



ES Global Ltd Unit G East, Coate House, 1-3 Coate Street, London E2 9AG

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## ES GLOBAL LTD STANDARD CONDITIONS OF HIRE AND FOR PROVISION OF SERVICES

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions and the Contract, the following words and expressions shall bear the following meanings:

**"Confirmation of Quote and Terms Letter"** means a letter which may be issued by ESG confirming or updating an earlier Quotation, which sets down particular terms applicable to the Contract.

**"ESG"** means ES Global Ltd a Company having its Registered Office at Unit G East, Coate House, 1-3 Coate Street, London, UK, E2 9AG

**"Event"** means the event to be held, for which the Works and Services are being carried out, such as a Show, Concert, Sports Event or Exhibition.

**"Expected Hire Period"** means the expected hire period set out in the Quotation.

**"Force Majeure Incident"** has the meaning given to it in Clause 11.

**"Hire Period"** means the period of hire as determined in accordance with Clause 3.2.

**"Hirer"** means the person, business or other entity who or which takes the Works on hire and receives the Services, and named as such in the Contract and shall include its successors, assignees or personal representatives.

**"Normal Working Hours"** means 8 a.m. to 5 p.m. on each Working Day.

**"Order Acknowledgment"** means any order acknowledgment (including a Cash Account Order Acknowledgment) issued by ESG from time to time.

**"Price"** means the quoted price for the Works and Services, as accepted by the Hirer, and as stated on the Confirmation of Quote and Terms Letter, excluding VAT.

**"Quotation"** means ESG's form of quotation, including the notes thereto, as updated from time to time.

**"Services"** means the services to be performed by ESG in relation to the Works, such as project management, attendance and maintenance.

**"Site"** means the site where the Works will be installed under the Contract.

**"Terrorism"** shall have the meaning given to that term in the Terrorism Act 2000.

**"Week"** means a period of seven (7) consecutive calendar days.

**"Working Day"** means a day other than a Saturday, Sunday or public holiday.

**"Works"** means all of the equipment, plant and materials provided by ESG to the Hirer.

1.2 Clause headings shall not affect the interpretation of the Contract. References to clauses are to the clauses of these Conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7 A reference to **writing** or **written** includes fax and e-mail.

1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.9 Any words following the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 2. BASIS OF CONTRACT

2.1 The Quotation (including the Hirer's acceptance thereof), any Order Acknowledgment, the ES Global Confirmation of Quote and Terms Letter, and these Conditions comprise the entire contract, agreement and understanding between ESG and the Hirer (the **"Contract"**) and no other terms and conditions, or pre-contractual statements or representations, shall form part of the Contract. The Contract supersedes and extinguishes all previous agreements,

8.3 The Contract sets forth the full extent of ESG's obligations and liabilities in respect of the Services and the Works and its hiring to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on ESG except as specifically stated in the Contract. Any condition, warranty or other term concerning the Works which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

### 9. LIABILITY

9.1 ESG's maximum aggregate liability to the Hirer under or in connection with the Contract (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed the total Price received from the Hirer by ESG or amounts recoverable and recovered by ESG on its Insurance Policies.

9.2 Nothing in the Contract shall exclude or in any way limit or exclude either party's liability for:

- death or personal injury caused by its (or its employees, agents and subcontractors) own negligence;
- fraud or fraudulent misrepresentation; or
- breach of any statutory implied term or warranty, or any other liability, to the extent that the same cannot be lawfully limited or excluded.

9.3 Subject to Clause 9.2, neither party shall be liable under or in connection with the Contract (whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise) for any:

- loss (direct or indirect) of business, production, profits, contracts, opportunity, goodwill, revenues, anticipated savings or similar; or
- special, indirect or consequential loss or damage, in each case, however caused, even if foreseeable.

9.4 Subject to Clause 9.2, ESG shall not be liable to the Hirer to the extent that any breach of contract, tort (including negligence), breach of statutory duty, misrepresentation or other ground for liability is due to any incorrect, incomplete or misleading advice, statement, information, representation or warranty by the Hirer, or the Hirer otherwise being in breach of contract.

### 10. TERMINATION

10.1 Without affecting any other right or remedy available to it, ESG 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 seven (7) calendar days after being notified in writing to make such payment;
- the Hirer shall do or cause to be done or permit or suffer any act or thing whereby the Works or ESG's rights in the Works may be prejudiced or put into jeopardy; or
- the Hirer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) calendar days after being notified in writing to do so;
- the Hirer shall cease to carry on business or shall be unable to pay its debts as they fall due for payment or if the Hirer shall suffer any diligence, distress or execution to be used or levied against it or make or propose to make any arrangement (including but not limited to an individual voluntary arrangement or company voluntary arrangement) with its creditors or, being a company shall go into liquidation (other than for the purposes of reconstruction or amalgamation) or have a receiver, administrator or administrative receiver appointed to the whole or any part of its assets and undertaking or shall do or suffer the equivalent of any of the foregoing in any other jurisdiction; or
- a Force Majeure Event shall have affected the Works and/or the performance of all or any part of ESG's services under the Contract for a continuous period of not less than 14 calendar days.



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promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and 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.

2.2 No variation of the Contract shall be effective unless specifically agreed in writing by an authorised signatory of ESG and of the Hirer. ESG will have no obligation to vary the Works or Services unless instructed in writing. Agreed cost of variations to be added to the Price.

2.3 In the event of any inconsistency between any of the documents forming part of the Contract, the Confirmation of Quote and Terms Letter shall prevail against all other such documents.

### 3. DELIVERY OF THE WORKS AND SERVICES, AND HIRE PERIOD

3.1 ESG shall deliver the Works to the Hirer at the Site, and provide the Services to the Hirer at the Site, subject to the terms and conditions of the Contract.

3.2 The Period of Hire shall be as determined on the Quotation, or as may later be superseded by the period stated within the Confirmation of Quote and Terms Letter.

### 4. PRICE AND PAYMENT

4.1 The Hirer shall pay the Price to ESG.

4.2 Unless otherwise agreed in writing, ESG shall invoice the Hirer following completion of the Hire Period, provided that where the Hire Period for any Works exceeds four (4) Weeks ESG shall invoice the Hirer every four (4) Weeks in arrears and following completion of the Hire Period; and the Hirer shall pay each invoice submitted by ESG in full within thirty (30) calendar days of the date of the invoice.

4.3 The Price is exclusive of VAT and any other applicable taxes; and any customs, import or other duties or similar charges which shall be payable in addition by the Hirer at the rate and in the manner from time to time prescribed by law.

4.4 ESG's Bank Details for Payment are : Account Holder – ES Global Ltd; Bank Name – Lloyds Bank PLC; Sort Code – 30-65-41; Account Number 31920468; Swift – LOYDGB21682; IBAN – GB17LOYD30654131920468.

4.5 If the Hirer fails to make any payment due to ESG under the Contract by the due date for payment, then, the Hirer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base 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.

4.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). ESG may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Hirer against any amount payable by ESG to the Hirer.

### 5. ACCESS, SITE CONDITIONS AND ACCEPTANCE

5.1 The Hirer shall be responsible for the unobstructed access and egress at the Site

5.2 The Hirer is solely responsible for ground conditions at the Site. The Hirer shall at its own cost provide a suitable area for the lay down, installation of the Works and shall ensure that the Site is levelled, graded, compacted and free from debris, structures and obstructions. If the ground at the Delivery Place and the Site is soft or unsuitable for the Works to work on or travel over, the Hirer shall at its own cost supply a suitable base in accordance with ESG's specifications in a suitable position.

5.3 The Hirer shall allow ESG's employees, contractors, agents and insurers access (including vehicle access) to the Site at all reasonable times to inspect, test, adjust, maintain, service, repair or replace the same. The Hirer shall be responsible for providing safe and proper access both for such purposes and for delivery and collection of the Works. If access is denied or delayed, any obligation of ESG to deliver the Works on a specified date or within a specified period; shall be modified by extending the relevant period by such time as ESG considers is reasonably necessary to take account of such denial of

10.2 Upon termination of the Contract, however caused:

(a) ESG's consent to the Hirer's possession of the Works shall terminate and ESG may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Works and for this purpose may enter the Site or any premises at which the Works is located; and

(b) without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to ESG on demand:

(i) all Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to Clause 4.5;

(ii) any costs and expenses incurred by ESG in recovering the Works and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

10.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

### 11. FORCE MAJEURE

11.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure is attributable to strike, lock-out, riot, civil commotion, insurrections, Terrorism or suspected Terrorism, threat of Terrorism, act of war (whether or not officially declared) or civil war, war-like action, act of any Parliament, government, agency or department (whether local or national), natural calamity, epidemic, pandemic, fire, flood, storm, tempest, earthquake, volcanic eruption, explosion, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, maritime or aviation disasters, or any other events, circumstances or causes beyond its reasonable control (each a "Force Majeure Incident").

11.2 In the event of Force Majeure, if ESG is or will be prevented from performing any of its obligations ESG shall suspend the execution of the Works, after giving notice to the Hirer, and, to the extent agreed with the Hirer, demobilise the ESG's equipment, plant and personnel. If the Force Majeure Incident continues for a period, such that even with acceleration of the delivery of the Works, the 'Event' for which Works are being carried out could not reasonably be held, either Party may then give notice of cancellation of the Works. After cancellation, ESG shall be entitled to payment of the unpaid balance of the Works executed and of the Materials and Plant reasonably delivered to the Site, and for the costs of any demobilisation. If the works are suspended but are capable of being completed then ESG will be entitled to additional payment as a result of the suspension, including but not limited to down-time costs.

### 12. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 12.2.

12.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 12; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.4 As between the Hirer and ESG, all Intellectual Property Rights and all other rights in the Works and the Services shall be owned by ESG. ESG licenses all such rights to the Hirer free of charge and on a non-exclusive, basis to such extent as is necessary to enable the Hirer

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or delay in access.

5.4 Unless notification in writing to the contrary is received by ESG from the Hirer within one (1) Working Days of the date of Delivery, all Works shall be deemed to have been timeously delivered in good condition, complete and fit in every way for the purpose for which it is intended and to the Hirer's satisfaction .

#### 6. TITLE

6.1 The Works shall at all times remain the property of ESG, and the Hirer shall have no right, title or interest in or to the Works (save the right to possession and use of the Works subject to the terms and conditions of the Contract).

6.2 The Hirer shall:

- (a) not remove or deface any plate or marking on the Works identifying ESG as the owner of the Works, make any alteration to the Works or remove any existing component(s) from the Works;
- (b) not part with control of (including for the purposes of repair or maintenance), sell or offer for sale, rehire, underlet or lend the Works or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (c) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of ESG in the Works; or
- (d) not suffer or permit the Works to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Works is so confiscated, seized or taken, the Hirer shall notify ESG and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Works.

The Hirer shall indemnify ESG upon ESG's written demand against all losses, damage, costs, charges and expenses arising as a result of failure to comply with this Clause.

#### 7. INSURANCE

7.1 Unless otherwise agreed in writing ESG will insure their Works for the period of the Hire and during Installation and Removal under their own Insurance Policies.

7.2 Insurances held by ESG and limits of cover, include :-

- (a) Employers Liability, £10M limit of Indemnity
- (b) Public Liability, £10M any one incident/unlimited
- (c) Product Liability, £10M any one incident and in the aggregate
- (d) Professional Indemnity, to a £10M limit of Indemnity
- (e) Production Property, £5M

8. The Hirer shall be responsible for paying any deductibles due on any claims under such ESG insurance policies; to the extent that the cause of the claim was the responsibility of the Hirer **WARRANTY**

8.1 ESG warrants to the Hirer that:

- (a) the Works shall:
    - (i) be free from any defects in design, workmanship and material which would affect the proper and safe operation of the Works;
    - (ii) conform in all material respects to its specification (as made available by ESG) be of satisfactory quality and fit for any purpose held out by ESG; and
    - (iii) comply with all applicable legislation from time to time in force; and
  - (b) the Services shall be provided:
    - (i) using reasonable care, skill and diligence;
    - (ii) in accordance with all applicable legislation from time to time in force;
    - (iii) by personnel who are suitably skilled and experienced to perform tasks assigned to them; and
    - (iv) in accordance with all health and safety rules and regulations and any other reasonable security requirements that apply at the Site.
- ESG shall remedy any defect in the Works or re-perform any defective Services which manifests itself during the Hire Period

8.2 The warranty and obligation to remedy any defect will not apply where any defect in the Works or Services has arisen from any drawing, design or specification supplied by the Hirer, wilful damage, negligence of the Hirer or its employees, subcontractors or agents, abnormal working conditions, failure to follow ESG's instructions, misuse or alteration or repair of the Works without ESG's prior written approval or breach of any of the terms of the Contract by the Hirer.

to make reasonable use of the Works and the Services. This licence will automatically terminate on termination or expiry of the Contract.

#### 13. ASSIGNMENT AND OTHER DEALINGS

13.1 The Hirer shall not assign the Contract or any part of it or any benefit or interest in or under it without the previous written agreement of ESG which will only be given in exceptional circumstances and shall notwithstanding the foregoing be in the absolute discretion of ESG.

13.2 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

13.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

13.4 At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the Contract.

13.5 No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

13.6 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.7 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

13.8 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.

#### 14. DISPUTES AND DIFFERENCES

14.1 The parties shall attempt in good faith to settle any dispute by agreement between the responsible Managers of each party for this Hire Agreement, and if the matter in dispute cannot be concluded between the Managers then the matter in dispute should be escalated up to a Senior Director of each party to seek an agreed settlement.

14.2 Where this Agreement is a construction contract within the meaning of the Housing Grants Construction and Regeneration Act 1996 (as amended) any dispute arising shall be referred to adjudication with the procedure stated in the CIC (Construction Industry Council) Model Adjudication Procedure current at the time of the referral. The Nominating Body for the appointment of any Adjudicator shall be the RICS (Royal Institution of Chartered Surveyors).

#### 15. GOVERNING LAW AND JURISDICTION

15.1 The governing law of the Contract and of the relationship of the parties thereto arising out of it shall be English Law.

15.2 Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).