

# ACC Production Department Terms and Conditions



<b>*ACCL*</b>	the Arena and Convention Centre Liverpool Limited
<b>"Agreement"</b>	means any agreement between the Client and ACCL for the supply of the Services including without limitation the hire agreement and the Production Quotation provided to Client;
<b>"Client"</b>	means the legal entity accepting ACCL's Production Quotation for the supply of Equipment and / or Services or whose order for Equipment or Services is accepted by ACCL or the party otherwise commissioning the Services in each case as named on ACCL's invoice;
<b>"Conditions"</b>	means these terms and conditions;
<b>"Content"</b>	means any materials required for the Services;
<b>"Delivery"</b>	means when the Services have commenced;
<b>"Equipment"</b>	shall mean all and each item of equipment referred to in this Agreement to be supplied by ACCL and all additions, alterations and replacements to that Equipment;
<b>"Event"</b>	the event in respect of which the Equipment or Services have been ordered by the Client.
<b>"Information"</b>	means any information required for the Services;
<b>"Intellectual Property Rights"</b>	means all vested, contingent and future intellectual property rights including but not limited to patents, copyrights, registered and unregistered trade marks, service marks, domain names, database rights, registered designs, design rights, know-how, inventions, get-up, confidential information, trade and business names, and any other similar protected rights in any country subsisting now or in the future together with, in relation to any of the foregoing rights: (i) the right to sue for past infringements; (ii) any applications for registration; and (iii) any licenses;
<b>"Production Charge"</b>	means the Fee(s) payable by ACCL for the Services as set out in the Production Quotation
<b>"Production Quotation"</b>	means the production quotation provided by ACCL to the Client or as set out in the Schedule hereto detailing the dates, amount and manner of payment to ACCL for the provision of the Services
<b>"Services"</b>	means the services or goods of ACCL as set out in the Production Quotation and in accordance with these Conditions including without limitation the installation, operation and removal of the Equipment .
<b>"Venue"</b>	the B.T. Convention Centre Liverpool

In these Conditions, unless the context otherwise requires: (a) words in the singular include the plural and vice versa; and (b) a reference to: (i) Client includes any subsidiary or holding company of the Client as defined under the Companies Act 1985 s. 736 (as amended), sub-contractor or agent of the Client for the purposes of carrying out its obligations under any Agreement (ii) any party includes its successors in title and permitted assigns. In the event of any conflict or inconsistency between these Conditions and (a) any document; (b) websites; (c) any media; and (d) any agreement between the Client and ACCL then these Conditions shall prevail. In these Conditions or any Agreement unless the context otherwise requires words importing any gender include every gender. Words importing persons include firms, companies and corporations and vice versa. References to terms are references to the relevant terms in these Conditions. The headings to the terms or clauses of these Conditions or Agreements will not affect the interpretation. Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment except to the extent that it would increase the liability of ACCL.

# ACC Production Department Terms and Conditions



## Agreements

These Conditions apply to all Agreements between ACCL and the Client. No action by ACCL shall purport to ACCL's acceptance of any terms or conditions of any Client or third party unless otherwise stated in writing by an authorised officer of ACCL. Any order placed by the Client to supply the Services shall be deemed an offer that shall be capable of acceptance by ACCL. The Client, on the commencement of the Services shall be deemed to have read and to have understood these Conditions. By supplying the Services the Client indicates acceptance of the Conditions. No contract shall be deemed to have been entered into by ACCL in respect to the provision of Services until such contracts are signed by an authorised officer of ACCL.

## Provision of Services or Equipment

ACCL shall provide and Client shall accept the Equipment and engage the Services of ACCL at the Venue as described in ACCL's hire agreement or order acceptance or, if none, ACCL's most recent Production Quotation for the event subject to these Conditions which contain the entire agreement between ACCL and the Client and shall apply to the exclusion of all other terms and conditions and shall not be varied except as confirmed in writing by ACCL.

Client acknowledges that following consultation with and recommendation from ACCL the Equipment was selected by Client as suitable for its purpose and Client has not been induced to enter into this Agreement by any prior representation (whether innocently or negligently made) except as specifically contained in this Agreement.

Unless otherwise expressly agreed in writing by ACCL, all Equipment supplied by ACCL is supplied on hire in accordance with these Conditions and no ownership interest in the Equipment shall pass to Client or any third party.

ACCL will use reasonable endeavours to ensure Equipment is in good working order on delivery and of satisfactory quality and will provide the Services using reasonable care and skill and in accordance with the Agreement and these Conditions.

## Order Acceptance and Cancellation

No order or booking submitted by the Client shall be deemed accepted unless and until ACCL has issued an Agreement or order acceptance signed on behalf of ACCL or by some other act of acceptance on the part of ACCL or unless ACCL in its discretion waives in writing any such requirement. ACCL may stipulate payment of an initial deposit(s) as a condition of acceptance or performance.

Receipt of acceptance note, email confirmation, the provision of a purchase order from the Client and/or acceptance of the commencement of Services shall indicate acceptance of the Agreement and these Conditions.

Client shall be responsible for ensuring the accuracy of any order but ACCL reserves the right to make changes in the manner of performance of the Services to comply with health and safety and other applicable legal requirements.

Following acceptance by ACCL, Client may cancel or terminate this Agreement and any claim by ACCL will be limited to the value of the contract.

## Cancellation charges to the Client shall be as follows:

If the Client purports to cancel the Event then the Client shall pay the full Production Charge .

## Production Charges

ACCL's charges for provision of Equipment and/or Services shall be as stated in the Production Quotation provided for the Event, which forms part of the Agreement. Any extra Equipment or Services later required will be chargeable in addition.

Client shall be liable for continuing Hire Charges at the same rate as provided in this Agreement: if Equipment is lost stolen damaged or destroyed,

Client shall pay the Production Charge (and any VAT), notwithstanding that performance may not have taken place, to be received by ACCL in cleared funds on or before the date(s) specified for payment or, if none, on or before the earlier of (i) 3 working days prior to date of supply of the Equipment or Services (ii) 30 days from date of ACCL's invoice or (iii) as may be set out in the Production Quotation.

It is a condition that each payment due under this Agreement is paid on time without any deduction, set-off or counterclaim. Any discounts quoted or agreed may be forfeited at ACCL's discretion if payment is received after the due date.

# ACC Production Department Terms and Conditions



If the Client fails to pay any sum on the due date then, without limiting any other right or remedy, ACCL may: cancel or suspend provision of Services and Equipment to the Client under this or any other agreement between the parties; apply any payment made by Client (notwithstanding any express instruction by Client) towards the discharge of any sums due to ACCL under this or any other agreement between the parties; and/or charge Client interest (both before and after judgement) on the amount unpaid at the rate of 1 % per month calculated on a daily basis until payment in full together with all costs, charges and expenses reasonably incurred by ACCL (including legal fees) in recovering overdue amounts.

ACCL may, at any time before performance, increase the Production Charge to reflect any matter apparent on subsequent site survey, any increase in cost due to any factor beyond the control of ACCL or change or delay caused by the Client. ACCL will provide timely notice to Client of any such increase. To the extent this Agreement has not been performed (but not otherwise), if Client following consultation with ACCL does not accept the increase and ACCL does not waive it, Client may cancel this Agreement by written notice given within 5 working days of notice of increase (but not less than 3 working days prior to commencement of Equipment hire or Services) provided that Client indemnifies ACCL in full against all costs, charges and expenses incurred by ACCL prior to or as a result of cancellation.

Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 4% above the Barclay's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment until payment is received by ACCL. ACCL shall further have if it so decides the right to use the provisions under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002.

The Client shall not be entitled to withhold payment of any amount payable to ACCL by reason of any dispute or claim by the Client and in the case of part delivery of the Services the Client shall remain liable to pay the full price of all other Services delivered or available for delivery.

The Client shall have no right of set off, statutory or otherwise.

The Client shall reimburse to ACCL immediately the entire cost of representing any cheque or other instrument delivered to it in payment of any sum due by the Client.

Any failure to pay on the due date will represent a breach of a contract condition entitling ACCL to rescind the contract for breach of condition and/or to claim damages.

ACCL shall have the right to withhold payments by reason of dispute and the right to set off in relation to all sums owing.

ACCL accepts no responsibility for loss or damage to any equipment or materials of the Client or any third party, which ACCL may agree to store or transport, and any such equipment or materials shall at all times be at the Client's risk.

## Health and Safety

Where a support structure is supplied by the Client, Client shall ensure that the surface, on which the Equipment and structure will be installed, will be stable under load and that the structure will be fit for the purpose (taking account of prevailing wind speeds) and will comply with all health and safety and other relevant regulations. Client shall provide ACCL on request with copies of certificates of compliance and structural engineering calculations verifying adequacy of Client's structure. Equipment dimensions and weights and representational drawings of structures are available on request from ACCL but are approximate and representational only and do not obviate the need for the Client to obtain appropriate professional advice.

## Client's Undertakings

Client undertakes to ACCL that Client shall:

grant or procure access for ACCL to and from the Venue at such times as ACCL may reasonably require to discharge its obligations;

obtain all necessary licences and consents for use by ACCL of any live or pre-recorded material;

not permit the Equipment to be operated other than by ACCL personnel nor open the outer case or otherwise interfere with the Equipment without the specific consent of ACCL;

in event of Equipment breakdown or malfunction to notify ACCL immediately and not attempt or arrange any repair without ACCL's prior authorisation;

not to sell, sub-let or otherwise dispose of or part with Equipment or any interest therein or do or permit to be done any act or thing which may prejudice or jeopardise ACCL's rights in the Equipment but to keep Equipment in its or ACCL's possession and control free from lien, charge or encumbrance so that Equipment shall at all times remain property of ACCL or its legal owner;

to keep the Equipment secure, safe and free from damage;

to be responsible for any activities or omissions of its agents, employees, contractors and officers.

to notify ACCL in writing of any change in Client's contact details and forthwith upon request to inform ACCL of the location of Equipment;

# ACC Production Department Terms and Conditions



## Damage to Equipment

Notwithstanding termination of this Agreement indemnify ACCL and keep ACCL fully and effectively indemnified against all liabilities whatsoever arising out of the operation and use of Equipment and any breach by Client of this Agreement (including without limitation loss, damage or injury caused by any negligent act or omission or wilful misconduct of the Client, its employees, agents or sub-contractors or any claim that any such use or communication of any material infringes any patent, copyright, trade mark, registered design, design right or other intellectual property right of any third party) and against all costs, claims, demands, expenses and liabilities incurred by ACCL in connection therewith provided such indemnity shall not extend to liability for ACCL's negligence.

## Exclusion and Limitation of Liability

Client acknowledges that electronic equipment may suffer breakdown or malfunction from time to time without fault and that consequences to Client of breach of the Agreement by ACCL may be disproportionate to ACCL's Production Charges. Therefore, Client agrees that ACCL's entire liability to the Client in respect of this Agreement and any breach or negligent act or omission (including liability for acts or omissions of ACCL's employees, agents and sub-contractors) shall be limited as follows:

except as provided in this Agreement, all conditions, warranties and representations whether implied or otherwise concerning the Services and Equipment, their state, quality, description, fitness for purpose or otherwise are excluded to the fullest extent permitted by law;

ACCL's liability in respect of each event or series of connected events shall not exceed the total Production Charges received by ACCL except that in the case of recorded material, ACCL's liability shall be limited to the cost of replacing blank media only and in the case of loss of or damage to physical property caused by ACCL's negligence, ACCL's liability shall be limited to £1,000,000.

ACCL shall not be liable in contract, tort or otherwise whatsoever for any indirect loss, consequential loss, loss of profit, business opportunity, goodwill or reputation.

Client shall give ACCL reasonable details of any claim in writing and in the event of Services or Equipment not being fit for purpose, not of reasonable quality or functionality.

All Equipment agreed to be sold by ACCL is sold "as is" and no warranty is given as to performance, functionality, fitness for purpose or that it is of reasonable quality, unless otherwise agreed by ACCL in writing. This does not affect your statutory rights.

Nothing herein shall limit or exclude ACCL or the Client's liability in respect of death or personal injury.

ACCL shall not be bound by any third party guarantee including that of the Client.

ACCL shall not be liable to the Client by reason of any delay or failure in performing ACCL's obligations due to any cause beyond ACCL's reasonable control including, without limitation, fire, flood, material adverse weather conditions (when ACCL shall be entitled not to install or, if installed, may take down all or any of the Equipment), interruption of power supply, war, act of terrorism or civil disturbance, industrial action or trade dispute or blockade, legal or governmental restriction or embargo ("Force Majeure"). In the event of Force Majeure, if the Equipment has been installed at the Venue, Client shall be liable to pay the Production Charge in full.

## Termination

This Agreement shall forthwith terminate without notice if Client (being an individual) dies or is subject to an interim order (within meaning of Insolvency Act 1986) or the presentation of a bankruptcy petition; or enters into any arrangement or composition with creditors; or (being a limited company) enters into compulsory or voluntary liquidation (not being for the purpose of reconstruction or amalgamation on terms previously approved by ACCL in writing); or has a receiver appointed or a petition presented for an administration order; or has any distress, execution or other legal process made in respect of Client's property; or if anything analogous to the foregoing under the laws of any jurisdiction occurs in relation to the Client; or if the Client ceases to trade; or if ACCL is aware that any of the above may be likely to occur.

ACCL may terminate this Agreement forthwith by notice without liability to Client if: Client fails to pay in full any sum owing to ACCL or any affiliated company of ACCL on its due date for payment; Client commits a breach of any other provision of this or any other agreement with ACCL or an affiliated company of ACCL and (if a breach capable of being remedied) fails to remedy such breach within 7 days after notice requiring the same; or performance by ACCL is prevented by Force Majeure; or ACCL or Client is unable to obtain insurance for Equipment and (if Venue is outside of UK) ACCL's personnel on terms (including insurance premium) to ACCL's satisfaction.

Upon termination, all sums due under this Agreement shall become immediately payable by the Client.

Termination or cancellation shall not affect any provision of these Conditions nor limit any other right or remedy of either party against the other under the Agreement or these Conditions or at law and all sums then owing to ACCL by Client shall become immediately due and payable.

ACCL's reasonable costs and expenses incurred by ACCL by reason of delay, variation, interruption, termination or suspension of work arising from any act of the Client, its employees, contractors or officers will be reimbursed to ACCL by the Client.

## ACC Production Department Terms and Conditions



### Confidentiality

Each party shall treat as it does its own confidential information all information obtained from the other pursuant to this Agreement which is marked "confidential" or the equivalent or has the necessary quality of confidence about it.

### General

For the avoidance of doubt nothing in the Agreement or these Conditions shall confer on any third party any benefit or the right to enforce any term of the Agreement or provision of these Conditions.

These Conditions and the Agreement do not constitute or imply any partnership, joint venture, fiduciary relationship or other relationship including that of employer and employee between the parties other than the contractual relationship expressly provided for in the Agreement and these Conditions.

The Client shall not assign or otherwise transfer any of its rights or obligations under the Agreement or Conditions.

If the Client is more than one person, they shall be liable both individually and together.

Where the Client is a corporate body including without limitation a limited company or limited liability partnership then where liability is limited by that corporate body due to it ceasing to trade then the individual directors or members shall be liable.

The Conditions or any Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of ACCL.

These Conditions and any Agreement under them set out the entire agreement and understanding between the parties in respect of its subject matter and the Client acknowledges that it has entered into such Agreement in reliance only upon the representations, warranties and promises expressly contained or incorporated in these Conditions and/or Agreement and save as expressly set out therein ACCL shall have no liability in respect of any other representation, warranties or promise made or given prior to the date of the Agreement, howsoever made or given, unless it was made or given fraudulently.

The Conditions and any Agreement shall be binding upon, and inure to the benefit of the parties and their respective successors and permitted assignees, and references to a party in any Agreement shall include its successors and permitted assignees.

In any Agreement references to a party include references to a person: who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under that Agreement (or any interest in those rights); or who, as administrator, liquidator or otherwise, is entitled to exercise those rights, and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under any Agreement include any similar rights to which another person becomes entitled as a result of a novation of the Agreement.

The Client shall not be entitled to assign or transfer the benefits or obligations of these Conditions or Agreement to any third party without the prior written consent of ACCL.

Any typographical or clerical error or omission in documents issued by ACCL may be corrected without liability on part of ACCL.

Any notice under the Agreement or these Conditions shall be in writing and may be served by hand, pre-paid first class post or airmail, electronic mail or facsimile to its address or facsimile number set out in the Agreement or these Conditions or such other address as is notified for the purpose. A confirming copy of any notice served by electronic mail or facsimile shall be sent by post within 24 hours of transmission.

Delay shall not prevent ACCL enforcing any provision of the Agreement or these Conditions. Any waiver of a breach by the Client shall not operate as a waiver of a later breach of the same or any other provision.

If any provision of the Agreement or these Conditions is held to be invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected.

This Agreement shall be governed and construed in accordance with the laws of England the courts of which shall have exclusive jurisdiction.