

BLACKOUT LTD. TERMS AND CONDITIONS FOR EQUIPMENT HIRE

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in the Contract:
"**Business Day**"; a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
"**Commencement Date**"; the date that the Lessee takes Delivery of the Equipment.
"**Conditions**"; the terms and conditions set out in this document.
"**Contract**"; the contract between the Lessor and the Lessee for the hire of the Equipment in accordance with these Conditions.
"**Delivery**"; the transfer of physical possession of the Equipment in accordance with clause 5.
"**Equipment**"; the items of equipment listed in the Order Confirmation, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.
"**Order**"; the Lessee's order for the Equipment, as set out in the Lessee's order form, the Lessee's written acceptance of the Lessor's quotation, or overleaf, as the case may be.
"**Lessor**"; Blackout Limited (registered in England and Wales with company number 02502293) whose registered office is at The Quadrangle, 2nd Floor, 180 Wardour Street, London W1F 8FY.
"**Lessee**"; the person or firm who hires the Equipment from the Lessor.
"**Order Confirmation**"; the Lessor's confirmation of the Lessee's order.
"**Payment Schedule**"; the sums payable as set out in the Order Confirmation.
"**Site**"; the Lessee's premises as set out in the Order.
"**Rental Payments**"; the payments made by or on behalf of Lessee for hire of the Equipment.
"**Rental Period**"; the period of hire as set out in clause 3.
"**Total Loss**"; the equipment is, in the Lessor's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.
"**Trading Address**"; 280 Western Road, London SW19 2QA.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to **writing** or **written** includes faxes and e-mails.

2. EQUIPMENT HIRE

- 2.1 The Lessor shall hire the Equipment to the Lessee for use at the Site subject to the terms and conditions of the Contract.
- 2.2 The Lessor shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with the Lessee's quiet possession of the Equipment.

3. RENTAL PERIOD

The Rental Period starts on the Commencement Date and shall continue for a period set out in the Order Confirmation unless the Contract is terminated earlier in accordance with its terms.

4. RENTAL PAYMENTS

- 4.1 The Lessee shall pay the Rental Payments to the Lessor in accordance with the Order Confirmation.
- 4.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee at the rate and in the manner from time to time prescribed by law.
- 4.3 All payments to be made by either party under the Contract shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.
- 4.4 If the Lessee fails to pay any Rental Payments or any other sums payable under the Contract by the due date for payment under the Contract then, without limiting the Lessor's rights under clause 11.1, the Lessee shall pay interest on such sums for the period from and including the due date of payment up to the actual date of payment, whether before or after judgment. The interest shall be paid at the rate of four per cent (4%) per annum above the base rate from time to time of Barclays Bank.

5. DELIVERY

- 5.1 The Lessee shall collect the Equipment from the Lessor's premises at the Trading Address or such other location as may be advised by the Lessor before delivery (Delivery Location).
- 5.2 If the Lessee fails to accept delivery of the Goods within three (3) Business Days of the Lessor notifying the Lessee that the Equipment is ready, then, except where such failure or delay is caused by a Force Majeure Event or the Lessor's failure to comply with its obligations under the Contract:
(a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Lessor notified the Lessee that the Equipment was ready; and
(b) the Lessor shall store the Equipment until delivery takes place, and charge the Lessee for all related costs and expenses (including insurance).
- 5.3 If specified in the Order Confirmation that delivery of the Equipment shall be made to the Lessee, the Lessor shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Lessee has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Lessor, the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.
- 5.4 Risk shall transfer in accordance with clause 7 of the Contract.

6. INSTALLATION AND OPERATION

- 6.1 If specified in the Order Confirmation, the Lessor shall at the Lessee's expense install and operate as the case may be the Equipment at the Site. The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that the Lessee has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Lessor, the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.
- 6.2 To facilitate Delivery, installation and operation, the Lessee shall at its sole expense provide all relevant, facilities, access and suitable working conditions to enable Delivery, installation and operation to be carried out safely and expeditiously including the materials, facilities, access and working conditions.

7. TITLE, RISK AND INSURANCE

- 7.1 The Equipment shall at all times remain the property of the Lessor, and the Lessee shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of the Contract).
- 7.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on Delivery. The Equipment shall remain at the sole risk of the Lessee during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Lessee ("**Risk Period**") until such time as the Equipment is redelivered to the Lessor. During the Rental Period and the Risk Period, the Lessee shall, at its own expense, obtain and maintain the following insurances:
(a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Lessor may from time to time nominate in writing;
(b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Lessor may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
(c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Lessor may from time to time consider reasonably necessary and advise to the Lessee.
- 7.3 The Lessee shall give immediate written notice to the Lessor in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Lessee's possession or use of the Equipment.
- 7.4 If the Lessee fails to effect or maintain any of the insurances required under the Contract, the Lessor shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Lessee.
- 7.5 The Lessee shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Lessor and proof of premium payment to the Lessor to confirm the insurance arrangements.

8. LESSEE'S RESPONSIBILITIES

- 8.1 The Lessee shall during the term of the Contract:
(a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
(b) take such steps (including compliance with all safety and usage instructions provided by the Lessor) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
(c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted), and shall make good any damage to the Equipment;
(d) make no alteration to the Equipment without the prior written consent of the Lessor;
(e) neither remove the Lessor's brands or labels from the Equipment nor attach or in any other way fix the Lessee's own or other brands or labels to the Equipment;
(f) keep the Lessor fully informed of all material matters relating to the Equipment;
(g) keep the Equipment at all times at the Site and shall not move or attempt to move any part of the Equipment to any other location without the Lessor's prior written consent;
(h) permit the Lessor or its duly authorised representative to inspect or test the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
(i) not, without the prior written consent of the Lessor, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
(j) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Lessor in the Equipment and, where the Equipment has become affixed to any land or building, the Lessee must take all necessary steps to ensure that the Lessor may enter such land or building and recover the Equipment both during the term of the Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Lessor of any rights such person may have or acquire in the Equipment and a right for the Lessor to enter onto such land or building to remove the Equipment;
(k) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Lessee shall notify the Lessor and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Lessor on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
(l) not use the Equipment for any unlawful purpose;
(m) ensure that at all times the Equipment remains identifiable as being the Lessor's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
(n) deliver up the Equipment at the end of the Rental Period or on earlier termination of the Contract at such address as the Lessor requires, or if necessary allow the Lessor or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and
(o) not do or permit to be done anything which could invalidate the insurances referred to in clause 7.
- 8.2 The Lessee acknowledges that the Lessor shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Lessee or its officers, employees, agents and contractors, and the Lessee undertakes to indemnify the Lessor on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Lessee to comply with the terms of the Contract.

9. WARRANTY

- 9.1 The Lessor warrants that the Equipment shall substantially conform to its specification (as made available by the Lessor), be of satisfactory quality and fit for any purpose held out by the Lessor. The Lessor shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within one (1) month from Delivery, provided that:
(a) the Lessee notifies the Lessor of any defect in writing within two (2) Business Days of the defect occurring;
(b) the Lessor is permitted to make a full examination of the alleged defect;
(c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Lessor's authorised personnel;
(d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Lessee or on its behalf; and
(e) the defect is directly attributable to defective material, workmanship or design.

- 9.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Lessor, the Lessee shall be entitled only to such warranty or other benefit as the Lessor has received from the manufacturer.
- 9.3 If the Lessor fails to remedy any material defect in the Equipment in accordance with clause 9.1, the Lessor shall, at the Lessee's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).
- 10. LIABILITY**
- 10.1 Without prejudice to clause 10.2, the Lessor's maximum aggregate liability for breach of the Contract (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the total sum of the Rental Payments under the Contract.
- 10.2 Nothing in the Contract shall exclude or in any way limit:
- either party's liability for death or personal injury caused by its own negligence;
 - either party's liability for fraud or fraudulent misrepresentation; or
 - liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973; or
 - any other liability which cannot be excluded by law.
- 10.3 The Contract sets forth the full extent of the Lessor's obligations and liabilities in respect of the Equipment and its hiring to the Lessee. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Lessor except as specifically stated in the Contract. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.
- 10.4 Without prejudice to clause 10.2, the Lessor shall not be liable under the Contract for any:
- loss of profit;
 - loss of revenue
 - loss of business; or
 - indirect or consequential loss or damage,
- in each case, however caused, even if foreseeable.
- 11. TERMINATION**
- 11.1 The Lessor may, without prejudice to any other right or remedy which may be available to it, terminate the Contract immediately by written notice to the Lessee if:
- the Lessee defaults in any of its payment obligations;
 - the Lessee commits a material breach of the Contract which breach is irremediable, or which breach (if remediable) is not remedied within ten (10) Business Days after the service of written notice from the Lessor requiring it to do so;
 - the Lessee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - the Lessee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
 - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Lessee; or
 - an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Lessee; or
 - the holder of a qualifying floating charge over the assets of the Lessee has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over the assets of the Lessee or a receiver is appointed over the assets of the Lessee; or
 - a creditor or encumbrancer of the Lessee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Lessee's assets and such attachment or process is not discharged within fourteen (14) days; or
 - any event occurs, or proceeding is taken, with respect to the Lessee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(c) to clause 11.1(i) (inclusive); or
 - the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 11.2 The Contract shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 11.3 Upon termination of the Contract, however caused:
- the Lessor's consent to the Lessee's possession of the Equipment shall terminate and the Lessor may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
 - without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor on demand:
 - all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.4;
 - any costs and expenses incurred by the Lessor in recovering the Equipment and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).
- 11.4 Upon termination of the Contract pursuant to clause 11.1, any other repudiation of the Contract by the Lessee which is accepted by the Lessor or pursuant to clause 11.2, without prejudice to any other rights or remedies of the Lessor, the Lessee shall pay to the Lessor on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period.
- 11.5 The sums payable pursuant to clause 11.4 shall be agreed compensation for the Lessor's loss and shall be payable in addition to the sums payable pursuant to clause 11.3(b).
- 11.6 Termination of the Contract shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.
- 12. FORCE MAJEURE**
- Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 13. CONFIDENTIAL INFORMATION**
- 13.1 Neither party shall, during and after termination of the Contract, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature.
- 13.2 Each party shall on demand and on termination of the Contract surrender to the other party all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.
- 14. ASSIGNMENT AND SUBCONTRACTING**
- 14.1 The Lessor may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 The Lessee may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Lessor.
- 15. ENTIRE AGREEMENT AND VARIATION**
- 15.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 15.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract. Each party agrees that its only liability in respect of those representations and warranties that are set out in the Contract (whether made innocently or negligently) shall be for breach of contract.
- 15.3 Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- 15.4 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- 16.1 A person who is not a party to the Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 16.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract is not subject to the consent of any person that is not a party to the Contract.
- 17. NOTICES**
- 17.1 Any notice or other communication required to be given under the Contract, shall be in writing and shall be delivered personally, or sent by pre-paid post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out in the Contract or as otherwise specified by the relevant party by notice in writing to each other party.
- 17.2 Any notice or other communication shall be deemed to have been duly received:
- if delivered personally, when left at the address and for the contact referred to in this clause;
 - if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt; or
 - if sent by pre-paid post or recorded delivery, 9.00 am on the second Business Day after posting.
- 17.3 A notice or other communication required to be given under the Contract shall not be validly given if sent by e-mail.
- 17.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 18. NO WAIVER**
- No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 19. SEVERANCE**
- 19.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 19.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 20. GOVERNING LAW AND JURISDICTION**
- 20.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law.
- 20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.
- 11 JANUARY 2012