

# BLACKOUT LTD

These terms and conditions regulate our trading relationship and set out duties and obligations. They need to be read in conjunction with the Order Confirmation which contains the specific content of our agreement but may also be subject to any special policies which Blackout applies under exceptional circumstances.

## CONDITIONS FOR EQUIPMENT HIRE

### 1. Meanings

1.1 The following terms will have the following meanings in these conditions for Equipment Hire.

**"Additional Hire Charges"** means any additional hire payments required by these Conditions which will be charged at the same periodic rate as the Hire Payment has been calculated for the period immediately before the Return Date.

**"Blackout"** means Blackout Limited (registered in England and Wales with company number 02502293) whose registered office is at 2<sup>nd</sup> Floor, 180 Wardour Street London W1F 8FY (or other registered office) and includes its subsidiaries associated companies and any successor businesses.

a **"Business Day"** is a day (not being a Saturday Sunday or public holiday) when the clearing banks are open for business in London.

the **"Commencement Date"** is the date stated in the Order Confirmation (or other date agreed in writing) on which the Customer is required to take Delivery of the Equipment.

**"Conditions"** means these terms and conditions for the hire of Equipment.

the **"Contract"** is the complete agreement between the parties for the hire and (where agreed) the installation of the Equipment which comprises (a) any Special Policies and (b) the provisions of the Order Confirmation and (c) these Conditions and (d) any variations or additions agreed between the parties and subject to Condition 15.5. Condition 20 applies to any conflict between these parts of the Contract.

the **"Customer"** means the company legal person or entity which the Order Confirmation names as hiring the Equipment from Blackout.

**"Delivery"** means the transfer of possession of the Equipment to the Customer by collection or physical delivery as Condition 5 provides.

**"Delivery Date"** means the date agreed for the Delivery of the Equipment.

**"Delivery Location"** means the agreed place for the Delivery of the Equipment whether by Blackout or by collection by the Customer.

**"Deposit"** means any deposit sum required by Blackout as security for the Customer's obligations under the Contract.

**"Equipment"** means the equipment listed in the Order Confirmation and/or any substituted or additional equipment which Blackout supplies with any accompanying manuals accessories or instructions.

the **"Hire Payment"** is the payment agreed for the hire of the Equipment for the period until the Return Date and for its' installation where installation is included.

**"Hire Period"** means the period specified in Condition 3.1. during which the Customer will hire the Equipment.

**"Order Confirmation"** means Blackout's written quotation for the hire and/or installation of the Equipment where that quotation is accepted by the Customer in writing (or where it is otherwise deemed to have been agreed) and includes any agreed credit terms.

an **"Overriding Circumstance"** is an act event or circumstance which is beyond Blackout's reasonable control.

**"Return Date"** means the date on which the Order Confirmation (or other written agreement) requires the Equipment to be returned to or collected by Blackout.

**"Site"** means the location for the Equipment which Blackout has approved.

**"Special Policies"** are any special terms and policies required by exceptional circumstances which Blackout notifies to the Customer.

**"Storage Period"** means the period not longer than the contractual Hire Period stated in the Order Confirmation during which Blackout may elect to store the Equipment under Condition 5.5.

**"Total Loss"** means that the Equipment has been entirely or partly destroyed or damaged beyond repair or where in the reasonable opinion of Blackout or its insurers it has been lost stolen seized or confiscated.

**"Trading Address"** is 280 Western Road London SW19 2QA or any other address for Blackout which the Order Confirmation states or which is otherwise notified to the Customer.

- 1.2 A **"person"** includes a natural person or firm or a corporate or unincorporated body or entity (whether it has a separate legal personality).
- 1.3 Reference to a **"company"** includes a company or other corporate body however it is incorporated or established.
- 1.4 Reference to a **"statute"** or **"statutory provision"** is a reference to that statute or statutory provision as it is currently in force with any subordinate legislation made under it and any statute or statutory provision which replaces it for an equivalent purpose.
- 1.5 Reference to the **"Equipment"** includes any part of it.
- 1.6 A reference to the words **"in writing"** or **"written"** includes faxes and delivered e-mails.

## 2. Equipment Hire

- 2.1 Blackout will hire the Equipment to the Customer for the period from the Commencement Date to the Return Date for Customer's use at the Site and where agreed install it on the terms of the Contract. The Customer will return the Equipment on the Return Date as Condition 8.1(n) requires.
- 2.2 During the Hire Period Blackout will not interfere with the Customer's quiet use and possession of the Equipment except when exercising its rights under the Contract or applicable law

## 3. Hire Period

- 3.1 The Hire Period will start on the Commencement Date and will continue until the later of (i) the Return Date or (ii) the date on which all the Equipment is fully returned to Blackout or (iii) the date that the Contract is terminated under Condition 11 provided that:
  - (a) If the Customer fails to return the Equipment to Blackout on the Return Date then the Customer will pay the Additional Hire Charges to Blackout in advance monthly from the Return Date and,
  - (b) If any of the Equipment is a Total Loss or the Contract is terminated then the Additional Hire Charges will continue to be payable until Blackout receives either replacement Equipment of equal specification and quality from the Customer or payment is made to Blackout in cleared funds for the

full replacement value of the Equipment.

- 3.2 If the Customer returns only part of the Equipment, then any Additional Hire Charges will be reduced in the amount which Blackout reasonably decides for the Equipment so returned.

## 4. Hire Payment

- 4.1 The Customer will comply not only with the payment terms of the Order Confirmation but also with any credit terms agreed between the Customer and Blackout. Where no credit terms have been agreed the Hire Payment and any Deposit must be received by Blackout in advance by electronic transfer in cleared funds through a recognised bank before the Equipment is collected delivered or installed. Invoices in amounts less than £10,000 (inclusive of Vat) may be made by the Customer through a credit or debit card in the Customer's name to Blackout's nominated bank account. No sums may be paid or will be accepted in cash.
- 4.2 All payments due to Blackout are exclusive of VAT and/or other taxes duties or charges required by law in the relevant jurisdiction which are payable by the Customer in addition.
- 4.3 If the Customer fails to pay any sum due to Blackout on the required date for payment then (without limiting Blackout's rights under Condition 11.1) the Customer will pay interest on that sum for the period from and including the date for payment to the actual date of payment at the rate of four percent (4%) above the base or equivalent rate of Handelsbanken whether the period is before or after judgment.
- 4.4 All payments due to Blackout will be made without deduction for set-off or for any other reason.

## 5. Delivery

- 5.1 Where the Order Confirmation states that the Customer is to collect the Equipment from the Delivery Location collection will be treated as the Delivery of the Equipment to the Customer.
- 5.2 Where the Order Confirmation states that Blackout will deliver the Equipment to the Customer at the Delivery Location Blackout will unless prevented or delayed by an Overriding Circumstance use its reasonable endeavours to Deliver the Equipment to that location on the Delivery Date at the time agreed (if any).
- 5.3 In either case the Customer will ensure that its authorised representative is present when the Equipment is Delivered. The representative's acceptance of Delivery will be conclusive evidence that the Customer has accepted that the Equipment is in good condition complete and fit in every way for the purpose for which it is intended (or be deemed to have done so if the representative is absent). The Customer's

representative will (if present) sign a receipt confirming that acceptance.

- 5.4 Where it is found that any Equipment is damaged or missing Blackout will replace or repair that Equipment as soon as practicable (or grant a discount on the Hire Payment at Blackout's reasonable discretion).
- 5.5 If the Customer fails or refuses to accept a valid Delivery at the time and place agreed then Blackout may (but without being so obliged and at its discretion) retain the Equipment for the Storage Period in which case the Customer will remain obliged to pay the Hire Payment from the Commencement Date and to pay other reasonable costs and expenses which Blackout incurs including the cost of insurance and re-delivery. This Condition is without prejudice to the Customer's other liabilities to Blackout for losses arising from the Customer's breach of contract.
- 5.6 Where Blackout is unable to Deliver the Equipment due to an Overriding Circumstance then it will give credit to the Customer for the Hire Payment for the period of delay but will not otherwise be liable for any loss or damage resulting from the delay and will complete the Delivery as soon as it is able.
- 5.7 The failure of the Customer to provide safe and secure conditions for receiving and securing the Equipment at the Delivery Location will entitle Blackout to treat that failure as a failure by the Customer to accept Delivery.

## **6. Installation and Operation**

- 6.1 Where the Order Confirmation states that the Equipment will be installed by Blackout the Customer will ensure that its authorised representative will be present at the Delivery Location for that installation at the time agreed. The representative's acceptance of satisfactory installation (or failure to do so because of the representative's absence) will be conclusive evidence that the Customer has examined the Equipment and has found it to be operational and properly installed and in good condition and complete and fit for the Customer's intended purpose. The Customer's authorised representative will sign a receipt confirming that acceptance (or be deemed to have done so in the representative's absence).
- 6.2 The Customer will provide site access power supplies facilities and safe working conditions at its own expense to enable the Equipment to be delivered and/or installed efficiently and speedily so that the Equipment is safe and secure.
- 6.3 Any charge for installation will be as the Order Confirmation or other agreement states.

## **7. Title risk and Insurance**

- 7.1 The Equipment will remain Blackout's property and the Customer will not have any right title to or interest in it other than the right to its possession and use on the provisions of the Contract.
- 7.2 The risk for the Equipment's loss theft damage or destruction will pass to the Customer on Delivery and will remain at the Customer's sole risk until it is returned to Blackout.
- 7.3 The Customer will its own expense and until the Equipment is returned insure the Equipment with a financially sound insurer by way of:
  - (a) comprehensive insurance for its full replacement value against usual risks of loss including loss damage or destruction by fire theft accidental or wilful damage storm water damage and terrorism (if available) and accident, and
  - (b) insurance against third party and public liability risks in the amount which a prudent owner or operator of the Equipment would insure, and
  - (c) any other insurance against risks relating to the Equipment or to third parties which Blackout reasonably requires.
- 7.4 The Customer will immediately inform Blackout in writing if the Equipment suffers any loss accident or damage while it is in the Customer's possession or control.
- 7.5 If the Customer fails to take out or maintain any of the required insurances Blackout will be entitled to arrange its own insurance and recover the premiums from the Customer as a debt due on demand.
- 7.6 The Customer will supply copies of the relevant insurance policies to Blackout on request and provide proof that the premiums have been paid and that any conditions for cover have been satisfied.
- 7.7 The proceeds of any claim for payment under the insurances effected under Condition 7.3 will be paid to Blackout on receipt and the Customer hereby by legal assignment assigns the entitlement to those monies to Blackout with the intention that Blackout will be entitled to their receipt.
- 7.8 As its lawful attorney the Customer irrevocably appoints Blackout as its lawful attorney to make all claims in the name of the Customer to recover insurance monies for insurance policies effected by the Customer under this Condition 7.
- 7.9 The Customer will serve written notice on its insurers of the assignment made in Condition 7.7

## 8. Customer's Responsibilities

8.1 While the Equipment is in the Customer's possession the Customer will:

- (a) ensure that it is kept secure and in a suitable environment at the Site and that it is used only for the purposes for which it was designed and that it is operated by correctly trained and competent personnel in compliance with any operating manuals and instructions, and
- (b) comply with lawful safe working standards and regulations when using the Equipment and undertake risk assessments where necessary, and
- (c) keep the Equipment safe and maintained and in good repair at its own expense so that it remains in the same functional and operating condition as it was on the Commencement Date (fair wear and tear only excepted), and
- (d) not alter or modify the Equipment without Blackout's advance written permission, and
- (e) not remove Blackout's brands or labels from the Equipment or attach any other brands or labels, and
- (f) keep Blackout informed of any material matters which relate to the Equipment, and
- (g) keep the Equipment at the Site and not move it to any other place without Blackout's advance permission in writing, and
- (h) allow Blackout and its representatives to inspect and test the Equipment at reasonable times wherever it is and provide reasonable access and facilities for Blackout to do so, and
- (i) not part with control or possession of the Equipment or sell or offer it for sale or sub-hire or underlet or lend or charge it (whether by floating charge or other means) nor create any lien or security interest which affects it, and
- (j) not permit or do anything which jeopardises Blackout's rights title or interest in the Equipment and where the Equipment has become physically affixed to any land or building the Customer must ensure that Blackout can recover the Equipment through a written acknowledgment or waiver from the owner(s) confirming Blackout's absolute ownership of the Equipment and its right to enter that land or building at any reasonable time to remove it, and
- (k) not allow the Equipment to be confiscated destroyed seized or removed from the Customer's possession or control as a result of distress execution or other legal process but if the Equipment is so confiscated seized or taken the Customer will immediately notify Blackout and at its sole expense and use its best endeavours to obtain the immediate release of the Equipment and will indemnify Blackout on demand against all losses costs charges damages and expenses incurred as a result of that confiscation, and

- (l) not use the Equipment for an unlawful purpose, and
- (m) ensure that the Equipment remains identifiable as Blackout's property and where possible ensure that a visible sign of Blackout's ownership is attached to the it, and
- (n) return the Equipment on the Return Date or immediately if the Contract is terminated to the Trading Address or other agreed place and allow access for Blackout and its representatives to the place where the Equipment is located to remove it and if necessary and to provide reasonable facilities to do so, and
- (o) not allow the insurances referred to in Condition 7 to be invalidated or cease.

## 9. Warranty

9.1 Blackout warrants that the Equipment substantially conforms with any specification provided to the Customer and is of satisfactory quality and fit for the purpose which the Customer has notified. Blackout will use reasonable endeavours free of charge to remedy any material defect in the Equipment which manifests itself within one (1) month from Delivery providing that:

- (a) the Customer informs Blackout in writing within two Business Days of any defect occurring, and
- (b) Blackout is permitted to make a full examination of the alleged defect, and
- (c) the defect is not caused by any mishandling neglect misuse wilful damage or failure to follow operating and maintenance instruction

9.2 Where the Equipment contains or consists of components which were not made by Blackout then the Customer will only be entitled to any warranty or other benefit which Blackout has itself received from the manufacturer.

9.3 If Blackout does not remedy a defect in the Equipment under Condition 9.1 it will accept the return of the defective Equipment at the Customer's request and make an appropriate reduction in the Hire Payment.

## 10. Liability

10.1 Without prejudice to Condition 10.2 Blackout's maximum aggregate liability for breaches of contract or in tort (including liability for the acts or omissions of its employees' agents and subcontractors) and however they arise will not exceed the Hire Payment.

10.2 Nothing in the Contract excludes or limits:

- (a) liability by either party for fraud or fraudulent misrepresentation, or
- (b) liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973, or

- (c) any other liability which cannot be excluded by law.

10.3 The Contract sets out the full extent of Blackout's obligations and liabilities for the Equipment and the terms of hire to the Customer. No conditions warranties or other terms either express or implied including any which relate to the quality or fitness of the Equipment for a particular purpose are given by Blackout unless stated in the Contract. Any condition warranty or term concerning the Equipment which might otherwise be implied or incorporated by law or otherwise within the Contract is expressly excluded.

- 10.4 Without prejudice to Condition 10.2 Blackout will not be liable under the Contract or in tort or otherwise for any:
- (a) loss of profit, or
  - (b) loss of revenue, or
  - (c) loss of business, or
  - (d) indirect or consequential loss or damage, however, caused even if it was foreseeable, or
  - (e) loss or damage arising from any third-party claims including for personal injury.

## 11. Termination

11.1 Without prejudice to any other right or remedy which it has under the provisions of the Contract or otherwise and subject to Condition 3.1 Blackout may immediately terminate the Contract by notice in writing to the Customer if:

- (a) the Customer does not make any required payment when due or fails to insure as required, or
- (b) the Customer fails to return the Equipment of the Return Date or commits any other material breach of the Contract which cannot be remedied or which if it can is not remedied within five Business Days after Blackout has served a written notice requiring the Customer to do so, or
- (c) the Customer 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;
- (d) the Customer 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
- (e) a petition is filed a notice is given a resolution is passed or an order is made or in connection with the winding up of the Customer to the 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 Customer, or.
- (g) the holder of a qualifying floating charge over the assets of the Customer has

- become entitled to appoint or has appointed an administrative receiver, or
- (h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer, or
- (i) a creditor or encumbrancer of the Customer attaches or takes possession of or a distress execution sequestration or other process is levied or enforced on or sued against the whole or any part of the Customer's assets and such attachment or process is not discharged within fourteen days, or.
- (j) any event occurs or proceeding is taken relating to the Customer in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in Condition 11.1(c) to Condition 11.1(i) (inclusive), or
- (k) the Customer suspends or ceases or threatens to suspend or cease carrying on all or a substantial part of its business, or
- (l) if the Equipment or any part of it suffers a Total Loss.

- 11.2 If the Contract terminates for any reason:
- (a) Blackout's agreement to the Customer's possession of the Equipment will terminate and Blackout may without notice and at the Customer's expense repossess the Equipment, and
  - (b) without prejudice to Blackout's rights or remedies under the Contract the Customer will on demand pay to Blackout all costs and expenses which Blackout incurs in recovering the Equipment (including any storage insurance repair transport legal and re-marketing costs) and in collecting sums due under the Contract.

11.3 On the Contract terminating under Condition 11.1 or if the Customer repudiates the Contract and Blackout accepts that repudiation or the Customer is struck off the register of companies then without prejudice to Blackout's other rights and remedies the Customer will on demand return the Equipment and pay to Blackout a sum equal to the total hire payments which would (but for the termination) have been payable if the Contract had continued.

11.4 Termination of the Contract will be without prejudice to Blackout's rights and remedies under the Contract. Provisions which expressly or by implication survive termination of the Contract will continue in full effect

## 12. Overriding Circumstances

Blackout will not be liable for any delay or failure to perform an obligation under the Contract if that delay or failure is caused by an Overriding Circumstance and in that case the time for performing the obligation will be extended until it can be performed or until performance becomes impossible in Blackout's reasonable opinion.

### **13. Confidential Information**

- 13.1 Neither party will at any time use or disclose any information which is identified as confidential, or which is confidential by its nature without the written consent of the other party.
- 13.2 On the expiry or termination of the Contract each party will hand over to the other party all materials which relate to confidential information, and which are under its control or under the control of its personnel agents or representatives.
- 13.3 The parties agree that damages are not a sufficient remedy for a material breach of these confidentiality obligations.

### **14. Assignment and Subcontracting**

- 14.1 Blackout may at any time assign transfer charge subcontract or otherwise deal its rights and obligations under the Contract.
- 14.2 The Customer may not assign transfer charge subcontract or otherwise deal its rights or obligations under the Contract without Blackout's advance written consent.

### **15. Entire Agreement and Variation**

- 15.1 The Contract comprises the whole agreement between the parties and supersedes any previous agreements which relate to its subject matter.
- 15.2 The Customer acknowledges that it has not relied on and has no right or remedy for any statement assurance or warranty (whether innocent or negligent) other than those which are expressly stated in the Contract. The Customer agrees that its only remedies for representations and warranties (whether innocent or negligent) is for breach of contract.
- 15.3 Nothing in this Condition limits or excludes liability for fraud or fraudulent misrepresentation.
- 15.4 No variation of the Contract will be effective unless it is in writing and mutually agreed.
- 15.5 An Order Confirmation or any variation or additions to the Contract will only be binding on Blackout if made or authorised by a person who is internally authorised for the purpose by Blackout.

### **16. Contracts (Rights of Third Parties) Act 1999**

- 16.1 No person who is not a party to the Contract will have any rights under or arising from it under of the Contracts (Rights of Third Parties) Act 1999.
- 16.2 The rights of the parties to terminate rescind or agree any variation waiver of or settlement under the Contract are not subject to the consent of any person which is not a party to the Contract.

### **17. Notices**

- 17.1 Any notice which is given under the Contract will be in writing and be delivered either

personally or be sent by pre-paid post or recorded delivery or by commercial courier or by email to the party which is required to receive it or as the Contract otherwise provides. Other means of communication may be specified in any notice which Blackout gives.

- 17.2 A notice or communication shall be deemed to have been received if it is:
- (a) delivered personally on the other party or left at that party's registered address or
  - (b) sent by commercial courier then on the date and at the time of signature of the courier's delivery receipt, or
  - (c) sent by pre-paid post or recorded delivery at 9.00 am on the second Business Day after posting, or
  - (d) sent by email to the other party's operational email address at the time of successful transmission.

- 17.3 This Condition does not apply to the service of proceedings or other documents in a legal action.

### **18. No Waiver**

- 18.1 No failure or delay by a party to exercise any right or remedy under the Contract or by law will constitute a waiver of any right or remedy nor will it preclude or restrict the further exercise of that right or remedy. No single or partial exercise of that right or remedy will preclude or restrict the further exercise of that or any other right or remedy.

### **19. Severance**

- 19.1 If any provision of the Contract (or part of it) is found by a court or competent authority to be illegal or unenforceable then that provision or part provision will to the extent required be treated as deleted and the validity and enforceability of the other provisions of the Contract will not be affected.
- 19.2 If any provision of the Contract is invalid unenforceable or illegal but would be valid enforceable and legal if some part of it was deleted then that provision will apply with the minimum modification necessary to make it legal valid and enforceable.

### **20. Conflict and interpretation of the Contract**

- 20.1 In the event of conflict then in construing the Contract (a) any Special Policies will prevail over the provisions of both the Order Confirmation and these Conditions and (b) the provisions of the Order Confirmation will prevail over these Conditions and (c) any agreed written variation or addition to of the Contract will prevail over any other provision subject to Condition 15.5.

### **21. Governing Law and Jurisdiction**

- 21.1 The Contract and any dispute arising out it will be governed by and construed under English law.

21.2 The parties irrevocably agree that the courts of England and Wales will have exclusive

jurisdiction to settle any dispute or claim under the Contract or its subject matter.