



KI Sound & Light

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TERMS AND CONDITIONS

This document sets out the terms and conditions on which the supply of Goods for hire and or Services are provided to customers by KI Sound & Light Limited (“the Supplier”).

We strongly recommend that you read this document before making a booking or placing an Order with Us. Any Orders accepted by us, will be deemed to have been accepted in accordance with these Conditions.

The Customer's attention is particularly drawn to the provisions of clause 11 (Customer's Liability) and 11 (Supplier's Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.7.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Goods: the hired goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier and detailed in the Order.

Hire Period: the period starting on the date that the Goods are dispatched to or collected by the Customer and ending on the date on which the Goods are collected by or returned to the Supplier in accordance with the Order.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer within the Order.

Supplier: KI Sound & Light Limited registered in England and Wales with company number 13521468.

Supplier Materials: has the meaning given in clause 7.1(h).

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax and email.

2. Basis of contract

- 2.1** The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2** The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (**Commencement Date**) incorporating these Conditions.
- 2.3** Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations, or descriptions of the Services contained in the Supplier's catalogues or brochures (including on the Supplier's website) are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5** Any quotation given by the Supplier is only valid for a period of 14 Business Days from its date of issue.
- 2.6** All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7** The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. Goods

- 3.1** The Goods are the goods in either the Supplier's catalogue/website or the Goods Specification.
- 3.2** The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause **3.2** shall survive termination of the Contract.

4. Delivery of Goods

- 4.1** The Supplier shall ensure that:
- (a) each delivery or collection of the Goods is accompanied by a delivery or collection note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) it states clearly on the delivery or collection note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for delivery or collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2** Either of the following apply in respect of delivery:
- 4.3** (a) the Supplier (either from their own supplier or the Supplier's delivery service) shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready; or
- (b) the Customer shall collect the Goods from the Supplier's premises at 46 East Street, Braintree, Essex, CM7 3JJ (**Delivery Location**) within three Business Days of the Supplier notifying the Customer that the Goods are ready.
- 4.4** Delivery of the Goods shall be completed on the completion of unloading or loading of the Goods at the Delivery Location.

- 4.5** Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by circumstances outside of our control or the Customer's failure to provide the Supplier with instructions that are relevant to the supply of the Goods.
- 4.6** The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by circumstances outside of our control or the Customer's failure to provide the Supplier with instructions that are relevant to the supply of the Goods.
- 4.7** If the Customer fails to take or accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8** If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 4.9** If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them.
- 4.10** The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Title and risk

- 5.1** The Goods shall at all times remain the property of the Supplier and the Customer shall have no rights to the Goods other than as hirer and the Customer shall not do or permit or cause to be done any matter or thing whereby the rights of the Supplier in respect of the Goods are or may be prejudicially affected.
- 5.2** The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.3** The Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.3; and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

6. Supply of Services

- 6.1** The Supplier shall use all reasonable endeavors to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.2** The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7. Customer's obligations

- 7.1** The Customer shall:
 - (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification;
- (j) provide a safe working area and environment for the Supplier to operate their Services
- (k) ensure the Goods are returned to the Supplier at the end of the Hire Period in a clean condition and in good working order, free from any defects or damage; and
- (l) ensure they understand how to correctly use the Goods and if unsure how to operate and use the Goods correctly, the Customer should immediately contact the Supplier to seek advice and instructions. If for any reason the Customer is not able to contact the Supplier, they should refer to the correct manufacturer's guide for the specified Goods.

7.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8. Charges and payment

8.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's price list as at the date of the order; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

8.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, of which the crew rate hours are set at 10 hours per day, unless otherwise specified in the Order;
- (b) the Supplier shall be entitled to charge an overtime rate of 50% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours specified in the Order; and
- (c) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

8.3 The Supplier reserves the right to increase prices for the Goods and Services if the quotation provided to the Customer has expired in accordance with Term 2.5.

8.4 In respect of Goods and Services, the Supplier shall invoice the Customer either:

- (a) if a cash paying Customer, then at the time of the Order being placed with the Supplier; or
- (b) if a trade Customer, then on or at any time after completion of delivery or collection.

8.5 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

8.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

8.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Loss, Damage and Insurance

9.1 In the event of any loss or damage to the Goods the Customer shall pay for its replacement, or the cost of restoring it to good working order, or allow the Supplier or its agent to carry out such work at the Customer's expense.

9.2 If the Customer is hiring the Goods and has not instructed and paid for the Supplier to provide the associated operating Service in respect of the Goods for the Customer's event, then the Customer shall during the Hire Period (without prejudice to the liability of the Customer to the supplier pursuant to Condition 10.1) keep the Goods insured for its full replacement value with a reputable insurance company against loss or damage from all risks (including third party risks) and the Customer shall:

- (a) notify its insurers that the Goods are on hire from the Supplier and request the insurers to endorse a note of such interest on the policy, naming the Supplier as loss payee; and

- (b) on demand provide the supplier with a copy of the policy, the premium receipts and insurance certificate and shall not use or allow the Goods to be used for any purpose not permitted by the terms and conditions of the said policy or do or allow to be done any act or thing whereby the insurance may be invalidated.
- 9.3** Where any event or accident shall occur which is a risk covered by the Customer's insurance hereunder, the Customer shall immediately notify the Supplier thereof. The Customer shall hold any monies received by the same on trust for the Supplier.
- 10. Customer's indemnities: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 10.1** The Customer shall be solely responsible for and hold the Supplier fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by the Supplier as a result of any accident involving the Goods.
- 10.2** The Customer shall be solely responsible for and hold the Supplier fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by the Supplier as a result of any breach or default on the part of the Customer in the discharge of its obligations under the Contract with the Supplier and in respect of any other third party contracts the Customer enters into which involve the use of the Goods and/or Services of the Supplier.
- 10.3** In the event of a breach of these Conditions by the Customer, the Customer agrees to pay the Supplier's costs of enforcement on the indemnity basis. The Customer's costs includes all costs of solicitors and counsel and, if court proceedings are issued, includes court fees.
- 11. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 11.1** The restrictions on liability in this clause **11** apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 11.3** Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - (a) death or personal injury caused by negligence;

- (b) fraud or fraudulent misrepresentation; and
- (c) defective products under the Consumer Protection Act 1987.

11.4 Subject to clause 11.3, the Supplier's total liability to the Customer shall not exceed the total value of the Contract.

11.5 This clause 11.5 sets out specific heads of excluded loss:

- (a) Subject to clause 11.3, clause 11.5(b) excludes specified types of loss.
- (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.

11.6 This clause 11 shall survive termination of the Contract.

12. Termination

12.1 Where there is no fixed period of hire, the period of hire may be terminated by either party giving to the other 7 days' notice in writing and the Customer's obligations under this agreement shall continue until the Goods are returned to the Supplier.

12.2 If the Customer defaults in the prompt payment of any sum due under this agreement or is in breach of any of the Terms and Conditions of this agreement, or is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors or if the Customer shall do or cause to be done or permit or suffer any act or thing whereby the rights of the Supplier over the Goods may be prejudiced or put in jeopardy, the Supplier shall be entitled to terminate the hire immediately by notice in writing to the Customer. and it shall thereupon be lawful for the Supplier to retake possession of the Equipment and for that purpose to enter into or upon any premises where the same may be and the termination of the hire under this

clause shall not affect the right of the Supplier to recover from the Customer any monies due to the Supplier under this agreement or damages for breach thereof.

12.3 The Supplier shall have the right to terminate a Contract forthwith by giving notice in writing if the Customer;

- (a) fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer; or
- (c) shall commit any other material breach of its obligations hereunder and shall not within 14 days of notice of such breach remedy the same; or
- (d) shall enter into liquidation whether compulsorily or voluntarily otherwise than for the purpose of amalgamation or reconstruction without insolvency or shall compound or make any arrangement with its creditors or shall be the subject of an application for an administration order or shall be subject of any proposal under Part 1 of the Insolvency Act 1996 for a composition in satisfaction of its debts.

12.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in **Error! Bookmark not defined.**12.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13. Consequences of termination

13.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for, in good working order. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until the Goods have been returned or collected by the Supplier, the Customer will continue to be charged the Fees, at the same rate and interval as it was during the hire period until the Goods are returned or collected and the Customer shall remain solely responsible for their safe

keeping and undertakes not to use them for any purpose not connected with this Contract or to remove them from their premises.

13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

14. Force majeure

Although the Supplier shall use all reasonable endeavors to discharge its obligations under the Contract in a prompt and efficient manner, it does not accept responsibility for any failure or delay caused by circumstances beyond its control.

15. General

15.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

15.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15.3 Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be modified to the minimum requirement to make the provision lawful or deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 15.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

15.4 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15.5 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

15.6 Third party rights.

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

15.7 Variation.

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing by the parties (or their authorised representatives).

15.8 Governing law.

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

15.9 Jurisdiction.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.