

## CONDITIONS OF HIRE

### **1 Definitions and Interpretation**

1.1 The following terms as used herein shall have the meaning as stated:

**"Charges"** means the Company's charges for the hire of the Goods which are current from time to time during the Hire Period;

**"Company"** means Bass Bags Limited;

**"Conditions"** means these Conditions of Hire;

**"Contract"** means a contract between the Company and the Customer for the hire of the Goods, which shall only be deemed to arise pursuant to the provisions of Condition 2.4 and which shall incorporate these Conditions;

**"Customer"** means the person, firm, company or other organisation hiring the Goods;

**"Deposit"** means any advance payment required by the Company in relation to the Goods which is to be held as security by the Company;

**"Goods"** means any musical instrument, instrument carrying case and/or accessories or other goods which are to be hired by the Company to the Customer under the Contract;

**"Hire Period"** means the period commencing when the Company notifies the Customer that the Goods are available for collection from the Company's premises and ending upon the happening of either of the following events: (i) the return of the Goods by the Customer to the Company's premises; or (ii) the repossession of the Goods by the Company;

**"Minimum Hire Period"** means (where the Goods are specified in the Contract to be hired to the Customer on a monthly basis), the initial period and minimum term of the Contract specified in the Contract during which the Customer shall hire the Goods, subject to Condition 8.1;

**"Notice Period"** means (where the Goods are specified in the Contract to be hired to the Customer on a monthly basis), the period of notice specified in the Contract required to be given by either party to the other in order to terminate the Contract in accordance with Condition 8.1;

**"Renewal Period"** means (where the Goods are specified in the Contract to be hired to the Customer on a monthly basis), a period of equal duration to the Minimum Hire Period (with the first such Renewal Period commencing immediately upon the expiration of the Minimum Hire Period) during which the Customer shall hire the Goods, subject to Condition 8.1.

1.2 A reference to a **"clause"** is to a clause of these Conditions. Clause headings shall not affect the interpretation of these Conditions.

1.3 Any reference to **"parties"** means the parties to the Contract and **"party"** shall be construed accordingly.

1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 Words in the singular include the plural and in the plural include the singular.

1.6 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.

### **2 Hire of the Goods**

2.1 All quotations are made and all orders are accepted by the Company subject only to these Conditions, which shall prevail to the exclusion of any other terms including any conditions, warranties or representations written or oral, express or implied, even if contained in any of the Customer's documents which purport to provide that the Customer's own terms shall prevail. Any representations about any Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.

2.2 All quotations are given on the basis that no Contract shall come into existence until the Company accepts the Customer's order in accordance with the provisions of Condition 2.4. A quotation is

valid for a period of 7 days only from its date, provided that the Company has not previously withdrawn it.

2.3 The Customer shall ensure that the terms of its order are complete and accurate.

2.4 The placing of an order following any quotation or other indication of price shall not be binding on the Company unless and until accepted by the Company in writing.

2.5 The Company may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the hire of the Goods without any liability to the Customer.

2.6 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures or otherwise issued by the Company are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and they shall not form a part of the Contract.

2.7 The Company may, from time to time and without notice, effect minor variations to the Goods and any other obligation of the Company under the Contract, provided that such variations do not materially affect the nature or quality of the Goods, or the Charges. If the Company requests any other variation to the Goods or any other obligation of the Company under the Contract, the Customer shall not unreasonably withhold or delay consent to it.

2.8 If the Customer wishes the Company to effect any variation to the Goods or any other obligation of the Company under the Contract, the Company has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the Charges and any other relevant terms of the Contract to take account of the change.

2.9 Goods are hired subject to them being available for hire to the Customer at the time required by the Customer. The Company will not be liable for any loss suffered by the Customer as a result of the Goods being unavailable for hire where the Goods are unavailable due to circumstances beyond the Company's control. Without prejudice to the foregoing provisions of this Condition 2.9, where the Goods are unavailable as aforesaid, the Company reserves the right to hire goods to the Customer which are of an equivalent standard to the Goods.

2.10 Subject to the provisions of Condition 3, the Customer shall be responsible for arranging for the collection of the Goods from the Company's premises upon notification by the Company that the Goods are available for collection and also for returning the Goods to the Company's premises upon termination of the Contract. The Customer shall be solely responsible for all costs, charges and expenses associated with fulfilling the Customer's obligations under this Condition 2.10. The Customer shall in addition be liable for:

2.10.1 delivery charges, if the Customer fails to collect the Goods from the Company's premises as aforesaid; and

2.10.2 collection charges, if the Customer fails to return the Goods to the Company's premises as aforesaid.

2.11 Subject to Conditions 3.12-3.14, unless notification in writing to the contrary is received by the Company from the Customer within 48 hours of the Company notifying the Customer that the Goods are available for collection from the Company's premises, the Goods shall be deemed to be complete and in good order, save for any inherent fault. The Customer shall be responsible for the Goods' safe keeping, use in a proper manner and return upon termination of the Contract in a complete state and in equal good order (fair wear and tear excepted). Without limitation, the Customer shall ensure that the Goods are used, stored, transported and cared for in accordance with any instructions issued with or for the Goods.

### **3 Consumer Contracts**

3.1 The Customer will have statutory cancellation rights if the Customer is contracting with the Company as a consumer (i.e. not for the purposes of the Customer's trade, business, craft or profession) and the Contract is a distance contract or off-premises contract within the meaning of the Consumer Contracts

- (Information, Cancellation and Additional Charges) Regulations 2013 (the "**Regulations**").
- 3.2 Under the Regulations, a consumer may cancel a Contract (without giving any reason for cancellation) at any time within the period:
- 3.2.1 beginning upon the submission of the Customer's order; and
- 3.2.2 ending at the end of 14 days after the day on which the Goods come into the Customer's physical possession or the physical possession of a person identified by the Customer to take possession of them (or, if the Contract is for the supply of multiple Goods, lots or pieces of something, 14 days after the day on which the last of those Goods, lots or pieces comes into the Customer's physical possession or the physical possession of a person identified by the Customer to take possession of them).
- 3.3 The Customer agrees that the Hire Period may commence before the expiry of the period referred to in Condition 3.2 and the Customer acknowledges that if the Hire Period does begin before the end of the period referred to in Condition 3.2, then the Customer will lose the right to cancel referred to in Condition 3.2.
- 3.4 In order to cancel a Contract on the basis described in Condition 3.2, the Customer must inform the Company of the Customer's decision to cancel. The Customer may inform the Company by means of any clear statement setting out the decision. To meet the cancellation deadline, it is sufficient for the Customer to send the Customer's communication concerning the exercise of the right to cancel before the cancellation period has expired.
- 3.5 The Customer must send the Goods back to the Company or hand them over to the Company or a person authorised by the Company to receive them. The Customer must comply with the Customer's obligations referred to in this Condition 3.5 without undue delay and in any event not later than 14 days after the day on which the Customer informs the Company of the Customer's decision to cancel the Contract. The Customer must pay the direct cost of returning the Goods.
- 3.6 If the Customer cancels a Contract on the basis described in Condition 3.2, the Customer will receive a full refund of the amount the Customer paid to the Company in respect of the order.
- 3.7 If the value of the Goods returned by the Customer is diminished by any amount as a result of the handling of those Goods by the Customer beyond what is necessary to establish the nature, characteristics and functioning of the Goods, the Company may recover that amount from the Customer up to the amount of the Charges. The Company may recover that amount by deducting it from any refund due to the Customer or require the Customer to pay that amount direct to the Company. Handling which goes beyond the sort of handling that might reasonably be allowed in a store will be "beyond what is necessary to establish the nature, characteristics and functioning of the Goods" for these purposes.
- 3.8 Unless the Company has offered to collect the Goods, the Company will process a refund due to the Customer as a result of a cancellation on the basis described in Condition 3.2 within the period of 14 days after the day on which the Company receives the returned Goods or (if earlier) after the day on which the Customer supplies to the Company evidence of having sent the Goods back. If the Company has not sent the Goods to the Customer at the time of cancellation or has offered to collect the Goods, the Company will process a refund due to the Customer without undue delay and, in any case, within the period of 14 days after the day on which the Company is informed of the cancellation.
- 3.9 The cancellation right described in Condition 3.2 is in addition to any other right that the Customer might have to reject the Goods, for instance because they are faulty or defective.
- 3.10 The Customer will not have the right to cancel a Contract on the basis described in Condition 3.2 in respect of any Goods which are ordered, made or customised in accordance with the Customer's specific requirements.
- 3.11 If the Customer does not satisfy the criteria for exercising the statutory cancellation rights described in Conditions 3.1-3.10, the

Customer may not cancel the Contract unless otherwise agreed with the Company in writing and such agreement will only be given, subject to the payment of adequate compensation and expenses incurred in connection with the Contract and for any loss of profit. The Company may in addition impose a cancellation, restocking and administrative charge at its discretion.

- 3.12 If the Customer is contracting with the Company as a consumer, Conditions 3.13-3.14 summarise the Customer's key legal rights in relation to the Goods, which are subject to certain exceptions.
- 3.13 The Consumer Rights Act 2015 says goods must be as described, fit for purpose and of satisfactory quality. During the expected life of the Goods, the Customer is entitled to the following:
- 3.13.1 up to 30 days: if the Goods are damaged or faulty, then the Customer can get a refund;
- 3.13.2 up to six months: if the damaged or faulty Goods cannot be repaired or replaced, then the Customer is entitled to a refund of up to the full amount, in most cases;
- 3.13.3 up to six years: in the event that the Goods can be expected to last up to six years the Customer may be entitled to a repair or replacement, or, if the Goods cannot be repaired or replaced, the Customer may be entitled to some of its money back.
- 3.14 If the Customer wishes to exercise its legal rights to reject the Goods the Customer must return the Goods or allow the Goods to be collected by the Company. The Company will pay the reasonable costs of return or collection.

#### **4 Charges and Payment**

- 4.1 The Charges shall be the charges set out in the Company's written acceptance of the Customer's order issued pursuant to Condition 2.4.
- 4.2 The Customer shall pay the Charges throughout the Hire Period, together with any additional costs, charges and expenses:
- 4.2.1 which are stipulated by the Company or which are agreed between the Company and the Customer in relation to the hire of the Goods; or
- 4.2.2 which, in the Company's sole but reasonable discretion, are required as a result of any cause directly or indirectly attributable to the Customer, including for any material or continuing breach of any of the provisions of the Contract (whether or not capable of remedy).
- 4.3 Where a Deposit is required for the hire of the Goods under the Contract, the Deposit shall be paid in advance of the Customer hiring the Goods. The Deposit shall be non-refundable, save where the Customer satisfies the criteria for exercising the statutory cancellation rights described in Conditions 3.1-3.10.
- 4.4 The Company shall be entitled to vary the Charges from time to time by giving not less than 3 days' written notice to the Customer.
- 4.5 The Charges and any additional sums payable by the Customer hereunder are exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the rate applicable from time to time.
- 4.6 The Company shall be entitled to invoice the Customer in advance of collection of the Goods by the Customer from the Company's premises.
- 4.7 The Charges and any additional sums payable to the Company shall be paid throughout the Hire Period by the Customer (together with any applicable Value Added Tax, and without any set-off or other deduction) by direct debit on the date or dates stipulated in the Contract or otherwise notified to the Customer in writing.
- 4.8 If any payment is not made by the due payment date, the Customer shall be liable to pay interest to the Company from the due date for payment at the annual rate of 5 % above the base lending rate from time to time of Lloyds Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall reimburse the Company for any and

all costs incurred by the Company in recovering payment pursuant to this Condition 4.

## **5 Warranties and Liability**

5.1 The Company warrants to the Customer that the Goods will be provided, as far as reasonably possible, in accordance with the Customer's requirements. All other warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract. Where the Customer is contracting as a consumer, the provisions of Conditions 3.12-3.14 shall apply.

5.2 Except in respect of death or personal injury caused by the Company's negligence, or as expressly provided in these Conditions, the Company shall not, to the fullest extent permitted by law, be liable to the Customer whatsoever.

5.3 Subject to the provisions of Condition 5.2:

5.3.1 the entire liability of the Company under or in connection with the Contract shall not in any event exceed the total Charges paid by the Customer to the Company in the 3 month period immediately preceding the claim or claims in respect of which liability is alleged; and

5.3.2 the Company shall not be liable for any indirect, special or consequential loss suffered by the Customer.

## **6 Risk, Ownership and Insurance**

6.1 Risk in the Goods will pass immediately to the Customer when the Company notifies the Customer that the Goods are available for collection from the Company's premises.

6.2 Risk in the Goods will not pass back to the Company from the Customer until either:

6.2.1 the Customer has returned the Goods to the Company's premises; or

6.2.2 the Company has repossessed the Goods.

6.3 Ownership of the Goods shall remain at all times with the Company. The Customer has no right, title or interest in the Goods except that they are hired to the Customer.

6.4 The Customer must not deal or interfere with the ownership of or any interest in the Goods. This includes selling, assigning, pledging, charging, securing, hiring, lending, disposing of, or abandoning the Goods. The Customer shall further protect the Goods against distress, execution or seizure.

6.5 The Customer shall (through the Company) take out an insurance policy covering the full replacement value of the Goods against all risks and the policy shall be kept in force at all times during which the Customer is in possession of the Goods.

## **7 Care of Goods**

7.1 The Customer shall:

7.1.1 not remove from, nor cover up, alter or deface any labels, names or proprietary marks on the Goods, nor damage, interfere with or alter the Goods, their working mechanisms or any other parts of them and shall take reasonable care of the Goods and only use them for their intended and proper purpose in an appropriate manner in accordance with any instructions provided to the Customer;

7.1.2 not affix any marking, labelling, lettering or advertising to the Goods;

7.1.3 not attempt to repair the Goods, but the Customer shall be solely liable for the day-to-day care of the Goods in accordance with any instructions issued by the Company and the Customer shall be solely responsible for purchasing from the Company any and all consumables required for use in conjunction with the Goods, including rosin, reeds, cork grease, valve oil, or slide oil, as applicable;

7.1.4 take adequate and proper measures to protect the Goods from theft, damage and other risks;

7.1.5 not use, nor continue to use the Goods in an unsatisfactory state or environment, nor where they have been damaged or have suffered any defect;

7.1.6 notify the Company immediately following any loss or damage to the Goods;

7.1.7 permit the Company at all times to inspect, test, adjust, repair or replace the Goods;

7.1.8 not do or omit to do anything which the Customer has been notified will or may be deemed to invalidate any policy of insurance related to the Goods;

7.1.9 keep the Goods at all times in its possession and control;

7.1.10 not remove the Goods from the United Kingdom without the prior written consent of the Company, but in any event, the Customer shall notify the Company of the intended country of destination and method of transportation for the Goods in order to assist the Company in determining whether to give or withhold consent as aforesaid and to enable the Company to determine the appropriate carrying case and/or packaging to be used by the Customer with respect to the carriage of the Goods, should the Company's consent be forthcoming.

7.2 The Customer shall be responsible for all loss (including loss of Charges) and/or damage suffered by the Company (including expenses) on account of any damage to or any defect in the Goods which arises due to the Customer's negligence (whether by act or omission) or the Customer's misuse of the Goods.

7.3 The Goods must be returned to the Company's premises by the Customer in good working order and condition (fair wear and tear excepted) and in a clean condition together with all relevant documents.

7.4 If the Goods are returned in a damaged, defective or unclean condition except where due to fair wear and tear or an inherent fault in the Goods, the Customer shall be liable to pay the Company for the costs of any repair and/or cleaning required to return the Goods to a condition fit for re-hire and to pay the Charges, in accordance with the provisions of Condition 4 until such repairs and/or cleaning have been completed.

7.5 The Customer will pay to the Company the replacement cost of any Goods which are lost, stolen or damaged beyond economic repair during the Hire Period. The Customer shall pay the Charges for the Goods up to and including the date it notifies the Company that the Goods have been lost, stolen or damaged beyond economic repair. From that date until the Company has replaced such Goods the Customer shall pay, as a genuine pre-estimate of lost profit, a sum as liquidated damages being equal to two-thirds of the Charges that would have applied for such Goods for that period. The Company shall use its reasonable commercial endeavours to purchase a replacement for such Goods as quickly as possible.

## **8 Term and Termination**

8.1 Subject to earlier termination under Condition 8.3, where the Goods are specified in the Contract to be hired to the Customer on a monthly basis, the Customer shall hire the Goods for the Minimum Hire Period and shall continue to hire the Goods thereafter for subsequent Renewal Periods, unless the Contract is terminated by either party giving to the other party written notice of termination in compliance with the Notice Period, such Notice Period to expire on the last day of the Minimum Hire Period or the last day of the relevant subsequent Renewal Period, as applicable.

8.2 Subject to earlier termination under Condition 8.3, where the Goods are not specified in the Contract to be hired to the Customer on a monthly basis, either party may terminate the Contract upon 14 days' written notice to the other party.

8.3 The Company may terminate the Contract forthwith by written notice to the Customer if:

8.3.1 the Customer fails to make any payment due to the Company hereunder within 3 days of its due date; or

8.3.2 the Customer commits a material or continuing breach of any of the provisions of the Contract and if the breach is capable of remedy, fails to remedy it within 3 days of receiving written notice of the breach; or

8.3.3 the Customer has a bankruptcy order made against it or makes an arrangement or composition with its

- creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 8.3.4 the Customer suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security, or the Customer ceases or threatens to cease to trade; or
- 8.3.5 the Company reasonably believes that any of the events set out sub-clauses 8.3.3 or 8.3.4 are likely to occur, or that its rights in the Goods have been or may be compromised in any manner.
- 8.4 Upon termination of the Contract (howsoever or by whomsoever occurring, subject to sub-clause 8.4.3):
- 8.4.1 the Customer shall immediately return the Goods to the Company's premises and if the Customer so fails to return the Goods, the Company may without prior notice repossess the Goods. The Customer shall, in any event, be solely liable for any and all costs, charges and expenses associated with any delay in returning the Goods and/or the repossession of the Goods;
- 8.4.2 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods hired but in respect of which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- 8.4.3 where the Goods are specified in the Contract to be hired to the Customer on a monthly basis and the Contract has been terminated otherwise than in accordance with the provisions of Condition 8.1, the Customer shall pay to the Company (within 7 days of the date of termination) an amount or amounts equal to any remaining Charges which would have been due to the Company under the Contract until the end of the Minimum Hire Period or the then-current Renewal Period, as applicable; and
- 8.4.4 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 8.5 The Customer may purchase the Goods at the end of the Hire Period, subject to the Customer not being in breach of any other of these Conditions. Where the Goods are specified in the Contract to be hired to the Customer on a monthly basis, the purchase price of the Goods will be reduced by the amount of the Charges paid by the Customer during the Hire Period, up to a maximum of 3 months of the Charges so paid. The aforementioned 3 month maximum applies to the entire Hire Period and shall not be increased under any circumstances, including where the Customer hires the Goods for 3 months or

more during the Minimum Hire Period and continues to hire the Goods for 3 months or more during any subsequent Renewal Period. The aforementioned reduction in the purchase price may not be redeemed against any goods other than the Goods and shall be non-transferable, unless the purchase price of the goods which are the subject of the purported transfer is higher than the purchase price of the Goods.

## 9 Indemnity

The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities to the extent that any such liabilities arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.

## 10 General

- 10.1 The Contract and these Conditions constitute the entire agreement between the parties, supersede any previous agreement or understanding and subject to the provisions of Condition 2.5, may not be varied except in writing between the parties.
- 10.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and in either event the notice shall be given by recorded delivery.
- 10.3 Neither the Company nor the Customer intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 10.4 The Customer shall not disclose to any third party any information disclosed to it by the Company which is confidential (or which could reasonably be supposed to be confidential) and shall not use any such information for any purpose other than to perform its obligations under the Contract. The Company shall, however, be free to disclose the Company's role and involvement in the hire of the Goods to the Customer for the purposes of advertising or otherwise promoting the Company's work.
- 10.5 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.6 If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected.
- 10.7 If, and to the extent that, any failure to perform, or delay in performance, on the part of the Company, shall be the result of any Act of God, riot, strike, lockout, insurrection, civil disorder, natural catastrophe, or the exercise of authority of any governmental agency, or any political subdivision of any of same, or any other event beyond the reasonable control of the Company, its agents or employees, the Company shall be excused from further performance until the cause of the interruption has abated, and shall not be liable for any loss, cost or expense resulting from such failure to perform or delay in performance of its obligations hereunder.
- 10.8 Each party to any dispute arising under or in connection with the Contract shall be responsible for the payment of its own legal fees, subject always to the decision of any arbitrator or court regarding the allocation or apportionment of costs.
- 10.9 Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Law Society.
- 10.10 English law shall apply to the Contract, and the parties agree to submit to the exclusive jurisdiction of the English courts.