



BECKERY ROAD, GLASTONBURY, SOMERSET, BA6 9NX

**Terms and Conditions of Hire (Business)**

**1 Interpretation**

1.1 Definitions. In these Conditions, the following definitions apply:

"Business Day"	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
"Charges"	the charges payable by the Hirer for the supply of the Equipment in accordance with clause 8, as further detailed in the Confirmation;
"Commencement Date"	has the meaning set out in clause 2.2;
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 14.8;
"Confirmation"	has the meaning set out in clause 2.2;
"Contract"	the contract between the Owner and the Hirer for the supply of Equipment comprising the Confirmation and these Conditions;
"Delivery Date"	the date for delivery as stated in the Confirmation;
"Hirer"	the person or firm who hires Equipment from the Owner;
"Delivery Location"	the delivery location as stated in the Confirmation or such other address agreed by the parties from time to time;
"Equipment"	the Equipment as supplied by the Owner to the Hirer as set out in the Confirmation;
"Hire Period"	shall have the meaning set out at clause 7;

"Intellectual Property Rights"	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
"Order"	the Hirer's order for Equipment as set out in the Hirer's purchase order form, or the Hirer's written acceptance of the Owner's quotation, or overleaf, as the case may be;
"Owner"	Themes Incorporated Limited registered in England and Wales with company number 04338929; and
"Owner Materials"	has the meaning set out in clause 4.1.7.

1.2 Construction. In these Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## **2 Basis of contract**

- 2.1 The Order constitutes an offer by the Hirer to hire Equipment in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Owner issues written acceptance of the Order ("**Confirmation**") at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 The Contract constitutes the entire agreement between the parties. The Hirer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Owner which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Owner, and any descriptions or illustrations contained in the Owner's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Hirer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Subject to clause 2.2, any quotation given by the Owner shall not constitute an offer, and is only valid for a period of 60 Business Days from its date of issue.

## **3 Supply of Equipment**

- 3.1 The Owner shall supply the Equipment to the Hirer in accordance with the Equipment description as set out in the Confirmation in all material respects.
- 3.2 The Owner shall have the right to make any changes to the Equipment which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Equipment, and the Owner shall use reasonable endeavours to notify the Hirer in any such event.
- 3.3 The Owner warrants to the Hirer that the Equipment will be provided using reasonable care and skill.
- 3.4 All electrical items have been PAT (Portable Appliance Test) tested and certificates are available on request (a fee is chargeable for each certificate required).

## **4 Hirer's obligations**

- 4.1 The Hirer shall:
- 4.1.1 ensure that the terms of the Order and Confirmation are complete and accurate;
  - 4.1.2 co-operate with the Owner in all matters relating to the Equipment and its hire;
  - 4.1.3 provide the Owner, its employees, agents, consultants and subcontractors, with access to the Hirer's premises and other facilities as reasonably required by the Owner;
  - 4.1.4 provide the Owner with such information and materials as the Owner may reasonably require in order to supply the Equipment, and ensure that such information is accurate in all material respects;
  - 4.1.5 prepare the Hirer's premises for the supply of the Equipment;
  - 4.1.6 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the provision of Equipment is to start; and
  - 4.1.7 keep and maintain all materials, Equipment, documents and other property of the Owner ("**Owner Materials**") at the Hirer's premises in safe custody at its own risk, maintain the Owner Materials in good condition until returned to the Owner, and not dispose of or use the Owner Materials other than in accordance with the Owner's written instructions or authorisation.
  - 4.1.8 Insure the equipment to the value shown on the hire contract with a reputable company for the period of the hire. The dates are given on the hire contract as "commence" and "continue until".
- 4.2 If the Owner's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Hirer or failure by the Hirer to perform any relevant obligation ("**Hirer Default**"):
- 4.2.1 the Owner shall, without limiting its other rights or remedies, have the right to suspend the Hire Period until the Hirer remedies the Hirer Default, and to rely on the Hirer Default to relieve it from the performance of any of its obligations to the extent the Hirer Default prevents or delays the Owner's performance of any of its obligations;
  - 4.2.2 the Owner shall not be liable for any costs or losses sustained or incurred by the Hirer arising directly or indirectly from the Owner's failure or delay to perform any of its obligations as set out in this clause 4.2; and

- 4.2.3 the Hirer shall reimburse the Owner on written demand for any costs or losses sustained or incurred by the Owner arising directly or indirectly from the Hirer Default.

## **5 Delivery and Collection of Equipment**

- 5.1 The Equipment may be delivered and/or collected in the following ways:
  - 5.1.1 the Owner or its representatives shall deliver the Equipment to the Delivery Location at any time after the Owner notifies the Hirer that the Equipment is ready and shall collect the Equipment from the Delivery Location on the date specified in the Confirmation or as agreed between the parties from time to time; or
  - 5.1.2 the Hirer shall collect the Equipment from the Delivery Location or such other location on the date set out in the Confirmation or as otherwise notified by the Owner to the Hirer and shall return the Equipment to the Delivery Location on the date set out in the Confirmation.  
  
as set out in the Confirmation.
- 5.2 Where the Owner delivers the Equipment, delivery shall be completed on the Equipment's arrival at the Delivery Location.
- 5.3 Where the Owner delivers and collects the Equipment in accordance with clause 5.1.1 above:
  - 5.3.1 the Hirer is responsible for attending the Delivery Location to accept and sign for delivery of the Equipment;
  - 5.3.2 on delivery, the Owner reserves the right to refuse delivery if the Hirer is not present or the Equipment cannot be delivered to the Delivery Location as a result of obstacles at the Delivery Location;
  - 5.3.3 on delivery, the Owner shall be responsible for unloading the Equipment at ground floor level only and to a distance no further than 10 metres from the delivery vehicle;
  - 5.3.4 the Hirer shall be responsible for accepting and moving any Equipment to a place which is a distance further than that specified at clause 5.3.3;
  - 5.3.5 the Hirer must provide a point of contact to the Owner;
  - 5.3.6 the Hirer is responsible for checking that all deliveries of Equipment match the Order and Confirmation; and
  - 5.3.7 on collection, the Hirer is responsible for ensuring that all Equipment is packed in the same condition as when it was delivered.

- 5.4 Where the Hirer collects the Equipment from the Owner and returns the Equipment to the Owner in accordance with clause 5.1.2:
- 5.4.1 the Hirer shall collect the Equipment between the hours of 9:00am to 5:00pm Monday to Friday and 10:00am to 4:00pm on Saturdays;
  - 5.4.2 the Hirer shall be responsible for unloading the Equipment at the Delivery Location;
  - 5.4.3 the Hirer will be responsible for any damage caused during loading of Equipment, transportation and any other damage howsoever caused to the Equipment during the Hire Period;
  - 5.4.4 the Hirer is responsible for insuring the Equipment at all times whilst the Equipment is in transit; and throughout the hire period; and
  - 5.4.5 upon return of the Equipment, the Hirer is responsible for ensuring that all Equipment is packed in the same condition as when it was collected.
- 5.5 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. The Owner shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Hirer's failure to provide the Owner with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6 If the Owner fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Hirer in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment. The Owner shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event, the Hirer's failure to provide the Owner with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.
- 5.7 If the Hirer fails to accept or take delivery of the Equipment on the date set out in the Confirmation or as otherwise notified by the Owner to the Hirer then except where such failure or delay is caused by a Force Majeure Event or by the Hirer's failure to comply with its obligations under the Contract in respect of the Equipment:
- 5.7.1 the Owner shall make one further attempt to deliver the Equipment on a day reasonably specified by the Owner to the Hirer ("**Re-delivery Date**") and at the Hirer's cost;
  - 5.7.2 the Owner shall store the Equipment until delivery takes place, and charge the Hirer for all related costs and expenses (including insurance); and

5.7.3 if delivery does not take place under clause 5.7.1, delivery shall be deemed to have been completed at 9:00 am on the Re-delivery Date.

## **6 Risk**

6.1 The risk in the Equipment shall pass to the Hirer on completion of delivery.

6.2 Title to the Equipment shall not pass to the Hirer.

6.3 The Hirer shall:

6.3.1 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;

6.3.2 maintain the Equipment in satisfactory condition and keep it insured against all risks for their full value on the Owner's behalf from the date of delivery for the Hire Period;

6.3.3 give the Owner such information relating to the Equipment as the Owner may require from time to time; and

6.3.4 not sell the Equipment.

## **7 Commencement of Hire**

The Hire Period shall be the period from the completion of delivery of the Equipment for the period that the Equipment is in the Hirer's possession as set out in the Confirmation and further, any extended period caused by delay or failure of Owner or Hirer to deliver or collect the Equipment (the "**Hire Period**").

## **8 Charges and payment**

8.1 The Charges for the hire of the Equipment must be made prior to collection or delivery of the Equipment, unless specified in the Confirmation.

8.2 The Hirer will be responsible for the cost of any repair work if a fault is found to be due to the Hirer's neglect of the Equipment. The cost of such repair work shall be invoiced by the Owner to the Hirer at cost at any time after completion of the Hire Period and payable by the Hirer within 7 days of the date of invoice.

## **9 Deposits, refunds and payment terms**

9.1 The following fees will be chargeable in the event that the Order is cancelled;

9.1.1 where the Order is cancelled three weeks prior to the Delivery Date a fee of 25% of the value of the Equipment will be chargeable;

9.1.2 where the Order is cancelled two weeks prior to the Delivery Date a fee of 50% of the value of the Equipment will be chargeable; and

9.1.3 where the Order is cancelled one week prior to the Delivery Date a fee of 100% of the value of the Equipment will be chargeable within 7 Business Days of invoice.

9.2 If the Hirer fails to make any payment due to the Owner by the due date for payment then, without limiting the Owner's remedies under this Contract the Hirer shall pay interest on the overdue amount at the rate of 2% over Lloyds TSB Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment.

## **10 Intellectual property rights**

10.1 All Intellectual Property Rights in or arising out of or in connection with the Equipment shall be owned by the Owner.

10.2 The Hirer acknowledges that, in respect of any third party Intellectual Property Rights, the Hirer's use of any such Intellectual Property Rights is conditional on the Owner obtaining a written licence from the relevant licensor on such terms as will entitle the Owner to license such rights to the Hirer.

10.3 All Owner Materials are the exclusive property of the Owner.

## **11 Limitation of liability**

11.1 Nothing in these Conditions shall limit or exclude the Owner's liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

11.1.2 fraud or fraudulent misrepresentation; or

11.1.3 any other matter in respect of which it would be unlawful for the Owner to seek to exclude or restrict liability.

11.2 Subject to clause 11.1:

11.2.1 the Owner shall under no circumstances whatever be liable to the Hirer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

11.2.2 the Owner's total liability to the Hirer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Hirer under the Contract.



11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

## **12 Termination**

12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

12.1.1 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach.

12.1.2 the other party 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

12.1.3 the other party 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

12.1.4 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

12.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

12.1.6 a creditor or encumbrancer of the other party 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 its assets and such attachment or process is not discharged within 14 days;

- 12.1.7 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 other party (being a company);
  - 12.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 12.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 12.1.10 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.1 to clause 12.1.9 (inclusive); or
  - 12.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 12.2 Without limiting its other rights or remedies, the Owner may terminate the Contract with immediate effect by giving written notice to the Hirer if the Hirer fails to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting its other rights or remedies, the Owner shall have the right to suspend provision of the Equipment under the Contract or any other contract between the Hirer and the Owner if the Hirer becomes subject to any of the events listed in clause 12.1.1 to clause 12.1.11, or the Owner reasonably believes that the Hirer is about to become subject to any of them, or if the Hirer fails to pay any amount due under this Contract on the due date for payment.

### **13 Consequences of termination**

- 13.1 On termination or expiry of the Contract for any reason:
- 13.1.1 the Hirer shall immediately pay to the Owner all of the Owner's outstanding unpaid invoices and interest and, in respect of Equipment supplied but for which no invoice has been submitted, the Owner shall submit an invoice, which shall be payable by the Hirer immediately on receipt;
  - 13.1.2 the Hirer shall return all of the Equipment and Owner Materials. If the Hirer fails to do so, then the Owner may enter the Hirer's premises and take possession of them. Until they have been returned, the Hirer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- 13.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
- 13.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 14 General

### 14.1 Force majeure:

- 14.1.1 For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of the Owner including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Owner or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage or damage by a third party, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.1.2 The Owner shall not be liable to the Hirer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.1.3 If the Force Majeure Event prevents the Owner from providing any of the Equipment for more than 4 weeks, the Owner shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Hirer.

### 14.2 Assignment and subcontracting:

- 14.2.1 The Owner may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 14.2.2 The Hirer shall not, without the prior written consent of the Owner, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### 14.3 Notices:

- 14.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class

post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

14.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

14.3.3 This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

14.4 Waiver:

14.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.

14.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.5 Severance:

14.5.1 If a court or any other 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 deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

14.5.2 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.

14.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties,

nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

- 14.7 Third parties: No term of this Agreement is enforceable by any person not a party to it, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 14.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Owner.
- 14.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.



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