

# PICTURE HIRE AUSTRALIA - HIRE AGREEMENT

## TERMS AND CONDITIONS OF HIRE

### 1. Definitions

- a) **Company** means DS and DGE Cookes trading as Picture Hire Australia (ABN 92 927 933 797) of 26 Clarke St, Norwood, South Australia, 5067.
- b) **Customer** means the person hiring the Equipment from the Company, including all persons acting on behalf of or under the instructions of the Customer.
- c) **Equipment** means the equipment and components listed on the attached booking details form.
- d) **Hire Charge** means the hire charge set out on the attached booking details form, together with any applicable taxes.
- e) **Term** means the period specified on the attached booking details form.
- f) **Loss and Damage Waiver** means the fee paid to limit the Customer's liability for loss or damage to the Equipment.

### 2. Terms and Conditions

The Equipment is hired strictly on the basis of the terms and conditions contained in this agreement. Modification of these terms and conditions expressed in any document of the Customer will not apply to the hire of the Equipment unless expressly accepted in writing by the Company.

### 3. Hire of Equipment

The Company agrees to hire the Equipment to the Customer for the Term and the Customer agrees to take the Equipment on hire for the Term and pay the Hire Charge. The Hire Charge must be paid in full prior to the Equipment being removed from the Company's premises, or on return if consented to by the company, unless the Customer is an approved account customer, in which case terms of payment are strictly 30 days from the date of the invoice. Payments not made within the 30 days may incur debt collection fees, and/or lead to the account being placed on "stop credit", and/or being placed in the hands of a debt collection agency. In the event of a late notice cancellation of the hire, the Company reserves the right to charge a cancellation fee equivalent to 50% of the Hire Charge.

### 4. Obligations of the Customer.

In all cases of hire of the Equipment the customer must

- a) Advise the Company of the situation of the Equipment at all times
- b) Not take the Equipment out of Australia, without the prior written consent of the Company
- c) Not use or allow the Equipment to be used on any abnormal or hazardous assignment, transport or aircraft (including helicopters and light aircraft) other than regular scheduled flights by recognised commercial airline, unless the Company has given its written consent
- d) Take all reasonable precautions for the safety and security of the Equipment and not use the Equipment where it could be affected by salt, water or climatic or atmosphere conditions
- e) Comply with all relevant laws and regulations when using the equipment
- f) Return the Equipment to the Company by the expiry of the Term in good working order and condition, and inform the Company of any damage or defect arising during the hiring or any incident that occurred during the hiring likely to cause such defect or damage;
- g) Not attempt to adjust or repair or interfere with the Equipment except where it is necessary for its proper and normal use; and
- h) Ensure the Equipment is used in a skilful and proper manner by persons with the necessary experience and familiarity with that type of equipment.

### 5. Title

In all cases of hire of the Equipment, the Customer acknowledges that:

- a) The Company retains title to the equipment and that the Customer has rights to possess the Equipment as a mere bailee only
- b) The Customer does not have the right to pledge the Company's credit in connection with the Equipment and agrees not to do so and:
- c) The Customer must not agree, attempt, offer or purport to sell, assign, lend, pledge, mortgage, encumber or otherwise part with or attempt to part with the Equipment and must not conceal, alter or make any addition or alteration to, or repair of, the Equipment.
- d) The Customer must not agree, attempt, offer or purport to sub-hire or let on hire the Equipment unless The Company has been notified and the Company has given express written approval.

### 6. State of Equipment

The Customer acknowledges receipt of the Equipment in good working order and good condition. Although the Company uses a thorough checking system, the Company will not be responsible for incomplete kits, incorrect functioning of Equipment or incompatibility of the Equipment with any other equipment or software used by the Customer. The Company makes no warranties as to the adequacy of the Equipment for any task required of it by the Customer. Return of hired Equipment in a dirty or improperly packaged condition will attract a 10% surcharge at the discretion of the Company.

### 7. Risk and Liability

- a) The Customer accepts responsibility for the care and safekeeping of the Equipment and is liable for any damage to or loss or destruction of the Equipment from any cause whatsoever (including the acts and omission, whether negligent or not, of technicians) from the time the Equipment leaves the Company's possession until the time the Equipment is returned.
- b) Notwithstanding any insurance cover in respect of the Equipment, the Customer remains liable under the provisions of this agreement and will also be liable to pay the Hire Charge for the Equipment at the rate applicable for the Term until the Equipment is replaced or repaired as the case may be.
- c) Any loss of or damage to the Equipment must be immediately notified to the Company and the Customer will, at the request of the Company, take any steps reasonably required of the Customer in respect of making reports to the Company, the insurer, the police or other appropriate authorities concerning any such loss or damage.

### 8. Loss and Damage Waiver

- a) If the Loss and damage waiver is paid, the Customer's liability is limited to 50% of the replacement value of the Equipment, up to a maximum liability of \$1,000. The terms of this cover are determined by the Company's insurance policy. The policy does not cover deliberate or fraudulent acts causing loss or damage, unusually high risk activities, or loss or damage outside Australia. A copy of the Company's insurance policy is available on request.
- b) The Loss and Damage Waiver is 7.5% of the Hire Charge for all Equipment, before discounts are applied.
- c) The Loss and Damage Waiver will be applied to all hires unless evidence is provided that the Customer's own insurance policy already fully covers them for loss and damage to the Company's Equipment

### 9. Exclusion of Warranties

- a) Except to the extent implied by any statute or regulation in force, the Company makes no warranties or representations in respect of the Equipment, including its fitness for any particular use, and the Customer accepts the Equipment solely relying on its own knowledge and opinion of the Equipment.
- b) The Company's liability for a breach of any warranty implied by law is limited to the replacement of the Equipment, the supply of equivalent equipment, the repair of the Equipment, the payment of the cost of replacing the Equipment or of acquiring equivalent equipment or the payment of the cost of having the Equipment repaired.
- c) If the Equipment is found to be defective, the Customer must immediately notify the Company, which will endeavour, in its sole discretion, to replace or repair the defective item as expeditiously as possible, or authorise a competent repairer to repair the Equipment. If the defect is determined by the repairer to be caused by misuse, neglect or carelessness, the full cost of repairs will be borne by the Customer, who will also be liable to pay the Hire Charge until the Equipment is returned to the Company fully repaired.
- d) The Company is solely responsible for carrying out all service and repairs to the Equipment and no repairs are to be carried out without the prior consent of the Company.
- e) The Company will not be held liable for any loss, damage, indirect or consequential loss (financial or otherwise) caused by the Equipment to the Customer or to any property or persons, or as a result of the Equipment not being fit for any use to which it is put to by the Customer.

### 10. Termination

- a) If the Customer defaults in punctual payment of any amount due under this agreement, is in breach of any term of this agreement, is declared bankrupt or enters into any agreement for the benefit of its creditors or if any execution of distress is levied against it and remains unsatisfied, or being a company, is placed into receivership or goes into liquidation, then in any such case the Company may without further notice, and without prejudice to any of its rights, terminate this agreement.
- b) In the event of termination the Customer must immediately at its own risk and cost deliver up the Equipment to the Company PROVIDED HOWEVER that in the event that the Customer neglects and/or refuses to do so, it is agreed that the Company, its servants and agents may without prior notice and without liability for trespassing or any resulting damage, enter any premises where the Equipment is situated and seize and retake possession of the Equipment. It is further agreed that the Customer will be liable to pay upon demand all costs and expenses which are incidental to any such retaking of possession incurred by the Company, together with penalty interest calculated at a rate which is 2% above the 90 day bank bill rate of the Company's bank from time to time.

### 11. Authority

Where any person signs this agreement on behalf of the Customer, the person so signing warrants that he or she is duly authorised by the Customer to enter into this agreement.

### 12. Governing Law

This agreement will be governed by the laws applicable in the state of South Australia and both the Company and the Customer submit to the jurisdiction of the courts of that state and any courts competent to hear appeals from those courts.

**PICTURE HIRE AUSTRALIA** ABN 92 927 933 797  
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