

# AVT Terms and Conditions of Business

## 1. DEFINITIONS

In these terms and conditions unless the context otherwise requires the following terms shall have the following meanings and where the context permits the singular shall include the plural and vice versa:

- 1.1 "AVT" means AVT Ltd;
- 1.2 "Booking Order" means the order drawn up by AVT setting out the services to be provided to the Client;
- 1.3 "Client" means the person, firm or company commissioning AVT to provide the services and/or materials specified in the Booking Order;
- 1.4 "Client Items" mean items or materials of any nature, including software, supplied to AVT by the Client or the End User;
- 1.5 "Dry Hire Arrangement" means the provision of a service whereby AVT supplies the Equipment without the provision of a Technician;
- 1.6 "End User" means the person, firm or company who will use the services and/or materials specified in the Booking Order;
- 1.7 "Equipment" means the Equipment specified in the Booking Order to be supplied to the Client or End User;
- 1.8 "Materials" means all software, artwork, images, computer generated works or other works of any nature produced or created by AVT pursuant to the Booking Order;
- 1.9 "Method Statement" means the specification drawn up by AVT regarding health and safety at any location specified in the Booking Order;
- 1.10 "Services" mean the services to be provided to the Client or End User as specified in the Booking Order;
- 1.11 "Technician" means the employee, agent or sub-contractor of AVT provided by AVT to oversee the operation of the Equipment specified in the Booking Order;
- 1.12 "Terms" mean these terms and conditions;
- 1.13 "Wet Hire Arrangement" means the provision of a service whereby AVT supplies the Equipment specified in the Booking Order together with the provision of a Technician.

## 2. TERMS AND CONDITIONS

- 2.1 The Client agrees that the Terms will govern all work undertaken by AVT pursuant to the Booking Order save where expressly stated otherwise, either in the Booking Order or other document signed by both parties.
- 2.2 The headings in the Terms are inserted for clarification only and shall not affect the meaning or interpretation of the Terms.
- 2.3 Where the Client requests that the End User or other third party is invoiced for work to be undertaken by AVT confirmation must be provided by the End User or other third party and the Client will remain liable in the event of default by the End User or other third party.

## 3. CLIENT'S OBLIGATIONS

- 3.1 The Client is responsible for ensuring the accuracy of the content of the Booking Order. Any extra time or expense incurred as a result of changes requested by the Client or End User will be chargeable to the Client.
- 3.2 The Client shall, in each case insofar as is reasonably necessary to enable AVT to effectively carry out its obligations pursuant to the Booking Order:
  - 3.2.1 ensure that its employees, independent contractors and, where appropriate, the End User co-operate with AVT, AVT's employees and contractors; and

- 3.2.2 promptly supply AVT with such information, content and documentation as required by AVT and in the event that the Client is late in supplying such information, content and/or documentation, the Client acknowledges that where possible any agreed dates for performance of any obligation and/or delivery will be adjusted accordingly and that in any event AVT will not be liable for any loss or damage caused by functionality errors, display issues, bugs, omissions or inability to deliver the Services resulting from the Client's default in providing information, content and/or documentation.
- 3.3 The Client shall be solely responsible for securing all necessary third party licences and consent required for the inclusion of any material, data or other information supplied to AVT for the purpose of incorporation within the Materials or for ensuring that such licences are secured.
- 3.4 Where appropriate, the Client shall be responsible for ensuring that all necessary certificates and profiles are in place for incorporation into any software created by AVT for the purpose of delivery of the Materials and/or Services.
- 3.5 The Client undertakes that it shall:
- 3.6.1 keep secure any passwords issued to the Client by AVT;
- 3.6.2 ensure that similar obligations regarding the security of passwords are imposed on the End User; and
- 3.6. will use best endeavours to ensure that material, data, software or other information provided to AVT in an electronic format is in a virus free condition.
- 3.6 While AVT endeavours to ensure that the Equipment supplied under a Dry Hire Arrangement is sound and in good working order and condition at the time of collection by or delivery to the Client or End User, the Client shall be responsible for inspecting or arranging for the inspection of the Equipment and ensuring that it is sound and in good working order before making any use of it, other than for the purpose of testing its condition. The Client shall notify AVT within 24 hours of delivery if the Equipment is found to be defective.
- 3.7 The Client undertakes that the Equipment will be used in a skillful and proper manner, that all necessary precautions shall be taken to ensure its safety and security, that it shall be kept in the possession of the Client or End User for the use of the Client or End User and that it shall not allow any lien or other encumbrance to be created in respect of the same. Furthermore, the Client undertakes that the outer case (if any) of the Equipment or any part thereof, including but not limited to any mechanism, nameplate, sign or serial numbers, shall not be opened nor interfered with in any way and that the Equipment shall not be exposed to excessive heat, water or fire and that it will be protected in all respects. The Client further undertakes that the Equipment shall not be repaired or modified in any way.
- 3.8 The Client accepts AVT's right to require that the Client or End User uses the services of a Technician at the cost of the Client and in such cases only the Technician may operate the Equipment, unless otherwise agreed
- 3.9 Unless otherwise agreed, the Equipment may not be used for any hazardous purpose nor taken outside the UK.
- 3.10 The Client undertakes that all Equipment will be returned to AVT by the time and to the place specified by AVT and in the same condition as when the Equipment was delivered to the Client or the End User and shall be liable for any and all loss or damage to the Equipment, subject to any limitations set out in Clause 5 below.
- 3.11 Where AVT is providing services at a venue arranged by the Client, End User or other third party, the Client shall be responsible for ensuring that all health and safety requirements are in place, including those specified in the Method Statement, and that proper arrangements are in place to provide access to all services required by AVT and to ensure the safety and security of Equipment, and AVT shall have no liability in respect of the cost of either the insurance or security arrangements.
- 4. COLLECTION AND DELIVERY**
- 4.1 At the Client's request, expense and sole risk, AVT may (at all times having absolute discretion as to whether or not it shall provide this service) arrange to dispatch or collect Client Items to or from an address specified by the Client provided that it shall be the Client's sole responsibility to arrange appropriate insurance in accordance with Clause 5 below.

- 4.2 AVT shall use all reasonable efforts to deliver the Materials in accordance with quoted times but any time quoted for delivery shall not be of the essence, unless otherwise specified in the Booking Order, and shall merely be an estimate. AVT shall not be liable for any loss or damage arising from late delivery, howsoever caused.
- 4.3 AVT will arrange for delivery of the Equipment in accordance with the instructions of the Client. Responsibility for the Equipment will pass to the Client on delivery of the same by AVT to either the Client or End User as instructed and until return of the same to AVT or the end of the period specified in the Booking Order.
- 4.4 Where Equipment is being provided under a Dry Hire Arrangement, it shall be the responsibility of the Client to return the Equipment to AVT on conclusion of the period specified in the Booking Order unless otherwise agreed. If AVT agrees to collect the Equipment on conclusion of the period the Client shall remain fully responsible for the safety of the Equipment until it is in the possession of AVT.

## **5. INSURANCE AND EXCLUSION OF LIABILITY**

- 5.1 The Client shall be responsible for ensuring that appropriate insurance arrangements are in place for Client Items which are forwarded to AVT, to include cover for their return to the Client or other addressee as appropriate. AVT accepts no liability for any damage caused to Client Items howsoever caused, whether by the default or negligence of AVT's staff, agents or sub-contractors or otherwise.
- 5.2 The Client shall be responsible for ensuring that appropriate insurance arrangements are in place for the Materials once these have been delivered to the Client or End User.
- 5.3 Unless otherwise agreed between the parties, the Client shall be responsible for ensuring that appropriate insurance arrangements are in place for the Equipment and will advise AVT of such arrangements prior to delivery or collection of the Equipment, which should include all risks for the replacement value of the Equipment. The Client shall fully indemnify AVT in relation to any loss or damage to the Equipment.
- 5.4 Where AVT is providing Equipment under a Wet Hire Arrangement and has agreed to insure the same, the Client will be liable for an excess of £400 in respect of loss or damage to each item of Equipment.
- 5.5 AVT accepts no liability for failure to meet deadlines or for any loss or damage resulting from mechanical or electronic breakdown of Equipment, from illness or absence of AVT staff, agents or sub-contractors or any other circumstances or event beyond the reasonable control of AVT.
- 5.6 Except in the case of death or personal injury caused by AVT's negligence, AVT's aggregate maximum liability under or in connection with this Agreement, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, for any claim or number of claims shall in no event exceed the payment made by the Client to AVT.

## **6. FORCE MAJEURE**

AVT shall not be deemed to be in breach of this Agreement, or otherwise be liable to the Client or End User by reason of any failure or delay in the performance of its obligations under this Agreement to the extent that such failure or delay is due to circumstances beyond AVT's reasonable control including without limitation any strike, lock-out or other form of industrial action, war, terrorism, enemy hostilities, fire, flood or storm

## **7. CHARGES, PAYMENT TERMS AND CANCELLATION**

- 7.1 The Client shall pay the charges as set out in the Booking Order.
- 7.2 Unless otherwise agreed, invoices are payable by the date specified in the Booking Order. If the Client fails to pay the invoice in full by the due date the Client shall pay interest at the maximum rate permitted by the Late Payment of Commercial Debts (Interest) Act 1988 and reimburse AVT for all costs and expenses (including legal costs) incurred in the recovery of any monies due.
- 7.3 Any concession made by AVT to the Client concerning discounts or special rates will only apply if confirmed in writing by AVT. Any discounts or special rates are agreed conditional upon payment being made by the date specified in the Booking Order and failure to make payment within this period shall render the Client liable to make payment at the full rate shown.
- 7.4 Without prejudice to any right or remedy of AVT in the event of cancellation of an order, the Client will remain liable for the full value of the order.

## **8. CONFIDENTIALITY**

The Client shall treat all information concerning the business of AVT acquired by the Client during the course of doing business with AVT as confidential save that this clause shall not apply if and to the extent that the information (i) is now or shall subsequently enter into the public domain otherwise than as a consequence of an unauthorised disclosure by the Client or by any third party; or (ii) was rightfully and without restriction on disclosure or use known to the Client prior to the date of disclosure by AVT to the Client; or (iii) is required by law to be disclosed.

## **9. GENERAL LIEN**

AVT shall have a general lien on Client Items in AVT's possession for any sum due or to become due to AVT from the Client whether in respect of the Booking Order to which they relate or otherwise. AVT's general lien on Client's Items in its possession shall continue until all sums owed by the Client to AVT have been paid.

## **10. TERMINATION**

AVT may without incurring any liability whatsoever to the Client suspend all work relating to the Booking Order, including delivery of the Materials and/or Services and/or Equipment, in the event of default by the Client in making any payment due to AVT or if the Client (being an individual) dies or (being an individual or body corporate) becomes insolvent, makes or purports to make a general assignment for his/its creditors, is unable to pay his/its debts as they fall due, or an encumbrancer takes possession or a receiver, administrative receiver, trustee for creditors, or similar officer is appointed over all or any part of the undertaking, property or assets of the Client, or (where the Client is a body corporate) an order is made or an effective resolution is passed or a petition is presented for the winding up of the making of an administrative order in relation to the Client.

## **11. COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS**

11.1 The End User (and, where they are not the same, the Client on behalf of the End User) shall be granted an exclusive licence for the period specified in the Booking Order to use the Materials on payment in full of all invoices due to AVT. The exclusive licence granted pursuant to this clause 11.1 only allows the Materials to be used in the form in which they are supplied by AVT to the Client and for the purposes for which they are supplied, and does not permit any use to be made of individual elements for any purpose whatsoever by either the Client or the End User. The copyright in any software and source codes created or used by AVT in undertaking and delivering the Services will be owned by AVT.

11.2 All orders for work of any nature are accepted by AVT on the understanding that the Client warrants that AVT has the right to reproduce all material supplied by the Client or the End User and that AVT shall be indemnified by the Client against all claims, loss or damage arising from any breach by AVT of any third party rights in reproducing material provided by the Client or End User. AVT shall be entitled to require the End User to give a similar warranty in writing directly to AVT.

11.3 Copyright in the Materials will remain vested in AVT at all times and the licence to use the Materials will only arise once all invoices due to AVT have been paid in full unless otherwise agreed between the parties.

## **12. DATA PROTECTION**

12.1 The parties hereby acknowledge and agree that for the purposes of the Data Protection Act 1998 (the "DPA") AVT is a data processor and the Client and/or End User is the data controller of any personal data (as defined by the DPA) captured within software forming part of the Materials.

12.2 Each party shall comply with the provisions of the DPA in relation to its processing of any personal data captured within software forming part of the Materials.

## **13. AVT PERSONNEL**

The Client, will not, without prior consent in writing from AVT, within two years of using the services of AVT, employ or procure or attempt to procure directly or indirectly the employment of any personnel who have been in the employment of AVT and provided services to the Client and/or the End User.

**14. GOVERNING LAW AND JURISDICTION**

The Terms shall be construed in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the courts of England and Wales.