

**GENERAL TERMS OF BUSINESS**

**1 INTERPRETATION**

- 1.1 In these Conditions:
  - 'The Contractor' means the Member of the Event Supplier and Services Association (ESSA) which agrees to perform the Contract Work.
  - 'Contract Work' means any or all of the work which the Contractor agrees to perform and/or the services which the Contractor agrees to provide including the provision of Goods on hire or by sale in accordance with the relevant quotation.
  - 'Goods' means all goods of whatsoever description including but not limited to materials, plant, equipment, machinery and fittings.
  - 'Customer' means the person, firm or corporate body who agrees to purchase Contract Work.
  - 'Contract' means any contract between the Contractor and the Customer for the carrying out of Contract Work.
  - 'Quotation' means a quotation by the Contractor for the Contract Work.
- 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect the interpretation of a Contract.
- 1.4 A reference to one gender includes a reference to the other gender.

**2 ORDERS AND SPECIFICATIONS**

- 2.1 The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No variation of, or addition to, these Conditions shall be effective unless in writing and signed by the Contractor and the Customer.
- 2.3 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Contractor which is not set out in the Contract. Nothing in this condition shall exclude or limit the Contractor's liability for fraudulent misrepresentation.
- 2.4 Any typographical or clerical error or omission in any Quotation, price list, acceptance, invoice or other such document issued by the Contractor shall be subject to correction without any liability on the part of the Contractor.
- 2.5 All specifications, descriptions, drawings, designs, measures or other information provided by the Contractor in relation to Contract Work and/or Goods are approximate and, in relation thereto, the Contractor reserves the right to incorporate modifications or amendments in Contract Work subject to the consent of the Customer, such consent not to be unreasonably withheld
- 2.6 A Contract shall be created by the Contractor accepting a Quotation or otherwise placing an order with the Contractor, irrespective of how such Quotation, acceptance or order is expressed.
- 2.7 The Customer shall be responsible to the Contractor for ensuring the accuracy of the terms of any order or other material (including any applicable specification) submitted by it or on its behalf and for giving the Contractor any necessary information relating to Contract Work within a sufficient time to enable the Contractor to perform the Contract in respect thereof in accordance with its terms.
- 2.8 The Customer shall be responsible for obtaining all necessary licences and other permissions whatsoever for the performance of Contract Work.
- 2.9 The Customer shall be responsible for ensuring that every building, path, private road, open space or other property to be used in the performance of Contract Work is safe and suitable for the intended use and, without limitation of the foregoing, is adequately served with all required public utilities.
- 2.10 The Customer may not cancel a Contract unless the Contractor agrees in writing and then on the terms that the Customer shall indemnify the Contractor in full against all loss (including loss of profit, costs (including the cost of all labour and materials used), claims, actions, damages, charges and expenses incurred by the Contractor as a result of cancellation.
- 2.11 The Contractor shall have and retain the property, copyright, design right and all other intellectual or industrial property rights in all know how, trade secrets, trade marks, service marks, drawings, designs, plans, models, specifications and/or estimates prepared by the Contractor. If the Customer uses or allows any third party to use any design or other intellectual property rights of the Contractor provided as part of the Contract Work other than as contemplated under the Contract, the Customer will, without prejudice to any other remedy available to the Contractor, pay the Contractor under the Contract plus VAT.
- 2.12 Where the Customer is to supply goods ('Customer's Property') to the Contractor in connection with the Contract Work the Contractor will not be liable to the Customer for loss of or any damage to Customer's Property unless caused by the negligent act or omission of the Contractor.
- 2.13 If any part of Contract Work is to be performed elsewhere than on the Contractor's premises, the Customer shall be responsible to the Contractor for insuring the place of performance of such Contract Work and shall indemnify the Contractor against liability for any damage to the place of performance of such Contract Work, however caused.

**3 PRICES**

- 3.1 The Contractor will quote for Contract Work only after the Contractor has received a written specification from, or on behalf of, the Customer.
- 3.2 The Quotation shall be open for acceptance within either the period stated therein or, if none is stated, within three calendar months of its date.
- 3.3 The Contractor reserves the right by giving notice to the Customer at any time before completion of Contract Work to increase the price of the applicable Contract in the following circumstances:
  - 3.3.1 Where additional work is performed at the Customer's request; and/or
  - 3.3.2 to reflect any increase in the cost to the Contractor which is due to any factor beyond the Contractor's control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the cost of labour, materials or other costs of performance) or any failure of the Customer to give the Contractor adequate information or instructions; and/or
  - 3.3.3 without prejudice to the generality of condition 3.3.2 above, to reflect any increase in the general index of retail prices compiled by the United Kingdom Department of Employment and published in the United Kingdom in the monthly digest of statistics by the Central Statistical Office or any index substantially replacing it.
- 3.4 Prices are exclusive of VAT and, where applicable, any additional or substitute taxes, levies, imposts, duties, fees or charges all of which shall be paid by the Customer.

**4 TERMS OF PAYMENT**

- The Customer shall pay one half of the price of a Contract when it is made and shall pay the balance (including any extra sums due under Condition 3.3 above) on completion of Contract Work as notified by the Contractor or, where Contract Work relates to an exhibition, on the opening of the exhibition if earlier. Time for payment shall be of the essence. Receipts for payment will be issued only on request.
- 4.1 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Contractor, the Contractor shall be entitled, at its option at any time thereafter to:
  - 4.1.1 terminate the relevant Contract and suspend further performance of Contract Work; and
  - 4.1.2 require the immediate return of any Goods hired to the Customer; and
  - 4.1.3 require full payment, without deduction, of the total amount due and/or which would have become due under the relevant Contract but for termination
- 4.2 Property in Goods supplied by way of sale under a Contract shall not pass until payment by the Customer of all sums due under the Contract under which the Goods were delivered; until property in such Goods passes the Customer shall hold them as bailee for the Contractor, shall store them separately from all other property of the Customer or any third party, marked so

as to be clearly identifiable as belonging to the Contractor, shall keep them insured against all usual risks in their full invoice value and, if any of the events referred to in condition 9 occurs, the Customer shall place such Goods at the disposal of the Contractor and the Contractor shall be entitled to enter upon any premises of the Customer, or any other premises where such Goods are kept, for the purpose of removing them.

**5 WARRANTY**

Provided that notice is given as soon as reasonably possible, and in any event within fourteen days of the defect being discovered and Provided Always that in the case of Goods such notice must be given within the period of hire, where supplied on hire, or within 12 months of the date of delivery, where supplied by way of sale, if the Customer gives notice of a defect in Contract Work, and the defect was not caused in whole or in part by any matter, action or occurrence outside the Contractor's control the Contractor shall, in its sole discretion, either remedy the defect or refund to the Customer a reasonable proportion of the price of the Contract.

**6 LIABILITY**

- 6.1 The terms of Condition 5 are, to the extent legally permissible, in lieu of all conditions, warranties and statements of whatever nature in respect of Contract Work whether express or implied by statute, trade, custom or otherwise and any such condition, warranty or statement is hereby excluded.
- 6.2 The Contractor shall not be liable for any defect in Contract Work arising directly or indirectly from compliance with any drawing, design, specification or order of the Customer.
- 6.3 Without prejudice to the terms of Conditions 6.1, 6.2 and 6.4, the Contractor will accept liability for any loss or damage sustained by the Customer as a direct result of any breach of a Contract or of any liability of the Contractor (including negligence) in respect of the performance of a Contract provided that such liability shall be limited to payment of damages not exceeding the invoice value of the Contract in questions.
- 6.4 Subject to the terms of Condition 6.6, the Contractor shall not be liable for the following loss or damage however caused (even if foreseeable or in the Contractor's contemplation):
  - 6.4.1 Loss of profits, business or revenue whether sustained by the Customer or any other person; and/or
  - 6.4.2 special, indirect or consequential loss or damage, whether sustained by the Customer or any other person; and/or
  - 6.4.3 any loss arising from any claim made against the Customer by any other person.
- 6.5 The Customer shall indemnify the Contractor against all claims, actions, costs, expenses (including court costs and legal fees) or other liabilities whatsoever in respect of:
  - 6.5.1 Any liability arising under the Consumer Protection Act 1987, unless caused by the negligent act or omission of the Contractor in the manufacture and/or supply of Goods; and/or
  - 6.5.2 any claim for breach of industrial and/or intellectual property rights arising out of compliance with any drawings, designs, specifications or order of the Customer; and/or
  - 6.5.3 any breach of Contract or negligent or wilful act or omission of the Customer in relation to a Contract.
- 6.6 Nothing in these conditions excludes or limits the liability of the Company:
  - 6.6.1 For death or personal injury caused by the Company's negligence;
  - 6.6.2 under section 2(3) of the Consumer Protection Act 1987;
  - 6.6.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - 6.6.4 for fraud or fraudulent misrepresentation.

**NOTHING IN THESE CONDITIONS SHALL AFFECT THE STATUTORY RIGHTS OF A CONSUMER**

**7 HIRED GOODS**

Unless specifically provided by way of sale, all Goods used or supplied by the Contractor in connection with Contract Work shall be deemed to be on hire to the Customer.

The Customer shall indemnify the Contractor against the loss of and/or damage to hired Goods unless caused by the negligent act or omission of the Contractor.

The Customer shall keep hired Goods in his possession and/or under his control at all times and shall not remove them from the place where they are installed by the Contractor without the latter's prior written consent.

Upon expiry of the period of deemed hire, or upon the earlier termination of the relevant Contract, the Customer shall no longer be in possession of hired Goods and the Contractor may at any time without notice retake possession of such hired Goods and the Contractor shall be entitled to enter the premises of the Customer and/or any other place of performance of Contract Work, for such purposes.

**8 FORCE MAJEURE**

The Contractor shall be entitled, without liability on its part and without prejudice to its other rights, to terminate a Contract or any unfulfilled part thereof or, at its option, to suspend or give partial performance under it, if performance by the Contractor or by its suppliers is prevented, hindered, or delayed whether directly or indirectly by reason of any cause whatever beyond the Contractor's or its suppliers' reasonable control, whether such cause existed on the date when the Contract was made or not.

**9 INSOLVENCY**

If the Customer, being an individual, or being a firm, if any partner in the Customer is the subject of a petition for a bankruptcy order or of an application for an interim order under Part VIII of the Insolvency Act 1986, or if the Customer, being a company, compounds with its creditors or has a receiver or manager appointed in respect of all or of any part of its assets or is the subject of an application for an administration order or of any proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986, or enters into liquidation whether compulsorily or voluntarily otherwise than for the purpose of amalgamation or reconstruction, or if the Contractor reasonably believes that any of the above events is about to occur, then the Contractor shall be entitled immediately, and at any time thereafter, to terminate forthwith any Contract or any unfulfilled part thereof.

**10 GENERAL**

- 10.1 No waiver by the Contractor of any breach of Contract by the Customer shall be construed as a waiver of any subsequent breach of the same or any other provision.
- 10.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 10.3 Any dispute arising under or in connection with these Conditions or the work done by the Contractor shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party.
- 10.4 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Contractor.
- 10.5 Failure or delay by the Contractor in enforcing or partially enforcing its rights under the Contract will not be construed as a waiver of any of its rights under the Contract.
- 10.6 The parties to this Contract do not intend that any term of this 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.

This Contract shall be governed by the Laws of England.