

LITTLE YELLOW JACKET PRODUCTIONS LIMITED – TERMS OF BUSINESS

In these Terms of Business, "LYJ" means Little Yellow Jacket productions Limited and "Client" means any person, firm or company who requests, rents, hires and/or purchases equipment, services and/or consumables from LYJ.

1 APPLICATION OF THESE TERMS

1.1 These Terms of Business govern the supply of all equipment, services and consumables by LYJ. All other terms and conditions (including without limitation any terms and conditions of the Client) are excluded.

1.2 Any valid amendment or variation to these Terms of Business must be in writing and signed by a director of LYJ.

2 ORDERING FROM LYJ

2.1 The Client may order equipment, services and/or consumables either in writing (including email) or verbally, by telephone or in person. Where reasonably practicable, LYJ shall confirm orders in writing.

2.2 All orders for equipment, services and/or consumables shall be binding on the Client whether or not they are confirmed by LYJ.

2.3 LYJ shall not be responsible for any errors made (by either party) in connection with verbal orders.

2.4 LYJ shall be entitled to assume that any person placing and/or signing an order on behalf of the Client is authorised to do so.

2.5 LYJ reserves the right in its absolute discretion to refuse to accept any order.

2.6 Once an order has been accepted by LYJ, LYJ shall supply the equipment, services and/or consumables ordered in accordance with these Terms of Business.

3 CHARGES

3.1 All prices and hire charges shall be as quoted by LYJ or calculated by reference to LYJ's current price lists as applicable from time to time. All prices exclude delivery and VAT.

3.2 All quotations shall (subject to clause 3.3) remain valid for a period of 30 days from the date on which they are first given, provided that LYJ shall be entitled to vary any quotation if the Client's order differs from the requirements and specifications on which such quotation was based. The provision of a quotation by LYJ to the Client does not guarantee the availability of the equipment, consumables and/or services specified in such quotation, whether at the time of the quotation or at the time the Client wishes to place its order.

3.3 Prices and hire charges specified on LYJ's price lists from time to time and/or quotations provided by LYJ may be subject to change without warning where necessary due to any variations in LYJ's costs, such as third party supplier costs and/or labour costs.

3.4 Where hire charges include a charge for the provision of personnel, overtime rates may apply during certain hours or after certain periods of time, in accordance with LYJ's applicable price list(s). Travel, subsistence and accommodation expenses of LYJ personnel will be charged to the Client, in addition to applicable day rates and hire charges.

4 PAYMENT

4.1 If LYJ has accepted an application from the Client to open an account with LYJ (which decision shall be in LYJ's absolute discretion), the Client shall pay each invoice within 30 days of the invoice date. If the Client pays any invoice using a credit card, the Client shall be liable to pay an additional surcharge of 3% of the invoice amount. In the event of late payment of any invoice, LYJ reserves the right to withdraw credit facilities at any time without prior notice. LYJ reserves the right not to provide account facilities without disclosing a reason. Clients should be aware that account applications will be credit checked.

4.2 If the Client does not have an account with LYJ, the Client shall pay LYJ for all equipment, services and consumables as set out below. Payment may be made by cash, cheque or major credit or debit card:

4.2.1 hire charges for equipment, together with a deposit, must be paid in full prior to the commencement of the hire period. LYJ shall refund the deposit in full to the Client after the end of the hire period, except in the circumstances set out in clauses 11.23 and 11.31

4.2.2 Where payment is made by credit card over the telephone, due to the requirements of the credit card companies, items may not be collected by the Client but will be delivered to the Client by LYJ. Items that cannot be delivered electronically will be delivered by LYJ or its subcontractors, subject to an additional delivery charge; and

4.2.3 all consumables must be paid for at the time of ordering.

4.3 All sums payable to LYJ shall be payable in pounds sterling, in full, without deduction, withholding or set-off. All prices and delivery charges are quoted exclusive of VAT.

4.4 If the Client is overdue with any payment hereunder, then without prejudice to LYJ's other rights or remedies:

4.4.1 the Client shall be liable to pay interest on the overdue amount at an annual rate of 5% above the prevailing base rate of Lloyds TSB Bank plc, which interest shall accrue on a daily basis from the date payment becomes due until LYJ has received payment of the overdue amount together with all interest that has accrued;

4.4.2 the Client shall reimburse LYJ for any costs incurred by LYJ in taking steps to recover the overdue payment; and

4.4.3 LYJ shall have the right, at its option, to suspend delivery of any services and/or consumables and/or to require the Client to cease using equipment until full payment is received.

4.5 The Client shall be responsible for all customs and other duties and all related costs and expenses payable on any international transaction.

5 INTELLECTUAL PROPERTY RIGHTS

5.1 The Client warrants that no copyright or other intellectual property right (including without limitation moral rights) of any third party, now existent or hereafter created, will be infringed by virtue of:

5.1.1 the Client's use of LYJ's equipment;

5.1.2 any services to be carried out by LYJ at the request of the Client; or

5.1.3 the loading, storage, management, archiving, re-touching or manipulation of the Client's images and other data by LYJ.

5.2 Where the Client provides film, negatives, data, digital images and/or other materials to LYJ and requires LYJ to develop, process, manipulate and/or carry out other services in relation to the same, the Client warrants that the Client owns or controls all copyright and other intellectual property rights in such materials, or has obtained all necessary permissions, consents and waivers as are or will be required for the copying, processing, manipulation and other work to be undertaken by LYJ in relation to them. The Client hereby irrevocably licenses LYJ to do all such copying, processing, manipulation and other work as is necessary in performing, or ancillary to, the services requested by the Client.

5.3 The Client agrees to indemnify LYJ against all losses, damages, claims or expenses (including legal costs on an indemnity basis) which LYJ may incur by virtue of any breach of the warranties in clauses 5.1 or 5.2 or in the event of any claim (whether or not proceedings are issued) by any party against LYJ or its employees, agents or contractors, that any third party copyright or other intellectual property right (including without limitation moral rights) has been infringed by virtue of anything done by, on behalf of or at the request of the Client.

5.4 The Client warrants that no materials or data deposited with LYJ shall contain any material which is defamatory, blasphemous or obscene, or which is otherwise contrary to any applicable laws, regulations or codes of practice.

6 STORAGE AND DELIVERY OF DATA AND OTHER CLIENT MATERIALS – CLIENT'S RESPONSIBILITY TO INSURE

6.1 All film, negatives, digital data and other materials (including but not limited to any data or materials created by or on behalf of LYJ at the request of the Client) held by LYJ (whether online or otherwise) and all other materials belonging to the Client or any third party and provided to LYJ by the Client (for storage or otherwise) shall remain at the Client's risk at all times and the Client shall be responsible for insuring the same at its own expense. LYJ shall not be responsible for the future integrity of digital data, nor for any failure to retrieve data from LYJ's storage archive.

6.2 Where LYJ's services involve the creation of digital data then, at any time after the date falling 30 days after the completion of the shoot at which such digital data were created, provided that LYJ has provided the Client with at least one high resolution copy of the data and the Client has not, within 30 days of receipt of the same, expressly rejected such copy or copies for failure to comply with the Client's order, LYJ reserves the right to dispose of such digital data without seeking the prior approval of the Client. Where LYJ has agreed to store the Client's

digital data for a specific period of time, LYJ reserves the right to dispose of the digital data files after such specified period of time has elapsed, unless agreed otherwise with the Client in writing. Accordingly, the Client shall be solely responsible for ensuring that it holds adequate back-up copies of all digital data.

6.3 All property, valuables and equipment brought by the Client and its employees, agents and contractors to LYJ's premises shall remain at the Client's own risk and LYJ shall not be liable for any loss of or damage to such property, valuables and/or equipment.

Courier Service / Delivery

6.4 The Client must sign for delivered work, or LYJ will not be held responsible for any losses arising from the delivery.

6.5 Whilst LYJ will make every effort to collect the Client's materials and deliver work as quickly as possible, it will not be liable for any losses arising from delays in delivery or collection.

6.6 Where work is delivered digitally either by e-mail or by making it available online, LYJ will not be held responsible for any loss or corruption of or delay to the work caused by such digital delivery.

7 LIMITATION OF LIABILITY

7.1 LYJ's liability in respect of faulty hire equipment shall be limited to the adjustment, repair or replacement of such equipment and/or the refund of the applicable hire charges in accordance with clauses 11.20 to 11.22 and, for the avoidance of doubt, LYJ shall not be liable for the cost of retaking or reshooting any material which is not captured or is lost, or for any other costs or losses incurred by the Client, as a result of the equipment being faulty.

7.2 Subject to the provisions of this clause 7, LYJ's maximum aggregate liability under or in connection with any order shall not exceed the total sums payable by the Client to LYJ in connection with the relevant order.

7.3 Subject to clause 7.4, LYJ shall not be liable for any loss of income or profits, loss of contracts or for any indirect or consequential loss or damage of any kind howsoever arising.

7.4 Nothing in these Terms of Business shall exclude or in any way limit LYJ's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent that the same may not be excluded or limited as a matter of law.

7.5 Nothing in this Agreement will affect any consumer's statutory rights.

8 FORCE MAJEURE

8.1 LYJ shall not be liable for any delay in performing or failure to perform its obligations hereunder to the extent that such delay or failure results from any cause or circumstance beyond its reasonable control, including without limitation any inability of LYJ to secure labour, materials, supplies or transport, scarcity of fuel, power or components, breakdown of machinery, fire, storm, flood, acts of God, internet failure, war, civil disturbance, strikes, lockouts or industrial action (each an event of force majeure). If any event of force majeure occurs, the date(s) for performance of LYJ's affected obligation(s) shall be postponed for as long as is made necessary by the event of force majeure. If any event of force majeure continues for a period of or exceeding 60 days, the Client may cancel the affected order (or the affected part(s) of it) by written notice to LYJ.

9 GENERAL

9.1 LYJ reserves the right to change opening times.

9.2 Time shall not be of the essence with respect to the performance of any of LYJ's obligations hereunder.

9.3 The Client may not assign, sub-license or sub-contract any of its rights or obligations under these Terms of Business without the prior written consent of LYJ.

9.4 No person shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms of Business.

9.5 These Terms of Business constitute the entire agreement and understanding between the parties with respect to their subject matter and supersede any prior agreement, understanding or arrangement between the parties, whether oral or in writing, with respect to the same. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in communications between the parties except as set out in these Terms of Business. Neither party shall have any remedy in respect of any untrue statement made to it upon which it has relied (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in these Terms of Business.

10 INTERNET BASED SERVICES (INCLUDING LYJ ONLINE)

10.1 The uptime and accessibility of internet based services is not guaranteed. LYJ will not accept liability for any failure of any internet based services as a result of computer system failure, internet failure, software bugs, computer viruses, software or hardware breakdown, incompatibility of LYJ's internet based services with any third party software being used by the Client, or for any other reason outside of LYJ's reasonable control.

10.2 The Client shall be responsible for maintaining the confidentiality of all passwords for access to internet based services, and LYJ will not accept any liability for lost or stolen passwords, or for any unauthorised access to the Client's digital data held on any internet based service.

10.3 LYJ will not accept any liability to manage any data being stored by LYJ online, and it is the responsibility of the Client to manage, delete and archive such data from time to time. If the Client uses LYJ's internet based services to edit, retouch, and/or manipulate digital data, LYJ will not accept any liability for any resulting loss of digital data.

11 ADDITIONAL TERMS APPLICABLE TO THE HIRE OF EQUIPMENT

Hire Period

11.1 The hire period for equipment shall commence:

11.1.1 upon delivery to or collection by the Client of the equipment; or

11.1.2 where delivery or collection of the equipment is delayed due to any act or omission of the Client or due to LYJ's representatives being unable to gain access to the delivery address nominated by the Client, on the date on which delivery is first attempted or collection should have taken place, and shall continue for the period agreed between the parties when the Client ordered the equipment, unless terminated sooner by LYJ in accordance with clause 11.28 below.

11.2 The minimum hire period for equipment shall be one day.

11.3 Hire periods may be extended by agreement between the parties, subject always to the availability of the equipment and the Client's payment (or agreement to pay) all additional hire charges.

11.4 All hire periods and production schedules should include adequate provision for equipment set-up time.

11.5 Hire charges shall be payable for the entirety of the hire period, whether or not the relevant equipment is/are in use for the whole of such hire period.

Delivery of Equipment

11.6 The Client may collect equipment from LYJ or have it delivered by LYJ for an additional delivery charge.

11.7 Where LYJ has agreed to deliver equipment to the Client, equipment shall be delivered to the delivery address specified by the Client. If LYJ's representative(s) is/are unable to gain access to the delivery address and/or if delivery is delayed due to any act or omission of the Client, the Client shall be responsible for any additional delivery costs incurred by LYJ as a result of rearranging delivery and shall pay hire charges as if the delivery of the equipment had not been so delayed.

11.8 Title to all equipment shall remain with LYJ (or LYJ's licensors) at all times and, save for the right to use such equipment during the agreed hire period, the Client shall acquire no right, title or interest in or to the same.

11.9 Immediately upon receipt or collection of any equipment, the Client shall inspect and satisfy itself as to its condition. If the Client fails to notify LYJ, promptly after receipt or collection, of any defect in or problem with the equipment and/or if the Client starts to use the equipment, the Client shall be deemed to have confirmed that the equipment is in a satisfactory condition upon delivery or collection.

Damage Waiver

11.10 Risk in all equipment shall pass to the Client upon delivery to or collection by the Client. The Client shall be responsible, for the duration of the hire period, for the cost of insuring all hired equipment.

- 11.11 Unless the Client agrees to insure the equipment in accordance with clause 11.14 below, the Client shall be charged, in addition to the hire charges, a "Damage Waiver" fee of 15% of the total applicable hire charges. The following Damage Waiver terms will then apply in the event of damage to or loss of the equipment:
- 11.11.1 Geographical Limits - Europe, subject to prior declaration of where the equipment is to be taken;
- 11.11.2 Maximum hire period - two months, longer subject to negotiation;
- 11.11.3 Excess - first £250 each and every loss, for which the Client shall be responsible;
- 11.11.4 **Exclusions**
- (a) damage caused by corrosion, excessive heat, dampness or physical mistreatment;
 - (b) damage occasioned by or resulting from nationalisation, confiscation, requisition, seizure or destruction by the government or any public authority;
 - (c) property damaged as a result of its undergoing any process including testing, repairing, adjusting, servicing or maintenance operation;
 - (d) damage arising from:
 - riot or civil commotion occurring elsewhere than in the United Kingdom, the Channel Islands or the Isle of Man;
 - breakage of flash tubes and/or bulbs;
 - (e) damage to glass and other fragile or brittle articles unless such damage is caused by fire, theft or as a result of an accident to the vehicle in which the article(s) is/are being transported;
 - (f) theft from unoccupied vehicles;
 - (g) damage to property carried on the outside of vehicles unless as a result of overturning or collision;
 - (h) damage or loss as a result of negligence;
 - (i) consequential loss of any description.
- 11.12 The Client acknowledges and accepts the above Damage Waiver terms and agrees that it shall not, for the duration of the hire period, do or omit to do any act or thing which would or may vitiate or invalidate the Damage Waiver terms and/or jeopardise the prospect of a successful claim in respect of any loss of or damage to the equipment.
- 11.13 Where LYJ incurs loss, damage or expense as a result of loss of or damage to the equipment during the hire period, and such loss, damage or expense is not recoverable under the Damage Waiver, the Client shall be liable for and shall indemnify LYJ against such loss, damage or expense. Any loss must be reported to the local police within 24 hours.
- 11.14 Where the Client has agreed to arrange insurance for the equipment, the Client shall keep the equipment insured against loss or damage throughout the hire period for all risks including theft. Such insurance shall be with a reputable insurance company, shall be for the full replacement value (as new) of the equipment, shall be free from restriction or excess and shall be in the joint names of LYJ and the Client. The Client shall produce to LYJ on demand a copy of a current insurance policy in respect of the equipment in accordance with this clause 11.14 (together with a receipt for the last premium paid).
- 11.15 Where the Client has arranged insurance under clause 11.14, the Client shall be liable for and shall indemnify LYJ against any and all losses, damages or expenses incurred by LYJ which arise out of or in connection with any loss of or damage to the equipment caused during the hire period (fair wear and tear excepted), including without limitation:
- 11.15.1 any loss of rental income resulting from such loss or damage, up to maximum of 13 weeks' hire charges; and
- 11.15.2 the lesser of (1) the full replacement cost of the equipment and (2) the cost of reinstating the equipment to satisfactory and operational condition.
- 11.16 Within 24 hours of becoming aware of any occurrence which will or may give rise to a Damage Waiver claim, or a claim under the Client's insurance, in relation to the equipment, the Client shall give written notice to LYJ of such occurrence.
- 11.17 LYJ reserves the right to terminate usage of any equipment if LYJ considers that its employees, agents, contractors or equipment would or may be put at risk if such usage were to continue, for example in adverse weather conditions. In these circumstances, hire charges shall remain payable by the Client in full.
- Customer's Obligations**
- 11.18 During the hire period, the Client shall:
- 11.18.1 keep all hire equipment in its custody and control and shall not sell, loan, assign, pledge, encumber or part with possession of or suffer a lien to be created over the equipment or any part thereof (unless otherwise agreed in writing by LYJ);
- 11.18.2 ensure that all equipment is used in a skilful and proper manner by persons having the appropriate qualifications and experience who are familiar with the equipment; and
- 11.18.3 take proper care of all equipment and ensure that it is properly stored and protected from interference, deterioration and/or damage from any source.
- Replacement and Repairs of Hire Equipment**
- 11.19 The Client shall at all reasonable times allow LYJ and its representatives access to hire equipment in order to inspect, test, adjust, repair, alter or replace the same.
- 11.20 If at any time during the hire period any hire equipment requires adjustment, repair or replacement then:
- 11.20.1 the Client shall not, and shall not permit any third party to, adjust, repair, alter or replace the equipment but shall forthwith give notice of such requirement to LYJ; and
- 11.20.2 LYJ shall either carry out the necessary adjustment or repair at the Client's premises or, at LYJ's discretion, shall arrange for the removal of the equipment (or the relevant part(s) thereof) to LYJ's premises for such purpose.
- 11.21 If LYJ removes any hire equipment for adjustment or repair, LYJ may, at its option:
- 11.21.1 adjust, repair and redeliver the relevant equipment;
- 11.21.2 terminate the hire period forthwith in relation to the relevant equipment by giving notice to the Client, in which case LYJ shall refund to the Client any part of any hire charges paid by the Client in respect of the relevant equipment that relates to the unexpired part of the hire period; or
- 11.21.3 replace the relevant equipment, in which case the replacement equipment shall be deemed to have been included in the equipment delivered to or collected by the Client at the start of the hire period.
- 11.22 If LYJ adjusts, repairs or substitutes the equipment pursuant to clause 11.21.1, LYJ may at its option vary the hire charges with effect from the date of completion of such adjustments or repairs, or from delivery of such replacement equipment, and may invoice the Client for any additional hire charges payable.
- 11.23 If any equipment requires adjustment, repair or replacement due to any act or omission of the Client and/or due to any failure of the Client to comply with these Terms of Business, LYJ shall be entitled to retain any deposit paid by the Client in respect of the equipment and the Client shall be liable for all costs incurred by LYJ in carrying out such adjustment, repair or replacement (including without limitation the costs of inspecting, loading, unloading, transporting and testing such equipment), to the extent not covered by the amount of the deposit.
- Extension of hire Periods/Cancellation of Hire**
- 11.24 We will do our best to extend hire periods providing sufficient notice is given.
- 11.25 If notice is given within 24 hours of agreed time, a penalty equivalent to 100% of one days hire cost will be levied.
- 11.26 If no notice is given to cancel the hire; then a penalty equal to double the daily rate will be made to the hirer's account.
- 11.27 If no notice is given with respect to extending the hire period then a penalty equal to double the daily rate will be applied to each day beyond the agreed hire period.
- Termination of Hire Period**
- 11.28 LYJ may terminate any hire period immediately on notice to the Client in the event of any material breach of these Terms of Business by the Client (including without limitation any failure to pay any hire charges when due) and/or if the Client uses any equipment in any way which is unlawful and/or would cause damage to the equipment or any part of them and/or would or might bring LYJ into disrepute.
- 11.29 Upon termination or expiry of the hire period, the Client shall:
- 11.29.1 allow LYJ or its authorised representatives and/or contractors, at a time agreed with LYJ, to enter onto the premises at which all hire equipment is being used or stored (the "Collection Address") for the purposes of collecting the equipment. If LYJ's representatives or contractors are unable to gain access to the Collection Address for the purposes of such collection and/or if collection is delayed due to any act or omission of the Client, the Client shall be responsible for any additional costs incurred by LYJ as a result and shall pay hire charges until the eventual collection of the equipment; or
- 11.29.2 Immediately at its own expense return all equipment to an address nominated by LYJ. If the Client fails to return all equipment in accordance with this clause 11.29.2, LYJ shall be entitled to enter the Collection Address for the purpose of removing such equipment and the Client hereby grants LYJ an irrevocable licence for LYJ's representatives and/or contractors to enter the Collection Address for such purpose; and
- Return of Equipment: Loss / Damage**
- 11.30 The Client shall be responsible for returning all hire equipment at the end of the hire period in the condition in which it was delivered to or collected by the Client (subject to fair wear and tear).
- 11.31 If any equipment is returned damaged, or if equipment is lost and not returned at the end of the hire period, LYJ shall be entitled to retain any deposit paid by the Client in respect of the equipment and the Client shall be charged for the repair or replacement of the relevant equipment (to the extent not covered by the amount of the deposit) and for any loss of rental income incurred by LYJ as a result of such damage or loss, up to a maximum of 13 weeks' hire charges.
- 12 ADDITIONAL TERMS APPLICABLE TO THE SALE OF CONSUMABLES**
- 12.1 The Client may collect consumables from LYJ or have them delivered by LYJ for an additional delivery charge.
- 12.2 Title to all consumables shall pass to the Client upon receipt by LYJ of the full price payable for them or, if later, on the date on which the consumables are delivered to or collected by the Client.
- 12.3 If the Client fails to notify LYJ, within three days after collection or receipt, of any defect in or problem with consumables and/or if the Client makes any use of them, the Client shall be deemed to have accepted the Consumables as being in a satisfactory condition upon delivery or collection.
- 12.4 Consumables purchases are not refundable and not returnable unless they are faulty.