

These Terms and Conditions shall apply to the rental of all audiovisual and computer equipment ("the Equipment") from Lush Digital Media LTD ("the Company") by customers who are renting the Equipment for use at the Venue laid out in the "Hire Contract"

## 1. Definitions and Interpretation

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

<b>"Additional Software"</b>	means software that is installed by the Customer during the Rental Term;
<b>"Authorised Personnel"</b>	means employees of or consultants to the Customer that have been trained in the relevant aspects of information technology in order to perform maintenance and updates to the Equipment;
<b>"Customer"</b>	means the customer who is renting the Equipment subject to these Terms and Conditions;
<b>"Customer Data"</b>	means any and all data created by or for the Customer which is stored on the Equipment;
<b>"Deposit"</b>	means the sum payable by the Customer under Clause 3 of these Terms and Conditions and as set out in the Hire Contract;
<b>"Preinstalled Software"</b>	means software that is installed on the Equipment by the Company and supplied therewith for the Rental Term;
<b>"Venue"</b>	means the location referred to in the Hire Contract to which the goods are delivered to and/or collected from;
<b>"Price List"</b>	means the Company's price list, current at the time of the start of the Rental Term;
<b>"Rental"</b>	means the rental of the Equipment by the Customer subject to these Terms and Conditions;
<b>"Hire Contract"</b>	means the agreement entered into by the Customer and the Company incorporating these Terms and Conditions which shall govern the Rental of the Equipment;
<b>"Rental Fees"</b>	means the sum payable by the Customer for the Rental 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.Rental Term**

2.1 The agreed Rental Term will be set out in the Hire Contract.

2.2 If the Customer wishes to extend the Rental Term they may do so at any time prior to the end of the Rental Term. The Customer must contact the Company to arrange such an extension. The Company shall use its best and reasonable endeavours to satisfy requests for extensions but cannot guarantee the availability of the Equipment to the Customer beyond the end of the pre-existing Rental Term.

2.3 The Company reserves the right to recall the Equipment immediately at any time. In the event that the Company exercises this right the Customer will be reimbursed for any and all days remaining in the Rental Term or will be issued immediately with replacement Equipment of the same type or of the closest type thereto at no additional cost. If the Equipment is not returned to the Company on request the Customer shall be deemed to have authorised the Company to enter the Premises and use any means necessary to recover the Equipment. The Customer shall be charged for any costs associated with such recovery.

## **3.Deposit**

3.1 The Customer may be required to pay a refundable Deposit to the Company at the commencement of the Rental Term, prior to delivery of the Equipment. The sum of the Deposit shall be set out in the Hire Contract.

3.2 At the end of the Rental Term the Company shall have a period of one week 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 Customer 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 Customer in writing, including all relevant calculations and pricing information.

## **4.Fees and Payment**

4.1 The Rental Fees will be determined by reference to the length of the Rental Term, the type and quantity of Equipment, the Price List and any additional items which may be included in the Rental, as set out in the Hire Contract.

4.2 Payment shall be made in part or in full, as set out in the Hire Contract, at the commencement of the Rental Term.

4.3 All payments to be made in part will take the form of an Invoice being issued to the Billing party

4.4 All payments shall be required within 30 days of the date of the relevant invoice.

## **5. Delivery, Installation and Collection**

5.1 Following the receipt by the Company of the Deposit and any required Rental Fees the Company shall deliver the Equipment to the Venue on the agreed date, as set out in the Hire Contract.

5.2 The Company shall use its best and reasonable endeavours to ensure that delivery is made on time but shall not be liable for any failure to do so.

5.3 The Customer or a suitable authorised representative must be available at the Venue at the time of delivery in order to sign for the Equipment. In the event that the Customer fails to comply with the provisions of this sub-Clause 5.3 it shall be deemed to have accepted delivery of the Equipment, assumed responsibility thereof and shall not have the right to subsequently dispute the facts of the delivery.

5.4 In the event that the Company is unable to deliver the Equipment due to the Customer's absence from the Venue (along with that of any authorised representatives) additional delivery charges will be incurred for any necessary re-delivery. Any such additional charges shall be borne by the Customer.

5.5 Certain items of Equipment may require specialist installation. Unless specifically authorised to do so by the Company in writing the Customer may not undertake such installation. Installation of the Equipment shall be the responsibility of the Company. All costs of installation and subsequent removal shall be incorporated into the Rental Fees.

5.6 At the end of the Rental Term, on the agreed collection date the Customer shall ensure that all of the Equipment is available for collection by the Company.

5.7 At the end of the Rental Term, prior to collection in accordance with sub-Clause 5.6, the Customer must remove all Customer Data from the Equipment. The Company accepts no responsibility for any Customer Data which remains on the Equipment following the end of the Rental Term.

5.8 In the event that any Equipment is unavailable for collection on the agreed date the Customer shall be required to pay the relevant Rental Fees for the missing items up to and including the day that they are returned to the Company (at the Customer's expense). If those items are not available for collection due to loss or destruction the Customer shall be required to pay the cost of replacement in accordance with the Company's then current Price List.

## **6. Software**

6.1 Any and all Preinstalled Software is and shall remain the property of the relevant proprietor. The Customer gains no rights of ownership over such software at any time.

6.2 The Customer may only use the Preinstalled Software within the bounds of the relevant software licences, documentation of which shall be supplied along with the Equipment at the start of the Rental Term.

6.3 The Customer shall be solely liable for any breaches of licences for Preinstalled Software which occur during the Rental Term.

6.4 The Customer shall not communicate, transfer, copy (in whole or in part), modify, reverse-engineer or translate the Preinstalled Software for any reason.

6.5 The Customer 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 Rental Term.

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

7.1 The Customer may only use the Equipment for the normal purpose for which it is intended.

7.2 The Customer 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 Customer 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 Rental Term.

7.5 The Customer 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 Customer may not affix the Equipment to anything unless using fixings approved [and supplied] by the Company.

7.7 The Customer 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 Customer may not remove Equipment from the Venue without the prior written consent of the Company.

## **8. Maintenance and Upgrades**

8.1 The Customer shall not attempt to make any repairs to the Equipment without the prior written consent of the Company. When the Company is contacted in this regard it shall have the option of repairing the Equipment itself or granting the Customer permission to make the necessary repairs. The cost of such repairs shall be borne by either the Company or the Customer, the responsibility being determined by the reasons for those repairs.

8.2 The Customer 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 Customer uses their own hardware it must be replaced with the original hardware prior to the collection of the Equipment at the end of the Rental Term.

8.3 The Customer 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.

In the event of any Equipment failure, the Customer shall inform the Company of such failure in writing by email to [support@lushdigitalmedia.co.uk](mailto:support@lushdigitalmedia.co.uk) or by telephone on 0845 4676818, The Company will use its best and reasonable endeavours to respond within 8 hours.

8.5 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.

8.6 All parts that cannot be described as consumables which may require replacement during the Rental 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 Customer being charged for the cost of replacement parts and associated labour.

## **9. Insurance**

9.1 The Company may offer equipment insurance cover as part of the Rental for a premium. In the event that the Customer opts to purchase the Company's insurance, the Equipment shall be insured by the Company as part of the Rental. This insurance cover provides for the following:

9.1.1 Damage to the Equipment by fire and flood; and

9.1.2 Accidental damage to the Equipment; and

9.1.3 Theft of the Equipment, provided that reasonable precautions have been taken to secure the equipment; and

9.2 The insurance cover provided for in this Clause 9 shall not cover malicious damage or negligence by the Customer.

9.3 The insurance cover provided for in this Clause 9 shall, in the event of a claim, attract an excess as stipulated in the Hire Contract which will become immediately due and payable by the Customer.

9.4 In the event that the Company does not offer insurance cover to the Customer or the Customer chooses not to purchase the Company's insurance cover, it is the responsibility of the Customer to fully and comprehensively insure the Equipment against loss, damage and theft. The value stated for the Equipment shall be at current market rate and that value can be requested from The Company at any point. If the Customer is at the Venue when the equipment is de-installed they will be notified of any damage alternatively within 7 days of the rental ending The Company will evaluate any costs resulting from damage or Theft and these will be invoiced to the Customer and become due immediately for payment.

9.5 The Customer shall supply proof of such insurance to the Company on demand. The Company reserves the right to delay or cancel delivery until proof of such insurance is provided.

9.6 The Company shall not provide any form of data loss insurance. If the Customer opts to obtain such insurance it shall remain their sole responsibility to do so.

## **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 The Company will not be liable for any other loss or damage arising out of any circumstances beyond its reasonable control.

10.3 The Company will not be liable to any third parties for any acts of the Customer which may involve the Equipment.

10.4 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**

The Company will not share the Customer's personal data with any third parties for any reasons without the prior consent of the Customer. Such data will only be collected, processed and held in accordance with the Company's rights and obligations arising under the provisions and principles of the Data Protection Act 1998.

## **12.Termination and/or Cancellation**

12.1 Where the Customer is an individual, the Company shall be entitled to terminate the Hire Contract in the event that:

12.1.1 the Customer is in breach of these Terms and Conditions;

12.1.2 the Customer has had their personal belongings confiscated in order to satisfy debts; or

12.1.3 the Customer has a receiving order made against them.

12.2 Where the Customer is a company, the Company shall be entitled to terminate the Hire Contract in the event that:

12.2.1 the Customer is in breach of these Terms and Conditions;

12.2.2 the Customer 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.

12.3 In the event of termination for any of the above reasons:

12.3.1 all payments required under the Hire Contract shall become due and immediately payable; and

12.3.2 the Company shall have the immediate right to request the immediate return of the Equipment or repossess the Equipment and may charge the Customer for any reasonable costs involved in such repossession.

12.4 The Customer has the right to Cancel the Hire Contract at any time however if the contract is cancelled within 1 calendar month of the rental 25% of the rental agreement will become due, cancellation 14 days before the rental will incur a 50% charge of the rental and within 7 days of the rental commencing the full 100% will become due.

### **13. Screen Rental**

The points below are in relation to renting TV/Monitors and LED video walls

13.1 All of the Companies screens are serviced after each rental however should pixel failure occur during a rental the company will only attend the venue to rectify if we deem its number and location on the screen sufficient to warrant immediate repair.

13.2 No changes to the screen or its connections must be made by the customer once it has been installed.

### **14.No Waiver**

No failure by either the Company or the Customer 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.Law and Jurisdiction**

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

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