



MACHINE SHOP SPECIAL EFFECTS LTD
TERMS OF SALE

1. Formation of Contract

- 1.1 These terms and conditions of sale (**Terms of Sale**) shall apply to all contracts entered into by Machine Shop Special Effects Limited (the **Company**) with any customer (**Customer**) named in the cost estimate (**Estimate**). No addition to or variation of or exclusion of these Terms of Sale, in whole or in part, shall be binding on the Company unless expressly confirmed in writing by the Company. Words and phrases in these Terms of Sale shall be construed in accordance with the material particulars of the Estimate to which they refer and the word "**Agreement**" shall mean any such Estimate together with these Terms of Sale.
- 1.2 Subject to clause 1.1. above, these Terms of Sale shall prevail over and override any inconsistent terms and conditions whether expressed or implied, contained in or referred to in the Customer's acceptance or the Customer's terms and conditions of trade or in any correspondence between the parties or elsewhere; any agreement to the contrary is expressly excluded.
- 1.3 No contract shall come into existence between the Company and the Customer unless and until the Customer has signed and delivered to the Company the Estimate and the Company shall be under no obligation to commence work unless and until the Estimate has been signed. Once the Estimate has been signed, the Estimate together with these Terms of Sale shall form a contract between the Customer and the Company

2. The Products and Services

- 2.1 These terms apply to the provision by the Company of the products (**Products**), services (**Services**) or both, specified in the Estimate.
- 2.2 Where applicable, the Customer shall provide the Company with instructions as soon as reasonably possible to allow the Company to adequately supply the Products and/or perform the Services in accordance with any delivery dates specified in the Estimate. The Company accepts no responsibility for late delivery of Products or delayed performance of Services which is due to a delay in the Customer providing instructions.
- 2.3 The Customer shall not be entitled, following the signature of the Estimate, to change the quantity or the specification of the Products or Services, or any relevant delivery date, without the prior written consent of the Company. If any such change would result in additional cost or expense to the Company in providing the Products or Services or would delay delivery, the Company shall be entitled, as a condition of giving its consent, to make an adjustment to the price and delivery date(s) set out in the Estimate, to the extent necessary to reflect the additional costs or delay (as the case may be).
- 2.4 In the event any changes made by the Customer to delivery dates or to the specification of Products and/or Services are not agreed with the Company in advance under clause 2.3, the Customer shall pay the Company for the additional time spent by the Company in carrying out the Services or producing and delivering the Products and the Customer shall indemnify the Company and keep the Company indemnified in relation to any cost or liability that the Company incurs as a result of the delay caused by such changes.
- 2.5 Where Products or Services are supplied on location, the Customer shall be solely responsible for:
 - (a) compliance by the Customer with all rules and regulations applicable at the location where the Products are being supplied or the Services are being provided and the Customer shall comply with all reasonable directions of the Company in relation to the use of the Products or the receipt of the Services;
 - (b) the actions of the Customer and the Customer's personnel (**Personnel**) while in any studio or other location to which Products are supplied or at which Services are provided;
 - (c) the use of equipment supplied by the Company (**Equipment**) where it is agreed that such Equipment may be operated by the Customer without the direction or supervision of the Company;
 - (d) the direct or indirect results of the actions of the Customer and the Personnel and the use by the Customer or the Personnel of the Equipment.
- 2.6 The Customer shall ensure that all persons using the Services or Products are suitably qualified and comply with any terms, conditions and/or restrictions imposed on such use by insurers or any relevant regulatory authority.
- 2.7 There is no express or implied warranty given on the part of the Company that the Services and/or the Products are fit for the purposes of the Customer and there is no obligation whatsoever on the part of the Company to assess the needs of the Customer or to advise the Customer in relation to such needs. Any assessment or advice which may be given by the Company, is given entirely without liability on the part of the Company and does not form part of any agreement between the Company and the Customer. If expressly provided in the Estimate, but under no other circumstances, the Company may provide a warranty in respect of Products supplied or Services rendered in respect of defects which occur within 12 months of installation or supply (as relevant). Where such defects occur within the relevant period, the sole obligation of the Company shall be to remedy such defect(s) and return the relevant Products to a level of functionality equivalent to that at the time of delivery, subject always to reasonable wear and tear experienced by the Products.

3. Payment

- 3.1 It is a condition precedent to any liability of the Company to the Customer and to the ability of the Customer to use the Products or Services that the charges specified in the Estimate are paid on the date(s) specified in the Estimate in full without deduction, set-off or counterclaim.
- 3.2 Payment terms are stated on the Estimate and time for payment shall be of the essence of this Agreement. If the Customer fails to effect payment to the Company, whether in whole or in part, of any sums due pursuant to this Agreement the Company shall be entitled to sell, hire or charge any property over which it has a lien and exercise any rights vested in it or assigned to it and retain the proceeds arising from such sale or exercise for the Company's own use and benefit absolutely.
- 3.3 In the event of the Customer failing to make payment of any sums due to the Company in accordance with the payment terms contained in the Estimate, Invoice or communicated in writing the Customer shall be liable to pay a late payment fee of £300 in respect of each late payment together with interest on the amount of the late payment calculated at 4% per annum above the Bank of England base rate from the day after the due date until the date of actual payment, whether before or after any judgment.

- 3.4. In the event of cancellation by the Customer of the Estimate or this Agreement the Customer shall be liable to pay to the Company 100% of the charges specified in the Estimate relating to Product build or fabrication Services. Where Services are to be provided by the Company, if the Customer cancels such Services without giving at least 3 clear business days' notice of such cancellation prior to the earlier of (i) the date on which Company personnel are due to travel to the site at which Services are to be provided; and (ii) the first Services delivery date as set out in the Estimate, the Customer shall be liable to pay 100% of the charges set out in the Estimate which relate to such Services.
- 3.5 For the purposes of clause 3.4, notice shall be required to be in writing via email to the Company's relevant project supervisor. The Company may apply in whole or in part any advance payment made by the Customer to the Company in order to reduce any cancellation Charges.

4.Price

- 4.1 Value Added Tax and any other sales or purchase tax or duties on the Products and/or Services shall be payable by the Customer in addition to the price and shall be charged at the rate prevailing at the date of delivery. Where no VAT is payable by the Customer the Customer shall provide the Company with an independently verified Customer VAT number.
- 4.2 The Customer shall make all payments under this Agreement without withholding or deduction of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Customer shall, when making the payment to which the withholding or deduction relates, pay to the Company such additional amount as will ensure that the Company receives the same total amount that it would have received if no such withholding or deduction had been required.
- 4.3 Unless specified in an Estimate, prices are quoted exclusive of delivery charges that may be incurred by the Company in relation to the provision of the Services or delivery of the Products.

5. Charge Rates

- 5.1 All charges shall be in accordance with the particulars contained in the Estimate and in the Company's Crew Rates Card contained within the Estimate, as amended from time to time.
- 5.2 The Company charges at an hourly rate as specified in the Company's Crew Rates Card; the charges include initial preparation, meetings and management of the project. Travel from the Company's premises to and from the location at which Services are to be provided shall be charged to the Customer in accordance with the terms set out in the Estimate.
- 5.3 Overnight accommodation expenses for Company personnel shall be charged to the Customer when working hours and locations make it unreasonable to expect return to the Company's offices and, in any case, shall be charged where Company personnel are required beyond 21.00 hours at a site outside the M25 area. Where meals for Company personnel are not provided by the Customer, the cost of subsistence for Company personnel will be charged to the Customer at reasonable local rates when such personnel are working away from the Company's offices.
- 5.4 Supervisor, Senior Technician, Technician and Trainee charge rates are at the Company's base rates (T) with overtime and other payments at the rates described in the Company's Crew Rates Card.

6. Retention of Title

- 6.1 Notwithstanding delivery of any Products, title to the Products shall not pass to the Customer until the Company has received payment in full of all sums owed to the Company under this Agreement and any other agreement between the Company and the Customer. The Customer shall take all measures necessary for the protection of the Products and shall store the same separately from all other products and shall not combine or consolidate or mix or incorporate or adapt the whole or any part of the Products with any other materials or in any way copy any part of them.
- 6.2 The Company reserves the right to repossess the whole or any part of any Products to which it retains title (and resell the same) if payment for the Products is overdue or if a resolution is passed or an order is made for the winding up of the Customer or a receiver, administrative receiver or administrator is appointed in respect of the Customer or any of its assets or the Customer becomes bankrupt or the Company reasonably believes that any of the above may occur.. This right shall continue to subsist notwithstanding the termination of this Agreement for any reason and is without prejudice to the Company's other rights. Any expense incurred by the Company in repossessing and/or reselling the Products shall be borne by the Customer.

7. Copyright, Credit and Confidentiality

For the purposes of these Terms of Sale, "Intellectual Property Rights" means all or any registered or unregistered intellectual property rights or similar rights in any part of the world, including patents, design rights and registered design rights, copyrights, database rights, topography rights, registered and unregistered trade marks or service marks, know how, rights to inventions and ideas, together with any right to apply, and the benefit of any applications, for any such intellectual property rights;

- 7.1 The Customer acknowledges that the Company is the sole absolute unencumbered owner of all Intellectual Property Rights subsisting in the product of the Services and the Products. Under no circumstances shall any of the Intellectual Property Rights transfer to the Customer other than as expressly stated within the Agreement.
- 7.2 Subject to the payment by the Customer to the Company of all sums due under this Agreement and any other agreement between the Company and the Customer, the Company grants to the Customer a non-exclusive license (without the right to sub-license) to use any Intellectual Property Rights in the Products or Services for the purpose of making reasonable use of the Products or Services.
- 7.3 The Customer warrants to the Company that it has obtained all consents and licenses and clearances required from all owners of performers rights, performers property rights, copyright, moral rights and all other persons of any description having any propriety or other right or interest of whatever nature in respect of the exploitation of materials made or recorded in the studios or any location at which the Products are delivered or the Services are rendered and undertakes to indemnify the Company from and against all and any liability to third parties for royalties, performance incomes, statutory and/or mechanical fees, defamation, breach of privacy, infringement of Intellectual Property Rights, moral rights, publicity rights, privacy right, personality right or any right whatever involved or arising directly or indirectly as a result of the Customer's activities.
- 7.4 Notwithstanding the provisions of clause 7.2, the supply of goods or services by the Company to the Customer shall not convey any

right to the Customer to use any trademark of the Company (whether registered or unregistered) without prior written consent of the Company or as expressly provided for in these Terms of Sale and at all times such trademarks shall remain the property of the Company.

- 7.5 The Company retains title to the rights relating to all methods of creating the Products and delivering the Services including any copyright and patent rights relating to such methods.
- 7.6 For the avoidance of doubt and without prejudice to the foregoing provisions of this clause 7, the Company retains all rights to any model or prototype or equipment created by the Company for the purposes of the Products or Services. Unless the Customer notifies the Company otherwise, the Company shall have the right to use any model, prototype or equipment in relation to advertising and promotional activities of the Company after delivery of the Products or Services to the Customer.
- 7.7 The Customer shall consider in good faith any request by the Company to accord credit to the Company and to any individuals whose names are specified from time to time by the Company on all films, television programmes, commercials, promos, interactive audio-visual material or any other audio-visual material derived from or incorporating the Products or Services as follows: **SPECIAL EFFECTS BY MACHINESHOP**, with inclusion of the Company's trademark and logo.
- 7.8 Unless the Customer expressly directs otherwise, the Company reserves the right to record footage in relation to the delivery of the Products and/or Services for the purposes of record keeping and promotion and reserves the right to use such footage on the Company's website and social media channels once the subject of the relevant footage is, where applicable, in the public domain.
- 7.9 Any and all Confidential Information arising out of, related to, or in connection with this Agreement shall be kept secret and confidential by the parties (save for disclosures on a confidential basis to a party's professional advisor or as required by law). More particularly, the Customer shall not be entitled to replicate the Products or Services or to disclose to any third party the method used in the creation of the Products or delivery of the Services and any information obtained by the Customer or the Personnel in relation thereto shall be treated as strictly confidential and shall not be disclosed to any third party.

8. Delivery Carriage and Risk

- 8.1 Risk in the Products shall pass to the Customer on delivery or on delivery being tendered by the Company notwithstanding any refusal of delivery by the Customer.
- 8.2 The Company may effect delivery in one or more instalments. Damage to, defects in or loss of one instalment of any order shall not entitle the Customer to cancel or to refuse to accept delivery of the remaining instalments of the order.
- 8.3 If the Customer refuses or fails to take delivery of the Products, the Company shall be entitled to immediate payment in full for the Products. All storage and transport costs incurred by the Company as a result of such refusal or failure shall be payable by the Customer.
- 8.4 Where the Products are supplied by the Company to the Customer the Customer shall be deemed irrevocably to have accepted them unless the Customer shall have objected in writing to the Company within 24 hours from receipt of the same. In the event any Products delivered to the Customer are of unsatisfactory quality and the Company accepts that they are of unsatisfactory quality, the Company's sole liability shall be in relation to the replacement of the Products and the Company shall incur no further liability whatever in relation to any loss suffered by the Customer as a result of the defective or late delivery.

9 Liability Exclusion Insurance and Indemnity

- 9.1 The Company shall not be liable to the Customer in contract, tort or otherwise for loss or damage caused by any act, failure to act, negligence or default of the Customer or any third party. Where applicable, the Customer will maintain a duplicate copy of all audio and audio-visual and other material of any description supplied by the Customer to the Company and the Company will not be responsible for the loss or destruction of any such material other than to replace the medium on which it was provided.
- 9.2 The Company may at its option make good any shortage or non-delivery and/or as appropriate replace or repair any part of the Products found and acknowledged by the Company to be damaged or defective and repair or replacement of any such Products shall constitute full and final satisfaction of any claim.
- 9.3 The Company's aggregate liability to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the price, exclusive of value added tax, of the Products and Services set out in the Estimate. The prices at which the Company is able to provide the Products and Services are determined on the basis of the limit of liability set out in this clause.
- 9.4 Under no circumstances shall the Company be liable to the Customer for loss of profit, loss of revenue, loss of bargain, loss of business or contract, diminution of goodwill or for any other economic loss (whether direct, indirect or consequential), or for any indirect or consequential loss or damage of any kind save as expressly provided in the Agreement and all warranties, conditions or other terms implied by statute or common law in relation to the sale of goods are hereby excluded and the Company makes no warranty as to the fitness of the Products for any particular purpose even if that purpose is stated in the Estimate.
- 9.5 Nothing in the Agreement shall limit or exclude the liability of the Company for death or personal injury resulting from the negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977) of the Company; for fraud or fraudulent misrepresentation; or for any matter in respect of which it would be unlawful or illegal to exclude or limit its liability.
- 9.6 Each party shall maintain adequate public and employer's liability insurance policies and all other usual and customary insurance policies in relation to its operations and shall observe and perform all terms and conditions of those insurance policies, pay all premiums when due and maintain such policies in full force and effect during the term of this Agreement. Details of such policies shall be supplied by either party on request by the other party.

10. Miscellaneous

- 10.1 The Customer shall indemnify and hold the Company harmless from all claims and all direct liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any alleged or actual infringement of any third party's Intellectual Property Rights or other rights arising out of the use of any materials

and information provided by the Customer.

- 10.2 If any term or provision or any part of a term or provision in these Terms of Sale shall be held to be illegal or unenforceable under an enactment or rule of law such term or provision or part of it shall to that extent be deemed not to form part of these Terms of Sale then the enforceability of the remainder of the Terms of Sale shall not be affected.
- 10.3 The Company shall not be liable to the Customer in contract, tort or otherwise for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of Services or delivery of Products by the Company being prevented prohibited hindered or delayed by reason of circumstances or events beyond the Company's reasonable control including (without limitation):
- (a) acts of God and extreme weather including flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - (f) collapse of buildings, fire, explosion or accident;
 - (g) any labour or trade dispute, strikes, industrial action or lockouts [(other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - (i) interruption or failure of utility service,
- and in such circumstances the Company shall have the option either to terminate this Agreement or the unfulfilled part of it or to extend the time for delivery to a reasonable time after the relevant circumstances cease to apply.
- 10.4 The Company may, acting reasonably, delay or permit the passage of time before taking steps to enforce provisions of these Terms of Sale without prejudicing or waiving its rights.
- 10.5 Any notices required to be served by the Company on the Customer shall be deemed to be properly served if delivered in person or sent by first class prepaid post or recorded mail to the addresses specified for the Company and/or the Customer as appropriate on the Estimate.
- 10.6 The Company shall be entitled to assign its rights and/or obligations under this Agreement. This Agreement is personal to the Customer and may not be assigned or charged by it.
- 10.7 The construction validity and performance of these Terms of Sale shall be governed and construed in accordance with the law of England and Wales whose courts shall be courts of competent jurisdiction.