

## STREAM MEASUREMENT LIMITED – TERMS AND CONDITIONS OF HIRE OF EQUIPMENT

### 1. Interpretation

1.1 The following definitions apply in these Conditions.

**Additional Payments:** any charges additional to the Hire Charge payable by the Customer to the Company under the Contract as specified in the Key Terms Document.

**Company:** Stream Measurement Limited of 5 Elder Road, St Johns Industrial Estate, Lees, Oldham OL4 3DZ.

**Conditions:** these Terms and Conditions of Hire, as amended from time to time by the Company.

**Contract:** the contract for the hire of the Equipment by the Company to the Customer comprising the Key Terms Document and the Conditions.

**Customer:** the customer named in the Key Terms Document.

**Date of Collection:** the date on which the Equipment is collected from the Depot on behalf of the Customer or the date on which the Equipment is removed from the Depot for carriage on behalf of the Company to the Site including (only where provided for in the Key Terms Document) by the Company's engineer.

**Date of Return:** the date on which the Equipment is returned to the Depot on behalf of the Customer (or by Company engineer if relevant pursuant to the Key Terms Document).

**Depot:** the Company's address specified in the Key Terms Document for uplift and return of the Equipment.

**Equipment:** the equipment to be hired by the Customer as specified in the Key Terms Document together with all related accessories, manuals and instructions provided for it.

**Equipment Availability Date:** the earliest date on which the Equipment is available for hire as specified in the Key Terms Document.

**Hire Charge:** the weekly amount specified in the Key Terms Document to be paid by the Customer to the Company for the duration of the Hire Period.

**Hire Period:** the period of hire of the Equipment as more fully described in clause 3.

**Key Terms Document:** the document containing the Pricing Summary in respect of and the Key Terms of the hire of the Equipment, as agreed between the Company and the Customer.

**Site:** the site specified in the Key Terms Document at which the Equipment will be installed and utilised by the Customer.

## **2. Equipment hire and basis of contract**

- 2.1 The Company shall hire the Equipment to the Customer for use at the Site subject to the terms of the Contract.
- 2.2 In the event of any discrepancy between the Key Terms Document and the Conditions, the Key Terms Document shall prevail.
- 2.3 The Key Terms Document shall be agreed when signed by both parties and deemed to be agreed upon commencement of the Hire Period in accordance with clause 3.1, if not signed by both parties before then.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by law, trade custom, practice or course of dealing. For the avoidance of doubt no Customer purchase orders (and any terms and conditions annexed thereto or referred to therein) or equivalent are required to constitute and do not form part of the Contract.

## **3. Hire Period and term of the Contract**

- 3.1 The Hire Period starts on the Date of Collection and continues until the Date of Return. Where the Hire Period is longer than one month, the Customer shall give the Company at least one week's prior written notice (which may be by email) of its intended Date of Return.
- 3.2 The earliest Date of Collection shall be the Equipment Availability Date.
- 3.3 The minimum Hire Period shall be one week.

## **4. Hire Charge and Additional Payments**

- 4.1 The Company shall invoice the Customer for the Hire Charge monthly in arrears and, in respect of the last month of the Hire Period, at the end of the Hire Period. Where the Hire Period is less than one month, the invoice shall be sent to the Customer at the end of the Hire Period.
- 4.2 The estimated Hire Period in the Key Terms Document is an estimate only and invoicing shall be on the basis of the actual Hire Period which has elapsed whether shorter or longer than the estimated Hire Period. For the avoidance of doubt,

where the actual Hire Period is longer than the estimated Hire Period (and without prejudice to clause 2.4), the Company may invoice for the whole Hire Period without necessity for a Customer purchase order or equivalent in respect of the period by which the actual Hire Period exceeds the estimated Hire Period.

- 4.3 The Company shall invoice the Customer for the Additional Payments upon the relevant charge being incurred/service completed.
- 4.4 The Hire Charge and the Additional Payments are exclusive of VAT and any other applicable taxes and duties, including but not limited to import duty, or similar charges all of which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 4.5 All amounts due under the Contract shall be paid within thirty days from the date of the relevant invoice in Pounds Sterling to the bank account stated in the relevant invoice and 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).
- 4.1 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

## **5. Collection, installation and return of the Equipment**

- 5.1 Unless expressly stated in the Key Terms Document, responsibility for collection of the Equipment from the Depot to commence the Hire Period and for return of the Equipment to the Depot to end the Hire Period, shall lie with the Customer. The Customer shall be responsible for all carriage costs.
- 5.2 Equipment must be collected and returned by the Customer during the Company's normal business hours. The Customer will be issued with an on-hire and off-hire receipt respectively.
- 5.3 Unless expressly stated in the Key Terms Document, the Customer shall be responsible for the installation of the Equipment at the Site which it shall do strictly in accordance with any manuals or instructions supplied with it and any written instructions of the Company.
- 5.4 In the event that the Customer requires assistance from the Company to perform the installation, which can be delivered either by a Company engineer Site visit or

remotely, the Customer shall pay the Company in respect of such assistance including any related travel and accommodation expenses. The engineer's time shall be charged at the Company's prevailing hourly charge out rate per hour expended.

- 5.5 Where it is expressly stated in the Key Terms Document that an engineer of the Company shall carry out the installation of the Equipment at the Site, the engineer shall do so at the Customer's expense as provided for in the Key Terms Document. If it is expressly stated in the Key Terms Document that the relevant engineer will transport the Equipment to the Site and/or return it to the Depot, the Customer will not be responsible for relevant carriage costs in either of those eventualities. An on-hire and off-hire receipt will be generated as relevant.
- 5.6 Where it is expressly stated in the Key Terms Document that the Company will arrange for carriage of the Equipment from the Depot to the Site, the Customer will be responsible for all carriage costs. An on-hire receipt will be generated.

## **6. Title, risk and insurance**

- 6.1 The Equipment shall at all times remain the property of the Company, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Contract).
- 6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer at the point of collection or removal of the Equipment from the Depot, as relevant, on the Date of Collection. The Equipment shall remain at the sole risk of the Customer during the Hire Period.
- 6.3 During the Hire Period, the Customer shall, at its own expense, obtain and maintain the insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing.
- 6.4 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.
- 6.5 The Customer shall give immediate written notice to the Company in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.

## 7. Customer's responsibilities

### 7.1 The Customer shall during the Hire Period:

- (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- (b) take such steps (including compliance with all safety and usage instructions provided by the Company) 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, used, cleaned or maintained by a person at work;
- (c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Date of Collection (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
- (d) make no alteration to the Equipment;
- (e) keep the Company fully informed of all material matters relating to the Equipment including its loss or damage to it;
- (f) keep the Equipment at all times at the Site until it is returned to the Depot;
- (g) permit the Company or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Site and shall grant reasonable access and facilities for such inspection;
- (h) maintain operating and maintenance records of the Equipment and make copies of such records available to the Company upon request, together with such additional information as the Company may reasonably require;
- (i) not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (j) not without the prior written consent of the Company, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material damage to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and

indemnify the Company against all losses, costs or expenses incurred as a result of such affixation or removal;

- (k) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Company and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (l) not use the Equipment for any unlawful purpose;
- (m) ensure that at all times the Equipment remains identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- (n) deliver up the Equipment at the end of the Hire Period to the Depot or if necessary allow the Company or its representatives access to the Site for the purpose of removing the Equipment; and
- (o) not do or permit to be done anything which could invalidate the insurances referred to in clause 6.3.

7.2 The Customer shall indemnify the Company in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of, or in connection with any failure by the Customer to comply with its obligations in this clause 7.

7.3 Subject to clause 8, the Company accepts no responsibility for loss or damage to or theft of the Equipment or any part of the Equipment during the Hire Period. In the event of the Equipment (including for the avoidance of doubt any accessories like transducers, as relevant) or any part thereof being lost, damaged or stolen, howsoever arising, during the Hire Period (fair wear and tear excepted) or not returned to the Company on the Date of Return, the Customer will be invoiced for and shall pay to the Company: (1) the full reinstatement value as new of the Equipment (or part thereof) or the cost of repairs to the Equipment (whichever being applicable at the sole discretion of the Company); (2) the full Hire Charge for the period up to the date on which the full replacement value of the Equipment (or part thereof) or the cost of repairs to the Equipment is paid to the Company by the Customer; and (3) all associated costs of the Company (including carriage costs and legal fees).

## **8. Breakdown of Equipment**

- 8.1 Any breakdown of the Equipment at the Site or unsatisfactory working performance of any part of the Equipment must immediately be reported to the Company. Oral communication shall be accepted to facilitate timely action, however full details of any breakdown must be confirmed in writing and supported by a documented history of events leading to the breakdown.
- 8.2 The Customer shall afford the Company and/or its insurer's access to the Equipment at all reasonable times for the purpose of inspection, testing, adjusting, repairing or replacing the Equipment. In the event of a breakdown of the Equipment or any part of the Equipment or its unsatisfactory working performance, not readily repairable, the Company shall be entitled, but not bound, to supply substitute equipment of a similar type and condition. If the Company is not in a position to do so, the hire in respect of that item of Equipment or part thereof (but not, for the avoidance of doubt, in respect of any other Equipment made available to the Customer by the Company) shall terminate from the date of the breakdown of that item of Equipment (notwithstanding the Date of Return). The Customer shall have no claims against the Company for any loss or damage whatsoever occasioned to or suffered by the Customer as a result of that item of Equipment no longer being available to the Customer.
- 8.3 For the avoidance of doubt, clause 7.3 shall operate in lieu of clause 8.2 in the event that the relevant breakdown or unsatisfactory working performance of the Equipment or any part of it has been caused in any way by the Customer or any person or entity acting on its behalf.

## **9. Limitation of liability**

- 9.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort or delict (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in the Conditions limits any liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any liability that legally cannot be limited.
- 9.3 Subject to clause 9.2, the Company's total liability to the Customer shall not exceed the total amount of Hire Charge paid to the Company under the Contract up to the

point at which the relevant claim is brought against the Company by the Customer in relation to the Contract.

- 9.4 Subject to clause 9.2, the Company shall not be liable under the Contract for any:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 9.5 Subject to clause 9.2, all implied terms and conditions as to the quality or performance of the Equipment are, to the fullest extent permitted by law, excluded from the Contract.

## **10. Termination**

- 10.1 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - (b) the Customer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (c) the Customer takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a

receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 10.1(c);

- (d) the Customer suspends or ceases, or threatens to suspend or cease, carrying on business; or
- (e) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

10.2 The Contract shall terminate automatically upon the Equipment being returned to the Customer on the Date of Return.

10.3 The Company may terminate the Contract at any time by giving at least one week's written notice to the Customer.

## **11. Consequences of termination or expiry**

11.1 On expiry or termination of the Contract, however caused, to the extent relevant:

- (a) the Company's consent to the Customer's possession of the Equipment shall terminate;
- (b) the Customer shall arrange for the immediate return of the Equipment to the Depot at the Customer's expense;
- (c) the Company may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located;
- (d) the Customer shall ensure the safe and proper storage of the Equipment until it has been collected by the Company; and
- (e) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Company on demand:
  - (i) all Hire Charges and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.1; and
  - (ii) any costs and expenses incurred by the Company in recovering the Equipment or in collecting any sums due under this Contract (including any storage, insurance, repair, transport and legal costs).

- 11.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect, including but not limited to, clauses 7.2 and 7.3.
- 11.3 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.

## **12. Force majeure**

Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving not less than 30 days written notice to the affected party.

## **13. Confidential information**

- 13.1 Each party undertakes that it shall not at any time during the Contract, and for a period of one year after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with clause 13; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party may use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

#### **14. Assignment and other dealings**

The Contract is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.

#### **15. Entire Contract**

15.1 The Contract constitutes the entire contract between the parties.

15.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation based on any statement in the Contract.

#### **16. Variation**

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **17. No partnership or agency**

17.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between 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.

17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **18. Third party rights**

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of the Contract.

#### **19. Notices**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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).

- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address; or
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting.

## **20. Waiver**

- 20.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 20.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

## **21. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

## **22. Governing law and Jurisdiction**

- 22.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Scotland.
- 22.2 Each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.