

Film & Television Institute (WA) Inc – Terms & Conditions of Hire

1. Definitions

- 1.1 "Institute" shall mean Film & Television Institute (WA) Inc and its successors and assigns.
- 1.2 "Hirer" shall mean the Hirer or any person acting on behalf of and with the authority of the Hirer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Hirer on a principal debtor basis.
- 1.4 "Equipment" shall mean Equipment supplied by the Institute to the Hirer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Institute to the Hirer and includes any advice or recommendations (and where the context so permits shall include any supply of Equipment as defined supra).
- 1.6 "Price" shall mean the cost of the Equipment as agreed between the Institute and the Hirer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Institute from the Hirer for the supply of Equipment and/or the Hirer's acceptance of Equipment supplied by the Institute shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Hirer has entered into this agreement, the Hirer's shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Hirer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Institute.
- 2.4 None of the Institute's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Institute in writing nor is the Institute bound by any such unauthorised statements.
- 2.5 The Hirer undertakes to give the Institute not less than fourteen (14) days prior written notice of any proposed change in the Hirer's name and/or any other change in the Hirer's details (including but not limited to, changes in the Hirer's address, facsimile number, or business practice).

3. Equipment

- 3.1 The Equipment are as described on the invoices, quotation, authority to hire or any other work commencement forms as provided by the Institute to the Hirer.

4. Price And Payment

- 4.1 At the Institute's sole discretion the Price shall be either;
 - (a) as indicated on invoices provided by the Institute to the Hirer in respect of Equipment supplied; or
 - (b) the Institute's current Price, at the date of delivery of the Equipment, according to the Institute's current Price list; or
- 4.2 At the Institute's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Equipment and shall become immediately due and payable.
- 4.3 Time for payment for the Equipment shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Equipment.
- 4.4 The Institute may withhold delivery of the Equipment until the Hirer has paid for them, in which event payment shall be made before the delivery date.
- 4.5 At the Institute's sole discretion, payment for approved Hirer's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Hirer's address or address for notices.
- 4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Hirer and the Institute.
- 4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Institute.

5. Delivery Of Equipment / Services

- 5.1 Delivery of the Equipment shall be made to the Hirer at the Institute's address.
- 5.2 The failure of the Institute to deliver shall not entitle either party to treat this contract as repudiated.
- 5.3 The Institute shall not be liable for any loss or damage whatever due to failure by the Institute to deliver the Equipment (or any of them) promptly or at all.

6. Risk

- 6.1. The Institute retains property in the Equipment nonetheless, all risk for the Equipment passes to the Hirer on delivery.
- 6.2. The Hirer acknowledges that they are liable for any loss or damage to the equipment from the time of delivery until it is returned to or picked up by the Institute.
- 6.3. The Hirer will insure, or self insure, the Institute's interest in the Equipment against physical loss or damage including, but not limited to, the perils of

accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

- 6.4. The Hirer will accept all responsibility for all damage to property and injury caused during the period of hire by the Hirer, his servants or any person acting on behalf of the Hirer and shall hold the Institute harmless in respect thereof.
- 6.5. In respect of all claims whether for workers compensation or third party liability or otherwise the Hirer shall comply with all statutes, regulations and industrial awards relating to the labour and effect all such insurances as may be necessary.
- 6.6. The Hirer shall keep the Institute indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses.

7. Hirer's Disclaimer

- 7.1 The Hirer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Institute and the Hirer acknowledges that he buys the Equipment relying solely upon his own skill and judgement and that the Institute shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Hirer and shall not be transferable to any subsequent Hirer.

8. Cancellation

- 8.1 The Institute may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. The Institute shall not be liable for any loss or damage whatever arising from such cancellation.

9. Warranty

- 9.1 No Warranty is provided by the Institute in respect of the condition of the Equipment or its fitness for any particular purpose. The Hirer shall indemnify and hold harmless the Institute in respect of all claims arising out of use of the Equipment.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Hirer's Responsibilities

- 11.1 The Hirer shall:
 - (a) notify the Institute immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification.
 - (b) satisfy itself at Commencement that the Equipment is suitable for its purposes;
 - (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturers instruction whether supplied by the Institute or posted on the Equipment;
 - (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are full licensed;
 - (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
 - (f) on termination of the hire, the Hirer shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Institute. The Hirer is not authorised to pledge the Institute's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs;
 - (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment and the Hirer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Institute for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Hirer;
 - (h) accept full responsibility for and indemnify the Institute against all claims in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising, whether from the negligence of the Hirer or any other persons including but without limitation where the Equipment is being operated for any reason by the Institute their servants or Institutes;
 - (i) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;

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- (j) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- 11.2 The Hirer shall not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 11.3 Immediately on request by the Institute the Hirer will pay:
- (a) The new list price of any Equipment which is for whatever reason not returned to the Institute.
 - (b) All costs incurred in cleaning the Equipment;
 - (c) All costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
 - (d) The cost of repairing any damage to the Equipment caused by the negligence of the Hirer or the Hirer's agent;
 - (e) The cost of repairing any damage to the Equipment caused by vandalism, or (in the Institute's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer.
 - (f) The cost of fuels and consumables provided by the Institute and used by the Hirer.
- 11.6 The date upon which the Hirer advises of termination shall in all cases be treated as a full day's hire.
- 12. Default & Consequences Of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Hirer defaults in payment of any invoice when due, the Hirer shall indemnify the Institute from and against all the Institute's costs and disbursements including on a solicitor and own client basis and in addition all of the Institute's nominees costs of collection.
- 12.3 Without prejudice to any other remedies the Institute may have, if at any time the Hirer is in breach of any obligation (including those relating to payment), the Institute may suspend or terminate the supply of Equipment to the Hirer and any of its other obligations under the terms and conditions. The Institute will not be liable to the Hirer for any loss or damage the Hirer suffers because the Institute exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the Equipment or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 12.1 hereof.
- 12.5 In the event that:
- (a) any money payable to the Institute becomes overdue, or in the Institute's opinion the Hirer will be unable to meet its payments as they fall due; or
 - (b) the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer; then without prejudice to the Institute's other remedies at law
 - (i) the Institute shall be entitled to cancel all or any part of any order of the Hirer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Institute shall, whether or not due for payment, immediately become payable.
- 13. Title**
- 13.1 The Equipment is and will at all time remain the absolute property of the Institute.
- 13.2 If the Hirer fails to return the Equipment to the Institute then the Institute or the Institute's agent may enter upon and into land and premises owned, occupied or used by the Hirer, or any premises as the invitee of the Hirer, where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 14. Privacy Act 1988**
- 14.1 The Hirer and/or the Guarantor/s agree for the Institute to obtain from a credit-reporting agency a credit report containing personal credit information about the Hirer and Guarantor/s in relation to credit provided by the Institute.
- 14.2 The Hirer and/or the Guarantor/s agree that the Institute may exchange information about Hirer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Hirer;
 - (b) To notify other credit providers of a default by the Hirer;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and
 - (d) To assess the credit worthiness of Hirer and/or Guarantor/s.
- 14.3 The Hirer consents to the Institute being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Hirer agrees that Personal Data provided may be used and retained by the Institute for the following purposes and for other purposes as shall be agreed between the Hirer and the Institute or required by law from time to time:
- (a) provision of Services & Equipment;
 - (b) marketing of Services and/or Equipment by the Institute, its agents or distributors in relation to the Services and Equipment;
 - (c) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to provision of Services/Equipment;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Hirer; and
 - (e) enabling the daily operation of Hirer's account and/or the collection of amounts outstanding in the Hirer's account in relation to the Services and Equipment.
- 14.5 The Institute may give, information about the Hirer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Hirer; and or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Hirer.
- 15. General**
- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 All Equipment supplied by the Institute is subject to the laws of Western Australia and the Institute takes no responsibility for changes in the law which affect the Equipment supplied.
- 15.3 The Institute shall be under no liability whatever to the Hirer for any indirect loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Institute of these terms and conditions.
- 15.4 In the event of any breach of this contract by the Institute the remedies of the Hirer shall be limited to damages. Under no circumstances shall the liability of the Institute exceed the Price of the Equipment.
- 15.5 The Hirer shall not set off against the Price amounts due from the Institute.
- 15.6 The Institute may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.
- 15.7 The Institute reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Institute notifies the Hirer of such change.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.