

# **POPPY RECORDS**

## **EQUIPMENT HIRING AGREEMENT TERMS AND CONDITIONS**

### **DEFINITION**

THE COMPANY – Shall mean Adrian Tuddenham of 88, Mount Road, Southdown, Bath BA2 1LH trading as Poppy Records and where the context permits, his employees, agents or subcontractors.

HIRER – Means the person or company who agrees to hire the goods from THE COMPANY.

### **1. GENERAL**

1.1. THE COMPANY agrees to let and the HIRER agrees to take on the hire of the Equipment described in the Schedule hereto upon and subject to the Terms and Conditions set out below.

1.2. This Agreement contains all the terms agreed between THE COMPANY and the HIRER. The HIRER has not relied on any representation or warranty by THE COMPANY except as expressly stated or referred to in this Agreement. No variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of THE COMPANY.

1.3. THE COMPANY'S terms and conditions nullify all other terms and conditions received unless agreed by the Company's representative in writing.

### **2. HIRE PRICES AND PERIOD**

2.1. The HIRER shall pay to THE COMPANY the rentals plus VAT where applicable set out in the Hire Agreement at the times set out in the Hire Agreement . THE COMPANY reserves the right to charge a minimum rental.

2.2. The hire period shall commence on delivery of the Equipment to the HIRER'S premises or the collection of the Equipment from THE COMPANY'S premises by the HIRER or representative. Where the Equipment is lost or damaged, close of the hire will occur on the date of THE COMPANY being notified of such loss or damage in writing or acknowledged e-mail.

2.3. THE COMPANY shall be entitled to vary the rentals at any time by giving not less than 28 day's notice in writing of the variation to the HIRER.

2.4. The HIRER shall, if so required by THE COMPANY, pay a deposit at the commencement of the hire period.

2.5. The HIRER shall pay any additional preparation fees on placing an order for Equipment. The fee shall be irrecoverable if the HIRER does not take delivery of the Equipment.

2.6. THE COMPANY shall be entitled to make a reservation charge in respect of Equipment reserved by the HIRER and the hire shall unless otherwise agreed, be deemed to commence on the reservation date.

### **3. TERMINATION OF HIRE**

3.1. THE COMPANY may terminate this Agreement forthwith by giving written notice to the HIRER and re-take possession of the Equipment in the event of:

- i. any material breach of this Agreement by the HIRER which has not been immediately remedied (if capable of remedy) following a written demand by THE COMPANY;
- ii. if any order is made, proceedings are commenced or a resolution is passed, for the liquidation or winding-up of the HIRER;
- iii. if a distress or execution is levied against any property of the HIRER;
- iv. if a liquidator or receiver or administrator is appointed in respect of the undertaking or any property or assets of the HIRER;
- v. if the HIRER ceases or threatens to cease to carry on its business or is unable to pay its debts as they fall due or enters in any arrangements with creditors generally;
- vi. if THE COMPANY reasonably believes that its rights in the Equipment are in jeopardy.

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**4. DELIVERY AND COLLECTION**

4.1. The HIRER shall unless otherwise agreed with THE COMPANY, be responsible for the collection and return of the Equipment from and to THE COMPANY’S premises.

4.2. THE COMPANY will at the request of the HIRER, procure delivery of the Equipment to the HIRER’S premises, subject to payment by the HIRER of THE COMPANY’S charges for delivery.

**5. HIRER’S OBLIGATIONS**

5.1. The HIRER shall agree not to sell, offer for sale, assign, mortgage, charge or sublet the Equipment or this Agreement or the letting hereunder, nor hold itself out as the owner of the Equipment and shall not create or allow to be created, any lien or other encumbrance on the Equipment.

5.2. The HIRER shall affix to and maintain upon the Equipment such plates or identification marks, as THE COMPANY shall require, showing that the Equipment is the property of THE COMPANY.

5.3. The HIRER shall not cause or permit the Equipment to be removed from the HIRER’S possession without the prior written consent of THE COMPANY.

5.4. The HIRER shall assume the entire risk of damage to or loss of the Equipment or any part thereof. Insurance of the equipment is the responsibility of the HIRER whilst on hire to the HIRER.

5.5. THE COMPANY or its authorised representatives may enter at all times during normal business hours, at any premises to inspect the Equipment and, upon termination, to repossess the Equipment.

5.6. The HIRER agrees to indemnify and keep indemnified THE COMPANY, against all liabilities, actions, claims, damages, costs and demands suffered or incurred by THE COMPANY, as a result of a claim made by a third party arising out of the state, condition or use of the Equipment or in any way out of its hiring hereunder.

5.7. On termination of this Agreement for whatever reason, the HIRER shall immediately return the Equipment or make the same available for collection by THE COMPANY and shall grant THE COMPANY all necessary access to repossess the same.

**6. COMPANY**

6.1. THE COMPANY shall be entitled to assign its interest in this Agreement and the Equipment, whether absolutely or by way of charge and whether wholly or in part and to any person.

6.2. THE COMPANY will use all reasonable endeavours to make the Equipment available on the date required by the HIRER but shall not be liable for any costs or claims arising as a result of delay.

6.3. THE COMPANY will either repair or replace, in each case at no charge to the HIRER, any Equipment which is found by THE COMPANY to be defective or not capable of obtaining any published specification as a result of faulty design, manufacture or workmanship. The HIRER shall give THE COMPANY written notice of any claim made hereunder, as soon as reasonably practicable and in any event within twenty four hours after the alleged defect has come to the HIRER’S knowledge. It is expressly agreed between the parties that THE COMPANY may be absolved from all liability under this condition if the Equipment has been modified in any way by the HIRER or if it has been used for any purpose or in any manner other than that for which it was designed or if it has in any way otherwise been misused.

6.4. Subject only to the provision of paragraph 6.3 above, all warranties, conditions, representations or stipulations, whether expressed or implied and whether arising hereunder or under any prior agreement or statement or by statute or common law or hereby expressly excluded insofar as the law allows. Specifically (but without limitation) THE COMPANY does not accept responsibility for any consequential, indirect or economic loss or damage howsoever arising except to the extent that the same is attributable to negligence on the part of THE COMPANY or its employees.

**7. CONDITIONS OF USE**

7.1. The HIRER shall ensure that the Equipment is operated in a skilful and proper manner by persons competent to operate the same and in all respects in accordance with all instructions and any operations manual provided by THE COMPANY for the use of the Equipment and shall ensure that such directions and instructions are fully understood and will be observed by all persons operating the Equipment.

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7.2. The HIRER shall ensure that the Equipment will be operated safely and without risk to health and safety and shall comply in all respects with any notices of regulations under the Health and Safety at Work etc Act 1974 or any statutory modification or re-enactment for the time being thereof.

7.3. The HIRER shall not make or permit to be made any alterations, modifications or additions to the Equipment and shall not carry out any repairs or authorise the carrying out of any repairs to the Equipment by a third party without THE COMPANY'S prior written consent.

7.4. The HIRER shall take all reasonable proper care of the Equipment and keep the same in good and serviceable condition (reasonable fair wear and tear excepted) and shall indemnify THE COMPANY against loss of or damage to the Equipment howsoever caused and shall give THE COMPANY immediate notice of any such damage.

7.5. The HIRER shall carry out all periodical maintenance, inspections and requirements in respect of the Equipment prescribed by THE COMPANY'S written instructions with all due care in accordance with those instructions and at the recommended time or times.

## **8. PAYMENT TERMS**

8.1. Payment shall be made by the HIRER within 30 days of the invoice being submitted by THE COMPANY or 30 days from the date of the invoice whichever is the later.

8.1. Default of punctual payment of any sum owing, will entitle THE COMPANY to charge interest on the amount of any outstanding payment from the date of invoice to the date of payment thereof at the rate of 3% above the prevailing minimum leading rate of the Bank of England.

## **9. CANCELLATION**

9.1. Upon the termination of this Agreement before the end of the Hire period, the HIRER shall pay to THE COMPANY on demand the aggregate of:

- i. all rentals and other sums due or in arrears at the date of termination under this Agreement;
- ii. all costs (including legal costs) incurred as a result of a breach of this Agreement including repossessing and restoring the Equipment to its proper condition;

## **10. OWNERSHIP**

10.1. Title in the Equipment shall never pass to the HIRER and the HIRER'S interest in the Equipment shall only be and remain that of HIRER.

10.2. As between THE COMPANY and the HIRER the Equipment shall remain personal moveable property and shall continue in the ownership of THE COMPANY notwithstanding that the same may have been affixed to any land or building. The HIRER shall be responsible for any damage caused to any such land or building by the affixing to or removal there from of the Equipment (whether the same be effected by THE COMPANY or the HIRER) and shall indemnify THE COMPANY against any such claim made in respect of such damage.

## **11. PERFORMANCE**

11.1. The performance of the equipment provided by THE COMPANY will be supplied in accordance with manufacturer's published performance details.

## **12. CONTRACT HIRE**

12.1. If THE COMPANY has supplied Equipment on negotiated terms for a Hire period, THE COMPANY shall unless otherwise agreed be entitled to payment of all rentals due up to the end of the agreed hire period notwithstanding the earlier return of the Equipment to THE COMPANY.

## **13. SOFTWARE AND DOCUMENTATION**

13.1. The following shall apply where software or documentation is supplied with the equipment.

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- i. The title to all software, including programs and documentation furnished by THE COMPANY shall be retained by THE COMPANY
- ii. The HIRER is supplied the use of the software and documentation only for the rental term and the software and documentation shall be used only on the specific equipment with which it was supplied. Use of the software shall consist either of copying any portion of the program from storage units or media into the CPU or the processing of DATA with the program or BOTH.
- iii. The HIRER may make up to two copies of THE COMPANY'S supplied machine-readable software for backup and archival purposes.
- iv. Subject to the provision of clause 16(iii), the HIRER shall not copy or duplicate or permit a third party to copy or duplicate in any manner any physical or magnetic version of THE COMPANY'S supplied machine readable software. The HIRER shall not copy or duplicate any printed materials related to any furnished with THE COMPANY'S supplied machine-readable software.
- v. Upon termination of the hire as defined in clause 6 above, the HIRER shall return to THE COMPANY the original Owners supplied machine readable software, all copies thereof and all printed material furnished with such software.
- vi. The provisions of clause 13(v) shall not apply if the HIRER has purchased user rights from THE COMPANY for THE COMPANY'S supplied software and has signed the original manufacturer's software or program licence agreement for said software. In that event, the HIRER'S rights and obligations upon termination shall be governed by the original manufacturer's software or program licence agreement.
- vii. No licences or rights are granted except as set forth herein or in the original manufacturer's software or program licence agreement, which the HIRER shall be required to sign on receipt and before using the software. The HIRER may not assign the software, without THE COMPANY'S prior written consent.
- viii. THE COMPANY accepts no liability for any viruses that are contained in the software or the effect they may have on the HIRER'S business. It is the HIRER'S responsibility to check any software supplied with the equipment is tested by the appropriate diagnostic software for the presence of any computer viruses before use.

OR

Machine-readable software must only be used in conjunction with the equipment for which it is supplied. Any copies made must be destroyed or returned with the hired equipment. Support documentation must not be copied. Software and support documentation is supplied for the use of the HIRER only and must not be passed on to any third party.

**14. FORCE MAJEURE**

14.1. If either THE COMPANY or the HIRER are rendered unable wholly or in part by Force Majeure to carry out their obligations under this contract, the party affected shall give to the other prompt written notice of the Force Majeure with reasonable full particulars concerning it whereupon the obligation of the party giving the notice so far as it is affected by the Force Majeure shall be suspended during but not longer than the continuance of the Force Majeure. The affected party shall use all reasonable diligence to remove the effects of the Force Majeure as quickly as possible. The term Force Majeure as employed in this contract should be deemed to include but shall not be limited to any war, riot, act of God, fire, flood, government regulation or act, any natural or accidental disaster, any strike, lockout or industrial dispute or shortage of raw materials or fuel or any breakdown of machinery or illness or any other cause outside the reasonable control of the party suffering such Force Majeure, but not in any circumstances including financial inability. If a party is rendered unable wholly or in part by Force Majeure substantially to carry out its obligations under this contract for a period of one year or more, then either party may declare the contract to be abandoned forthwith by written notice to the other party to that effect.

**15. GOVERNING LAW**

15.1. All Hire of equipment shall be governed by and interpreted in accordance with the laws of England and the parties submitted to the jurisdiction of the English Courts, but THE COMPANY may enforce any such Hire of equipment in any court of competent jurisdiction.

**16. ARBITRATION**

16.1. In the event of a dispute or difference arising from these conditions or the interpretation thereof or otherwise arising from the Hire of the equipment under these conditions, such dispute or differences shall be referred to arbitration by a single arbitrator mutually agreed between the parties or failing such agreement, by an arbitrator nominated by the President of the Institute of Arbitrators. Any such arbitration shall be conducted in accordance with the Arbitration Act 1950, and by application of the law of England.

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