

Terms & Conditions for Hire

The Hirer's attention is drawn in particular to the provisions of clauses 7, 8 and 10 below.

1. FORMATION OF THE CONTRACT

- 1.1 The Hirer has requested to hire certain products from Proportion London Limited ("PL"). The products requested for hire (the "Products") are detailed in the Hirer's hire request form (the "Hire Form"). The Hire Form constitutes an offer by the Hirer to hire the Products in accordance with these Conditions.
- 1.2 The terms & conditions set out below (the "Conditions") apply to the Hire Form, to the exclusion of any other terms that the Hirer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Hirer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Hirer that is inconsistent with these Conditions.
- 1.3 The Hire Form and these Conditions together form the "Contract" between PL and the Hirer (each a "Party" and together the "Parties").
- 1.4 The Hire Form shall only be deemed to be accepted when PL issues a written acceptance of the Hire Form to the Hirer including any amendments proposed by PL, at which point the Contract shall come into existence and following which the Contract may not be cancelled or amended by the Hirer other than in accordance with the terms of the Contract or with PL's prior written approval.

2. HIRE PERIOD

- 2.1 PL shall hire the Products to the Hirer for the period of time set out in the Hire Form (the "Hire Period") in accordance with the terms of the Contract.

3. DELIVERY

- 3.1 The Rental Payments quoted do not include delivery charges (unless otherwise stated in the Hire Form) and the Hirer shall be responsible for all costs incurred by PL in delivering the Products to the Hirer.
- 3.2 PL shall endeavour to deliver the Products to the Hirer on the first day of the Hire Period. Any dates quoted for delivery however are approximate only, and the time of delivery is not of the essence. If PL fails to deliver the Products by the quoted date, or fails to deliver the Products in full, its liability shall be limited to the costs and expenses incurred by the Hirer in hiring replacement Products of similar description and quality in the cheapest market available, less the Rental Payments (as defined below). PL shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Hirer's failure to provide PL with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 3.3 **If PL is delivering the Products to the Customer:** PL shall deliver the Products to the delivery address set out in the Hire Form or such other location as the Parties may agree (the "Delivery Location"). Delivery is completed on the completion of unloading of the Products at the Delivery Location.
If the Customer is collecting the Products from PL: The Hirer shall collect the Products from the collection address set out in the Hire Form or such other location as may be advised by PL prior to delivery (the "Delivery Location") within three (3) Business Days of PL notifying the Hirer that the Products are ready. Delivery is completed on the completion of loading of the Products at the Delivery Location.
- 3.4 **If PL is delivering the Products to the Customer:** If the Hirer refuses or fails to accept delivery of the Products within three (3) Business Days of PL delivering the Products to the Delivery Location, then, except where such failure or delay is caused by a Force Majeure Event or PL's failure to comply with its obligations under the Contract, delivery of the Products shall be deemed to have been completed at 0900 GMT on the third Business Day after the day on which PL delivered the Products to the Delivery Location.
If the Customer is collecting the Products from PL: If the Hirer refuses or fails to accept delivery of the Products within three (3) Business Days of PL notifying the Hirer that the Products are ready for collection from the Delivery Location, then, except where such failure or delay is caused by a Force Majeure Event or PL's failure to comply with its obligations under the Contract:
(a) delivery of the Products shall be deemed to have been completed at 0900 GMT on the third Business Day after the day on which PL notified the Hirer that the Products were ready for collection from the Delivery Location; and
(b) PL shall store the Products until delivery takes place, and charge the Hirer for all related costs and expenses (including insurance).

4. TITLE, RISK AND INSURANCE

- 4.1 The Products shall at all times remain the property of PL, and the Hirer shall have no right, title or interest in or to the Products (save the right to possession and use of the Products subject to the terms and conditions of this Contract).
- 4.2 The risk of loss, theft, damage or destruction of the Products shall pass to the Hirer on completion of delivery. The Products shall remain at the sole risk of the Hirer during the Hire Period and any further term during which the Products are in the possession, custody or control of the Hirer (the "Risk Period") until such time as the Products are in the physical possession of PL.
- 4.3 During the Hire Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain appropriate insurance for such amounts as a prudent owner of the Products would insure for to cover the usual risks of loss, damage or destruction by fire, theft or accident and any third party or public liability risks of whatever nature and howsoever arising in connection with the Products. The Hirer shall, at PL's request, supply PL with copies of the relevant insurance policies and proof of premium payment to confirm the insurance arrangements. The proceeds of any such insurance claim that relate directly to the Products shall be held by the Hirer on trust for PL and shall be paid to PL on demand.

5. HIRER'S RESPONSIBILITIES

- 5.1 The Hirer shall during the Hire Period and Risk Period:
- (a) ensure that the Products are kept in a suitable environment;
 - (b) maintain at its own expense the Products in good and substantial repair in order to keep the Products in as good a condition as they were at the start of the Hire Period (fair wear and tear only excepted) and shall make no alteration to the Products, including by removing any labels or tags from the Products, unless approved in advance in writing by PL;
 - (c) keep PL fully informed of all material matters relating to the Products;
 - (d) permit PL or its duly authorised representative to inspect the Products at all reasonable times;
 - (e) not, without the prior written consent of PL, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Products or allow the creation of any mortgage, charge, lien or other security interest in respect of the Products;
 - (f) not do or permit to be done any act or thing which will or may jeopardise PL's right, title and/or interest in the Products;
 - (g) not suffer or permit the Products to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process. If the Products are so confiscated, seized or taken, the Hirer shall notify PL and the Hirer shall at its sole

expense use its best endeavours to procure an immediate release of the Products and shall indemnify PL on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

- (h) not use the Products, nor allow the Products to be used, for any unlawful purpose;
- (i) deliver up the Products at the end of the Hire Period or on earlier termination of the Contract at such address as PL requires, or if necessary allow (or procure for) PL or its representatives access to the premises where the Products are located for the purpose of removing the Products.

5.2 The Hirer acknowledges that PL shall not be responsible for any loss of or damage to the Products arising out of or in connection with any negligence, misuse, mishandling of the Products or otherwise caused by the Hirer or its officers, employees, agents and contractors.

6. RENTAL PAYMENTS AND DELIVERY CHARGES

6.1 The Hirer shall pay the rental payments set out in the Hire Form (the "**Rental Payments**") to PL. The Hirer shall pay the Rental Payments in full and in cleared funds, at the time set out in the Hire Form or as may be agreed between the Parties in writing. The Hirer shall pay any invoice received from PL in full and in cleared funds within thirty (30) calendar days of the date of the invoice. Any payment to PL shall be made by the Hirer to the bank account nominated in writing by PL. Time of payment is of the essence.

6.2 The Rental Payments excludes amounts in respect of value added tax ("**VAT**") (which the Hirer shall additionally be liable to pay to PL at the prevailing rate, subject to the receipt of a valid VAT invoice) and (unless otherwise noted on the Hire Form) excludes the costs and charges of packaging, insurance and transport of the Products which shall be invoiced to the Hirer. If the Hirer refuses or fails to accept delivery at the Delivery Location then, except where such refusal is caused by a Force Majeure Event or PL's failure to comply with its obligations under the Contract, PL shall be entitled to invoice the Hirer for the costs incurred by PL in arranging and undertaking any further delivery of the Products.

6.3 If the Hirer fails to make any payment due to PL under the Contract by the due date for payment then the Hirer shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Hirer shall pay the interest together with the overdue amount.

6.4 PL reserves its statutory right to claim interest and compensation for debt recovery costs under this clause and under the Late Payments Commercial Debts (Interest) Act 1998 for the price once payment becomes due notwithstanding that title may not have passed.

6.5 The Hirer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). PL may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Hirer against any amount payable by PL to the Hirer.

6.6 In the event the Rental Payments and expenses paid to PL by the Hirer are subject to any deduction or withholding in respect of tax, PL reserves the right to charge the Hirer an additional amount which will, after any deduction or withholding has been made, leave PL with the same amount PL would have received in the absence of any such deduction or withholding.

6.7 The Hirer is required to pay PL a deposit against default by the Hirer of payment of any Rental Payments or any loss of or damage caused to the Products. The value of the deposit will be set out in the Hire Form and the Hirer shall pay the deposit to PL in advance of the Hirer hiring the Products on the date agreed in the Hire Form. If the Hirer fails to make any Rental Payments in accordance with this Contract, or causes any loss or damage to the Products (in whole or in part), PL shall be entitled to apply the deposit against such default, loss or damage. The Hirer shall pay to PL any sums deducted from the deposit within ten (10) Business Days of a demand for the same. The deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Hire Period following receipt of the Products by PL in a good and clean condition.

7. INTELLECTUAL PROPERTY

7.1 The Hirer hereby expressly acknowledges that all Intellectual Property Rights in the Products and any drawings, plans, specifications, sketches, models, photos, images, templates, designs or related materials received from PL (together with the Products, the "**Creations**") belong and shall belong to PL. The Hirer further acknowledges that the receipt of any Creations from PL pursuant to this Contract shall not transfer, nor otherwise give the Hirer any licence of, any rights whatsoever in respect of any part of such Creations including the Intellectual Property Rights therein.

7.2 The Hirer undertakes that at no point, whether during the term of this Contract or any time thereafter, shall it do anything to prejudice or damage PL's ownership of or interest in the Intellectual Property Rights in the Creations. The Hirer undertakes and agrees that it has no right to and shall not (nor directly or indirectly allow, permit or enable any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify or use any Creations in whole or in part other than in accordance with this Contract or PL's express prior written consent.

7.3 For the purposes of this clause "**Intellectual Property Rights**" means: (a) patents, inventions, designs, copyright and related rights, database rights, know how, trade marks and related goodwill and trade names (all whether registered or unregistered) and rights to apply for registration; (b) all other rights of a similar nature or having an equivalent effect anywhere in the world which currently exist or are recognised in the future; and (c) all applications, extensions and renewals in relation to any such rights.

8. TERMINATION

8.1 Without limiting its other rights or remedies, PL may terminate this Contract with immediate effect by giving written notice to the Hirer if:

- (a) the Hirer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of being notified in writing to do so;
- (b) the Hirer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- (c) the Hirer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.

8.2 Without limiting its other rights or remedies, PL may terminate the Contract with immediate effect by giving written notice to the Hirer if the Hirer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment.

8.3 On termination of the Contract for any reason:

- (a) PL's consent to the Hirer's possession of the Products shall terminate and the Hirer shall promptly deliver up the Products to PL. The Hirer hereby acknowledges and agrees that in the event the Hirer fails to deliver up the Products in accordance with the Contract within thirty (30) days of the expiry of the Hire Period PL may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Products and for this purpose may enter any premises at which the Products are located; and
- (b) without prejudice to any other rights or remedies of PL, the Hirer shall pay to PL on demand:
 - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 6.4; and
 - (ii) any costs and expenses incurred by PL in recovering the Products and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

8.4 Termination of the Contract shall not affect any of the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

- 8.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination (including clauses 6, 7, 8, 9, 10 and 13) shall remain in full force and effect.
- 9. DAMAGE TO OR LOSS OF PRODUCTS**
- 9.1 The Hirer agrees that it is responsible for ensuring that the Products are returned to PL at the end of the Hire Period (or Risk Period, whichever ends later) in a good and clean condition. The Hirer agrees that it shall return the Products to PL in substantially the same packaging (including form of packaging) as the packaging in which they were supplied by PL.
- 9.2 If the Products are returned in a damaged, unclean and/or defective state (fair wear and tear only excepted) the Hirer shall be liable to pay PL for the cost of any repair and/or cleaning required to return the Products to a condition fit for re-hire. The Hirer shall continue to pay the Rental Payments on a pro rata basis until such repairs and/or cleaning have been completed to PL's satisfaction, acting reasonably.
- 9.3 If the Products are lost, stolen or damaged beyond economic repair, the Hirer will pay PL the replacement cost of any Products so lost, stolen or damaged, less the amount paid to PL under any insurance policy taken out by PL. The Hirer shall pay the Rental Payments on a pro rata basis for the Products up to and including the date the Hirer notifies PL that the Products have been lost, stolen or damaged beyond economic repair.
- 9.4 For the avoidance of doubt, the 'Products' includes any bases, re-usable packaging (such as cases and containers) and spare parts which have been provided by PL to the Hirer with the Products. In the event that some, but not all, of the Products are damaged, unclean or defective or are lost, stolen or damaged beyond economic repair ("**Damaged Products**"), the provisions of this clause 9 shall apply as appropriate mutatis mutandis to those Damaged Products.
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in these Conditions shall limit or exclude PL's liability for (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (b) fraud or fraudulent misrepresentation; or (c) any matter in respect of which it would be unlawful for PL to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- (a) PL shall under no circumstances whatsoever be liable to the Hirer, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss of profit or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) PL's total liability to the Hirer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed one hundred per cent (100%) of the value of the Rental Payments received by PL from the Hirer.
- 11. COMPLAINTS**
- PL aims to provide a high level of service to its hirers at all times. If the Hirer has an enquiry or complaint regarding the Products provided by PL the Hirer should address them in writing to the Managing Director, Proportion London Limited, 16 Hickman Avenue, London, E4 9JG.
- 12. SCOPE OF PL'S ENGAGEMENT**
- 12.1 PL specialises in the design and manufacture of mannequins, bust forms and visual merchandising related equipment. It does not have expertise or experience in the installation, fitting or fixing of such products and makes no claim to have such expertise or experience.
- 12.2 The Parties acknowledge and agree that PL has only been engaged to hire the Products to the Hirer under this Contract. PL is not in a position to give, and shall not be deemed to have given, any advice or instructions to the Hirer on how the Products should be installed, fitted or fixed at the Hirer's intended location and, accordingly, PL has no, and accepts no, responsibility in that respect.
- 12.3 PL recommends that the Hirer seeks independent advice concerning the installation, fitting or fixing of any Products which the Hirer considers require installing, fitting or fixing at the Hirer's intended location.
- 13. GENERAL**
- 13.1 **Force Majeure.** Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (each a "**Force Majeure Event**"). In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for six (6) months, the Party not affected may terminate the Contract by giving thirty (30) days' written notice to the affected Party.
- 13.2 **Assignment and other dealings.** PL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Hirer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of PL.
- 13.3 **Entire agreement.** This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.
- 13.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 13.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: (a) waive that or any other right or remedy; nor (b) prevent or restrict the further exercise of that or any other right or remedy.
- 13.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.7 **Notices.** Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service. A notice or other communication shall be deemed to have been received: (a) if delivered personally, when left at the address referred to above; or (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am (GMT) on the second Business Day after posting. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.8 **Third party rights.** No one other than a Party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 13.9 **Governing law and Jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

Notwithstanding the foregoing, PL shall nevertheless still have the right to apply at any time for injunctive, other interlocutory or emergency relief to any court of competent jurisdiction.

13.10 **Definitions.** For the purposes of this Contract a "**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when banks in London are ordinarily open for business.

13.11 **Interpretation:** For the purposes of this Contract:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provisions, as amended or re-enacted;
- (b) a number of days will be calculated as exclusive of the first day and inclusive of the last day unless the last day falls on a day which is not a Business Day in which case the last day will be the next succeeding Business Day;
- (c) 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 those terms; and
- (d) an obligation on a Party not to do something includes an obligation on that Party not to allow that thing to be done.