

ARRI Americas Inc.
General Terms and Conditions of Sale

1. General; Scope

These terms and conditions (these “Terms and Conditions”) shall be the sole terms and conditions which apply to each and all of ARRI Americas Inc.’s (hereinafter referred to as “ARRI”) current and future sales of ARRI products (the “Agreements”) to a customer (the “Customer”). Unless ARRI has approved otherwise in writing, any terms or conditions which conflict with, deviate from or modify these Terms and Conditions shall not be binding on ARRI irrespective of whether ARRI had prior notice of such terms or conditions. ARRI hereby expressly objects to any such conflicting, deviating or modifying terms or conditions. Any terms and conditions that the Customer has included, or seeks to impose or incorporate, including in any click-through, wrappers, quotations, order acknowledgments, invoices, delivery notes, online terms, or other communications or documents, or which are implied by law, trade, custom, practice or course of dealing, and that conflict with, deviate from, or modify these Terms and Conditions, are expressly rejected by ARRI and of no force and effect. For the avoidance of doubt, such Customer terms and conditions will be considered material alterations to any Agreement, and ARRI will not sell or deliver ARRI products to any Customer except solely on the basis of these Terms and Conditions.

THESE TERMS AND CONDITIONS, WHICH ARE A PART OF ANY AGREEMENT TO SELL ARRI PRODUCTS FROM ARRI TO THE CUSTOMER, DO NOT CONSTITUTE A STANDARD FORM CONTRACT UNDER APPLICABLE LAW AND WAS OPEN TO NEGOTIATION BY THE PARTIES. EACH PARTY AGREES THAT ANY AGREEMENT TO SELL ARRI PRODUCTS FROM ARRI TO THE CUSTOMER SHALL BE DEEMED THE JOINT WORK OF THE PARTIES AND THAT ANY PRESUMPTION OR RULE REQUIRING THE CONSTRUCTION OR INTERPRETATION OF THE AGREEMENT AGAINST THE PARTY DRAFTING THE AGREEMENT SHALL NOT APPLY.

2. Contract Formation

2.1 Any quotations or product offers made by ARRI shall not constitute an offer to conclude an Agreement and shall not create an obligation to deliver any ARRI products and is subject to change without notice.

2.2 The Customer is bound to its order. An Agreement is deemed to have been concluded upon the Customer's receipt of ARRI's written communication confirming the Customer's order or upon the delivery of the ARRI products ordered by the Customer pursuant to these Terms and Conditions and, if applicable, confirmation that the Customer has withdrawn any of its own terms and conditions relating to the purchase of ARRI products. For the avoidance of doubt, if the Customer does not withdraw its own terms and conditions, an Agreement will not have been formed and ARRI will have no obligation to sell or deliver any ARRI products.

2.3 The scope and type of delivery for a Customer's order shall be established solely through ARRI's written confirmation relating to such order. Any errors or omissions in ARRI's sales prospectus, pricelists, quotation or offer documents or other related documentation may be amended without ARRI incurring any liability for damages or compensation in relation to such errors or omissions.

2.4 ARRI may request a deposit as a condition of concluding an Agreement with a Customer. ARRI will request a deposit of 30% (thirty percent) of the purchase price if the Customer selects a product which is not in stock in the United States, and which ARRI is required to order from, and which is manufactured in, the manufacturing facilities outside of the United States (a "Special Contractual Product").

3. Terms of Payment

3.1 The purchase price for the Agreement shall be that price which is specified by ARRI for such Agreement in the order confirmation and shall be exclusive of any value-added tax or sales taxes unless otherwise provided in writing. If, at the Customer's request, the sale of ARRI products has occurred through delivery to a place other than ARRI's standard place of delivery specified in section 4.4 below, any additional costs incurred for packaging, shipping, freight, customs duties, or other related costs will be charged to the Customer and added to the purchase price.

3.2 In the event that the costs for the contracted ARRI products rise, or if a new tariff, tax, or duty on imports, or an increase in an existing tariff, tax, or duty on imports is enacted on, or relating to, the entire ARRI product or any portion thereof, subsequent to ARRI's issuance of written confirmation of the Customer's order, but before delivery or making the product available, ARRI shall have the right to increase the purchase price in accordance therewith. Upon notification to the Customer of a price increase from ARRI, the Customer shall have the right, within ten (10) days of such notification ("10 Day Cancellation Period"), to cancel its order without further purchase obligation, by written notification of cancellation to ARRI. If Customer timely notifies ARRI in writing of cancellation, any deposit previously paid for that order will be returned within thirty (30) business days. After such 10 Day Cancellation Period expires, Customer will be deemed to have accepted the new price provided by ARRI as applied to Customer's existing order and will be bound to pay the invoiced amount in full.

3.3 Invoices from ARRI are due upon ARRI making the ARRI products available to the Customer or the Customer's shipping company EXW ARRI (see section 4.4 below) and are payable without deductions within thirty (30) days of the issuance thereof with approved credit. Sales with unapproved credit require full payment in advance of making available or shipping ARRI products. ARRI reserves the right at its sole discretion to request payments in advance of making available or shipping ARRI products (deposits) as situations may arise requiring such deposits. Upon a default in payment, any overdue amounts will accrue interest at a rate of 8% above the Prime interest rate, or the maximum interest rate permitted by law, whichever is lower, per annum, payable monthly. ARRI reserves its right to assert any further claims regarding damages resulting from a default.

3.4 The Customer cannot offset from any payment due ARRI any counterclaim it believes it may have against ARRI unless such counterclaim has been resolved by final, non-appealable judicial determination. A right to withholding shall only apply to counterclaims arising specifically from the Agreement which is the subject of such withholding.

3.5 Any Customer who makes payment by check or draft which is returned due to insufficient funds will be assessed a fee, and is responsible for the payment, of \$75 for each returned check or unfunded draft.

3.6 Each delivery of ARRI products shall be deemed to be a separate and independent transaction and payment therefor shall be made accordingly.

4. Delivery

4.1 The expected dates for delivery and/or the making available of the goods by ARRI are not binding and are subject to change without notice. For the avoidance of doubt, in the event that ARRI products are not delivered by the estimated delivery date(s) provided by ARRI, Customer shall not have the right to cancel its order.

4.2 ARRI is entitled to carry out advance and/or partial deliveries of ARRI products, unless Customer requests in writing that only complete, and not partial, shipments be made, and ARRI accepts such request in writing.

4.3 Force Majeure. ARRI shall not be liable for any failure to perform its obligations under the Agreement if such failure is caused by an event of Force Majeure (as defined). ARRI shall be entitled to postpone delivery or availability of the ARRI products for the entire duration of the Force Majeure event.

In the event that ARRI is unable to deliver or make the ARRI products available to the Customer due to events of Force Majeure lasting for a period of three (3) months or more, ARRI may then terminate its obligation to deliver or make the ARRI products available with immediate effect, without liability.

Events of "Force Majeure" shall be deemed to be any events which are beyond ARRI's control and which make delivery impossible or unreasonably difficult, including, for example, strikes, lockouts, war, import or export prohibitions, scarcity of energy supplies or raw materials, pandemic or epidemic, and all consequences arising from or measures relating thereto, such as quarantines, business closures, social distancing and travel and transportation restrictions ordered by Governmental Authorities, or the delayed delivery to ARRI of goods required for the performance of its obligations hereunder for reasons beyond ARRI's control. The foregoing is a non-exhaustive list of events that may constitute Force Majeure. If ARRI is released from its obligations as described above, the Customer shall be entitled to rescind the applicable Agreement. Subject to ARRI's limitation of liability as set forth in section 9. below, ARRI shall only be liable to the Customer for non-performance if the delay, or failure, to deliver is due to ARRI's gross negligence or is intentionally caused by ARRI.

4.4 All sales are EXW (Incoterms 2020) ARRI's warehouse or the facility which ARRI in its sole discretion selects to service the Customer (each an "ARRI Location"), conveyance loaded, and ARRI's sole responsibility shall be to make the ARRI products available at ARRI's Location. All shipping, insurance, freight and other transportation charges are borne by the Customer.

5. Non-Acceptance and Cancellations

5.1 If the Customer fails to accept delivery when ARRI products are made available at an ARRI Location by ARRI, the Customer must nevertheless pay the invoiced amount.

5.2 Subject to Section 3.2 above, if, after the 10 Day Cancellation Period has expired, the Customer provides a written request to cancel an Agreement in whole or in part prior to ARRI making ARRI products available at an ARRI Location, ARRI, at its sole discretion, has the option to (i) insist on delivery of the ARRI products and full payment of the invoiced amount by the Customer, (ii) withhold delivery but charge twenty percent (20%) of the purchase price of the Agreement as a cancellation fee, and any applicable costs of collection, including reasonable attorney's fees, plus the interest rate provided for in section 3.3, or (iii) withhold delivery and keep and collect the deposit paid by the Customer for a Special Contractual product as a collection fee, and any applicable costs of collection, including reasonable attorney's fees, plus the interest rate provided for in section 3.3.

6. Transfer of Risk

6.1 The risk of loss or damage to the ARRI products passes to the Customer at such time as the Customer or the Customer's transportation carrier takes possession of the ARRI products at an ARRI Location. The above shall also apply in the event that ARRI serves as the carrier for the ARRI products.

6.2 If the Customer or the Customer's transportation carrier, or any other designated third-party transportation carrier, does not pick up the ARRI products within three (3) days of having been made available for pick up at an ARRI Location, the risk of loss shall transfer to the Customer.

6.3 Unless requested by the Customer, ARRI will not secure transportation insurance. Insurance requested by the Customer is at the Customer's expense.

7. Defective Goods

7.1 The Customer must inspect the delivered ARRI products immediately upon their receipt. The Customer must notify ARRI in writing of any apparent defects within five (5) business days of the ARRI products' receipt. ARRI must be notified of hidden defects in writing within ten (10) business days of their emergence but in no event later than three (3) months after delivery of such ARRI products. In the event that the Customer fails to meet the aforementioned notification obligations, the ARRI products shall be deemed to have been accepted and the rights set forth in Sections 7.2 and 7.3 below shall not be available to the Customer.

7.2 In the event that the Customer has notified ARRI of defects in a timely manner and is thus eligible to make a claim for corrective action, ARRI shall have the right, at its own cost, either to remedy the defect or to replace the defective ARRI products with conforming ARRI products.

7.3 If ARRI twice fails to remedy a defect under the same Agreement for sale of ARRI products, or if ARRI is otherwise unable to undertake corrective action or fails to do so within a reasonable time period (such period of time being ninety (90) days in each instance), the Customer shall be entitled to reduce the purchase price under the Agreement or to cancel the Agreement. Instead of seeking performance, the Customer can make a claim for damages or for compensation for expenses directly incurred as a result of ARRI's failure to remedy a defect as set forth herein. However, if the Customer elects to rescind or cancel the Agreement it shall have no right to make any claim for damages with respect to the defective ARRI products. Under no circumstances shall ARRI be liable for any amount exceeding the total invoice value of the ARRI products.

7.4 Subject to the specific warranty periods identified in section 8. below, any claim by the Customer regarding the ARRI products shall become void and unenforceable one (1) year after delivery of the applicable ARRI products.

7.5 No ARRI products will be accepted for return unless permission is granted from ARRI and a Return Material Authorization (RMA) is issued by ARRI. Returns may be subject to restocking charges of up to 20% of the invoiced amount and to processing fees of \$ 75 per item. In no event will ARRI consider granting a RMA unless (1) the Customer submits a written request for return within thirty (30) days of issuance of the invoice, with such request to include (a) the number corresponding to the original invoice, sales order and/or purchase order for the relevant product (and, if the product is referenced by a Product Serial Number this must also be provided), and (b) the reason for the requested return, (2) the Customer ships the goods to be returned to the ARRI Location indicated in the invoice, and (3) the goods sought to be returned are in new condition, resalable in original undamaged packaging and bearing no markings, etchings, logos or other signs of use, all to be exclusively determined by ARRI in its sole discretion. For the avoidance of doubt, ARRI will not accept any returns for lighting or camera electronic spare parts.

8. Limited Warranty

ARRI offers a limited warranty against defects of 1 (one) year for ARRI manufactured camera products and accessories and 2 (two) years for ARRI branded lighting products. Extended warranties are also available for some products. Please refer to the ARRI website for more information. (<https://www.arri.com/en/technical-service/extended-warranty-and-service-contracts>)

THE WARRANTY PROVIDED ABOVE IS THE ONLY WARRANTY PROVIDED BY ARRI. IT IS IN PLACE, AND TO THE EXCLUSION, OF ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY EXCLUDED.

In no event shall ARRI be responsible, or provide warranty services, for products manufactured by third parties, even if sold by ARRI; such third-party products shall carry only the warranty of the manufacturer of the third-party product, if any.

9. Liability

9.1 By issuing a purchase order, the Customer acknowledges and agrees that the Customer has determined that the ARRI products are fit for the purpose for which the Customer requires them.

9.2 The Customer has not relied on ARRI's skill and judgment in selecting the ARRI products.

9.3 ARRI is not responsible if the ARRI products do not comply with any applicable safety standards or similar regulations in the location where they are being used or that apply to the Customer, and ARRI is not liable for any claim resulting from such non-compliance.

9.4 ARRI is not subject to, and the Customer releases ARRI from any liability arising from, any delay in delivery of or any defect or fault in the ARRI products to the full extent permitted by law.

9.5 ARRI's liability for ARRI products is limited, at ARRI's option, to, and the Customer's sole and exclusive remedy for ARRI products shall be, whether a claim is based on breach of warranty, negligence, strict liability, tort, breach of contract, or any other legal theory:

- Replace or repair the ARRI products,
- Supply of equivalent goods, or
- Pay the cost of replacing or repairing the ARRI products or of acquiring equivalent products.

In each case plus commercially reasonable charges in connection with the return or disposition of the ARRI products. And in any case, ARRI will not be liable for any excluded loss or damage.

9.6 ARRI's sole and total liability with regard to the ARRI products to the Customer, or any third party claiming through the Customer, for any and all loss or damage to the Customer, or any other loss, damage, expense or claim, resulting from any cause whatsoever (whether based on damaged or defective ARRI products, irrespective of whether such damages or defects are discoverable or latent, or ARRI's limited warranty shall fail of its essential purpose, or any other reason), and whether based on breach of warranty, negligence, strict liability, tort, breach of contract or any other theory, is limited to the invoice value of the ARRI products. ARRI shall have no liability for the cost (of labor, disposal or otherwise) to remove an ARRI product or install any new product(s). ARRI shall have no liability to any person other than the Customer.

9.7 THE FOREGOING IS THE ENTIRE OBLIGATION OF ARRI. IN NO EVENT SHALL ARRI BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES TO ANY PERSON, WHETHER BASED UPON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT, BREACH OF CONTRACT OR ANY OTHER LEGAL THEORY, OR CAUSE OF ACTION, REGARDLESS OF WHETHER THE LOSS OR DAMAGE WAS FORESEEABLE, REGARDLESS OF WHETHER THE CUSTOMER WAS ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND REGARDLESS OF WHETHER THE REPLACEMENT OR REFUND REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE OR FOR ANY OTHER REASON.

No statement or recommendation made or assistance given by ARRI, or its representatives, either oral or in any literature or other documentation, to the Customer, its customers or any other person in connection with the purchase, use or installation by the Customer, its customers or any other person, of any ARRI product sold hereunder, shall constitute a waiver by ARRI of any provision hereof or affect ARRI's liability as herein defined.

10. Retention of Title, Security Interest, and Intellectual Property Rights

10.1 Ownership of the delivered ARRI products shall remain with ARRI until it has received full payment for such ARRI products. Title to the ARRI products shall first pass to the Customer upon ARRI's receipt of all payments which are due under the current applicable Agreement.

10.2 Prior to obtaining title to the ARRI products, the Customer is not entitled to pledge, to assign by way of security, to process or to alter the ARRI products. The Customer is, however, authorized to sell the goods to third parties in the ordinary course of business unless a non-assignability agreement regarding the consideration exists between the Customer and the third party. If a third party acquires an interest in the ARRI products through a resale to such party, the Customer agrees to assign to ARRI all of its correlating rights and claims against such third party and ARRI hereby accepts such assignment.

10.3 Upon a default in payment by the Customer, ARRI has the right to disclose to any applicable third party that it holds an interest in the goods pursuant to the assignment delineated above and to assert any of its claims directly. The Customer is obligated to provide and deliver to ARRI all documentation required for the assertion of such claims. The Customer must also make available to ARRI, completely and in a timely fashion (i.e., within three (3) business days), all information about any events that might affect the obligations described above.

10.4 As collateral security for the payment of the purchase price of the ARRI products and the performance in full of all the obligations of the Customer under this Agreement, the Customer pledges and grants to ARRI, a continuing lien on and security interest in and to all of the right, title, and interest of the Customer in, to, and under the ARRI products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing, as security for the payment of the purchase price of the ARRI products. The security interest granted under this section 10.4 may, but need not solely, constitute a purchase-money security interest under Division 9 of the California Uniform Commercial Code.

10.5 ARRI hereby grants to the Customer a limited, non-transferable, non-assignable, non-sublicensable, license to use, solely for the Customer's own purposes, in connection with the ARRI products, (i) ARRI's trademarks, and (ii) any ARRI firmware, in, on, and relating to, the ARRI products. Except for the limited license set forth in this section 10.5, no rights in or to any intellectual property rights are granted by ARRI to the Customer under by virtue of the Agreement.

11. Jurisdiction; Governing Law

11.1 These Terms and Conditions, and any contract formed between, or transaction undertaken by, ARRI and the Customer, and any and all claims, controversies or disputes relating thereto, shall exclusively be governed by, and in all respects construed in accordance with, the laws of the State of New York, without regard to the conflict of law principles thereof that would result in the application of the laws of another jurisdiction. Under no circumstances shall the Convention on the International Sale of Goods (CISG) apply.

11.2 Any and all claims, controversies, or disputes arising from or related to these Terms and Conditions, any contract formed between, or transaction undertaken by, ARRI and Customer, are subject to mandatory, confidential, and binding arbitration administered by Judicial Arbitration and Mediation Services (“JAMS”) in accordance with its Comprehensive Rules and Procedures (which can be found here: <https://www.jamsadr.com/rules-comprehensive-arbitration/>) (“JAMS Rules and Procedures”). The Arbitration shall be heard by one (1) arbitrator, selected according to the above JAMS Rules and Procedures, and shall be conducted in New York, New York, unless ARRI agrees to an alternate venue in writing. Any arbitration proceeding, decision, or award rendered by the arbitrator, and the validity, effect, and interpretation of this arbitration provision, shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq. For the avoidance of doubt, all issues of arbitrability, both procedural and substantive, shall be decided by the arbitrator.

The arbitrator shall have the authority, taking into account that the arbitration proceeding hereunder be reasonably expedited and efficient, to permit the Parties to conduct reasonable discovery, including the production of documents and the taking of depositions for a reasonable period after the filing of the request for arbitration. Any discovery disputes will be resolved by the arbitrator, who shall have the authority to issue subpoenas for the attendance of witnesses and for the production of records and other evidence at any hearing and may administer oaths. The arbitrator shall apply the Federal Rules of Civil Procedure and the arbitrator shall have the authority to determine motions brought by any party, including dispositive motions.

The prevailing party in the arbitration shall be entitled to recover from the non-prevailing party its reasonable attorneys’ fees and costs incurred in connection with the arbitration. For the avoidance of doubt, costs include, but may not be limited to, the costs of preparation and presentation of proof, experts, and witnesses, as well as fees paid to JAMS. In the event that a party prevails on only part of its claim, the arbitrator shall have discretion to award a corresponding portion of the partially prevailing party’s reasonable costs and attorneys’ fees.

The arbitrator will, as soon as practicable, but in any event within thirty (30) days after the conclusion of the evidentiary hearing, render a reasoned decision in writing as to all disputes for which the arbitrator was impaneled, as applicable, which decision shall be binding on the parties to the arbitration. Subject to the specific limitations on ARRI’s liability contained herein (including, but not limited to, the limitations on damages contained in Sections 9.6 and 9.7), the arbitrator shall have the power to award any remedy available under applicable law.

The parties to the arbitration hereby waive their right to have their disputes heard or decided by a jury or in a court. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. This arbitration provision shall survive in the event (i) that any particular provision of these Terms and Conditions is determined to be unenforceable and/ or (ii) if these Terms and Conditions, or any contract formed between, or transaction undertaken by, ARRI and Customer, is cancelled or terminated. No party to the arbitration, nor anyone acting by or on behalf of any party, nor the arbitrator, may disclose the existence, content, or results of any such arbitration without the prior written consent of all parties to the arbitration.

12. Miscellaneous

12.1 Priority. Subject to sections 1. and 2.2 above, in the event of any inconsistency among the provisions in these Terms and Conditions and the Agreement, precedence shall be given first to any special terms and conditions contained in the Agreement, if and to the extent specifically approved in writing by ARRI, and second, to these Terms and Conditions.

12.2 Relationship of the Parties. ARRI and the Customer are independent contracting parties and nothing in these Terms and Conditions shall be construed as constituting or making ARRI or the Customer as franchiser, franchisee, partner, broker or agent of the other. ARRI and the Customer are each an independent contractor, and neither shall have any power, right or authorization to bind the other or to assume or create any obligations or responsibilities, express or implied, on behalf of the other or in the other's name.

12.3 Non-Waiver. No change, modification, or waiver of any provision of these Terms and Conditions shall be valid or binding unless it is accepted by ARRI in writing. A waiver by either party of any breach or failure to enforce any term or condition of these Terms and Conditions shall not, in any way, affect, limit or waive such party's right at any time to enforce strict compliance with that or any other term or condition of these Terms and Conditions.

12.4 Non-Assignment. The Customer may not assign its rights or delegate its obligations hereunder or under the Agreement without ARRI's prior written consent.

12.5 Export Controls. The Customer acknowledges that all ARRI products, software, and technology are subject to the U.S. Government export control and economic sanction laws, including the Export Administration Regulations administered by the Department of Commerce, Bureau of Industry and Security, and the Foreign Asset Control Regulations administered by the Department of Treasury, Office of Foreign Assets Control. The Customer will, therefore, not directly or indirectly, export, re-export, transfer or release any ARRI products to any destination, person, entity or end use prohibited or restricted under U.S. law without prior U.S. Government authorization to the extent required by regulation.

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