

1. Definitions and Interpretation

1.1 In these terms the following words have the following meanings:

- “CAV”** means Convergence Audio Visual Ltd and/or its representatives
- “Customer”** means the entity accepting CAV’s quotation for the supply of Equipment and/or Services or whose order for said Services is accepted by CAV and/or its representatives
- “Agreement”** documentation describing and/or amending the equipment and/or services to be supplied by CAV
- “Equipment”** means each and every item of Equipment inc. cases/covers referred to in this Agreement to be supplied by CAV (with or without services) and any additions alterations and replacements to that Equipment inc. cases/covers
- “Dry Hire”** means hire of Equipment without the supply of personnel to operate said Equipment
- “Services”** means the installation operation and removal of Equipment and/or other services as described in the Agreement;
- “Hire Charge”** means the charges made by CAV for the provision of Equipment and/or Services as described in the Agreement
- “Writing”** shall include electronic mail

2. Application of Conditions

These Conditions shall:

- (a) apply to and be incorporated into this Agreement; and
- (b) prevail over any inconsistent terms or conditions contained or referred to in the Customer’s purchase order or booking.

3. Provision of Equipment and Services

- 3.1 CAV shall provide and the Customer shall accept the Equipment and engage the Services of CAV at the location(s) as described in CAV’s hire agreement or order acceptance or if none CAV’s most recent quotation for the event (“Agreement”) subject to these terms, which contain the entire agreement between CAV and the Customer and shall apply to the exclusion of all other terms and conditions and shall not be varied except as confirmed in writing by CAV.
- 3.2 The Customer acknowledges that Equipment was selected by the Customer as suitable for its purpose and the Customer 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.
- 3.3 Unless otherwise expressly agreed in writing by CAV, all Equipment supplied by CAV is supplied on hire in accordance with these terms and no ownership interest either in part or in full in the Equipment shall pass to the Customer or any third party at any time.
- 3.4 CAV will use reasonable efforts 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 this Agreement.

4. Order Acceptance and Cancellation

- 4.1 No order or booking submitted by the Customer shall be deemed accepted unless and until CAV has issued a Hire Agreement or order acceptance signed on behalf of CAV or by some other act of acceptance on the part of CAV or unless CAV in its discretion waives any such requirement. CAV may stipulate payment of initial deposit(s) as a condition of acceptance or performance.
- 4.2 The Customer shall be responsible for ensuring the accuracy of any order but CAV 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.
- 4.3 Following acceptance by CAV, the Customer may not cancel or terminate this Agreement except with CAV’s written consent and then only on terms that the Customer indemnifies CAV according to the following schedule
- (a) more than 30 days notice – the Customer will not be liable for any costs unless CAV have incurred costs prior to the cancellation the Customer shall reimburse CAV the full amount on the submission by CAV of supporting documentary evidence;
- (b) between 21 and 30 days notice – the Customer will be liable for 50% of Agreement value;
- (c) between 14 and 21 days – the Customer will be liable for 75% of Agreement value;
- (d) less than 14 days notice –the Customer will be liable for 100% of Agreement value

5. Charges and Fees

- 5.1 CAV’s charges for provision of Equipment and/or Services shall be as stated in the Agreement. Any extra Equipment or Services later required will be chargeable in addition. The Customer shall be liable for continuing Hire Charges at the same rate as provided in this Agreement if Equipment is lost stolen damaged or destroyed until its repair or replacement (in such case any continuing Hire Charges not to exceed a further 90 days rental) and in case of a Dry Hire or where the Customer arranges transit if Equipment is returned late until date of its actual return to CAV.
- 5.2 The Customer shall pay Hire Charge (and any VAT) notwithstanding that

performance may not have taken place to be received by CAV in cleared funds on or before the date(s) specified for payment or before the earlier of (i) 3 working days prior to date of supply of the Equipment or Services and (ii) 28 days from date of CAV’s invoice. It is a condition that each payment due under this Agreement is paid on time without any deduction, set-off or counterclaim.

- 5.2.1 Any discounts quoted or agreed may be forfeit at CAV’s discretion if payment is received after the due date.
- 5.3 If the Customer fails to pay any amount under this Agreement by the due date CAV may but is not obliged to charge the Customer interest on the overdue undisputed amount. The applicable interest rate shall be 10% per annum above Bank of England base rate. Non-payment of any amount due shall not constitute a breach of this Agreement unless that sum remains unpaid 28 days after written notice is received by the Customer from CAV correctly stating that such amount is undisputed and overdue. If a breach by the Customer does arise under this clause, CAV may suspend provision of the Services and/or terminate this Agreement on 30 days notice unless the Customer remedies that breach within the notice period.
- 5.4 CAV may at any time before performance increase the Hire Charge to reflect any matter apparent on subsequent site survey any increase in cost due to any factor beyond the control of CAV or change or delay caused by the Customer. CAV will provide timely notice to the Customer of any such increase. To the extent this Agreement has not been performed (but not otherwise), if the Customer following consultation with CAV does not accept the increase and CAV does not waive it the Customer 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 the Customer indemnifies CAV in full against all costs, charges and expenses incurred by CAV prior to or as a result of cancellation.

6. Risk and Insurance

- 6.1 The Equipment shall be at the risk of the Customer from the time of delivery at the Location or Customer’s carrier until its return to CAV’s premises or carrier.
- 6.2 The Customer shall at its own expense insure Equipment with an insurance company of repute against all loss or damage (whether the Customer’s or CAV’s fault) in an amount equal to its replacement cost new and against liability for any continuing Hire Charges under Clause 4.1 until the earlier of its return to CAV in good working order and condition (fair wear and tear excepted) or (if not economic to repair) its replacement with equivalent new equipment or receipt by CAV of payment in full of its replacement cost new and all other sums due hereunder.
- 6.3 The Customer shall not do or allow to be done any act or thing whereby insurance of Equipment may be invalidated.
- 6.4 If Equipment is lost or damaged the Customer shall notify CAV forthwith making appropriate claims under such insurance and not without CAV’s consent settle or compromise any claim.
- 6.5 The Customer will on request at any time produce to CAV the insurance policy and receipt for current premium. If the Customer fails to keep Equipment insured to CAV’s satisfaction or to produce policy or receipt or if CAV so agrees in writing CAV may insure Equipment in consideration of which the Customer will pay CAV further sum equal to 12.5% of CAV’s charges (before any discount) for relevant Equipment or Services this is to be paid immediately by Customer. Non payment will negate Agreement and CAV will take possession of all equipment and withdraw all services with immediate effect.

- 6.6 CAV accepts no responsibility for loss or damage to any equipment or material of the Customer or any third party which CAV may agree to store or transport and any such equipment or materials shall at all times be at the Customer’s risk.

7. Health and Safety

- 7.1 The Customer shall take all reasonable steps to safeguard the health safety and welfare of CAV’s personnel while at the location(s) to safeguard the Equipment from theft, loss or damage and to give CAV adequate notice of any unusual risks. Without prejudice to the foregoing the Customer acknowledges that CAV shall not be obliged to continue supply of Equipment or Services (and may take down all or any Equipment previously installed) where in CAV’s reasonable opinion the installation poses a material risk to health and safety or to the Equipment.

8. Customer’s Undertakings

- The Customer undertakes to CAV that the Customer shall:
- 8.1 grant or procure access for CAV to and from the location at such times as CAV may reasonably require to discharge its obligations;
- 8.2 where CAV’s Services are dependent on provision of equipment or services provided by the Customer or its contractor to ensure that all such equipment and services are provided on time that equipment is of sufficient quantity

- adequate quality and specification and in good working order and the Services are provided by persons of adequate competence and experience using reasonable care and skill;
- 8.3 obtain all necessary licences and consents relating to the locations and the communication or use by CAV of live or pre-recorded material;
- 8.4 if transit of Equipment is organised by the Customer to arrange any and all necessary documentation and / or authorisations required to facilitate the crossing of borders & customs clearances to comply with all applicable import/export regulation and legislation and pay all related duties for each as well as any fines resulting directly or indirectly from them
- 8.5 (except in case of Dry Hire) not permit the Equipment to be operated other than by CAV personnel nor open the outer case or otherwise move / interfere with the Equipment;
- 8.6 in event of Equipment breakdown or malfunction will not attempt or arrange or undertake any repair without CAV's prior authorisation;
- 8.7 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 CAV's rights in the Equipment but to keep Equipment in its or CAV's possession and control free from lien charge or encumbrance so that Equipment shall at all times remain property of CAV or its legal owner
- 8.8 to permit or procure for CAV or its agents access to any premises to inspect or remove Equipment
- 8.9 to notify CAV in writing of any change in the Customer's contact details and forthwith upon request to inform CAV of the location of Equipment
- 8.10 (notwithstanding termination of this Agreement) indemnify CAV and keep CAV fully and effectively indemnified against all liabilities whatsoever arising out of the operation and use of Equipment and any breach by the Customer of this Agreement (including without limitation loss damage or injury caused by any negligent act or omission or wilful misconduct of the Customer 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 CAV in connection therewith provided such indemnity shall not extend to liability for CAV's negligence.
- 9. Customer's Undertakings Specific to Dry Hire**
- The Customer undertakes during the continuance of this Agreement and until return of Equipment to CAV:
- 9.1 to check Equipment before taking into use, to notify CAV forthwith of any repair or maintenance required to Equipment and not to permit such repair or maintenance other than by CAV or with its authority;
- 9.2 to ensure Equipment is only used in a proper manner without risk to health and safety and not contrary to any law or for any purpose for which Equipment is not designed or reasonably suited and not to make any modification to Equipment, open the outer case (unless required in normal use) or remove any notices or serial number on the Equipment.
- 10. Exclusion and Limitation Of Liability**
- 10.1 The Customer acknowledges that electronic equipment may suffer breakdown or malfunction from time to time without fault and that consequences to the Customer of breach of the Agreement by CAV may be disproportionate to CAV's Hire Charges. Therefore the Customer agrees that CAV's entire liability to the Customer in respect of this Agreement and any breach or negligent act or omission (including liability for acts or omissions of CAV's employees agents and sub-contractors) shall be limited as follows:
- 10.1.1 CAV's liability in respect of each event or series of connected events shall not exceed the total Hire Charges received by CAV except that in the case of recorded material CAV'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 CAV's negligence, CAV's liability shall be limited to £1,000,000;
- 10.1.2 CAV will not be liable for any loss damage or expense caused by any interruption or loss of use of Equipment increased cost of working delay loss of profit or goodwill special consequential or indirect damage however caused even if reasonably foreseeable;
- 10.1.3 The Customer shall give CAV reasonable details of any claim in writing without delay and no later than 90 days after occurrence of the matter giving rise to the claim;
- 10.1.4 all Equipment agreed to be sold by CAV is sold "as is" and no warranty is given as to performance, functionality, fitness for purpose or that it is of satisfactory quality unless otherwise agreed by CAV in writing;
- 10.1.5 nothing in these terms shall limit or exclude CAV's liability in respect of death or personal injury resulting from CAV's negligence.
- 10.2 If so requested by the Customer CAV may consider accepting higher limits of liability subject to payment by the Customer of an additional charge.
- 10.3 CAV shall not be liable to the Customer by reason of any delay or failure in performing CAV's obligations due to any cause beyond CAV's reasonable control

including without limitation (but not limited to) fire flood material adverse weather conditions (when CAV 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 location, the Customer shall be liable to pay the Hire Charge in full but otherwise the provisions of Clause 4.3 shall apply.

11. Termination

- 11.1 This Agreement shall forthwith terminate without notice if the Customer (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 CAV 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 the Customer's property; or if anything analogous to the foregoing under the laws of any jurisdiction occurs in relation to the Customer.
- 11.2 CAV may terminate this Agreement forthwith by notice without liability to the Customer if: the Customer fails to pay in full any sum owing to CAV or any affiliated company of CAV by its due date, the Customer commits a breach of any other provision of this or any other agreement with CAV or an affiliated company of CAV and (if a breach capable of being remedied) fails to remedy such breach within 7 days after notice requiring the same; or performance by CAV is prevented by Force Majeure; or CAV or the Customer is unable to obtain insurance for Equipment and CAV's personnel on terms (including insurance premium) to CAV's satisfaction.
- 11.3 Upon termination, all sums due under this Agreement shall become immediately payable by the Customer and in the case of a Dry Hire the Customer shall no longer be in possession of Equipment with CAV's consent and (without prejudice to the Customer's obligations and other rights and remedies of CAV) the Customer shall at the Customer's expense return Equipment to CAV in good working condition (fair wear and tear expected) and in default CAV may forthwith without notice repossess Equipment and all costs and expenses (including without limitation) any legal costs and expenses incurred by CAV in locating repossessing or restoring Equipment shall be payable by the Customer.
- 11.4 Termination or cancellation shall not limit any other right or remedy of either party against the other under these terms or at law and all sums then owing to CAV by the Customer shall become immediately due and payable.
- 12. Confidentiality**
- 12.1 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.
- 13. General**
- 13.1 If the Customer is more than one person they shall be liable both individually and together.
- 13.2 The Contracts (Right of Third Parties) Act 1999 shall not apply to this Agreement and no person other than CAV and the Customer shall have any rights under or to enforce these terms.
- 13.3 Neither party shall assign or otherwise transfer any of its rights or obligations under this Agreement except that CAV may sub-contract all or any of its obligations to a competent third party.
- 13.4 Any typographical or clerical error or omission in documents issued by CAV may be corrected without liability on part of CAV.
- 13.5 Any notice under these terms 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 this Agreement or such other address as is notified for the purpose.
- 13.6 Delay shall not prevent CAV enforcing any provision of this Agreement. Any waiver of a breach of this Agreement shall not operate as a waiver of a later breach of the same or any other provision.
- 13.7 If any provision of this Agreement is held to be invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected.
- 13.8 Headings in this Agreement are included for convenience only and shall not affect interpretation.
- 14. Governing Law and Jurisdiction**
- 14.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 14.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.

