

# Kinetika Flag, Banner and Costumes Hire: Full Terms and Conditions 2013

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following definitions apply:

**“Acknowledgement”**

the written acknowledgment of order sent by Kinetika to the Customer;

**“Additional Services”**

any additional services required by the Customer including but not limited to hire of performers, musicians and artists.

**“Approvals”**

has the meaning given to it in clause 4.2;

**“Commencement Date”**

the date specified in the Acknowledgement for the commencement of the provision of the Services by Kinetika;

**“Confidential Information”**

the confidential information referred to in clause 10;

**“Contract”**

the Customer’s offer to Hire or purchase Installation Services, subject to these terms and conditions and Kinetikas acceptance of that order as evidenced by the Acknowledgement;

**“Duration”**

the period starting when the items are dispatched to the Customer by Kinetika and ending when they are returned to Kinetika’ premises by the Customer;

**“Hire”**

the hire of the items to the Customer by Kinetika as set out in the Acknowledgement;

**“Installation Services”**

the provision of services to the Customer by Kinetika including but not limited to the installation of flags or site decoration at the Venue and the provision of any Additional Services as set out in the Acknowledgement;

**“Venue”**

the venue at which Kinetika will provide the Installation Services and/ or the venue at which the items will be used by the Customer, as such venue is specified in the Acknowledgement;

**“Price”**

the price payable by the Customer for the Services as set out in the Acknowledgement;

**“Items”**

any and all materials developed, created or supplied by Kinetika or its employees and provided in relation to the Services; this includes but is not limited to costumes, costume accessories, flags and associated hardware, banners, and puppets.

**“Return Date”**

the date on or before which the Customer is required to return the Items supplied under Hire as specified in the Acknowledgement;

**“Services”** the Hire and/ or Installation Services and/ or Additional Services; and

**“Terms”**

these Terms and Conditions.

**“Working Day”**

any day which is not a Saturday, a Sunday or a bank or public holiday in England;

## **2 THE CONTRACT**

2.1 The Acknowledgement forms part of the Contract and shall have effect as if set out in full in the body of these Terms.

2.2 These Terms and the Acknowledgement contain the only terms and conditions which shall apply to the provision of the Services by Kinetika to the Customer to the entire exclusion of all other terms and conditions.

2.3 Any prices shown on Kinetika’ website or literature and any quotations provided by Kinetika do not constitute a legally binding offer by Kinetika.

2.4 The Contract shall come into force when Kinetika sends an Acknowledgement to the Customer subject to the Customer obtaining necessary Approvals as provided in clause 4.2.

## **3 PERFORMANCE BY KINETIKA**

3.1 The Customer agrees that the supply of the Services will be subject to Kinetika’ reasonable artistic licence and interpretation.

3.2 The provision of Items and Installation Services is subject to availability and Kinetika reserves the right to provide reasonable alternative Items and/or Services in the case of unavailability of the Items and/or Services specified in the Acknowledgement.

3.3 The Customer agrees that Kinetika may, without liability, omit, change or move any element of the Services as Kinetika reasonably considers necessary on the grounds of health and safety.

3.4 If Kinetika has agreed to deliver and collect the Items under Hire, delivery and collection shall take place at a ground floor loading bay of the Venue (subject to clause 4.4) by one delivery person unless otherwise agreed by Kinetika in advance.

3.5 If the Customer is not present when the Items or Installation Services are collected or delivered, Kinetika’ delivery or collection note (as relevant) will be conclusive evidence of the amount of Items collected or delivered and the quality or state of such Items.

## **4 OBLIGATIONS AND ACKNOWLEDGEMENTS OF THE CUSTOMER**

4.1 The Customer shall ensure that the Venue is suitable for the Services including but not limited to the size of the Venue, and the technical facilities available to accommodate provision of the Services by Kinetika.

4.2 The Customer shall ensure that any approvals, permission or consents, that may be required in relation to the performance of the Contract (“Approvals”), shall be acquired before the Commencement Date and evidence of such provided to Kinetika on request.

4.3 If the Customer is arranging collection of the Items from Kinetika' premises, the Customer shall ensure that suitable transport is provided for the collection of such Items and Kinetika reserves the right to refuse to release the Items if in its reasonable opinion such transport is unsuitable or inadequate.

4.4 In the case of Installation Services and in the case of Hire, where Kinetika is responsible for delivery and/or collection of the Items, if traffic regulations or similar provisions prohibit access to the ground floor loading bay of the Venue, the Customer must ensure that alternative arrangements are made for the delivery and/or collection (as appropriate) to provide safe and suitable access at the point of delivery.

4.5 The Customer shall ensure that the Items are:

4.5.1 kept away from direct heat sources and the Customer acknowledges and agrees that flammable materials may have been used in the production of the Items.

4.6 In the case of the Installation Services, the Customer shall: 4.6.1 Provide full and accurate technical details of the Venue and access to the Venue as required by Kinetika prior to the Commencement Date. Kinetika shall be entitled to terminate the Contract without liability if, in Kinetika' reasonable opinion, the results of those technical details are unsatisfactory;

4.6.2 ensure that Kinetika is provided with safe and reasonable access to the Venue to carry out the Installation Services including but not limited to ensuring that all health and safety and fire regulations have been met; and 4.6.3 where appropriate, make available to Kinetika such facilities including power supply and other support as may be reasonably necessary to assist Kinetika in the performance of the Installation Services including off loading and uploading of the. Items at delivery and collection.

4.7 In the case of Hire, the Customer shall: 4.7.1 provide assistance with off loading and uploading of the Items as required by Kinetika; 4.7.2 ensure that all necessary measures are undertaken at the Venue to ensure that the Hire complies with relevant health and safety and fire regulations; 4.7.3 ensure that any Items of an electrical nature are tested prior to use and only used in conjunction with a Residual Current Device (RCD); and 4.7.4 return the Items cleaned by the Return Date repackaged and in the same condition as they left Kinetika' premises.

4.8 The Customer acknowledges that Items are not new and may have signs of reasonable wear and tear.

4.9 The Customer acknowledges that any dimensions supplied by Kinetika in relation to the Items and Services are approximate only.

4.10 The Customer acknowledges that the Items remain the property of Kinetika at all times. Risk in the Items shall pass to the Customer on despatch/delivery (whichever is earlier) and shall pass from the Customer to Kinetika upon delivery back to Kinetika.

## **5 PRICE AND PAYMENT**

5.1 The Price shall be paid in cleared funds by the Customer no later than 10 Working Days prior to the Commencement Date.

5.2 The Price is net of Value Added Tax. The Customer shall pay Value Added Tax at the rate of 20% or other prevailing rate in addition to the Price.

5.3 Kinetika may increase the Price if the Customer changes the Venue or the Event Duration, which have been agreed with Kinetika.

5.4 The Customer shall pay a deposit for the Services as set out in the Acknowledgement to cover the risk value of the Services ("Deposit"). Such Deposit shall be repaid to the Customer if and to the extent that it returns the Items on or before the relevant Return Date in the same condition as on the Commencement Date.

5.5 In the case of Hire:

5.5.1 the Price is for one Venue only. Additional Venues will be subject to an additional charge determinable by Kinetika.

5.5.2 the Customer shall pay the Price, notwithstanding that Items may be returned unused;

5.5.3 if the Customer fails to return the Items on or before the Return Date, the Customer shall pay, in addition to the Price, hire charges at the daily rate payable under the Contract;

5.5.4 the cost of delivery to and collection from the Venue of the Items is not included in the Price but is payable in addition to the Price as set out in the Acknowledgement.

5.6 The Customer agrees that the Customer shall pay the Price notwithstanding that part or all of the Services are unable to be completed by Kinetika as a result of access to the Venue or the time available to access the Venue being limited, failure of lifts or any other event occurring at the Venue which results in Kinetika' becoming unable to complete the Services.

5.7 If the Customer fails to pay any amount payable by it under these Terms, Kinetika shall be entitled to charge the Customer interest on the overdue amount, from the due date up to the date of actual payment, after as well as before judgement, at the rate of 8% per annum above the base lending rate for the time being of the Bank of England.

5.8 When payment is made by credit card, such credit card number will be held and used against losses/additional costs/damages.

## **6 OWNERSHIP of INTELLECTUAL PROPERTY RIGHTS**

Kinetika reserves all rights in its intellectual property of any nature whatsoever including without limitation copyright, and design rights and the Customer shall not be entitled to any intellectual property rights arising out of the provision of the Services. The Customer shall not release photographs, designs, quotations, drawing and recordings to any third party for any commercial purpose without the prior written consent of Kinetika.

## **7 LIABILITY AND INSURANCE**

7.1 Kinetika's liability for any of the following is not excluded or limited by these Terms (even if any other term of the Terms would suggest otherwise): 7.1.1 death or personal injury caused by Kinetika's negligence or the negligence of its employees, servants or agents; or 7.1.2 any other liability which cannot be legally excluded or limited.

7.2 Subject to clause 7.1, Kinetika shall not be liable to the Customer under or in relation to these Terms (whether such liability arises due to negligence, breach of contract, misrepresentation or otherwise) for any indirect or consequential loss or damage.

7.3 Subject to clause 7.1 and without prejudice to the provisions of clause 7.2, Kinetika's liability arising from or in connection with these Terms (whether the liability arises for breach of contract, negligence, or otherwise) shall be limited to a refund of the Price paid by the Customer for that element of the Services to which the liability relates.

7.4 Kinetika makes no warranty as to the suitability of the Items under Hire for the intended use by the Customer unless otherwise agreed by Kinetika.

7.5 Kinetika accepts no responsibility for the condition of the Items or completeness of the order if the Customer is not present for delivery or collection.

7.6 The Customer shall be liable for any loss or damage to the Items or Kinetika's other property whilst it remains in the possession of the Customer.

7.7 The Customer agrees that Kinetika shall be entitled to charge all loss and/or damage (including costs of cleaning if relevant) to the Items to the Customer's credit card number provided by the Customer during the order process and, in the case of Hire, be immediately entitled to retain the Deposit towards such charge.

7.8 The Customer shall take out, for the Event Duration, sufficient insurance to cover the full replacement cost of the Items and the Customer shall, upon request by Kinetika, provide copies of such insurance cover to Kinetika together with evidence that policy premiums have been paid to date.

7.9 The provisions of this clause 7 shall survive the termination or expiry of these Terms for any reason.

## **8 TERMINATION**

8.1 Without prejudice to any other rights to which it may be entitled, Kinetika may immediately terminate the Contract if:

8.1.1 any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or 8.1.2 the Customer commits a breach of any of the Terms; or 8.1.3 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his property or obtained against him, or fails to perform any of his obligations under these Terms.

8.2 If the Customer seeks to amend, cancel or postpone the provision of the Services following the execution of a Contract, the Customer shall still be liable to pay the Price in full unless otherwise agreed by Kinetika.

8.3 On termination of the Contract:

8.3.1 the Customer shall return to Kinetika the Items and any other property of Kinetika the Customer then has in its possession or control including without limitation any Confidential Information belonging to Kinetika; and 8.3.2 Kinetika shall be entitled to enter the Customer's premises at any time in order to recover any equipment and materials which are the property of Kinetika and the Customer irrevocably licenses Kinetika and its employees to enter any such premises for that purpose.

8.4 In the event of any form of aggressive/bullying/offensive/discriminatory behaviour by the customer, Kinetika reserves the right to immediately terminate the contract without notice or recourse.

## **9 FORCE MAJEURE**

9.1 If Kinetika is prevented or delayed in the performance of any of its obligations under the Contract by any cause which arises from or is attributable to acts, events, omissions or accidents beyond its reasonable control including but not limited to strikes, lock-outs or other industrial disputes, unavailability of raw materials, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown

of plant or machinery, transport disruption, fire, flood, storm, terrorist attack, nuclear, chemical or biological contamination or sonic boom, then it shall have no liability in respect of the performance of such of its obligations as are prevented by those events.

## **10 CONFIDENTIALITY**

10.1 The Customer will keep in strict confidence all technical or commercial knowhow, specifications, drawings, quotations, inventions, processes or initiatives which are of a confidential nature and which have been disclosed to the Customer by Kinetika or its agents and any other confidential information concerning Kinetika's business or its products which the Customer may obtain. The Customer will restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know the same and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Customer.

## **11 ASSIGNMENT**

11.1 The Customer shall not without the prior written consent of Kinetika assign or transfer the Contract or any part of it to any other person.

## **12 GENERAL**

12.1 Any notice or other document to be served under the Contract must be in writing and may be delivered or sent by prepaid first class letter, post or facsimile transmission.

12.2 Any notice or demand shall be deemed served, if delivered, at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.

12.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it will, to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness, be deemed servable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.4 Failure or delay by either party in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

12.5 Any waiver by either party of any breach of, or any default under, any provision of the Contract by the other party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

12.6 A person who is not party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause 12.6 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

12.7 The Contract shall be governed by and construed in all aspects in accordance with English law.

12.8 Subject to clause 12.9 the parties submit to the exclusive jurisdiction of the English courts and agree that (subject to clause 12.9), in respect of proceedings in England and any other jurisdiction, process may be served on either of them in the manner specified for notices in clause 12.1 and 12.2 above.

12.9 Nothing in this clause 12 shall limit the right of Kinetika to take proceedings against the Customer in any other court of competent jurisdiction nor shall the taking of proceedings in an one or more jurisdiction preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.