

Terms & Conditions of Equipment Sale for Arts Alliance Media Ltd ("AAM")

The Distributor's attention is in particular drawn to paragraph 10.

1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation in this clause have the following meanings and apply in these terms and conditions.

- (a) **Buyer:** the person, firm or company who purchases the Goods from AAM;
- (b) **Contract:** any contract between AAM and the Buyer for the sale and purchase of the Goods (including invoices signed by AAM), incorporating these terms and conditions;
- (c) **Delivery Point:** the place where delivery of the Goods is to take place under paragraph 4;
- (d) **Payment Terms:** the payment terms set out in the Contract; and
- (e) **Goods:** any goods agreed in the Contract to be supplied to the Buyer by AAM (including any part or parts of them) and as installed if AAM is responsible for such installation pursuant to the Contract.

1.2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3. Words in the singular include the plural and in the plural include the singular.

1.4. Paragraph headings do not affect the interpretation of these paragraphs.

2. APPLICATION OF TERMS

2.1. Subject to any variation pursuant to paragraph 2.3, any Contract shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3. These terms and conditions apply to all AAM's sales and any variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Chief Operating Officer or a Director of AAM. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of AAM which is not set out in the Contract. Nothing in this paragraph shall exclude or limit AAM's liability for fraudulent misrepresentation.

2.4. Each order or acceptance of a quotation for Goods by the Buyer from AAM shall be deemed to be an offer by the Buyer to buy Goods subject to these terms and conditions.

2.5. No order placed by the Buyer shall be deemed to be accepted by AAM until a written acknowledgement of order is issued by AAM or (if earlier) AAM delivers the Goods to the Buyer.

2.6. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7. Any quotation is given on the basis that no Contract shall come into existence until AAM despatches an acknowledgement of order to the Buyer. Any quotation is valid for period of 30 days only from its date of issue, provided that AAM has not previously withdrawn it.

3. DESCRIPTION

3.1. The quantity and description of the Goods shall be as set out in AAM's quotation or acknowledgement of order.

3.2. All samples, drawings, descriptive matter, specifications and advertising issued by AAM and any descriptions or illustrations contained in AAM's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and shall not constitute a sale by sample.

4. DELIVERY

4.1. Unless otherwise agreed in writing by AAM, delivery of the Goods shall take place at AAM's place of business, in which case the Buyer shall take delivery of the Goods within 14 days of AAM giving it notice that the Goods are ready for delivery.

4.2. Any dates specified by AAM for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3. Subject to the other provisions of these terms and conditions AAM shall not be liable for any direct, indirect or consequential loss (all three of which include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by AAM's negligence), nor shall any

delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

4.4. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or AAM is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by AAM's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) AAM may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

5. NON-DELIVERY

5.1. The contents of any consignment of Goods as recorded by AAM on despatch from AAM's place of business shall be conclusive evidence of the contents received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2. AAM shall not be liable for any non-delivery of Goods (even if caused by AAM's negligence) unless the Buyer gives written notice to AAM of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.3. Any liability of AAM for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

6.1. The Goods are at the risk of the Buyer from the time of delivery.

6.2. Ownership of the Goods shall not pass to the Buyer until AAM has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to AAM from the Buyer on any account.

6.3. Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as AAM's bailee;
- (b) store the Goods (at no cost to AAM) in such a way that they remain readily identifiable as AAM's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on AAM's behalf for their full price against all risks to the reasonable satisfaction of AAM. On request the Buyer shall produce the policy of insurance to AAM.

6.4. The Buyer may resell the Goods before ownership has passed to it solely on the following terms and conditions:

- (a) any sale shall be effected at full market value; and
- (b) any such sale shall be a sale of AAM's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5. The Buyer's right to possession of the Goods shall terminate immediately if:

- (a) the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between AAM and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Goods.

6.6. AAM shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from AAM.

6.7. The Buyer grants AAM, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.8. Where AAM is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by AAM to the Buyer in the order in which they were invoiced to the Buyer.

6.9. On termination of the Contract, howsoever caused, AAM's (but not the Buyer's) rights contained in this paragraph 6 shall remain in effect.

7. PRICE

7.1. Unless otherwise agreed by AAM in writing, the price for the Goods shall be the price set out in AAM's quotation or invoice.

7.2. The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

8. PAYMENT

8.1. Subject to paragraph 8.4 and unless otherwise agreed in writing by AAM and the Buyer, the price under paragraph 7.1 is payable under the Payment Terms.

8.2. Time for payment shall be of the essence.

8.3. No payment shall be deemed to have been received until AAM has received cleared funds.

8.4. All payments payable to AAM under a Contract shall become due immediately on its termination despite any other provision.

8.5. The Buyer shall make all payments due under a Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by AAM to the Buyer.

8.6. If the Buyer fails to pay AAM any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to AAM on such sum from the due date for payment at the annual rate of 5% (five per cent) above 90-day LIBOR, accruing on a daily basis until payment is made, whether before or after any judgment. AAM reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. QUALITY

9.1. Where AAM is not the manufacturer of the Goods, AAM shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to AAM.

9.2. AAM warrants that (subject to the other provisions of these terms and conditions) on delivery the Goods shall:

- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- (b) be reasonably fit for the purpose of digital cinema projection.

9.3. AAM shall not be liable for a breach of any of the warranties in paragraph 9.2 unless:

- (a) the Buyer gives written notice of the defect to AAM, and, if the defect is as a result of damage in transit to the carrier, within 5 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) AAM is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by AAM) returns such Goods to AAM's place of business at AAM's cost for the examination to take place there.

9.4. AAM shall not be liable for a breach of any of the warranties in paragraph 9.2 if:

- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow AAM's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of AAM.

9.5. Subject to paragraph 9.3 and paragraph 9.4, if any of the Goods do not conform with any of the warranties in paragraph 9.2 AAM shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if AAM so requests, the Buyer shall, at AAM's expense, return the Goods or the part of such Goods which is defective to AAM.

9.6. If AAM complies with paragraph 9.5 it shall have no further liability for a breach of any of the warranties in paragraph 9.2 in respect of such Goods.

10. LIMITATION OF LIABILITY

10.1. Subject to paragraphs 4, 5 and 9, the following provisions set out the entire financial liability of AAM (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these terms and conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods

Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3. Nothing in these terms and conditions excludes or limits the liability of AAM:

- (a) for death or personal injury caused by AAM's negligence; or
- (b) under section 2(3) of the Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for AAM to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.4. Subject to paragraph 10.2 and paragraph 10.3:

- (a) AAM's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) AAM shall not be liable to the Buyer for loss of revenue and/or profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused, including by way of damage to any of the Buyer's, or any third party's, property) which arise out of or in connection with the Contract.

11. ASSIGNMENT

11.1. AAM may assign the Contract or any part of it to any person, firm or company.

11.2. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of AAM.

12. FORCE MAJEURE

AAM reserves the right to defer the date of delivery or to cancel the Contract (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of AAM including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to AAM to terminate the Contract.

13. GENERAL

13.1. Each right or remedy of AAM under the Contract is without prejudice to any other right or remedy of AAM whether under the Contract or not.

13.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.3. Failure or delay by AAM in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

13.4. Any waiver by AAM of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

13.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.6. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14. COMMUNICATIONS

14.1. All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

- (a) (in case of communications to AAM) to its registered office or such changed address as shall be notified to the Buyer by AAM; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to AAM by the Buyer.

14.2. Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

14.3. Communications addressed to AAM shall be marked for the attention of the Chief Operating Officer.