



## INTERPRETATION

In these terms and conditions unless the context otherwise requires:

- (i) "The Company" means Lemac Films (Australia) Pty Ltd A.C.N. 005 455 685 A.B.N. 32 005 455 685 which expression shall include any or all companies related or any subsidiary successors and assigns of Lemac Films (Australia) Pty Ltd.
- (ii) "The Customer" means the person (including his successors, representatives and permitted assign) hiring equipment from the Company and where there is more than one Customer the covenants on their part contained herein shall be deemed joint and several covenants.
- (iii) "Equipment" means all or any film or video equipment or any other goods of any kind whatsoever hired by the Customer from the Company.
- (iv) "ACL" means Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth);

## GENERAL

1. These terms and conditions are deemed to be incorporated into all contracts for the supply of Equipment to the Customer and supersede all terms and conditions previously issued by the Company. The Company is only prepared to hire Equipment upon these terms and conditions and no contract for the hire of Equipment shall exist between the Company and the Customer except upon these terms and conditions unless their exclusion or modifications is agreed to in writing by the Company. Any order placed by the Customer is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies in the Customer's order.

## DELIVERY

2. Unless the Customer arranges the delivery and return of Equipment by the Company, the Customer shall be responsible for the collection and return of Equipment. Where at the Customer's request, Equipment is delivered or collected by the Company, the Company shall have an absolute discretion as to the mode of delivery and the delivery and collection will be at the Customer's risk and expense.

Equipment must be collected from and returned to the Company's premises.

## HIRE CHARGES

3. (1) Hire charges for equipment are as set out in the Rental Catalogue. The Company reserves the right to alter its hire charges without notice. A minimum charge for invoiced services applies.

(2) Hire charges for Equipment are calculated from the time the Equipment leaves the Company's premises until the end of the period of hire or when the Equipment is returned to the Company's premises, whichever is the later. In the event that the Equipment is not returned by 9.00am on the working day following the last day of the hiring period, the Customer shall be liable for additional fees at the full daily rate in respect of each day or part thereof until the Equipment is returned.

(3) In addition to normal hire charges, the Company shall be entitled to charge an opening fee for services outside of normal business hours.

(4) The Customer will pay to or reimburse the Company (except where such payment or reimbursement is expressly prohibited by statute) all delivery costs, stamp duty and other government duties, taxes and expenses which the Company may be liable to pay from time to time in connection with the hire of the Equipment to the Customer.

## PAYMENT

4. (1) Hiring fees must be paid prior to the hiring of Equipment or in the case of Account Customers within 30 days from the date of the Company's invoice unless otherwise expressly agreed to in writing by the Company. Credit Accounts will only be opened where warranted by the Customer's volume of business and where the Customer can establish its credit worthiness to the satisfaction of the Company. An approved Renter's Register form is required prior to hiring, even on a COD basis. All first time rentals are on a COD basis, unless they are to be shipped. If equipment is to be shipped, first orders are to be pre-paid. A safety deposit is required on all COD orders. The deposit will be refunded upon return of the order barring any damage, missing equipment or late changes.

(2) Notwithstanding Clause 4. (1), the Company may at any time of any order, delivery or collection of Equipment demand payment in cash upon such order, delivery or collection.

(3) The Company reserves the right to charge interest on overdue accounts without prior notice to the Customer at the rate of 2% per month or at such other rate as may be fixed from time to time by the Company such interest to be computed from the date a payment becomes overdue until payment of such monies is received in full. A certificate signed by any Director, Manager or Secretary of the Company shall be deemed conclusive evidence of such rate of interest.

(4) The Company reserves the right to set a minimum invoice value from time to time at its discretion and reserves the right to refuse to hire Equipment to the Customer in the event that the Customer fails to comply with the Company's terms of payment.

## IMPLIED TERMS

5. All warranties and conditions expressed or implied by statute, common law, equity, trade, customer usage or otherwise howsoever are to the extent permitted by law expressly excluded from this contract.

6. The Customer acknowledges that neither the Company or any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in the contract whether as to the fitness of the Equipment for any particular purpose or any other matter. The Customer acknowledges that without relying upon the skill or judgement of the Company or any person purporting to act on its behalf, it has determined that Equipment conforming to the contract description will be fit for its purposes. The provisions of this Clause shall not apply insofar as their application is prevented by the Competition & Consumer Act 2010 or any other State or Territory laws.

## COMPANY LIMITATION OF LIABILITY

7. (1) Save as expressly provided for in this contract the Company shall not be liable to the Customer or the Customer's servants or agent for any direct, indirect, incidental or consequential loss, injury or damages of any nature howsoever caused (whether based on tort contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of or failure to perform this contract whether resulting from the negligence of the Company, its servants, agents or otherwise. Without limiting the generality of the foregoing all deterioration of and/or damage to filters, lens elements and bubbles of any description while in the Customer's possession is the responsibility of the Customer. The provisions of this Clause shall not apply insofar as their applications is prevented by the Competition & Consumer Act 2010 or any other State or Territory laws.

(2) The Customer agrees to indemnify and to keep indemnified the Company and the Company's servants and agents against any claims actions, suits and demands brought by third parties arising out of the use of the Customer of the Equipment or otherwise arising out of or in connection with this contract.

(3) The Competition and Consumer Act 2010 (Cth) and Fair Trading Acts: (a) Nothing in this Hire Agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable. (b) If the Hirer is a consumer for the purposes of the ACL, nothing in the Hire Agreement limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

## PROPERTY, RISK AND INSURANCE

8. (1) The Equipment shall be at the Customer's risk from the time the Equipment leaves the Company's premises or is in the Customer's care (including on-site testing) until the time it is returned and accepted by the Company. Acceptance does not release the Customer from the responsibility for the loss or damage of hired Equipment.

(2) Unless otherwise agreed to by the Company in writing, the Customer is required to effect suitable insurance in respect of the Equipment and must provide documentary evidence of such insurance prior to the hiring of any Equipment by the Customer.

(3) Lemac Films (Australia) Pty Ltd should be included and named as joint insured under all policies of insurance, particularly "negative" insurance effected by the Customer.

(4) In the event the Equipment is lost or damaged (fair wear and tear excepted) while at the risk of the Customer, the Customer shall be liable to compensate the Company for the full replacement cost or full cost of repairing the Equipment as the case may be.

(5) When equipment is lost or damaged the Customer is responsible for hire charges up to the time the Equipment is repaired or replaced for a maximum of 13 weeks. Customers are to make sure adequate insurance cover is obtained to cover this contingency.

(6) The Customer and the employees or servants of the Customer are the only persons permitted to use the Equipment and without limiting the generality of the foregoing, the Customer shall not lend or rehire the Equipment to any other person.

## CANCELLATION CHARGES

9. Customer agrees to pay The Company upon demand reasonable compensation, not to exceed the contract amount, for any losses The Company may sustain because of Customer's cancellation of all or part of an order.



## **CUSTOMER LIMITATION OF LIABILITY**

10. If, at the request of the Customer, the Company agrees in writing to limit any claim for loss or damage to the Equipment, the Customer hereby agrees and accepts the following charges, terms and conditions. The Customer acknowledges that the Company has not in any way represented itself to the Customer as a person carrying on the business of insurance.

### **A. CHARGES**

(1) Where the Customer is an account customer, the Customer shall pay an additional charge equal to 10% of the total rental charge for Equipment rented for use within Australia. Overseas usage charge on application.

(2) Where the Customer is a COD customer, the Customer shall pay to the Company an additional charge equal to 20% of the total rental charge for Equipment rented for use within Australia. Overseas usage charge on application.

(3) The Customer acknowledges that in the event of loss or damage to the Equipment the Company will limit the claim to two thousand, two hundred dollars inc. GST (\$2,200.00 inc. GST) in relation to each and every claim.

### **B. TERMS**

The Company will limit any claim for loss or damage to Equipment within or outside Australia as specifically agreed to in writing, but such limitation EXCLUDES loss or damage to the equipment in the following circumstances:

(1) Loss or damage caused by misuse, mechanical or electrical derangement, exposure to salt water, exposure to water, exposure to dust or sand, or confiscation by Customs or other authorities.

(2) Loss or damage directly or indirectly caused by or arising from war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

(3) Loss or destruction of or damage to any Equipment whatsoever or any loss or expense whatsoever resulting or arising from or any consequential loss or legal liability of whatsoever nature directly or indirectly caused or contributed to, by or arising from:

(i) ionising radiations or contamination by radioactivity from any irradiated nuclear fuel or from any nuclear waste from combustion of fuel

(ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

(4) Loss or damage resulting from leaving Equipment in vehicles whether locked or unlocked, but unattended.

(5) Loss or damage to two way radios.

(6) Loss or damage to electric globes.

### **C. CONDITIONS**

(1) All ordinary and reasonable precautions for the safety of the Equipment must be taken.

(2) In the event of loss or damage the Customer shall:

(i) forthwith notify the Company and the Police where necessary, and take any practicable steps towards the discovery and recovery;

(ii) as soon as practicable give full written report of the circumstances of the loss or damage to the Company;

(iii) and at the same time furnish to the Company any particular or evidence as may be reasonably be required by the Company or its insurer including attending at a lawyer's office and at Court to give evidence.

(3) The due observance and fulfilment of the Terms and Conditions and Endorsements as stated above in so far as they relate to anything to be done or complied with the Customer and the truth of the statements and answers made by the Customer at the time of instigating the loss and damage waiver are conditions precedent to the Company limiting the liability of the Customer for any claims for loss or damage of the Equipment

### **POWER OF ENTRY**

11. (1) The Company may enter any premises where the Company reasonably believes the goods are located for the purpose of inspecting, testing or taking possession of the goods in accordance with this Agreement and the Customer hereby indemnifies the Company against any liability the Company may incur in the exercise of its rights under this clause.

(2) The Customer undertakes to insert in any Agreement giving any other person the right to use or the use of the equipment a clause that permits the Company to enter that person's premises for the purpose of inspecting or testing or taking possession of the goods in accordance with this Agreement.

### **TERMINATION BY COMPANY**

12. (1) The Company may, notwithstanding the specified period of hire and notwithstanding any waiver of some previous default, forthwith terminate this contract and repossess the Equipment in any of the following events:

(i) if the Customer shall fail to pay any hiring charges within two (2) days of the due dates;

(ii) if the Customer shall do or permit any act or thing whereby the Company's rights in the Equipment may be prejudiced;

(iii) if the Customer commits any breach of contract;

(iv) if the Customer should become or be made insolvent or bankrupt or make any agreement or composition with its creditors or in case of the Customer being a limited company, should an order be made or a resolution passed for the winding up of such company.

(2) If such termination occurs the Customer will pay the Company all costs and charges already incurred under this contract.

### **OTHER CONDITIONS**

13. (1) The minimum hiring period for Equipment hire for use interstate is two (2) days.

(2) Equipment must not be used on any abnormal or hazardous assignment or taken from the ground other than on a regular schedule flight by a recognised airline other than with the prior written consent of the Company. The Customer is required to keep hired Equipment in safe custody and must ensure that it is used in a skillful and proper manner by persons having the appropriate qualifications and experience. The Customer must take all reasonable precautions to ensure that the equipment is not damaged or destroyed.

### **WAIVER**

14. Failure of the Company to insist upon strict performance by the Customer of any terms or conditions contained herein shall not be taken to be a waiver thereof or of any right of the Company in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion

### **GOVERNING LAW AND JURISDICTION**

15. These terms and conditions and the contract governed thereby shall be governed by and construed in accordance with the laws from time to time, of the State of Victoria which is where the head office of the Company is located and any proceedings shall be brought and heard in Melbourne.

### **GENERAL INSTRUCTIONS TO CUSTOMERS**

1. Hire charges are levied on a daily or weekly basis. Unless other arrangements are made with the Company, for the purposes of the calculation of hire rates, a day is deemed to commence and conclude at midnight. The weekly rate is equal in most cases to three times the daily rate but for some items is two or four times the daily rate. A week consists of any consecutive seven day period.

2. Lemac Films (Australia) Pty Ltd should be included and named as joint insured under all policies of insurance, particularly "negative" insurances effected by the Customer. It is recommended that the Customer makes in ample time, its own checks of the completeness and correct functioning of Equipment including film testing of all cameras and takes adequate reserves of all essential items.

3. Filters including diffusers, graduateds, fogs, neutral densities and polarizers, electric bulbs, etc, are subject to Clause 7 of the Terms and Conditions, only supplied on the understanding that all deterioration and/or damage while in the Customer's possession is the responsibility of the Customer. Each such item is examined before despatch from the Company's premises to ensure that it is in good condition and, subject to Clause 7 of the Terms and Conditions, if any deterioration subsequently occurs (including during transit by air or other means) the Customer will be charged with its replacement cost. Filters etc, as provided in standard sets cannot be supplied separately or in part sets.

4. All items are serviced at termination of each hire period but for extended hire, service and general maintenance may be arranged through our service department.

5. Customers using the Company's testing/production areas are to be advised to insure all personnel and equipment used in those areas for the production as they would for a normal studio/location shoot.

6. Equipment damaged by salt water is, unless treated immediately, in most cases subject to re-occurrence of salt water residue. This makes certain electronic items and components unusable. Special mention of production shooting in the vicinity of salt water should be made to the Company when ordering Equipment and to your insurance company.

7. To avoid inconvenience to other hirers, any extension of hire must be arranged prior to termination of the original hire period.

8. Any shortage of, damage to or malfunctioning of Equipment should be reported to the Company immediately upon the return of Equipment.