

## B. General Terms and Conditions

### 1. Definitions and Interpretation

In these General Terms and Conditions, unless the context otherwise requires, the following expressions shall have the following meanings:

<b>“Additional Software”</b>	means software that is installed by the Client during the Hire Term;
<b>“Authorised Personnel”</b>	means employees of or consultants to the Client that have been trained in the relevant aspects of information technology in order to perform maintenance and updates to computer equipment;
<b>“Client”</b>	means the Client who is hiring the Equipment subject to these Terms and Conditions;
<b>“Client Data”</b>	means any and all data created by or for the Client which is stored on the Equipment;
<b>“Commercial Terms”</b>	means the prevailing commercial terms published on our website from time to time or as otherwise agreed between the company and the client in writing;
<b>“Deposit”</b>	means the sum payable by the Client under Clause 3 of these Terms and Conditions and as set out in the Hire Agreement;
<b>“Preinstalled Software”</b>	means software that is installed on the Equipment by the Company and supplied therewith for the Hire Term;
<b>“Price List”</b>	means the Company’s price list, current at the time of the start of the Hire Term;
<b>“Hire”</b>	means the hire of the Equipment by the Client subject to these Terms and Conditions;
<b>“Hire Agreement”</b>	means the agreement entered into by the Client and the Company for the hire of the Equipment consisting of the Commercial Terms and these Terms and Conditions;
<b>“Hire Fees”</b>	means the sum payable by the Client for the Hire as determined under Clause 4 of these Terms and Conditions.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;

- 1.2.4 a Schedule is a schedule to these Terms and Conditions;
- 1.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and
- 1.2.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.

## **2. Hire Term**

- 2.1 The agreed Hire Term will be as set out in the Confirmed Booking (as defined in the Commercial Terms). Changes to Confirmed bookings are subject to the Cancellations policy set out in the Commercial Terms.
- 2.2 The Company shall use its reasonable endeavours to satisfy requests for extensions of time but cannot guarantee the availability of the Equipment to the Client beyond the end of the pre-existing Hire Term.
- 2.3 If the Client does not vacate an edit suite at the end of the Hire Term when required to, the Company shall be entitled to charge the Client for or losses incurred by the Company including any lost bookings from other clients.

## **3. Deposit**

- 3.1 The Client may be required to pay a refundable Deposit to the Company at the commencement of the Hire Term, pursuant to paragraph 3.2 of the Commercial Terms.
- 3.2 At the end of the Hire Term the Company shall have a period of 2 weeks within which to fully inspect the Equipment. If the Equipment requires cleaning and / or maintenance which is the result of normal wear and tear the Client will receive the Deposit back in full at the end of the inspection period. In the event that additional cleaning and / or maintenance is required the Company shall retain the Deposit in full or in part as appropriate and shall provide the reasons for such retention to the Client in writing, including all relevant calculations and pricing information.

## **4. Fees and Payment**

- 4.1 The Hire Fees will be determined by reference to the length of the Hire Term, the type and quantity of Equipment, the Price List and any additional items which may be included in the Hire, as set out in the Commercial Terms.
- 4.2 Payment shall be made by card payment, cheque or BACS. All cheques must be made payable to Molinare TV and Film Ltd.
- 4.3 All payments shall be required within 30 days of the date of the relevant invoice.
- 4.4 The time of payment shall be of the essence of these terms and conditions. If the Customer fails to make any payment on the due date in respect of any sum due under these Terms and Conditions then the Company shall have the right to charge the Customer interest on any sum outstanding at the rate of 8% above the base rate of HSBC Bank PLC from the due date for payment until the date on which the payment is received

**5. Edit Suite Use**

- 5.1 All set up and set down costs shall be for the account of the Client.
- 5.2 At the end of the Hire Term, the Client shall ensure that the edit suite(s) in use are restored to the same condition they were in on the Client's arrival.
- 5.3 At the end of the Hire Term, the Client must remove all Client Data from the Equipment. The Company accepts no responsibility for any Client Data which remains on the Equipment following the end of the Hire Term.
- 5.4 The client should be liable for the full replacement value of any Equipment that is damaged by it or its agents or representatives during the Hire Period.
- 5.5 The Client's use of its own equipment on the Premises is entirely at the Client's own risk and Molinare accepts no liability for any loss or damage to the Equipment or Molinare's infrastructure or power supply resulting from the operation of the Client's own equipment.
- 5.6 Unless otherwise agreed in writing, Molinare will not undertake to handle or provide technical support for any client supplied equipment. If, in exceptional cases and with Client agreement, Molinare does undertake to handle or provide technical support for any client equipment, Molinare will not accept any liability for damage, failure or fault in the equipment, nor liability for any loss of intellectual property, media or data therein.

**6. Software**

- 6.1 Any and all Preinstalled Software is and shall remain the property of the relevant proprietor. The Client gains no rights of ownership over such software at any time.
- 6.2 The Client may only use the Preinstalled Software within the bounds of the relevant software licences.
- 6.3 The Client shall be solely liable for any breaches of licences for Preinstalled Software which occur during the Hire Term.
- 6.4 The Client shall not communicate, transfer, copy (in whole or in part), modify, reverse-engineer or translate the Preinstalled Software for any reason.
- 6.5 The Client shall be free to install Additional Software provided that such software is a final release version and is not likely to damage the Equipment. Beta and other pre-release versions of software may only be installed with the prior written consent of the Company.
- 6.6 All Additional Software must be removed from the Equipment prior to collection at the end of the Hire Term.

**7. Use and Care of the Equipment**

- 7.1 The Client may only use the Equipment for the normal purpose for which it is intended.
- 7.2 The Client may only use the Equipment for legal and legitimate purposes.
- 7.3 All Equipment must be used in accordance with any and all operation and safety instructions or similar documentation provided.
- 7.4 Certain items of Equipment may require specialist training prior to use. The Client must ensure that such training is provided to all employees (and any other relevant individuals for whom it may be responsible) that will use the Equipment during the Hire Term.
- 7.5 The Client may only affix or connect other items to the Equipment where such affixation does not exceed the design limitations of the Equipment and is not likely to damage it in any way.

- 7.6 The Client may not affix the Equipment to anything unless using fixings approved [and supplied] by the Company.
- 7.7 The Client shall at all times treat the Equipment with a reasonable level of care and shall ensure that it is kept clean, subject always to reasonable levels of wear and tear.
- 7.8 All Equipment which uses consumables of whatever nature must only be used with official consumables (that is, those produced or recommended by the manufacturer of that particular piece of Equipment) or such other products as authorised by the Company.
- 7.9 The Client may not remove Equipment from the Premises without the prior written consent of the Company. This prohibition does not extend to laptops, and portable disk drives.
- 7.10 If after obtaining prior written consent from The Company The Client takes the Equipment out of the United Kingdom The Client shall be solely responsible for obtaining all the necessary customs Clearance Licences and permits.

## **8. Maintenance and Upgrades**

- 8.1 The Client shall not attempt to make any repairs to the Equipment without the prior written consent of the Company.
- 8.2 The Client may not perform any hardware upgrades to the Equipment of any kind without the prior written consent of the Company. Where such upgrades are provided by the Company the hardware concerned shall remain the property of the Company. If the Client uses their own hardware it must be replaced with the original hardware prior to the collection of the Equipment at the end of the Hire Term.
- 8.3 The Client may appoint Authorised Personnel to perform software updates without the prior written consent of the Company provided such updates do not constitute new versions of software which would ordinarily be charged for. Permitted updates include, but are not limited to, routine updates, patches and service packs.
  - 8.3.1 In the event of any Equipment failure, the Client shall inform the Post Production Manager or the support desk of such failure. The Company will use its reasonable endeavours to respond and rectify the failure as soon as practicable.
- 8.4 The Company shall maintain the Equipment to the standards specified by the relevant manufacturers. Only official parts (that is, those produced or recommended by the manufacturer of that particular piece of Equipment) shall be used for maintenance and repair work.
- 8.5 All parts that cannot be described as consumables which may require replacement during the Hire Term shall be replaced free of charge by the Company provided that such replacement is necessitated by nothing more than normal wear and tear. Additional damage may result in the Client being charged for the cost of replacement parts and associated labour.

## **9. Insurance**

- 9.1 It is the responsibility of the Client to insure its own equipment fully and comprehensively at the full replacement value against loss, fire, damage and theft.

- 9.3 Molinare accepts no liability for any of the Clients' goods, equipment or personal belongings whilst on the Premises.
- 9.4 The Company does not hold insurance for any loss or failure of client equipment and it is the responsibility of the client to arrange suitable insurance for this purpose, where they require it.
- 9.5 The Company shall not provide any form of data loss insurance. It is entirely a matter for the client whether it chooses to obtain such insurance itself.
- 9.6 Any installation or operation by the Client of its own equipment at Molinare's Premises, shall be entirely at the risk of the Client.
- 9.7 Molinare accepts no liability for any loss caused by the failure of Molinare's equipment, infrastructure or power supply.
- 9.6 Unless otherwise agreed in writing, Molinare will not agree to handle or provide technical support for any Client equipment. If, in exceptional cases and with the agreement of the Client, Molinare does undertake to handle or provide technical support for Client equipment, Molinare will not accept any liability for damage, failure or fault in the equipment, nor liability for any loss of intellectual property, media or data therein.

## **10. Liability**

- 10.1 The Company will not be liable for any personal injury or damage to property which results from the improper use of the Equipment.
- 10.2 In no event will the Company be liable by reason of any breach by it of any of these Terms and Conditions or breach by it of any implied warranty, condition or other term of the Agreement, or any negligent or innocent misrepresentation, or any negligence or other duty at common law, for any:
- (a) loss of or damage to data;
  - (b) loss of use of data;
  - (c) of use of any hardware or software;
  - (d) interruption to business;
  - (e) loss of income or revenue;
  - (f) loss of profit, contracts, business, business opportunity, or goodwill;
  - (g) loss of anticipated savings; or any indirect, special or consequential loss, damage, costs, expenses or other claims, whether or not the same were reasonably foreseeable or actually foreseen.
- arising from any act or omission of the Company in connection with the performance of its obligations under the Agreement.
- 10.3 The Company will not be liable for any other loss or damage arising out of any circumstances beyond its reasonable control.
- 10.4 The Company will not be liable to any third parties for any acts of the Client which may involve the Equipment.
- 10.5 Nothing in these Terms and Conditions restricts the Company's liability for death or personal injury arising out of any act or omission of the Company.

## 11. Data Protection

- 11.1 All personal information that the Company may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and the Client’s rights under the GDPR, or any successor domestic legislation.
- 11.2 The Client acknowledges and agrees that it may be necessary for Molinare to use certain personal data (as defined in Schedule 1(1) of the Data Protection Act 1998 (the “Act”)) for the purposes of adding descriptive metadata to a file in order to comply with a broadcaster’s delivery requirements. The Client represents and warrants that it has obtained all necessary consents and complied with all of its legal and contractual obligations in respect of such personal data and that the inclusion of such personal data in the metadata of the file and the delivery of the file to the broadcaster will not constitute a breach of any law or regulation including, but not limited to, the Act. Molinare agrees that it shall only use such personal data in accordance with the instructions of the Client, shall not use the personal data for any other purpose and will endeavour to keep such personal data safe and secure.

## 12. Termination

- 12.1 The Company shall be entitled to terminate the Hire Agreement in the event that:
- (i) the Client is in breach of these Terms and Conditions;
  - (ii) the Client goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.
- 12.2 In the event of termination for any of the above reasons:
- (i) all payments required under the Hire Agreement shall become due and immediately payable; and
  - (ii) The Company shall have the immediate right to cancel the Client’s booking (whether Confirmed or not) and the immediate return of the Equipment or repossess the Equipment and may charge the Client for any reasonable costs involved in such repossession.

## 13. Indemnity

- 13.1 The Client shall indemnify Molinare for any losses, damages, liability, costs and expenses (including professional fees) incurred by it as a result of any action, demand or claim:
- (a) that use of its own equipment or its production content infringes the Intellectual Property Rights of any third party (an **IPR Claim**);
  - (b) that Molinare is in breach of any applicable laws as a result of any act or omission of the Client;
  - (c) made against Molinare by a third party (including by any client of Molinare) arising from any defect in the Equipment caused by the Client’s breach of this Agreement,
- each being a **Claim**.
- 13.2 If Molinare receives notice of any Claim, it shall:
- (a) notify the Client in writing as soon as reasonably practicable;

- (b) not make any admission of liability or agree any settlement or compromise of the Claim without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed);
- (c) let the Client at its request and own expense have the conduct of or settle all negotiations and litigation arising from the Claim at its sole discretion, provided that, if the Client fails to conduct the Claim in a timely or proper manner, Molinare may conduct the Claim at the expense of the Client;
- (d) take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the Claim; and
- (e) provide the Client with all reasonable assistance in relation to the Claim (at Molinare's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of Molinare.

13.3 If any IPR Claim is made or is reasonably likely to be made, the Client may at its option:

- (a) procure for Molinare the right to continue using and possessing the relevant Equipment; or
- (b) modify or replace the infringing part of the Equipment so as to avoid the infringement or alleged infringement, provided the Equipment remain in conformance to the Specification.

#### **14. No Waiver**

No failure by either the Company or the Client to enforce the performance of any provision in these Terms and Conditions shall constitute a waiver of the right to subsequently enforce that provision or any other provision of these Terms and Conditions. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

#### **15. Severance**

If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

#### **16. Title and Risk**

The legal and beneficial ownership of the Equipment supplied shall remain with the Company at all times.

#### **17. Arbitration**

Subject to the agreement of the parties, if any dispute or difference shall arise between the Company and the Customer on any matter relating to or arising out of the Agreement, such a dispute shall be referred to the arbitration of a single Arbitrator to be agreed upon by the parties or failing agreement to be appointed by the then President of the Law Society of England and Wales.

If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

**18. Law and Jurisdiction**

17.1 These Terms and Conditions shall be governed by the laws of England and Wales.

17.2 Any dispute between the Parties relating to these Terms and Conditions shall fall within the jurisdiction of the courts of England and Wales.