

STANDARD TERMS AND CONDITIONS OF HIRE & SERVICES (“Terms”)

The following Terms of EnterTec Limited (“ETL”) form the basis of the Contract between ETL and the Customer. Where there is any inconsistency between the provisions hereof and the Confirmation (defined below), the provisions of the Confirmation will apply.

1. Interpretation

1.1 In these Terms, unless the context otherwise requires, the following expressions have the following meanings:-

“Confirmation” the email/letter sent by ETL to the Customer confirming the details of the Order (including any amendments to the Confirmation agreed by both parties).

“Consumables” those items sold by ETL to the Customer from time to time including, but not limited to, tapes and batteries.

“Contract” each individual offer by ETL accepted by the Customer in accordance with Clause 2 incorporating these Terms.

“Customer” the person who, in the course of their business, has agreed to hire the Equipment and/or Services from ETL.

“Delivery Date” the date set out in the Confirmation or such other date agreed in writing by the parties.

“Delivery Address” the address for delivery set out in the Confirmation or such other address agreed in writing by the parties.

“Equipment” the equipment supplied by way of hire by ETL as set out in the Confirmation together with such other equipment as may be agreed in writing by the parties.

“ETL” EnterTec Limited (company number 5629550) whose registered office is at Avaland House, 110 London Road, Apsley, Hemel Hempstead. HP3 9SD.

“Hire Charge” the fee for the hire of the Equipment and/or Services as set out in the Confirmation payable in accordance with Clause 4.

“Hire Period” the period of hire of the Equipment and/or Services as set out in the Confirmation.

“Order” the order placed by the Customer (by telephone or otherwise) for the hire of the Equipment and/or Services.

“Price” the price of the Consumables as set out in the Confirmation payable in accordance with Clause 4.

“Services” the provision of crew, transportation, project management, and/or any associated expenses required to fulfill an Order as agreed in writing by the parties.

1.2 The headings in these Terms are for ease of reference only and shall not affect the construction or interpretation of the Contract.

1.3 Words importing the singular include the plural and vice versa and words importing any gender include every gender.

1.4 Any reference to “person” shall include any partnership, firm, company, body corporate, corporation or organisation.

1.5 Any reference to “writing” or “in writing” includes emails and facsimilies.

2. Application of Terms

2.1 Subject to Clauses 2.5 and 14.3, these Terms shall apply to all Orders and Contracts to the exclusion of all other terms and conditions (including any terms and conditions which the Customer supplies or purports to apply).

2.2 The Confirmation shall constitute an offer by ETL to provide the Equipment and/or Services for hire. The Customer shall accept this offer by returning the signed Confirmation by fax, by returning the completed Confirmation email to ETL, or by stating acceptance as response to an offer made by ETL via email, post or fax.

2.3 Where the Customer does not accept, reject or request an amendment to the Confirmation within 4 normal working hours of the Confirmation being sent to the Customer, the Customer shall be deemed to have accepted ETL's offer.

2.4 Each Confirmation accepted by the Customer in accordance with this Clause 2 will create a separate Contract governed by these Terms.

2.5 ETL reserves the right to amend these Terms from time to time and shall notify the Customer of such amendments. The Customer shall be required to accept the new Terms before an Order can be placed and a new Contract formed.

3. Hire of the Equipment and/or Services, and Sale of Consumables

3.1 In consideration of the payment by the Customer of the Hire Charge, ETL agrees to hire the Equipment and/or Services to the Customer for the Hire Period subject to these Terms.

3.2 In consideration of the payment by the Customer of the Price, ETL agrees to supply and sell to the Customer the Consumables set out in the Confirmation subject to these Terms.

4. Payment of the Hire Charge and the Price

4.1 ETL may invoice the Customer for all or part of the Hire Charge and the Price before, on or immediately following delivery of the Equipment, Services and the Consumables to the Customer. Time shall be of the essence in respect of the Customer's payment.

4.2 Unless otherwise stated in the Confirmation, the Customer shall pay the Hire Charge and the Price within 30 days of ETL's invoice.

4.3 All sums due are exclusive of VAT or other applicable sales tax which shall be paid by the Customer at the appropriate rate.

4.4 Where the Customer fails to make payment within 10 days from the due date then, without prejudice to any other right or remedy available to ETL, ETL shall be entitled to cancel the Contract and/or suspend any delivery of the Equipment, Services and Consumables or where the Equipment and Consumables have already been delivered enter the Delivery Address and remove the same until the outstanding amount has been received and the Customer hereby grants to ETL an irrevocable licence to enter such premises for this purpose. ETL may also charge the Customer interest (both before and after any judgement is made) on the amount unpaid at the rate of 4% above NatWest Bank's base rate in force from time to time until full payment is made.

4.5 Invoice details will be considered final and binding by ETL if no query or dispute is received within the credit terms. ETL reserves the right to refuse to consider queries or disputes which are raised 30 days or more after the date of ETL's invoice.

4.6 The Customer shall make all payments due without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

5. Delivery

5.1 ETL shall use all reasonable endeavours to deliver the Equipment and the Consumables to the Customer at the Delivery Address on or before the Delivery Date. For the avoidance of doubt the time for delivery shall not be of the essence and ETL shall have no liability to the Customer if it fails to meet any Delivery Date.

6. Customer's Obligations

6.1 During the Hire Period, the Customer shall:

(a) keep the Equipment fully insured against all risks of loss and damage, to the full replacement value of the Equipment as new, from the time that delivery is effected or tendered until the Equipment is returned to ETL and the Customer shall procure that the interest of ETL is noted by the insurance company and on the insurance policy and provide forthwith to ETL at ETL's reasonable request, a copy of the certificate of such insurance;

(b) ensure that the Equipment is used in a proper manner by competent trained persons only or by persons under their immediate supervision;

(c) keep and operate the Equipment in a proper and prudent manner;

(d) ensure that the external surfaces of the Equipment are kept clean and in a good condition;

(e) not itself, nor permit its employees, agents, sub-contractors or servants to take the Equipment outside of the United Kingdom without the prior written consent of ETL. Such consent shall not be unreasonably withheld subject always to the Customer arranging and paying for the insurance of the Equipment to the full replacement value for such time as the Equipment is overseas;

(f) not interfere or permit interference with the Equipment or any part thereof nor alter, erase, deface or overprint any trade mark or any other notice of proprietary rights placed on the Equipment;

(g) store or otherwise keep the Equipment in such a way as clearly to indicate at all times that the Equipment is owned by ETL and shall not remove, obscure or delete any mark placed on the Equipment by ETL which may enable the Equipment to be so identified; and

(h) not attempt to repair the Equipment nor permit any person other than ETL's authorised representatives or those approved by ETL to repair the Equipment.

6.2 The Customer shall forthwith upon the occurrence of any loss or damage to the Equipment notify ETL in writing. In the case of damage the Customer shall return the Equipment to ETL and ETL will arrange for the repair of the Equipment or (if lost or if ETL in its absolute discretion considers the Equipment to be beyond economic repair) for its replacement.

6.3 Where the Equipment requires repair or replacement in accordance with Clause 6.2 above:-

(a) the cost of any repair or replacement (whether on loss or damage) shall be the responsibility of the Customer who will forthwith reimburse ETL on an indemnity basis the full cost thereof immediately after notification in writing of such costs; and

(b) until the Equipment (or any replacement) is returned to ETL in good working condition the Customer shall remain liable to pay the Hire Charge in accordance with Clause 4.

7. Title to the Equipment

7.1 The Equipment shall at all times remain the property of ETL.

7.2 The property in the Consumables shall not pass to the Customer until ETL has received in cash or cleared funds payment in full of the Price and the Hire Charge and other goods and/or services agreed to be sold or supplied by ETL to the Customer for which payment is then due.

7.3 The Customer hereby grants an irrevocable licence to ETL, its agents and servants to enter into its premises and collect the Equipment if the Customer is in breach of Clause 6.1 or if ETL has, in any way whatsoever, dealt with or attempted to deal with the Equipment as either legal or equitable owner.

8. Warranties

8.1 Subject to the exception set out in Clause 8.6 below and the limitations upon its liability in Clause 11 below, ETL warrants and undertakes to the Customer that:-

(a) its title to and property in the Equipment and Consumables are free and unencumbered and that it has the right, power and authority to enter into the Contract;

(b) any Services provided by ETL under the Contract shall be supplied and rendered with reasonable skill, care and diligence by appropriately experienced, qualified and trained personnel in accordance with good industry practice; and

(c) the Equipment and Consumables supplied to the Customer shall be of satisfactory quality, reasonably fit for their purpose and free from defects in design, materials and workmanship. For the avoidance of doubt ETL makes no warranties as to the suitability of the Equipment.

8.2 The Customer warrants and undertakes to ETL that it is, and shall remain throughout the Hire Period free and entitled to enter into the Contract.

8.3 Subject to Clause 8.1, the Customer acknowledges and accepts that ETL gives no other warranties of any kind in relation to the Equipment or Consumables and that any conditions, warranties, terms and undertakings which would otherwise be implied into the Contract (whether by statute or otherwise) relating to the Equipment or Consumables, or the provision of any other goods or Services by ETL to the Customer under the Contract are hereby excluded to the fullest extent permitted by law.

8.4 Except as provided below, where any defect appears in Equipment during the Hire Period ETL shall at its selection either repair the Equipment and/or supply replacement Equipment as soon as reasonably practicable. For the purposes of this Clause 8, a "defect" means any non-performance with Clause 8.1(c).

8.5 ETL shall not be liable for a breach of the warranty in Clause 8.1(c) unless:-

(a) the Customer gives written notice of a defect to ETL within 14 (fourteen) days of the time when the Customer discovers or ought to have discovered the defect; and

(b) ETL is given a reasonable opportunity after receiving such notice to examine the Equipment and the Customer (if asked to do so by ETL) returns such Equipment to ETL's place of business at the Customer's cost for the examination to take place there.

8.6 ETL shall not be liable for a breach of the warranty in Clause 8.1(c) if a defect arises as a result of:

(a) defects or errors resulting from any modifications of the Equipment made by or any act or omission on the part of the Customer or any person other than a person acting on behalf of ETL;

(b) a failure by the Customer or its sub-contractors, agents, officers or employees to use the Equipment in accordance with good industry practice;

(c) any attempt by any person other than ETL's personnel to adjust, repair or maintain the Equipment;

(d) defects or errors resulting from any fluctuation of electric power, humidity controls or other adverse environmental conditions due to whatever cause;

(e) accident, transportation, neglect, misuse or default of the Customer or its employees, sub-contractors or agents or any third party; or

(f) an event of force majeure, as defined in Clause 11.

8.7 Where any defect in the Equipment is due to the default of the Customer or its sub-contractors, agents, officers or employees under Clause 8.6:-

(a) ETL may charge the Customer for the repair of the Equipment in accordance with its standard scale of charges from time to time, including but not limited to the costs of repair, removal and transportation of the Equipment; and

(b) until the Equipment (or any replacement) is returned to ETL in good working condition the Customer shall remain liable to pay the Hire Charge in accordance with Clause 4.

9. Limitation of Liability

9.1 Nothing in the Contract shall operate to exclude or limit ETL's liability for:

- (a) death or personal injury caused by the negligence of ETL, its servants, agents, employees or subcontractors;
- (b) any breach or contravention of the conditions implied by Section 12 of the Sale of Goods Act 1979 and Section 2 Supply of Goods and Services Act 1982;
- (c) fraudulent misrepresentation; or
- (d) any breach of any undertaking as to title, quiet possession and freedom from encumbrance implied by law.

9.2 Subject to Clause 9.1, ETL shall not be liable to the Customer for any loss of, damage to or costs in respect of:

- (a) loss of profit, anticipated profits, revenues, anticipated savings;
- (b) goodwill or business opportunity;
- (c) indirect or consequential loss or damage whether foreseeable, known, foreseen or otherwise.

9.3 ETL's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Hire Charge and the Price.

10. Term and Termination

10.1 Subject to Clause 10.3, the Contract shall commence on the date ETL's Confirmation is accepted by the Customer in accordance with Clause 2 and shall continue in force for the Hire Period.

10.2 Without prejudice to any other remedies available, either party shall be entitled to terminate the Contract with immediate effect by giving written notice of termination to the other if:

- (a) the other commits a material breach of the Contract which, in the case of a breach capable of remedy, shall not have been remedied within fourteen (14) days of the receipt by the other of a notice identifying the breach and requiring its remedy; or
- (b) the other party shall have a receiver or administrative receiver appointed over it or any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide reconstruction) or if a court of competent jurisdiction shall make an order to that effect or if the other shall enter into any voluntary arrangement with its creditors or shall be subject to an administration order or shall threaten to cease or cease to carry on business.

10.3 Notwithstanding Clause 10.2(a), ETL may terminate the Contract with immediate effect if the Customer fails to pay any sums due by it to ETL within 10 days after the due date.

10.4 Clauses 7, 8 and 9 shall survive termination of the Contract howsoever caused.

10.5 Any termination of the Contract shall be without prejudice to any other rights or remedies either party may be entitled to hereunder or at law.

10.6 At the end of the Hire Period or (if earlier) immediately upon termination of the Contract, the Customer shall, at its own expense, forthwith return to ETL all Equipment supplied to the Customer by ETL under the Contract.

11. Force Majeure

11.1 Neither party shall be liable to the other for any delay in performing or any failure to perform any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying (including, without limitation, any act of God, fire, flood, strike, lock-out or other form of industrial action).

12. Notices

12.1 Any notice or other document to be given under the Contract shall be in writing and delivered by hand or sent by first class pre-paid letter, e-mail or facsimile transmission (to the address or e-mail or facsimile number of the other party set out in the Confirmation (or such other address or number as may have been notified) and any such notice or other document shall be deemed to have been served and/or delivered if hand-delivered at the time of delivery, if by first class post, 48 hours after posting and if sent by e-mail or facsimile on transmission.

13. Assignment And Sub-Licensing

13.1 ETL shall be entitled to sub-contract, transfer or assign any or all of its rights and/or obligations under the Contract without restriction.

13.2 The benefits and obligations conferred by the Contract upon the Customer are personal to the Customer and shall not be capable of being assigned, delegated, transferred, sub-contracted or otherwise disposed of and the Customer shall not purport to assign, transfer, sub-contract or dispose of the same.

14. General

14.1 If any provision in the Contract shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that provision or part thereof shall to that extent be deemed not to form part of the Contract and the enforceability of the remainder of the Contract or any part thereof shall not be affected.

14.2 The Contract contains the entire understanding of the parties with respect of the subject matter hereof and supersedes all prior agreements. Each party acknowledges that, in entering into the Contract, it has not relied on and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.

14.3 No variations to the Contract or these Terms will be effective unless agreed in writing and signed by a duly authorised representative of each party.

14.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of the Contract, the Contract is not intended to, and does not give any person who is not a party to it any right to enforce any of its provisions.

14.5 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to any Contract promptly through negotiation. If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an alternative dispute resolution procedure as recommended to the parties by CEDR or another recognised mediation provider. The commencement of mediation will not prevent the parties commencing or continuing Court proceedings.

14.6 No failure of either party to exercise, and no delay in exercising, any right or remedy provided under the Contract or by law herein contained shall operate as a waiver of such right or remedy.

14.7 ETL and the Customer are each independent contractors with respect to each other and nothing in the Contract shall create any association, partnership or joint venture relationship between them.

14.8 The Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English Courts.