

ATMOSPHERE

LIGHTING & SOUND

Terms and conditions of hire

13 May 2013 at 10:15

1. DEFINITIONS

In these terms and conditions the following words and expressions shall have the following meanings:- "the Firm" means the partnership of A.B. & C. Campbell which trades as Atmosphere Lighting & Sound, Shamona Hire and Rainbow Chaser Discotheques at 67/69 Nelson Street, Aberdeen;

"the Customer" means the customer of the Firm hiring or purchasing the Equipment and/or whom the Services are being supplied pursuant to the Contract;

"the Conditions" means the standard conditions for hire or sale of the equipment and supply of the Services set out in this document;

"the Contract" means the contract between the Firm and the Customer for the hire or sale of the Equipment and/or supply of Services;

"the Equipment" means the audio, lighting, visual effects and pyrotechnic equipment hired or sold by the Firm to the Customer under the Contract;

"the Order" means the order issued by the Customer to the Firm in respect of the Equipment and/or the Services;

"the Quotation" means the quotation issued by the Firm to the Customer in respect of the Equipment and/or the Services;

"the Services" means (a) any electrical and/or electronic installations, repairs, maintenance, and testing services and (b) any provision of sound and lighting operators supplied by the Firm to the Customer pursuant to the Contract;

"the Site" means the premises of the Customer or any other location other than the Firm's premises. "the Act" means the Criminal Justice & Public Order Act 1994;

2. GENERAL

2.1 The Firm shall hire or sell the Equipment and/or supply the Services as the case may be and the Customer shall hire or purchase the Equipment and/or accept the supply of the Services in accordance with the Quotation or any Order which is accepted by the Firm, subject in each case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions.

2.2 No variation of these Conditions shall be binding unless agreed in writing between an authorised representative of the Firm and the Customer.

2.3 Subject to sub-clause 2.2 no employee, agent or other representative of the Firm shall be empowered to waive the rights of the Firm hereunder or vary these terms and conditions orally or otherwise.

3. HIRE OF EQUIPMENT

Period of Hire

3.1 The period of hire shall be set out in the Quotation or Order accepted by the Firm shall be deemed to have commenced when the Equipment leaves the Firm's premises and shall terminate when the Equipment is returned to the Firm's premises.

Hire Charges

3.2 The Firm's hire charges shall be in accordance with Clause 8.

Ownership

3.3 The Equipment shall remain the property of the Firm and is provided to the Customer solely on rental basis.

Defects

3.4 The Customer shall immediately notify the Firm of any defects in the Equipment hired. Failing such notification, it shall be conclusively presumed as between the Firm and the Customer that the Equipment has been received in good condition and is in every way satisfactory for the Customer's purposes. Although the Firm checks all Equipment immediately prior to its being hired out, it does not give any warranty as to the quality of the Equipment nor as to its

fitness for the purposes of the Customer. The Firm does not warrant the Equipment corresponds with any description or specifications either contained in catalogues or given verbally.

Customer's Obligations

3.5 During the continuance of the Contract for hire of Equipment the Customer shall:

- (a) keep the Equipment at the location specified in the Contract and in its own possession and not remove the same from such location without the prior written consent of the Firm;
- (b) permit an authorised representative of the Firm at all reasonable times to enter upon any premises, so that the Equipment may be inspected, and if relevant, maintained, repaired, tested or removed;
- (c) take all reasonable and proper care of the Equipment, keep the Equipment in good condition and not subject the same to any misuse (normal wear and tear excepted);
- (d) ensure that the Equipment is operated in a skilful and proper manner and by persons who are competent to operate the same and ensure that any demonstrations carried out and instructions or manuals supplied by the Firm for use of the Equipment are fully observed;
- (e) take all necessary steps to ensure that the Equipment will be safe and without risk to health and safety when properly used by it including providing appropriate verbal and written warnings where pyrotechnics and/or strobe lighting is to be used;
- (f) preserve on the Equipment the Firm's and any manufacturer's identification number or mark or any nameplate that is or should be upon the Equipment;
- (g) notify the Firm forthwith in writing of any loss, damage or claim relating to the Equipment;
- (h) not part with possession of the Equipment or any part thereof at any time during the period of hire without the written consent of the Firm;
- (i) not make any alterations, modifications, additions or technical adjustments to or , attempt any repairs to the Equipment without the prior written consent of the Firm and the Customer acknowledges that any items or non-expendable material not returned to the Firm will be charged to the Customer at cost to the Firm;
- (j) not by any act or default render the Equipment liable to any arrestment, charge or other legal process;
- (k) upon expiry of the period of hire, return the Equipment at its expense to the Firm unencumbered and in good repair and conditions;
- (l) ensure that in respect of use of all relevant Equipment on hire, all necessary performing rights licences and the like are in place;
- (m) ensure that the Equipment is not used at a "gathering" as defined by Section 63 of the Act.

Cancellation

3.6 In the event that the Customer cancels the Contract or any part thereof more than 14 days prior to commencement of the hire of the Equipment then it shall, notwithstanding that the hire Equipment is no longer required, pay half of the relevant hire charges and if cancelled any nearer to the commencement of the hire then the full amount of the relevant hire charges will be payable.

Maintenance

3.7 All maintenance and repairs to the Equipment shall be undertaken by the Firm provided that (where relevant) the Customer at its expense returns the Equipment or any part thereof to the Firm's premises for inspection and provided further that such of the Equipment or any part thereof is accepted by the Firm as defective. All equipment returned to the Firm following a period of hire shall be fully inspected and all costs incurred by the Firm in reconditioning the Equipment following use by the Customer (fair wear and tear excluded) shall be met by the Customer. For the avoidance of doubt such costs shall include but not be limited to repair or replacement of lamps, styli, plugs and sockets.

4. SALE OF EQUIPMENT

Sale Price

4.1 The Firm's sale prices shall be in accordance with Clause 8.

Defects

4.2 The Customer shall notify the Firm of any defects in the Equipment supplied within twenty-four (24) hours of receipt by it. Failing such notification, it shall be conclusively presumed as between the Firm and the Customer that the Equipment has been received in good condition and is in every way satisfactory for the Customer's purposes. The Firm does not give any warranty as to the quality of the Equipment nor as to its fitness for the purposes of the Customer. The Firm does not warrant that the Equipment corresponds with any description or specifications either contained in catalogues or given verbally.

Retention of Title

4.3 Notwithstanding delivery and the passing of risk in the Equipment, ownership of and title to the Equipment shall remain with the Firm and shall not pass to the Customer until the Firm has received in cash or cleared funds payment in full of all sums then due by the Customer to the Firm for (a) the price of the Equipment, (b) the price of all other

Equipment supplied, (c) all hire charges, (d) all charges for Services, and (e) all other costs incurred by the Firm in having to enforce this clause.

5. DELIVERY AND RISK

5.1 Delivery of Equipment sold by the Firm to the Customer shall be deemed to take place when the Equipment leaves the Firm's premises when the whole risk shall pass to the Customer.

5.2 The Firm shall endeavour to adhere to delivery times but time shall not be of the essence and the Firm shall not be liable for any claim, loss or damage occasioned by or consequential on the non-delivery at the expected time or for delayed delivery. In case of unforeseen delay on delivery, the Firm will notify the Customer as soon as reasonably practicable.

6. CARRIAGE

In addition to hire charges or sale prices, the Firm may make a separate charge for outward delivery and/or collection and/or packing of the Equipment as the case may be.

7. SERVICES

General

7.1 Supply of the Services and payment therefore shall be governed by these Conditions and the Firm undertakes that it shall use all reasonable endeavours to supply the same in accordance with any specific requirements detailed in the Contract. Where the Services include supply of Equipment the Firm reserves the right to supply similar equipment where the Equipment specified in the Contract is not available.

7.2 Where the supply of Services includes Equipment hire and the provision of Disc Jockeys, sound and/or lighting operators then during the continuance of the Contract the Customer shall have sole responsibility for ensuring:-

- (a) that the necessary performing rights licenses and the like are in place;
- (b) the safety and security of the Equipment and the Disc Jockeys, sound and lighting operators including providing a suitable location for setting up the Equipment and an adequate power supply;
- (c) control of any venue including crowd control;
- (d) adherence to all health and safety regulations, fire controls and first aid obligations;
- (e) that any other equipment provided by the Customer and utilised with the Equipment provided is up to the required standard for so utilising.

7.3 Where the supply of Services includes the supply and installation of Equipment on Site and unless the contrary is expressed in the Quotation, the Customer shall have sole responsibility for ensuring that:

- (a) secure storage for any tools and materials brought on Site by the Firm;
- (b) the Site is adequately lit, heated and ventilated so as to provide an acceptable working environment;
- (c) there is an adequate and safe power supply on Site;
- (d) the Site is suitable for the installation of the Equipment and that all necessary local authority building consents and all necessary licences have been obtained from the relevant bodies;
- (e) in respect of any installation the Site complies with all relevant Health & Safety legislation, rules and regulations;
- (f) other contractors and sub-contractors on Site perform their functions and delegated tasks in accordance with any timetable set down;
- (g) only authorised personnel are given access to the Site;
- (h) regular meetings between all contractors and sub-contractors are held on Site to discuss progression of the works and said meetings are minuted;
- (i) facilities are available for the removal of all rubbish and waste from the Site.

7.3.2 Where the provision of Services includes the supply of Equipment on Site such supply of Equipment shall be subject to the terms concerning sale of Equipment contained in these conditions save that notification of defects shall be in accordance with clause 10.9 rather than clause 4.2.

Sub-Contract

7.4 The Firm reserves the right to sub-contract supply of the Services or any part thereof.

8. HIRE CHARGES, SALE PRICES AND CHARGES FOR THE SERVICES

8.1 Hire charges, sale prices (including restocking charges) and charges for the Services shall be the Firm's quoted prices or where no prices have been quoted the price listed in the Firm's published current price list. The Firm reserves the right by giving notice to the Customer at any time before delivery, to increase the price of the Equipment, hire charges or charges for the Services to reflect any increase in the cost to the Firm arising from:-

- (a) any change in the delivery time or time upon which the Equipment or Services are required by the Customer;
- (b) any delay caused by other instructions of the Customer; or

(c) failure of the Customer to give adequate information, instructions or, if relevant, access.

8.2 Except as otherwise stated under the terms of any quotation or any price list of the Firm and unless otherwise agreed in writing between the Customer and the Firm, all prices are given by the Firm on an ex-works basis exclusive of delivery costs. Unless otherwise agreed, the Firm shall deliver the Equipment to the Customer at the Firm's premises.

8.3 Without prejudice to all the Firm's rights hereunder where Equipment hired is not returned immediately following the expiry of the period of hire, the Firm shall be entitled to charge the full hire charge for any additional period of time until the Equipment is returned.

9. PAYMENT

9.1 The Firm may request a cash deposit in respect of any Contract which is reasonable given the value of the Contract and the cost to the Firm of effecting its contractual obligations thereunder which deposit shall be payable by the Customer at the time of acceptance by the Customer of the Quotation or at the time when any Order is accepted by the Firm. Without prejudice to any other rights or remedies available to the Firm against the Customer, the Firm shall be entitled to retain such deposit or such part thereof which, in the Firm's sole opinion, represents an amount equal to losses incurred by the Firm in the event of the Customer cancelling the Contract.

9.2 All invoices for the Services and for hire or sale of the Equipment are payable as set out in the Quotation or where no payment details have been quoted within thirty (30) days of the invoice date. Charges and prices are exclusive of any VAT. The Firm may charge and the Customer shall pay interest on any overdue payment at a rate of 4 per cent above the base rate of Clydesdale Bank PLC from time to time.

9.3 The Customer shall not be entitled to withhold payment of any amount payable under the Contract due to any dispute or claim nor shall the Customer be entitled to set off against any amount payable under the Contract or under any other contract between the Firm and the Customer.

10. LIABILITY

For Hire Equipment

10.1 The Customer shall be liable under the Contract and indemnify the Firm for:-

- (a) any loss or damage to the Equipment whilst it is on hire to the Customer, whether caused by the Customer being in default of its obligations pursuant to Clause 3.5 or otherwise;
- (b) any loss incurred due to the late return of Equipment;
- (c) any injury caused to or death of the Customer caused by the Equipment whilst on hire to the Customer (other than death or injury resulting from the negligence of the Firm);
- (d) any claim raised by any third party against the Firm in respect of damage to property or injury or death caused to such third party by the Equipment whilst on hire to the Customer; and
- (e) the value of any Equipment seized or forfeited pursuant to an offence under the Act and any loss or profit sustained as a consequence of such forfeiture or seizure.

10.2 Where any valid claim in respect of any Equipment on hire which is based on any defect of the quality or condition of the Equipment is notified to the Firm in accordance with these Conditions (Clause 3.4), the Firm shall be entitled to replace the Equipment on hire (or the part in question) free of charge or, at the Firm's sole discretion, refund the Customer the hire cost of the Equipment (or a proportionate part of the cost) but it shall have no further liability to the Customer.

10.3 Subject as expressly provided in these Conditions and except where the Equipment is hired to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute of common law are excluded to the fullest extent permitted by the law.

10.4 Where the equipment is hired under a consumer contract (as defined in the Unfair Contract Terms Act 1977) the statutory rights of the consumer are not affected by clause 10.3.

For Sale of Equipment

10.5 Any claim by the Customer which is based on any defect on the quality or condition of the Equipment shall be notified to the Firm within 24 hours of the time of delivery. If the Customer does not notify the Firm accordingly the Customer shall not be entitled to reject the Equipment and the Firm 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. 10.6 Where any valid claim in respect of any Equipment which is based on any defect of the quality or condition of the Equipment is notified to the Firm in accordance with these Conditions, the Firm shall be entitled to replace the Equipment (or the part in question) free of charge or, at the Firm's sole discretion, refund to the Customer the price of the Equipment (or a proportionate part of the price) but the Firm shall have no further liability to the Customer. 10.7 Subject as expressly provided in these Conditions and except where the Equipment is sold to a person

dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by the law.

10.8 Where the Equipment is sold under a consumer contract (as defined in the Unfair Contract Terms Act 1977) the statutory rights of the Customer are not affected by Clause 10.7. For Services

10.9 Any claim by the Customer which is based on a defect or failure in the Services shall be notified to the Firm within 24 hours of the completion of the Services. If the Customer does not notify the Firm accordingly, the Firm shall have no liability for such defect or failure and the Customer shall be bound to pay the price of the Services in accordance with the Contract.

10.10 Where any valid claim in respect of a defect in the quality of the Services is notified to the Firm, the Firm shall be entitled to carry out such remedial works as are necessary, free of charge, to satisfactorily complete the Services or, at the Firm's sole discretion, refund to the Customer the price charged for the Services. The Firm shall have no further liability in respect of such defect or failure.

10.11 The Customer shall be liable under the Contract in respect of the Services and indemnify the Firm for:-

- (a) any loss or damage to the Equipment,
- (b) any injury or death caused to the Customer or its employees or sub-contractors and
- (c) any claim raised by any third party against the Firm in respect of damage to property or injury or death caused to such third party which is caused by the Customer or its employees or sub-contractors being in default of its obligations pursuant to Clauses 7.2 and 7.3.

Consequential Loss

10.12 In respect of the sale or hire of Equipment or their use or resale by the Customer or the supply of Services, the Firm shall in no circumstances be liable to the Customer for consequential loss of any nature whatsoever (and whether caused by the negligence of the Firm, its employees or agents or otherwise) whether for loss of profit, loss of business or otherwise.

Force Majeure

10.13 The Firm shall not be liable to the Customer or be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Firm's obligations in relation to the Equipment or the Services if the delay or failure was due to any cause beyond the Firm's reasonable control.

11. TERMINATION OF CONTRACT

11.1 (a) If the Customer shall make default in payment, or commit any other breach of the Contract or if any arrestment, charge or other legal process shall be levied upon the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition with creditors or become apparently insolvent or commit any act of bankruptcy, or if any petition of bankruptcy shall be presented or made against him, or, if the Customer is a limited company, a resolution or petition to wind up such company (other than for the purposes of amalgamation or reconstruction shall be passed or presented, or if a liquidator or receiver or administrator of such company's undertaking, property, assets or any part thereof shall be appointed, the Firm shall have the right to immediately terminate the Contract and to declare all sums due and to become due under the Contract either for the full term of the rental period or for the sale price of the Equipment or for the Services as the case may be immediately due and payable; and

(b) the Firm may demand that the Customer returns:-

- (i) all Equipment (on hire) in the same condition as delivered, ordinary fair wear and tear excepted; and
- (ii) all Equipment purchased but not paid for at the Customer's risk and expense to such location as the Firm may designate. The Firm may enter upon any premises where the Equipment is located and take immediate possession of and remove the same, all without court order or other process of law and all without any liability but without prejudice to all rights or remedies available to the Firm in respect of the non-payment or any other breach of the Contract by the Customer.

12. LAW

These Conditions and the Contract shall be governed by the Law of Scotland and the parties submit to the non-exclusive jurisdiction of the Scottish Courts.