

## Terms & Conditions of Hire

Terms & Conditions Documents: This document is issued by Hire Frequencies Ltd, to describe the terms and conditions of hire of the Company's Sound Systems installed into third party premises.

Where a Rental Agreement is drawn up and signed by the Hirer and the Owner, that agreement shall take precedence over these Terms and Conditions. In the absence of such a signed Rental Agreement, these Terms and Conditions shall apply. The latest version of this document can be found in PDF format on our website at <http://www.hirefrequencies.co.uk/terms-conditions>.

### Definition of expressions used:

1. In this document the following words have the following meanings:

"Hirer" The person, company, department or other body who has ordered and/or accepted Equipment or services from Hire Frequencies Ltd.

"The Equipment" All items of equipment being any audio and/or associated equipment and/or any other equipment together with any accessories as agreed between the parties from time to time which are hired to the Hirer at the Premises. "Owner/The Company" Hire Frequencies Ltd

"Commencement Date" Date that the equipment was installed into the third party premises.

"Initial Period" Period of time from Commencement Date that Hirer is initially contracted to rent the equipment for.

"Liability" The liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities.

"Rentals" Sum of monthly payment for hire of equipment

### Basis of Contract

2. Equipment is Hired subject to it being available for hire to the Hirer at the time required by the Hirer. The Owner shall not be liable for any loss suffered by the Hirer as a result of the Equipment being unavailable for hire where the Equipment is unavailable due to circumstances beyond the Owner's control.

3. Where hire is to a Hirer who is an individual and the Hire would be covered by the Consumer Credit Act 1974, the duration of the Hire Period shall not exceed 90 days, after which time this Agreement shall be deemed to have automatically terminated. Accordingly, the hire is not covered by the Consumer Credit Act 1974.

### Hire of Equipment

4. Subject to clause 3, the Owner shall let and the Hirer shall take on hire of the Equipment for the Initial Period until this agreement is terminated as provided below ("Hire Period"). The duration of the Hire Period shall not exceed 90 days.

5. The Owner shall deliver the Equipment to the Premises of the Hirer and shall install it in working order on a date agreed between the parties in writing in positions selected by the Hirer, the Hirer having previously prepared the Premises for such installation to include provision of suitable electric power supply.

### Risk and Ownership

6. Subject to clause 7 below, risk in the Equipment will pass immediately to the Hirer when the Equipment is delivered by the Owner to the Premises or is collected by the Hirer. Risk in the Equipment will not pass back to the Owner from the Hirer until the Owner collects the Equipment from the Premises and/or the Equipment is back in the physical possession of the Owner. This shall apply even if the Owner has agreed to cease charging for the Equipment.

7. Subject to clause 34, ownership of the Equipment remains at all times with the Owner. The Hirer has no right, title or interest in the Equipment except it is hired to the Hirer.

## Price and Payment

8. The Hirer shall during the Hire Period pay to the Owner without previous demand by way of rent the Rentals to the Owner's account, details of which will be supplied to the Hirer, the first payment to be made on the Commencement Date. Unless explicitly agreed, the Hirer will make payments by banker's order to the Owner's account and will set up the instruction with its bank.
9. If the Hirer fails to make payment by the due date the Owner may, without prejudice to any other rights or remedies it may have, charge interest (both before and after judgment) on the amount unpaid at whichever is the greater of the rate of 6% above the base rate from time to time of Barclays Bank plc, compounded with monthly rests, or the rate of interest prescribed by law.
10. The interest set out in clause 9 shall be in substitution for any other right to interest or compensation for late payment which the Owner may have, including under the Late Payment of Commercial Debts (Interest) Act 1998 or any other equivalent law and the parties agree that clause 8 constitutes a substantial remedy of late payment of any sum payable in accordance with this Agreement for the purposes of Section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
11. In the event of Rental arrears, the Owner may affix or cause to be affixed on the Equipment such plates or other marks indicating the Equipment is the property of the Owner which the Owner may think fit and the Hirer shall allow those plates or marks to remain as affixed and shall not obliterate, deface or cover them up and the Owner shall at all reasonable times have access to the Equipment for the purposes of inspecting it and the plates and marks and at the Owner's sole option but without any obligation, keeping the Equipment in good repair.
12. Time for payment shall be of the essence.
13. No payment shall be deemed to have been received until the Owner has received payment in full and cleared funds.
14. All payments payable to the Owner under this Agreement shall become due immediately on its termination despite any other provision.
15. The Rentals are, unless otherwise stated, exclusive of any applicable VAT for which the Hirer shall additionally be liable.
16. The Hirer shall pay all sums due to the Owner under this Agreement without any set-off, deduction, counterclaim and/or any other withholding of monies.
17. The Owner may set a reasonable credit limit for the Hirer. The Owner reserves the right to terminate or suspend the Agreement if allowing it to continue would result in the Hirer exceeding its credit limit or the credit limit is already exceeded.

## Hirer's Obligations

18. The Hirer during the Hire Period shall not sell or offer for sale, mortgage, pledge, underlet, lend or otherwise deal with or part with possession of the Equipment or any part of it without the previous consent in writing of the Owner and shall not hold himself/itself out as the owner of the Equipment.
19. The Hirer shall duly and punctually pay all rent, rates, taxes and outgoings payable by the Hirer in respect of the Premises where the Equipment is installed and protect the Owner against any distress, execution or seizure of the Equipment.
20. The Hirer shall not at any time during the Hire Period make any mortgage of or charge or encumbrance upon the premises where the Equipment for the time being is installed without the Owner's prior consent in writing. If the Owner provides its consent, the Hirer shall procure that any such mortgage, charge or encumbrance is made subject to the rights of the Owner including the right of removal, notwithstanding that the Equipment or any part of it is affixed to such premises and upon the failure of the Hirer to comply with this clause to the satisfaction of the Owner, the Owner may terminate the hiring immediately.
21. The Hirer shall not:-
  1. interfere with or attempt to interfere with adjust or attempt to adjust any component part of the Equipment other than the normal operating controls; or
  2. remove all the Equipment either temporarily or permanently from the Premises unless the Owner before such removal shall consent in writing thereto.
22. The Hirer shall use the Equipment in a skilful and proper manner and shall not misuse or damage or permit or allow the misuse or damage of the Equipment or any part thereof.

#### Insurance

23. The The Hirer shall insure and keep insured the Equipment during the Hire Period against loss or damage by fire and normal commercial risks and such other risks as the Owner nominates from time to time to the replacement value of the Equipment, in the name of the Owner with an insurance company to be approved by the Owner and shall punctually pay all premiums and other sums required to keep the insurance effective and shall not do or permit or suffer to be done any act which might invalidate such insurance and shall on demand produce for the inspection of the Owner or its authorised agents the policy of insurance and all receipts for premiums. If the Equipment is damaged during the hiring and such damage can be made good, all insurance monies paid under any policy shall be applied in making good the damage. If the Equipment is lost, stolen or damaged beyond repair then such monies shall be paid to the Owner.

#### Care of Equipment

24. The Hirer shall:-

1. not remove any labels from and/or interfere with the Equipment, its working mechanisms or any other parts of it;
2. take reasonable care of the Equipment including but not limited to ensuring that Equipment is returned to the Owner free of any virus or other harmful computer code (where appropriate);
3. only use the Equipment for its proper purpose in a safe and correct manner and in accordance with any operating and/or safety instructions provided or supplied to the Hirer;
4. ensure that only competent individuals are permitted to use the Equipment;
5. notify the Owner (and where appropriate the Police) immediately of any breakdown, theft, loss and/or damage to the Equipment and co-operate fully with any Police enquiry and keep the Owner fully up to date with the enquiry and all information provided by the Police;
6. take adequate and proper measures to protect the Equipment from theft, damage and/or other risks including but not limited to ensuring that Equipment is not left unattended or in an unsecure area;
7. notify the Owner of any change of the Hirer's address and upon the Owner's request provide details of the location of the Equipment;
8. keep the Equipment at all times in its possession and control;
9. not continue to use Equipment where it has been damaged and/or has broken down;
10. notify the Owner immediately if the Equipment is involved in an accident resulting in damage to the Equipment, other property and/or injury to any person; and
11. where the Equipment requires electricity ensure that a proper and appropriate supply for the Equipment is used and that, where appropriate, the Equipment is properly installed by a qualified and competent person.

25. The Equipment must be returned by the Hirer in good working order and condition (fair wear and tear excepted) together with all documents relating to the Equipment.

#### Breakdown and Non-Functioning Equipment

26. The Owner shall during the Hire Period maintain the Equipment in good working order and repair and the Hirer shall immediately inform the Owner by notice in writing of any fault occurring to the Equipment whereupon the Owner shall as soon as reasonably practicable repair or replace the Equipment with equipment of similar type and condition. With the exception of items under warrantee, repairs and replacements will be at additional cost to the Hirer.

27. The Hirer shall permit the Owner his servants and agents at all reasonable times to have access to the Equipment for the purposes of inspection or repair.
28. With the exception of items under warrantee, the Hirer will be responsible for all expenses, loss (including loss of Rentals) and the cost of all repairs and services necessary to Equipment during the Hire Period. Site Service Call Out charges will be as provided in the Contract Rental Agreement.
29. Subject to clause 26, the Hirer must not itself or permit a third party to repair or attempt to repair the Equipment without the written authorisation of the Owner.

#### Loss or Damage to the Equipment

30. The Hirer shall pay the Owner the replacement cost of any Equipment which is lost, stolen and/or damaged beyond economic repair except where the relevant events occurred while the Equipment was at the risk of the Owner and the Hirer shall be liable to continue paying the Rental until the repair and/or cleaning has been completed and/or until the Owner has received the funds to purchase a replacement for such Equipment (as appropriate).
31. The Owner shall use its reasonable commercial endeavours to repair and/or clean the Equipment and/or purchase replacements for such Equipment as quickly as possible using any monies paid under clauses 30 above and 33 below.
32. If the Equipment is to be replaced at the cost of the Hirer in accordance with clause 30 above, the Hirer will pay to the Owner the replacement cost for the Equipment on a new for old basis.

#### Indemnity

33. Without prejudice to any other right or remedy the Owner may have, the Hirer agrees to indemnify and keep indemnified the Owner against any and all Liabilities and increased administration and professional and legal costs on a full indemnity basis suffered by the Owner (without set-off, counterclaim and/or reduction) and arising out of or in connection with:

1. any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Hirer; and
2. all loss or damage to the Equipment from whatsoever cause the same may arise and all actions, claims and demands made by any third party arising out of the use or possession of the Equipment from whatsoever cause the same may arise; whether or not such losses were foreseeable or foreseen at the date of this Agreement.

#### Limits on Liability

35. The Owner shall have no Liability for defective Equipment where the defect has been caused or contributed to by the Hirer.
36. The Owner shall have no Liability for damage, loss, liability, claims, costs or expenses caused or contributed to by the Hirer's continued use of defective Equipment after a defect has become apparent or suspected or should reasonably have become apparent to the Hirer.
37. The Hirer shall give the Owner a reasonable opportunity to remedy any matter for which the Owner is liable before the Hirer incurs any costs and/or expenses in remedying the matter itself. If the Hirer does not do so, the Owner shall have no Liability to the Hirer in relation to such matter.
38. The Hirer shall produce to the Owner written evidence of any claims for which it is alleged that it has Liability together with written details of how that Liability was caused by the Owner and the steps the Hirer has taken to mitigate the loss before the Owner shall have any Liability for the claim by the Hirer.
39. The Owner shall have no Liability to the Hirer to the extent that the Hirer is covered by any policy of insurance and the Hirer shall ensure that its insurers waive any and all rights of subrogation they may have against the Owner.

40. The Owner shall have no Liability to the Hirer for any: loss of profits and/or damage to goodwill; pure economic and/or other similar losses; special damages;

aggravated, punitive and/or exemplary damages;  
consequential losses and/or indirect losses;  
loss and/or corruption of data; and/or  
business interruption, loss of business, loss of contracts, loss of opportunity and/or production.

41. The Owner's total Liability to the Hirer in connection with this Agreement shall not exceed:

1. £700,000 in relation to any damage to tangible property; and
2. in relation to any Liability other than for damage to tangible property, in any relevant 12 month period, the amount paid by the Hirer to the Owner by way of Rentals in the same relevant 12 month period. For the purposes of this Clause 42b, relevant 12 month period means the 12 months immediately prior to the first act and/or omission giving rise to the Liability.

42. Each of the limitations and/or exclusions in this Agreement shall be deemed to be repeated and apply as a separate provision for each of:

1. Liability in contract (including fundamental breach);
2. Liability in tort (including negligence);
3. Liability for breach of statutory duty; and
4. Liability for breach of Common Law and/or under any other legal basis;

except that the clause above placing financial caps on the Owner's Liability shall apply once in respect of all of the said types of Liability.

43. Nothing in this Contract shall exclude or limit the Owner's Liability for death or personal injury due to its negligence or any Liability which is due to its fraud or any other liability which it is not permitted to exclude or limit as a matter of law.

44. All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

#### Termination

45. Either party may terminate this Agreement at any time by service on the other of one calendar month's notice, in the case of the termination by the Hirer, such notice not to expire before the expiry of the Initial Period.

46. If the Hirer:

1. fails to make any payment when due;
2. breaches the terms of this Agreement (and if remediable the breach has not been remedied within 14 days of receiving notice requiring it to be remedied);
3. persistently breaches any one or more terms of this Agreement;
4. provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Agreement;
5. pledges, charges or creates any form of security over any Equipment, ceases or threatens to cease to carry on business, is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or insolvent or has a moratorium declared in respect of any of its indebtedness;
6. and/or the Guarantor ceases or threatens to cease to carry on business;
7. pledges, charges or creates any form of security over any Equipment;
8. and/or the Guarantor is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances;
9. appears reasonably to the Owner due to the Hirer's credit rating to be financially inadequate to meet its obligations under the Agreement; and/or
10. appears reasonably to the Owner to be about to suffer any of the above events,

the Owner shall have the right, without prejudice to any other remedies to exercise any or all of the rights set out in clause 48 below.

47. The Hirer may immediately terminate this Agreement by written notice if the Owner:

1. breaches the terms of this Agreement (and if remediable the breach has not been remedied within 14 days of receiving notice requiring it to be remedied);
2. ceases or threatens to cease to carry on business; and/or
3. is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances.

#### Consequences of Termination

48. If any of the events set out in clause 47 above occurs, then:
1. the Owner may terminate the Agreement;
  2. the Owner may enter, without prior notice, any of the Hirer's premises (or premises of third parties with their consent) and repossess and use or sell any Equipment found which is owned by the Owner;
  3. any repossession of Equipment shall not affect the Owner's right to recover from the Hirer any monies due under the Agreement and/or any damages in respect of any breach which occurred prior to repossession of the Equipment;
  4. the Hirer is automatically no longer permitted to use and/or part with the possession of any Equipment owned by the Owner until it has paid in full all sums due to the Owner under this Agreement or any other agreement between the parties;
  5. the Owner may cancel, terminate and/or suspend without Liability to the Hirer any other agreement between the parties; and/or
  6. all monies owed by the Hirer to the Owner shall immediately become due and payable.
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49. Upon termination of the Agreement the Hirer shall immediately:
1. make the Equipment available for collection by the Owner as requested by the Owner in good repair and condition; and
  2. pay to the Owner all charges and/or any other sums payable under the Agreement.
50. Upon termination of this Agreement for any reason referred to in clause 46 hereof the Hirer shall forthwith pay to the Owner the amount which is the total of all monies then due and outstanding to the Owner under this Agreement as at the date of termination together with a sum equal to eighty five per cent (85%) of the total of all future instalments of rent payable hereunder had the hiring continued until the end of the Initial Period. Such latter sum shall be payable and considered as liquidated damages and not by way of a penalty it being an agreed estimate of the loss the Owner would suffer.
51. The payment of liquidated damages by the Hirer under clause 50 above shall be without prejudice to any other right or remedy of the Owner including but not limited to the right of the Owner to recover damages from the Hirer if the

Owner's damage and/or loss exceeds the amount of the liquidated damages and/or the right of the Owner to recover damages from the Hirer in relation to damage and/or loss caused by the Hirer's breach continuing after the period covered by the liquidated damages in clause 50 above.

#### Guarantee

52. If required by the Owner, the Hirer will procure the provision by the Guarantor of the Guarantee at the same time as this Agreement is entered into.

#### Notices

53. Any notice under this Agreement shall be in writing and shall be deemed to have been duly given if delivered to the party concerned at the address set out on the first page of this Agreement or such other address as that party may from time to time notify in writing and shall be deemed to have been served if sent by registered post 48 hours after posting.

#### General Matters

54. This Agreement contains the whole agreement between the parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement shall exclude liability for any fraudulent statement or act made prior to the date of this Agreement. The Hirer's acceptance of

the Equipment and/or of any sices provided by the Owner will amount to acceptance of the terms and conditions set out in this Agreement.

55. No waiver by either party of any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
56. The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
57. The Owner shall not be liable for any delay or failure in performing its obligations under this Agreement as a result of reasons beyond its reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events.
58. The Hirer shall be Liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions.
59. The Hirer shall not assign its interest in this Agreement (or any part) without the written consent of the Owner. The Owner may assign its interest in this Agreement (or any part) without the written consent of the Hirer.
60. None of the terms and conditions of this Agreement shall be enforceable by any person who is not a party to it.
61. This Agreement is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.