

# Standard terms and conditions of agreement (STCA)

## § 1 Purpose of Use

### 1.1 Change of purpose of use

1.1.1 The purposes of use resulting from the Lease and Service Agreement may only be changed with the prior written consent of e-shelter services GmbH (hereinafter referred to as "esg").

1.1.2 esg always makes any declaration of consent even though this is not explicitly provided in the declaration of consent, subject to an official authorisation for change of use possibly required, the provision of which shall be incumbent on the Tenant at its expense.

1.1.3 Prior to implementing the authorised change of use the Tenant shall furnish proof to esg either that the official authorisation required in this context was effectively granted or that an official authorisation is not required.

1.2 The Tenant is aware of the Leased Premises and its present condition after close inspection. The Leased Premises is handed over to the Tenant in a condition as inspected.

The Leased Premises is made available to the Tenant in an operational condition according to the (construction) engineering requirements at the time of its construction subject to its general ageing. The Tenant shall not be entitled to the Leased Premises fulfilling stricter or improved requirements or changed technical requirements relating to electricity supply, energy law, construction engineering or other technical progress possibly introduced in the meantime or during the term of the Lease Agreement.

## § 2 Handover

2.1 The lease relationship shall start on the date it commences according to the commencement of the Lease Agreement and even in case the Tenant does not take over the Leased Premises at that date for which esg is not responsible.

2.2 When possession of the Leased Premises is transferred to the Tenant the Parties shall jointly prepare a handover certificate which shall include a list of all defects, if any, of the Leased Premises, and any such defects shall then be repaired by esg without undue delay.

Except to the extent that any defects listed in the handover certificate still have to be repaired, and except for any hidden defects, the Tenant acknowledges by signing the handover certificate that the condition of the Leased Premises is in accordance with this Agreement. Consequently, esg shall not be liable for defects which the Tenant does not complain of and which are not mentioned in the handover certificate, although they are apparent when possession of the Leased Premises is transferred.

2.3 The transfer of possession of the Leased Premises will not be delayed due to any minor defects that do not have material adverse effects on the Tenant's business activities, and that can be repaired without substantially disturbing the Tenant's business activities. However, esg shall repair any such defects without undue delay.

2.4 The pertinent date for the observance of all time limits shall be the date on which the recipient of the declaration receives the respective declaration.

2.5 The Tenant is aware of the size of the Leased Premises after its inspection. Therefore, esg does not assume any liability for the accuracy of any information relating to the square meters contained in this Agreement.

## § 3 Rent, Vat Provisions

3.1 The pertinent date for the timeliness of the payment will not be the dispatch date but the date on which the amount is credited on the account of esg.

In the event of any default of payment of the rent and/or (advance payments) of ancillary charges the Tenant shall be required to pay default interest at a rate of 8 (eight)% p.a. above the base rate fixed by the European Central Bank. esg shall also be entitled to claim compensation for any damage exceeding the amount of such default interest.

3.2 With respect to the letting of the Leased Premises, esg has waived its claim for exemption from VAT (section 9 in conjunction with section 4 no. 12a of the VAT Act (Umsatzsteuergesetz, UStG). Such waiver (VAT option) has the effect that the Tenant shall be required to pay VAT at the statutory rate in addition to the rent and (advance payments of) ancillary charges.

The Tenant is aware that such a VAT option as made by esg is only permissible if the requirements set forth in section 9 para 2 of the VAT Act are met. The Parties therefore agree as follows:

3.2.1 The Tenant agrees to use the Leased Premises exclusively for the purpose of obtaining revenue with respect to which pre-accrued VAT is offsettable.

3.2.2 The Tenant further agrees to immediately provide any documents to esg as may be requested by esg at any time in order to be able to provide evidence as may be requested by the tax authorities under section 9 para 2 of the VAT Act. esg shall be entitled to require the Tenant to provide any documentation and/or issue any statements as may be requested by the tax office in charge of esg.

3.2.3 The Tenant shall notify esg immediately if any circumstances concerning the Tenant or any subtenant arise that may not be compatible with esg's VAT option; the same shall apply in the event that the tax authorities assume in connection with any tax audit that such circumstances may exist.

3.2.4 In the event of any subletting the Tenant shall opt for VAT being payable on the rent and the Tenant shall contractually impose all obligations described in Clauses 3.2.1 to

3.2.3 on the subtenant with esg being entitled to directly enforce compliance therewith and hold the subtenant liable for any non-compliance with these obligations (contract for the benefit of a third party, i.e. providing for rights of esg). The Tenant shall be fully liable towards esg for all obligations of the subtenant being complied with.

3.2.5 To the extent and for as long as the tax authorities (and the courts) accept any de minimus exception from the requirement of premises being "exclusively" used for the purpose of obtaining revenue with respect to which pre-accrued VAT is offsettable, such de minimus exception shall also apply with respect to the above provisions (see in this context the decree of the Federal Ministry of Finance relating to sec. 9 para 2 VAT Act in Bundessteuerblatt (Federal Tax Gazette) 1994 1994 page 943 et seq.).

3.2.6 Should the Tenant and/or the subtenant (if any) fail to comply with any of their obligations under Clauses 3.2.1 to 3.2.5, the Tenant shall provide full indemnification to esg with respect to any loss or damage esg may suffer as a result of such noncompliance. The onus of proof shall lie with the Tenant.

3.2.7 With regard to Clause 3.2.6 esg points out that it will presumably not pay VAT on any acquisition and construction costs invested in the Leased Premises and that such VAT deduction may well be much higher than the VAT accruing on the rent at the rate of presumably 19 (nineteen)% (as of the beginning of the tenancy).

3.2.8 Any claims of esg against the Tenant under these provisions shall become statute-barred upon expiry of 10 (ten) years after the termination of the tenancy. Should the Tenant or the subtenant, if any, fail to comply with any notification duties under Clause

3.2.3, the term of prescription for any claims based on circumstances the Tenant or any subtenant improperly failed to disclose to esg shall be extended to 15 (fifteen) years.

## § Right of Retention, Offsetting, Reduction in Rent

4.1 The Tenant may only offset any claims against the rent or (advance payments) of ancillary charges, or exercise and right of retention in respect of any claims, if the existence of such claims is confirmed by a final ruling or not denied by esg. Moreover, the Tenant shall give written notification of any intention to exercise any setoff right to esg no less than one month before the due date of the claim to be offset.

4.2 The Tenant may only reduce the rent due to defects the existence of which is either confirmed by a final ruling or not denied by esg.

## § 5 Liability for Defects and Damage, Maintenance and Repair of the Leased Premises

5.1 Liability of esg, maintenance and repair by esg

5.1.1 The Leased Premises are handed over to the Tenant as inspected. The Leased Premises shall be maintained in an operational condition by esg, except to the extent that the Tenant assumes responsibility for maintenance and repair work.

5.1.2 Any entitlement of the Tenant to demand damages and/or any reduction in rent due to any defect of the Leased Premises shall be conditional on esg having caused or defaulted on any obligation to repair such damage with intent or through gross negligence. This shall apply notwithstanding Clause 4.2 and without affecting any claim of the Tenant to assert claims of unjust enrichment against esg if the statutory requirements of reduction are fulfilled.

5.1.3 Any claim for a reduction in rent or for damages of the Tenant shall be ruled out in respect of any disturbance or pollution esg is not responsible for, including any obstruction of access to the Property or construction work by third parties outside the Property.

The Tenant's right to assert claims of unjust enrichment against esg shall remain unaffected if the statutory requirements of reduction are fulfilled.

To the extent these concern the Leased Premises, esg hereby assigns to the Tenant any claims esg may have against any third party due to any such disturbance or pollution; the Tenant hereby accepts such assignment.

5.1.4 In case of force majeure, official order or other impossibility of performance (e.g. fuel shortage), any provision of heating or cooling cannot be demanded. In such case esg shall not be obliged to provide substitution heating or cooling. In such case the Tenant shall not be entitled to reduce the rent and/or claim damages unless esg was grossly negligent or has acted wilfully.

The Tenant shall not be entitled to continuous operation of the lift in case of any interruption of operations. The Tenant shall not be entitled to reduce the rent and/or to claim damages unless esg was grossly negligent or has acted wilfully.

5.1.5 The liability restrictions provided for in Clauses 5.1.3 sentence 1 and 5.1.4 shall not apply to damage covered by esg's property owner's liability insurance. However, any liability for such damage shall be limited to the insurance cover existing for damage to property or injury to persons; if one insured event affects more than one tenant, the sum insured shall be split up between all aggrieved parties. esg shall only be liable for any damage exceeding the sum insured if esg caused such damage with intent or through gross negligence.

5.1.6 The provisions in Clauses 5.1.3, 5.1.5 and 5.1.6 above restricting or excluding liability of esg shall not apply in the event of injury to life, limb or health. esg's liability shall be unrestricted in the event of intent or gross negligence (also including its legal representative or vicarious agent).

5.2 Tenant's liability, maintenance and repair by the Tenant

5.2.1 The Tenant shall properly handle the Leased Premises.

# Standard terms and conditions of agreement (STCA)

5.2.2 All rack repairs and repairs relating to the items brought in by the Tenant and associated works shall be performed by the Tenant at its expense.

5.2.3 Upon termination of the lease relationship, the Tenant shall return the Leased Premises in a condition equivalent to that upon handover.

5.2.4 Should the Tenant return the Leased Premises without having carried out the works described in Clause 5.2.2, and if the Tenant fails to carry out such works within a period of grace fixed by esg, esg shall be entitled to have such works carried out at the Tenant's cost; should such works be carried out by a new tenant, this shall not affect esg's claim for reimbursement of the renovation costs. Moreover, esg shall be entitled to compensation for any damage caused by such failure to renovate.

5.2.5 The Tenant may only install the Equipment according to the Lease Agreement by observing the permissible floor load of which it shall obtain information from esg. Such permissible floor loads may not be exceeded. Any damage or consequential caused by not complying with such floor load limits shall be borne by the Tenant and the Tenant shall fully indemnify esg with respect to any claims of third parties arising as a consequence of any failure of the Tenant to comply with floor load limits.

5.2.6 The Tenant shall be responsible for any damage to the Leased Premises and to the land and building if it is connected with the Leased Premises and it is within its sphere of risk. This shall also apply if such damage is caused by any relatives, employees or other staff, subtenants, visitors or suppliers of the Tenant, or craftsmen employed by the Tenant who get into contact with the Leased Premises at the instigation of the Tenant.

Any such damage shall be removed by the Tenant immediately without being requested.

5.3 Provisions governing Clauses 5.1 and 5.2

5.3.1 The Parties shall have the repair and maintenance work for which they are responsible carried out within a reasonable period. If, in spite of a warning and extension of the original term allowed, one of the Parties does not comply with its obligations within the specified time, the other Party shall be entitled to have urgent work carried out at the expense of the Party in default.

5.3.2 In the event of imminent danger, each Party shall immediately take the necessary steps to eliminate such danger.

## § 6 Structural Changes by esg

6.1 esg may, even without the Tenant's consent, carry out any repairs or structural changes necessary to preserve or maintain the building, or in order to eliminate imminent danger or to repair damage.

The same shall apply to any works or structural change which may not be essential, but are nonetheless appropriate and expedient, especially any modernization works, improvements or any expansion of improvement of the building (including any enlargement or construction of additional floors), unless this would involve unreasonable hardship for the Tenant.

The Tenant shall make the relevant premises accessible and may not obstruct or delay the execution of any such works. Any damage caused by any such obstruction shall be borne by the Tenant.

6.2 Modernization and improvement measures within the Leased Premises shall be tolerated by the Tenant to the extent that this can be reasonably expected of the Tenant.

6.3 Any works or other measures referred to in Clauses 6.1 shall be coordinated with the Tenant. The Tenant shall be informed in due time in advance of when such works will begin (except in the event of imminent danger).

6.4 With respect to any measures referred to in Clauses 6.1 and 6.2, the Tenant shall not be entitled to assert any claims, and the Tenant shall especially not be entitled to reduce the rent because of such measures, except and to the extent that these materially disturb the Tenant's business activities over a period of more than one week. Such measures shall not entitle the Tenant to terminate this lease agreement under section 554 para 3 sent. 2 BGB.

Claims for damages of the Tenant shall be ruled out except for damage caused by esg or its agents with intent or through gross negligence. This shall not apply in the event of injury to life, limb or health. esg's liability for any such injury or breach caused or committed with intent or through gross negligence shall be unlimited.

## § 7 Structural Changes by the Tenant

7.1 Prior to any building alteration work to be undertaken within the Leased Premises and/or the installation of any supplementary equipment required for the Tenant's business operations, the Tenant shall obtain written permission from esg and submit to esg suitable plans. The cost of any structural changes shall be borne by the Tenant. Clauses 1.1 and 1.2 shall apply accordingly.

The Tenant shall be held liable for all damage caused in connection with building work carried out by it and shall indemnify esg against all third party claims in this respect.

7.2 At the end of the tenancy, the Tenant must return the Leased Premises to their original condition, unless esg has accepted the offer to be made to esg in advance to take over any fixtures and fittings installed, or alterations made, by the Tenant.

If esg agrees to take over fixtures and fittings in, or alterations of, the Leased premises made by the Tenant, esg must pay their current market value. If no agreement on their current value can be reached within two weeks of either Party having submitted an estimate of such current value, their market value shall be determined by an expert arbitrator to be appointed by the local Chamber of Industry and Commerce at the request

of either Party.

The fees of the expert arbitrator shall be borne by the Parties according to the degree to which the findings of the expert arbitrator confirm their respective positions, which shall be communicated to the expert arbitrator in writing at the beginning of the arbitration procedure; the provisions of sections 91 et seq. ZPO shall be applied mutatis mutandis.

7.3 Gas installations and electrical devices may only be connected to the mains network supplying the Leased Premises as long as the maximum network load provided for is not exceeded. The Tenant shall make itself aware of this maximum load in advance. Additional devices may only be connected after written permission has been obtained from esg. In such case, the Tenant shall bear the costs of any modifications to the network which may be required.

## § 8 Company Name Plates and Advertising

8.1 esg shall be responsible for providing and mounting company and other name plates of a uniform design. esg shall have the final say (Bestimmungsrecht) with regard to the appearance of name plates, but shall be prepared to consider the tenants' wishes if they do not compromise a uniform design.

The Tenant shall bear the costs involved in procuring, putting up and taking down its (company) name plate(s).

8.2 The design and appearance of any advertising space let to the Tenant shall be uniform and shall require prior approval from esg. Such advertising must not impact on or inconvenience other tenants or any other third party.

The Tenant shall bear all costs incurred in acquiring, mounting, maintaining, repairing, cleaning and removing such advertising facilities. Clauses 1.1 and 1.2 shall apply mutatis mutandis with regard to such advertising.

## § 9 Access to the Leased Premises

esg or its agents or representatives are entitled to inspect the Leased Premises during the Tenant's normal business hours upon giving prior notice. Arrangements shall be made for esg to be able to enter the Leased Premises at any time in the event of an emergency.

## § 10 No Protection Against Competition

esg does not provide any protection against competition within the Property.

## § 11 Sub Letting

11.1 The Leased Premises or any part thereof may only be sublet with prior written consent of esg.

esg shall be entitled to withdraw this consent for reasons relating to the person or conduct of the subtenant which would allow esg to terminate this Agreement without notice if such reasons existed regarding the person or the conduct of the Tenant.

11.2 The Tenant's special right of termination (Sonderkündigungsrecht) under section 540 para. 1 sentence 2 BGB shall not apply if esg refuses its consent to subleasing of the Leased Premises for any reason to do with the person or conduct of the subtenant, or otherwise for cause.

11.3 In the event of any unauthorized subletting esg may require the Tenant to terminate the sublease at the earliest possible date, but at the latest within one month. If his is not done, esg may terminate this Lease Agreement without notice.

11.4 In the event of subletting the Tenant shall be liable for all acts and omissions of the subtenant, without regard to any fault on the part of the Tenant.

11.5 In the case of subletting and by way of security, the Tenant hereby and as of now, and up to the amount of any claim of esg, assigns to esg any claims, including any accompanying liens, it – the Tenant – may have against the subtenant.

11.6 Any other form of transfer of use which is more than merely temporary shall be regarded as subletting.

## § 12 Keys and Code Cards

12.1 Upon handover the Tenant shall be provided with the required number of keys and code cards.

12.2 Any code cards and keys as well as any copies of such keys or code cards made by the Tenant, shall be returned by the Tenant upon the termination of the tenancy.

If the Tenant does not comply with this requirement despite being issued with a formal reminder and being given additional time to meet said requirement, esg shall be entitled to change the locks and the master locking systems concerned at the Tenant's expense.

12.3 Any loss of a key/a code card shall be notified to esg immediately.

12.3.1 In case of loss of a key for a master locking system, esg may arrange for the complete replacement of the entire master key system at the Tenant's expense unless it has to be assumed that any misuse of the lost key can be excluded.

12.3.2 The Tenant shall be liable for all damage esg, a new tenant of Tenant or any third party may suffer as a result of the negligent infringement of this obligation or the loss of one or several keys/code cards.

12.3.3 In case of loss of code cards esg shall charge the Tenant EUR 50.00 per code card.

12.3.4 Additionally, the Tenant shall bear any damage suffered by esg and any third party by the loss/misuse of the code card in full and without any restrictions. Any restriction of liability shall not apply.

# Standard terms and conditions of agreement (STCA)

## § 13 Insurance

13.1 The Tenant undertakes to notify esg without undue delay of any improvements and betterments which increase the value of any insured premises, as well as any change in the risk situation (Gefahrenänderung) within the meaning of Federal insurance law. Any associated increase in insurance premiums payable shall be borne exclusively by the Tenant.

13.2 The Tenant shall take out business liability insurance and other reasonable insurance for its enterprise at its cost, to maintain such insurance during the term of the Lease Agreement and to furnish proof thereof to esg at its request.

## § 14 Termination For Cause

The statutory provisions shall apply in the case of the termination of the tenancy for cause.

## § 15 Expiry of the Tenancy Period

Upon expiry of the lease period, the lease shall not be extended for an unlimited period even if the Tenant continues to occupy the Leased Premises and none of the Parties object to the continuation of the tenancy; section 545 BGB shall not apply.

## §16 Obligations of the Tenant Upon Termination of the Tenancy

16.1 The Tenant undertakes to fully vacate clean the Leased Premises prior to returning them to esg. The provisions of clauses 5.2.3, 7.2 and 12.2 shall apply.

16.2 Upon termination of the Lease Agreement and Service Agreement, the Tenant shall indemnify elc and the subsequent tenant against any obligations to which they may be subject under section 613 a BGB. The subsequent tenant may hold the Tenant directly liable by virtue of this provision.

## § 17 Written Form

17.1 No oral side agreements have been made.

17.2 Amendments and supplements to these Standard Terms and Conditions and to the Lease and Service Agreement shall be made in writing. This requirement of the written form may only be waived in writing.

The same shall apply with regard to any statements that require this written form.

17.3 The Parties are aware of the specific requirements for the written form as set out in sections 550, 578 BGB. Each Party hereby agrees that if and whenever requested to do so by the respective other Party it shall take any necessary action and issue any statements that may be necessary to satisfy this requirement of written form. They also undertake not to terminate the Lease and Service Agreement prematurely on grounds of any non-compliance with these requirements of written form. This shall apply to both the original/principal Agreement (Ursprungs-/Hauptvertrag) as well as to any addenda, amendments or supplementary agreements.

## § 18 Partial Invalidity

If any provision of these Standard Terms and Conditions is void or voidable, this shall not affect any of the other provisions hereof. Any such invalid provision shall be replaced by such legally permissible provision that comes as close as possible to been aware of the invalidity of the original provision. The same shall apply accordingly if these Standard Terms and Conditions should contain a contractual gap.

## § 19 Other Provisions

The Tenant shall be responsible for ensuring that any premises exclusively occupied by the Tenant shall be safe for any authorized use at all times (allgemeine Verkehrssicherungspflicht).

19.1 esg shall be entitled to issue house rules and to determine its content at its equitable discretion.

19.2 Substances which are damaging or potentially damaging to health or the environment may not be used or stored by the Tenant without the prior written consent of esg (e.g. substances which are poisonous, injurious to health, inflammable, explosive, corrosive or carcinogenic or substances which have an oxidising effect, cause irritation or react dangerously on contact with water).

Prior to the granting of such consent, the Tenant shall submit to esg a statement by an insurance company confirming that third party liability insurance cover extending to the use and possession of such substances exists and is being maintained in full force and effect.

The Tenant also agrees to adhere to all relevant provisions concerning the handling and use of such dangerous substances and to indemnify esg against associated risks or official requirements.

The Tenant shall provide full compensation for any damage caused by any use (including storage) of dangerous substances the Tenant is responsible for.

19.3 Several persons as Tenant mutually authorise each other to accept all declarations concerning the tenancy. This authorisation is not subject to the limitations set out in section 181 BGB. It is irrevocable.

19.4 The exclusive place of jurisdiction for all disputed arising from or in connection with this Agreement shall be Frankfurt am Main.

19.5 This Agreement shall be governed by German Law.

As of February 2019

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