

Terms & Conditions

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Definitions:

"Company" is Smiddereens and/or their subcontractors or agents.

"Equipment" is all items provided to or hired by the Hirer including tents, temporary demountable structures, big tops, little tops, marquees and all other tents.

"Fee" is the total fee (including the deposit) for the hire of the Equipment specified in the Hire Agreement.

"Hire Agreement" is the contract entered into by the Hirer and the Company including any quotation and subject to/incorporating these terms and conditions.

"Hirer" is the person hiring the Equipment from the Company.

"Period of Hire" is the time specified in the Hire Agreement and commencing with the arrival of the Equipment on the Site, and terminating when the Equipment is removed from the Site by the Company.

"Site" is the location specified in the Hire Agreement at which the Hirer requires the Equipment during the Period of Hire.

1. Conditions

Unless expressly stated in the Hire Agreement, all orders are subject to these terms and conditions and the Hirer, by paying the deposit and/or authorising or allowing the Period of Hire to commence, is deemed to have accepted and agreed to be bound by these terms and conditions.

2. Terms

a) The Hirer will pay to the Company the deposit specified in the Hire Agreement. The deposit is non-refundable.

b) The Hirer will pay the Fee in full to the Company no later than the first day of the Period of Hire.

c) The Company reserves the right to charge interest on any unpaid invoice(s) at the rate of 3% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Hirer must pay the Company interest together with any overdue amount.

d) If the Hirer disputes an invoice in good faith and contacts the Company promptly after receiving such an invoice, paragraph 2 c) will not apply for the period of the dispute.

e) In the event of severe weather affecting the safety of performers or the public (or the Company's crew) and/or any event outside the reasonable control of the Company under paragraph 11, which results in the Equipment not being able to be erected, the Company reserves the right to charge the Hirer for any costs reasonably incurred in starting to fulfil its obligations under the Hire Agreement. The Company will tell the Hirer what these costs are and these costs will be deducted from any refund that is due to the Hirer, or if no refund is due to the Hirer, invoiced to the Hirer.

3. Quotations

a) The Company reserves the right to: (i) revise or withdraw any quotation prior to acceptance by the Hirer; and (ii) to vary the Fee should any substantial increase in labour, materials or transport cost occur before or during the Period of Hire. The Company shall give reasonable notice to the Hirer of such an increase, but no increase shall affect any confirmed Hire Agreement.

b) All quotations are made strictly subject to the Equipment being available at the time of ordering. Every effort will be made to supply the Equipment as specified in any order but the Company reserves the right to substitute the most closely matching item of Equipment available should the necessity arise.

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4. Erection and Dismantling

- a) The Fee includes the provision of labour for erecting and dismantling the Equipment.
- b) Unless expressly stated in writing, the Fee does not include attendance by the Company's crew (except during the process of erection and dismantling) or provision of a watchman.

5. Title and Risk

- a) The Equipment shall at all times remain the property of the Company, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms of the Hire Agreement).
- b) During the Period of Hire, the risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer. Once the Equipment is erected, it will be checked by the Company and the Company will complete, time and date the relevant Equipment completion form and provide the Hirer with a copy, the Hirer shall then be responsible for all costs associated with providing security and/or preventing any interference, tampering or damage to the Equipment and restoring to its original condition and/or replacing the Equipment on the happening of any such event. The Company will not be responsible for the safety of any property stored or housed in any Equipment during the Period of Hire. It shall be the responsibility of the Hirer to obtain any necessary insurance for the Equipment during the Period of Hire.

6. Fire Prevention

Housing appliances when required, must be firmly fixed and sufficiently guarded to avoid risk of Equipment materials coming into contact with the element. Radiators of the convector type are recommended. Electrical installations, both lighting and heating should be in accordance with the regulations of the Institute of Electrical Engineers. All such appliances, radiators and electrical items used by the Hirer are at the Hirer's sole risk and the Company accepts no liability for any loss or damage caused to the Equipment or otherwise as a result.

7. Liability

- a) Without prejudice to paragraph 8 b), the Company's maximum aggregate liability for breach of the Hire Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the Fee or £5,000,000.
- b) Nothing in the Hire Agreement shall exclude or in any way limit: (i) either party's liability for death or personal injury caused by its own negligence; (ii) either party's liability for fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be excluded by law.
- c) The Hire Agreement sets out the full extent of the Company's obligations and liabilities in respect of the Equipment and its hiring to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Company except as specifically stated in the Hire Agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Hire Agreement, whether by statute, common law or otherwise, is expressly excluded.
- d) Without prejudice to paragraph 8 b), if the Company fails to comply with the Hire Agreement, the Company shall be responsible for the loss or damage the Hirer suffers that is a foreseeable result of the Company's breach of the Hire Agreement or the Company's negligence. Loss or damage is foreseeable if they were an obvious consequence of the Company's or if they were contemplated by the Hirer and the Company at the time we entered into the Hire Agreement.

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e) The Hirer acknowledges that the Company shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Hirer or its officers, employees, agents and contractors, and the Hirer undertakes to indemnify the Company on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of the Hire Agreement.

8. The Site

- a) The Fee assumes that the Site is reasonably level, firm, with easy access for commercial vehicles. The Company cannot be held responsible for damage caused to concealed or buried pipes, cables and other services and features unless their positions have been clearly marked on the Site by the Hirer.
- b) The Company reserves the right to erect, dismantle and remove the Equipment from the Site at its convenience. The Fee does not include any repairs or making good that may be required to the Site. The Company reserves the right to charge an additional fee for any such work.
- c) The Hirer shall have representatives on the Site to show the Company where the Equipment shall go, or shall provide detailed plan for that purpose. In the absence of both, the Company shall erect the Equipment where it deems fit, and shall be entitled to charge an additional fee if the Hirer wishes the Equipment to be repositioned.
- d) The Hirer is responsible for giving notice to, or obtaining permits from Local Authorities or site owners prior to erection. Any costs incurred in delays or modifications in the work arising from the absence or misinterpretation of any such permission or permits or inability to access the Site, shall be payable to the Company by the Hirer.

9. Cancellation

In the event of cancellation the following charges will be invoiced to and due for payment by the Hirer within 14 days from the date of the invoice:

- a) 25% of the Fee (excluding any deposit if paid) if cancellation is more than 28 days before the first day of the Period of Hire.
- b) 50% of the Fee (excluding any deposit if paid) if cancellation is between 14 and 28 days before the first day of the Period of Hire.
- c) 90% of the Fee (excluding any deposit if paid) if cancellation is less than 14 days before the first day of the Period of Hire.

10. Force Majeure

- a) The Company shall not be in breach of the Hire Agreement or these terms and conditions nor liable for delay in performing, or failure to perform, any of its obligations during the Period of Hire if such delay or failure results from events, circumstances or causes beyond its reasonable control including but not limited to acts of God, wind, storm, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident, interruption or failure of utility service.
- b) In such circumstances, the Company shall contact the Hirer as soon as reasonably possible, the Company's obligations shall be suspended and the time for performance of the Company's obligations shall be extended.
- c) Subject to paragraph 2e), the Hirer may cancel the Hire Agreement if an event outside the reasonable control of the Company takes place and the Hirer no longer wishes the Company to provide the Equipment. The Company will only cancel the Hire Agreement if an event outside its reasonable control continues beyond the Period of Hire.