

TERMS AND CONDITIONS OF HIRE



1. DEFINITIONS

- 1.1 In these terms and conditions the following words and phrases shall have the following meanings:-
- 1.1.1 "**Commencement Date**" means the date on which the Hire Period begins, being the date specified as such on the Hire Form or such other date as may be agreed by the parties in writing;
- 1.1.2 "**Company**" means Black Light Limited, a company incorporated in Scotland under the Companies Acts (registered number SC079054) and having its registered office at 18 West Harbour Road, Granton, Edinburgh, EH5 1PN;
- 1.1.3 "**Conditions**" means these terms and conditions of hire;
- 1.1.4 "**Contract**" means the contract for the hire of the Equipment between the Company and the Hirer as constituted by these Conditions and the Hire Form;
- 1.1.5 "**Deposit**" means the sum of money specified as such on the Hire Form;
- 1.1.6 "**Equipment**" means the equipment to be hired by the Hirer from the Company pursuant to the Contract, as specified on the Hire Form;
- 1.1.7 "**Hire Form**" means the hire form issued by the Company to the Hirer on the Hirer's standard form of hire form from time to time incorporating these Conditions;
- 1.1.8 "**Hire Period**" means the period of time for which the Company agrees to Hire the Equipment to the Hirer beginning on the Commencement Date and ending on the Return Date;
- 1.1.9 "**Hirer**" means the person specified as such on the Hire Form who hire or agrees to hire the Equipment from the Company pursuant to the Contract;
- 1.1.10 "**Hire Charges**" means the charges for hiring the Equipment as specified on the Hire Form;
- 1.1.11 "**Losses**" means loss of revenue, pure economic loss, loss of actual or anticipated profits, loss of the use of money, loss of anticipated savings, loss of business, loss of opportunity, loss of goodwill or loss of reputation;
- 1.1.12 "**Return Date**" means the date on which the Hire Period ends, being the date specified as such on the Hire Form or such other date as the parties may agree in writing;
- 1.1.13 "**Set Up**" means set up the Equipment such that the Equipment is ready for use by the Hirer; and
- 1.1.14 "**Site**" means the location where the Equipment will be used, being the location specified on the Hire Form or such other location as may be agreed by the parties in writing.
- 1.2 In these Conditions:-
- 1.2.1 the singular shall include the plural and vice versa. The masculine, feminine and neutral genders shall be interchangeable;
- 1.2.2 headings are for convenience only and do not affect the construction and/or the interpretation of these Conditions;
- 1.2.3 words importing the whole shall be construed as including a reference to any part of the whole; and
- 1.2.4 references to persons shall include individuals, partnerships, bodies corporate, unincorporated associations, trusts and any other form of legal entity; and
- 1.2.5 reference to any statute or statutory provision shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
2. GENERAL
- 2.1 Subject to any variation in accordance with these Conditions, the Contract shall be governed by these Conditions which will apply to the exclusion of all other terms and conditions (including any terms and conditions which the Hirer purports to apply under any purchase order other than the Hire Form, specification or other document), and will supersede any previous understanding, quotation and/or agreement (whether written or oral) in respect of the subject matter of the Contract. Subject to these Conditions, no waivers, alterations or modifications of these Conditions shall be valid unless made in writing and signed by the duly authorised representatives of the Hirer and the Company.
- 2.2 Each Hire Form issued by the Company to the Hirer shall be deemed to be an offer from the Company to the Hirer to hire the Equipment to the Hirer on the basis of these Conditions. Subject to any rule of law to the contrary, no contract between the Company and the Hirer shall be deemed to be formed until the Hire Form is signed by the Hirer and (if applicable) the Hirer has

- paid the Deposit to the Company.
- 2.3 The Hirer is responsible for ensuring that the terms of the Hire Form are complete and accurate.
- 2.4 Any quotation given by the Company is given on the basis that no contract will come into existence until a contract is formed between the Company and Hirer pursuant to clause 2.2 above. Any quotation given is valid for a period of 30 days from the date on which it was given.
- 2.5 The Hirer hereby acknowledges and agrees that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in these Conditions. Nothing in this clause shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.6 To the extent that these Conditions, do not provide consumers (as defined in Section 25(1) of the Unfair Contract Terms Act 1977) with the statutory protections conferred upon them from time to time by United Kingdom consumer legislation, these Conditions will be deemed to be varied or amended to confer such statutory protection upon consumers as so defined who are Hirers and these Conditions shall be read and construed accordingly.
3. HIRE OF EQUIPMENT
- 3.1 Subject to these Conditions, the Company agrees to hire to the Hirer, and the Hirer agrees to hire from the Company, the Equipment for the Hire Period in consideration for the Hire Charges.
- 3.2 The Hire Period shall commence on the Commencement Date and shall end on the Return Date.
4. DELIVERY, SET UP AND COLLECTION OF THE EQUIPMENT BY THE COMPANY
- 4.1 This clause 4 shall only apply if the Hire Form specifies, or the parties otherwise agree in writing, that the Equipment shall be delivered to the Site.
- 4.2 The Company shall be responsible for ensuring that the Equipment is delivered to and (only in cases where the Hire Form specifies, or the parties have otherwise agreed in writing, that the Equipment is also to be Set Up on the Site) Set Up at the Site on the Delivery Date provided that:-
- 4.2.1 time for delivery and (if applicable) Set Up of the Equipment shall not be of the essence of the Contract and time stated or advised by the Company in respect of such delivery and/or Set Up shall be indicative only; and
- 4.2.2 the Hirer's only remedy for any failure of the Company to comply with its obligations under this clause 4.2 shall be that the Hire Charges shall be reduced to the extent that the Company (in its sole discretion and acting reasonably) shall determine.
- 4.3 Where the Equipment is to be Set Up by the Company, the Company shall use its reasonable endeavours to accommodate any reasonable and practicable requests and/or instructions made the client in respect of the manner in which the Equipment is Set Up provided that the Company cannot and does not guarantee that the Equipment will be Set Up in accordance with such instructions or requests.
- 4.4 If for any reason the Hirer fails to take delivery of the Equipment at any time when the Equipment is due and ready for delivery, the Company shall be entitled to be reimbursed by the Hirer in respect of all costs and expenses incurred by the Company in connection with making such delivery (and in connection with any subsequent redelivery of the Equipment) and/or charge the Hirer an administration fee at such a level as the Company (in its sole discretion and acting reasonably) shall determine. For the avoidance of doubt, where the Hirer fails to take delivery of the Equipment on more than one occasion, the Company shall be entitled to charge the client recover the costs and expenses, and charge the charges, referred to in this clause 4.4 in respect of each such occasion.
- 4.5 The Hirer shall inspect the Equipment in the presence of the Company as soon as practicably possible following the Equipment being delivered and (as the case may be) Set Up.
- 4.6 On or as soon as practicably possible following the Return Date the Company shall remove the Equipment from the Site. Unless the Equipment was Set Up by the Company, the Hirer shall comply with any instructions and/or guidance given by the Company to the Hirer with a view to ensuring that the Equipment ready for collection by the Company. In particular the Hirer shall ensure that any cables supplied with or as part of the Equipment are returned to the Company properly re-coiled. Where the Hirer fails to comply with this clause 4.6 the Company shall be entitled (acting reasonably) to charge the Hirer such additional charges as it considers appropriate.
- 4.7 If the Company is unable to collect the Equipment from the Site due to any act, omission or failure on the part of the Hirer (including, for the avoidance of doubt, a failure of the Hirer to procure access to the Site for the Company having been given reasonable notice by the Company of its intention to collect the Equipment at the relevant time) the Hirer shall not only be liable for any costs and/or expenses suffered or incurred by the Company as a result of such act, omission or failure but the Company shall also be entitled to charge the Hirer such additional charges as the Company shall (acting

reasonably and in its sole discretion) determine. For the avoidance of doubt, the Company shall, without prejudice to any other charges it may be entitled to charge and/or costs and expenses it may be entitled to recover under this clause 4.7, the Company shall (in its sole discretion and acting reasonably) be entitled to charge the Hirer additional hire charges until such time as the Equipment is collected by or otherwise returned to the Company.

5. COLLECTION AND RETURN OF THE EQUIPMENT BY THE HIRER

- 5.1 This clause 5 shall only apply if the Hire Form specifies, or the parties otherwise agree in writing, that the Equipment is to be collected by the Hirer from the Company's premises.
- 5.2 The Hirer shall collect the Equipment from the Seller's premises on the Commence Date.
- 5.3 The Hirer shall be responsible for inspecting the Equipment upon collecting the Equipment from the Company's premises.
- 5.4 The Hirer shall return the Equipment to the Company on the Return Date. If the Hirer fails to return the Equipment when it is due to be returned the Hirer shall not only be liable to the Company in respect of any costs and expenses suffered or incurred by the Company as a result of such failure but the Company shall be entitled to charge the Hirer such additional charges as the Company shall (acting reasonably and in its sole discretion) determine.
- 5.5 The Hirer shall comply with all instructions and/or guidance given by the Company to the Hirer in respect of the manner and/or condition in which the Equipment is to be returned. In particular the Hirer shall ensure that any cables supplied with or as part of the Equipment are returned to the Company properly re-coiled. In the event of any failure by the Hirer to comply with this clause 5.5, the Company shall be entitled to charge the Hirer an administration/re-coiling charge at such a level as the Company (in its sole discretion and acting reasonably) shall determine.

6. HIRE CHARGES AND PAYMENT

- 6.1 The Hirer shall pay the Hire Charges in consideration of being hired the Equipment by the Company.
- 6.2 If the Hire Form states or the parties agree in writing that payment is to be made "In Advance":
- 6.2.1 clause 6.3 below shall not apply; and
- 6.2.2 the Hirer shall pay the Hire Charges (plus any VAT due thereon) in full immediately on or prior to commencement of the Contract.
- 6.3 If the Hire Form states that payment is to be made "By Deposit and Invoice":
- 6.3.1 clause 6.2 above shall not apply; and
- 6.3.2 the Hirer shall pay to the company the Deposit (which shall be set-off against any Hire Charges and/or other amounts owing by the Hirer to the Company from time to time) (plus any Vat due thereon) immediately on or prior to commencement of the Contract; and
- 6.3.3 the Company shall be entitled to invoice the Hirer in respect of the Hire Charges (less any Deposit already paid by the Hirer) at any time following the end of the Hire Period.
- 6.4 All prices are, unless otherwise stated, exclusive of any applicable value added tax, packing, posting and delivery charges (which, for the avoidance of doubt, the Hirer shall also be liable to pay to the Company).
- 6.5 Time of payment is of the essence of the contract.
- 6.6 If the Hirer fails to make payment of any sum due to the Company, the Company shall be entitled to (without prejudice to any other rights and remedies which the Company may have under the Contract or otherwise):
- 6.6.1 terminate the Contract and/or suspend any further performance of the Company's obligation under Contracts; and/or
- 6.6.2 charge the Hirer interest on the overdue amount at a rate equal to 4% above the base rate of The Royal Bank of Scotland from time to time.
- 6.7 All invoices issued by the Company to the Hirer pursuant to these Conditions shall be payable within 30 days of the relevant invoice.
- 6.8 The Company shall be entitled to invoice the Hirer from time to time in respect of any other costs, expenses, fees or charges which the Hirer is liable to pay to the Company pursuant to these Conditions.

7. BREAKDOWN AND REPAIR

- 7.1 The Company shall have no liability to the Hirer for any claim in respect of any defect in the Equipment which:-

- 7.1.1 where clause 4 applies;
- 7.1.2 would have been apparent on inspection; and/or
- 7.1.3 was brought to the Hirer's attention by the Company at the time of inspection and which is made after the commencement of the Hire Period;
- 7.1.4 where clause 5 applies, would have been apparent on inspection and which is made after the commencement of the Hire Period.

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- 7.2 In respect of any defect in any items of Equipment not falling with the scope of clause 7.1, the Company shall arrange for a replacement item of Equipment to be provided to the Hirer as soon as practicably possible following being notified of the defect by the Hirer provided that the Company shall have no liability to the Hirer under this clause where such defect is attributable to any fault or negligence of the Hirer or otherwise attributable to any breach by the Hirer of these Conditions. This shall be the Hirer's sole remedy in respect of any defects in any Equipment provided by the Company to the Hirer and the Company shall have no liability to the Hirer in respect of any costs and expenses suffered or incurred by the Hirer as a result of such defect.
8. **HIRER'S OBLIGATIONS**
- 8.1 Throughout the period of the Contract the Hirer shall:-
- 8.1.1 ensure that the Company is given access to the Site (upon being given reasonable notice by the Company) in order to fulfil its obligations and/or enforce its rights under the Contract;
- 8.1.2 use the Equipment in a safe manner and in accordance with all instructions and/or directions given to the Hirer by the Company from time to time;
- 8.1.3 use the Equipment for the purpose for which it was intended and, if the Hirer has any doubt as to whether the Equipment is suitable for a proposed purpose, refrain from using the Equipment for that purpose until the Hirer has confirmed with the Company whether the Equipment is suitable for such purpose;
- 8.1.4 read any operating instructions, user manuals and explanatory notes supplied with the Equipment and ensure that the Equipment is used in accordance with such instructions, user manuals and explanatory notes;
- 8.1.5 ensure that the Equipment is kept secure until such time as the Equipment is returned to the Company's premises by the Hirer or collected by the Company;
- 8.1.6 in the event that any item of Equipment is lost or damaged, inform the Company of such loss or damage as soon as reasonably possible following such loss or damage occurring;
- 8.1.7 not to assign, mortgage, let on hire, or otherwise dispose of or part with possession of any item of Equipment or part thereof or charge the benefit of the Contract or purport to do any of the foregoing;
- 8.1.8 maintain the Equipment in the state that it is in at the date of delivery of the Equipment to the Site by the Company or collection of the Equipment from the Company's premises by the Buyer (as the case may be);
- 8.1.9 to keep the Equipment free from all liens, charges, encumbrances and securities;
- 8.1.10 bear the cost of the repair or rectification of any damage to the Plant and Equipment resulting from negligence or improper use of the Equipment by the Hirer or any person permitted by the Hirer to use the Equipment; and
- 8.1.11 indemnify the Company against all fines, penalties and liabilities imposed on the Company, or arising in respect of any non-compliance or contravention of any law or regulation, relating to the use and operation of the Equipment, together with any reasonably and properly incurred cost or expense relating thereto incurred by the Company.
- 8.2 **For the avoidance of doubt, the Hirer is responsible for satisfying itself prior to the commencement of the Contract that the Equipment to be supplied by the Company is sufficient and/or suitable for a given use or application. The Hirer is encouraged to discuss its requirements in detail with the Company prior entering into the Contract. The Company accepts no responsibility to the Hirer should the Hirer subsequently claim that the Equipment is not so sufficient and/or suitable.**
- 8.3 Without prejudice to any other rights and/or remedies to which the Company may be entitled under these Conditions or otherwise, the Hirer shall reimburse the Company in respect of any costs and expenses reasonably and properly incurred by the Company as a result of any breach of by the Hirer of its obligations under these Conditions.
9. **HIRER TO OPERATE EQUIPMENT**
- 9.1 The Hirer hereby acknowledges and agrees:-
- 9.1.1 that the Company will not be responsible for operating or maintaining the Equipment during the Hire Period; and
- 9.1.2 that, unless otherwise agreed by the Company in writing, that the Company will not provide the Hirer with any training in respect of the Equipment beyond any training which the Company may be required to give to the Hirer under any rule of law.
10. **LIABILITIES**
- 10.1 The Hirer shall be responsible for and shall save, indemnify, defend and hold harmless the Company from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
- 10.1.1 personal injury including death or disease or loss or damage to the property of any third party to the extent that such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Hirer; and
- 10.1.2 loss or damage to the property of the Company or any person employed by the Company or personal injury including death or disease to any person employed by the Company to the extent that such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Hirer; and
- 10.1.3 loss or damage to the property of the Hirer or any person employed by the Hirer or personal injury including death or disease to any person employed by the Company to the extent that such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Hirer.
- 10.2 Except to the extent of fair wear and tear, the Hirer shall reimburse the Company in respect of the loss of or damage to any Equipment which occurs while the Equipment is on hire to the Hirer. **All lamps provided by the Company to the Hirer must be returned to the Company at the end of the Hire Period (whether functioning or not) otherwise the Hirer shall be liable to the Company for the cost of replacing any lamps not so returned with a new lamp of equivalent specifications.**
- 10.3 The Company shall have no liability to the Client for any of the Losses nor for any indirect, special, consequential loss or damage to the Client or any third party arising under the Contract whether arising from the negligence of the Company or otherwise.
- 10.4 The Company's maximum and aggregate liability arising out of contract, delict (including negligence or breach of statutory duty) or otherwise for any loss or damage arising out of or in connection with the Contract, howsoever arising, shall not exceed the total sum received by the Company from the Client under the Contract.
- 10.5 Nothing in this Agreement shall exclude or limit the Company's liability for death or personal injury or any liability which cannot be excluded or limited by law.
- 10.6 **TERMINATION**
- 10.7 The Company will have the right to terminate the Contract forthwith by notice in Writing if the Hirer:-
- 10.7.1 commits any material breach of the Contract; or
- 10.7.2 commits an act of bankruptcy, becomes apparently insolvent, makes an arrangement or composition with creditors or (being a company) has had convened a creditors meeting;
- 10.7.3 has a receiver (whether administrative or otherwise) appointed or any steps are taken for the appointment of an administrator or a resolution has been passed for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or any proceedings have commenced relating to the insolvency or liquidation or possible insolvency of that party or it ceases or threatens to cease to carry on business or if serious doubt arises as to that party's solvency.
- 10.8 **Cancellation Period:** The Hirer shall have the right to terminate the Contract at any time prior to:
- 10.8.1 the start of the Hire Period; or
- 10.8.2 prior to collecting or taking delivery of the Equipment (as the case may be)
- (whichever is earlier) provided that the Company shall be entitled to retain the Deposit (if any) or charge the Hirer such a cancellation fee as the Company (in its sole discretion and acting reasonably) may determine.
- 10.9 In the event that the Contract is terminated in accordance with any of the provisions of Clause 11.1:
- 10.9.1 the total amount due or that may become due by the Hirer to the Company under the Contract shall become immediately due and payable by the Client to the Company; and
- 10.9.2 the Hirer shall immediately return the Equipment to the Company or shall ensure that the Company has given access to the Site upon reasonable notice being given by the Company in order to allow the Company to collect the Equipment.
- 10.10 Termination of the Contract for any reason by the Company shall not affect the Hirer's obligation to pay any outstanding invoices or any other monies owing to the Company, including any interest charges.
11. **INSURANCE**
- 11.1 Unless the Hire Form specifies that the Company shall be liable for insurance, the Hirer shall keep the Equipment insured with an insurance company of good repute against loss or damage from all normal business risks (including normal third party risks). The Hirer shall notify its insurers that the Equipment is on hire from the Company and request the insurer to endorse a note of such interest on the policy of insurance naming the Company as loss payee and shall on demand show to the Company the policy of insurance, the premium receipts and insurance certificate and shall not use or allow the Equipment to be used for any purpose not permitted by the terms and conditions of the policy of insurance or do or allow to be done any act or thing whereby the insurance may be invalidated. If the Hirer shall make default in the payment of any premium in respect of the insurance the Company may pay such premium in which event the Hirer shall repay the amount thereof on demand. The Hirer shall indemnify the Company against all loss or damage to the Equipment not recoverable under the policy of insurance.
- 11.2 Where any event or accident shall occur which is a risk covered by the Hirer's insurance hereunder, the Hirer shall immediately notify the Company thereof, shall not compromise any claim without the consent of the Company, shall 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 Equipment, or loss or damage to the property of the Hirer unconnected with the Equipment) and shall 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 reasonably 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 as the Company directs and as herein provided. If any of the Equipment is declared a total loss the Company shall, unless otherwise agreed by the Hirer, apply any proceeds of insurance received by it towards a replacement of equivalent value which replacement shall be deemed to be included in the Contract for all purposes and the Hirer shall continue to pay the Hire Charges as if such loss had not taken place.
12. **GENERAL**
- 12.1 **Entire Agreement.** The Contract constitutes the entire agreement between the Company and the Hirer relating to the hire of the Equipment and shall supersede all prior agreements and understandings (whether oral or in writing) between the Hirer and the Company with respect to the hire of the Equipment. Any modification or variation to the terms of the Contract shall only be valid if it is made in writing and signed by the Hirer and the Company or their duly authorised agents.
- 12.2 **Notices.** All notices to be given under the Contract shall be in writing and, in the case of the Company, be addressed to its registered office and, in the case of the Hirer, be addressed to the address specified on the Hire Form or such other addresses as either party may notify the other pursuant to this provision.
- 12.3 **Assignment.** The Hirer party shall not be entitled to assign any of its rights and/or obligations under the Contract without the prior written consent of the Company. The Company may assign or sub-contract any of its rights and/or obligations under the Contract without the consent of the Hirer.
- 12.4 **Unforeseen Circumstances.** Save in respect of any obligation under the Contract to make any payment, neither party shall be liable for any delay in performing any of its obligations hereunder if such a delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled to a reasonable extension of time for the performance of such obligations. Such delay shall not constitute a breach of the Contract, provided however that if such delay continues for a period in excess of 14 days, the party not in delay shall be entitled to terminate the Contract forthwith by written notice to the other party.
- 12.5 **Waivers.** No delay or failure by the Company in exercising or enforcing any of its rights or remedies under the Contract will prejudice or restrict its rights, nor will any waiver of rights operate as a waiver of subsequent rights.
- 12.6 **Survival of Clauses.** In the event that any Clause of the Contract is held to be invalid by any court having jurisdiction over the Contract, that Clause may be deleted from these Conditions and the remaining Clauses shall continue to be, to the extent that they are unaffected by the deletion, valid and binding on the parties hereto.
13. **GOVERNING LAW AND JURISDICTION**
- 13.1 The provisions of these Conditions shall be governed by and construed according to the law of Scotland and the parties hereto prorogate the exclusive jurisdiction of the Scottish courts.

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