

**ELP BROADCAST & EVENTS LIMITED**  
**TERMS OF TRADE FOR THE SUPPLY**  
**OF EQUIPMENT, GOODS, FACILITIES AND SERVICES**

**1 INTERPRETATION**

In these terms the following expressions shall have the following meanings:

“Contract”	the booking, the order, the hire or proposed hire of equipment goods, facilities or services pursuant to an offer by the Customer and acceptance by the Company in accordance with these Terms;
“Contract Price”	the amount payable by the Customer to the Company as detailed in the Contract Document;
“Contract Period”	the period specified in the Contract Document;
“Contract Document”	the Company document detailing the Customer, the Contract, the Contract Price, the Contract Period and any Special Conditions;
“Customer”	the individual, firm or company as specified in the Contract Document to whom the Company is supplying the equipment, goods, services or facilities under the Contract;
“Company”	ELP Broadcast & Events Limited (“ELP”);
“Dry Hire”	the equipment, goods and facilities under the Contract hired to the Customer not under the control of the Company;
“Conditions”	the Terms of Trade as detailed herein;
“Special Conditions”	any amendments or additional conditions specified in the Contract Document which take precedence over these Terms of Trade.

**2 AGREEMENT**

The Company enters into all agreements with the Customer solely on the terms of these Conditions and no representation or warranty collateral or otherwise shall bind the Company and no statement made by any representative by or on behalf of the Company shall vary these conditions unless such representation warranty or statement shall be made in writing and signed by a director of the Company and shall be stated to be made specifically in pursuance of this clause 2 of these Conditions. The Company shall not be bound by any Conditions of business of the Customer unless such conditions are expressly accepted by the Company by a statement made in

writing signed by a director and stated to be made specifically in pursuance of this clause 2 as aforesaid. Where there is any variance between the Customer's conditions and these Conditions, these Conditions shall prevail.

### **3 ORDERS/BOOKINGS**

3.1 Orders may be placed verbally or in writing and thereupon such orders become binding provided that all cancellations will only be effective if given in writing by the Customer;

3.2 No order or purported booking of equipment, goods, facilities or services by the Customer shall bind the Company unless and until the Company have accepted the order or booking by the issue of an order of acceptance or invoice or Contract Document or by some other act of acceptance on the part of the Company.

### **4 CONTRACT PRICE AND PAYMENT**

4.1 The Contract Price quoted by the Company is exclusive of VAT (which if applicable shall be applied at the appropriate rate);

4.2 All prices quoted by the Company are valid for 30 days only, unless otherwise stipulated;

4.3 The Company reserves the right to increase the Contract Price to reflect:

4.3.1 any use of the equipment, goods, facilities or services beyond that provided for under the Contract; or

4.3.2 any increase in the cost of the provision of any equipment, goods, facilities or services due to any deficiency in the Customer's instructions or any delay on the part of the Customer;

provided that the Company shall use reasonable endeavours to keep the amount of any such increase to a minimum and, where practicable, shall advise the Customer in writing of the nature and amount of such increase prior to incurring it;

4.4 The Company shall submit an invoice to the Customer for payment due and the Customer shall remit full payment due within thirty (30) days of date of invoice;

4.5 In the event that the Customer fails to make payment by the due date the Company shall, without prejudice to its other rights under the Contract (including but not limited to those set out in Clause 5) or otherwise, at law or in equity be entitled to:

4.5.1 charge the Customer interest from the date specified for payment of the principal sum described in Clause 4.4 upon the outstanding amount at such rate as the Company may decide but which in any event shall not exceed 5% per annum above the Company's principal banker's normal base rate from time to time accruing daily until payment of the principal sum is paid in full;

4.5.2 require payment in advance for the continued performance of the Contract without incurring any liability whatsoever to the Customer;

4.5.3 refuse to further perform the Contract without incurring any liability whatsoever to the Customer;

4.5.4 suspend further performance of the Contract until the Customer has supplied a satisfactory credit reference or bank guarantee;

4.5.5 be reimbursed by the Customer for all costs and expenses incurred in the collection of any overdue amount.

4.6 The existence of a query in respect of any individual item in an invoice submitted by the Company shall not affect the due date for payment of the balance of the invoice and such queries shall be notified in writing to the Company no later than 14 days from the date of invoice.

## **5 CANCELLATION**

5.1 Cancellation of an order and/or booking will be effective only upon receipt by the Company of written notice of cancellation by the Customer.

5.2 In the event of cancellation the Customer agrees to indemnify the Company in full against all loss (including loss of profit), costs and expenses incurred or committed by the Company as a result of the order and/or booking.

5.3 Notwithstanding Clause 5.2 above, the Customer shall pay the Company's standard minimum cancellation charges as follows:

5.3.1 where cancellation occurs not less than seven clear days before scheduled commencement of the supply of goods, facilities or services, 50% of the Contract Price;

5.3.2 where cancellation occurs less than seven clear days before scheduled commencement of the supply of goods, facilities or services, 100% of the Contract Price;

5.3.3 In the event of cancellation or breach of any agreement after commencement of the supply of goods, facilities or services any deposit or monies paid hereunder shall be forfeited to the Company but without prejudice to any other rights and remedies of the Company in respect of such cancellation or breach.

## **6 EXPENSES**

Where the Contract Price does not include travel and subsistence expenses the Company shall be entitled to reimbursement of all such reasonable expenses required to be made by any person engaged by the Company for the performance of the Contract.

## **7 SUPPLY OF EQUIPMENT, GOODS, FACILITIES AND SERVICES**

7.1 The Company will exercise all reasonable care and skill in the discharge of its obligations in respect of the order and/or booking and will provide such services,

equipment and materials as the Company considers reasonable for such purpose PROVIDED THAT:

7.1.1 it shall nevertheless be the responsibility of the Customer prior to the commencement of the Contract to ensure that all services, equipment and materials to be provided by the Company are appropriate to and will satisfy the Customer's specific requirements and that all services, equipment and materials to be provided by the Customer are suitable and are supplied on the date(s) when required;

7.1.2 if the Customer shall require the Company to supply any additional services, equipment and materials not provided for in the Contract Price, the Company shall use its reasonable endeavours to supply the same on no more than the Company's standard rates in force at the time and any extra charge shall be agreed with and borne by the Customer in addition to the Contract Price; and

7.1.3 The Company may at any time without notice make such changes to its services, equipment and materials as may be necessary to comply with any applicable safety or other statutory requirements or which do not materially affect the nature and quality of the services, equipment and materials provided.

7.2 Each of the Company and the Customer acknowledges its legal responsibilities for the health and safety of persons attending any workplace and agrees to take all reasonable practicable steps to ensure the health, safety and welfare of their respective staff, other persons engaged in the Customer's production and any audience or other visitors to or users of the workplace.

7.3 Without prejudice to the obligations of the Customer under Clause 7.2, the Company reserves the right to refuse permission for the operation or use in the workplace of any equipment and materials provided by the Customer which the Company reasonably suspects may be unsafe or a risk to health and for this purpose the Customer agrees that the Company may (but shall not be obliged to) carry out safety tests on such equipment and materials as The Company may think fit.

7.4 The Customer shall be at liberty to provide its own or freelance technical personnel subject to prior arrangement and subject to the right of the Company to refuse the employment of any person if, in the Company's reasonable opinion, that person is not suitably qualified having regard to his or her responsibilities, provided that:

7.4.1 operation of certain specialised equipment shall be limited to trained Company personnel only;

7.4.2 no repair or modification shall be carried out to any part of the Company's equipment and materials other than by suitably qualified Company personnel; and

7.4.3 the Company may, notwithstanding any previous approval, prohibit the use or operation of any equipment and materials by any person where the

Company reasonably considers that the competence of such person poses a material risk to health or safety, to any property or to the efficient and satisfactory completion of the production. In such circumstances and after consultation with the Customer, the Company may agree to provide the services of its own staff at additional cost.

7.5 The Customer shall indemnify the Company against all loss, costs, claims or damages and other sums payable by the Company due to the unsuitability of the venue or workplace, non-performance or unsatisfactory delivery by any third party or due to lack of control of audiences or the public attending such venue or workplace, or other personnel involved or present.

7.6 The Customer will ensure that the work carried out under the Contract does not contravene any laws, byelaws or local or national working regulations both in UK and overseas at the venues or workplaces booked by or on behalf of the Customer.

7.7 Where the Contract consists of the hiring out or leasing of any equipment, goods or materials or facilities from the Company they shall remain at all times the sole and exclusive property of the Company and the Customer shall not sell assign let pledge mortgage charge encumber or part with possession of or otherwise deal with the equipment, goods or materials or facilities or any interest therein or create or allow to be created any lien thereon and the Company may terminate the Contract with immediate effect in the event of the Customer making any attempt to do so.

## **8 EQUIPMENT AND MATERIALS**

8.1 Unless the Company shall otherwise agree in writing, the Company does not accept responsibility for loss or damage to any equipment and materials or other property belonging to or brought into the workplace by the Customer or any of the Customer's employees, agents, sub-contractors and guests (including any audience) and such items shall at all material times be at the risk of the Customer.

8.2 In the event that the Customer supplies its own equipment and materials in connection with any order/booking, the Company shall have no liability in respect of any damage, delay or failure caused by any deficiency in the quality or functionality of such equipment and materials or their incompatibility with the Company's equipment and materials.

8.3 If the Company agrees to store the Customer's equipment and materials, the Customer shall pay the Company's charges for such storage up to and including the date of collection or removal. In the event that the Customer shall fail to remove its equipment and materials from storage within 14 days of the expiration of any agreed period, the Company shall be entitled to sell or otherwise dispose of such equipment and materials and, after deduction of any costs of sale or disposal, arrears of storage charges and other sums owing by the Customer to the Company, the Company will account to the Customer for the balance of any proceeds (excluding VAT).

8.4 The Company may (but shall not be obliged to) require that any instruction from the Customer for the removal, destruction, disposal or other dealing with any equipment and materials or other property of the Customer in the care of the Company shall be confirmed in writing. Unless otherwise agreed in writing,

equipment and materials and other property returned to or to the order of the Customer by the Company will be delivered at the risk and cost of the Customer.

8.5 If the Company agrees to supply any equipment or materials to the Customer then, notwithstanding their delivery to the Customer, title to such equipment or materials shall not pass to the Customer until such time as the Company has received payment in full of its relevant invoice and, until title passes to the Customer:

8.5.1 the Customer shall hold such equipment or materials as the Company's fiduciary agent and bailee and shall keep the equipment and materials separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property.

## **9 USE OF EQUIPMENT – DRY HIRE**

9.1 The Customer warrants and agrees:

9.1.1 all rented electrical equipment must be connected to a suitable earthed power supply;

9.1.2 to ensure that all equipment is handled by a competent person;

9.1.3 lanterns must be disconnected from power supply before changing lamps;

9.1.4 care must be taken to ensure adequate mains supplies for dimmer systems. Equipment supplied for single phase operation must not be connected to more than one phase;

9.1.5 the Customer shall be responsible for the safe-keeping, use in a workmanlike manner within the manufacturers rated capacity, and return on completion of the hire in equal order (fair wear and tear excepted) of all equipment on hire;

9.1.6 the Customer shall be responsible for compliance with all laws and regulations applicable to the equipment and to the work being performed by the equipment;

9.1.7 the Customer shall take all reasonable steps to keep himself/herself acquainted with the state and conditions of the equipment and shall be solely responsible for routine inspection of the equipment and for any damage, loss or accidents whether directly or indirectly arising from the use of the equipment;

9.1.8 the Customer shall regularly clean the equipment at the Customer's expense and return it to the Company in a perfectly clean condition.

## 9.2 The Customer shall:

9.2.1 collect the equipment from the Company's authorised representative or premises at the commencement of the Contract Period and return the equipment likewise at the end of the Contract Period;

9.2.2 use the equipment only for the purposes for which it is designed;

9.2.3 maintain the equipment in the same working condition and appearance and state of repair as at time of collection or delivery and in default of so doing pay to the Company on demand the cost of remedy, repair or replacement howsoever any damage might be caused;

9.2.4 not sublet, lend or otherwise part with the possession of the equipment or any item thereof;

9.2.5 immediately on request advise the Company of the whereabouts of the equipment;

9.2.6 not pledge the equipment or any item thereof nor allow the same to be taken in execution;

9.2.7 return the equipment to the Company's authorised representative or premises upon the date of termination of the Contract Period and in default of so doing pay to the Company by way of liquidation in respect of each subsequent day a sum equivalent to the daily Contract Price payable in respect of each additional day the equipment is in the Customer's possession, such sums to be paid without prejudice to the Company's right to greater damages for such default in the event of greater loss, including those arising from the Company being unable to fulfil subsequent hirings.

## 10 INDEMNITY

10.1 The Customer shall indemnify the Company against all liabilities, claims, demands, damages, losses, costs and expenses (including legal costs) which may be incurred by or brought against the Company in respect of:

10.1.1 injury to any person or loss of or damage to any property arising out of or in connection with the use by the Customer of any goods and/or facilities and/or services as a result of any negligent act or omission by the Customer;

10.1.2 any breach of or non-compliance by the Customer of any of its obligations or warranties under the Contract;

10.1.3 the Customer's negligence or wilful default;

10.1.4 any claims from third parties made as a result of the Customer's acts or omissions.

## **11 LIABILITY**

11.1 Nothing in the Contract excludes either party's liability for death or personal injury caused by that party's negligence or wilful default.

11.2 Subject to Clause 11.1 the Company shall only be liable to the Customer for accidental loss or damage caused by the negligence or default of the Company.

11.3 In no circumstances shall the Company be liable for any loss of profits or any indirect or consequential loss of any nature whatsoever.

11.4 In any event, and notwithstanding anything contained in the Contract, the Company's liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising by reason or in connection with this Contract (except in relation to death or personal injury) shall be limited to the Contract Price.

## **12 INSURANCE**

12.1 The Customer shall arrange and maintain insurance throughout the Contract Period to cover its legal liabilities and the responsibilities imposed by the Contract including but not limited to Public liability insurance with a scope of cover appropriate to the equipment, goods, facilities and services supplied under the Contract with an adequate indemnity limit which shall be no less than five million pounds sterling (£5,000,000) in respect of any one claim or incident. For the avoidance of doubt, such minimum insurance level shall not be a limit of liability under the Contract.

12.2 Where the Customer engages a sub-contractor the Customer shall ensure that the insurance requirements as specified in Clause 12.1 extend as necessary to cover the liabilities and responsibilities of the sub-contractor under the Contract or that the subcontractor holds its own insurance in accordance with Clause 12.1.

12.3 Where the Contract consists of Dry Hire of equipment, goods or facilities:

12.3.1 the Customer shall arrange and maintain adequate insurance in relation to the loss of or damage to any equipment goods or facilities hired or loaned to the Customer by the Company;

12.3.2 the Customer shall be responsible to the Company for the prompt repair or replacement (at the Company's option) of equipment goods or facilities lost or damaged whilst in the charge and control of the Customer, other than to the extent that the loss or damage is caused by the Company's breach of any of the provisions of the Contract or any other of its omissions.

12.4 The Company shall not be liable for any consequential or indirect loss, including any loss of profits revenues and/or business, anticipated savings, whether or not in the contemplation of the parties at the time of entering into the Contract, incurred by the Customer as a result of the loss of or damage to the equipment goods and facilities (by whatever means) during the course of their being hired or loaned by the Company, and the Customer is advised to arrange and maintain insurance in respect of such loss.

12.5 The Customer shall provide to the Company prior to the commencement of Contract Period satisfactory evidence of compliance with this Clause 12.

## 13 TERMINATION

13.1 The Company shall have the right to terminate the Contract at any time upon written notice to the Customer if:

13.1.1 the Customer shall fail to make any payment due under the Contract in full in accordance with Clause 4;

13.1.2 the Customer shall commit or cause to be committed any breach of its obligations under the Contract and:

(i) the breach is capable of remedy and the Customer fails to remedy the breach within 7 days (or such shorter period as may be reasonable) of receipt of a written notice to the Customer specifying the breach and requiring its remedy (in which case the Company may remedy the breach and recover the costs thereof from the Customer and terminate the Contract in accordance with this Clause 13; or

(ii) the breach is not capable of remedy; or

(iii) the breach is a material breach or a breach of a material term;

13.1.3 the Customer commits an act of bankruptcy or insolvency, is unable to pay its debts as or when they fall due or makes any composition or arrangement with its creditors, or goes into liquidation whether voluntary or compulsory, or if any order is made or a resolution is passed for the winding up of the Customer (except for the purpose of a solvent amalgamation or reconstruction), or if it ceases or prepares to cease trading, or if it suffers the appointment of a receiver, administrative receiver, administrator or similar officer over the whole or part of any of its assets; or

13.1.4 there is a change of control of the Customer. For the purposes of this paragraph (13.1.4) "control" means the ability to direct the affairs of the Customer whether by virtue of contract, ownership of shares or otherwise howsoever in relation to the subject matter of the Contract;

13.1.5 the Company exercises its rights under Clause 7.7 or the continued performance thereof is prevented by reason of any event beyond the reasonable control of the Company or the Customer (any such occurrence being deemed an event of force majeure).

13.2 The Customer shall be entitled to terminate the Contract with immediate effect in writing if at any time during the Contract the Company shall commit or cause to be committed any breach of its obligations under the Contract provided that in the case of a breach capable of remedy the Customer shall have first given written notice to the Company specifying the breach complained of and requiring the same to be remedied within a reasonable period of time from notification thereof and the Company shall have failed to comply therewith.

13.3 Termination of the Contract howsoever arising shall be without prejudice to any rights accruing or already accrued to either party at the date of termination.

13.4 Upon termination of the Contract for any cause whatsoever all sums accrued due to the Company under the Contract shall immediately become due and payable to the Company.

13.5 Upon termination of the Contract the Customer agrees that a representative of the Company may enter upon any premises upon which the Company's equipment, goods or facilities may be kept or reasonably believe to be kept for the purpose of its recovery and where such equipment, goods or facilities is on premises not occupied or under the control of the Customer, the Customer undertakes to secure for the Company permission to enter for such purposes and the Customer shall compensate the Company for any costs incurred in effecting such premises.

13.6 The rights and obligations of either party arising under Clauses 7.7, 10, 11, 13.4, 14, 17 and 20 shall survive termination of the Contract.

## **14 FORCE MAJEURE**

14.1 Neither party shall be liable for any failure to fulfil its obligations under the Contract by reason of any event beyond its reasonable control including but not by way of limitation Acts of God, strikes, lockouts, war, riot, civil commotion, order or Act of Government (whether national or international), any such occurrence being deemed an event of force majeure.

14.2 If either the Company or the Customer is prevented or delayed from performing any of its obligations under the Contract by an event of force majeure then that party shall be entitled by notice in writing to the other party given at any time during the subsistence of the event to suspend the Contract for the duration of the event. Where the party giving notice is unable to proceed with the Contract by reason of matters arising from the event for a reasonable period of time following notice of suspension then such party shall have the right to terminate the Contract with immediate effect in writing.

## **15 NOTICES**

15.1 Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class, pre-paid post or facsimile transmission (to be confirmed by letter posted within 12 hours of the time of transmission) to the last known address or facsimile number of the party concerned (or to such other address or facsimile number as may have been notified in accordance with the provisions of this Clause).

15.2 Any notice or document shall be deemed to have been served:

15.2.1 if delivered by hand or sent by facsimile transmission at the time of delivery or transmission if between the hours of 9.00 am and 5.00 pm on a business day or otherwise at 9.00 am on the next succeeding business day; and

15.2.2 if posted, on the second business day after posting and for this purpose a "business day" shall mean a day other than a Saturday, Sunday or public holiday in England.

15.3 In proving service (without prejudice to any other means):

15.3.1 by post, it shall only be necessary to prove that the envelope containing the notice or document was properly addressed, stamped and posted and that it has not been returned to the sender;

15.3.2 by facsimile, that the notice or document was duly received by production of a copy fax bearing the automatic record of correct transmission.

## **16 ASSIGNMENT**

Neither the Company nor the Customer shall be entitled to assign (in whole or in part) the benefit or burden of any Contract to any third party without the prior written consent of the other, except that the foregoing shall not preclude the use by the Company of hired-in equipment and materials, sub-contract labour or facilities.

## **17 WAIVER**

The failure of either party to exercise or enforce any right conferred upon it by the Contract shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time(s) thereafter. No waiver of any term or condition of the Contract shall operate as a waiver of another or constitute a continuing waiver.

## **18 VARIATION**

Any amendment or variation to the Contract shall be made by prior written agreement between the parties.

## **19 NO AGENCY, PARTNERSHIP OR JOINT VENTURE**

Nothing in the terms of the Contract shall create or be deemed to create a partnership or a joint venture or shall be deemed to constitute either party as the agent of the other.

## **20 LAW**

The Contract shall be construed in accordance with the laws of England.