

DIGITALFILM SERVICE TERMS AND CONDITIONS OF BUSINESS

1. INTERPRETATION

In these conditions "the Company" means Digitalfilm Service, a division of Media Film Service (Pty) Ltd and its successors and assigns of Johannesburg: Tripark, 17 Eastern Service Road, Eastgate Ext 8, Sandton, 2146

"The Customer" means the persons or Company hiring the Equipment referred to below. "The Equipment" means all articles and materials taken on hire from the Company by the Customer in the course of its business. "The Hire Charges" means the charges agreed between the parties for the hire of the Equipment. "Consumables" means any item sold not taken on hire. "The Services" means the Services (if any) to be provided by the Company to the "Customer" (including the installation, delivery, collection and maintenance of the Equipment) as agreed between the parties.

1.1 These conditions shall govern the contract between the Company and any Customer to the exclusion of any other conditions.

1.2 No variation to these conditions will be binding unless agreed in writing between the Company and the Customer.

1.3 These conditions override any earlier conditions appearing in the Company catalogue or elsewhere or agree to by the Customer whether in the quotation or any negotiations unless changed in terms of 1.2 above.

1.4 The invalidity of any part of this agreement shall not affect the validity of any other part.

1.5 A certificate issued by the Financial Director of the Company shall be prima facie proof of the indebtedness of the Customer.

1.6 Any printout of computer evidence tendered by any party shall be admissible evidence and the parties shall not object to the admissibility of the evidence purely on the grounds that such evidence is computer evidence or that the requirements of the Computer Evidence Act have not been met.

2. QUOTATION

2.1 Details of the Hire Charges and the hire period are set out in the Company's quotation.

2.2 The Hire Charge for the Equipment commences on the day the Equipment leaves the Company premises and terminates at the end of the agreed hire period, provided that the Equipment has been returned to the Company in the same condition it was in at the commencement of the hire (fair wear and tear expected).

2.3 In the event that the Equipment is lost, damaged or destroyed, the period in respect of which a Hire Charge shall be payable shall continue until such time as the Equipment is recovered and returned to the Company or (if damaged) is repaired and available for re-hire or (if destroyed) is replaced by an equivalent or comparable item available for hire, or replacement value has been paid to the Company. Any such additional Hire Charge for lost, damaged or destroyed Equipment shall not exceed an amount equal to 13 weeks' rental of that Equipment.

2.4 If the Customer, following the commencement of the agreement, cancels it or seeks to reduce its requirement for Services or Equipment, the Company reserves the right to charge the Customer a sum which reflects the cost to the Company entering into the agreement and preparing for the supply of the Equipment or Services.

3. PAYMENT

3.1 Unless specific payment terms are agreed between the parties prior to the commencement of the contract, the conditions relating to the payment set out in sub clause 3.2, 3.3, 3.4 and 3.5 below shall apply.

3.2 Payment of Hire Charges must be made in full on receipt of invoice, only if by prior written authorisation 30 days from date of statement.

3.3 Payment in respect of the Services and Consumables must be made in full within seven days of the date of the Company's invoice.

3.4 If the Customer fails to make payment on the due date, the Company shall be entitled to charge the Customer interest on the unpaid amount at the maximum legal interest rate prescribed in the terms of the Usury Act, and the interest shall be calculated and compounded monthly. Interest will be charged on overdue amounts without further notification to the Customer.

3.5 The Customer is not entitled to discounts on overdue invoices. Discount reflected on these invoices will be reversed and the Customer will be responsible for the gross amount. Discounts will be reversed on all unpaid invoices after 60 days after date of invoice, without further notification to the Customer.

3.6 Queries on invoices must be raised within seven days from date on invoice.

3.7 The Hire Charge specified on the Company's quotation is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay the Company.

3.8 Outstanding amounts are subject to default listing on a national credit bureau database.

4. DELIVERY AND RISK

4.1 All Equipment hired from the Company shall at all times remain the property of the Company.

4.2 Customers will become liable for all Consumables taken at time of delivery.

4.3 Any dates quoted for the delivery of the Equipment or the provisions of the Services are approximate only and the Company shall not be liable for any delay in delivery howsoever caused.

4.4 The Customer shall, as soon as is practicable and in any event prior to using the Equipment, satisfy itself that the Equipment is in good working order. If the results of the test are unsatisfactory, the Customer shall immediately notify the same to the Company.

4.5 If, upon delivery of the Equipment, the Customer discovers that the Equipment is damaged or malfunctions in any way, it shall notify the Company within 24 hours of discovering the same. If the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Equipment and the Company shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Equipment had been delivered in accordance with the contract. The Company shall endeavour to replace any faulty Equipment, of which it is notified, in accordance with this clause as soon as is reasonably practicable.

4.6 All Equipment delivered to the Customer, or the Customer's premises (for this purpose) shall, after delivery, be the responsibility of and at the risk of the Customer. The Customer shall be liable for any theft, loss, damage or destruction howsoever caused to the Equipment. Equipment collected by the Customer will be deemed to have been delivered at the earliest of signing the picking list or the departure of the Equipment from the Company's warehouse.

4.7 Where delivery to the Customer's premises is effected by a third party, delivery for these purposes shall be deemed to have occurred when the Equipment leaves the Company's premises.

4.8 Any Customer related vehicle parked on the Company's premises is deemed to be the Customer's property and Equipment stored in that vehicle is deemed to be in possession of the Customer and is subject to 4.5.

4.9 The Company shall provide the Services with reasonable care and skill and in accordance with all statutory regulations.

5. USE OF THE EQUIPMENT

5.1 If the Equipment becomes defective during the hire period, the Company will, at its discretion, either replace the Equipment or repair any defective part providing the defective Equipment or part is returned to the Company at the place from which it was hired, with the costs of carriage, insurance and the handling charges paid by the Customer. Alternatively, the Company will, at its discretion, pay the reasonable cost of the repair or, the replacement of the Equipment by a dealer approved by the Company for that purpose and on terms acceptable to the Company.

5.2 The Customer will at all times during the hire period:

5.2.1 Keep the Equipment in its possession and under its control and not purport to sell, loan, assign, pledge or permit any lien to be created over it or any part of it.

5.2.2 Ensure that the Equipment is used in a proper manner with the benefit of such permissions, licences or permits as may be required, in accordance with all statutory regulations and only by persons having the appropriate qualifications, and subject to the Control of the Customer.

5.2.3 Not hold or use the Equipment (nor permit others to do so) in a manner which will or may cause any term or condition of the damage waiver/ insurance policy referred to in condition 7 below to be broken.

5.2.4 Take proper care of the Equipment and ensure that it is safely and properly stored.

5.2.5 Inform any person to whom a debenture or charge over any part of the Customer's assets is to be granted that the Equipment is not the property of the Customer.

5.3 The Customer will not, without prior written consent of the Company, allow the Equipment to be removed outside South Africa or to be used in any abnormal or hazardous assignment.

6. LIABILITY AND INDEMNITY

6.1 The Company shall not be liable for any damage or personal injury or death howsoever caused with arising from the supply of the Equipment or Services.

6.2 Without prejudice to any liability which the Company may have under Section 2 (1) of the Unfair Contract Terms Act 1977, the Company shall not be liable for any loss, damage claim, demand or expense whether caused by the negligence of the Company or otherwise which the Customer may suffer resulting from:

6.2.1 Any delay, non delivery, defect or efficiency relating to the Equipment or the Services.

6.2.2 Any defect or damage to the Equipment by the usual storage or damage caused to the Equipment once it has left the Company's premises or which may be caused by adverse weather conditions.

6.2.3 Any trade disputes or difficulties in supplying the Services or in obtaining the Equipment from the suppliers or manufacturers.

6.3 The Company shall not be liable to the Customer for loss of profits or contracts or other indirect or consequential loss howsoever caused.

6.4 In so far as not covered by the damage waiver/ insurance policy referred to in condition 7 below, the demands, costs, actions or proceedings made against them by any third party, arising out of the hire of the Equipment, the making available to the Customer of the Services or the Customer's failure to comply with the terms and conditions.

7. DAMAGE COVER/ CUSTOMER INSURANCE

7.1 In the event that the Customer elects to utilise their own insurance, they shall affect the insurances stated herein and the Damage Cover levy will not be charged on condition a signed copy of the Damage Cover Waiver form and an insurance certificate is received from the Customer prior to the commencement of the rental.

7.2 Negligent use and use of Equipment under hazardous conditions, and the theft from an unattended (unguarded) vehicle are not covered under the Damage Cover.

7.3 If the Customer does not have its own insurance cover, or its cover is not acceptable to the Company, or is unable to provide an insurance certificate, it will pay the Company the relevant Damage Cover levy and in case of damages/losses the lower amount of the excess or the replacement/ repair cost of the item(s).

7.4 The Customer shall effect the following insurances:

7.4.1 An all risk insurance policy on all items of the Equipment for their full replacement value (including without limitation cover against loss, theft or damage to the Equipment).

7.4.2 A third-party liability insurance policy covering the liability of the Customer and of the Company for death, injury, and damage to or loss of property arising directly or indirectly out of the use or possession of the Equipment and shall at the commencement of the hire period give notice to the insurer of the Company's interest in such policy.

7.5 The policy in respect of such insurance and evidence of payment or premiums shall, when requested by the Company, be produced to the Company for inspection.

7.6 The Customer shall give written notice to the Company of any occurrence which will or may rise to a claim being made on any insurance pursuant to this clause and such notice shall be given within 24 hours of the occurrence being first known to the Customer.

7.7 The Customer shall, at its own cost, assist the Company in securing the settlement of any claim and the payment to the Company of the value of such claim so far as it relates to the Equipment or the liability of the Company to any third party.

8. TERMINATION AND REPOSSESSION

8.1 Either party shall be entitled to immediately terminate the contract on giving written notice to the other if:

8.1.1 That other party commits any breach of these conditions and, in the case of such a breach, which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

8.1.2 That other party makes voluntary arrangement with its creditors or becomes subject to an administration order or (being a company) goes into liquidation (otherwise than for the purpose of the amalgamation or reconstruction) or

8.1.3 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of that other party, or

8.1.4 That the other party ceases, or threatens to cease, to carry on business.

8.2 On termination the Customer shall pay to the Company all charges and expenses owing to the Company at that date.

8.3 Neither party shall have any right to claim for any loss or damage occasioned by such termination.

8.4 At the expiry of the hire period, or following termination of the contract for whatever reason, the Customer shall return the Equipment to the Company's premises in good working order and condition.

8.5 If the Customer fails to return the Equipment within 24 hours of being requested to do so by the Company, the Company may, without notice, re-take possession of the Equipment and for the purpose shall be entitled without notice, to enter into any premises occupied or controlled by the Customer.

9. NOTICES

Any notice required to be given in accordance with these conditions shall be deemed to be properly given if delivered by hand or sent by prepaid post or telex or facsimile to the party concerned at the address, telex or facsimile number as may be communicated to the sender of the notice. Notices sent by prepaid post shall be deemed to have been received three working days after the date of posting. Notices delivered by hand or sent by facsimile shall be deemed to have been received on the first working day following the date of delivery or sending as the case may be.

10. PROPER LAW

These conditions shall be governed by and construed in accordance with the laws of the Republic of South Africa. The parties hereto agree further that, in event of a dispute arising from these terms and conditions, such dispute may be determined by any Magistrate's Court in South Africa having jurisdiction in the circumstances, irrespective of whether the amount in dispute exceeds the jurisdictional limit of such Courts as determined or fixed from time to time, and not withstanding the Company's discretion to have the matter heard in the High Court of South Africa.

11. COSTS

In the event that the Customer breaches any terms of this agreement and the Company instructs attorneys or a debt collection agency to enforce any of its rights in terms of the agreement, then the Company shall be entitled to claim all of its cost incurred in enforcing its rights, including but not limited to, collection commissions, legal costs (upon the attorney and client scale) and the like.