

Film Plus LLP terms and conditions of hire

An agreement made between Film Plus LLP having its registered office at 77-81 Scrubs Lane, London, NW10 6QW ("the Owner") (1) and the hirer named in the Schedule hereto ("the Hirer") (2) whereby it is agreed as follows:

1. Definitions

1.1 Save where otherwise specified, the capitalised words and expressions in these terms and conditions shall have the meanings set out in the Schedule.

1.2 "Account Hirer" shall mean a Hirer who has a current monthly account facility with the Owner, and the term Hirer shall include Account Hirer where appropriate.

2. Hire

The Owner hereby hires to the Hirer the Equipment for the Hire Period and at the Rentals in each case as stated in the Schedule hereto upon the terms and subject to the conditions hereinafter appearing.

3. Hire Period

3.1 The Hire Period shall commence from the Commencement of Hire as stated in the Schedule unless the Equipment is delivered by the Owner in which case the Hire Period shall commence when the Equipment leaves the Owner's premises. If the Equipment is collected by the Owner then the Hire Period shall terminate when the goods are received back at the Owner's premises.

3.2 The Hire Period will be calculated as follows:

(a) 1 day: Any 24 hour period commencing from the time the Equipment leaves the Owner's premises until the same time the following day;

(b) 1 week: Any continuous period of 7 days calculated in accordance with Section 3.2(a) above;

(c) 1 month: Any continuous period of 30 days calculated in accordance with Section 3.2.(a) above;

(d) Weekend: The period from 4.00 p.m. on Friday to 10.00 a.m. on Monday, which is to be calculated as a period of one day for the purposes of these terms and conditions;

(e) Early Pick-Up: Provided that the Equipment is available, the Equipment can be collected after 4.00 p.m. the day before the Commencement of Hire starts and returned [by 10.00 a.m. the day after the end of the Hire Period] without incurring further charges.

(f) The Owner will use all reasonable endeavours to have each item of specified Equipment available for hire on the Commencement of Hire but the Owner shall not incur any liability whatsoever in the event of any non-availability due to failure by another customer to return, unforeseeable mechanical breakdown or any other circumstance beyond its reasonable control.

4. Rentals and Deposit

4.1 A Hirer who is not an Account Hirer will pay to the Owner on or before the Commencement of Hire the Rentals stated in the Schedule together with value added tax at the rate or rates and in the manner for the time being in force.

4.2 A Hirer who is not an Account Hirer will provide the Owner in advance with a deposit to the full value of the Equipment on hire in the form of cash, banker's draft or other form of security acceptable to the Owner. The Owner will be entitled without prejudice to its other rights hereunder to cash the Deposit and credit it to its account in the event that, and to the extent that, the Hirer shall fail to discharge in a timely manner any of its liabilities hereunder. For the avoidance of doubt, the Owner shall refund to the Hirer any portion of the Deposit not required to discharge the Hirer's liabilities as aforesaid. The Owner shall not be liable for any tax which may have accrued in respect of the Deposit when in the Owner's possession.

4.3 An Account Hirer shall be invoiced monthly in arrears and shall pay all sums due for all Rentals owing in respect of the hiring of Equipment in the previous month together with all value added tax at the rate or

rates and in the manner for the time being in force within 30 days of the date of invoice. An Account Hirer shall pay to the Owner interest at the rate of [2] per cent above the base rate of the Bank of England on all sums due which are not paid within 30 days of the date of invoice. Further orders will not be accepted if the account is not settled within 30 days of the due date for payment.

5. Equipment and its use

5.1 All lighting and projection Equipment is supplied with spare lamps. All such spare lamps and any failed original lamp fitted to the Equipment must be returned with all items of Equipment at the end of the Hire Period. Failure to comply with this requirement will result in the cost of each lamp being added to the final invoice.

5.2 The Hirer agrees not to use, or permit the use of, the Equipment for any purposes for which it is not expressly designed. The Hirer further agrees that it will not use or permit the Equipment to be used for any illegal purpose whatsoever.

5.3 The Hirer agrees that it will not:

(a) without the prior written consent of the Owner, effect any mechanical or other modification to the Equipment, make any alterations or additions, or fit any accessories or non-standard parts thereto. Without prejudice to the preceding sentence, any additions, alterations or other parts which are made (whether with or without the Owner's consent) shall become part of the Equipment and shall belong to the Owner absolutely;

(b) remove or interfere with any identification marks (including, without limitation, any trade marks or CE marking) affixed to the Equipment nor attempt to do so, nor permit the same;

(c) deface the Equipment in any way whatsoever.

6. Duties of the Owner

6.1 In the event that an item of Equipment becomes temporarily unworkable other than as a result of accident, damage, theft, vandalism or any other occurrence due to the default of the Hirer, the Owner will, subject to availability, make available as soon as is reasonably practicable a replacement item of Equipment (not necessarily of the same make and type but functionally equivalent) for collection by the Hirer after the receipt of notification from the Hirer requesting the same.

6.2 Subject to the limitations upon its liability set out in Clause 9, the Owner warrants to the Hirer that it will perform the services supplied under this Agreement with reasonable care and skill.

7. Duties of the Hirer

7.1 The Hirer shall be solely responsible for and hereby fully indemnifies and holds the Owner harmless against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by the Owner as a result of any accident or occurrence involving the Equipment or otherwise due to the Hirer's or any third party's use or misuse of the Equipment during the Hire Period (or any period of possession of the Equipment under Clause 11), other than for death or personal injury resulting from the negligence of the Owner, its employees or agents.

7.2 For the period during which any item of Equipment is out of use as a

result of any such accident, the Hirer will, without prejudice to any other rights of the Owner, pay to the Owner a daily sum (payable in arrears) at the same rate per annum as the rental payments previously due in respect thereof, together with Value Added Tax at the rate or rates and in the manner for the time being in force.

7.3 The Hirer shall ensure that the Equipment is operated properly and with due care.

7.4 The Hirer shall not take or allow any of the Equipment to be taken out of the United Kingdom mainland without receiving the prior written authority of the Owner and, in the event of that authority being given, only on such terms as the Owner, in its sole discretion, shall consider appropriate.

7.5 The Hirer shall bear the full cost of the repair or rectification of any damage to the Equipment resulting from [use or from] negligence or improper use of the Equipment by the Hirer or any person permitted by the Hirer to use the Equipment.

7.6 The Hirer shall not sell, assign, mortgage, charge, let on hire or otherwise dispose of or part with possession of any Equipment or part thereof or charge the benefit of this Agreement nor attempt or purport to do so.

7.7 The Hirer shall take all necessary steps at its own expense to retain and recover possession and control of any Equipment of which the Hirer loses possession or control.

7.8 The Hirer shall notify the Owner of any change in the Hirer's address and upon request by the Owner

promptly inform the Owner of the whereabouts of the Equipment.

7.9 The Hirer shall have no rights to the Equipment other than as Hirer and the Hirer shall not do or permit or suffer to be done any act (or omission) whereby the rights of the Owner in respect of such Equipment are or may be prejudicially affected.

8. Insurance

8.1 Risk of loss or damage to the Equipment shall pass to the Hirer upon delivery and the Owner requires that all Equipment on hire is covered by the Owner's insurance policy (the "Owner's Insurance") unless the Hirer (i) has obtained an alternate insurance policy which has been approved by the Owner prior to the Commencement of Hire and (ii) complies fully with the requirements of clause 8.2.

8.2 If the Hirer intends to rely on an alternate insurance policy the Hirer agrees that it shall:

- (i) on or before Commencement of Hire, arrange to keep the Equipment (including any replacement Equipment provided under Clause 6.1 above) insured throughout the continuance in force of this Agreement without prejudice to the liability of the Hirer to the Owner with an insurance company of good repute against loss or damage from all risks (including third party risks);
- (ii) on or before Commencement of Hire, notify its insurers that the Equipment is on hire from the Owner and request that the insurers endorse a note of such interest on such policy of insurance naming the Owner as the loss payee;
- (iii) on or before Commencement of Hire, produces to the Owner the policy of insurance endorsed as required under 8.2(a)(ii);
- (iv) on demand show to the Owner the policy of insurance, the premium receipts and insurance certificate;
- (v) 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; [and
- (vi) indemnify the Owner against all loss or damage to the Equipment not recovered by the Owner under any policy of insurance]; and if the Hirer

defaults in the payment of any premium in respect of the insurance, the Owner may (but is not obliged to) pay such premium in which event the Hirer shall repay the amount thereof to the Owner on demand.

8.3 Where the Hirer does not intend to rely on an alternate insurance policy as contemplated by clause 8.1, it shall pay to the Owner a fee calculated as a percentage of the rental fee in respect of the cost of maintaining the Owner's Insurance in respect of the Equipment (the "Insurance Fee"). This Agreement is subject to the full terms of the Owner's Insurance, a copy of which (including the current Insurance Fee) is available from the Owner on request.

8.4 The Hirer hereby acknowledges and agrees that:

- (a) subject to clause 8.5, the Hirer is liable for the first £[250] of any claim made on the Owner's Insurance (the "excess");
- (b) the Owner's Policy does not cover and the Hirer shall be fully liable and hereby indemnifies the Owner for any loss or damage to the Equipment during the Hire Period caused by the Hirer's negligence; and
- (c) the Hirer is obliged to report to the Owner (and if applicable to the police) all relevant loss or damage to the Equipment during the Hire Period as soon as practicable upon such loss or damage occurring.

8.5 The Owner agrees that in the event of a claim being made on the Owner's Insurance, it shall waive the Hirer's obligation to pay the excess provided that the Hirer has paid on or before the Hire Commencement the [Excess Fee].

9. Limitation of Liability

9.1 Subject to Clause 9.3, the following provisions set out the Owner's entire liability (including any liability for the acts and omissions of its employees, subcontractors or agents) to the Hirer in respect of:

- (a) any breach of its contractual obligations arising under this Agreement;
- (b) any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement; and
- (c) any other fact, matter or circumstance arising out of or in connection with this agreement.

9.2 Any act or omission on the part of the Owner or its employees or agents or any other fact, matter or circumstance falling within Clause 9.1 shall for the purposes of this Clause 9 be known as an "Event of Default". If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

9.3 Nothing in this Agreement shall limit or exclude the Owner's liability to the Hirer for:

- (a) death or injury resulting from the Owner's, its employees' or agents' negligence;

(b) any damage suffered by the Hirer as a result of the implied statutory undertakings as to the right to transfer possession pursuant to section 7 of the Supply of Goods and Services Act 1983; and
(c) any damage suffered by the Hirer as a result of fraud or fraudulent concealment.

9.4 Subject to Clause 9.3, the Owner's entire liability shall be limited to:

(a) in respect of any one Event of Default (or any one claim for a number of Events of Default under Clause 9.2) damages of an amount equal to the Rentals set out in the Schedule, or in the case of an Account Hirer, the aggregate of all Rentals paid by the Account Hirer in the preceding 3 months; and
(b) in any event, to damages of an amount equal to £* in respect of all Events of Default arising in any [12] month period.

9.5 Subject to Clause 9.3 the Owner shall not be liable to the Hirer in respect of any Event of Default for loss of profits, savings or goodwill; increased costs or expenses or any type of special indirect or consequential loss even if such loss or damage was reasonably foreseeable or the Owner had been advised

of the possibility of the Hirer incurring the same.

9.6 Nothing in this Clause 9 shall confer any right or remedy upon the Hirer to which it would otherwise be legally entitled.

9.7 Except as set forth herein and to the fullest extent permitted by law, the Owner makes no warranties or representations, express or implied, statutory or otherwise, with respect to the Equipment. The Owner does not warrant that the Equipment will operate error-free or uninterrupted, or will meet the Hirer's requirements. The Owner hereby specifically excludes and disclaims all representations, warranties and conditions not expressly set out herein, whether express, implied or statutory including, without limitation, warranties or conditions of satisfactory quality and of fitness for a particular purpose and any representation, warranty or condition that may arise by reason of trade usage, custom or course of dealing and the Hirer hereby expressly waives any and all rights and remedies it would otherwise have in respect of all such representations, warranties or conditions other than the warranties set forth herein.

10. Termination

10.1 If the Hirer shall fail to pay any Rental or other sum payable under this Agreement (or under any other agreement between the Owner, any subsidiary of the Owner, any holding company of the Owner, or any other subsidiary of any such holding company and the Hirer) within 7 days of its becoming due (whether demanded or not) or shall commit a breach of the other terms and conditions whether express or implied of this Agreement (or of the terms and conditions of any such agreement as aforesaid) or shall do or allow to be done any act or thing which in the opinion of the Owner may jeopardise the Owner's rights in the equipment or any part thereof, then in each and every such case the Hirer shall be deemed to have repudiated the Agreement and the Owner may thereupon or at any time within 3 months thereafter by notice in writing to the Hirer for all purposes forthwith terminate this Agreement.

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

(a) if any distress, execution, or other legal process shall be levied on or against the Equipment or any part thereof or against any premises where the same may be or against any of the Hirer's goods or other property or the Hirer shall permit any judgment against it to remain unsatisfied for 7 days, or
(b) if the Hirer, being an individual, shall die or makes an arrangement or composition with his creditors generally or suffers to be made against him a bankruptcy order or petition for such a bankruptcy order; or
(c) If the Hirer, being a body corporate, enters administration (as defined in Schedule B1 of the Insolvency Act 1986) or suffers the appointment of an administrative receiver or a receiver over the Hirer, or suffers an encumbrancer taking possession of or selling any asset of the Hirer; or makes an arrangement or composition with its creditors generally or is otherwise unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 then in each and every such case the hire constituted by this Agreement shall automatically and without notice terminate and no payment accepted by the Owner without knowledge of such termination shall in any way prejudice or affect the operation of this Clause.

10.3 The Hirer shall upon any termination under clauses 10.1 or 10.2 above pay to the Owner all arrears of Rental (if any) then due and all other sums accrued due and unpaid at the date of termination, together with interest thereon payable from the due date of payment until payment (as well as before judgment) at the rate of [2] per cent above the base rate of the Bank of England. The termination of the hire constituted by the Agreement shall not affect any rights of the Owner or liabilities of the Hirer subsisting at the date of

termination.

10.4 On termination of the hire howsoever or whenever occasioned or on expiry of the Hire Period, the Hirer shall no longer be in possession of the Equipment with the Owner's consent and shall (unless otherwise agreed with the Owner) forthwith return the Equipment in good order and in good working condition

(including accessories where fitted) to the Owner at such address as the Owner may direct and at the Hirer's expense and risk. Without prejudice to the foregoing or to the Owner's claim for any arrears of Rental, the Owner 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 the Hirer shall permit the Owner or its authorised representatives to enter upon any premises belonging to or in the occupation or control of the Hirer. The Hirer shall be responsible for all costs, charges and expenses so incurred in retaking possession of the Equipment as aforesaid together with all reasonable costs incurred by the Owner at any time in ascertaining the whereabouts of the Equipment and/or the Hirer.

11. Continuation Payment

11.1 Without prejudice to the provisions of Clause 10.4 hereof, as from the due termination or expiration (as applicable) of the Hire Period and until such time as the Equipment is returned, the Hirer shall pay by way of recompense for the continued possession of the Equipment a daily sum (payable in arrear) at the same rate per annum as the Rental payments previously due in respect thereof, together with VAT at the rate or rates and in the manner for the time being in force.

11.2 Nothing in this clause 11 shall confer upon the Hirer any right to the continued use or possession of the Equipment beyond the Hire Period.

11.3 If the Hirer retains the Equipment beyond the Hire Period without first obtaining the permission of the Owner then he shall be in breach of this Agreement such that the Owner may exercise his rights of termination under Clause 10 above.

12. Force Majeure

Although the Owner will use all reasonable endeavours to discharge its obligations hereunder in a prompt and efficient manner, it does not accept responsibility for any failure or delay caused by circumstances beyond its reasonable control.

13. Forebearance

No forbearance indulgence or relaxation on the part of the Owner shown or granted to the Hirer in respect of any of these terms and conditions shall in any way affect diminish restrict or prejudice the rights or powers of the Owner hereunder or operate as or be deemed to be a waiver of any breach by the Hirer of these terms and conditions.

14. Concurrent Remedies

No right or remedy herein conferred upon or reserved to the Owner is exclusive of any other right or remedy herein or by law or equity provided or permitted but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing and may be enforced concurrently therewith or from time to time.

15. Notices

Any notice hereunder shall be in writing and may be served by sending it by facsimile or pre-paid first class letter post or personal delivery if sent or delivered to the fax number or address stated herein, and in any other case, to the last known address of the addressee and such notice shall be deemed to have been duly given or made as follows (i) if personally delivered, upon delivery at the address of the relevant party; (ii) if sent by first class post, two business days after the date of posting; and (iii) if sent by fax, when despatched provided always that if, in accordance with the this clause 15, any

such notice, demand or other communication would otherwise be deemed to be given or made after 5.00 p.m. such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next business day.

16. Waiver of Set-Off

The Hirer hereby waives all and any future claims and rights of set-off against any instalment of Rental or any payment due hereunder and agrees to pay the Rental and other amounts hereunder regardless of any equity, set-off or cross-claim on the part of the Hirer against the Owner.

17. Construction

Where there are two or more parties to the Hire Agreement as Hirer their liability hereunder shall be joint and several. In these terms and conditions and where the context so admits or requires the masculine gender shall include the feminine or neuter (and vice versa) and expressions in the singular shall include the plural.

18. Governing Law

These terms and conditions shall be governed by and construed in accordance with the Laws of England. The Hirer irrevocably submits to the non-exclusive jurisdiction of the English Courts.

19. Entire Agreement

Each party acknowledges and agrees with the other party that this Agreement constitutes the entire and only agreement between the parties and supersedes all prior agreements, understandings and arrangements, oral or written, between the parties hereto with respect to the subject matter hereof, provided that the provisions of this Clause 19 shall not exclude any liability or right which either party would otherwise have to the other party in respect of any fraudulent statements or any fraudulent concealment made prior to the execution of this Agreement.

20. Severability

If any provision of this Agreement is held to be unenforceable, this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects this Agreement shall remain in full force and effect; provided, however, that if any provision may be made unenforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

21. Rights of Third Parties

Save as expressly provided herein, the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no rights or benefits expressly or impliedly conferred by it shall be enforceable under that Act against the parties by any other person.