acceptance of delivery of the equipment by the Hirer will be conclusive evidence that the Goods have been thoroughly inspected and found to be complete, in accordance with the manufacturer's description, in good order and condition, fit for any purpose for which it may be required and, in every way, satisfactory.
- 8.2 The Hirer shall give immediate notice in writing to the Owner after discovering that some or all of the goods do not comply with the terms in 8.1. The Owner will endeavour to repair, replace or substitute any Goods that are defective, or refund the price of such defective Goods.

**9. Carriage of Goods**

- 9.1 Carriage will be chargeable on all hires. This will be at the rate of stated on the Owners written quotation. Carriage will be calculated based on mileage and vehicle required to safely accommodate Goods and/or Services and is non-negotiable. The Hirer is permitted to collect Goods and/or Services from the Owner, on request.

**10. Supply of Services**

- 10.1 The Owner shall provide the Services to the Hirer.
- 10.2 The Owner shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Owner shall notify the Hirer in any such event.

**11. Hirer's obligations**

- 11.1 The Hirer shall:
  - 11.1.1 Ensure that the terms of the Order are complete and accurate;
  - 11.1.2 Co-operate with the Owner in all matters relating to the Services;
  - 11.1.3 Provide the Owner, its employees, agents, consultants and subcontractors, with access to the Hirer's Delivery address as reasonably required by the Owner to provide the Services or to inspect, maintain, repair and test the Goods;
  - 11.1.4 Provide the Owner with such information and materials as the Owner may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - 11.1.5 Obtain and maintain all necessary insurances, licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
  - 11.1.6 Keep and maintain all materials, equipment, documents and other property of the Owner (Owner Materials) at the Hirer's premises in safe custody at its own risk, maintain the Owner Materials in good condition, and not subject to wear and tear over and above that which is consistent with normal and reasonable use, until returned to the Owner, and not dispose of or use the Owner Materials other than in accordance with the Owner's written instructions or authorisation.
  - 11.1.7 To notify the Owner's immediately, in writing, of any loss or damage to the equipment and on demand to reimburse the Owner's in respect thereof within 30 days of the occurrence. The Owners shall continue to charge the Hirer the full cost of hire for the equipment until such payment is received. The Hirer shall be liable for the full replacement cost of the equipment as new.
  - 11.1.8 Not to sell, assign, let on hire or transfer the benefit of hire contract in whole or in part or to part with possession of the said equipment or any part of it at any time during the hire.
  - 11.1.9 Not to make any alterations, modifications, or adjustments or attempt any repairs to the equipment without written agreement from the Owner.
  - 11.1.10 In the event of any breakdown or alleged defect in the equipment:
    - i) The Hirer shall give written notice to the Owner's within 24 hours (which shall be deemed to be given once received by the Owner's) of the discovery of the alleged defect specifying the nature of the defect.
    - ii) The Hirer shall make no further use of the equipment alleged to be defective after the time at which the Hirer discovers that it is defective.
  - 11.1.11 To preserve the Owner's and manufacturer's identification numbers or marks or any nameplates that there should be upon the said equipment.

- 11.1.12 Not to allow the said equipment to be transferred to any country outside of the United Kingdom without prior written agreement from the Owner.
  - 11.1.13 Not to allow the said equipment to be transferred to any country prohibited by the Department of Trade and Industry or the Bureau of Export Administration.
  - 11.1.14 For deliveries within the European Union to assume upon receipt of the equipment until returned to the Owner's or the Owner's appointed agents the entire risk of loss or damage to the equipment from any occurrence whatsoever. For deliveries outside the European Union to assume for the duration of the period of hire as set out in these terms and conditions the entire risk of loss or damage to the equipment from any occurrence whatsoever. The Hirer agrees to arrange, at its own expense, appropriate insurance cover with an approved insurance company against all insurable risks and to produce on request to the Owner's evidence of such insurance and the payment of premiums thereunder.
- 11.2 If the Owner's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Hirer or failure by the Hirer to perform any relevant obligation (Hirer Default):
- 11.2.1 the Owner shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Hirer remedies the Hirer Default, and to rely on the Hirer Default to relieve it from the performance of any of its obligations to the extent the Hirer Default prevents or delays the Owner's performance of any of its obligations;
  - 11.2.2 the Owner shall not be liable for any costs or losses sustained or incurred by the Hirer arising directly or indirectly from the Owner's failure or delay to perform any of its obligations as set out in this clause 11.2; and
  - 11.2.3 The Hirer shall reimburse the Owner on written demand for any costs or losses sustained or incurred by the Owner arising directly or indirectly from the Hirer Default.

**12. Intellectual Property Rights**

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Owner.
- 12.2 The Hirer acknowledges that, in respect of any third-party Intellectual Property Rights in the Services, the Hirer's use of any such Intellectual Property Rights is conditional on the Owner obtaining a written licence from the relevant licensor on such terms as will entitle the Owner to license such rights to the Hirer.
- 12.3 All Owner Materials are the exclusive property of the Owner.

**13. Limitation of Liability**

- 13.1 Nothing in these Conditions shall limit or exclude the Owner's liability for:
  - 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 13.1.2 fraud or fraudulent misrepresentation;
  - 13.1.3 defective products under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1:

13.2.1 The Owner shall under no circumstances whatever be liable to the Hirer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract, and;

13.2.2 the Owner's total liability to the Hirer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed five million (£5,000,000) pounds in respect of any one incident or series of related incidents and ten million (£10,000,000) pounds in the aggregate for any or all incidents (whether related or not) arising during the Agreement Period..

13.3 After the Warranty Period, the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.4 This clause 13 shall survive termination of the Contract.

#### **14. Termination**

14.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 1 months' written notice.

14.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

14.2.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;

14.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

14.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

14.2.5 The other party (being an individual) is the subject of a bankruptcy petition or order;

14.2.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;

- 14.2.7 An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - 14.2.8 The holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 14.2.9 A person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 14.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.2 to clause 15.2.9 (inclusive);
  - 14.2.11 The other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
  - 14.2.12 the other party's financial position deteriorates to such an extent that in the Owner's opinion the Hirer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 14.2.13 The other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.3 Without limiting its other rights or remedies, the Owner may terminate the Contract with immediate effect by giving written notice to the Hirer if the Hirer fails to pay any amount due under this Contract on the due date for payment.
- 14.4 Without limiting its other rights or remedies, the Owner may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Hirer and the Owner if the Hirer fails to pay any amount due under this Contract on the due date for payment, the Hirer becomes subject to any of the events listed in clause 15.2.2 to clause 15.2.13, or the Owner reasonably believes that the Hirer is about to become subject to any of them.
- 14.5 On termination of the Contract for any reason:
- 14.5.1 the Hirer shall immediately pay to the Owner all of the Owner's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Owner shall submit an invoice, which shall be payable by the Hirer immediately on receipt;
  - 14.5.2 The Hirer shall return all of the Owner Materials. The Hirer shall return any Consumables items which have not been fully paid for. If the Hirer fails to do so, then the Owner may enter the Hirer's premises and take possession of them. Until they have been returned, the Hirer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 14.5.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 14.5.4 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**15. Force Majeure**

- 15.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Owner including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Owner or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, interference by civil of military authorities, national or international calamity, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, epidemic or similar events, or default of suppliers or subcontractors.
- 15.2 The Owner shall not be liable to the Hirer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents the Owner from providing any of the Services and/or Goods for more than 1 week, the Owner shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Hirer.

**16. General**

- 16.1 Notices.
- 16.1.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- 16.1.2 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 16.2 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.3 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.4 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.5 This Contract contains the entire agreement and understanding of the parties relating to the subject matter of this Contract and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral.
- 16.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Owner.

- 16.7 Governing law. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 16.8 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).