

TERMS & CONDITIONS FOR VENUE HIRE AT ERSKINE STEWART'S MELVILLE SCHOOLS

1 Definitions and interpretation

The following definitions and rules of interpretation apply in these Terms and Conditions.

Definitions:

Activity Area: the area forming part of a Sports Centre upon which a sporting activity is carried out.

Astro Turf: the astro turf pitches located within any Sport Centre.

Balance: any balance of the Fee due by the Customer to ESMS.

Bar Services: the provision of alcoholic and non-alcoholic beverages for payment by the Customer and their Participants as stated on the Booking Form.

Booking: the Venue booking made by the Customer in terms of the Booking Form completed by the Customer detailing the Venue, date and time of the Booking and other matters relating to the Booking.

Booking Date: the date specified by the Customer in the Booking Form as the date they require to hire the Venue.

Booking Form: the booking form attached to these Terms and Conditions completed by the Customer and sent to ESMS in respect of the Booking required.

Booking Period: the duration of the Booking as stated on the Booking Form.

Box Office Services: the online ticket purchasing and delivery service provided by the Box Officer Provider for a Performing Arts Venue as specified by the Customer on the Booking Form.

Box Office Provider: the third-party supplier providing the Box Officer Services as nominated by ESMS.

Business Day: a day, other than a Saturday or Sunday, when banks in Edinburgh are open for business.

Business Hours: between the hours of 08:30 and 16:30 on any Business Day.

Cancellation Fee: such amount determined by ESMS required to be paid by the Customer to ESMS for the cancellation of Bookings for Sports Centres.

Catering: any food and/or drink required by the Customer and specified on the Booking Form.

Customer: any person (legal or otherwise) or entity that makes a booking on the Booking Form.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Deposit: any deposit required to be paid in advance by the Customer to ESMS (as notified in writing by ESMS) in order to secure a Booking.

ESMS: Erskine Stewart's Melville Schools, a charity registered in Scotland, as part of the Merchant Company Education Board Schools, with charity registration number SC009747.

ESMS Sports Club: the sports clubs operated by ESMS outwith school times from Mary Erskine School and Stewart's Melville College.

Equipment: any equipment belonging to ESMS and supplied to the Customer in terms of the Booking Form.

Event: any event held in a Performing Arts Venue;

Fee: the fee payable by the Customer to ESMS for the Booking as specified on the Booking Form.

Force Majeure: any event or circumstance materially and adversely affecting the performance by ESMS of its obligations arising beyond its reasonable control including without limitation fires, floods, acts of war, acts of terrorism, natural disasters, epidemic or pandemic, default or non-compliance of suppliers or third parties, events or circumstances attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees or any inability to pay sums of money.

Kitchen Facilities: any kitchen or catering facilities within a Venue.

Member: any person who is a member of the ESMS Sports Club.

Nominated Caterer: any caterer that ESMS has contracted with to provide Catering.

Participants: any person who is attending or making use of a Venue in terms of a Booking

Performing Arts Venue: the Tom Fleming Centre, Stewart's Melville College, Queensferry Road, Edinburgh EH4 3EZ and any other Venue as may be designated by ESMS in writing from time to time as a Performing Arts Venue for the purposes of these Terms and Conditions.

Property: any property within the ownership or control of ESMS.

Responsible Person: the person designated by the Customer on the Booking Form (or otherwise notified to ESMS by the Customer) as being responsible for the Participants.

Sports Centre: any ESMS sports centre (as described on the Booking Form) and the Swimming Pool.

Staff: any person employed by ESMS.

Swimming Pool: the swimming pool in the SMC Sports Centre located at Stewart's Melville College, Queensferry Road, Edinburgh.

Terms and Conditions: these terms and conditions.

Venue: the venue selected by the Customer on the Booking Form.

1.1 Interpretation

1.2 References in these Terms and Conditions to:

(a) clauses are, unless specified otherwise, to the clauses of to these Terms and Conditions;

(b) any statutory or other legislative provision shall be construed as including any statutory or legislative modification or re-enactment thereof, or any substitution therefore;

(c) the word **person** or **persons** or words importing persons include, without limitation, individuals, partnerships, joint ventures, trust, organisations, associations, corporations, government agencies, committees, departments, authorities and other bodies, corporate or unincorporated, whether having distinct legal personality or not, or any member of the same;

(d) any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.3 In these Terms & Conditions, unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.4 In these Terms & Conditions, unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.5 In these Terms & Conditions “ESMS” and the “Customer” include their respective directors, officers, servants, agents, employees and sub-contractors;
- 1.6 In these Terms and Conditions any reference to **writing** or **written** includes email.
- 1.7 In these Terms and Conditions clause headings are for ease of reference only.

2 **Booking, Deposit and Fee.**

- 2.1 The Customer shall ensure the Booking Form is complete and accurate and shall submit the Booking Form well in advance of the Booking Date to ESMS via the online booking platform;
- 2.2 Within 72 Business Hours of receipt of the completed Booking Form ESMS shall confirm to the Customer in writing if their Booking has been accepted, whether further information is required and/or whether the Booking has been rejected. ESMS reserve the right to refuse any Booking, for any reason that ESMS deems appropriate.
- 2.3 In the event a Deposit is payable by the Customer, the Customer will be notified of this by ESMS in writing and the Customer shall pay the Deposit to ESMS by the date specified by ESMS in writing in order to secure their Booking.
- 2.4 Once the Booking has been accepted by ESMS, ESMS shall send confirmation to the Customer in writing. Bookings shall not be secured until the Customer has paid the Fee or Deposit and received written confirmation of the Booking from ESMS.
- 2.5 Any Balance due by the Customer to ESMS shall be paid on or prior to the date specified by ESMS in writing. In the event that a Balance is not paid in full 48 hours prior to the Booking Date, ESMS shall be entitled to cancel the Booking and retain the Deposit
- 2.6 Any Balance due for a Booking that includes Catering shall be paid in full by the Customer to ESMS no later than 2 weeks prior to the Booking Date otherwise ESMS shall be entitled to cancel the Booking and retain the Deposit.
- 2.7 ESMS do not offer a facility for repeated Bookings. Any Customers wishing to repeat a Booking must do so in good time, using the Booking Form.

3 Use of Venue - General obligations on the Customer

- 3.1 The Customer accepts the Venue as being in good condition and repair and sufficient for the purposes of the Booking.
- 3.2 The Customer shall vacate the Venue at the end of the Booking Period and leave the Venue in a clean and tidy condition. In the event that the Customer fails to vacate the Venue timeously (i) ESMS shall be entitled to charge an additional fee calculated as a pre-estimate of loss and inconvenience suffered by ESMS and (ii) the Customer will fully reimburse ESMS for all costs connected with the cleaning thereof, removal of rubbish and storage of Customer equipment.
- 3.3 In the event that any damage is caused to the Venue or Equipment therein for which the Customer is responsible the Customer shall promptly notify ESMS in writing who shall arrange for the same to be repaired or renewed, as necessary, and the Customer shall be responsible for any costs incurred by ESMS in so doing.
- 3.4 The Customer shall not be permitted to display advertising material in or on the Venue without the prior written approval of ESMS. ESMS reserve the right to charge an additional Fee where such approval is given.
- 3.5 No material shall be fixed, posted, pinned or otherwise placed on the walls, doors, windows, ceilings, floor or structure or other fixtures of the Venue without the prior written consent of ESMS.
- 3.6 The Customer shall ensure will not, nor permit others, to do anything which may be or cause a nuisance to ESMS, other customers or neighbours of ESMS.
- 3.7 The Customer undertakes to respect and not infringe any copyright or other intellectual property rights of ESMS and/or third parties and shall indemnify ESMS in respect of any and all claims which may be brought against ESMS as a consequence of the wrongful act or omission of the Customer in this regard.
- 3.8 The Customer shall be entitled to take photographs of its own activities at the Venue during the Booking for its own marketing purposes, subject to resolving any third-party copyright issues and/or requirements of law (including the Data Protection Legislation and child protection laws) to the satisfaction of ESMS.
- 3.9 The Customer shall be responsible for the behaviour of Participants during the Booking. A Responsible Person must be present throughout the duration of each Booking. The Customer shall ensure that they provide a suitable number of adults to supervise groups of children.
- 3.10 ESMS reserve the right to refuse entry to any Customer or Participant.
- 3.11 Smoking is not permitted in any part of the Venues or Property. This includes and is not limited to the use of E-Cigarettes or vapourisers.
- 3.12 The Customer is strictly prohibited from bringing onto (or using) at the Venue any fireworks. The mass release of balloons and/or paper lanterns or any other substance that may negatively impact on the environment at the Venue is also strictly prohibited.
- 3.13 Except where expressly agreed with ESMS in writing in terms of condition 9.5 hereof, the Customer shall ensure that no alcohol is brought onto or consumed in the Venue or any part of the Property.
- 3.14 In the interests of safety and hygiene, dogs and other animals shall not be admitted to Venues. The only exception to this is for Guide or Hearing Dogs.

- 3.15 ESMS licences do not cover the Customer's use of the Venue for the public performance (or playing) of music, plays, dramatic-music productions or any other copyrighted works. The Customer shall be responsible for ensuring they do not infringe third party intellectual property rights and for obtaining all licences, approval, consents, permissions and authorisations that may be required for or in connection with their event. The Customer shall indemnify ESMS against any and all losses, expenses, costs or damages suffered by ESMS as a result of the Customer's breach of third party intellectual property rights.

4 Use of Venue - Sports Centre and Swimming Pool

This Condition 4 shall apply to all Bookings made in respect of a Sports Centre and Swimming Pool.

- 4.1 Sports activities must be carried out and supervised in accordance with the appropriate rules and safety recommendations of the relevant governing body of the sport concerned (and as otherwise may be notified in writing by ESMS to the Customer). The Responsible Person must report to the Venue reception on arrival at the Venue.
- 4.2 The Customer shall be liable for any and all loss of, or damage to, property or injury to their staff or the Participants, which may occur during the Booking.
- 4.3 The Customer is made aware that the Booking Period may require at least 5 minutes at the start to set up Equipment and at least 5 minutes at the end to put Equipment away meaning a 60 minute Booking may only last 50 minutes.
- 4.4 Participants must not enter the Venue or Activity Area before commencement of the Booking Period. At the end of the Booking Period, Participants must vacate the Venue or Activity Area promptly so that the next scheduled booking may start on time.
- 4.5 Customers shall ensure that Participants wear clean trainers with non-marking soles in any games hall and on the Astro Turf. No studded footwear may be worn, and this includes (without limitation) the plastic moulded type.
- 4.6 No food or drink may be taken into any of the Activity Areas (plastic water bottles are acceptable however).
- 4.7 Any person using a locker at any Sports Centre does so at their sole risk and liability.

5 Use of Venue - Children's Sports Parties

This Condition 5 shall apply to all Bookings made in respect of a children's party at a Sports Centre.

- 5.1 Children's parties in the Sports Centres or Swimming Pool as appropriate are subject to further following conditions.
- 5.1.1 Children under the age of 8 years must be accompanied by a responsible adult (18+) in the water to the ratio of one adult to every three children under 8 years of age. It is the responsibility of the Customer to ensure that all Participants are water confident.
- 5.1.2 The maximum number of Participants allowed for a party in the Swimming Pool is 24. The maximum number of Participants allowed for other parties within a Sports Centre is 30.
- 5.1.3 The Customer shall only be permitted to use that section of the Swimming Pool designated by ESMS for the party.
- 5.1.4 No pool toys may be used except those provided by ESMS.

- 5.1.5 The Customer is responsible for ensuring that Participants are well behaved and adhere to the rules of ESMS.
- 5.1.6 The Customer may bring their own food (but not an Alternative Caterer) for the Participants and the Customer is responsible for ensuring good food hygiene and ensuring food allergies of Participants are catered for.
- 5.1.7 The Customer must keep the Venue clean and tidy inform a member of ESMS Staff immediately of any breakages, spillages and/or mess.
- 5.1.8 The Customer shall ensure that games/activities take place before food, not after.

6 Use of Venue - Swimming Pool

This Condition 6 shall apply in relation to all Bookings made in respect of the Swimming Pool.

- 6.1 The Swimming Pool can only be booked by Members with the following exceptions:
 - 6.1.1 the Swimming Pool can be used by guests of Members who have signed in and are accompanied by a Member;
 - 6.1.2 Swimming lessons provided by a pre-agreed provider of swimming lessons;
 - 6.1.3 Entry by special offer voucher issued by ESMS Sports Club; or
 - 6.1.4 Group Bookings authorised by ESMS.
- 6.2 Customers using the Swimming Pool must comply, and ensure full compliance of Participants, with the Swimming Pool rules (as exhibited at the Swimming Pool and as may be varied from time to time) and any lifeguard instructions.
- 6.3 The number of Participants using the Swimming Pool shall be limited to a maximum of 30 swimmers and the number of swimmers per lane shall be limited to 6.
- 6.4 The Responsible Person must ensure that an adult accompanies Participants under the age of 8 in the water at the Swimming Pool (and in a ratio of 1:3).

7 Use of Venue - Performing Arts Venue

This Condition 7 shall apply in relation to all Bookings made in respect of a Performing Arts Venue.

- 7.1 All audience members must be seated for the Event. The seating capacity for an Event will be notified by ESMS to the Customer in writing and will depend on the layout of the seating specified by the Customer and in compliance with the relevant ESMS Public Entertainment License.
- 7.2 ESMS shall provide such lighting together with power thereto as specified on the Booking Form for the duration of the Booking. The Customer is required to satisfy itself that what ESMS can provide in this regard will be sufficient for the Customer's purposes.
- 7.3 ESMS will provide assistance by way of janitors and such specialist Staff as is specified on the Booking Form.
- 7.4 If specified by the Customer on the Booking Form ESMS will provide technical support relative to sound and lighting.

- 7.5 If so requested by the Customer on the Booking Form ESMS will provide a public address system (PA) for the play back of music and vocal amplification only. If the Customer is providing their own DJ or live music then the Customer is responsible for supplying their own PA unless previously agreed with ESMS. The Customer shall not plug in any electrical equipment to sockets within a Venue and must bring their own independent power supply.
- 7.6 If specified by the Customer on the Booking Form ESMS will provide the use of a piano or organ. The Customer shall follow all directions provided to it by ESMS concerning the use, movement and location of such piano or organ.
- 7.7 ESMS will insure its own Equipment. The Customer will insure and be responsible for any equipment or instruments of its own that it brings into the Venue or is brought into the Venue on its behalf by any party other than ESMS. If so required by ESMS the Customer will promptly produce evidence of such insurance.
- 7.8 Where the Customer has requested Box Office Services these will be provided by the Box Office Provider. The Customer will make arrangements direct with the Box Office Provider and will be subject to the Box Office Provider's standard terms and conditions. ESMS will have no liability to the Customer for ticket sales or the successful delivery of the Box Office Services.

8 Equipment

- 8.1 If Equipment is specified on the Booking Form then the Equipment shall be made available to the Customer for the duration of the Booking. The Customer shall be liable for any loss of or damage to any Equipment in terms of Condition 3.3 of these Terms and Conditions.
- 8.2 ESMS will ensure that any electrical equipment will have a current PAT test and be labelled as such and in good working order. ESMS reserves the right to refuse use of Equipment by the Customer if it is deemed unsafe by Venue Staff.

9 Catering and Bar Services

- 9.1 Where the Customer has requested the provision of Catering from the Nominated Catering Supplier on the Booking Form, the ESMS Events Manager shall contact the Customer direct to confirm the details of their Catering requirement. Customers must use the Nominated Caterer unless ESMS agree in writing that the Customer may provide their own catering. In the event that the Nominated Caterer is unable to supply the Catering for the Booking or the Customer is permitted (in writing) by ESMS to provide their own catering then any such alternative caterer (**Alternative Caterer**) shall have no access to or use of the Kitchen Facilities.
- 9.2 In the event that the Customer utilises the services of an Alternative Caterer, then the Alternative Caterer is required to bring their own catering equipment and power source. Any food or drink must be prepared off site and stored using the Alternative Caterers own equipment. For the avoidance of doubt, the Customer and/or the Alternative Caterer shall not be permitted to connect into ESMS power supply for the purposes of powering catering equipment.
- 9.3 The Customer will adhere to and observe the terms and conditions issued by any Catering supplier (including the Nominated Caterer).
- 9.4 If specified by the Customer on the Booking form ESMS shall provide the Bar Services at the Venue. ESMS shall obtain all licences required to serve alcohol at the Venue.
- 9.5 The Customer is prohibited from providing their own Bar Services. The Customer may be permitted to bring their own alcohol to a Venue in the following circumstances:

- 9.5.1 With the express approval (in writing) of ESMS in advance of the Booking;
- 9.5.2 The Customer is strictly prohibited from selling alcohol to Participants or from taking any payment or payment in kind from Participants in exchange for alcohol at the Venue; and
- 9.5.3 The Customer will be charged a fee for corkage.

10 Cancellation, Amendments and Force Majeure

- 10.1 In the event the Customer requires to cancel a Booking at a Sports Centre they shall notify ESMS in writing no later than 48 hours prior to the Booking Date. Where 48 hours notice is provided to ESMS the Customer shall be entitled to a full refund of the Fee from ESMS. Where 48 hours notice is not provided to ESMS then the Customer shall be required to pay the Cancellation Fee to ESMS.
- 10.2 In the event the Customer requires to cancel a Booking at any other Venue not covered by clause 10.1 hereof they shall notify ESMS in writing no later than two weeks prior to the Booking Date. Where two weeks notice is provided to ESMS the Customer shall be entitled to a refund of the Fee (minus the Deposit) from ESMS. The Deposit shall be retained by ESMS. Where two weeks notice is not provided to ESMS then the Customer shall be required to pay the Fee in full to ESMS.
- 10.3 In the event the Customer requires to amend a Booking at a Sports Centre they shall notify ESMS in writing as soon as practicably possible and no later than 48 hours prior to the Booking Date. ESMS shall use reasonable endeavours to facilitate the amended Booking but ESMS reserves the right not to amend any Booking. In the event that an amendment to a Booking cannot be facilitated by ESMS the Customer shall be entitled to cancel the Booking but that subject to the cancellation provisions at clause 10.1 hereof.
- 10.4 In the event the Customer requires to amend a Booking of any Venue not covered by clause 10.3 hereof they shall notify ESMS in writing no later than two weeks prior to the Booking Date. ESMS shall use reasonable endeavours to facilitate the amended Booking but ESMS reserves the right to not to amend a Booking. In the event that an amendment to a Booking cannot be facilitated by ESMS the Customer shall be entitled to cancel the Booking but that subject to the cancellation provisions of clause 10.2 hereof.
- 10.5 ESMS reserve the right to cancel any Booking for any reason that ESMS deems appropriate. ESMS shall use reasonable endeavours to notify the Customer in advance of any such cancellation and shall refund any sums paid by the Customer to ESMS in respect of the cancelled Booking. No damages shall be due or payable by ESMS to the Customer in this respect.
- 10.6 In the event ESMS are unable to honour the Booking by reason of Force Majeure (including damage to the Venue, serious systems failure, illness to key Staff or a risk of infection to pupils, Staff or members of the public) ESMS shall notify the Customer in writing as soon as reasonably practicable. If a Force Majeure event occurs ESMS shall be entitled to cancel a Booking and shall have no liability to the Customer. Whilst ESMS will take reasonable steps to avoid such cancellation it is recommended that the Customer puts in place cancellation insurance for, amongst other things, such occurrences.

11 Liability

- 11.1 The Customer is liable for any and all loss of, or damage to, property or injury to their Participants, their staff and ESMS Staff, which may occur while making use of the Venue including any such incidents which may occur on ESMS Property.

- 11.2 The Customer shall immediately report any incidents they become aware of involving injury to, or risk to the health or safety of, any person using the Venue to the ESMS duty manager or janitor on call.
- 11.3 ESMS shall not be liable under any circumstances, whether in contract, delict (including negligence), breach of legal duty, or otherwise, for any economic loss (including loss of profit, business, revenue, goodwill or anticipated savings (whether or not foreseeable)) or any indirect or consequential loss arising under or in connection with these Terms & Conditions or use of a Venue by any Customer.
- 11.4 ESMS' total liability to the Customer shall be limited to the Fee or £500 (whichever is the greater).
- 11.5 Nothing in these Terms & Conditions shall limit or exclude the liability of ESMS for:
- 11.5.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 11.5.2 fraud or fraudulent misrepresentation; and
 - 11.5.3 any other liability which cannot be excluded by law.
- 11.6 Business or commercial Customers shall take out and maintain public liability insurance for the duration of the Booking in such sum as specified in writing to the Customer by ESMS. The Customer shall provide a copy of all such insurance to ESMS promptly upon a request in writing to that effect.

12 **Data protection & Privacy**

For information about how ESMS handles personal information and rights under Data Protection Legislation please refer to the ESMS website <https://www.esms.org.uk/privacy>.

13 **Entire agreement**

The Booking Form and these Terms & Conditions constitutes the entire agreement and understanding between the parties regarding the subject matter thereof and supersedes and extinguishes any prior agreement (written or verbal) between the parties regarding such subject matter.

14 **Third party rights**

Unless it expressly states otherwise, these Terms & Conditions do 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 these Terms & Conditions.

15 **Severance**

If any provision or part-provision of these Terms & Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of these Terms & Conditions.

16 **Waiver**

16.1 A waiver of any right or remedy under these Terms & Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

16.2 A failure or delay by a party to exercise any right or remedy provided under these Terms & Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Terms & Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy

17 **Assignment and Variation**

17.1 The Customer shall not be entitled to assign or transfer any of its rights and/or obligations under these Terms & Conditions.

17.2 Any variation to these Terms & Conditions shall be agreed between the parties in writing.

18 **Governing law**

These Terms & Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation, shall be governed by and construed in accordance with the law of Scotland.

19 **Jurisdiction**

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 these Terms & conditions or their subject matter or formation.