

Scanlite Visual Communications Ltd

Data House
Mowbray Drive
Blackpool
FY3 7UZ

www.scanlite.co.uk

Email sales@scanlite.co.uk

Telephone +44(0) 1253 302723

Fax +44 (0) 1253 300484



CONDITIONS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION:

The following terms as used herein shall have the meaning as stated: "**Commencement Date**" means the date on which the Hire Term begins, being the date stipulated in the Company's acknowledgment of order issued pursuant to clause 2.3, or such other date as may subsequently be agreed in writing with the Company; "**Company**" means Scanlite Visual Communications Limited; "**Conditions**" means these Conditions of Supply; "**Confidential Information**" means any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential; "**Contract**" means any contract between the Company and the Customer for the supply of any Goods and/or Services, incorporating these Conditions; "**Customer**" means any person, firm, company or other organisation who is the addressee of the Company's quotation or acceptance of order issued by the Company and shall include any successor-in-title of the Customer and any company or entity arising (wholly or partly) by way of any merger, amalgamation, reorganisation or acquisition of the Customer; "**Deliverables**" means all documents, products and materials developed by the Company or its agents, subcontractors, consultants and employees in relation to the Services in any form, including, without limitation, computer programs, data, reports and specifications (including drafts); "**Delivery Point**" means the place where delivery of any Goods is to take place under clause 5; "**Equipment**" means any goods or materials (including but not limited to any Goods) in relation to which any maintenance services are to be performed; "**Goods**" means any goods or materials agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them), including any goods agreed to be supplied with, or in relation to, any Services; "**Hire Charge**" means the price for (the hire of) the Hire Goods, as applicable from time to time, calculated on a weekly basis and payable throughout the Hire Term; "**Hire Goods**" means any goods which the Company has agreed in the Contract to hire to the Customer (including any part or parts of them); "**Hire Term**" means the period between the Commencement Date and the Termination Date during which the Hire Goods are to be held by the Customer in return for payment of the Hire Charge to the Company, subject to earlier termination of the Contract under clause 13; "**Input Material**" means any documents, plans, drawings, designs or other materials, and any data or other information provided by the Customer to the Company relating to the Goods and/or Services; "**Intellectual Property Rights**" means any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered; "**Output Material**" means any documents, plans,

drawings, designs or other materials, and any data or other information provided by the Company to the Customer relating to the Goods and/or Services; **"Services"** means any services agreed in the Contract to be performed by the Company for the Customer (including any part or parts of them) including, but not limited to, any installation work to be undertaken in relation to any Goods and any maintenance work to be undertaken in relation to any Equipment; **"Site"** means the premises at which the delivery of any Goods and/or the performance of any Services shall take place, including, but not limited to, the Customer's place of business; **"Supplies"** means the Goods and/or the Services, depending on the context. **"Termination Date"** means the date on which the Hire Term ends, being the date stipulated in the Company's acknowledgment of order issued pursuant to clause 2.3, or such other date as may subsequently be agreed in writing with the Company, subject always to earlier termination of the Contract under clause 13. **"Working Hours"** means between 09.00 and 17.00 on Monday to Friday inclusive, excluding any public or bank holidays. All references to Goods shall include Hire Goods except where otherwise indicated. A reference to a clause is to a clause of these Conditions. Clause headings shall not affect the interpretation of these Conditions. Any reference to "parties" means the parties to the Contract and "party" shall be construed accordingly. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. Words in the singular include the plural and in the plural include the singular.

2. APPLICATION OF CONDITIONS AND DESCRIPTION OF GOODS AND SERVICES:

- 2.1 All quotations are made and all orders are accepted by the Company subject only to these Conditions of Supply, which shall prevail to the exclusion of any other terms including any conditions, warranties or representations written or oral, express or implied, even if contained in any of the Customer's documents which purport to provide that the Customer's own terms shall prevail. Any representations about any Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. Nothing in this clause 2.1 purports to exclude any liability for fraudulent misrepresentation.
- 2.2 Any quotation is given on the basis that no Contract shall come into existence until the Company accepts the Customer's order in accordance with the provisions of clause 2.3. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.3 The placing of an order following any quotation or other indication of price and delivery shall not be binding on the Company unless and until accepted by the Company in writing.
- 2.4 The Customer shall ensure that the terms of its order and any Input Material and/or any applicable specification are complete and accurate.
- 2.5 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.6 No order of the Customer may be cancelled by the Customer, except with the Company's express agreement and on such terms as the Company may require.
- 2.7 No order of the Customer may be varied, altered or deferred by the Customer, except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of such variation, alteration or deferment.
- 2.8 The Company reserves the right to charge the Customer for any Output Material provided to the Customer.
- 2.9 Any surplus fittings or materials shall remain the property of the Company and shall be returned to it.
- 2.10 The quantity and description of any Goods and/or Services shall be as set out in the Company's written acceptance of order.
- 2.11 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract and this is not a sale by sample.

- 2.12 The specification for the Goods shall be based upon standard contract specification, unless varied expressly in the Customer's order and accepted by the Company.
- 2.13 Unless otherwise agreed in advance by the Company in writing, the Customer shall be solely responsible for determining the accuracy of any measurements which may be required to be furnished to the Company in relation to the supply of any Goods.
- 2.14 The Customer will be liable for any additional costs, charges or expenses which arise from any conditions at the Site being at variance with any conditions perceived by or notified to the Company.
- 2.15 The Company has no obligation to accept any variation to the Contract requested by the Customer, whether by addition, substitution or omission (or, without limitation, to the Goods/and or Services to be provided under the Contract) and no such request shall be deemed to be accepted in the absence of the Company's written agreement to the variation.
- 2.16 Without prejudice to any of the provisions of clauses 2.7 or 2.15, any amendment to any specification supplied to the Company by or on behalf of the Customer which results in additional time or expense for the Company, or any time spent by the Company in fault finding or carrying out additional work either at the Customer's request or through any failure, omission, deficiency or delay directly or indirectly attributable to the Customer, shall in either event be fully chargeable at the Company's then-current rates (including but not limited to such rates that shall be chargeable for call-outs, time and materials).
- 2.17 If any Goods are to be manufactured, ordered, designed, built, configured, altered, adapted, or subjected to any process by or on behalf of the Company for the Customer and/or any Services are to be performed by the Company, in each case in accordance with any Input Material, specification or design submitted by the Customer, the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any patent, copyright, design, trade mark or any other intellectual property right of any other person resulting from the Company's use of any Input Material, specification or design so submitted.
- 2.18 The Customer shall ensure that any specification submitted by the Customer does not contravene any applicable safety or other statutory or regulatory requirement.

3. OBLIGATIONS OF THE CUSTOMER:

- 3.1 The Customer shall:
- (a) be responsible for preparing and maintaining any relevant part of the Site for the performance of the Services and for reinstating any such part of the Site and undertaking any required making good and clean-up work once performance of the Services has been completed;
 - (b) ensure that conditions at the Site are suitable for the performance of the Services and that any relevant thing required to perform the Services thereon is available and in good working order (for the avoidance of doubt, the Company shall not be required to undertake any survey of the Site although the Company may opt to do so);
 - (c) if requested to do so by the Company and without charge, provide facilities at the Site for the off-loading and storage of the Goods and the Company's tools and equipment in a readily accessible and secure storage area protected from theft and damage and shall be solely responsible for the safekeeping of the Goods and the Company's tools and equipment whilst the same are stored at the Site;
 - (d) take all steps to ensure the health and safety of the personnel of the Company whilst they are in attendance at the Site in connection with the performance of the Services and be solely responsible for ensuring the safety of any and all persons who are or may be present at the Site during the performance of the Services, including but not limited to restricting access to those areas of the Site where the Services are or are to be performed to those individuals engaged in performing the Services, or providing assistance to those so engaged;
 - (e) provide prompt and unobstructed access to and egress from the Site;

- (f) inform the Company of any unusual layout, composition or construction of the Site or its parts and for reporting any unusual conditions or obstacles to the performance of the Services at the Site to the Company;
- (g) notify the Company of any special properties of, or requirements of the Customer in relation to, any surfaces, fixtures or fittings at the Site, as the Company shall not be liable for any damage resulting directly or indirectly from the installation of any Goods to the Customer's property, fixtures or fittings, including but not limited to damage caused by the drilling of walls, tiles, glass or other surfaces, the removal of fixtures and fittings whether obsolete or not, or for damage to porous or any other materials;
- (h) ensure that any materials and/or surfaces upon which the Services are to be performed comply with any tolerances required by the Company and are of adequate strength to withstand any work undertaken on them by the Company and to support the Goods and the maximum loads to be imposed on the Goods;
- (i) at all times during the performance of the Services ensure, insofar as it is reasonably practicable to do so, that other trades or operations are not undertaken on that part of the Site where the performance of the Services is to take place, so as to ensure that the Services can be performed in one continuous, uninterrupted operation during Working Hours;
- (j) unless otherwise agreed by the Company in writing, ensure that the Goods are connected to isolated power supplies no further than 1.5m from the Goods (information regarding the amount of available power and its rating must be provided to the Company prior to installation, failing which the Company may not install the Goods on the agreed date for installation and a further charge will be made for re-installation or re-commissioning);
- (k) be responsible at its own cost (other than for statutory obligations placed solely on the Company) for obtaining all consents, permissions, easements and licences necessary for the performance of the Services in accordance with these Conditions and for conforming with all Statutes and Orders, Regulations and Bye-Laws which are applicable at any time to the Services and shall indemnify and keep indemnified the Company against any actions, proceedings, costs, charges, claims or demands arising out of or in connection with any breach of this clause 3.1 (j);
- (l) provide the Company with all information, co-operation and support that may be required to enable the Company to carry out its obligations to the Customer; and
- (m) effect and maintain appropriate insurance at the Site on an all risks basis and in an adequate amount.

3.2 The Customer shall not, without the prior written consent of the Company, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf), at any time from the date of first provision of the Services to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.

3.3 Any consent given by the Company in accordance with clause 3.2 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.

3.4 The Customer hereby agrees that with respect to any Hire Goods, it shall:

- (a) take reasonable care of the Hire Goods and use them only for their intended and proper purpose in a safe and correct manner;
- (b) comply with all directions given by the Company or in any accompanying instructions as to the use and where applicable, operation, installation, and/or removal of the Hire Goods and the Customer shall be liable for any damage or deterioration (fair wear and tear excepted) resulting from any failure so to comply;
- (c) take adequate and proper measures to protect the Hire Goods from damage and other risks;

- (d) insure the Hire Goods on such terms as the Company may require, the proceeds of such insurance to be held by the Customer in trust for the Company and to be paid to the Company on demand;
- (e) permit the Company at all reasonable times and upon reasonable notice to inspect, repair or replace the Hire Goods;
- (f) notify the Company immediately, following any loss of, damage or deterioration to, and/or breakdown of, the Hire Goods; and
- (g) protect the Hire Goods against distress, execution or seizure and keep the Hire Goods at all times under its control;
- (h) where the Hire Goods are to be operated, installed and/or removed by the Customer, ensure that any employees, agents or contractors that operate, install, and/or remove the Hire Goods are adequately and sufficiently qualified and trained to do so;
- (i) be responsible for and shall fully reimburse the Company for any and all expenses, costs, losses (including loss of Hire Charges) and/or damage incurred by or against the Company arising from any loss of, damage or deterioration to, and/or breakdown of the Hire Goods attributable to any act or omission of the Customer; and
- (j) indemnify and keep indemnified the Company against any and all losses, lost profits, damages, claims, costs, actions and any other losses and/or liabilities suffered by the Company and arising from or due to any breach of contract, tortious act and/or omission and/or any breach of statutory duty by the Customer.

3.5 The Customer hereby agrees that with respect to any Hire Goods, it shall not:

- (a) attempt to repair, maintain, alter or interfere with the Hire Goods without the prior written consent of the Company;
- (b) use, nor continue to use any Hire Goods in an unsafe or unsatisfactory state or environment, or where they have been damaged and will notify the Company immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person;
- (c) remove from, nor cover up, alter or deface any labels, names or proprietary marks on the Hire Goods;
- (d) affix any marking, or labelling on the Hire Goods without the Company's written consent;
- (e) attempt to sell, hire, assign, charge, pledge, or otherwise lend or dispose of the Hire Goods or any interest therein;
- (f) remove the Hire Goods from the Site, or from any subsequently authorised site, without the authority of the Company; or
- (g) without limitation, do or omit to do anything which the Customer has been notified may invalidate any policy of insurance related to the Hire Goods.

3.6 The Customer shall submit the Hire Goods to the Company at the Termination Date by making the Hire Goods available for collection by the Company or by returning the Hire Goods to the Company, pursuant to the provisions of clause 5.10. The Customer must notify the Company prior to the Termination Date if the Customer wishes to purchase the Hire Goods.

3.7 The Hire Goods must be submitted to the Company in good order and condition (fair wear and tear excepted) and in a clean condition.

3.8 If the Hire Goods are found by the Company to be in a damaged, unclean and/or defective state except where due to fair wear and tear, the Customer shall be liable to pay the Company for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire and to continue to pay the Hire Charge until such repairs and/or cleaning have been completed.

3.9 The Customer will incur additional costs and charges for any Hire Goods which are damaged beyond economic repair, up to and including the replacement cost of new Hire Goods at current market rates.

3.10 Without limiting any of the provisions of clause 3.9, the Customer shall pay the Hire Charge for the Hire Goods up to and including the date it notifies the Company that the Hire Goods have been damaged beyond economic repair. From that date until the Company has replaced such Hire Goods the Customer shall pay, as a genuine pre-estimate of lost profit, a sum as liquidated damages being

- equal to two thirds of the Hire Charge that would have applied for such Hire Goods for that period. The Company shall use its reasonable commercial endeavours to purchase replacements for such Hire Goods as quickly as possible.
- 3.11 Where the Company has agreed to undertake maintenance services for the Customer, the following clauses 3.12 to 3.23 shall govern the supply of maintenance services, without prejudice to the provisions of any other clause of these Conditions.
- 3.12 Preventative maintenance service visits to the Site shall be undertaken over such period of time and at such intervals as are indicated in the Company's written acceptance of order issued pursuant to clause 2.3.
- 3.13 Dates for performance of the preventative maintenance services shall be suggested by the Company to the Customer and mutually agreed in advance. The Company reserves the right to levy a re-scheduling charge should the Customer wish to change any agreed dates for performance of the preventative maintenance services less than 7 days prior to any date so agreed.
- 3.14 During the preventative maintenance visit, (or otherwise thereafter, where deemed appropriate by the Company), the Company shall check various aspects of the Equipment and replace or repair faulty Equipment (or faulty components of the Equipment).
- 3.15 The Company will provide reactive (call-out) maintenance cover in order to fix faults which may arise in relation to the Equipment. Reactive (call-out) maintenance cover will be provided at the times indicated in the Company's written acceptance of order issued pursuant to clause 2.3. Any response time indicated in the Company's written acceptance of order is an estimate only and time shall not be of the essence for performance of the maintenance services.
- 3.16 The charges payable for the maintenance services shall cover either (i) all labour costs, together with (ii) the cost of any parts required for replacement or repair, or (i), but not (ii), which shall be separately chargeable. The extent of coverage will be indicated in the Company's written acceptance of order issued pursuant to clause 2.3, which will also describe which particular maintenance services will be undertaken and whether the cost of consumables will be included.
- 3.17 The maintenance services shall be provided within Working Hours. If the Company has confirmed in the written acceptance of order issued pursuant to clause 2.3 that the maintenance services will also be provided outside Working Hours, the maintenance services will be provided during the hours stated in the written acceptance of order. The Customer may request the Company to provide the maintenance services outside Working Hours at any time, provided that the Company reserves the right in its sole discretion not to accede to the Customer's request. Where the Company agrees to the Customer's request, the Customer will be charged for the maintenance services provided pursuant to the Customer's request on a time and materials basis. All waiting time shall be chargeable.
- 3.18 The Customer warrants and undertakes to the Company that it is the owner or authorised user of the Equipment, that it has full power and authority to permit the Company to perform the maintenance services and the Customer undertakes to fully and promptly indemnify and hold the Company harmless against any loss or damage that the Company may suffer as a result of any breach by the Customer of this clause 3.18.
- 3.19 In order to be eligible for maintenance under the Contract, the Equipment must at all times be in a condition suitable for regular planned maintenance and if the Company, in its sole discretion, at any time deems the Equipment not to be in such a condition, the Company may, without liability to the Customer, refuse to undertake maintenance services in relation to the Equipment.
- 3.20 All defective parts removed from the Equipment by the Company shall become the property of the Company and their replacements shall become the property of the Customer.
- 3.21 The maintenance services shall not include:
- (a) any work, including but not limited to electrical work, in relation to anything which does not form a part of the Equipment; and
 - (b) any maintenance or repair work with respect to any modification of, or addition to, the Equipment, if any such modification or addition has been undertaken without the Company's prior consent; and

- (c) the repair of any damage to the Equipment caused by fire, water, frost, lightning, wind, damage in transit, burglary, vandalism, or explosion; and
- (d) the remedy of any defect resulting from any misuse of, neglect of, tampering with, or wilful or accidental damage to the Equipment, or from the utilisation of incorrect mains voltage with the Equipment where relevant, the attachment of the Equipment to any unsuitable or inappropriate devices or the use of defective or inappropriate supplies with the Equipment, or from any failure to follow any instructions contained in any operation or maintenance manual published for, or otherwise specified to be appropriate for use in conjunction with, the Equipment, or from any failure to follow any written or oral instructions of the Company, or from any failure to maintain a suitable environment for the Equipment at the Site where relevant, including but not limited to any failure to maintain a continuous power supply where required.

3.22 The Customer acknowledges that any variation in voltage +/- 230 volts by 10% will detrimentally affect the operation of the Equipment and all that power surges must be reported to the Company for investigation within 48 hours of their occurrence. The Customer shall be liable for the full cost of any repairs and/or call out charges which are directly or indirectly attributable to any failure to timely notify the Company regarding any power surge or change in supply voltage.

4. PRICE:

4.1 Prices for the Supplies, howsoever given, are based on conditions ruling on the date of their giving and are subject to change. The effective price for the Supplies shall be the price confirmed by the Company in its written notification of acceptance of the Customer's order pursuant to clause 2.3.

4.2 The Company reserves the right, by giving notice to the Customer at any time before delivery or provision of the Supplies, to increase the price of the Supplies to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, any increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Supplies which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate, accurate or complete information or instructions.

4.3 The Company shall be entitled to vary the Hire Charge from time to time by giving not less than 7 days' written notice to the Customer.

4.4 An additional Hire Charge shall be payable if the Company and the Customer agree to extend the Hire Term beyond the Termination Date. In any event, any retention of the Hire Goods beyond the Termination Date by or on behalf of the Customer shall require the Customer to continue to pay the Hire Charge for the entire duration of the period for which the Hire Goods are so retained, without limiting any other right or remedy available to the Company in such circumstances.

4.5 Unless otherwise stated, the price quoted will be exclusive of Value Added Tax which will be charged at the rate which is applicable at the date of dispatch of the Goods or commencement of performance of the Services.

4.6 Unless otherwise agreed in writing between the Customer and the Company, all prices for the supply of Goods are given by the Company on an ex works basis and the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.

4.7 The Company's time-based rates are calculated from the time of dispatch or departure from the Company's premises to the time of return thereto. A mileage charge is also charged, as applicable, to overtime rates and call out costs whether or not incurred in an emergency and will be applied based upon such rates and costs as are published by the Company from time to time.

4.8 Any waiver or reduction of any price will only be applicable if agreed by the Company in writing.

5. DELIVERY AND PERFORMANCE:

5.1 Whilst the Company will reasonably endeavour to provide the Supplies in accordance with the Customer's requirements, the Company will not be liable for any consequences of any delay in the provision of the Supplies, howsoever caused. Time of delivery of the Goods or performance of the Services shall not be of the essence of the Contract.

- 5.2 Unless otherwise agreed in writing by the Company, the delivery of the Goods and the performance of the Services shall take place at the Customer's place of business. Goods must be examined upon delivery for any and all signs of damage, shortage or failure to correspond to specification.
- 5.3 Unless otherwise agreed in writing by the Company, the Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading and loading the Goods.
- 5.4 If delivery involves difficult access to or at the Delivery Point and/or the Delivery Point is located at an unreasonable distance from any feasible vehicular access point, the Company reserves the right to levy an extra delivery charge.
- 5.5 The Company may deliver the Goods by separate instalments and perform the Services in separate tranches. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.6 Each instalment shall be a separate contract.
- 5.7 No cancellation or termination of any one contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.
- 5.8 Any deviation in the quantity of Goods delivered from that stated in the Contract to be delivered shall not permit the Customer to repudiate the Contract nor to claim damages under the Contract, but the Customer shall only be obliged to take delivery of and pay the price for the quantity of Goods actually delivered to the Customer.
- 5.9 If for any reason the Customer fails to accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, the Company will charge the Customer an abortive delivery charge and:
- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); or
 - (d) sell and/or hire the Goods and/or Hire Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale/hire of the Goods and/or Hire Goods), charge the Customer for any shortfall below the Charges for the Goods and/or Hire Goods.
- 5.10 Unless the Customer has been notified by the Company that the Customer shall return the Hire Goods to the Company's premises on the Termination Date, the Customer shall be responsible for making the Hire Goods available for collection by the Company on the Termination Date and the Customer shall pay to the Company in addition to the Hire Charge the cost of such collection at the Company's standard rates applicable from time to time.
- 6. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS:**
- 6.1 The Customer and the Company agree that in the course of the Company providing Goods and/or Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.
- 6.2 The Customer acknowledges the Company's ownership of any Intellectual Property Rights in any Deliverables and any Output Material and in any Goods and/or Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. Without limitation, the Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that, without limitation, any and all Intellectual Property Rights

developed by the Company in performing any Services or providing any Goods shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this clause 6.2.

7. PAYMENT:

- 7.1 Subject only to any special terms agreed in writing between the Company and the Customer, the Company shall be entitled to invoice the Customer for the price of the Supplies on or at any time after acceptance of the Customer's order.
- 7.2 Provided that the Customer has produced references which in the Company's opinion are satisfactory, then settlement terms will be net 28 days from the day after the invoice date. In all other cases payments shall be made in advance upon submission by the Company of a pro-forma invoice. The time of payment of the price shall be of the essence of the Contract.
- 7.3 All payments shall be made without any deduction, withholding or set-off.
- 7.4 Failure by the Customer to pay any invoice by its due date shall entitle the Company to: a) at its option, to charge interest at the rate of five percent (5%) per annum above HSBC Bank plc's base lending rate from time to time calculated on a daily basis (whether before or after any judgment) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); b) to charge the Customer with any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer; c) suspend any warranty for the Supplies or any other goods or services supplied by the Company to the Customer, whether or not they have been paid for; d) appropriate any payment made by the Customer to such of the Supplies as the Company may think fit; e) set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever; f) terminate the Contract, or suspend or cancel any future delivery of Goods and/or performance of Services; g) cancel any discount (if any) offered to the Customer; and h) if the Customer has an approved credit account, withdraw or reduce its credit limit or bring forward its due date for payment without notice. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.5 The Company shall retain a general lien on all goods and property of the Customer in its possession, exercisable in respect of all sums lawfully due from the Customer to the Company. The Company shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.
- 7.6 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8. FORCE MAJEURE:

The Company reserves the right to defer the date of provision of the Supplies, or to cancel the Contract or reduce the volume of the Supplies ordered by the Customer (without liability to the Customer) if it is prevented from, or delayed in, the carrying on of its business (wholly or in part) due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, or any inability or delay in obtaining supplies of adequate or suitable materials, or the failure or demise of any source of supply.

9. WARRANTY:

- 9.1 The Company will endeavour to transfer to the Customer the benefit of any manufacturer's warranty or guarantee given to the Company and the Company warrants (subject to the other provisions of these Conditions) that:
- (a) on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - (b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in its written acceptance of the Customer's order that it will supply Goods suitable for that purpose, then the Goods shall be reasonably fit for the purpose so stated; and

- (c) the Services will be performed with reasonable skill and care.
- 9.2 The Company's liability pursuant to clause 9.1 shall be limited: a) for Goods, to the replacement of any part of the Goods found to be defective and notified to the Company within the period set forth in clause 9.3 (or, if the claim is on any manufacturer's warranty, within the relevant manufacturer's warranty period); and b) for Services, to re-performing those Services found not to have been performed with reasonable skill and care and notified to the Company within the period set forth in clause 9.3.
- 9.3 Any defect or deficiency in, or malfunction or shortage or failure to correspond to specification of the Supplies shall be notified to the Company in writing within 7 days of the delivery date of the Goods; otherwise, the Supplies shall be deemed to be satisfactory and a charge will be made for additional rectification work.
- 9.4 The Company shall not be liable for any breach of any warranty in clause 9.1, if: a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect; b) the Customer modifies, adjusts, alters or repairs the Goods without the prior written consent of the Company; c) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; d) the defect arises from any specification supplied by the Customer, or from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse of the Goods or from any other cause which is not due to the neglect or default of the Company; e) the defect relates to electrical work or other work external to the Goods, or arises by virtue of any act or omission of the Customer relating to the operation of the Goods, or through transportation or relocation of the Goods not performed by, for or on behalf of the Company, or by subjecting the Goods to any unusual physical or other stress or adverse environmental conditions or by use of the Goods in excess of any performance or load-bearing specifications stated in the Company's catalogue or otherwise stated by the Company; f) the full price for the Supplies has not been paid by the time for payment stipulated in clause 7.2; g) the Customer is in breach of any of its obligations in clause 3, with respect to any Hire Goods; or h) the defect is of a type specifically excluded by the Company by notice in writing.
- 9.5 If upon investigation, the Company reasonably determines that any defect or deficiency in, or malfunction or shortage or failure to correspond to specification of the Supplies is a result of, or is excused by, any of the matters referred to in clause 9.4, the Customer shall be liable for all costs reasonably incurred by the Company in investigating the same and determining the cause.
- 9.6 Subject to and without limiting the generality of any of the provisions of this clause 9, (i) all Goods which are installed and/or commissioned by engineers trained by the Company are covered by a 12 month on-site warranty, details of which may be obtained from the Company upon request; and (ii) Goods which are not installed and/or commissioned by engineers trained by the Company are covered by a 12 month back-to-base warranty. All returns claims must be logged with the Company's maintenance department or emailed to maintenance@scanlite.co.uk in order to be evaluated by the Company.
- 9.7 Any Customer who is not an end user of the Goods (including but not limited to any reseller or agent) shall notify any third party purchaser of the Goods that: (i) the Goods are covered by a back-to-base warranty unless the Goods have been installed and/or commissioned by the Company's engineers; and (ii) that title to the Goods shall not pass until the Goods have been paid for in full by the Customer.
- 9.8 The return of any Goods other than by virtue of the provisions of clauses 9.2-9.6 shall be at the Company's discretion and shall require the Customer to pay a 15% administration fee and restocking charge.

10. EXCLUSION OF LIABILITY AND INDEMNITY:

- 10.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these Conditions;
 - (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and

- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 10.4 Subject to clause 10.2 and clause 10.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - (b) the Company shall not be liable to the Customer for loss of profits or anticipated savings, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 10.5 The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs 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 claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 11. CHANGES:**
- The Company reserves the right without prior approval from or notice to the Customer to make any changes in the specification of the Goods and/or Services which are required to conform to any applicable safety or other statutory or regulatory requirements or which, in the reasonable opinion of the Company, do not materially affect the specification of the Goods and/or Services.
- 12. RISK AND TITLE:**
- 12.1 The Goods are at the risk of the Customer from the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered the delivery of the Goods.
- 12.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full (including any interest or other sums payable) in cash or cleared funds (i) for the Goods and (ii) for any other goods or services that the Company has supplied to the Customer in respect of which payment has become due.
- 12.3 Until title to the Goods has passed to the Customer, the Customer shall: a) hold the Goods on a fiduciary basis as the Company's bailee; b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property; c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and indemnify the Company against all loss or damage of whatsoever nature affecting the Goods; e) notify the Company immediately if it becomes subject to any of the events listed in clause 12.5; f) not assign to any other person any rights arising from a sale of the Goods without the Company's written consent (and then only subject to a set of terms and conditions containing a Risk and Title clause which is at least as onerous as this clause 12); and g) give the Company such information relating to the Goods as the Company may require from time to time, but the Customer

may resell the Goods in the ordinary course of its business, provided that it shall hold the entire proceeds of any such resale upon trust for the Company until the Goods have been paid for in full and shall keep all such trust monies in a separate bank account in which such trust monies are not mingled with its own or any other monies.

12.4 Ownership of the Hire Goods shall remain at all times with the Company. Risk of damage to or loss of the Hire Goods shall pass back from the Customer to the Company:

- (a) in the case of Hire Goods to be collected by the Company, on delivery to the Company's carrier at the Site or such other site as may be specified by the Customer and approved by the Company; or
- (b) in the case of Hire Goods to be returned to the Company's premises by the Customer, at the time of delivery to the Company's premises.

12.5 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security, or the Customer ceases or threatens to cease to trade.

12.6 If:

- (a) the Customer is late in paying for the Goods; or
- (b) the Customer is late in paying for any other goods or services supplied by the Company; or if
- (c) before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 12.5 or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then

provided that the Goods have not been irrevocably incorporated into another product and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, the Company may enter any premises of the Customer or of any third party where the Goods are stored or kept in order to recover them. The Customer shall not keep the Goods at any premises other than such premises as shall be specified in writing by the Customer to the Company prior to the dispatch of Goods to the Customer, or at any premises at which the Customer does not have the right to grant access to the Company.

12.7 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

12.8 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 12 shall remain in effect.

13. TERMINATION:

- 13.1 The Contract may be terminated immediately by notice in writing:
- (a) by the Company if the Customer fails to pay the Contract price or any part thereof by the due date for payment;
 - (b) by either party if the other party is in material or continuing breach of any of its obligations under the Contract and fails to remedy the same (if capable of remedy) within a period of thirty (30) days after receiving written notice of the breach; or
 - (c) by either party if any of the events described in clause 12.5 occurs, or reasonably seems likely to be about to occur, in respect of the other party.
- 13.2 The right to terminate the Contract given by this clause 13 shall not prejudice any other right or remedy of either party against the other party in respect of the breach concerned, or any other breach.

14. NOTICES:

Any notice to be given by the Company under these Conditions shall be sent by first class or recorded delivery post to the Customer's registered office (in the case of a company) or (in case of an individual or a firm) to his or their last known address and any notice to be given to the Company shall be sent by first class or recorded delivery post to the Company's registered office. Any such notice shall be deemed to be given at the time when it would have been delivered in the normal course of events, unless it can be shown that it was not so delivered.

15. GENERAL:

- 15.1 No forbearance or indulgence granted by the Company to the Customer shall in any way limit the rights of the Company under these Conditions.
- 15.2 Neither the Company nor the Customer intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 15.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 15.4 The Customer shall not sub licence, assign or transfer in any way any of its rights or obligations under the Contract without the prior written consent of the Company, but the Company shall be entitled to assign, novate, sub - contract or transfer all of its rights and/or obligations hereunder.
- 15.5 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 15.6 Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society whose decision as to the type, qualifications and experience of such arbitrator shall be final and binding on the parties. The costs of the arbitrator shall be borne by the parties as he directs and his decision on the issue in dispute shall be final.
- 15.7 These Conditions shall be subject to and construed under English Law and the parties hereby submit to the exclusive jurisdiction of the English courts for that purpose.