

ARRI AUSTRALIA PTY LIMITED
ABN 76 114 618 389

TERMS AND CONDITIONS OF SALE

1. **INTERPRETATION**

In these Terms:

- 1.1. **“Agreement”** means any agreement between ARRI Australia and the customer for the sale of Goods;
- 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”** includes but is not limited to loss of profits, revenue, use or opportunity, re-installation costs, removal costs and any other remote or indirect form of 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. **“Services”** means all maintenance, repair and on-site technical support services provided by ARRI Australia to the customer from time to time; and
- 1.9. **“Terms”** means these Terms and Conditions of Sale.

2. **APPLICATION**

- 2.1. These Terms apply to the sale of Goods to the customer by ARRI Australia but not to the hire of Equipment which will be governed exclusively by the Terms and Conditions of Hire 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 Hire 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 Goods other than as contained in these Terms; and
 - 2.3.2. the customer has determined that the Goods are fit for the purpose for which they are required;
 - 2.3.3. the customer has not relied on the skill and judgement of ARRI Australia in selecting the Goods; and
 - 2.3.4. the customer has checked the Goods 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 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. **PROPERTY IN GOODS / RETENTION OF TITLE**

- 4.1. Legal and beneficial ownership of the Goods will not pass to the customer until such time as the Goods so supplied have been paid for in full in cash or cleared funds.
- 4.2. Until the amount payable in respect of the Goods has been paid in full in cash or cleared funds:
 - 4.2.1. the customer will hold the Goods as bailee only for ARRI Australia;
 - 4.2.2. any monies received or income generated by the customer (up to the amount owing to ARRI Australia) through the use of such Goods will be deemed to be received on trust for ARRI Australia; and
 - 4.2.3. the Goods must be stored in such manner that they are readily distinguishable from other goods owned by the customer or other persons, so as to clearly show that they are the property of ARRI Australia.

5. **GOODS AT CUSTOMER'S RISK**

- 5.1. The Goods are entirely at the risk of the customer from the moment the Goods leave ARRI Australia's Premises even though property in and title to the Goods have not passed to the customer.
- 5.2. The customer must, at its own expense, maintain the Goods and insure them for the benefit of ARRI Australia for their full replacement value against theft, destruction, fire, water and other risks, as from the moment of collection by the customer until property of and title to the Goods have passed to the customer.
- 5.3. The customer must take all reasonable measures to ensure that ARRI Australia's title to the Goods is in no way prejudiced. If any of the Goods are lost, destroyed or damaged, any insurance proceeds relating to the Goods in respect of such event that are received by the customer, must be paid to ARRI Australia immediately on receipt.

6. **RE-SALE OF GOODS SUBJECT TO A RETENTION OF TITLE**

- 6.1. The customer has the right to sell the Goods subject to a retention of title in its own name only at full market value and in the ordinary course of business.
- 6.2. Any sale by the customer of Goods subject to a retention of title, whether in their original condition or incorporated into other goods, will only be effected by the customer as trustee for ARRI Australia and the proceeds of such sale and the rights of ARRI Australia' customer against its customer arising from such sale will be held on trust for ARRI Australia. The said proceeds must be held in a separate account or otherwise clearly identified in the books and records of the customer.
- 6.3. If the customer resells any Goods then, unless the Goods are clearly identifiable by serial numbers or other distinguishing marks, the customer is deemed to have disposed of the Goods in the chronological order of supply by ARRI Australia to the customer (oldest to the most recent).

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 supply of Goods 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 Goods and given written notice to ARRI Australia within seven (7) days after collection or delivery that the Goods are defective, do not comply with the relevant specifications or descriptions, or that the Goods are faulty or damaged, the Goods are deemed to have been accepted in good order and condition and compliant with those specifications and descriptions.

9. **RETURN OF GOODS**

- 9.1. Subject to clauses 9.2 and 9.3, ARRI Australia will only accept the return of any Goods to it by the customer, if:
 - 9.1.1. the customer has applied to ARRI Australia for approval to return the Goods with seven (7) days of collection or delivery, whichever is applicable;
 - 9.1.2. ARRI Australia has given written approval for the return of the Goods;
 - 9.1.3. the customer has returned the Goods to ARRI Australia' premises (or such premises as are specified by ARRI Australia in its approval referred to in clause 9.1.2) within fourteen (14) days from the date the approval is granted.
- 9.2. If ARRI Australia agrees to the return of Goods:
 - 9.2.1. the Goods, when received by ARRI Australia, must be unsoiled, undamaged and in a resaleable condition as determined by ARRI Australia;
 - 9.2.2. the customer must pay for the delivery, freight, customs, duties, levies and/or insurance in respect of the return of the Goods to ARRI Australia; and
 - 9.2.3. the customer must bear the risk of loss or damage of the Goods in transit until arrival of the Goods at the return address as advised by ARRI Australia.
- 9.3. ARRI Australia will not allow a credit or return of Goods if the Goods are:
 - 9.3.1. imported especially for the customer or comprise non-standard equipment made to special order; or
 - 9.3.2. marked on ARRI Australia' invoices as "NOT RETURNABLE".

10. **DEFAULT**

If:

- 10.1. the Goods are not paid for in accordance with these Terms or any other applicable written agreement; or
- 10.2. ARRI Australia receives notice that, or reasonably believes that a third party may attempt to take possession of the Goods or attach the Goods pursuant to a writ of execution; or

10.3. any other event occurs which is likely to adversely affect the customer's ability to pay for the Goods (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 any contract relating to the Goods and the bailment referred to in clause 4.2.1.

11. **RIGHT TO ENTER PREMISES**

In any of the circumstances referred to in clause 10, the customer:

- 11.1. 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 Goods are located in order to collect the Goods, without being guilty of any manner of trespass; and
- 11.2. assigns to ARRI Australia all the customer's rights to enter onto and remain in and on such premises until all the Goods have been collected.

12. **ADMINISTRATION, RECEIVERSHIP ETC.**

In any of the circumstances referred to in clause 10:

- 12.1. neither the customer nor its insolvency representative is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with ARRI Australia's ownership of the Goods, without ARRI Australia's prior written approval;
- 12.2. the customer and its insolvency representative are obliged to return the Goods to ARRI Australia immediately or immediately on his appointment at his expense; and
- 12.3. 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 Goods 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 Goods.

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

13.1. These Terms do not affect any rights conferred by the Trade Practices Act (1974).

13.2. 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 Goods. The customer acknowledges that ARRI Australia is not responsible if the Goods do 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.

13.3. 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:

13.3.1. replacement or repair of the Goods; or

13.3.2. supply of equivalent Goods,

and in either case, ARRI Australia will not be liable for any Consequential Loss or Damage or other direct or indirect loss or damage.

14. **WARRANTY**

14.1. ARRI Australia warrants that the Goods will be supplied new (except in the sale of second hand Goods) and in an undamaged condition.

14.2. The customer acknowledges and agrees that:

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

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

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

14.4. 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 Goods are hereby expressly negated and excluded to the full extent permitted by law.

14.5. 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 Goods for any purposes.

- 15. **CATALOGUES AND TECHNICAL DOCUMENTS**
 - 15.1. 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.
 - 15.2. 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 Goods.
- 16. **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).
- 17. **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.
- 18. **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.
- 19. **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.
- 20. **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.

THE CUSTOMER ACKNOWLEDGES HAVING READ AND AGREES TO BE BOUND BY THE ABOVE TERMS AND CONDITIONS OF SALE

.....
(Customer's Name)

.....
(Signature)

.....
(Date)

.....
(Position)