

ARRI AUSTRALIA PTY LIMITED
ABN 76 114 618 389

TERMS AND CONDITIONS OF HIRE

1. INTERPRETATION

In these Terms:

- 1.1. **“Agreement”** means any agreement between ARRI Australia and the customer for the hire of Equipment;
- 1.2. **“ARRI Australia”** means ARRI Australia Pty Limited ABN 76 114 618 389;
- 1.3. **“ARRI Australia’s Premises”** means Unit 6C, 5 Talavera Road, Macquarie Park NSW 2113;
- 1.4. **“Consequential Loss or Damage”** means loss of profits, revenue, use or opportunity, re-installation costs, removal costs and any remote or indirect form of loss or damage;
- 1.5. **“Equipment”** means all articles of equipment hired from ARRI Australia by the customer from time to time;
- 1.6. **“Goods”** means all goods including consumables sold and/or delivered by ARRI Australia to the customer from time to time;
- 1.7. **“GST”** means the Goods and Services Tax imposed by A New Tax System (Goods & Services Tax) Act 1999 and any related act and/or regulations;
- 1.8. **“Hire Charges”** means the moneys charged by ARRI Australia for the hire of the Equipment during the Hire Period with a minimum charge of \$35.00 per invoice;
- 1.9. **“Hire Period”** means the period as defined in clause 4 of these Terms; and
- 1.10. **“Services”** means all maintenance, repair and on-site technical support services provided by ARRI Australia to the customer from time to time; and
- 1.11. **“Terms”** means these Terms and Conditions of Hire.

2. APPLICATION

- 2.1. These Terms apply to all Equipment hired by the customer from ARRI Australia but not to the sale of Goods which will be governed exclusively by the Terms and Conditions of Sale of ARRI Australia or the provision of Services to the customer by ARRI Australia which will be governed exclusively by the Terms and Conditions of Service of ARRI Australia. The customer acknowledges having received a copy of the Terms and Conditions of Sale and the Terms and Conditions of Service together with the Terms.
- 2.2. No amendment, alteration, waiver or cancellation of these Terms is binding on ARRI Australia unless confirmed in writing by ARRI Australia.
- 2.3. The customer acknowledges and agrees that:
 - 2.3.1. no employee or agent of ARRI Australia may make any representation, warranty or promise in relation of the Equipment other than as contained in these Terms; and
 - 2.3.2. the customer has determined that the Equipment is fit for the purpose for which it is required;
 - 2.3.3. the customer has not relied on the skill and judgement of ARRI Australia in selecting the Equipment; and
 - 2.3.4. the customer has checked the Equipment for suitability, functionality and completeness.

3. TERMS OF PAYMENT

- 3.1. Payments must be made in full, without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement to the customer.
- 3.2. Payments must be made:
 - 3.2.1. on collection of the Equipment; or
 - 3.2.2. subject to ARRI Australia’s prior approval, within thirty (30) days of the date of invoice in cash or cleared funds.
- 3.3. In the absence of any specific written direction to the contrary, payments will be credited against the oldest outstanding account of the customer with ARRI Australia to the most recent.
- 3.4. The customer cannot set-off from any payment, any counter-claims that the customer may have against ARRI Australia.
- 3.5. Interest is payable on all overdue accounts calculated on a daily basis at the rate of interest equivalent to the Westpac Banking Corporation’s indicator rate as at the final date of payment plus 2% until full payment is received by ARRI Australia.

4. EQUIPMENT HIRE

- 4.1. The customer must pay the Hire Charges.
- 4.2. Hire Charges are payable for the Equipment from the commencement of the Hire Period as calculated in accordance with clause 4.3 to the end of the Hire Period calculated in accordance with clause 4.4.
- 4.3. The Hire Period commences at:

- 4.3.1. the agreed date of collection of the Equipment; or
- 4.3.2. the time the Equipment leaves ARRI Australia's premises, whichever is the earlier.
- 4.4. The Hire Period ends at:
 - 4.4.1. the agreed date of return of the Equipment; or
 - 4.4.2. if the Equipment has been returned in the same condition as at the commencement of the Hire Period, the date on which the Equipment has been actually returned to ARRI Australia; or
 - 4.4.3. if the Equipment is lost, subject to clause 4.5, the time the Equipment is recovered and returned to ARRI Australia or replaced by an equivalent or comparable item of Equipment and is available for hire by ARRI Australia; or
 - 4.4.4. if the Equipment is damaged, subject to clause 4.5, the time the Equipment has been repaired and is available for re-hire; or
 - 4.4.5. if the Equipment is destroyed, subject to clause 4.5, the time when the Equipment has been replaced by an equivalent or comparable item of Equipment and is available for hire, whichever is the later.
- 4.5. If the Equipment is lost, damaged or destroyed, the Hire Period will end no later than thirteen (13) weeks after the agreed date for the return of the Equipment.
- 4.6. If the customer cancels the booking of Equipment less than 24 hours before the commencement of the Hire Period, the customer will incur a cancellation fee of 50% of the Hire Charges.
- 4.7. The customer must at all times retain the Equipment in its custody and must ensure that only individuals with appropriate qualifications and experience will be permitted to use the Equipment.

5. **RISK AND INSURANCE**

- 5.1. The Equipment is entirely at the risk of the customer from the moment of:
 - 5.1.1. collection; or
 - 5.1.2. commencement of testing, whichever is the earlier.
- 5.2. The customer must, subject to clause 5.3, at its own expense, insure the Equipment for the benefit of ARRI Australia with a reputable insurance company for its full replacement value (including Hire Charges incurred on lost or damaged Equipment while it is being replaced or repaired) against loss, damage or destruction, as from the moment of collection or commencement of testing by the customer, as the case may be, until the Equipment has been returned to ARRI Australia and must provide a certificate of currency for such insurance at the commencement of the Hire Period.
- 5.3. The customer may expressly elect in writing, on or before commencement of the Hire Period, that ARRI Australia maintains and effects insurance for the Equipment during the Hire Period.
- 5.4. If the customer makes an election in accordance with clause 5.3 the customer:
 - 5.4.1. must pay to ARRI Australia:
 - 5.4.1.1. in addition to the normal Hire Charges for the relevant Equipment, an amount equivalent to ten (10%) percent of those Hire Charges as a contribution to ARRI Australia's insurance costs; and
 - 5.4.1.2. in the case of a claim on the insurance, an amount of \$1,500.00 for each and every claim; and
 - 5.4.2. will not have any further liability for the loss, damage or destruction of the Equipment, except where loss, damage or destruction:
 - 5.4.2.1. results from leaving the Equipment in an unattended vehicle (whether locked or unlocked);
 - 5.4.2.2. is caused by misuse of the Equipment or exposure of the Equipment to water, dust, sand or salt;
 - 5.4.2.3. results from war (including civil wars or riots); or
 - 5.4.2.4. results from confiscation by public authorities such as police or customs.
- 5.5. The customer must not electrically or mechanically connect any third party equipment to the Equipment unless such connection has been approved or tested by ARRI Australia and must also not attempt to repair the Equipment. Any breach of this clause is a misuse of the Equipment in accordance with clause 5.4.2.2 and may void insurance cover.
- 5.6. Without prior consent of ARRI Australia the Equipment must not be used in any abnormal or hazardous condition nor taken from the ground other than on a regular scheduled flight with a recognised airline.
- 5.7. The customer must take all reasonable measures to ensure that ARRI Australia's title to the Equipment is in no way prejudiced. If any of the Equipment is lost, destroyed or damaged, any insurance proceeds relating to the Equipment in respect of such event that are received by the customer, must be paid to ARRI Australia immediately on receipt.

6. **RETURN OF EQUIPMENT**

The customer acknowledges and agrees that:

- 6.1. ARRI Australia will generally not be able to comprehensively inspect and test the Equipment immediately on return; and
- 6.2. the customer will remain liable and ARRI Australia remains entitled to claim compensation if:
 - 6.2.1. items of the Equipment are found missing; or
 - 6.2.2. damage to the Equipment is discovered,and the customer is notified of such claim, within four (4) weeks from the return of the Equipment.

7. **GOODS AND SERVICES TAX**

- 7.1. GST is not included in the quoted price.
- 7.2. Where GST is imposed on ARRI Australia in respect of the hire of the Equipment then the customer must pay ARRI Australia the amount of such GST in addition to the quoted price.
- 7.3. ARRI Australia must give the customer written notice of the amount of any GST payable under this clause and provide a tax invoice showing the amount of GST payable.

8. **INSPECTION**

Unless the customer has inspected the Equipment and given written notice to ARRI Australia within twenty-four (24) hours after collection or delivery that the Equipment is defective, does not comply with the relevant specifications or descriptions, or is faulty or damaged, the Equipment is deemed to have been accepted in good order and condition and compliant with those specifications and descriptions.

9. **DEFAULT**

If:

- 9.1. the Hire Charges are not paid for in accordance with these Terms or any other applicable written agreement; or
- 9.2. ARRI Australia receives notice or reasonably believes that a third party may attempt to take possession of the Equipment or attach the Equipment pursuant to a writ of execution; or
- 9.3. any other event occurs which is likely to adversely affect the customer's ability to pay Hire Charges (including but not limited to the appointment of a receiver, administrator, liquidator or similar person [each an "insolvency representative"] to the customer's undertaking),

then ARRI Australia may at any time thereafter, without notice to the customer and without prejudice to any other rights which it may have against the customer, terminate the Agreement.

10. **RIGHT TO ENTER PREMISES**

In any of the circumstances referred to in the preceding clause, the customer:

- 10.1. authorises ARRI Australia by itself, its agents or representatives at all reasonable times, without notice, to enter onto and at all necessary time(s), to remain in and on any premises where the Equipment is located in order to collect the Equipment, without being guilty of any manner of trespass; and
- 10.2. assigns to ARRI Australia all the customer's rights to enter onto and remain in and on such premises until all the Equipment has been collected.

11. **ADMINISTRATION, RECEIVERSHIP ETC.**

In any of the circumstances referred to in clause 9.3:

- 11.1. neither the customer nor its insolvency representative is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Equipment in any way inconsistent with ARRI Australia's ownership of the Equipment, without ARRI Australia's prior written approval;
- 11.2. the customer and its insolvency representative are obliged to return the Equipment to ARRI Australia immediately or immediately on his appointment at his expense; and
- 11.3. the insolvency representative will become personally liable to ARRI Australia on a full indemnity basis in respect of any dealings with or use of the Equipment by the customer or the insolvency representative occurring after the date of appointment of the insolvency representative and must account to ARRI Australia or reimburse ARRI Australia for all monies received as a result of such dealings or use of the Equipment.

12. **ARRI AUSTRALIA'S LIABILITY LIMITED**

- 12.1. These Terms do not affect any rights conferred by the Trade Practices Act (1974).
- 12.2. ARRI Australia is not subject to, and the customer releases ARRI Australia from any liability (including but not limited to Consequential Loss or Damage) arising from any delay in delivery or fault or defect in the Equipment. The customer acknowledges that ARRI Australia is not responsible if the Equipment does not comply with any applicable safety standard(s) or similar regulation(s), and that ARRI Australia is not liable for any claim, cost, damage or demand resulting from such non-compliance.
- 12.3. If any statutory provisions under the Trade Practices Act 1974 or any other statute(s) apply to the Agreement then, to the extent to which ARRI Australia is entitled to do so, ARRI Australia's liability under the statutory provisions is limited, at ARRI Australia's option, to:
 - 12.3.1. replacement or repair of the Equipment; or

12.3.2. the supply of equivalent Equipment,
and in either case, ARRI Australia will not be liable for any Consequential Loss or Damage or other direct or indirect loss or damage.

13. **WARRANTY**

13.1. ARRI Australia warrants that the Equipment will be supplied in an, subject to fair wear and tear, undamaged condition.

13.2. The customer acknowledges and agrees that:

13.2.1. all technical data supplied by ARRI Australia in relation to the Equipment are approximates only unless advised otherwise and are subject to alterations by ARRI Australia without notice; and

13.2.2. it is satisfied from its own enquiries that the specification of the Equipment is correct and appropriate for the purpose required by the customer.

13.3. Subject to clause 8, on discovery of any defect in the Equipment, the customer must immediately notify ARRI Australia in writing of such defect. The customer must not carry out any remedial work to the Equipment that is alleged to be defective without first obtaining the written consent of ARRI Australia to do so.

13.4. The provisions of any act or law (including but not limited to the Trade Practices Act 1974) implying terms, conditions and warranties, or any other terms, conditions and warranties which might otherwise apply to or arise out of the Agreement in relation to the Equipment are hereby expressly negated and excluded to the full extent permitted by law.

13.5. The customer expressly acknowledges and agrees that it has not relied on, and ARRI Australia is not liable for any advice given by ARRI Australia, its servants, agents, representatives or employees in relation to the suitability of the Equipment for any purposes.

14. **CATALOGUES AND TECHNICAL DOCUMENTS**

14.1. Particulars in leaflets, catalogues, drawings, brochures and other printed material are illustrations only, form no part of the contract between ARRI Australia and the customer, and are not binding on ARRI Australia.

14.2. All technical documents such as drawings, illustrations, descriptions, etc., are the exclusive property of ARRI Australia. They must not be made available to third parties, or copied, duplicated or used to reproduce any part of the Equipment.

15. **FORCE MAJEURE**

ARRI Australia will not be liable for any breach of contract due to any matter or thing beyond ARRI Australia's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).

16. **WAIVER OF BREACH**

No failure by ARRI Australia to insist on the strict performance of any of the terms in these Terms is a waiver of any right or remedy which ARRI Australia may have, and is not a waiver of any subsequent breach or default by the customer.

17. **NO ASSIGNMENT**

Neither the Agreement nor any rights arising under the Agreement may be assigned by the customer without the prior written consent of ARRI Australia which is at ARRI Australia's absolute discretion.

18. **SEVERABILITY**

If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

19. **CONTRACT / GOVERNING LAW**

The terms of contract between the parties are wholly contained in these Terms and any other writing signed by both parties. The contract is deemed to have been made at ARRI Australia's Premises in Sydney and any cause of action is deemed to have arisen there.