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STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF EQUIPMENT OR PROVISION OF SERVICES

1 IMPORTANT NOTICE

- 1.1 These Terms and Conditions apply to clients of Blond Productions, some of which/whom may qualify as consumers in terms of the Consumer Protection Act, No 68 of 2008, as amended, replaced or re-enacted from time to time ("Consumer Protection Act").
- 1.2 These Terms and Conditions contain provisions that appear in similar text and style to this clause 1 and which –
 - 1.2.1 may limit the risk or liability of Blond Productions; and/or
 - 1.2.2 may create risk or liability for the Client; and/or
 - 1.2.3 may compel the Client to indemnify Blond Productions; and/or
 - 1.2.4 serve as an acknowledgement and acceptance, by the Client, of a fact.
- 1.3 Your attention is drawn to these Terms and Conditions because they are important and should be carefully noted.
- 1.4 If there is any provision in these Terms and Conditions that you do not understand, it is your responsibility to ask Blond Productions to explain it to you before Accepting the Quotation.

2 INTERPRETATION

- 2.1 For the purpose of these Terms and Conditions, the following words and expressions shall have the following meanings assigned to them and cognate expressions shall bear corresponding meanings (unless the context indicates otherwise) –
 - 2.1.1 "Application Form" shall mean the written client information schedule or application form containing, *inter alia*, the particulars of the Client;
 - 2.1.2 "Blond Productions" shall mean Blond Productions Proprietary Limited, registration number 2019/510106/07, a company duly incorporated in the Republic of South Africa and trading as Blond Productions;
 - 2.1.3 "Client" shall mean the person listed in the Application Form and/or Quotation, contracting with Blond Productions for the supply of Equipment or provision of Services;
 - 2.1.4 "Equipment" shall mean the sound, lighting, audio-visual, staging, trussing, structure and/or ancillary equipment listed in the Quotation and rented to the Client by Blond Productions;
 - 2.1.5 "Equipment Rental Form" shall mean the written equipment rental form to be supplied by Blond Productions and signed by the Client on delivery and return of the Equipment;
 - 2.1.6 "Ex Works" shall have the meaning assignment to that term in the International Commercial Terms, 2010 published by the International Chamber of Commerce;
 - 2.1.7 "Intellectual Property Rights" shall mean all intellectual property rights of, and/or intellectual property protections afforded to, Blond Productions, including all patents, rights in inventions, rights in designs, trade marks, trade and business names and all associated goodwill, rights to sue for passing off or for unlawful competition, copyright, moral rights and related rights, domain names, rights in information (including know how and trade secrets) and all other similar or equivalent rights subsisting now or in the future in any part of the world, in each case whether registered or unregistered and including all applications for and renewals or extensions of, such rights for their full term, and "Intellectual Property" shall bear a corresponding meaning;
 - 2.1.8 "Parties" shall mean Blond Productions and the Client, and "Party" shall mean either one of them, depending on the context;
 - 2.1.9 "Prime Rate" shall mean the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 day year irrespective of whether or not the year is a leap year, from time to time published by Blond Productions' bankers as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to verify or prove;
 - 2.1.10 "Quotation" shall mean the written quotation provided to and Accepted by the Client for the supply of Equipment or provision of Services, and to which these Terms and Conditions are attached;
 - 2.1.11 "Services" shall mean the production and function management services listed in the Quotation and provided to the Client by Blond Productions, which may, in certain instances, include the supply of Equipment;

- 2.1.12 "Term" shall mean the period as indicated on the Quotation for the supply of Equipment or provision of Services; and
- 2.1.13 "Terms and Conditions" shall mean these standard terms and conditions for the supply of Equipment or provision of Services, as amended from time to time in accordance with clause 35 below.
- 2.2 In these Terms and Conditions –
 - 2.2.1 part, clause and sub-clause headings are for convenience only and are not to be used in its interpretation;
 - 2.2.2 an expression which denotes: (i) any gender includes the other genders; (ii) a natural person includes a juristic person and *vice versa*; and (iii) the singular includes the plural and *vice versa*;
 - 2.2.3 a reference to a consecutive series of 2 (two) or more clauses is deemed to be inclusive of both the first and last mentioned clauses;
 - 2.2.4 the words "include" and "including" (or any derivatives thereof) mean "include without limitation" and "including without limitation". The use of the words "include" and "including" (or any derivatives thereof) followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
 - 2.2.5 any reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday gazetted by the Government of the Republic of South Africa from time to time;
 - 2.2.6 "person" shall mean any person, company, close corporation, trust, partnership, or other entity whether or not having separate legal personality;
 - 2.2.7 "laws" shall mean all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and "law" shall have a similar meaning;
 - 2.2.8 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day, or, where the last day falls on a day that is not a business day, the next succeeding business day;
 - 2.2.9 any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in these Terms and Conditions, shall be given effect to as if it were a substantive provision in the body of the Terms and Conditions;
 - 2.2.10 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout these Terms and Conditions;
 - 2.2.11 a reference to any statutory enactment shall be construed as a reference to that enactment as at the date that these Terms and Conditions come into force and effect and as amended or substituted from time to time;
 - 2.2.12 the rule of construction that these Terms and Conditions shall be interpreted against the Party responsible for the drafting of the Terms and Conditions, shall not apply; and
 - 2.2.13 the use of any expression in these Terms and Conditions covering a process available under South African law, such as winding-up, shall, if either of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

3 INTRODUCTION

- 3.1 Blond Productions is in the business of supplying sound, lighting, audio-visual, staging, trussing and structure equipment, as well as providing production and function management services. As indicated in clause 2.1.11 above, there may be instances where the provision of Services shall include the supply of Equipment.
- 3.2 These Terms and Conditions have therefore been divided into 4 (four) parts, namely –
 - 3.2.1 Part 1: Terms and Conditions, Charges and Payment Terms;
 - 3.2.2 Part 2: Supply of Equipment;
 - 3.2.3 Part 3: Provision of Services; and

- 3.2.4 Part 4: General Legal Terms.
- 3.3 Where there is only the supply of Equipment, Parts 1, 2 and 4 shall apply.
- 3.4 Where there is only the provision of Services (in other words excluding the supply of Equipment), Parts 1, 3 and 4 shall apply.
- 3.5 Where there is the provision of Services which includes the supply of Equipment, all 4 (four) Parts shall apply (subject to the specific amendments thereto and/or clarification or confirmation in clause 18).

4 CONSUMER PROTECTION ACT

- 4.1 To the extent only that these Terms and Conditions are regulated by or subject to the Consumer Protection Act –
- 4.1.1 no provision of these Terms and Conditions is intended to contravene the applicable provisions of the Consumer Protection Act; and
- 4.1.2 all provisions of these Terms and Conditions shall be deemed to be qualified to the extent required in order to ensure compliance with the applicable provisions of the Consumer Protection Act and these Terms and Conditions must be interpreted and applied accordingly.
- 4.2 Nothing in these Terms and Conditions is intended or must be understood to unlawfully restrict, limit or avoid any right or obligation (as the case may be) created for either the Client or Blond Productions in terms of the Consumer Protection Act.

PART 1: TERMS AND CONDITIONS, CHARGES AND PAYMENT TERMS

5 CLIENT ENGAGEMENT AND TERMS AND CONDITIONS

- 5.1 Prior to the supply of Equipment or provision of Services, the Client shall be required to complete the Application Form. It is specifically recorded herein that the Application Form incorporates, by reference, these Terms and Conditions, and draws to the Client's attention that any supply of Equipment or provision of Services by Blond Productions is subject to, and shall be governed by, these Terms and Conditions.
- 5.2 Blond Productions shall provide the Client with the Quotation in respect of the supply of Equipment or provision of Services. The Quotation shall indicate the description of the Equipment or Services the Client wishes to utilise, as well as the Charges in respect thereof.
- 5.3 The Quotation shall be valid for a period of 7 (seven) days from the date on which it is issued by Blond Productions to the Client, where after the Quotation shall automatically lapse and be of no further force or effect whatsoever.
- 5.4 **The Client shall, in accepting the Quotation, sign the Quotation and fax and/or email such signed Quotation to Blond Productions, together with an order number, prior to the expiration of the aforesaid 7 (seven) day period, provided that Blond Productions shall be entitled, but not obliged, to accept a signed Quotation lodged after the aforesaid 7 (seven) day period, in which event, a contract for the supply of Equipment or provision of Services shall be formed in accordance with clause 5.7.**
- 5.5 Notwithstanding clauses 5.2 to 5.4, Blond Productions may, in its sole and absolute discretion and on a case-by-case basis, accept a verbal acceptance of a Quotation by the Client or an expression of intent (including any payment in terms of 6.3 or 6.4, or the Client continuing to engage Blond Productions in the supply of Equipment or the provision of Services) by the Client, and where such verbal acceptance or expression of intent is accepted by Blond Productions and Blond Productions supplies the Equipment or provides the Services, such will be deemed conclusive evidence of the Client's acceptance of these Terms and Conditions.
- 5.6 In the event that Blond Productions accepts such verbal acceptance of the Quotation or expression of intent in terms of clause 5.5, the Client shall be required to provide written acceptance of the Quotation within 7 (seven) days after such verbal acceptance or expression of intent, or such other period stipulated by Blond Productions. Failure to provide timeous written acceptance of a Quotation may result in the withdrawal or cancellation by Blond Productions of any order or Quotation without further notice to the Client (however, such failure shall not prejudice or detract from the Client's acceptance of these Terms and Conditions, as contemplated in clause 5.5). Should Blond Productions have incurred or become liable for any costs and expenses as a result of any verbal acceptance or expression of intent that is accepted the Client shall reimburse Blond Productions.
- 5.7 **A contract for the supply of Equipment or provision of Services shall be formed when the Client accepts the Quotation in accordance with the provisions of clause 5.4 or 5.5 above (however subject to clause 5.6) (herein defined as "Accepting" and "Acceptance").**
- 5.8 The Terms and Conditions shall come into force and effect on the date of Acceptance of the Quotation, and shall endure until all the obligations of the Client in terms these Terms and Conditions have been fully discharged (unless otherwise terminated in terms hereof).

- 5.9 Accordingly, the cancellation of the supply of Equipment or provision of Services, or expiration of the Term, shall not affect the provisions of these Terms and Conditions, which will remain binding on the Parties.
- 5.10 **Notwithstanding any other provision in these Terms and Conditions, either Party may, at any time, subject to the provisions of clause 7, cancel the supply of Equipment or provision of Services contemplated in these Terms and Conditions by giving the other Party –**
- 5.10.1 **1 (one) month's prior written notice, in the event that the Term is equal to or exceeds a period of 1 (one) month; or**
- 5.10.2 **10 (ten) business days' prior written notice, in the event that the Term is less than a period of 1 (one) month.**

6 CHARGES AND PAYMENT TERMS

- 6.1 The Equipment shall be supplied or the Services provided at the prices listed on Quotation ("Charges").
- 6.2 The Charges shall be in South African Rands and shall include value-added tax in terms of the Value-Added Tax Act, No 89 of 1991 ("VAT"), unless otherwise indicated, however excluding transportation and delivery charges referred to in clause 9.1 and other taxes (if applicable).
- 6.3 Notwithstanding the provisions of clause 6.6, the Charges shall become due and payable as follows –
- 6.3.1 50% (fifty percent) of the Charges, on Acceptance of the Quotation;
- 6.3.2 the remainder of the Charges, 24 (twenty four) hours prior to the event referenced in the Quotation,
- unless otherwise arranged between the Parties, and agreed in writing by Blond Productions.
- 6.4 Blond Productions may, however, at its sole and absolute discretion, call for the Client to pay a deposit of 100% (one hundred percent) of the Charges to Blond Productions on or before a specified date to be nominated by Blond Productions. The aforementioned deposit shall become due and payable on such specified date.
- 6.5 **The Charges shall be paid in South African Rands of immediately available and freely transferrable funds, and shall be free of any deductions or set-off whatsoever.**
- 6.6 Blond Productions shall, upon Acceptance of the Quotation, issue a tax invoice to the Client in respect of the supply of Equipment or provision of Services. The aforesaid invoice shall include the Charges, the quantity of Equipment to be supplied or the Services to be provided, VAT and all other charges payable by the Client.
- 6.7 Blond Productions shall be entitled to charge interest on all amounts due and owing by the Client to Blond Productions at the Prime Rate plus 2% (two percent), calculated daily in arrears from the date it falls due until the date of payment (both dates inclusive).
- 6.8 All payments made by the Client to Blond Productions shall, unless otherwise agreed by Blond Productions in writing, be allocated, to the extent relevant, first to costs, including all legal costs, then to interest, and finally towards the reduction of any outstanding amounts and charges.
- 6.9 **The Client acknowledges and accepts that Blond Productions shall be under no obligation to supply, or continue to supply, the Equipment, or provide, or continue to provide, the Services, to the Client should the Charges not have been paid by the Client to Blond Productions as contemplated in this clause 6.**

7 CANCELLATION CHARGES AND REFUNDS

- 7.1 If in the event that the Client cancels or terminates the supply of Equipment or provision of Services governed in terms of these Terms and Conditions prior to expiration of the Term, the following cancellation charges shall apply and shall become immediately due and payable by the Client to Blond Productions –
- 7.1.1 30 (thirty) days prior to the event referenced in the Quotation – 20% (twenty percent);
- 7.1.2 15 (fifteen) days prior to the event referenced in the Quotation – 50% (fifty percent);
- 7.1.3 72 (seventy two) hours prior to the event referenced in the Quotation – 100% (one hundred percent);
- 7.1.4 any time after the time set out in clause 7.1.3 above – 100% (one hundred percent).
- 7.2 **The Parties acknowledge and accepts that the cancellation charges in clause 7.1 are reasonable in the circumstances, and that they are based on the following factors taken into regard in the determination of same –**
- 7.2.1 **the Term;**
- 7.2.2 **the total amount of the Charges;**
- 7.2.3 **the nature of the Equipment or Services;**

- 7.2.4 **the length of notice of cancellation provided by the Client;**
- 7.2.5 **the reasonable potential for Blond Productions, acting diligently, to find an alternative client between the time of receiving the cancellation notice and the event referenced in the Quotation; and**
- 7.2.6 **the general practice of the industry in question.**
- 7.3 In the event that the Client cancels the supply of Equipment or the provision of Services prior to expiration of the Term, and should Blond Productions have received any payment from the Client in terms of clause 6, the Client shall be entitled to a refund of amounts paid by it in excess of the cancellation charge determined in accordance with the provisions of clause 7.1 (if any).

PART 2: SUPPLY OF EQUIPMENT

8 SUPPLY OF EQUIPMENT

The Client hereby appoints Blond Productions to supply the Equipment to the Client for the duration of the Term, and Blond Productions hereby accepts such appointment, subject to the provisions contained in these Terms and Conditions.

9 DELIVERY AND RETURN OF EQUIPMENT

- 9.1 The Charges shall exclude charges associated with the transportation and delivery of the Equipment by Blond Productions (including any insurance charges in respect thereof).
- 9.2 Generally, Blond Productions shall deliver the Equipment *Ex Works* (ie at the premises of Blond Productions) on the delivery date specified in the Quotation ("**Delivery Date**"). However, if the Client so requests and Blond Productions agrees, Blond Productions shall deliver the Equipment to the premises of the Client on the Delivery Date, and shall be entitled to levy such transportation and delivery charges as agreed upon between the Parties.
- 9.3 The Client shall, on both the delivery and return of the Equipment, sign the Equipment Rental Form.
- 9.4 **The Client shall inspect the Equipment on delivery of the Equipment, and shall, within a period of 5 (five) business days thereafter, give Blond Productions written notice of any defects in the Equipment. If the Client does not give notice to Blond Productions in terms of this clause 9.4, the Client shall be deemed to have accepted the condition of the Equipment and acknowledges and accepts that the Equipment is suitable for the purpose for which it is to be utilised.**
- 9.5 **If the Client fails to take delivery of the Equipment on the Delivery Date, then the risk shall pass from Blond Productions to the Client immediately on the Delivery Date, and Blond Productions shall be entitled to increase the Charges payable by the Client to the extent that the period the Equipment is supplied, has been prolonged. Furthermore, and in the event that Blond Productions delivers the Equipment to the Client's premises as agreed in terms of clause 9.2, the Client shall be responsible for any and all costs and expenses resulting from or incidental to such failure to take delivery on the Delivery Date (including holding or storage costs, insurance costs, cancellation costs for any loading equipment and costs relating to rental vehicles).**
- 9.6 Generally, the Equipment shall be returned by the Client to the premises of Blond Productions on the return date specified in the Equipment Rental Form ("**Return Date**"). However, if the Client so requests, and Blond Productions agrees, Blond Productions shall collect the Equipment from the premises of the Client on the Return Date, and shall be entitled to levy such transportation and collection charges as agreed upon between the Parties.
- 9.7 Should the Equipment be returned later than the Return Date, Blond Productions reserves the right to charge the Client additional charges for the supply of Equipment for such additional period, until the Equipment has been returned to Blond Productions.

10 INSTALLATION AND/OR COMMISSIONING OF EQUIPMENT

- 10.1 Blond Productions shall not be responsible for the installation and/or commissioning of the Equipment, unless the Client so requests, and Blond Productions agrees to provide such installation and/or commissioning services. In such event that the Parties agree to same, Blond Productions shall be entitled to levy such installation and/or commissioning charges as agreed upon between the Parties.
- 10.2 Nothing in this clause 10 shall be seen as prejudicing or detracting from the provisions set out in this Part 2.

11 MAINTENANCE OF EQUIPMENT

The Client shall –

- 11.1 keep and maintain the Equipment in good order and repair;
- 11.2 not use the Equipment for any purpose other than that for which it was designed and utilised; and

- 11.3 not alter or in any way tamper with the Equipment, **and acknowledges and accepts that only duly authorised representatives of Blond Productions are entitled to repair the Equipment.**

12 ACCESS TO EQUIPMENT

- 12.1 Blond Productions reserves the right of access to the Equipment at all reasonable times during the currency of these Terms and Conditions, either personally or through its appointed agents and/or representatives, for the purpose of inspecting and/or replacing any part or parts of the Equipment. Should the Equipment be located on premises which are not owned by Blond Productions, the Client undertakes to do all such things as may be necessary to enable Blond Productions to obtain access to the Equipment.
- 12.2 Where the Client intends moving and/or transporting the Equipment to premises unknown to Blond Productions, the Client shall be required to obtain the written consent of Blond Productions prior to such intended movement and/or transportation.

13 TITLE AND RISK

- 13.1 The Equipment is supplied by Blond Productions on the basis that it is rented by the Client.
- 13.2 Accordingly, title to, legal and beneficial ownership of and benefit in the Equipment vests, and shall at all times vest, in Blond Productions.
- 13.3 **The Client acknowledges and accepts that it shall not accrue any rights of ownership in terms of these Terms and Conditions, and that it shall not be entitled to dispose or encumber the Equipment in any way whatsoever, including encumbering the Equipment by way of a lease, lien, hypothec, mortgage, notarial bond or pledge.**
- 13.4 Subject to clause 9.5 and 14, the risk in and to the Equipment shall pass to the Client on delivery of the Equipment in accordance with clause 9. The Client therefore assumes the risk of any loss or theft of, or damage to, the Equipment in any way, caused by any reason whatsoever, on delivery of the Equipment in accordance with clause 9, and all such loss or theft of, or damage to, the Equipment shall be for the account of the Client.

14 LOSS OR THEFT OF, OR DAMAGE TO, THE EQUIPMENT

- 14.1 In the event of the Equipment or a separate part thereof, being lost, stolen or damaged in any way, and caused by any reason whatsoever, the Client shall immediately notify Blond Productions in writing of such event.
- 14.2 Notwithstanding the provisions of clause 29, should the Equipment be lost, stolen or damaged in any way, Blond Productions shall be entitled, without prejudice to any other rights it may have in law, to terminate the supply of Equipment forthwith; provided always that the Client shall be obliged to pay to Blond Productions the amounts which are advised by Blond Productions as being the cost of replacing and/or repairing the Equipment, within 7 (seven) days of written notification by Blond Productions.

PART 3: PROVISION OF SERVICES

15 PROVISION OF SERVICES

- 15.1 The Client hereby appoints Blond Productions to provide the Services to the Client for the duration of the Term, and Blond Productions hereby accepts such appointment, subject to the provisions contained in these Terms and Conditions.
- 15.2 Blond Productions shall use reasonable endeavours to provide the Services on the event date/s as set out in the Quotation ("**Event Dates**"), however, there may be unforeseen circumstances that will prevent the provision of the Services on or before such Event Dates. In such event, the provisions of clause 24 shall apply, *mutatis mutandis*.

16 VARIATION TO THE SCOPE OF SERVICES

Where there is an intended variation to the scope of Services, Blond Productions shall record the details of such variation (as well as any increase in Charges (if any) and payment terms in respect thereof) in a Quotation to be signed by a duly authorised representative of the Client. Any such variation to the scope of Services shall only be binding on the Parties once so recorded in the Quotation by Blond Productions, and signed by a duly authorised representative of the Client.

17 OVERTIME AND ANCILLARY CHARGES

- 17.1 Notwithstanding the provisions of clauses 6 and 16, Blond Productions reserves the right to charge the Client –
- 17.1.1 overtime; and
- 17.1.2 costs and expenses associated with transport, airfare, accommodation, meals and subsistence and travel allowances ("**Ancillary Charges**"),
- in the event that the scope of Services as stated in the Quotation are exceeded in the provision thereof.

17.2 Overtime shall generally be charged by Blond Productions at 1.5 (one point five) times the relevant hourly rates, and Ancillary Charges shall be charged at the actual costs and expenses incurred by Blond Productions. Where overtime is performed on a Sunday or a public holiday, overtime shall be charged by Blond Productions at double the relevant hourly rates.

17.3 All overtime and Ancillary Charges shall be included in the final tax invoice to be provided by Blond Productions to the Client.

18 SUPPLY OF EQUIPMENT

As noted in clause 3.1 above, there may be instances where the provision of Services includes the supply of Equipment. In such event, the provisions contained in Part 2 shall apply, subject to the following specific amendments thereto and/or clarification or confirmation to Parts 1 and 2 –

18.1 Blond Productions shall deliver the Equipment to the premises of the Client on the Delivery Date.

18.2 Blond Productions shall collect the Equipment from the premises of the Client on the Return Date.

18.3 The Client shall not be required to sign the Equipment Rental Form on delivery, or return, of the Equipment.

18.4 The charges associated with the transportation, delivery and collection of the Equipment by Blond Productions (including any insurance charges in respect thereof) shall be included in the Charges.

18.5 Blond Productions shall be responsible for the installation and/or commissioning of the Equipment.

18.6 The charges associated with the installation and/or commission of the Equipment by Blond Productions shall be included in the Charges.

18.7 Subject to clause 9.5 and 14, the risk in and to the Equipment shall pass to the Client on delivery of the Equipment in accordance with clause 18.1. The Client therefore assumes the risk of any loss or theft of, or damage to, the Equipment in any way, caused by any reason whatsoever, on delivery of the Equipment in accordance with clause 18.1, and all such loss or theft of, or damage to, the Equipment shall be for the account of the Client.

18.8 In the event of the Equipment or a separate part thereof, being lost, stolen or damaged in any way, and caused by any reason whatsoever, whilst the Client has assumed risk in and to the Equipment in terms of clause 18.7, the Client shall immediately notify Blond Productions in writing of such event.

18.9 Following the passing of risk in and to the Equipment to the Client in terms of clause 18.7, Blond Productions shall, however, assume the risk in and to the Equipment in respect of any loss or theft of, or damage occasioned to, the Equipment arising solely from the actual use of the Equipment by Blond Productions in the actual provision of Services.

PART 4: GENERAL LEGAL TERMS

19 CLIENT OBLIGATIONS

19.1 In addition to all other obligations of the Client as set out in these Terms and Conditions, the Client shall provide Blond Productions with all such information and assistance as Blond Productions may require from time to time to perform its obligations under these Terms and Conditions.

19.2 Notwithstanding any other term contained herein, Blond Productions will not be in breach of these Terms and Conditions to the extent its failure to perform or delay or defect in performance of its obligations under these Terms and Conditions arises as a result of –

19.2.1 any breach by the Client of its obligations contained herein;

19.2.2 Blond Productions relying on any information or guidance provided by the Client; or

19.2.3 Blond Productions complying with any instruction or request by the Client or one of its employees.

20 CERTIFICATE OF BALANCE

A certificate of balance signed by a manager or director of Blond Productions, or his/her delegate duly authorised thereto in writing (as the case may be), shall be –

20.1 **prima facie proof of the amount(s) plus interest and any costs, due at any time by the Client to Blond Productions; and**

20.2 **valid, together herewith, for any purpose and as a liquid document (alternatively as proof of a liquidated amount) in any court or forum of competent jurisdiction for the purpose of obtaining provisional sentence, summary judgment or any other judgment against the Client,**

and the Client acknowledges and accepts its indebtedness in respect of any amount so certified.

21 NON-SOLICITATION OF EMPLOYEES

The Client shall not, at any time during the Term or within 12 (twelve) months from the expiry or termination of these Terms and Conditions, solicit, undertake to engage, employ or utilise, in any capacity, the services of or introduce to another employer either temporarily or permanently, directly or indirectly, any employee, officer or director of Blond Productions, either as employee, agent, independent contractor or any other form of employment or engagement.

22 CONFIDENTIALITY

22.1 Subject to clause 22.2, each Party undertakes to keep confidential and not to disclose to any third party any and all information given by one Party to the other pursuant to and in respect of these Terms and Conditions.

22.2 Clause 22.1 shall not apply to information which is publicly known or becomes publicly known through no unauthorised act of the recipient Party, rightfully received by the recipient Party from a third party, required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the Party required to release the information provides the disclosing Party with prior notice of such disclosure (if possible), or the information is publicly disclosed with the disclosing Party's prior written consent.

23 INTELLECTUAL PROPERTY

23.1 The Client acknowledges and accepts that all right, title and interest in and to the Intellectual Property Rights vest, and shall at all times vest, in Blond Productions. The Client shall not at any time dispute the validity or enforceability of the Intellectual Property Rights or execute any act or do something which in any manner impairs or could impair such rights.

23.2 Furthermore, the Client shall not use in any manner any Intellectual Property without the prior written consent of Blond Productions. Should Blond Productions consent to the use of the Intellectual Property in terms of this clause 23.2, this shall not prejudice or detract from the provisions of clause 23.1.

24 FORCE MAJEURE

24.1 Should either Party be prevented or delayed from being able to perform an obligation under in terms of these Terms and Conditions, where such event would constitute *force majeure*, such as wars, insurrections, strikes, acts of God, governmental actions or controls, water restrictions or other causes beyond the control of a Party, then such failure shall not be regarded as a breach of its obligations in terms hereof provided that –

24.1.1 the Party hereto subject to *force majeure* shall give prompt notice to the other Party hereto of the nature and estimated duration of the *force majeure* concerned;

24.1.2 the Parties shall co-operate and collaborate together and use all reasonable efforts to overcome the *force majeure* concerned and/or nullify its effect;

24.1.3 any suspension of performance within the provisions of the above clauses shall be limited to the period during which such inability shall exist and the Term shall be interrupted by the period of such suspension.

24.2 If the inability referred to in clause 24.1 substantially or permanently prevents the continued performance by either Party of its obligations in terms of these Terms and Conditions for a period exceeding 10 (ten) consecutive days, then either Party shall be entitled, by giving notice in writing, to terminate the supply of Equipment or provision of Services in respect of any of its obligations still to be performed hereunder and these Terms and Conditions shall terminate 7 (seven) days after giving of such notice. The provisions of this clause 24.2 shall in no way prejudice Blond Productions' rights in terms of clauses 6 and 7 herein.

25 WARRANTIES, EXCLUSION OF LIABILITY AND INDEMNITY

25.1 **The Client hereby represents and warrants to and in favour of Blond Productions that –**

25.1.1 **it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to be bound by these Terms and Conditions;**

25.1.2 **these Terms and Conditions constitute an agreement valid and binding on it and enforceable against it in accordance with its terms;**

25.1.3 **the execution of the Application Form and/or Quotation, and the performance of its obligations in these Terms and Conditions, does not and shall not –**

25.1.3.1 **contravene any law or regulation to which the Client is subject;**

25.1.3.2 **contravene any provision of the Client's constitutional documents; or**

25.1.3.3 **conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and**

- 25.1.4 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in these Terms and Conditions;
- 25.1.5 it is entering into this contract for the supply of Equipment or provision of Services as principal (and not as agent or in any other capacity);
- 25.1.6 the natural person who signs and executes the Application Form and/or the Quotation on its behalf is validly and duly authorised to do so;
- 25.1.7 no other party is acting as a fiduciary for it; and
- 25.1.8 it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in these Terms and Conditions.
- 25.2 Each of the representations and warranties given by the Client in terms of clause 25.1 shall –
- 25.2.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in these Terms and Conditions;
- 25.2.2 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in these Terms and Conditions; and
- 25.2.3 *prima facie* be deemed to be material and to be a material representation inducing Blond Productions to supply the Equipment or provide the Services to the Client.
- 25.3 Blond Productions makes no warranty, undertaking or representation, whether express or implied, in respect of or in connection with the supply of Equipment or provision of Services. The Client acknowledges and accepts that Blond Productions is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any director, manager, employee or any other person acting or purporting to act for and on behalf of Blond Productions, whether negligently or otherwise, unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by a duly authorised representative of Blond Productions.
- 25.4 In no event shall Blond Productions be liable for any losses, damages or injuries (whether direct, indirect, consequential, special or otherwise) which may be sustained by the Client or a third party for any reason whatsoever, and, in particular, Blond Productions shall not be liable for any liabilities, costs or damages arising from –
- 25.4.1 electrical failure of the Equipment;
- 25.4.2 lack of an electrical power source at the venue where the Services or the Equipment are employed;
- 25.4.3 incompatibility of the sound and lighting system and or audiovisual system;
- 25.4.4 damage to the Equipment caused by the performing artist, members of the public, any contractor of the Client and other persons not in the employ of Blond Productions, whilst the Equipment is being used for performance, or during installation and dismantling for such performances;
- 25.4.5 confiscation of the Equipment by Customs Officials or the police, or for any interference by such persons;
- 25.4.6 the inability of Blond Productions or their sub-contractors to gain timeous entry into the premises where the Equipment is to be delivered or the Services provided;
- 25.4.7 Blond Productions inability to perform under these Terms and Conditions due to a *force majeure* event referred to in clause 24.
- 25.5 The Client hereby holds harmless and indemnifies Blond Productions from all liabilities, costs and damages caused by or arising from any acts or omissions of the Client (or any of its employees, directors, officers or agents) in terms of these Terms and Conditions, including the utilisation of the Equipment or Services.
- 26 LAWS AND APPROVALS
- 26.1 The Client shall, in its utilisation of the Equipment, conform with all laws in force from time to time, in respect of the Equipment or the use to which the Equipment shall be put under these Terms and Conditions.
- 26.2 The Client shall ensure that it obtains any and all licences, authorities, consents and approvals as are required by any law for the transportation, installation, commissioning and/or use of the Equipment or the provision of the Services ("Approvals").
- 26.3 The Client indemnifies and holds Blond Productions harmless, against any claims, damages, costs, liabilities or losses suffered by Blond Productions as a result of any delay in obtaining any Approvals, or any failure to obtain, maintain and/or otherwise comply with the Approvals.

27 SUB-CONTRACTING, CESSION AND ASSIGNMENT

- 27.1 Blond Productions shall be entitled to sub-contract any of its obligations in terms of these Terms and Conditions to any third party.
- 27.2 **The Client shall not cede, transfer or assign and of its rights, title or obligations granted herein without the prior written consent of Blond Productions. Blond Productions, on the other hand, shall be entitled to cede, transfer and assign its rights, title and obligations granted herein without the prior written consent of the Client.**

28 NO CHANGE OF CONTROL

If the Client is an unlisted company, a close corporation or a trust, no shares or interest therein (as the case may be) shall be transferred from its shareholders or members (as the case may be), nor may any shares or membership interests (as the case may be) be allotted to any person other than existing shareholders or members (as the case may be), nor may there be any change in the trustees or beneficiaries of a trust (if the Client is a trust), without Blond Productions' prior written consent, save in the case of a transfer of shares or membership interests (as the case may be) which will leave control of the Client with the original shareholder/s or member/s (as the case may be), or of a transfer of shares or membership interests (as the case may be) to a deceased shareholder or member's heirs, or trustees (as the case may be).

29 EVENTS OF DEFAULT

- 29.1 If –
- 29.1.1 the Client commits a breach of any of the terms or conditions contained herein (including a failure by the Client to pay punctually any amount due and payable to Blond Productions), and, if such breach is capable of remedy, fails to remedy that breach within 10 (ten) business days of receipt of demand from the Blond Productions; or
- 29.1.2 the Client commits an act or omission that would constitute an act of insolvency, within the meaning of section 8 of the Insolvency Act, No 24 of 1936, as amended, replaced or re-enacted from time to time (or any similar act or omission within the meaning of any replacement legislation); or
- 29.1.3 the Client enters into any compromise, composition or arrangement with any one or more of its creditors; or
- 29.1.4 any step (including an application or a petition to court, proposal or convening of a meeting) is taken with a view to a moratorium or a composition or similar arrangement with any of the Client's creditors; or
- 29.1.5 a meeting of the Client's shareholders or directors is convened for the purpose of considering a resolution for the voluntary liquidation of the Client or to place it into business rescue, curatorship or similar disability; or
- 29.1.6 an order for the Client's winding-up, dissolution, reorganisation, business rescue, curatorship or similar disability (by way of a scheme of arrangement or otherwise) is made; or
- 29.1.7 the Client allows any judgment by court of law to be taken against it to remain unsatisfied for 7 (seven) days from the date of such judgment,
- then, and in such event, an "Event of Default" shall be deemed to have been committed.

- 29.2 Upon the happening of an Event of Default, Blond Productions shall be entitled, in addition to and without prejudice to any other remedy which it may have in terms of these Terms and Conditions or in law, to accelerate payment of any outstanding amount or cancel the supply of Equipment or the provision of Services forthwith in writing (which, in the event that it has supplied Equipment to the Client, shall entitle Blond Productions to repossess the Equipment), and without prejudice to any other claim which Blond Productions may have in law to claim such damages as it may have suffered.
- 29.3 If Blond Productions cancels or purports to cancel the supply of Equipment or the provision of Services then, notwithstanding anything to the contrary herein, all outstanding amounts due and payable by the Client to Blond Productions shall immediately be due and payable by the Client to Blond Productions (including cancellation charges in terms of clause 7 and interest charged in terms of clause 6.6).

30 GOOD FAITH AND REPUTATION

- 30.1 The Parties undertake to observe the utmost good faith, and they warrant in their dealings with each other that they will neither do anything nor refrain from doing anything which might prejudice or detract from the rights of the other Party.
- 30.2 The Client undertakes at all times to ensure that nothing which may be detrimental to the image, good name and reputation of Blond Productions is done or published by the Client, and furthermore to take all reasonable steps to avoid any unfavourable publicity for Blond Productions, and shall procure that all of its employees, directors, officers and agents do the same.

31 RELATIONSHIP BETWEEN THE PARTIES

Nothing in these Terms and Conditions, and no action taken by the Parties in connection with same, shall create or constitute a contract or relationship of agency, representation, employment or partnership between the Parties or, save as expressly provided otherwise in these Terms and Conditions, give either Party authority to act as the agent, employer, employee or partner of or in the name of or on behalf of the other Party or to bind the other Party or to hold itself out as being entitled to do so.

32 INDEPENDENT ADVICE

Each of the Parties hereby acknowledges and accepts that –

- 32.1 **it has been free to secure independent legal and other professional advice as to the nature and effect of all of the provisions in these Terms and Conditions, and that it has either taken such independent advice or has dispensed with the necessity of doing so; and**
- 32.2 **all of the provisions and the restrictions herein contained are fair, reasonable and just in all the circumstances and are in accordance with the Parties' intentions.**

33 APPLICABLE LAWS AND JURISDICTION

- 33.1 These Terms and Conditions shall in all respects be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 33.2 In the event of any dispute arising between the Parties, each Party hereby consents to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Western Cape Division, Cape Town) notwithstanding that the quantum in the action or proceedings may otherwise fall below the monetary jurisdiction of that court.

34 LEGAL COSTS

Each Party ("**Innocent Party**") agrees that the other Party ("**Defaulting Party**") shall be liable for all legal costs incurred by the Innocent Party, on the scale of an attorney and client, including collection commission and other charges, and/or damages suffered by the Innocent Party as a result of the breach by the Defaulting Party of any of the provisions contained in these Terms and Conditions.

35 AMENDMENTS TO TERMS AND CONDITIONS

- 35.1 **Blond Productions may, in its sole and absolute discretion, amend these Terms and Conditions at any time, and agrees to provide a copy of same to the Client and place the amended terms and conditions on its website (www.blondproductions.co.za).**
- 35.2 **It is, however, the Client's responsibility to regularly check the website of Blond Productions to make sure that it is satisfied with the amendments. Should the Client not be satisfied with the amendments, it must not utilise the Equipment or Services of Blond Productions.**

36 ORDER OF PRECEDENCE

- 36.1 These Terms and Conditions are the only terms and conditions on which Blond Productions shall supply the Equipment or provide the Services to the Client. Therefore, these Terms and Conditions shall apply to the exclusion of all other terms and conditions, including any terms and conditions which the Client purports to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
- 36.2 For the avoidance of doubt, the provisions contained in these Terms and Conditions shall always take precedence.

37 DOMICILIUM CITANDI ET EXECUTANDI

- 37.1 The Parties hereby choose as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under these Terms and Conditions, the said physical addresses as well as the following email addresses –

Blond Productions:

Physical Address: 94 Gazelle Ave, Corporate Park South, Randjespark, Midrand, 1685.

Email Address: cballot@blondproductions.co.za.

For the attention of: Mr Christiaan Ballot, Director, Blond Productions.

The Client:

Physical Address: Physical address recorded in the Application Form.

Email Address: Email address recorded in the Application Form.

For the attention of: (The contact person recorded in the Application Form).

- 37.2 A Party may change its *domicilium citandi et executandi* to another physical address in the Republic of South Africa (provided that such physical address is not a post office box or poste restante), or may change its address for the purposes of notices to any other physical address or email address by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

- 37.3 Notices may be sent either by hand, registered post or via email and must be in English. All notices sent –

- 37.3.1 by hand, will be deemed to have been received on the date of delivery;
- 37.3.2 by registered post, will be deemed to have been received within 10 (ten) days after the date of posting; and
- 37.3.3 by email before 17h00 on a business day will be deemed to have been received on the date on which the email is successfully transmitted. All emails sent after 17h00 shall be deemed to have been received on the following business day.

38 GENERAL

- 38.1 These Terms and Conditions constitute the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of these Terms and Conditions not incorporated herein shall be binding on either of the Parties.
- 38.2 These Terms and Conditions supersede and replace any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.
- 38.3 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions contained herein shall be of any force or effect unless in writing and signed by the Parties.
- 38.4 No relaxation or indulgence which one Party ("**Innocent Party**") may give at any time whatsoever in regards to the carrying out of any of the other Party's obligations in these Terms and Conditions, shall prejudice any of the Innocent Party's rights, or be regarded as a waiver of any of the Innocent Party's rights in terms of these Terms and Conditions.
- 38.5 Each provision contained in these Terms and Conditions shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes invalid or unenforceable in any jurisdiction, the validity and enforceability of each of the remaining provisions herein shall not in any way be affected or impaired thereby in that jurisdiction, nor shall the validity or enforceability of any of the provisions herein be affected or impaired thereby in any other jurisdiction. The Parties declare that it is their intention that these Terms and Conditions would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 38.6 The expiration or termination of these Terms and Conditions shall not affect such of the provisions contained in these Terms and Conditions that expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.