

DEFINITIONS:

'the Company' means DMX Productions Ltd

'the Contract' any contract between the Company and the Customer for the hire, sale or repair of the Equipment, incorporating these conditions;

'the Customer' means you, the customer, being the person, firm or company named overleaf.

'the Equipment' means the items referred to overleaf

'the Professional Fee' means all sums due to the Company under the Contract for hire, sale or repair

'the Company Premises' means Unit 2, 14-16 Bissell Street, Birmingham, B5 7HP or any other premises used by the Company at the time of the Contract for the purpose of conducting their business.

1. ORDERS AND HIRE PERIODS

1.1 Subject to any variation under condition 1.2 below the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

1.2 These conditions apply to all the Company's contracts for hire, sale or repair of the Equipment and any variation to these conditions and any representations about the Equipment shall have no effect unless expressly agreed in writing and signed by a director of the Company. Nothing in this condition will exclude or limit the company's liability for fraudulent misrepresentation

1.3 All quoted prices are ex-works and exclusive of Value Added Tax and carriage. The Customer will pay to the Company any agreed charges for delivery, collection, installation or operation of the Equipment.

1.4 Save for telephone orders, all orders must be in writing and must include an order number or reference. All telephone orders must be confirmed in writing by email as soon as reasonably practicable.

1.5 Hire charges are, unless otherwise agreed, based on a period of one week irrespective of whether the goods are in use during the whole period or not. Hire commences upon delivery to the Customer and ceases upon return to the Company but in any event if the Customer is an individual or an unincorporated body of persons the hire period will not exceed 84 days.

1.6 A contract for the hire, sale or repair of the Equipment comes into being when the Customer has placed an order giving details of its requirements and has agreed to be bound by these conditions and the Company has accepted the Customer's order.

2. CANCELLATION OR VARIATION OF ORDER

2.1 In the event of a cancellation or reduction in value of the order by the Customer:

(a) at any time up to four weeks prior to the delivery date, the Company will be entitled to recover from the Customer a sum equal to any loss and expenses incurred by the Company;

(b) within four weeks of the delivery date, the Company will be entitled to recover from the Customer a sum equal to any loss and expenses incurred by the Company, or 50% of the charges as originally agreed/quoted, whichever is the greater;

(c) within two weeks of the delivery date, the Company will be entitled to recover from the Customer the full charges agreed/quoted.

3. LOSS AND DAMAGE

3.1 All Equipment hired will be entirely at the Customer's risk throughout the hire period and the Customer is responsible for providing 'all-risks' insurance cover on all Equipment to full replacement value. All Equipment sold will be entirely at the Customer's risk immediately on delivery of the goods to the Customer or its recipient.

3.2 In the event of loss or damage to Equipment hired, the Customer shall reimburse the Company:

(a) to the full replacement value thereof; and

(b) to any loss of profits/income of the Company due to the unavailability of the lost or damaged Equipment.

(iii) The Company shall be entitled to continue to charge the Customer for the hire of the Equipment until all payments due under condition 3.2 above have been received and the Equipment has been replaced or repaired.

4. PAYMENT TERMS

4.1 Unless otherwise agreed, all Equipment hired from the Company shall be subject to a minimum cash deposit of £500.00. Any deposit shall be retained until all payments due, in accordance with these terms and conditions, have been received by the Company.

4.2 Unless otherwise agreed, all charges are due for payment on presentation. The Company may, at its discretion, grant a credit account to the Customer; accounts are to be paid within 30 days of the invoice date. All invoices, unless otherwise shown, are strictly net.

4.3 No payment shall be deemed to have been received until the Company has received cleared funds.

4.4 Any credit outstanding beyond this due date as detailed above will, at the Company's discretion, be passed to the Company's agents for recovery. To cover this additional cost, £50 will be added to the amount overdue for payment such accounts will also be subject to any other costs incurred in obtaining settlement.

4.5 The Customer shall make all payments due under the contract for sale or hire without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

4.6 An interest charge of 6% per annum over the base rate for the time being of Barclays Bank Plc from time to time will, at the Company's discretion, be added to any overdue invoice, calculated on a daily rate basis from the due date for payment to the date of actual payment, as well before as after any judgement.

4.7 If the agreed hire charges are not paid on the agreed due date then the Company reserves the right to repossess any hired Equipment.

4.8 In the event that the Company repossesses any hired Equipment in accordance with 4.7 above or sold Equipment in accordance with 5.3, it will not be liable for any damages or loss incurred by the Customer as a consequence of such repossession. The Customer will pay to the Company any charges the Company reasonably incurs in the recovery from the Customer of money or Equipment.

5. TITLE

5.1 Subject to condition 5.2, all Equipment hired from the Company remains the property of the Company at all times.

5.2 In the event of loss or irreparable damage to Equipment hired from the Company, and upon receipt by the Company of the full replacement costs in accordance with 3.2, title to such Equipment will pass to the Customer.

5.3 Any dates specified by the Company for delivery of Equipment sold are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

5.4 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Equipment sold (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds [180] days.

5.5 All Equipment sold by the Company remains the property of the Company until full payment for the Equipment and all outstanding account balances is received and any cheques are cleared by our bankers. In the event of non-payment by the agreed date the Company reserves the right to repossess or trace the goods or the proceeds of the sale of the goods in the buyer's hands or in the hands of any liquidator or receiver.

5.6 The Customer must advise the Company as to the location of hired Equipment and any change thereto.

5.7 No hired Equipment shall be taken outside mainland Great Britain without the written agreement of the Company.

5.8 The Customer shall not hire, sell or otherwise dispose of any hired Equipment to any person, partnership or any other entity without the specific agreement of the Company.

6. LIEN AND POWER OF SALE

6.1 The Company will have, in addition to any other right or remedy available to it, a lien and power of sale over any equipment and all other property at the Company Premises belonging to the Customer ("Customer's Property") for the Professional Fee and all other fees, costs and expenses charged under or in connection with this agreement. If any such sum remains unpaid (in full or in part) more than three months after it becomes due, the Company is entitled to:

- (a) retain the Customer's Property in its possession until full payment is made; and
- (b) dispose of the Customer's Property in such manner and at such price as the Company thinks fit on the expiry of 21 days' notice to the Customer. Such notice must:
 - (i) be given in writing;
 - (ii) be given in person or sent by first-class post to the Customer's last known address;
 - (iii) state the amount due; and
 - (iv) state the Company's intention to dispose of the Customer's Property unless the amount due is paid in full by the expiry of the notice period.

Any notice given in person is deemed received at the time of delivery. Any notice sent by first-class post is deemed received on the second working day after posting to the Customer's last known address.

6.2 The Company will apply the proceeds of any disposal under clause 6.1(b) in the following order:

- (a) payment of disposal costs;
- (b) payment of outstanding fees, costs and expenses charged under or in connection with this agreement;
- (c) payment of any other costs and expenses during its retention pending disposal; and
- (d) payment of any remainder to the Customer.

6.3 The Customer irrevocably appoints the Company as its attorney to sign, execute and deliver on its behalf all deeds and documents and to do all acts and things necessary to enable the registration of the Company as owner of the Customer's Property in exercise of the power of sale in clause 6.1.

7. EQUIPMENT

7.1 The Customer shall be responsible for ensuring that any relevant regulations, rules or statutory provisions governing or related to the use of the hired Equipment are complied with during the period of hire, and to the fullest extent permissible by law the Company excludes all liability for the consequences of any non-compliance with any such regulations, rules or statutory provisions. In particular, [and except where (and to the extent that) the Company is installing the hired Equipment] the Company's only responsibility under the Lifting Operations & Lifting Equipment Regulations 1998 ('LOLER') will be to mark the Equipment with its safe working load or working load limit and to carry out periodic examination/inspections of the Equipment. Such examinations will not take place whilst the Equipment is on hire to a Customer. Save as above or where the Company is installing the hired Equipment, the responsibility for compliance with LOLER and related regulations shall pass to the Customer upon delivery of the Equipment to it by the Company.

7.2 The Customer is responsible for the safekeeping of the Equipment and protection against the elements, theft, vandalism or improper use, during the hire period.

7.3 The Customer will be charged for the cleaning and repainting of any Equipment hired by the Company, including Equipment cases where such work is found to be necessary.

7.4 Equipment will be supplied to the Customer in normal working order. The Company's liability for any defect or failure of the Equipment is limited to rectification of any such defect or failure. The Company will not be liable for any loss incurred by the Customer consequent to any defect or failure of the Equipment hired. It is the responsibility of the Customer to ensure that the Equipment is in full working order on delivery, and to ensure that the Equipment is fit for the purpose for which it is hired.

7.5 Where any part of the Equipment is electrical it should normally be used with plugs and/or sockets as fitted but if temporarily fitted with other suitable plugs or sockets this must be carried out by a competent person who must also return it to its original condition. It will be the Customer's responsibility at all times to arrange a suitable supply of electricity for use with the Equipment. Under no circumstances should the electrical Equipment be used without it being correctly earthed unless it has double insulated specification. The Customer will be responsible for complying with the requirements of the Electricity at Work Regulations 1989 or any amendment to them during the period of its responsibility for the Equipment.

7.6 Equipment hired must not be modified or altered by the Customer in any way without the specific written agreement of the Company. Any Equipment found, on return to the Company, to be modified or altered, with any missing or damaged lamps or components and any cable cut, will be charged at full replacement value.

7.7 The Customer will be charged for the cleaning or recoiling and taping of returned hired cables if such work is found to be necessary.

7.8 The Customer assumes responsibility for the replacement of lamps, tubes, etc., except in the case of electrical failure under normal working conditions. All faulty lamps, etc., must be returned to the Company for inspection, otherwise the Customer will be charged for them at full replacement value.

7.9 The Company reserves the right to substitute other designs than the Equipment ordered.

7.10 None of the information or data in any catalogue or price list of the Company shall constitute part of a contract of hire or sale, such information being for the purpose of general information only.

7.11 The Customer authorises the Company to enter any land or premises where the Company believes any Equipment to be at reasonable times and after reasonable notice in order to make any necessary inspection of it or to test repair service replace or repossess it.

8. INSTALLATION/OPERATION

8.1 Where the Equipment is hired for use in an event, the Customer shall be responsible for ensuring and hereby warrants that all necessary consents, permissions, licenses and approvals have been obtained for that event.

8.2 If the Customer so requires, the Company shall install the hire or sale Equipment at a location nominated by the Customer on the date of delivery.

8.3 In the event that the Company has agreed to operate the hire Equipment on behalf of the Customer, the Customer shall provide all reasonable assistance as may be required by the Company's operatives during the hire period.

8.4 Where the Company has agreed to operate the hire Equipment and if the Customer so requires, the Company shall liaise with the Environmental Health Department and the Police on behalf of the Customer in relation to the necessary approvals and consents regarding noise levels and finishing times.

8.5 The Company shall supply to the Customer in reasonable time before delivery of the Equipment such information and assistance as may be necessary to enable the Customer to prepare the location for the installation and, if applicable, operation of the Equipment. The Customer shall at its own expense prepare the location and provide proper environmental and operational conditions prior to delivery.

8.6 The Customer shall afford to the authorised personnel of the Company during normal working hours full and safe access to the location and shall provide adequate free working space and such other facilities as may be necessary for the installation and operation of the Equipment.

8.7 If in the reasonable opinion of the Company it is necessary to remove or otherwise disconnect any of the Customer's existing Equipment at the location in order to carry out the installation and operation of the Equipment, then the Customer shall permit and obtain all necessary consents for such removal and/or disconnection and shall give the Company all necessary assistance to enable such work to be carried out.

8.8 The time of delivery, installation and operation of the Equipment shall not be of the essence of this agreement.

8.9 Once installation of the Equipment has been completed, the Company shall test it to ensure that the Equipment and every part thereof is in full working order.

8.10 Once the Equipment and every part thereof has been successfully tested, the Equipment shall be accepted by the Customer and shall, if required by the Company, sign a certificate acknowledging such acceptance.

9. LIMITATION OF LIABILITY

9.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub- contractors) to the Customer in respect of:

(a) any breach of these conditions; and

(b) any representation, statement or tortious act or omission including negligence arising under or in connection with the contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

9.4 Subject to 9.2 and 9.3 above:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the total price of the Contract; and

(b) the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10. TERMINATION

10.1 The Company is entitled at any time if the Customer breaks this contract or becomes bankrupt or if being a company, commences to be wound up or if a receiver or administrative receiver or administrator is appointed in respect of all or part of the Customer's assets or undertaking, or if the Customer enters into any arrangement with its creditors or becomes the subject of a voluntary arrangement, to terminate this contract with immediate effect and to repossess any or all of the Equipment. Such termination will not affect the Company's right to recover from the Customer any money due under this contract or damages for breach of contract.

11. COMPLAINTS

11.1 Any complaints must be notified by the Customer to the Company in writing within 10 days of the date on the invoice.

12. ASSIGNMENT

12.1 The Customer shall not be entitled to assign the contract or any part of it without the prior written consent of the Company.

12.2 The Company may assign the Contract or any part of it to any person, firm or company.

13. FORCE MAJEURE

13.1 The Company reserves the right to defer the date of delivery or to cancel the contract or reduce the amount of Equipment (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of [180] days, the Customer shall be entitled to give notice in writing to the Company to terminate the contract.

14. GENERAL

14.1 Each right or remedy of the Company under the contract is without prejudice to any other right or remedy of the Company whether under the contract or not.

14.2 If any provision of the contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Company in enforcing or partially enforcing any under the contract.

14.4 Any waiver by the Company of any breach of, or any default under, any provision of the contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the contract.

14.5 The parties to this contract do not intend that any term of this contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts. Provision of the contract will not be construed as a waiver of any of its rights.

15. PUBLICITY PHOTOGRAPHS

15.1 All publicity photographs shall credit DMX Productions Limited as responsible for the production. DMX Productions shall be offered free access to all photographs routinely offered to the press and free access to all production photographs owned by the Producer for DMX Productions' own non-commercial purposes, including web site.

16. DOCUMENTATION

16.1 DMX Productions shall be able to take photographs, video and audio documentation or recordings during any stage of rehearsals, dress rehearsals and/or shows for their own purposes (e.g. promotional material on DMX Productions' web site and/or portfolio, or audio/visual rehearsal notes).

17. COPYRIGHT

17.1 All rights in and to any design conceived by DMX Productions in the course of the provision of services provided shall be and shall remain, upon their creation, DMX Productions' sole and exclusive property. This includes, but is not limited, to technical drawings, CAD designs, rigging plots, sound predictions, video content, lighting design, stage design and custom set. DMX Productions as named above is hereby identified as creator of this work in accordance with Section 77 of the Copyright, Designs and Patents Act, 1988.