



NEP UK LIMITED

TERMS AND CONDITIONS OF SALE

1. Definitions

In this Agreement unless the context otherwise requires: the “**Agreement**” means these terms and conditions of sale, “**Charges**” means the fee for the Services as provided in clause 3; “**Client**” means any person, firm or body (whether incorporated or unincorporated) whose order for Services is accepted by the Company, subject to the terms of the Agreement, or the party otherwise commissioning the Services in each case as named on the Company’s invoice; “**Company**” means NEP UK Limited trading as NEP UK, a subsidiary of NEP Broadcasting LLC; “**Crew**” means any person or persons employed or engaged or chosen by the Company to operate and/or manage the Equipment; “**Equipment**” means any and all equipment including any Third Party Equipment (which shall include any additions, improvements, variations, modifications, alterations, replacement or renewals thereof) and vehicles, provided by the Company to the Client in connection with the provision of the Services. “**Services**” means the provision of Equipment and/or Crew and any other requested services (including the production of tapes) provided by the Company to the Client under the Agreement; “**Force Majeure**” means any circumstance not within a party’s reasonable control including, but not limited to, Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service; “**Order Confirmation**” means the Company’s confirmation of a Client order; “**Payment Date**” means twenty-eight (28) days after the final transmission or recording date for which the Services have been provided, or in all other cases such other date as is set out in writing by the Company; “**Start Date**” means the date when the Company commences any activity (other than simply agreeing the terms of a Client’s order) or incurs any costs relating to the provision of the Services; “**Third Party Equipment**” means those items of Equipment not owned by the Company and used in connection with the provision of the Services; and “**Venue**” means the location to or in which the Services will be provided as set out in the Company’s Order Confirmation.

2. Purchase Orders

- 2.1 The terms of the Agreement apply to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 A Client’s order for Services shall only be deemed to be accepted when the Company issues an Order Confirmation (or the Company accepts the Client’s order by some other act of acceptance or in its discretion waives any such requirement), at which point the Agreement shall come into existence.
- 2.3 Any quotation is given on the basis that no contract will come into existence until the Company dispatches an Order Confirmation, or the provisions of clause 2.2 otherwise apply.
- 2.4 If Client orders are signed for and on behalf of the Client by unauthorised personnel, all costs incurred by the Company will be passed onto the Client whether or not the requested services are required by the Client.

3. Rates of Charge

- 3.1 Charges for the Services shall be as stated in the Company’s Order Confirmation, as varied as the case may be, in accordance with this clause 3 and/or clause 4 below, provided that any extra Services or variations to the Order Confirmation which result in extra cost to the Company shall be chargeable in addition.
- 3.2 Any discounts agreed in the Company’s Order Confirmation may be forfeited at the Company’s discretion if payment is received after the Payment Date.
- 3.3 If between the time the Company issues the Order Confirmation and the time the order is fulfilled, the Company has suffered:
- in respect of the Crew or the Equipment an increase in the rates of pay or expenses or National Insurance contributions or other related payments pursuant to any new or any change to legislation or pursuant to any union agreement recognised by the Company; and/or
 - a material delay caused by the Client;

the Company reserves the right to increase the charges set out in the Order Confirmation by giving reasonable written notice of the circumstances giving rise to the increase.

- 3.4 Any variations to an Order Confirmation, which result in extra cost to the Company shall be chargeable in addition to the Charges.

4. Payment of Charges

- 4.1 If the Client does not hold a credit account with the Company it shall pay, at the Company’s absolute discretion, before the Start Date an advance payment for the provision of the Services which will be between 50% and 100% of the charges for such Services. Any balance shall become due on the Payment Date.
- 4.2 Where the Client holds a credit account with the Company the charges shall become due on the Payment Date.
- 4.3 The Client shall satisfy in full all its payment obligations to the Company without any deduction, discount, set off or abatement unless required by law.
- 4.4 If the Client fails to pay any sum due by the Payment Date then, without limiting any other right or remedy, the Company may: cancel or suspend provision of the Services to the Client under this or any other agreement between the parties; apply any payment made by the Client (notwithstanding any express instruction by the Client) towards the discharge of any sums due to the Company under this or any other agreement between the parties; and/or charge the Client interest (both before and after judgement) on the amount unpaid at the rate of 2% per month calculated on a daily basis until payment in full together with all costs, charges and expenses reasonably incurred by the Company (including legal fees) in recovering overdue amounts.
- 4.5 All sums due to the Company under this Agreement are exclusive of VAT (if applicable) or any other applicable tax which will be charged in addition in accordance with the relevant regulations in force at the time of making the relevant taxable supply.

5. Cancellation

- 5.1 Following the provision of an Order Confirmation by the Company, the Client may not cancel or terminate the Agreement except with the Company’s prior written consent and then only on terms that the Client indemnifies the Company in full against all loss (including, without limitation, the Company’s loss of profit and reimbursement of all costs (including Third Party Equipment costs)) incurred prior to or as a result of cancellation or termination of the Agreement.

6. Title

- 6.1 The Equipment is supplied on hire and therefore is and will at all times remain the property of the Company and the Client shall not sell, or offer for sale, rent, mortgage, charge, pledge, assign, underlet or otherwise deal with the Equipment or allow it to be taken or removed from its possession.
- 6.2 The Client will not remove, obliterate, deface or cover up the labels, plates or other marks on the Equipment indicating that the Equipment is the property of the Company without written permission from the Company and the Client will grant and/or procure that the Company has access to the Equipment for the purpose of affixing such labels, plates or other marks and keeping it in repair.

7. Risk and Insurance

- 7.1 The Equipment shall be at the risk of the Client from the time of delivery or, if earlier, delivery to Client’s carrier, until its return to the Company’s premises or, if earlier, possession is taken by the Company’s carrier.
- 7.2 The Client shall at its own expense insure the Equipment with an insurance company of repute : against all loss or damage (whether or not the Client’s or the Company’s fault) in an amount equal to its replacement cost new; and against liability for any continuing charges under Clause 3 until the earlier of: return of the Equipment to the Company in good working order and condition (fair wear and tear excepted) or (if not capable of economic repair) its replacement with equivalent new equipment; or receipt by the Company of payment in full of its replacement cost new and all other sums due hereunder.
- 7.3 The Client hereby irrevocably authorises the Company in name and on behalf of the Client to make any claims under the insurance in respect of loss of or damage to the Equipment; to settle or compromise such claims; and to receive and give good discharge to insurers for any moneys payable. The Client shall not do or allow to be done any act or thing whereby insurance of the Equipment may be invalidated.

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- 7.4. If Equipment is lost or damaged, Client shall notify the Company forthwith, assist in making appropriate claims under such insurance and not without the Company's consent settle or compromise any claim.
- 7.5. The Client will on request at any time produce to the Company the insurance policy and receipt for current premium. If the Client fails to keep the Equipment insured to the Company's satisfaction or to produce policy or receipt or if the Company so agrees in writing, the Company may insure the Equipment, in consideration of which the Client will pay the Company a further sum equal to the cost of that insurance.
- 7.6. The Company accepts no responsibility for loss or damage to any equipment or materials of the Client or any third party, which the Company may agree to store or transport, and any such equipment or materials shall at all times be at the Client's risk.
- 8. Services**
- 8.1. When the Client requests that the Company decides how the Services or any part of them are to be provided, the Company will use its reasonable endeavors to exercise such discretion with reasonable skill and care provided that the liability of the Company in respect of any losses, costs or expenses which arise as a result of such action shall be limited to the amount set out in clause 20 below.
- 8.2. The Company reserves the right to vary the Services as detailed in the Company's Order Confirmation (including but not limited to the specification of any Equipment to be provided) where it considers that such variations shall adequately meet the reasonable requirements of the Client.
- 8.3. The Client acknowledges that the Equipment was selected by the Client as suitable for its purpose.
- 9. Delivery**
- 9.1. The Company will only be obliged to provide the Services at the times and at the locations specified in the Company's Order Confirmation. If the Client wishes the Services to be provided at different times or different locations it shall immediately inform the Company in writing and if the Company agrees to the proposed variation it shall be entitled to levy reasonable charges in addition.
- 9.2. Under no circumstances will the Client cause or allow the Equipment to be removed to a location different to that specified in the Company's Order Confirmation except as provided in clause 9.1 above.
- 9.3. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of any Equipment and/or Crew or any other services that is caused by Force Majeure or the Client's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the provision of the Services or any other services.
- 10. Operation of Equipment**
- 10.1. The Client shall take all reasonable steps to safeguard the health, safety and welfare of the Crew while at the Venue, to safeguard the Equipment from theft, loss or damage and to give the Company adequate notice of any unusual risks. Without prejudice to the foregoing, the Client acknowledges that Company shall not be obliged to continue supply of the Services (and may take down all or any Equipment previously installed) where, in the Company's reasonable opinion, the installation poses a material risk to health and safety or to the Equipment.
- 10.2. Where a support structure is supplied by the Client, the Client shall ensure that the surface, on which the Equipment and structure will be installed, will be stable under load and that the structure will be fit for the purpose (taking account of prevailing wind speeds) and will comply with all health and safety and other relevant regulations. The Client shall provide the Company on request with copies of certificates of compliance and structural engineering calculations verifying the adequacy of the Client's structure. The Equipment dimensions and weights and representational drawings of structures are available on request from the Company but are approximate and representational only and do not obviate the need for the Client to obtain appropriate professional advice.
- 10.3. Save as agreed in writing between the Client and the Company the Equipment shall be used and operated only by the Crew.
- 10.4. If the Client requires that any person other than a member of the Crew operates or uses the Equipment, then the Client shall ensure that such person is suitably trained and qualified to operate the Equipment and shall be responsible for all losses, costs and expenses which arise from such person failing to exercise due skill and care in operating or using the Equipment.
- 11. Uses of Equipment**
- 11.1. The Client will make use of and operate the Equipment and will instruct or direct the Crew or any other authorised person to use and operate the Equipment only for the purpose for which it was designed in a proper manner and in accordance with any applicable statutory regulations which may from time to time be in force and will take such steps as are necessary to ensure that the Equipment will be safe and without risk to person or property.
- 11.2. The Client will observe, conform and comply with all rules, regulations and requirements relating to the production of films, television films, or television programmes made in or under or in pursuance of any Act of Parliament, statutory instrument or order or by any local or other authority or otherwise howsoever.
- 11.3. The Client will indemnify the Company in full for any loss or damage howsoever caused to any of the Equipment except when it is under the direct control of a member of the Crew.
- 12. The Client's Undertakings**
- 12.1. The Client undertakes to the Company that the Client shall:
- a. grant or procure access for the Company to and from the Venue at such times as the Company may reasonably require to discharge its obligations;
 - b. where applicable and unless otherwise agreed, provide free of charge within a reasonable distance of the operating position of the Equipment at the Venue: a video feed of the relevant format; an uninterrupted power supply terminated in an appropriate connection; and such other facilities as the Company may reasonably require.
 - c. where the Services are dependent on provision of equipment or services by the Client (or its contractor(s)), ensure that all such equipment and services are provided on time when required; the equipment is of adequate quality and specification and in good working order; and the services are provided by persons of adequate competence and experience using reasonable care and skill;
 - d. obtain all necessary licences and consents relating to the Venue and the communication or use by the Company of live or pre-recorded material;
 - e. if transit of the Equipment is arranged by the Client, arrange any necessary customs clearances, comply with all applicable import/export regulations and pay all related duties;
 - f. not permit the Equipment to be operated other than as agreed or by the Company's personnel nor open the outer case or otherwise interfere with the Equipment;
 - g. in event of an Equipment breakdown or malfunction, not attempt or arrange any repair without the Company's prior authorisation;
 - h. not to sell, sub-let or otherwise dispose of or part with the Equipment or any interest therein or do or permit to be done any act or thing which may prejudice or jeopardise the Company's rights in the Equipment but to keep the Equipment in its or the Company's possession and control free from lien, charge or encumbrance so that the Equipment shall at all times remain property of the Company or its legal owner;
 - i. to permit or procure for the Company or its agents access to any premises to inspect or remove the Equipment;
 - j. to notify the Company in writing of any change in Client's contact details and forthwith upon request to inform the Company of the location of Equipment;
 - k. notwithstanding termination of the Agreement, indemnify the Company and keep the Company fully and effectively indemnified against all liabilities whatsoever arising out of the operation and use of Equipment and any breach by Client of the Agreement (including without limitation loss, damage or injury caused by any negligent act or omission or wilful misconduct of the Client, its employees, agents or sub-contractors or any claim that any such use or communication of any material or content infringes any patent, copyright, trade mark, registered design, design right or other intellectual property right of any third party) and against all costs, claims, demands, expenses and liabilities incurred by the Company in connection therewith, provided such indemnity shall not extend to liability for the Company's negligence.
- 13. The Company's Undertakings**
- 13.1. The Company undertakes to the Client that the Company shall:
- a. use reasonable efforts to ensure the Equipment is in good working order on delivery and of satisfactory quality and will provide the Services using reasonable care and skill and in accordance with the Agreement; and

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- b. use reasonable endeavors to ensure that the Equipment is properly maintained.
- 14. Lien**
- 14.1 The Company shall be entitled to retain possession of and shall have a general lien upon all property or goods of the Client pending payment by the Client of all sums outstanding. Any property or goods of the Client held or stored by the Company will under such lien be entirely at the risk of the Client and the Company accepts no liability for their loss or damage.
- 14.2 Property or goods of the Client subject to such lien may be sold by the Company in satisfaction of the Client's debts to the Company upon giving the Client reasonable prior written notice.
- 14.3 The Company will only accept written instructions from the Client requiring the removal, disposal or any other dealing with the property or goods of the Client for the time being in the possession for the Company.
- 15. Withdrawal of Services**
- 15.1 If the Client fails to perform or observe any provision of this Agreement or does or allows any act or thing which in the reasonable opinion of the Company may jeopardise the safety of the Crew and/or of the Company's rights in the Equipment, the Company shall be entitled without liability to the Client to withdraw the Crew and/or Equipment notwithstanding that the agreement for the provision of Services has not been satisfied. The Company reserves the right to charge the Client for any costs and expenses incurred and/or for that part of the Services provided by the Company.
- 16. Faulty and Defective Equipment**
- 16.1 If the Client is deprived of the use of any part of the Equipment as a result of it being faulty or defective the Company will use its reasonable endeavors to provide substitute Equipment save where such faults or defects have arisen through:
- a. the Company following the Client's directions; and/or
- b. the Client, or those employed or chosen by the Client, incorrectly operating the Equipment.
- 16.2 The Company accepts no responsibility or liability for any loss of, or damage to recording media or for the value of the material recorded thereon as a result of any defect or failure in the Equipment or negligence on the part of the Crew.
- 17. Copyright**
- 17.1 The Client shall indemnify the Company against all costs, claims, expenses or damages or other liabilities incurred by the Company arising from any third party claims relating to defamation, copyright, royalties, performance fees or any other proprietary right or other claim arising out of or relating to any recording made by the Company for the Client under the Agreement or any use by anyone of such recording.
- 18. Confidentiality and Data Protection**
- 18.1 Each party undertakes that it shall not at any time during this agreement, and for a period of two (2) years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.2.
- 18.2 Each party may disclose the other party's confidential information:
- a. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 18.2; and
- b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 18.4 Both parties will comply with all applicable legislation regarding privacy, data protection, unsolicited communications, telecommunication and security.
- 19. Publicity**
- 19.1 The Company and the Client agree that the Company can, if it wishes, develop and distribute a communication to the media announcing the Agreement to use the Company's Services. The primary purpose of the announcement being to achieve press coverage in the target media. The Client agrees to cooperate with the development of the news announcement and the Company agrees to provide the Client with a draft of the news announcement for approval prior to distribution to the media. Written approval should be provided by the Client within three (3) days of receipt of the draft news announcement and said approval not to be withheld without reasonable cause. In the absence of any withholding of approval within this period, approval shall be deemed to have been granted. The Company agrees not to disclose any confidential and/or competitively sensitive information in the news announcement.
- 20. Limitation**
- 20.1 The Company shall have no liability unless the Client gives the Company details in writing of its claim within one year of the occurrence of the matter giving rise to the claim and then, subject to the remaining provisions of this clause 20 the aggregate liability of the Company shall be limited to the fullest extent permitted by law to the Charges in relation to the Services.
- 20.2 Apart from any liability to which the Company may be subject pursuant to the express terms of the Agreement, any liability of the Company arising under any other condition or warranty, express or implied, by statute or otherwise relating to the Services is, to the extent permitted by law, hereby expressly excluded.
- 20.3 Except in the case of death or personal injury or otherwise as required by law, and save as provided under clause 20.1, neither the Company nor any of its officers, servants or agents shall be liable, whether in contract, tort or otherwise, for any loss or damage of whatsoever nature (including consequential loss of any kind, including without limitation any economic loss or other loss of turnover, profits, business or goodwill) howsoever caused for any act or omission in connection with the provision of the Services.
- 20.4 The Company shall not be liable for any loss, cost, expenses or damage suffered by the Client as a result of Force Majeure.
- 21. Termination**
- 21.1 The Agreement shall forthwith at the Company's sole option terminate without notice if the Client (being an individual) dies or is subject to an interim order (within meaning of Insolvency Act 1986) or the presentation of a bankruptcy petition; or enters into any arrangement or composition with creditors; or (being a limited company) enters into compulsory or voluntary liquidation (not being for the purpose of reconstruction or amalgamation on terms previously approved by the Company in writing); or has a receiver appointed or a petition presented for an administration order; or has any distress, execution or other legal process made in respect of the Client's property; or if anything analogous to the foregoing under the laws of any jurisdiction occurs in relation to the Client.
- 21.2 The Company may terminate the Agreement forthwith by notice without liability to the Client if: the Client fails to pay in full any sum owing to the Company or any company affiliated to it on or by the Payment Date; the Client commits a breach of any other provision of this or any other agreement with the Company or any company affiliated to it and (if a breach capable of being remedied) fails to remedy such breach within seven (7) days after notice requiring the same; or performance by the Company is prevented by Force Majeure; or the Company or Client is unable to obtain insurance for Equipment and the Company's personnel on terms (including insurance premium) to the Company's satisfaction.
- 21.3 Upon termination, all sums due under the Agreement shall become immediately payable by the Client and (without prejudice to the Client's Obligations and other rights and remedies of the Company) the Client shall at the Client's expense return the Equipment to the Company in good working condition (fair wear and tear excepted) and in default the Company may forthwith without notice repossess the Equipment and all costs and expenses (including without limitation, any legal costs and expenses) incurred by the Company in locating, repossessing or restoring the Equipment shall be payable by the Client.
- 21.4 Termination or cancellation shall not limit any other right or remedy of either party against the other under the Agreement or at law and all sums then owing to the Company by the Client shall become immediately due and payable.
- 22. General**
- 22.1 If the Client is more than one person, they shall be liable both individually and together.
- 22.2 The Contracts (Right of Third Parties) Act 1999 shall not apply the Agreement and no person other than the Company and the Client shall have any rights under or to enforce these terms.
- 22.3 If any part of any provision of the Agreement is invalid or unenforceable, then the remainder of such provision and all other provisions of the Agreement shall remain valid and enforceable.
- 22.4 The Company shall be entitled to sub-contract the performance of any part of its obligations under the Agreement with the agreement of the

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Client (such agreement not to be unreasonably withheld.). The Company shall be responsible for the acts or omissions of its sub-contractors subject to the limitations and exclusions set out in the Agreement.

- 22.5 Any notice under or in connection with the Agreement shall be in writing and shall be delivered to the party due to receive the notice at its address set out in the Order Confirmation or such other address as either party may specify by notice in writing to the other.
- 22.6 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter. The Client confirms that it is not relying on any statements made by the Company in relation to the Services (except for those in writing and expressly stated as varying the Agreement) and that it shall have no rights or remedies relating to such statements save to the extent that they arise out of a fraud committed by the Company.
- 22.7 No neglect or delay by the Company in enforcing any of its rights pursuant to the Agreement (including, but without prejudice to the generality of the foregoing the Company's rights pursuant to clause 5) shall prejudice such rights or be construed as a waiver of such rights by the Company.
- 22.8 No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 22.9 The Agreement shall be read and construed in accordance with the laws of England, and in the event of dispute the Client will be subject to the non-exclusive jurisdiction of the Courts of England.