

# TERMS & CONDITIONS

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## TERMS & CONDITIONS

### 1. DEFINITIONS AND LAW

- 1.1 “the Equipment” shall mean goods, components and other items hired or sold by HAWTHORN THEATRICAL LTD or any part thereof
- 1.2 “the Customer” is the person, firm, corporate or public body hiring or purchasing the Equipment. Any person purporting to act on behalf of the Customer shall be bound by the Contract
- 1.3 “Consequential loss” shall mean loss of profits, contracts or other consequential loss or damages whatsoever
- 1.4 “Interest” shall mean interest calculated in accordance with Clause 6.2
- 1.5 The Contract shall be interpreted and applied in accordance with English Law and the parties to this contract agree to submit to the exclusive jurisdiction of the English Courts

### 2. DRY HIRE TERMS (EQUIPMENT RENTAL ONLY)

- 2.1. Charges
  - 2.1.1. Hire charges commence from the date stated in the contract and are payable for the period of hire
  - 2.1.2. Equipment must be returned by 12 noon on the date specified in the Contract in a clean and serviceable condition and the Customer must obtain the supplier’s receipt
  - 2.1.3. Additional charges accrue at the full daily hire rate together with consequential loss in the event of the breach of these conditions or the equipment not being available for use by other customers
  - 2.1.4. All cables must be returned coiled and taped and in default a charge of £2 per cable will be made
  - 2.1.5. HAWTHORN THEATRICAL LTD provides spare lamps with Equipment where appropriate. These and any lamps they replace must be returned with the Equipment and in default their full replacement cost will be charged
  - 2.1.6. All charges are payable on demand
- 2.2. Hire Period
  - 2.2.1. The hiring period commences at 1:00pm on the date specified in the Contract and continues for the period specified in the Contract and terminates at 12 noon on the last day of the hiring period
- 2.3. Customer’s responsibilities
  - 2.3.1. The Customer’s responsibility for the Equipment commences on receipt of the Equipment by the Customer or his agent or on delivery and ends when the Customer is in possession of HAWTHORN THEATRICAL LTD’s unqualified receipt for the return of all the Equipment
  - 2.3.2. The Customer shall not at any time sell dispose or otherwise part with control of the Equipment or attempt to do so
  - 2.3.3. The Signatory to the Contract and the Customer jointly and severally undertake with HAWTHORN THEATRICAL LTD that everyone who uses the Equipment has been properly instructed in its safe and proper operation and will ensure that every user is in possession of necessary instructional material and further will not allow the Equipment to be misused

- 2.3.4. The Customer will at all times fully indemnify HAWTHORN THEATRICAL LTD against any expense liability financial loss claim or proceedings whatsoever in respect of any personal injury or damage to or loss of any property arising out of or in connection with the delivery hire use non use repossession collection return or non return of the Equipment
- 2.3.5. Nothing in this clause shall affect the statutory rights of the Customers or purport to exclude any liability which may not be excluded under the Unfair Contract Terms Act 1977
- 2.4. Electrical Equipment
  - 2.4.1. Any electrical Equipment should be used with plugs and/or sockets as fitted.
  - 2.4.2. No Equipment shall be modified without prior written consent from HAWTHORN THEATRICAL LTD
  - 2.4.3. The Customer shall be responsible at all times to arrange a proper supply of electricity for use with the Equipment and ensure that the Equipment shall at all times be properly earthed. Damage to equipment from incorrectly connected or disrupted supply will be charged.
- 2.5. Equipment Maintenance and Reporting
  - 2.5.1. The Customer shall ensure that the Equipment remains serviceable and clean during the hire period
  - 2.5.2. Any breakdown or unsatisfactory working of Equipment shall be immediately notified to HAWTHORN THEATRICAL LTD
- 2.6. Customer's responsibilities
  - 2.6.1. The Customer's responsibility for the Equipment commences on receipt of the Equipment by the Customer or his agent or on delivery and ends when the Customer is in possession of HAWTHORN THEATRICAL LTD's unqualified receipt for the return of all the Equipment
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- 2.8. Equipment Maintenance and Reporting
  - 2.8.1. The Customer shall ensure that the Equipment remains serviceable and clean during the hire period
  - 2.8.2. Any breakdown or unsatisfactory working of Equipment shall be immediately notified to HAWTHORN THEATRICAL LTD
  - 2.8.3. The Customer shall under no circumstances attempt to repair the Equipment without prior authorisation from HAWTHORN THEATRICAL LTD
  - 2.8.4. Any damaged or unsatisfactory Equipment must be returned to HAWTHORN THEATRICAL LTD's premises for examination at the Customer's cost
  - 2.8.5. If the Equipment is involved in any accident resulting in damage to either the Equipment or other property or injury to any person the Customer shall notify HAWTHORN THEATRICAL LTD immediately
  - 2.8.6. Equipment must not be removed from any site originally specified by the Customer or from any subsequently authorised site without prior consent of HAWTHORN THEATRICAL LTD
- 2.9. Compatibility of Equipment
  - 2.9.1. The Customer shall ensure that the Equipment is compatible and may safely be used with any other Equipment being used by the Customer
  - 2.9.2. The Customer shall be responsible for ensuring that the equipment is suitable for their purposes.
  - 2.9.3. HAWTHORN THEATRICAL LTD reserves the right to supply equipment of a similar design to the Equipment specified.
  - 2.9.4. All descriptions and specifications, drawings and particulars of weights and dimensions issued by HAWTHORN THEATRICAL LTD are approximate only, and are intended only to present a general idea of the goods to which they refer and shall not form part of the contract. Due to continuing development, HAWTHORN THEATRICAL LTD reserves the right to change specifications without notice.

### **3. WET HIRE TERMS (FULL SERVICE - EQUIPMENT RENTAL AND LABOUR AND/OR ADDITIONAL SERVICES)**

- 3.1. Charges
  - 3.1.1. Hire charges commence from the date stated in the contract and are payable for the period of hire
  - 3.1.2. All charges are payable on demand
- 3.2. Hire Period
  - 3.2.1. The hiring period commences on the date specified in the Contract and continues for the period specified in the Contract and terminates at 12 noon on the last day of the hiring period
- 3.3. Customer's responsibilities
  - 3.3.1. The Customer's responsibility for the Equipment commences on receipt of the Equipment by the Customer or his agent or on delivery and ends when the Customer is in possession of HAWTHORN THEATRICAL LTD's unqualified receipt for the return of all the Equipment
  - 3.3.2. The Customer shall not at any time sell dispose or otherwise part with control of the Equipment or attempt to do so
- 3.4. Equipment Specification

- 3.4.1. All descriptions and specifications, drawings and particulars of weights and dimensions issued by HAWTHORN THEATRICAL LTD are approximate only, and are intended only to present a general idea of the goods to which they refer and shall not form part of the contract. Due to continuing development, HAWTHORN THEATRICAL LTD reserves the right to change specifications without notice.
- 3.5. Equipment usage
  - 3.5.1. HAWTHORN THEATRICAL LTD personnel, or their duly appointed affiliates, must handle and operate all equipment.
  - 3.5.2. Equipment may not be operated, moved, stored, or serviced by The Customer or any other party unless authorized by prior written agreement from HAWTHORN THEATRICAL LTD. The Customer may incur additional charges if equipment is moved or relocated by unauthorized personnel.
  - 3.5.3. The Customer agrees that HAWTHORN THEATRICAL LTD shall be permitted free access to the equipment at any time before, during and/or after the event for purpose of set/strike, maintenance and routine checks.

## 4. CONDITIONS APPLICABLE TO BOTH DRY & WET HIRES

- 4.1. Insurance
  - 4.1.1. The Customer agrees to pay HAWTHORN THEATRICAL LTD the full retail cost of any Equipment lost stolen or damaged beyond economic repair (without deduction for usage wear tear or age)
  - 4.1.2. The Customer shall insure the goods against the above liability.
  - 4.1.3. All monies received by the Customer from any insurance company or third party in settlement of any claim shall be held in trust by the Customer and paid to HAWTHORN THEATRICAL LTD on demand to the extent that any such payment is due under this clause
  - 4.1.4. The Customer shall not compromise or settle any claim without the express consent of HAWTHORN THEATRICAL LTD
  - 4.1.5. In the case of Equipment which is lost stolen or damaged beyond economic repair the Customer shall pay a charge at the full daily rate together with interest and consequential loss until the Equipment is replaced
- 4.2. Termination of hire
  - 4.2.1. HAWTHORN THEATRICAL LTD shall be entitled to terminate the contract with immediate effect and to repossess the Equipment if at any time:-
    - (a) The Customer is in breach of these terms; or
    - (b) The Customer shall take any steps or if any act or proceeding is commenced in which the Customer's solvency is in the reasonable view of HAWTHORN THEATRICAL LTD in doubt.Such termination shall not affect the right of HAWTHORN THEATRICAL LTD to recover from the Customer any monies due under this contract interest consequential loss or damages for breach
  - 4.2.2. The Customer hereby authorises HAWTHORN THEATRICAL LTD to enter upon any property, upon which HAWTHORN THEATRICAL LTD reasonably believe any Equipment to be held and HAWTHORN THEATRICAL LTD in their absolute discretion may recover and remove the Equipment

- 4.2.3 The Customer hereby authorises HAWTHORN THEATRICAL LTD (notwithstanding any subsequent instruction to the contrary after the date of the commencement of the Contract) to deduct any sums properly due to HAWTHORN THEATRICAL LTD arising under a breach of these terms from any credit card debit card or charge account details of which are in the possession of HAWTHORN THEATRICAL LTD
- 4.3. Cancellation of contract
- 4.3.1 Cancellation notices must be in writing and received by a Hawthorn Theatrical Ltd representative before becoming effective.
- 4.3.2 The following shall apply should the customer cancel the contract:-
- in the event of cancellation 30 days before the beginning of hire 0% of the rental shall be due plus any expenses actually incurred by Hawthorn Theatrical Ltd.
  - in the event of cancellation between 29 and 10 days before the beginning of hire, 50% of the contract value or the total amount of expenses incurred to that point, which ever is the greater, shall be due.
  - in the event of cancellation 10 days or fewer before the beginning of hire, 100 % of the contract value shall be due.
- 4.3.3. Where scenic, gobos of other items are designed or fabricated as part of the contract an additional cancellation fee will be applicable, regardless of the date of cancellation, to an amount equal to the direct and indirect costs incurred by Hawthorn Theatrical Ltd or its affiliates in securing and/or constructing such custom materials plus a 15% administration fee.
- 4.3.4 Cancellation fees shall be due immediately upon any such cancellation by the Customer
- 4.3.5. Postponement of an agreed date shall be regarded as a cancellation.
- 4.4. Ownership
- 4.4.1 HAWTHORN THEATRICAL LTD retains all title and rights in and to the equipment and all related accessories

## 5. CONDITIONS AS TO SALE

- 5.1. Risk in Title
- 5.1.1. The risk in the Equipment shall pass to the Customer immediately on delivery to the Customer at the address shown for delivery on the contract or if the Customer collects on collection
- 5.1.2. Property and title in the Equipment shall remain vested in HAWTHORN THEATRICAL LTD and HAWTHORN THEATRICAL LTD reserve the right to dispose of the Equipment until such time as the price shall have been paid in full
- 5.1.3. If any part of the payment is overdue or if the Customer is in breach of any of these terms or if the Customer or any third party shall take any steps or any act or proceeding in which in the reasonable view of HAWTHORN THEATRICAL LTD the Customer's solvency is in doubt HAWTHORN THEATRICAL LTD may (without prejudice to any of HAWTHORN THEATRICAL LTD's other rights) recover or resell the Equipment and may enter upon the Customer's or any third parties property for that purpose.
- 5.2. Receipt
- 5.2.1. The Customer or any duly authorised person on behalf of the Customer shall receive and unload the Equipment and shall check the same for quantity and condition in the presence of HAWTHORN THEATRICAL LTD's carrier

- 5.2.2. Any shortage of or unsatisfactory Equipment shall be endorsed by the Customer or a duly authorised person on behalf of the Customer on the delivery document and the Customer shall give written confirmation to HAWTHORN THEATRICAL LTD within three days of delivery
- 5.2.3. No claim in respect of shortage of or unsatisfactory condition of the Equipment shall be entertained by HAWTHORN THEATRICAL LTD unless condition 5.2.2. is observed
- 5.2.4. This condition does not affect the statutory rights of the Customer
- 5.3. Price
  - 5.3.1. The price charged will be the price ruling at the time of delivery. Where this is at variance with the price quoted or inserted in the contract at the time the goods were ordered the Customer will be advised prior to delivery
- 5.4. Payment
  - 5.4.1. Where account facilities have been granted to the Customer in writing all invoices must be paid within the terms on the invoice
  - 5.4.2. Where no such facilities have been granted payment will be with order or where previously agreed on delivery

## 6. GENERAL CONDITIONS

- 6.1. Power to Enter this Contract
  - 6.1.1. The signatory to the contract warrants that they are duly authorised on the Customer's behalf to enter into the contract and hereby personally indemnifies Hawthorn Theatrical Ltd. against all losses and costs that may be incurred by Hawthorn Theatrical Ltd. if this is not the case
  - 6.1.2. Written acceptance of a quotation and/or the provision of a purchase order shall constitute the forming of a contract
- 6.2. Payment and Interest
  - 6.2.1. Where payments are not made on the due date HAWTHORN THEATRICAL LTD will be entitled to interest on the amount that is overdue at National Westminster Bank PLC base rate prevailing for the period for which such monies are overdue together with 4% calculated on a day to day basis compounded with quarterly rests.
  - 6.2.2. The payment of such interest shall be without prejudice to any other rights or remedies of HAWTHORN THEATRICAL LTD.
  - 6.2.3. Any legal or other charges incurred in the recovery of money or equipment shall be paid by the Customer
  - 6.2.4. Notwithstanding any provision in these terms of business to the contrary the customer shall if required by HAWTHORN THEATRICAL LTD pay such sum on account of the hire charges or price for goods and or services as shall be agreed at the time of placing the order
- 6.3. Liability
  - 6.3.1. HAWTHORN THEATRICAL LTD's liability for any defect in the equipment shall be limited to and in no case exceed:-
    - (a) any manufacturer's warranty sold with the equipment; or if there shall be none
    - (b) replacement or repair of the defective equipment; or
    - (c) at HAWTHORN THEATRICAL LTD's option a refund of the price

- 6.3.2. Consequential losses - Nothing in these terms and conditions shall make HAWTHORN THEATRICAL LTD liable for any consequential loss to the Customer including any expense liability loss claim or proceeding whatsoever caused by or arising out of the late delivery non delivery unsuitability incompatibility or unlawful repossession of the Equipment or any part thereof or any breakdown or stoppage of the same
- 6.3.3. LIMITATION OF LIABILITY: Notwithstanding any other provision, HAWTHORN THEATRICAL LTD's aggregate liability to The Customer under any circumstances shall be strictly limited to an amount equal to the actual fees paid to HAWTHORN THEATRICAL LIABILITY in connection with the Contract. Under no circumstances shall HAWTHORN THEATRICAL LTD's liability exceed such fees.
- 6.4 Force Majeure
  - 6.4.1. HAWTHORN THEATRICAL LTD's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a failure to perform their part of the hire agreement.
- 6.5. Injury to Persons and Damage to Property
  - 6.5.1. Subject to 6.3. above HAWTHORN THEATRICAL LTD shall not be liable for any loss other than that which directly arises from any injury to persons or damage to tangible property where and only to the extent that such injury or damage is caused by any defects in the Equipment and where such defect is caused by the negligence of HAWTHORN THEATRICAL LTD
- 6.6. Rights Reserved
  - 6.6.1. Any failure by HAWTHORN THEATRICAL LTD to enforce any or all of these conditions shall not be construed as a waiver of any of HAWTHORN THEATRICAL LTD rights hereunder
  - 6.6.2. If any term in this contract shall be held invalid such invalidation shall not affect the validity of the remaining terms
- 6.7. Terms of Contract
  - 6.7.1. These conditions have effect in substitution for and to the exclusion of any condition put forward by the Customer
- 6.8. Delivery and Carriage
  - 6.8.1. All times quoted or stated for deliveries are approximate only shall not be liable for any delay in delivery of the Equipment howsoever caused.
  - 6.8.2. Hire charges or sale prices do not include carriage. Any expenses incurred by HAWTHORN THEATRICAL LTD in delivery or recovering equipment or attempting the same will be paid by the Customer
  - 6.8.3. Where carriage charges are quoted by HAWTHORN THEATRICAL LTD such charges will include only for the time to load or unload alongside the HAWTHORN THEATRICAL LTD vehicle at the address specified by the Customer. Further time or attendance will be paid for by the Customer
  - 6.8.4 HAWTHORN THEATRICAL LTD reserves the right to recharge additional costs of delivery and collection including, but not restricted to, parking fines, waiting time and toll charges.
  - 6.8.5 HAWTHORN THEATRICAL LTD shall not be held liable for any damage incurred to a customer vehicle when loading\unloading or for the safe and secure loading of their vehicle.
  - 6.8.6 Where The Customer makes arrangements for the delivery and collection of equipment, The Customer will be liable for loss or damage which occurs during transport of the equipment.



6.9. Copyright

- 6.9.1. HAWTHORN THEATRICAL LTD notifies the Customer that playing or showing copyright material in circumstances where the Customer or anyone authorised by him does not hold the appropriate Licence of the copyright holder he will infringe copyright and may become liable in damages for so doing
- 6.9.2. The Customer by accepting delivery of sound or visual reproduction equipment warrants that he has or will obtain the appropriate Licence for the said performance playing or showing, prior to using the equipment for the said purpose
- 6.9.3 The customer agrees to indemnify HAWTHORN THEATRICAL LTD in respect of any claim for breach of Copyright caused by the transmission, recording, broadcasting, rebroadcasting of audio and visual projection on behalf of the Customer.