

**STANDARD TERMS AND CONDITIONS  
EQUIPMENT HIRE AGREEMENT**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In the Conditions unless the context requires otherwise:

**You and Your:** the customer named in the Contract Details.

**We and Our:** Design & Control (Lighting) Limited (Company Number 07543128) whose registered office is at 29 Oaktree Close, Letchworth Garden City, Hertfordshire, SG6 3XY.

**Claims:** all demands, claims, proceedings, fines, penalties and liabilities (whether criminal or civil, in contract tort or otherwise) and any losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

**Conditions:** these standard terms and conditions and, in addition, any special terms and conditions agreed in writing between Us and You.

**Contract:** the contract between Us and You for the hire of the Equipment.

**Contract Details:** the Contract Details of the Contract, issued by Us to You confirming acceptance of the Order, which may be sent by email.

**Delivery:** the transfer of physical possession of the Equipment to You.

**Equipment:** the items of equipment listed in the Contract Details, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

**Hire Fees:** the fees for the hire of the Equipment for the Hire Period specified in the Contract Details.

**Hire Period:** the period specified in the Contract Details.

**Working Day:** Monday to Friday other than a Public Holiday in England.

**Order:** a purchase order or other written request issued by You to Us for the hire of Equipment.

2. Any reference to a statute or statutory provision is a reference to it as amended or replaced from time to time and to any subordinate legislation made under it.

3. Any obligations of a party consisting of one or more persons shall be held jointly and severally by them.

4. Unless expressly stated otherwise, the term "including" in the Conditions is deemed to be followed by the words "without limitation".

5. Any obligation on You not to do something includes an obligation not to allow that thing to be done.

6. References to the Equipment include a reference to each thing that comprises the equipment and to each component or part of those things.

**2. GENERAL**

2.1 A binding Contract will not come into existence between Us and You unless and until We issue the Contract Details to You or We deliver the Equipment to You (whichever occurs earlier). ACCEPTANCE OF DELIVERY OF THE EQUIPMENT SHALL BE DEEMED CONCLUSIVE EVIDENCE OF YOUR ACCEPTANCE OF THE CONDITIONS.

2.2 An Order constitutes an offer by You to hire the Equipment in accordance with these Conditions. You are responsible for ensuring that the terms of any Order are complete and accurate.

2.3 Any quotation given by Us shall not constitute an offer. A quotation shall only be valid for a period of 10 Working Days from its date of issue provided that We have not previously withdrawn it.

2.4 You may not cancel or amend the Contract or any part of it (including any amendment to the Equipment or the Hire Period), except with Our agreement in writing not less than 2 Working Days before the due date for delivery of the Equipment and You must indemnify Us in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by Us as a result of such cancellation or amendment. We shall not be obliged to deliver any Equipment until such time as We have received payment in full from You for any losses, costs, damages, charges and expenses incurred by Us as a result of any partial cancellation or variation. If the Contract is cancelled in accordance with this clause and You have made a pre-payment in accordance with clause 4.7, We shall refund such amount, less Our losses, costs, damages and expenses within 20 Working Days of the date of cancellation.

2.5 The Conditions and Contract Details apply to the Contract to the exclusion of any other terms and conditions, descriptions and statements as to quality and performance or suitability of the Equipment that You seek to impose or

incorporate, or which are implied by trade, custom, practice or course of dealings.

2.6 Where there is a conflict between the Contract Details and the Conditions, the Contract Details will prevail.

2.7 Any descriptive matter or advertising of any kind issued by Us (including any on Our website) are issued for the sole purpose of giving an approximate idea of the equipment described in them. They shall not form part of the Contract or have any contractual force.

2.8 [No representative or agent of Ours has any authority to agree any terms or make any representations that are inconsistent with the Conditions and/or the Contract Details. We will not be bound by any statements made by any person purporting to act on Our behalf as to the Conditions and/or Contract Details or any statements as to the delivery, quality, performance or suitability of the Equipment unless any such statement is specifically confirmed in writing by a duly authorised officer of Us and annexed to the Contract Details. You acknowledge that You do not rely on and waive any claim You might otherwise have for breach of any such representations which are not so authorised.]

2.9 The Contract may only be amended in writing signed by duly authorised representatives of each party.

2.10 The Conditions are deemed to be incorporated in all agreements entered into between Us and You from time to time which provide for the hire of equipment by Us to You.

2.11 Any notice required or permitted to be given by either party to the other under the Contract must be in writing addressed to that other party at the address set out in the Contract Details unless any other address is specifically notified to the party by the other at any time and the notice will be effective only if served by first class post at the expiration of two Working Days after the day of unreturned posting.

2.12 No failure or delay by Us in exercising any right, power or privilege under the Contract will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. Our rights and remedies set out in the Contract are cumulative and not exclusive of each other or any rights or remedies provided by law.

2.13 If any provision of the Contract is held by any competent authority to be unlawful, void or unenforceable in whole or in part it will be deemed to be amended insofar as it is possible to do so in order to make it enforceable whilst retaining its purpose or deleted if it is not possible to do so and will not in any way affect any other circumstances of or the validity or the enforcement of the Contract. In Our sole discretion We may terminate the Contract by not less than 2 Working Days written notice to You in the event that We consider that such deletion will adversely affect Our rights under the Contract.

2.14 The Contract shall in all respects be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

2.15 No one other than a party to the Contract shall have any right to enforce any of its terms.

2.16 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between either of the parties, constitute either party the agent of another party, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

2.17 The Contract is personal to You and You may not assign, transfer, mortgage, charge, sublease, declare a trust over or deal in any other manner with any of Your rights and obligations under the Contract. We may assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any of Our rights, benefits and obligations under the Contract without Your consent.

**3. EQUIPMENT HIRE**

3.1 We shall hire the Equipment to You for the Hire Period.

3.2 We agree that while You pay the Hire Fees and perform Your obligations under the Contract, You may keep possession of the Equipment and may use it without interruption from Us or persons claiming possession of the Equipment through Us.

3.3 Notwithstanding clause 2.4, if You wish to extend the Hire Period at any time after the start and before the end of the Hire Period specified in the Contract Details, you may give Us notice of your wish to do so giving details of the proposed extension. If you give us such a notice, We will confirm as soon as reasonably practicable whether or not We agree to the extension of the Hire Period and, if so, provide you with a quotation of the Hire Fees due in the extension period. If you do not return the Equipment to Us at the end of the Hire Period stated in the Contract Details, You will be deemed to have agreed the terms of the quotation. Our quotation will specify the time for payment of the Hire Fees in respect of the extended Hire Period and we may require you to pay the additional Hire Fees before the start of the extension period as a condition of agreeing to the extension. Nothing in this Contract shall require Us to agree to extend the Hire Period nor entitle You to any priority of supply over any other customer.

#### **4. PAYMENT**

4.1 You agree to pay the Hire Fees in Pounds Sterling within 30 days of the date of Our invoice.

4.2 Unless the Contract Details specify otherwise, We may invoice You for the Hire Fees on or at any time after delivery of the Equipment.

4.3 Payment in accordance with clause 4.1 is a condition of the Contract and any non-payment on the specified date for payment will allow Us to treat the Contract as repudiated by you and shall entitle Us to immediate possession of the Equipment and allow Us to exercise any other rights or remedies that arise by law or under the Contract.

4.4 All sums due from You to Us under the Contract are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by You at the rate and in the manner from time to time prescribed by law.

4.5 All amounts due from You 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).

4.6 If You fail to make any payment due to Us under the Contract by the due date for payment You shall pay interest on the overdue amount at the rate of 4% per year above Barclays Bank Plc 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 judgement. You shall pay the interest together with the overdue amount. We reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4.7 Where stated in the Contract Details, payment of the Hire Fees shall be made by You by a pre-payment of up to 100% of the total Hire Fees, payable on issue of Our proforma invoice in cleared funds in Our bank account not less than 2 Working Days prior to the Delivery Date. If pre-payment is required in relation to less than 100% of the Hire Fees, the balance of the Hire Fees shall be paid by You in accordance with clauses 4.1 and 4.2 above.

4.8 You are responsible for all costs and expenses arising in connection with your use of the Equipment during the Hire Period and any further period during which the Equipment is in Your possession, custody or control including any licences, permits and approvals which may be necessary to transport the Equipment from the UK to another country and from another country to the UK.

#### **5. INSPECTION**

5.1 You agree with Us that You will:

- (a) inspect the Equipment on delivery of it to You or on You taking possession of it;
- (b) notify Us in writing and as soon as reasonably practicable of any defect in the Equipment; and
- (c) allow Us (on reasonable notice) at any time access to inspect the Equipment.

5.2 If You do not give notification under clause 5.1 (b), then You will be conclusively deemed to accept that the Equipment is complete, in good order and condition, fit for the purpose for which You require it and in every way satisfactory to You.

#### **6. DELIVERY**

6.1 We will use reasonable endeavours to deliver the Equipment on the date specified in the Contract Details but time for delivery shall not be of the essence of the Contract.

6.2 The method of delivery shall be that specified in the Contract Details but, in any case, the Equipment shall be delivered to You at Our address:

- (a) If the Contract Details specify that We will arrange for carriage of the Equipment to Your address (specified in the Contract Details), the costs of carriage shall be included in the amount of the Hire Fees and any carrier used will be deemed to be Your agent. The Equipment shall be deemed to be delivered when We dispatch it from Our address specified in the Contract Details (whether We deliver ourselves or through a carrier);
- (b) If the method of delivery specified in the Contract Details is collection by You, the Equipment shall be deemed to be delivered when You (or your nominated carrier) take possession of it, having called to collect it at Our address specified in the Contract Details and you undertake to collect the Equipment from such address (or arrange for Your nominated carrier to do so) on the date specified in the Contract Details or such other date as We may notify to You.

#### **7. TITLE RISK AND INSURANCE**

7.1 You acknowledge that We will at all times retain the ownership of the Equipment and that You will have no right of ownership in the Equipment.

7.2 You acknowledge that, whether or not the Equipment has been affixed to any land, We will continue to be the owner of the Equipment and the Equipment will remain our personal chattels.

7.3 The risk of loss, theft, damage or destruction of the Equipment shall pass to You on delivery at Our premises. The Equipment shall remain at Your sole risk during the Hire Period and any agreed extension of it and any further period during which the Equipment is in Your possession, custody or control until such time as the Equipment is redelivered to Us ("the Risk Period").

7.4 You must insure the Equipment and keep the Equipment insured for its full replacement value against all risks of loss, damage or destruction on a comprehensive policy throughout the Risk Period and ensure that the Equipment is so insured wherever in the world you take it, including while it is in transit.

7.5 During the Risk Period You shall, at Your own expense, obtain and maintain the following insurances for both Your and Our benefit:

- (a) Insurance for such amounts (being not less than £5,000,000) as a prudent owner or operator of the Equipment would insure for, or such amount as We may from time to time reasonably require (whichever is the higher), to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
- (b) Insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurances We may from time to time consider reasonably necessary and advise to You.

7.6 You must immediately give us notice in the event of any loss, accident or damage to the Equipment arising out of or in connection with Your possession or use of the Equipment (including while it is in transit).

7.7 You are solely responsible for and indemnify Us in respect of all loss or damage to the Equipment (insofar as We shall not be reimbursed by the proceeds of insurance in respect thereof), however caused, occurring at any time or times before physical possession of the Equipment is re-taken by Us.

7.8 If there is a total loss of the Equipment (whether actual, constructive or arranged) ("Total Loss") then after such period as is appropriate to enable a claim to be made to the insurers, You will pay to Us:

- (a) any arrears of the Hire Fees (including an apportionment of Hire Fees for any period during which the Equipment is broken);
- (b) all the Hire Fees You agreed to pay until the end of the Hire Period;
- (c) any damages for breach of the Contract; and
- (d) the proper costs and expenses (including legal fees) incurred by Us in or towards enforcing Our rights under the Contract.

Less any insurance proceeds that have been received by Us before the end of that period.

7.9 If there is loss or damage to the Equipment that is not a total loss to the Equipment, then You will:

- (a) notify Us in writing as soon as reasonably practicable;
- (b) apply the insurance monies in making good the loss and damage; and

(c) on written request by Us absolutely assign to Us all Your benefit under the insurance policy.

7.10 If you do not comply with the obligations in clauses 7.4 and 7.5 then We may (but without any obligation) effect the insurance and You will reimburse Us on demand the cost of doing so.

## 8. YOUR RESPONSIBILITIES

8.1 You agree with Us that You will:

- (a) not remove the Equipment from the UK unless We have expressly agreed in writing that you may do so;
- (b) provide such information as We may request from time to time in a timely manner;
- (c) keep and operate the Equipment in a suitable environment and ensure that the Equipment is operated and used only for the purposes for which it is designed in a skilful and proper manner by trained competent staff in accordance with any operating instructions and in accordance with any relevant legislation;
- (d) take such steps (including compliance with all safety and usage instructions) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set up, used or maintained by a person at work;
- (e) keep the Equipment in good repair, condition, and working order, [properly serviced and maintained and fitted with any appropriate new parts when repair of any part is not reasonably practicable] (fair wear and tear only excepted);
- (f) report any fault or defect in the performance of the Equipment to Us immediately on becoming aware of the same;
- (g) make no alteration to the Equipment, nor remove any existing component(s), parts or accessories from the Equipment unless Your trained competent staff are directed to do so by Us;
- (h) keep Us fully informed of all material matters relating to the Equipment, including the location of the Equipment;
- (i) [maintain operating and maintenance records of the Equipment in such format as We may reasonably require;]
- (j) keep the Equipment in your own possession at all times and not, without Our prior written consent, part with control of it (including for the purposes of repair or maintenance);
- (k) not sell or offer for sale, underlet or lend the Equipment or any part of it nor allow the creation of any mortgage, charge, lien or other security interest in respect of it nor offer nor attempt nor purport to do any such act;
- (l) not do anything that leads any person to attempt to confiscate, seize, detain, take possession of, or attempt to execute any civil recovery (in any jurisdiction) or judgment on the Equipment nor suffer nor permit any person to do so and, at Your sole expense, to use Your best endeavours to procure an immediate release of the Equipment if any person does any such act and to indemnify Us on demand against all Claims arising as a result of such confiscation or other act; and
- (m) ensure that at all times the Equipment remains identifiable as being Our property and not cover, deface or obliterate any serial numbers on the Equipment;
- (n) deliver up the Equipment at the end of the Hire Period or on earlier termination of the Contract in a condition that complies with the full performance of Your obligations under the Contract at such address as We require or, if We require, allow Us or Our representatives (by force if necessary) to remove the Equipment from any premises where the Equipment is located; and
- (o) not do anything which could invalidate the insurances referred to in clause 7 in whole or in part.

## 9. WARRANTIES AND LIABILITY

9.1 We warrant to You that on delivery the Equipment:

- (a) substantially conforms to the specification of it given by Us;
- (b) is of satisfactory quality; and
- (c) fit for any purpose expressly held out by Us.

If you give us notice of a material defect in accordance with clause 5.1, we may at our option:

- (i) remedy (free of charge) any material defect in the Equipment provided that it did not materialise as a result of misuse, mishandling, neglect, alteration

or unauthorised manipulation by any person other than Our authorised personnel; or

- (ii) accept the return of part or all of the Equipment and make an appropriate reduction to the Hire Fees payable under the Contract.

9.2 Our obligations and liabilities in respect of the Equipment We provide are limited to those which are expressly stated herein and all other conditions, warranties and intermediate terms implied by common law or by statute or otherwise are hereby excluded from the Contract so far as the law allows. You acknowledge that We shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by You or Your officers, employees, agents and contractors.

9.3 Subject to clause 9.4, if We fail to perform Our obligations under the Contract then We shall only be liable to You for the damages arising directly and naturally in the ordinary course of events from the breach concerned and shall not be liable to You for any consequential indirect or special damages arising out of Our failure to perform any of Our obligations under the Contract.

9.4 Nothing in the Contract shall limit our liability for any Claims arising out of the death of or personal injury to any person or for fraud or fraudulent misrepresentation or for any other liability that cannot lawfully be excluded or limited.

9.5 Without prejudice to clauses 9.1 to 9.3 and subject to clause 9.4, Our maximum aggregate limit of liability under the Contract for any event or series of connected events arising out of any breach of the Contract (including any liability for the acts or omissions of our employees, agents and sub-contractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise shall in no circumstances exceed [£ ].

9.6 If Our performance of any of Our obligations under the Contract is prevented or delayed or defective as a direct or indirect result of any act or omission by You or failure by You to perform any relevant obligation We shall not be liable for any Claims sustained or incurred by You arising directly or indirectly from Our failure or delay to perform or defective performance of any of Our obligations.

9.7 You shall be liable to pay to us on demand for any Claims (including any direct indirect or consequential losses, loss of profit, loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) sustained or incurred by Us arising directly or indirectly from Your fraud, negligence, failure to perform or delay in performance or other breach of any of Your obligations under the Contract

9.8 You will indemnify Us against:

- (a) all Claims and insurance premiums whenever arising, directly or indirectly from Your failure or alleged failure to perform Your obligations under the Contract;
- (b) any loss, injury or damage suffered by any person (including without limitation Us) because of the presence of the Equipment;
- (c) the delivery, possession, hiring, transportation, condition, use, operation, removal or return of the Equipment;
- (d) the sale or disposal by Us of the Equipment;
- (e) any defect in the Equipment or its design, manufacture, testing, maintenance or overhaul; and
- (f) Our exercising any right in respect of the Equipment, its ownership, or its hiring.

## 10. TERMINATION

10.1 You and We agree that upon the occurrence of a Total Loss the hiring of the Equipment shall immediately terminate but without prejudice to the Contract (which shall continue in full force and effect) and to any Claims or liabilities then outstanding or thereafter arising under the Contract.

10.2 Without prejudice to Our right to arrears of Hire Fees or other sums due or for damages for breach of the Contract, We may terminate the Contract with immediate effect at any time by giving notice to You if:

- (a) You fail to pay any amount due under the Contract on the due date for payment;
- (b) You commit a breach of any other term of the Contract;

- (c) You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or admit inability to pay Your debts or (being a company or limited liability partnership) are deemed unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or make a proposal for or enter into any compromise or arrangement with Your creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or Your solvent reconstruction;
- (e) A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with Your winding up (being a company) other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or Your solvent reconstruction;
- (f) An application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over You (being a company);
- (g) The holder of a qualifying floating charge over Your assets (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) A person becomes entitled to appoint a receiver over Your assets or a receiver is appointed over Your assets;
- (i) If any step is taken or threatened under any procedure for the taking of control by another of any chattels of Yours or in Your possession;
- (j) Any event occurs, or proceeding is taken, with respect to You in any jurisdiction to which You are subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2 (c) to clause 10.2 (i) (inclusive);
- (k) You abandon the Equipment;
- (l) You suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of Your business; or
- (m) You, being an individual, die or have a bankruptcy order made against you.

10.3 In the event of a change of control of You (within the meaning of Section 1124 of the Corporation Tax Act 2010) the Contract will continue in full force and effect but We may, in our sole discretion, terminate the Contract with immediate effect by giving you notice.

## **11 CONSEQUENCES OF TERMINATION**

11.1 Upon termination of the Contract, however caused:

- (a) Our consent to Your possession of the Equipment shall terminate immediately and We may without notice and at Your expense, retake possession of the Equipment wherever it may be; and
- (b) You shall pay to Us on demand:
  - (i) all Hire Fees and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.6;
  - (ii) any costs and expenses incurred by Us in recovering the Equipment, repairing it to put it in a condition consistent with the performance of Your obligations under the Contract (or the value of such repairs if We decide in Our sole discretion to replace the Equipment) and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport and legal costs).

11.2 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.

11.3 Clauses that are necessary for the enforcement and/or interpretation of the Contract shall survive termination, including clauses 1, 2, 9 and 11.

## **12 FORCE MAJEURE**

We shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of Our obligations under the Contract if such delay or failure result from events, circumstances or causes beyond Our reasonable control.