

ARC SOUND LIMITED

COMMERCIAL TERMS OF BUSINESS AND CONDITIONS OF HIRE

1. Interpretation

1.1 For the purpose of these conditions, unless the context requires otherwise:

'the Company' means Arc Sound Limited; (Company No: 6559512) 'the Contract' means any hire agreement between the Company and the Hirer which may be defined as a contract under the terms of English law; 'Commencement Date' means the date on which the equipment is delivered to or made available for collection by the Hirer; 'Default Rate' means 4 per cent above the Bank of England base rate; 'Equipment' means any equipment hired by the Company to the Hirer including any replacement or substitute equipment and all accessories and additions and renewals; 'Hire Period' means the period of hire specified in the schedule and beginning on the Commencement Date; 'the Hirer' means any company, partnership or individual who shall enter into any hire agreement with the Company; 'Insolvency Act' means the Insolvency Act 1986 or any modification, amendment, consolidation, re-enactment or replacement of it; 'Rentals' means the rentals to be paid by the Hirer to the Owner details of which are set out in the schedule; 'Requested Delivery Date' means the date specified in the schedule as being the date requested by the Hirer upon which the Equipment is to be available for delivery or collection; 'Services' means any services hired by the Company to the Hirer, including any replacement or substitute services and all incidental services and additions and renewals; 'VAT' means value added tax.

2. Hire of the Equipment and/or Services

2.1 The Company agrees to hire and the Hirer agrees to take on hire the Equipment and/or Services for the Hire Period on the terms and conditions of hire set out in these conditions.

2.2 The hire of the Equipment and/or Services commences on the Commencement Date and continues for the Hire Period subject to termination as provided by these conditions.

2.3 The Company shall prepare a Delivery and Acceptance Form and, at the time of delivery or collection of the Equipment or provision of the Services, the Hirer or a person authorised on its behalf, shall sign the Delivery and Acceptance Form, which signature shall constitute the Hirer's acceptance of the Equipment and conditions of hire stipulated herein.

2.4 The Company shall use all reasonable endeavours to have the Equipment and/or Services available for delivery or collection on the Requested Delivery Date but the Company shall not incur any liability whatever in the event of any delay however caused.

3. Rentals

3.1 The Hirer shall pay to the Company the Rentals (subject to any adjustment as provided in clause 5) without previous demand by the Company the first such payment to be made on the Commencement Date and subsequent payments to be made at the consecutive intervals specified in the Schedule.

3.2 Time shall be of the essence in respect of the payment of all Rentals and all other sums due from the Hirer to the company under these conditions and the Hirer shall be deemed to have repudiated these conditions if any of the Rentals or other payments remain unpaid for 14 days or more after becoming due.

3.3 All Rentals and other sums due from the Hirer to the Company shall be increased to include VAT at the rate or rates for the time being in force.

3.4 All payments (if not made by direct debit or banker's order) shall be made to the address of the Company stated above or at such other address as the Company may from time to time communicate to the Hirer.

3.5 Any payment sent by post shall be so sent at the risk of the Hirer.

4. Interest

4.1 Interest shall be payable by the Hirer on:

4.1.1 Overdue Rentals; and

4.1.2 All other sums payable or which become payable under the Contract which are unpaid in each case from the due date to the date of payment at the Default Rate.

4.2 Any interest payable under clause 4.1 above shall run from day to day and shall accrue after as well as before any judgement.

5. Revision of contract

5.1 The Hirer is not permitted to cancel the contract without the company's written consent.

5.2 Where there is an agreed cancellation pursuant to paragraph 5.1 the hirer shall pay the company 50% of the contract price.

5.2 The Hirer expressly acknowledges and accepts that the Company is entitled to charge the full cost of contract for orders cancelled within 168 hours of the commencement date, and to amend rental costs by such amount as the Company deems appropriate at any time after the date of the Contract but before the Commencement Date to reflect an increase in the list price of the Equipment announced or imposed by the manufacturer or an increase in the price of the provision of the Service. Such increase shall be in accordance with the Retail Price Index.

5.3 Any such revision will be notified by the Company to the Hirer as soon as is practicable and in any event on or before the Commencement Date.

6. Use of the Equipment and/or Services

6.1 The Hirer may use the Equipment and/or Services for the purposes of its business.

6.2 The Equipment and/or Services are not to be used, and the Hirer will not permit them to be used, for any purpose for which they are not expressly designed.

6.3 The Equipment and/or Services are not permitted by the Hirer to be used for any purpose beyond their capacity or in a manner likely to result in undue deterioration of them.

6.4 The Hirer agrees that it will not:

6.4.1 Without the prior consent of the Company effect any alteration or other modification to the Equipment. In particular, cables must not be cut, and plugs and sockets must not be rewired by the Hirer. Any Equipment found to have been modified or in any way altered and any cables or components found to have been damaged by cutting or attempts at modification will be charged at replacement price on return;

6.4.2 remove or interfere with any identification marks or plates affixed to the Equipment, nor attempt or purport to do so, nor permit the same.

7. Duties of the Company: The Company shall during the continuance of the contract:

7.1 Ensure that any equipment is supplied to the Hirer in normal working order and maintain liability for the rectification defect or failure arising from normal usage;

7.2 Pay or reimburse to the Hirer the cost of regular service and maintenance in accordance with the manufacturers' recommendations having regard to usage and age together with the cost of any necessary repairs or replacements, except where such repair or replacement is necessitated by any accident or by any negligent use or abuse of the Equipment. If such service or maintenance is not carried out by the Company or its agents, the Company requires proof that the work has been carried out by way of original receipted invoices before it will pay or reimburse the Hirer for such service or maintenance;

7.3 In the event that the Equipment and/or Services become temporarily unusable or unavailable (other than as a result of misuse, accident, damage, theft or vandalism), make available replacement Equipment and/or Services (not necessarily of the same type and age) for collection by the Hirer within 48 hours (or as soon after that as is practicable) after the receipt of notification from the Hirer requesting replacement Equipment.

8. Duties of the Hirer

The Hirer shall during the continuance of the contract:

8.1 Ensure that the Company's Equipment is not used for any purpose beyond its capacity or in any manner likely to result in the deterioration of the Equipment;

8.2 Accept responsibility for ensuring that any relevant regulations, rules or statutory provisions governing, or related to, the use of the hire Equipment and/or Services are complied with during the period of hire and obtain and pay any sums due to acquire any licence or authority legally required to use the Equipment;

8.3 Accept responsibility for advising the Company of the location of the hire Equipment during the period of hire, and of any changes in the location;

8.4 Not take or allow the Equipment to be taken out of the United Kingdom mainland without receiving the prior written authority of the Company and, in the event of that authority being given, only on such terms as the Company deems fit, with it being expressly agreed that if such consent is given, the Company shall not be responsible for the cost of maintenance nor replacement of the Equipment in the event of mechanical failure for the period that the Equipment is outside the United Kingdom mainland;

8.5 Collect from and return to the Company, or from and to such place as the Company shall advise, any replacement Equipment to be made available to the Hirer in accordance with clause 8.4;

8.6 Bear the cost of the repair or rectification of any damage to the Equipment resulting from negligence or improper use of the Equipment by the Hirer;

8.7 Not offer for hire to any third party or parties any Equipment which is the property of the Company without the express written consent of the Company;

8.8 Not sell, assign, mortgage, let, hire or otherwise dispose or part with possession of the Equipment or part of the Equipment or charge the benefit of these conditions nor attempt or purport to do so;

8.9 Take all necessary steps (at its own expense) to retain and recover possession and control of the Equipment if the Hirer loses possession or control;

8.10 Notify the Company within 24 hours of any damage to, or failure of, or defect in any hired Equipment and confirm this in writing within 3 days of initial notification;

8.11 Permit the Company or its authorised representatives at all reasonable times to enter upon the premises where the Equipment may from time to time be in use or stored to inspect and test the condition of the Equipment;

8.12 Take responsibility for insuring equipment against 'all risk' to full replacement value;

8.13 Reimburse the Company for any loss or damage to the Equipment to the full replacement value thereof.

9. Insurance

9.1 The Hirer shall throughout the Hire Period (without prejudice to any liability of the Hirer to the Company) take responsibility for insuring the Equipment (including any replacement Equipment provided under clause 8.4) at its own expense. Underwriters against all loss or damage from all risks in an amount equal to the full new replacement value of the Equipment.

9.2 If the Hirer takes out a policy of insurance in respect of the Equipment to cover the Hire Period it shall notify its insurers that the Equipment is on hire from the Owner and request the insurers to endorse a note of the Company's interest on the policy of insurance naming the Company as loss payee.

9.3 Where any event or accident occurs which is a risk covered by the Hirer's insurance, the Hirer shall:

9.3.1 Immediately notify the Company of such event or accident;

9.3.2 Not compromise any claim without the consent of the Company;

9.3.3 Indemnify the Company against all loss or damage to the Equipment not recoverable under the policy of insurance;

9.3.4 Allow the Company to take over the conduct of negotiations (except in relation to claims of the Hirer for personal injuries, loss of use of the Vehicle, or loss of or damage to the property of the Hirer unconnected with the vehicle); and

9.3.5 At the expense of the Hirer, take such proceedings (in the sole name of the Hirer or jointly with the Company) as the Company shall direct, holding all sums recovered, together with any monies received by the Hirer under its policy of insurance, on trust for the Company and paying or applying the same as the Company directs and as provided in these conditions.

9.4 If the Equipment is declared a total loss, the hire of it shall terminate, and the Company at its option shall apply any proceeds of insurance received by it:

9.4.1 Towards a replacement of equivalent value, which replacement shall be deemed to be included in these conditions for all purposes, and the Hirer shall continue to be liable to pay Rentals as if such loss had not taken place; or

9.4.2 In or towards payment to the Company of the sum necessary to compensate the Company for the loss or profit suffered as a result of the loss of the Equipment.

9.5 The Company has the right to repair or have repaired the Equipment which suffers damage (and not a total loss), but if the Company does not choose to do so, the Hirer is liable at its own expense (but subject to any insurance proceeds) to reinstate or repair it and shall continue to pay Rentals in respect of the Equipment during such reinstatement or repair.

9.6 The Hirer is liable to pay to the Owner any amount deducted by the insurers by way of excess or in respect of damage caused to the Equipment prior to the date of total loss, and (subject to the application of insurance proceeds under sub-clause 9.4.2) shall indemnify the Owner accordingly.

10. General Liability

10.1 The Company does not hire the Equipment subject to any condition or warranty express, implied or statutory in connection with the fitness for any purpose or age of the Equipment and any conditions and warranties are hereby expressly excluded insofar as permitted by law.

10.2 Save for the Company's liability for death or personal injury caused by the negligence of the Company, its employees or agents, the Company will not be responsible for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment or its use.

10.3 The Hirer shall be solely responsible for and hold the Company fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by the Company as a result of any incident involving the Equipment (other than death or personal injury resulting from the negligence of the Company, its employees or agents).

10.4 The Hirer is solely responsible for and shall hold the Company fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses suffered or incurred by the Company as a result of any breach on the part of the Hirer in the discharge of its obligations pursuant to these conditions of hire.

11. Ownership

The Equipment shall at all times remain the property of the Company and the Hirer shall have no rights to the Equipment other than as hirer and the Hirer shall not do or permit or cause to be done any matter or thing which is inconsistent with the Company's ownership or as a result of which the rights of the Company in respect of the Equipment are or may be prejudicially affected.

12. Termination

12.1 If the Hirer:

12.1.1 Fails to pay any Rentals or other sums payable under these conditions (or under any other agreement between the Company), in full within 14 days after such sums have become due (whether demanded or not);

12.1.2 Commits a breach of any of the other terms and conditions of the contract (whether express or implied); or

12.1.3 Does or causes to be done any act or thing which in the opinion of the Company may jeopardise the Company's rights in the Equipment or any part of the Equipment; then in each and every such case the Hirer shall be deemed to have repudiated these conditions and the Company may then, or at any time within three months after that by notice to the Hirer, immediately terminate the hire contract under these conditions.

12.2 If any of the following events shall occur, namely:

12.2.1 If any distress, execution, or other legal process is levied on or against the Equipment or any part of the Equipment, or against any premises where the Equipment is, or against any of the Hirer's goods or other property, or the Hirer permits any judgement against it to remain unsatisfied for seven days; or

12.2.2 If the Hirer, being an individual, dies, suffers an interim order (within the meaning of the Insolvency Act) to be made against him or enters into a voluntary arrangement or suffers the making of a statutory demand or the presentation of a petition for a bankruptcy order; or

12.2.3 If the Hirer, being a body corporate, enters into any liquidation, calls any meeting of its creditors, or has a receiver or administrative receiver appointed of all or any of its undertaking or assets, or suffers the appointment or the presentation of a petition for the appointment of an Administrator under the provisions of Part II of the Insolvency Act, or is deemed by virtue of Section 123 of the Insolvency Act to be unable to pay its debts; then in each and every such case the hire under these conditions shall terminate without notice and no payment subsequently accepted by the Company without knowledge of such termination shall in any way prejudice or affect the operation of this clause.

12.3 If the Company at any time commits a material breach of any of these terms and conditions (whether express or implied), then (provided the Hirer is not itself also in breach) the Hirer may return the Equipment and (without prejudice to its right to claim damages for that breach) by notice to the Company immediately terminate the hire under these conditions for all purposes.

12.4 Without prejudice to the Company's rights to claim damages, the Hirer shall, upon any termination under clause 12.1 or 12.2, immediately pay to the Company:

12.4.1 All arrears of Rentals and all other sums accrued due and unpaid at the date of termination, together with interest in accordance with clause 4;

12.4.2 The cost of all repairs required as at the date of termination (other than those for which the Company has assumed responsibility under clause 7.3);

12.4.3 Compensation for the loss suffered by the Company as a result of such termination, such loss being determined by the Company having regard to all relevant circumstances; and

12.4.4 Any other sums which are or become due to the Company or to which the Company is entitled by way of damages.

12.5 On termination of the hire however or whenever occasioned or on expiry of the Hire Period, the Hirer shall (unless otherwise agreed with the Company) return the Equipment forthwith (including accessories where fitted) to the Company at such address as the Company may direct, in good order and in good working condition and at the Hirer's expense and risk.

12.6 Without prejudice to the foregoing, or to the Company's claim for any arrears of Rentals or damages for any breach by the Hirer of these conditions, the Company or its authorised representatives may, at any time after such termination or expiry of the Hire Period, without notice retake possession of the Equipment and for such purpose enter upon any premises belonging to or in the occupation or control of the Hirer and the Hirer shall be responsible for all costs, charges and expenses so incurred in retaking possession of the Equipment.

12.7 The Hirer shall bear the reasonable costs incurred by the Company at any time in ascertaining the whereabouts of the Equipment and/or the Hirer.

13. Concurrent Remedies

No right or remedy conferred upon or reserved to the Company by these conditions is exclusive of any other right or remedy in these conditions provided or permitted by law, and each shall be cumulative of every other right or remedy now or in the future existing and may be enforced by the Company concurrently or from time to time.

14. Assignment

14.1 The rights of the Hirer under the contract cannot be transferred or assigned.

14.2 The Company may assign, transfer, subcontract or make over all or part of the contract without the Hirer's consent.

15. Amendment and Waiver

15.1 No variation of these conditions of hire shall be effective unless it is made in writing, refers specifically to these conditions and is signed by the parties.

15.2 No waiver or any of these conditions shall be effective except to the extent made in writing and signed by the waiving party.

15.3 No omission or delay on the part of any party in exercising any right under these conditions shall operate as a waiver by it of any right to exercise it in the future.

16. Further Assurance

The Hirer shall, whenever requested by the Owner, execute such documents and do such acts and things as the Company may require to give full effect to these terms and conditions.

17. Time of the Essence

Time shall be of the essence for all contracts made under these conditions.

18. Invalidity

The invalidity, illegality or unenforceability of any of these conditions of hire shall not affect the other conditions.

19. Survivorship

These conditions shall, as to any of its provisions remaining to be performed in whole or in part or capable or having effect following termination, remain in full force and effect notwithstanding termination.

20. Notices

20.1 Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by pre-paid first class letter or facsimile transmission.

20.2 Any notice or document shall be deemed served, if delivered, at the time of delivery; if posted, 48 hours after posting, and if sent by facsimile transmission, at the time of transmission provided that confirmation of such transmission is in the possession of the sender.

21. Law and Jurisdiction

21.1 All contracts subject to these conditions of hire shall be governed by and construed in all respects in accordance with English law.

21.2 The Company and the Hirer irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with any contract of hire subject to these conditions and that, accordingly, any proceedings, suit or action arising out of any such contract shall be brought in such courts.