

# Terms & Conditions

## 1 INTERPRETATION

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

### 1.1 Definitions:

**Agreement** means the contract between TCAS and the Exhibitor consisting of the Acceptance of Site Allocation, these Terms and the Exhibitors Manual, and any other documents specifically referred to in these Terms and the Acceptance of Site Allocation.

**Acceptance of Site Allocation** means the form indicating, amongst other things, the Fee, the Term and the Dates.

**Applicable Laws** means the laws of England and Wales any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the exercise of the parties' rights or the performance of their obligations.

**Confidential Information** has the meaning given in Clause 13.

**Equipment** means items for hire as ordered by the Exhibitor as specified on the Acceptance of Site Allocation or from time to time.

**Event** means the event or series of events specified in the Acceptance of Site Allocation.

**Force Majeure Event** means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, breakdown of machinery, failure of supply of utilities, labour disputes, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar matter.

**General Regulations for Exhibitors** means the exhibitor's written regulations document which may be amended by TCAS from time to time.

**Fee or Fees** means any fee(s) specified in the Acceptance of Site Allocation, payable in accordance with Clause 3.

**"Exhibitor's Marks"** means the Exhibitor's trade marks, together with any accompanying artwork, design, slogan, text and other collateral marketing signs of the Exhibitor which are used by the Exhibitor in connection with the Event.

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Services** means the services, to be performed by TCAS for the Exhibitor as set out in the Acceptance of Site Allocation.

**Site** means all buildings, installations, exhibition stands, facilities, grounds and other property at The Showground, Malvern, Worcestershire, WR13 6NW.

**Showground** means The Showground, Malvern, Worcestershire, WR13 6NW.

**Supplementary Charges** means the current fees for Services and Equipment.

**TCAS's Marks** means the TCAS trade marks together with any associated artwork, design, slogan, text and other collateral marketing signs of TCAS.

**Temporary Structure** means any portable or dismantlable structure other than a domestic camping tent.

**Public** shall mean and include members of the general public, members of the Society, officers of the Society, exhibitors, their employees, contractors, agents and all other persons attending the Festival.

**Exhibitor** shall mean and include any person, business or company or other body making an application for space.

## 2 GRANT OF RIGHTS

2.1 TCAS grants the Exhibitor the right to stage the exhibit at the agreed site location throughout the Term.

2.2 TCAS and the Exhibitor agree that:

- a) legal possession and control of the Showground shall at all times remain vested in TCAS and the Exhibitor shall not acquire any estate or interest therein;
- b) the Exhibitor shall not be entitled to use the Showground to the exclusion of TCAS or others authorised by TCAS; and
- c) this Agreement shall not and shall not be deemed in any way to confer or impose upon either party any of the rights or obligations of a landlord or a tenant, or any other rights or obligations, save those expressed or implied by law or by the terms of this Agreement.

2.3 TCAS shall be entitled to substitute the allocated space with an alternative space of similar size and standard to those specified in the Acceptance of Site Allocation in the event that the allocated spaces specified in the Acceptance of Site Allocation are not able to be made available to the Exhibitor during the Term due to refurbishment or damage or for any reason beyond the control of TCAS.

## 3 FEES AND PAYMENTS

3.1 Any Fee(s) due shall be paid in accordance with the times specified in the Acceptance of Site Allocation.

## 4 TERM AND TERMINATION

4.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- a) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such

breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so; or

b) the other party ceases to carry on business, become insolvent or, enter into or are subject to any form of winding up, administration, receivership, liquidation, bankruptcy, arrangement with creditors generally or any other insolvency procedure in respect of it or any of its assets, or suffer from enforcement of security or legal process or repossession or any event analogous to any of the above in the United Kingdom.

4.2 TCAS shall be entitled to terminate this Agreement immediately or withhold the performance of any Services and cease any Services in progress under this Agreement and/or any other agreement between the Exhibitor and TCAS, by serving written notice on the Exhibitor in the event that:

a) the Exhibitor provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Agreement;

b) TCAS is unable to continue to provide the rights granted hereunder due to a requirement of law or regulation or pursuant to a ruling or order made by a government body or a local or regulatory authority.

4.3 On termination or expiry of this Agreement for any reason:

a) the rights granted by TCAS to the Exhibitor under Clause 2 shall immediately terminate;

b) the Exhibitor shall promptly return to TCAS any property of TCAS within its possession or control;

c) the following clauses shall continue in force: Clause 1 (Definitions and Interpretation), Clause 7 (Loss or Damage), Clause 8 (Liability and Indemnity), Clause 11 (Risk and Ownership), Clause 12 (Intellectual Property), Clause 13 (Confidentiality) and Clause 14 (General).

4.4 Termination or expiry of this Agreement 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 Agreement which existed at or before the date of termination or expiry.

## 5 DUTIES OF TCAS

5.1 TCAS agrees with the Exhibitor that it shall:

a) allow the Exhibitor to conduct the Event throughout the Term at the allocated space free from undue interruption from TCAS.

5.2 TCAS shall be responsible for maintaining signage in respect of the part of the Showground known as the 'lake', however TCAS shall not be liable for any failure of the Exhibitor to comply with Clause 6.1 (l) or for the consequences thereof or for any claim resulting from the negligence of the Exhibitor's employees subcontractors agents exhibitors or campers in respect of the lake.

## 6 DUTIES OF THE HIRER

6.1 The Exhibitor will:

a) comply with, and ensure that its employees, subcontractors and agents, and campers comply with the General Regulations for Exhibitors, having particular regard to the Temporary Structure procedure described more particularly therein;

b) undertake risk assessments for all activities to be carried out on the Site and provide the same to TCAS;

c) not, whether directly or indirectly, do (or permit or cause to be done (as the case may be)) anything which might bring TCAS into disrepute and/or damage TCAS's goodwill, reputation and/or business (or omit to do anything which might result in the same);

d) obtain and comply with all permissions, consents and licences required for all the activities to be carried on at the Site and in respect of the Equipment under any statute, regulation or byelaw;

e) comply with all applicable legislation and governmental or other regulations (in particular, but without prejudice to the generality of the foregoing, in respect of health and safety);

f) not permit any venture, business or company to operate or trade, whether directly or indirectly, from the Showground where TCAS has indicated to the Exhibitor that such venture, business or company (or that type of venture, business or company) is prohibited from operating and/or trading from the Showground;

g) not extend the scope or range of the Event held at the allocated space beyond that specified in the Acceptance of Site Allocation unless agreed by TCAS in writing;

h) allow TCAS and its employees and agents access to the allocated space (and to all other areas of the Showground) to inspect the allocated space and to enforce the provisions of this Agreement;

i) not hold itself out as being authorised to bind TCAS in any way or do (or permit or cause to be done) any thing which might reasonably create the impression that the Exhibitor is authorised to bind TCAS (or omit to do anything which might result in the same);

j) ensure that its personnel have appropriate skill, experience, qualifications and knowledge to carry out the Event;

k) use TCAS's preferred tentage contractor for the Event for shared items (such shared items to be specified in the Acceptance of Site Allocation or otherwise agreed by the parties);

l) notify its employees, subcontractor, agents, exhibitors, campers and any other persons using the Showground before the Event of the existence of the area of the Showground known as 'the lake' and the Exhibitor shall consider the lake as part of its risk assessment for the Event;

6.2 At least 30 days before the commencement of the Event, (or within a time period specified in the Acceptance of Site Allocation) the Exhibitor will provide to TCAS:

a) plans and all other documentation TCAS may reasonably request (including insurance policies, risk assessments and other health and safety documentation);

b) samples of all materials and objects in relation to which the words "Three Counties" or "Malvern Showground" (or any

6.3 In the event that the Exhibitor fails to comply, whether in whole or in part, with its duties under this Clause 6 TCAS shall be entitled (without prejudice to any right it may have, including (but not limited to) its right to terminate this Agreement) to perform and discharge the same and to recover from the Exhibitor any and all costs, charges and expenses it may incur in performing and discharging these duties in accordance with Clause 3.7 (b).

## 7 LOSS OR DAMAGE

7.1 The Exhibitor shall take reasonable care of the Site and/or Equipment during the Term.

7.2 If the Site and/or the Equipment is returned in a damaged, unclean and/or defective state (except where due to fair wear and tear and/or an inherent fault) the Exhibitor will pay TCAS for the cost of any repair and/or cleaning required to return the Site and/or Equipment to a condition fit for re-hire. The balance of sums due shall be paid within 14 days of the date of the invoice.

7.3 The Exhibitor shall pay to TCAS the replacement cost of any Equipment or parts of the Site (on a new for old basis) which are lost, stolen and/or damaged beyond economic repair less the amount paid to TCAS under any policy or insurance taken out by the Hirer under Clause 9.

## 8 LIABILITY AND INDEMNITY

8.1 Nothing in this Agreement shall limit or exclude a party's liability:

- a) for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- b) for fraud or fraudulent misrepresentation;
- c) any other liability which cannot be limited or excluded by the Applicable Laws; or
- d) under the indemnity set out at Clause 8.4.

8.2 Subject to Clause 8.1, under no circumstances shall TCAS be liable for any losses whether in Agreement and any tort (including negligence), breach of statutory duty or otherwise for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise and whether or not TCAS were advised of the possibility of loss, liability, damage or expense), indirect or consequential loss (including, without limitation, loss of revenue, loss of actual or anticipated profit (including loss of profits on Agreements), loss of business, loss of the use of money, loss of anticipated savings, loss of opportunity, depletion of goodwill or loss of reputation) howsoever caused.

8.3 The Exhibitor shall indemnify TCAS and its employees and agents against all losses, damages, costs, claims and expenses suffered or incurred by TCAS arising from or as a result of:

- a) the Exhibitor's breach of Agreement, tort (including negligence) and/or breach of statutory duty;
- b) any damage, theft or loss of property, goods, articles or other things placed, deposited, brought onto or left on the Site either by the Exhibitor or by its employees, agents, servants,

attendees and/or subcontractor;

- c) any loss, damage, injury or disease which may be suffered by any animal brought on to the Site by any person or persons by reason of the use of the Site by the Exhibitor;
- d) failure to obtain and comply with all permissions, consents and licences required for all the activities to be carried on at the Site and in respect of the Equipment under any statute, regulation or byelaw;
- e) failure to carry out and provide TCAS with risk assessments for all activities to be carried on at the Site;
- f) any claim made against TCAS by a third party for actual or alleged infringement of a third party's Intellectual Property Rights; and
- g) any third party claims in relation to the Event, Equipment and/or Site other than those that cannot be excluded by the Applicable Laws.

## 9 INSURANCE

9.1 The Exhibitor shall arrange a comprehensive insurance policy, at its sole cost, for the following:

- a) public liability at the Site during the course of the Term, in respect any materials or goods owned or controlled by the Exhibitor, which, in respect of any individual claim is not less than £5,000,000.00;
- b) employers liability as required by statute; and
- c) loss, theft or damage to any of materials or goods owned or controlled by the Exhibitor.

9.2 The Exhibitor shall provide TCAS with reasonable details of the insurance policies maintained in force by the Exhibitor.

9.3 The Hirer shall not, whether directly or indirectly, do (or permit or cause to be done (as the case may be)) anything which might cause any policy or policies of insurance effected by TCAS to be void or voidable at the instance of the insurance company or reduce any payment received from the insurance company under such policy or policies or increase the premium or premiums thereof (or omit to do anything which might result in the same).

9.4 Please note that any vehicle (owned or hired or loaned to you) you bring on to site must be insured for a minimum of Third Party Only. We randomly ask for proof of insurance, and if you are unable to provide this, the vehicle/s will be refused access.

## 10 DISPUTE RESOLUTION

10.1 All disputes which shall at any time arise between TCAS and the Exhibitor in respect of the construction or effect of this Agreement or the respective rights, duties and/or liabilities of the parties hereunder, or any matter or event connected with or arising out of this Agreement shall be referred to such independent third party (the "**Third Party**") as TCAS and the Exhibitor shall jointly nominate.

10.2 If TCAS and the Exhibitor shall fail to nominate a Third Party within 14 days of the date of occurrence of the dispute,

then the Third Party shall be nominated at the request of either TCAS or the Exhibitor by the Chairman for the time being of Malvern Hills District Council.

10.3 The parties acknowledge that the Third Party (whether appointed under Clause 10.1 or 10.2) shall act as an expert and not as an arbitrator. The parties shall share equally the fees and expenses of the Third Party.

10.4 No party may commence any court proceedings pursuant to Clause 14.9 in relation to the whole or part of the dispute until the parties have followed the procedure outlined at Clauses 10.1-10.3 above, provided that the right to issue proceedings is not prejudiced by a delay.

## 11 RISK AND OWNERSHIP

11.1 Risk in the Equipment will pass to the Exhibitor immediately from the commencement date of the hire and will not pass back to TCAS until the Equipment is returned to TCAS and all goods, machinery or other assets situated at the Site belonging to the Exhibitor have been removed.

11.2 Ownership of the Site and/or Equipment remains with TCAS at all times. The Exhibitor has no right, title or interest in the Site and/or Equipment.

11.3 The Exhibitor must not deal with the ownership or any interest in the Site and/or Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending.

## 12 INTELLECTUAL PROPERTY

12.1 The Exhibitor represents and warrants that it owns or is solely entitled to use the Exhibitor's Marks and any other material supplied to TCAS in relation to this Agreement and TCAS shall be entitled to see evidence to this effect on request and TCAS's use of the Exhibitor's Marks will not infringe the rights of any third party.

12.2 The Exhibitor acknowledges that all rights in TCAS's Marks, including any goodwill associated with them, shall be the sole and exclusive property of TCAS and the Exhibitor shall not acquire any rights in TCAS's Marks, including any developments or variations of them.

12.3 All Intellectual Property Rights in and to any materials produced for an Event by or on behalf of TCAS or jointly by TCAS and the Exhibitor shall, with the exception of the Exhibitor's Marks, be the sole and exclusive property of TCAS and if the Exhibitor acquires, by operation of law, title to any such Intellectual Property Rights it shall assign them to TCAS on request, whenever that request is made.

## 13 CONFIDENTIALITY

Neither party shall use, copy, adapt, alter, disclose or part with possession of any information or data of the other party which is disclosed or otherwise comes into its possession directly or indirectly as a result of this Agreement and which is of a confidential nature ('Confidential Information') except as strictly

necessary to perform its obligations or exercise its rights under this Agreement, except that this provision shall not apply to Confidential Information which:

(a) the receiving party is able to prove was already in its possession at the date it was received or obtained or which the receiving party obtains from some other person with good legal title to the same or which is independently developed by or for the receiving party;

(b) comes into the public domain otherwise than through the default or negligence of the receiving party; or

(c) the receiving party is required to disclose by law or applicable regulatory authority.

## 14 GENERAL

14.1 TCAS shall not be liable for any delay and/or non-performance of this Agreement or for damage to property to the extent that such delay and/or non-performance is due to a Force Majeure Event. In the event that TCAS is unable to comply with its obligations due to a Force Majeure Event, both parties shall be released from their respective obligations.

14.2 Any notice given to a party under or in connection with this agreement shall be in writing and shall be (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) by email to the address notified to the other party. Any notice shall be deemed to have been received: (a) if delivered by hand, on signature of a delivery receipt; (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second day after posting or (c) if sent by email, at 9.00 am on the next day after transmission. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14.3 Each party acknowledges that, in entering into this Agreement, it does so not on the basis of or in reliance on any representation, warranty or other provision, save as expressly provided in this Agreement and, accordingly, all conditions, warranties or other implied terms are excluded to the fullest extent permitted by law.

14.4 TCAS employees or agents are not authorised to make any representations concerning the Site and/or the Equipment unless confirmed in writing and any advice or recommendation given by TCAS to the Exhibitor as to the use of the Site or the storage, application or use of the Equipment which is not confirmed in writing and is followed or acted upon is entirely at the Exhibitor's own risk.

14.5 Nothing in this Agreement shall or shall be deemed to create a partnership between the parties.

14.6 A person who is not a party to this Agreement has no rights under the Agreements (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement.

14.7 No waiver by TCAS of any breach hereof shall operate as a waiver of any term hereof or of any subsequent or continuing breach.

14.8 No amendment of or addendum to this Agreement shall be effective unless it is in writing and is signed by or on behalf of both parties.

14.9 This Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14.10 If any provision is held by any competent authority to be unenforceable, in whole or in part, the validity of the other provisions of this Agreement and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

14.11 The Exhibitor shall not, without the prior written consent of TCAS assign, transfer, charge, sub-agreement or deal in any other manner with all or any of its rights or obligations under the Agreement.