

**Definitions**

- 1.1** "Company" means Panalux Limited of Waxlow Road, London, NW10 7NU and its successors and assigns.
- 1.2** "Customer" means the person, firm, company or partnership who requests, hires, purchases equipment, studio facilities, personnel and/or goods or from the Company.
- 1.3** "Delivery Date" means, subject to the provisions of clause 3.3, the earlier of (i) the date (and, where relevant, the time) the Equipment leaves the premises of the Company for delivery to the Customer; (ii) the date (and, where relevant, the time) the Equipment is ready for collection by the Customer from the Company or (iii) a date (and, where relevant, the time) agreed in writing by the Company and the Customer:
- 1.4** "Equipment" means the equipment and all articles materials vehicles and generators hired out or supplied by the Company to the Customer or any replacements or substitutes and all accessories and additions made thereto.
- 1.5** "Company Personnel" means the employees agents sub-contractors or other representatives of the Company whose services are employed by the Customer whether in conjunction with the hire of equipment or the sale or purchase of goods or otherwise.
- 1.6** "Contract" means the agreement between the Company and the Customer for the hire of the Equipment, Studio Facilities or Company Personnel or the sale and purchase of goods in accordance with and incorporating these Terms & Conditions.
- 1.7** "Hire Charges" means the rates agreed and payable for the hire of Equipment and/or Studio Facilities and set out in the Quotation.
- 1.8** "Quotation" means the written quotation made available by the Company to the Customer; setting out the price and, where applicable, quantity, in respect of any combination of the Equipment, Studio Facilities, Company Personnel and/or Goods.
- 1.9** "Studio Facilities" means the studio facilities owned or leased by the Company or an affiliate of the Company which are leased or subleased from time to time to the Customer in accordance with the provisions of these General Terms and Conditions.
- 1.10** "Termination Date" means the date on which the Customer agrees to deliver the Equipment to the Company as set out in the Quotation or as the parties may otherwise agree in writing.

**Acceptance of Terms and Conditions**

- 2.1** Unless otherwise agreed in writing by a director of the Company any order by the Customer for Equipment, Studio Facilities, Company Personnel and/or Goods (as defined below) shall be construed as an express acceptance of these Terms and Conditions and the Quotation which shall prevail to the exclusion of all other terms. In relation to Studio Facilities, the following special terms shall apply:
- 2.1.1** Bookings for the hire of Studio Facilities will be considered provisional unless and until the Company receives a written confirmation by the Customer no later than by mid-day two days before the start of the relevant intended Hire Period. In the absence of such confirmation, the Company reserves the right to cancel that provisional booking without further notice and to make those Studio Facilities available to others. Cancellations of confirmed bookings for Studio Facilities will be charged in full.
- 2.2** The Customer may order Equipment, Studio Facilities, Company Personnel and/or Goods either in writing (including email) or verbally, by telephone or in person.
- 2.3** All orders for Equipment, Studio Facilities, Company Personnel and/or Goods shall be binding on the Customer whether or not they are confirmed by the Company. The Company shall be entitled to assume that any person placing and/or signing an order on behalf of the Customer is authorised to do so.
- 2.4** The Company reserves the right in its absolute discretion to refuse to accept any order.

**Hire Period**

- 3.1** The hire period for Equipment ("Hire Period") shall commence on the Delivery Date and (unless terminated earlier in accordance with these Terms and Conditions) shall continue until the Termination Date. The minimum Hire Period shall be one day.
- 3.2** The Company will use its reasonable endeavours to have the Equipment available for delivery or collection on the date requested by the Customer at the time of order but the Company shall not be responsible for any consequences of a delay due to circumstances beyond its control.
- 3.3** Notwithstanding the foregoing, where delivery or collection of the Equipment is delayed due to any act or omission of the Customer or due to the Company's representatives being unable to gain access to the delivery address nominated by the Customer, the Delivery Date shall be deemed to be the date on which delivery is first attempted or collection should have taken place.
- 3.4** Hire Periods may be extended by agreement between the parties, subject always to the availability of the Equipment and/or Studio Facilities and the Customer's payment (or agreement to pay) of all additional hire charges.
- 3.5** Studio hours are between 8:30am and 6pm. Usage outside these hours shall be charged at overtime rates.

**Rates and Payment**

- 4.1** During the Hire Period and until redelivery of the Equipment to the Company the Equipment shall (subject to these Terms and Conditions) quoted by the Company and/or calculated by reference to the rates set out in the Company's list of hire rates current at the commencement of the Hire Period copies of which are available on request. All charges are payable in sterling, without deduction, withholding or set-off.
- 4.2** Hire Charges shall be payable:
- 4.2.1** for the entirety of the Hire Period, whether or not the relevant Equipment and/or Studio Facilities is/are in use for the whole of such Hire Period; and
- 4.2.2** in full at the time the order is placed.
- 4.3** In addition to Hire Charges, the Customer shall pay a deposit prior to the Delivery Date. The Company shall refund the deposit to the Customer after the end of the Hire Period, except in the circumstances set out in clauses 12.3.1 and 5.2.
- 4.4** The rates and Hire Charges in the price list are subject to increase by the Company to cover variations in cost to the Company of goods components materials labour packing loading carriage and insurances. Subject to the foregoing, all Quotations shall remain valid for a period of 30 days from the date on which they are first given, provided that the Company shall be entitled to vary the initial Quotation if the Customer's order differs from the requirements and specifications on which the initial Quotation was based. The provision of a Quotation by the Company to the Customer does not guarantee the availability of the Equipment, Studio Facilities, Goods and/or Company Personnel specified in such Quotation, whether at the time of the Quotation is made or at the time the Customer wishes to place its order. ----

- 4.5** Where charges include the provision of Company Personnel, overtime rates may apply during certain hours or after certain periods of time, in accordance with the Company's applicable price list(s) which are either provided with the Quotation or are available in writing upon request by the Customer. Travel, subsistence and accommodation expenses of Company Personnel will be charged to the Customer; in addition to applicable day rates and hire charges.
- 4.6** All charges and prices set out in a Quotation shall be excluding VAT. The Customer shall be exclusively responsible for all VAT, customs and other duties and all related costs and expenses payable on any international transaction.
- 4.7** The Customer may in certain circumstances and at the Company's discretion become entitled to a discount in respect of the Hire Charges. Any such discount shall be strictly conditional on the Customer complying with the Company's payment terms and the Company reserves the right without notice to revoke the discount any time prior to receiving payment in full.
- 4.8** Without prejudice to the Company's other rights or remedies, the Customer shall pay interest at 5 per cent p.a. above the prevailing base rate of Lloyds TSB Bank plc on all sums which may be due from the Customer to the Company under the Contract and remain unpaid, such interest being calculated from the due date until actual payment compounded quarterly and payable as well after as before any judgment obtained in respect thereof. The Customer shall indemnify and reimburse the Company for any costs incurred by the Company to recover the overdue payment. The Company shall have the right, at its option, to suspend delivery of any Equipment, Company Personnel and/or Goods and/or to require the Customer to cease using Equipment or Studio Facilities until full payment is received.
- 4.9** For so long as there are any sums due to the Company from the Customer under any contract which remain unpaid:
- 4.9.1** the property of the Customer then in or later coming into the custody possession or control of the Company shall be subject to a lien in favour of the Company for such unpaid sums; and
- 4.9.2** the Company reserves the right to suspend the provision of any Services agreed to be provided to the Customer and/or to suspend the delivery of any Equipment, whether a deposit has been paid or not.
- 4.10** Unless otherwise agreed by Company in writing, the following cancellation charges shall apply for cancellations of booked or reserved Equipment before the Delivery Date:
- 4.10.1** For cancellations between 24 hours and four working hours before such time, Customer shall pay to the Company 25% of the Hire Charges for all Equipment for the first full day of the Hire Period;
- 4.10.2** For cancellations up to four working hours prior to the intended start of the Hire Period, the Customer shall pay the Company 50% of the hire charges for all Equipment for the first full day of the Hire Period.
- 4.11** Unless otherwise agreed by Company, if any order for the hire of Equipment is cancelled after the Delivery Date, the Customer shall pay the Company 100% of the Hire Charges for all Equipment for the first full day of the Hire Period, together with any delivery costs incurred by the Company.
- 4.12** "working hours" for this purpose are: 8am to 7pm. By way of example, if the Hire Period is due to start at 9am on a Tuesday and the Customer cancels its order at 7pm on the Monday evening, that equates to one working hour's notice of cancellation and the charge specified in clause 4.10.2 above shall apply,

**Inspection and Condition**

- 5.1** The Customer shall inspect and satisfy itself as to the condition and suitability of the Equipment before it is accepted by the Customer.
- 5.2** Notwithstanding the foregoing the use of the Equipment by or on behalf of the Customer shall be conclusive evidence that the Equipment is in satisfactory condition and good working order at the commencement of the Hire Period. The Customer is responsible for returning the Equipment at the end of the Hire Period in satisfactory condition and good working order, save for fair wear and tear.
- 5.3** The Customer shall, without prejudice to any amount the Company can recover by way of the Damage Waiver, indemnify and hold harmless the Company for any losses, costs or fees suffered by the Company or a third party as a result of loss (including, for the avoidance of doubt, any loss of rental income due to the inability by the Company to hire out damaged Equipment, or damage to the Equipment of whatsoever kind as result of related to the breach by the Customer of its obligations pursuant to clause 5.2. In addition to paying any losses or costs, the Customer shall, at the Company's discretion, pay to the Company the lesser of the full replacement cost of the damaged Equipment or the cost of reinstating the Equipment to the condition it was in at the commencement of the Hire Period.
- 5.4** The Company's liability in respect of faulty Equipment shall be limited to the adjustment, repair or replacement of such Equipment and, for the avoidance of doubt, the Company shall not be liable for the cost of retaking or reshooting any material which is not captured or is lost, and shall have no liability for any other costs or losses incurred by the Customer; as a result of the Equipment being faulty, Equipment orders arriving incorrectly or Equipment orders arriving late.

**Damage Waiver and Insurance**

- 6.1** Risk in the Equipment shall pass to the Customer on the Delivery Date and the Customer shall be responsible, for the duration of the Hire Period, for the cost of insuring all Equipment.
- 6.2** Unless the Customer agrees to insure the Equipment in accordance with clause 6.3.5 below, the Customer shall be charged, in addition to the hire charges, a "Damage Waiver" fee of 15% of the total applicable Hire Charges.
- 6.3** The following Damage Waiver terms will then apply in the event of damage to or loss of the Equipment and the Customer expressly acknowledges and agrees to such terms:
- 6.3.1** Geographical Limits - Worldwide, subject to prior declaration of where the Equipment is to be taken;
- 6.3.2** Maximum Hire Period - two months, subject to negotiation for longer period;
- 6.3.3** Excess – first £500 each and every loss, for which the Customer shall be responsible; and
- 6.3.4** Exclusions
- Damage caused by corrosion, excessive heat, water, dampness or physical mistreatment;
  - Damage arising from:
    - Breakage of flash tubes, bulbs or lenses used in association with lighting equipment;
    - Damage to glass and other fragile or brittle articles unless such damage is caused by fire, theft or as a result of an accident to the vehicle in which article(s) is/are being transported;
  - Theft from unoccupied vehicles;
  - Damage or loss as a result of negligence either accidental or deliberate; and
  - Consequential loss of any description.
- 6.3.5** Where Customer has arranged insurance for the Equipment, the Customer shall (without prejudice to the liability of the Customer to the Company) keep the Equipment insured for its full replacement value throughout the Hire Period against all risks including third party risks loss or damage by fire theft (whether or not involving forcible or violent entry or exit to premises) and other risks usually covered by comprehensive insurance of products of the type of the Equipment. The Company may offer to the Customer additional equipment damage insurance to cover the full value of the Equipment at a rate equal to a percentage of the gross hire.

**6.4** The Customer shall in addition (and without prejudice to the liability of the Customer to the Company) take out and maintain insurance against loss, damage or liability arising in connection with the use or storage of the Equipment and/or loss due to breakdown accident damage or delay and/or against loss damage or liability arising in connection with acts omissions or default of Company Personnel in carrying out or incidental to their duties under the Contract such insurance to be for such sum as is stipulated by the Company or in the absence of such stipulation for a minimum of £1 million for public or product liability in respect of one occurrence.

**6.5** The Customer shall in respect of such insurance produce to the Company on demand evidence of a current insurance policy and a receipt for the last premium paid.

**6.6** Such insurance shall be free from unreasonable restrictions or excess and shall be in the joint names of the Company and the Customer and shall be with a reputable insurance company or companies who shall be notified that the Equipment is on hire from the Company.

**6.7** The Company shall itself be entitled (but not obliged) at any time and from time to time to effect at the expense of the Customer insurance against all or any of the contingencies referred to in clause 6.9 and against any other contingency which the Company may in its absolute discretion decide.

**6.8** The Customer shall not use or allow the Equipment to be used for any purpose or by any person not permitted by the terms and conditions of the policy of insurance or Damage Waiver (by whomsoever effected) and shall not, for the duration of the Hire Period, do or omit to do any act or thing whereby such insurance or Damage Waiver terms would or may be vitiated or invalidated and/or jeopardise the prospect of a successful insurance claim in respect of any loss of or damage to the Equipment.

**6.9** The Company reserves the right to terminate usage of any Equipment if the Company considers that its Equipment employees suppliers subcontractors or agents, would or may be put at risk if such usage were to continue, for example in adverse weather conditions. In these circumstances, Hire Charges shall remain payable by the Customer in full.

**6.10** In the case of theft, the Customer shall report any loss to the local police within 24 hours and a copy of the police report/crime reference number must be supplied to the Company within 24 hours of the occurrence. The Customer shall within 24 hours of the occurrence of any loss (whether by theft, damage or otherwise), give written notice to the Company of any occurrence which will or may give rise to a claim being made on any insurance pursuant to this condition. The Customer shall not compromise any claim without the consent of the Company, shall allow the Company to take over the conduct of negotiations (except in relation to claims of the Customer for personal injuries, loss of use of the Equipment, or loss or damage to the property of the Customer unconnected with the Equipment) and shall at the expense of the Customer take such proceedings (in the sole name of the Customer or jointly with the Company) as the Company shall direct, holding all sums recovered, together with any monies received by the Customer under its policy of insurance, on trust for the Company and paying or applying the same as the Company directs and as herein provided.

### **Intellectual Property Rights**

**7.1** The Customer represents and warrants that no intellectual property rights (including without limitation copyright, trade marks, patents and moral rights) or other proprietary rights of any third party, now existing or hereafter created will be infringed by virtue of:

**7.1.1** the Customer's use of the Company's Equipment or Studio Facilities

**7.1.2** any services to be carried out by Company Personnel at the request of the Customer; or

**7.1.3** the loading, storage, management, archiving, re-touching or manipulation of the Customer's images and other data by the Company.

**7.2** The Customer represents and warrants that no materials or data deposited with the Company shall contain any material which is defamatory, blasphemous or obscene, or which is otherwise contrary to any applicable laws, regulations or codes of practice.

**7.3** The Customer shall indemnify and hold harmless the Company and any relevant Company Personnel against all claims or actions by and/or loss or damage to any other person, firm, company, and/or all claims or actions, loss or damage to any property directly or indirectly by virtue of or related to any breach of the warranties in clauses 7.1 (and its sub-clauses) or 7.2, or in event of any claim (whether or not proceedings are issued) by any party against the Company, or its employees suppliers subcontractors or agents, that any third party copyright or other intellectual property right (including without limitation moral rights) has been infringed by virtue of anything done by, or on behalf of or at the request of the Customer and such indemnity shall continue in force in relation to the subject matter of the Contract notwithstanding that the parties remaining obligations under the Contract shall have been discharged or otherwise terminated.

### **Limitation of Liabilities and Indemnities**

**8.1** Nothing in the Contract shall exclude or limit a party's liability for (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by its negligence (as defined in section 1 of the Unfair Contract Terms Act 1977); (c) any breach of the undertakings implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (e) any other liability which it is not permitted to exclude or limit.

**8.2** The Company will not be liable to the Customer or a third party for:

**8.2.1** any loss suffered as a result of trade disputes, difficulties in obtaining Equipment or components from suppliers, or manufacturers or anything otherwise outside the control of the Company; or

**8.2.2** damage to the Equipment after delivery to the Customer or to a carrier nominated by the Customer or to any person acting under authority of the Customer either expressed or implied or for any damage to Equipment caused by any delay in delivery, adverse weather conditions or unsuitable storage after the Equipment has left the premises of the Company; or

**8.2.3** consequential, indirect or special loss; or

**8.2.4** loss of goodwill, loss of profit or economic loss.

**8.3** Subject to the provisions of clause 8.1 and 8.2, the aggregate liability of the Company in respect of breach of contract or breach of duty, tort or fault or negligence or otherwise whatsoever and/or howsoever arising out of or in connection with this Contract shall be limited to the amount of monies (whether by Hire Charges or otherwise) payable by the Customer to the Company pursuant to the Contract.

**8.4** The Customer shall indemnify and hold harmless the Company against all claims or actions by and/or loss or damage to any other person, firm, company or property directly or indirectly connected with the acquisition use operation or possession of the Equipment whether such claim action loss or damage arises from breach of contract or of third party rights or from the negligence of the Company its employees suppliers subcontractors or agents or otherwise and such indemnity shall continue in force in relation to the subject matter of the Contract notwithstanding that the parties remaining obligations under the Contract shall have been discharged or otherwise terminated.

**8.5** All implied terms, conditions and warranties are excluded to the extent permitted under law.

### **Storage and Delivery of Data and Other Customer Materials - Customer's Responsibility to Insure**

**9.1** All digital data and other materials (including but not limited to any data or materials created by or on behalf of the Company at the request of the Customer) held by the Company (whether online or otherwise) and all other materials belonging to the Customer or any third party and provided to the Company by the Customer (for storage or otherwise) shall remain at the Customer's risk at all times and the Customer shall be responsible for insuring the same at its own expense. The Company shall not be responsible for the future integrity of digital data from the Company's storage archive.

**9.2** Where the Company's services involve the creation of digital data then, at any time after the date falling 7 days after the completion of a shoot at which such digital data was created, provided that the Company has provided the Customer with at least one high resolution copy of the data and the Customer has not, within 7 days of receipt of the same, expressly rejected such copy or copies for failure to comply with the Customer's orders, the Company reserves the right to dispose of such digital data without seeking the prior approval of the Customer. Accordingly, the Customer shall be solely responsible for ensuring that it holds adequate back-up copies of all digital data.

**9.3** All property, valuables and equipment brought by the Customer its employees, agents and contractors to the Company's premises shall remain at the Customer's own risk and the Company shall not be liable for any loss of or damage to such property, valuables and/or equipment.

### **Termination of Hire and Repossession**

**10.1** If the Customer shall fail to pay any sum payable under the Contract (or under any other agreement between the Company, or any associated company of the Company, and the Customer) when due (whether demanded or not) or shall commit a breach of the other terms and conditions whether express or implied of the Contract (or of the terms and conditions of any such agreement as aforesaid) or shall use the Equipment or Studio Facilities in any way which is unlawful and/or would cause damage to the Equipment or Studio Facilities or any part of them or shall do or allow to be done any act or thing which in the opinion of the Company may prejudice or jeopardise the Company's rights in the Equipment or any part thereof or may in the opinion of the Company affect the Customer's creditworthiness (including, without limitation, the service on the Company of any legal proceedings) or would or might bring the Company into disrepute, the Company may at any time within three (3) months of such events occurring give the Customer written notice to terminate the Contract, such notice to be effective upon receipt by the Customer.

**10.2** If

**10.2.1** any distress, execution or other legal process shall be levied on or against the Equipment or any part thereof or against any premises where the same may be or against any of the Customer's goods or other property or the Customer shall permit any judgment against it to remain unsatisfied for 7 days; or

**10.2.2** the Customer, being an individual, shall die, shall suffer an interim order (within the meaning of the Insolvency Act 1986) to be made against him or enter into a voluntary arrangement or suffer the making of a statutory demand or the presentation of a petition for a bankruptcy order; or

**10.2.3** the Customer, being a body corporate, shall enter into any liquidation, shall call any meeting of its creditors or shall have a receiver or receiver manager of all or any of its undertaking or assets appointed, or shall suffer the appointment or the presentation of a petition for the appointment of an Administrator under the provisions of Part II of the Insolvency Act 1986, or shall be deemed by virtue of S123 of the Insolvency Act 1986 to be unable to pay its debts,

then in each and every such case the Contract shall ipso facto and without notice terminate and no payment subsequently accepted by the Company with or without knowledge of such termination shall in any way prejudice or affect the operation of this clause 10.2.

**10.3** The Customer shall upon termination under clauses 10.1 or 10.2 pay to the Company;

**10.3.1** all arrears of Hire Charges then due and all other sums accrued pursuant to this Contract and due and unpaid at the date of termination together with interest thereon payable pursuant to clause 4.8; and

**10.3.2** the cost of all repairs and/or replacements required as at the date of termination; and

**10.3.3** compensation for the loss suffered by the Company (including, but not limited to, Hire Charges otherwise payable to the Company) as a result of such termination, such loss being determined by the Company having regard to all relevant circumstances; and

**10.3.4** any other sums which are or become due to the Company or to which the Company is entitled by way of damages.

**10.4** The termination of the hire constituted by the Contract shall not affect any rights of the Company or liabilities of the Customer subsisting at the date of termination.

**10.5** On termination of the hire or on expiry of the Hire Period for the Equipment, the Customer shall no longer be in possession of the Equipment with the Company's consent and shall (unless otherwise agreed with the Company) forthwith return the Equipment to the Company at such address as the Company may direct and at the Customer's expense and risk. Without prejudice to the foregoing or to the Company's claim for any arrears of hire charge or damages for any breach by the Customer of the Contract or any other rights hereunder, the Company or its authorised representatives may at any time after such termination or expiry of the Hire Period without notice retake possession of the Equipment and for such purpose enter upon any premises belonging to or in the occupation or control of the Customer or any premises where the Equipment is stored and the Customer shall be responsible for all costs, charges and expenses so incurred in retaking possession of the Equipment. The Customer shall also bear the reasonable costs incurred by the Company at any time in ascertaining the whereabouts of the Equipment and/or the Customer.

**10.6** On termination of the hire or on expiry of the Hire Period for the Studio Facilities, the Customer shall leave the Studio Facilities (if used) in the same condition in which they were made available to the Customer; and shall dismantle and remove all of the Customer's property, equipment, sets, props, lighting set-ups and other materials. In the event that any sets, props and/or lighting set-ups remain in the Studio Facilities at the end of the Hire Period, the Company reserves the right to remove and dispose of such sets, props and/or lighting set-ups and to charge the Customer for dismantling and/or disposing of the same.

### **Customer's Duties**

**11.1** During the period of the Contract the Customer shall:

**11.1.1** keep the Equipment in its custody and control and shall not sell loan, assign, pledge, encumber, or part with possession of or suffer any lien to be created over the Equipment or any part thereof (unless otherwise agreed in writing by the Company);

**11.1.2** ensure that the Equipment is used in a skilful and proper manner and only by persons having the appropriate qualifications and experience and who are familiar with the Equipment and not on any abnormal or hazardous assignment;

**11.1.3** take proper care of the Equipment and ensure that it is properly stored and protected from interference and damage from any source whatsoever including inter alia the effect of the elements and interference from strangers;

**11.1.4** not take or allow any of the Equipment to be taken out of the United Kingdom mainland without the prior written authority of the Company and in the event of that authority being given only on such terms as the Company deems fit.

**11.2** The Customer shall fulfil its obligations under this Contract in compliance with all applicable laws and regulations, including all binding codes of conduct and judgments.

### Replacement and Repairs

**12.1** The Customer shall at all reasonable times during the relevant Hire Period permit the Company and its agents access to the Equipment to inspect test adjust repair alter or replace the same.

**12.2** If at any time during the Hire Period of the Contract the Equipment or any part thereof is in need of adjustment or repair or if there are any accidents or incidents involving the Equipment or any part thereof then:

**12.2.1** The Customer shall forthwith (at whatever time of night or day) give notice by telephone to the Company within 24 hours of the occurrence of any circumstance described in clause 12.2 followed by written confirmation to the Company within five days of the occurrence thereof, such confirmation to state clearly the nature of the problem with the Equipment;

**12.2.2** in the case of adjustment or repair for which the Company is responsible the Company shall either carry out the necessary adjustment or repair on site or at its discretion shall arrange for the removal of the Equipment or part or parts thereof to the Company's premises for adjustment or repair;

**12.2.3** in the event of the Company removing the Equipment or any part thereof then the Company may at its option adjust or repair or redeliver the Equipment or such part or parts thereof or determine this Contract forthwith in relation to the Equipment or part thereof or the Company may replace the Equipment or such part or parts thereof in which case the Contract shall continue as if the substituted product or such part or parts had been included in the subject matter of the Contract;

**12.2.4** in the case of adjustment, repair or substitution necessitated by an act or omission by or on behalf of the Customer the Company may at its option apply new hire rates current at the date of completion of the adjustment repair or substitution in place of those set out in the list of rates current at the date of the Contract in respect of any adjusted repaired or substituted product as from the date of such completion.

**12.3** If the Equipment's condition results in damage or the need for adjustment or repair to the whole or any part (other than where due to fair wear and tear or where the Equipment was already damaged before the Hire Period commenced) then:

**12.3.1** Without prejudice to the Company's other rights or remedies under the Contract, the Company shall, in the event of repairs or replacements required due to an act or omission of the Customer; be entitled to retain the deposit paid by the Customer in respect of the Equipment, and the Customer shall be liable for all costs of inspection, loading, unloading and transport and other labour costs and replacement parts or other materials in connection with the carrying out of the adjustments or repair the removal of the Equipment or any part or parts thereof and the redelivery thereof or any substitute thereof and for the avoidance of doubt should the Customer request that any repair be carried out on location by Company Personnel then all additional labour costs and all other expenses (including travel and accommodation) shall be paid by the Customer;

**12.3.2** Hire Charges shall continue to be payable as if the Equipment had not been in need of adjustment or repair.

### Vehicles

**13.1** Where the Equipment hired includes any vehicle or vehicles ("the Vehicles") the provisions of this clause shall apply.

**13.2** The Customer may use the Vehicles for the storage and transportation of the Company's lighting Equipment only –any other use of the Vehicles, without the prior written consent of the Company, shall be a material breach of this Contract by the Customer.

**13.3** Without prejudice to the generality of the foregoing, the Customer agrees that it will not:

**13.3.1** without the prior written consent of the Company effect any mechanical or other modification to the Vehicles, make any alterations or additions, fit any towing equipment or other accessories or non-standard tyres, and any such additions alterations or modified parts which may be made (whether with or without consent) shall be made at the cost of the Customer and shall become part of the Vehicles and shall belong to the Company;

**13.3.2** remove or interfere with any identification marks or plates affixed to the Vehicles nor attempt or purport to do so nor permit the same or deface the paintwork or bodywork of the Vehicles nor add or erect any painting, sign-writing, lettering, or advertising to or on the Vehicles.

**13.4** The Customer shall during the Hire Period:

**13.4.1** ensure that the Vehicles are operated properly and safely by drivers who at all times hold valid and current driving licences in the appropriate classes;

**13.4.2** not use or permit the Vehicles to be used or operated in a manner contrary to any statutory provision or regulation or in any way contrary to law, having regard in particular (but without prejudice to the generality of the foregoing) to the regulations affecting maintenance and usage of tyres, tachographs and drivers' hours; and

**13.4.3** indemnify the Company against all damages, fees, expenses, fines, penalties and liabilities imposed on the Company or arising in respect of or related to (i) any non-compliance or contravention of any transport, traffic or other law or regulation and (ii) a breach by the Customer of the provisions of clauses 13.3 and 13.4.

**13.5** The Customer shall pay for the mileage travelled by the Vehicles at the rate charged by the Company from time to time in respect of such type of vehicle. Fuel and lubricants for generators shall be paid for as used at the Company's rates then current.

### Services of Company Personnel

**14.1** During any period when the services of Company Personnel are employed by the Customer then such Company Personnel shall be deemed to be the servants or agents of the Customer and the Customer shall be responsible for ensuring that all Company Personnel working on and the place and method of work and in particular (but without limitation) the Customer shall ensure that (a) all Company Personnel working at heights in excess of 2 metres (without guardrails or equivalent protection) or 15 metres (in any event) shall wear safety harnesses which shall be provided by the Customer; (b) drivers of vehicles shall not exceed the maximum hours allowed by statute, the Customer paying for a replacement driver and all associated expenses as necessary, and the Customer shall provide such facilities and locations as shall enable the Company to comply with all and any similar legislation and regulations which are applicable.

**14.2** The Customer shall indemnify and hold harmless the Company against all losses, claims, fees, costs and expenses (including legal expenses) incurred by the Company and relating to

**14.2.1** the compliance with all health and safety legislation in relation to the services performed by the Company Personnel;

**14.2.2** a breach of the Customer's obligations pursuant to clause 14.1;

**14.2.3** proceedings or demands made by a third party in connection with or arising from any acts omissions or default of Company Personnel, including damage and/or injury to, as applicable, any third party or such third party's property;

**14.2.4** proceedings or demands made by Company Personnel in connection with or arising from any act omission or default of the Customer under the Contract or otherwise; and

**14.2.5** proceedings or demands made by Customer's representative or employee in connection with or arising from any acts omissions or default of Company Personnel, including damage and/or injury to, as applicable, to Customer's representatives, clients or employees and the property of such persons.

**14.3** The rates applicable to the hire of the services of Company Personnel will be those set out in the Company's Labour Charging Structure Advice for the applicable production type which are available upon request and/or set out in the relevant Quotation. Rates are subject to variation from time to time.

**14.4** The period for the hire of services of Company Personnel shall (unless terminated in accordance with these Conditions) continue until such date as the Company and the Customer agree in writing.

### Sale of Goods

**15.1** The provisions of this condition shall apply to all contracts for the sale of consumables or other goods ("Goods") by the Company to the Customer whether such sale is made in conjunction with the hire of Equipment or Company Personnel or otherwise.

**15.2** The price payable by the Customer shall be the Company's price for such goods current from time to time, as set out in the relevant Quotation, which shall set out prices exclusive of VAT

**15.3** Delivery of the Goods shall be made at the Company's address. Risk in the Goods shall pass to the Customer upon such delivery taking place. The Customer shall be deemed to have accepted the Goods if they are not returned to the Company within 24 hours (or, if used, lost or damaged by the Customer prior to that, then upon first being so used, lost or damaged). After acceptance the Customer shall not be entitled to reject Goods which are not in accordance with the Contract. Where the Customer rejects any Goods then the Customer shall have no further rights whatever in respect of such Goods or the failure by the Company to supply goods which conform to the Contract.

**15.4** If the Company shall elect to deliver Goods on a sale or return basis then in relation to such Goods the Customer shall be deemed to have accepted them and agreed to purchase them upon their first being used, lost or damaged by the Customer or if they shall not have been returned to the Company within 2 days after expiry or termination of the Contract.

**15.5** Notwithstanding delivery and/or acceptance of the Goods, title in the Goods shall not pass from the Company until the Customer has paid the price for the Goods in full and no other sums whatever shall be due from the Customer to the Company.

**15.5.1** Until title in the Goods passes to the Customer the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The Customer shall store the Goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.

**15.5.2** The Company shall be entitled to recover the price of the Goods (plus VAT) notwithstanding that title in any of the Goods has not passed from the Company.

**15.5.3** Until such time as title to the Goods passes from the Company the Customer shall upon request deliver up to the Company such of the Goods as have not ceased to be in existence or resold so that if the Customer fails to do so the Company may enter upon any premises owned occupied or controlled by the Customer where the goods are situated and repossess the goods.

### Credits

**16** If credits or acknowledgments are being made to the suppliers of equipment in the front or end titles of a production for which the Equipment is being used and/or which Company Personnel are engaged then the Customer shall include the Company's logo, copies of which can be obtained in a variety of formats from the Company, plus a similar size credit to read "Lighting facilities supplied by PANALUX www.panalux.biz".

### Miscellaneous

**17.1** The Contract and the Quotes incorporating these Terms and Conditions constitute the entire understanding and agreement between the parties hereto and any variation shall be binding only if it is in writing signed on behalf of the Company.

**17.2** Each party acknowledges that it has not relied upon or been induced to enter into this Contract by a representation, statement, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Contract;

**17.3** Clauses 17.1 and 17.2 are not intended to limit a party's liability in respect of a fraudulent misrepresentation or its own wilful default.

**17.4** The waiver by the Company of any breach of any term of the Contract or these Terms and Conditions shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

**17.5** Any notice under the Contract shall be in writing and telexed or sent by facsimile transmission or prepaid first class post or delivered to the address stated herein or to the last known address of the addressee. Service shall be deemed to be effective on the date of the telex or facsimile and in the case of posting on the day following the day of posting and any notice delivered to an address by hand shall be deemed to be effective from the date of such delivery.

**17.6** Where there are two or more parties to the Contract as Customer their liability shall be joint and several. In the Contract and these Terms and Conditions and where the context so admits or requires the masculine shall include the feminine or neuter (and vice versa) and the singular shall include the plural.

**17.7** The Contract and these Terms and Conditions and any disputes which may arise in connection with it shall be governed in all respects by English Law and shall be subject to the exclusive jurisdiction of the English Courts.