

## 1. Definitions and Application

1.1 These terms and conditions (“the Conditions”) shall apply to and be deemed incorporated in all contracts between Snow Business International Limited (“the Company”) and any person to whom it supplies Materials, Goods and/or Services (“the Customer”).

1.2 The expression “Materials” shall include raw materials and manufactured or part manufactured items of all descriptions. The expression “Goods” shall include the equipment manufactured or part manufactured and the expression “Services” shall include all facilities, services of personnel, vehicles, animals and equipment whatsoever made available by the Company.

1.3 The expression "Intellectual Property Rights" means all vested contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created;

1.4 The expression “Knowhow” means all those patentable and non-patentable inventions, discoveries, improvements, processes and copyright works (including without limitation computer payments) and designs (whether or not registered or registrable) including (without prejudice to the generality of the foregoing) drawings, formulae, test reports, operating and testing procedures, instruction manuals, tables of operating conditions.

## 2. Charges

2.1 The charges will become due and payable by the Customer upon receipt of a request for payment made by the Company.

2.2 The Customer shall be liable for any loss, damage or expense suffered by the Company arising from any cancellation or variation by the Customer of any contract or order for Materials or Services placed with the Company. If any such cancellation shall occur within 72 hours of the time agreed for commencement of the manufacture and/or supply of the Goods, the Company reserves the right to charge a fee of £250 or up to 20% of the contract value. If any such cancellation shall occur within 24 hours of the time agreed for commencement of the manufacture and/or supply of the Goods, the Company reserves the right to charge a fee of £300 or up to 50% of the contract value. These charges shall include in full, all direct costs suffered by the Company, loss of profit on rental equipment rental held back, cancellation fees for technicians reserved and stood down. The Company will endeavour to accommodate variations in dates or specifications requested by the Customer but reserves the right to decline to do so.

2.3 The Customer shall pay the Company the full replacement value of any Materials or Goods subject to cancellation together with any additional charges payable pursuant to clause 2.1 of the Conditions.

2.4 All charges are quoted exclusive of VAT, local taxes or import duties and the Customer shall pay VAT, local taxes or import duty thereon at the then prevailing rate.

- 2.5 All charges are payable on invoice and the Company shall be entitled to charge interest at the rate of 2% per month or part of a month on all balances outstanding after 30 days from invoice.
- 2.6 The Company reserves the right to add to the charge, the cost of any credit or charge card fee incurred by the Company when receipt of payment is via a credit or charge card.
- 2.7 Any overpayment not set off against a purchase made by the Customer within a period of one year of that overpayment being made, and in the event that the Customer does not request the overpayment from the Company, shall be written off.
- 2.8 If any cheque paid by the Customer is dishonoured, the Company shall be entitled to make an RDPR Charge or an RD Charge to the Customer's account and the Customer's account may be put on to hold until cleared funds are received in full to settle the outstanding account and additional charges.
- 2.9 The Customer shall not be entitled to set-off against sums due to the Company under any contract, any sums claimed by the Customer whether arising under that contract or any other transaction between the parties.
- 2.10 The Company shall have a general lien over all Materials and Goods delivered to it by the Customer or created by the Company for the Customer and such lien shall continue until all sums whatsoever and howsoever due from the Customer to the Company have been paid in full.
- 2.11 All property, legal and beneficial, in any Materials, Goods and equipment supplied by the Company shall not pass to the Customer until the Company has received full payment for all sums then owed by the Customer to the Company.
- 2.12 Materials, Goods and equipment in respect of which property has remained with the Company shall be kept identifiable as the property of the Company and the Customer shall at its own expense immediately return such materials to the Company, or permit the Company to enter the Customer's premises to collect them, should the Company so request.

### **3. Risk and Insurance**

- 3.1 The Customer acknowledges that:
- 3.1.1 The Company's charges do not reflect the value of the equipment, Goods or Materials made available or the value of the work upon which the Customer may be engaged;
- 3.1.2 Some of the specialist work carried out by the Company and some materials supplied by the Company may carry some form of hazard and may present a risk, the Company's charges do not reflect the potential liability to third parties for death injury or damage arising from accident, misuse, breach of contract or negligence;
- 3.1.3 It is customary in the film and television industries and live theatre (being the industries in which the Company's equipment, services and materials are customarily engaged) for the customer to bear the risks and affect the insurance hereinafter referred to. However the Conditions including the terms and conditions set out in this Clause 3 shall apply regardless of whether the Customer is engaged in the film or television industries or live theatre or otherwise.

3.2 All equipment, Goods and Materials made available by the Company shall be at the Customer's risk from the time they leave the Company's premises or the Company's shippers, regardless of whether they remain under the control of the Company's directors, servants or agents.

3.3 When shipping is organised by the Company, delivery dates are given in good faith and are only estimates.

3.4 All Equipment, Goods, Materials and Services shall be used, stored and rendered at the Customer's risk in all respects.

3.5 The Customer shall be solely responsible for all loss or damage to persons or property whatsoever and howsoever (including but not limited to loss or damage occasioned by negligence or breach of contract by the Company, its directors, servants and agents, save as mentioned in Clause 6.1.6 below).

3.6 The Customer undertakes to effect all normal and customary insurance and such further or greater insurance as the Company may advise, having regard to risks arising from the particular operations proposed. The Customer undertakes to ensure that all such policies of insurance are endorsed to the effect that there shall be no recourse against the Company.

3.7 All personnel made available by the Company shall for the purpose of any liabilities to third parties or loss or damage sustained by the Customer or the Company, be deemed the servants of the Customer for the period during which they are made available and the Customer will observe all relevant health and safety regulations and union agreements governing the employment of such personnel and in particular (but not by way of limitation) will effect for the benefit of such personnel such insurance cover as may from time to time be required by the provisions of the applicable union agreements or law.

3.8 If the Company makes available vehicles it will carry third party insurance for such vehicles when driven by persons specifically authorised by the Company. It will be the responsibility of the Customer to affect all other vehicle insurance.

3.9 If the Company makes available fire fighting equipment, it is acknowledged by the Customer that there can be no guarantee that such equipment will be adequate to meet all or any circumstances that may arise and that accordingly responsibility for observing all proper fire precautions remains with the Customer and the Customer shall effect appropriate insurance as well as making appropriate practical arrangements regardless of any equipment or personnel made available for this purpose by the Company.

3.10 Where the Company agrees to sell equipment, Goods or Materials to the Customer the risk therein shall pass to the Customer at the time such Materials, Goods or equipment leave the Company's premises.

3.11 In the case of all potentially hazardous special effects or other services the Company shall have the final decision as to whether and/or the manner in which such services are to be rendered

#### **4. Duties of Customer**

4.1 The Customer shall check all equipment, Goods and Materials immediately upon receipt and before use and shall make known to the Company any defects discovered from such inspection. Any defects so discovered will be remedied by the Company without charge. Any defects notified after commencement of use of the Goods or equipment will be remedied by the Company but at the Customers expense unless occasioned by fair wear and tear. The Customer shall be responsible for carriage, insurance and handling charges. In no circumstances shall the Company be responsible for any consequential or other loss or damage whatsoever suffered by the Customer by reason of the breakdown of any Goods or equipment or any delay arising therefrom.

4.2 The customer shall make any claim for short delivery within 3 working days of the delivery, if no such notice is received by the company, the goods are deemed to have been delivered in full.

4.3 If the customer has cause for dissatisfaction of any kind, for any goods or service provided by the Company, they shall notify the Company not later than 30 days after receipt of the invoice for those goods or services, otherwise the goods or services will be deemed to have been satisfactory.

4.4 The Customer shall not subject any Goods, equipment or Materials to any abnormal, dangerous or hazardous use, nor expose it to any unusual risks and shall not without the Company's prior written consent allow it to leave the Customer's custody, shall not take it across national or state borders and shall not permit it to be transported by air except by a recognised carrier; the Customer will protect all such Goods, equipment and Materials from the elements; will not misuse or abuse them , nor cause them to be stored or operated in or near hazardous or dangerous conditions or substances.

4.5 The Customer will at all times ensure that all Goods, equipment and Materials made available by the Company are handled and operated in a careful, skilful and proper manner only by appropriately qualified and experienced personnel who shall, unless the Company expressly agree to the contrary, be persons accepted by the appropriate union for that area. Under no circumstances may the Customer alter, including but not limited to modify, adapt, add to, copy or reproduce any equipment, Goods, Material or Intellectual Property Rights as supplied by the Company.

4.6 The Customer undertakes to observe all statutory safety regulations, all studio and other regulations and all safety requirements and operating instructions specified by the Company; to ensure all safety guards and the like are kept in position; to provide all necessary crowd control and to give adequate prior notice to the police, fire and ambulance services and to all owners and occupants of property in the vicinity of the place where services are to be rendered by the Company.

4.7 The Customer shall permit no liens or charges to attach to the Company's property nor permit it to be subject to any distraint.

4.8 The Customer shall be responsible for ensuring that adequate and safe supplies of water, power or other services or facilities are available as necessary to permit the Company to carry out in a prompt and safe manner any contracted services.

## **5. Indemnity**

5.1 The Customer undertakes to and shall indemnify the Company its officers, servants and agents and hold them harmless from and against all losses, costs, damages, claims or liabilities whatsoever and howsoever arising from or in connection with:

5.1.1 any failure by the Customer to observe and perform its obligations hereunder:

5.1.2 any claim relating to infringement of any of the Company's Intellectual Property Rights, defamation, obscenity, invasion of privacy or the like in connection with the Customer's material or the use or processing thereof by the Company, its officers, servants or agents; and

5.1.3 any non-compliance with any applicable foreign laws or regulations.

## **6. Exclusion of liability**

6.1 Neither the Company nor any of its officers, servants or agents shall have any responsibility or liability for:

6.1.1 any losses, costs, damages, delays, failures or other liabilities (together "Losses") suffered by the Customer arising out of a breach of contract by or negligence of the Company (or any of its officers, servants or agents);

6.1.2 any consequential or indirect loss and/or expense (including loss of turnover and profits) suffered by the Customer;

6.1.3 any advice, information or assistance given by the Company, its officers, servants or agents to the Customer other than as a part of the contracted services and the same shall not be communicated by the Customer to any third party in circumstances where the third party might reasonably be expected to rely thereon;

6.1.4 any acts or omissions of any third party introduced by the Company to the Customer, and with whom the Customer enters into any contractual or other arrangement;

6.1.5 any loss, damage or liability to property whether of the Customer or any third party howsoever arising and whether or not occasioned or contributed to by any negligence or breach of contract on the part of the Company, its officers, servants or agents;

6.1.6 death or any personal injury sustained by any person whomsoever and howsoever save that nothing in the Conditions nor in this Clause 6 shall be deemed to exclude or limit the Company's liability for death or personal injury occasioned by negligence on the part of the Company, its officers, servants or agents.

6.2 All warranties, conditions and representations implied by statute or by common law or by the laws of any foreign country are hereby expressly excluded in so far as it is legally possible to do so.

6.3 The Company shall be entitled to rely upon all information, Goods, equipment and Materials made available by the Customer and shall have no obligation to check the same nor shall the Company bear any responsibility for any loss, damage, defect or failure occasioned by any defect in such information, Goods, equipment or Materials.

6.4 Save as provided in Clause 6.1.6 any liability of the Company not excluded by the Conditions shall be limited to the amount of the Company's charges paid or payable by the Customer in respect of the services, equipment and materials supplied by the Company in connection with which such liability has arisen.

6.5 Whilst the Company will use every reasonable endeavour to secure prompt performance, time shall not be of the essence hereunder and the Company shall not be responsible for delays however occurring.

6.6 The Company shall not be regarded as being in breach of its obligations hereunder if the Services rendered or Goods or equipment or Materials supplied differ in minor respects from those specified in any quotation given by the Company provided that the Services rendered or Goods or equipment or Materials supplied are of the same standard in all material respects as those so specified.

6.7 Without prejudice to the provisions of 3 and 4 above if Services or Goods are to be made available or used outside the national or state boundary it shall be the duty of the Customer to notify the Company of all applicable foreign laws and regulations but although the Company shall endeavour to comply therewith so far as is reasonably practicable having regard to the Customer's requirements the responsibility for ensuring such compliance shall rest with the Customer.

## 7. Intellectual Property

7.1 All Knowhow and all Intellectual Property Rights used in or generated from or arising as a result of the work undertaken by the Company for the purpose of the contract (to the extent that they are not already vested in the Company prior to their use as aforesaid) vest in and is the absolute property of the Company.

7.2 The Customer hereby acknowledges and accepts that it has no claim, including any right of ownership whatsoever in respect of any of the Company's Intellectual Property Rights. For the avoidance of doubt any work that the Customer instructs the Company to carry out is to be strictly interpreted as a specific order only for the supply of Goods and/or Services in accordance with these Conditions.

7.3 These Conditions and any order placed by the Customer shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in these Conditions.

## 8. Force Majeure

The Company shall not be liable for any Losses suffered by the Customer to the extent resulting from any failure on the part of the Company, its officers, servants or agents caused by or directly or indirectly due to war, terrorism, act of any Government or other competent authority, civil unrest, embargo, computer system failure, storm, fire, accident, industrial action including strikes or lock outs, acts of God, illness, prevention from or hindrance in obtaining raw materials, energy or other supplies or any other similar cause or matter beyond reasonable control of the Seller and during the continuance of such causes or matters the obligation of the Company to the Customer shall be suspended.

## **9. Credits**

The Customer shall afford to the Company appropriate credits on all copies of any film, television or video production in respect of which the Company's services, equipment, materials or facilities are made available and, in the case of stage productions and other live activities, credit shall be given to the Company in all programmes issued in respect thereof. The wording of all such credits shall be subject to the Company's approval (not to be unreasonably withheld) usually 'Snow Effects – Snow Business'. The Company may refer to any production in its list of credits, advertising and packaging. The Company may show photographic images of its work in its photo-file, brochures, and show-reel and all other promotional material.

## **10. Variations waiver**

10.1 No terms or conditions, representations, warranties or undertakings other than those set herein and no variation of the Conditions shall be binding on the Company unless contained in a written instrument expressly varying the Conditions and signed by an officer of the Company.

10.2 No waiver and any breach of the Conditions shall be deemed to constitute a waiver of any subsequent breach and no failure or delay on the part of the Company to enforce the Conditions shall prejudice its right subsequently to do so in respect of the same or any other breach.

10.3 The Conditions shall take precedence over any conflicting terms and conditions of business of the Customer.

## **11. Assignment**

The Customer shall not be entitled to assign or sub-licence the benefit of any agreement entered into between the Customer and the Company except with the Company's prior written consent and without prejudice to the Customer's continuing responsibility for performance and observance of the Conditions. The Company reserves the right to assign or sub-contract the performance of any of its obligations and its rights hereunder to any person providing similar services.

## **12. Governing law**

The Conditions and all contracts in which they are incorporated shall be subject to the laws of England and the non-exclusive jurisdiction of the English Courts.

## **13. Unenforceability**

If any term or provision of the Conditions shall be held to be illegal or unenforceable under any enactment or rule of law, such term or condition shall to that extent be deemed not to form part of the Conditions and the validity and enforceability of the remainder thereof shall not be effected thereby.