

Equipment Rental Agreement - Terms And Conditions

1. INTERPRETATION

Unless the context requires otherwise the following terms shall be interpreted as follows:

- a) "Red Pix" means Red Pix a business registered in Queensland and having the A.B.N. 56 053 549 748. This expression shall include any or all businesses and companies related or any subsidiary successors and assigns of Red Pix.
- b) "The Customer" means the person (including his successors, representatives and permitted assignees) hiring equipment from Red Pix. Where there is more than one Customer, the covenants contained in these Rental Terms and Conditions be deemed joint and several covenants.
- c) "Equipment" means all or any film or digital equipment or any other goods of any kind whatsoever hired by the Customer from Red Pix.

2. GENERAL

- a) These terms and conditions are deemed to be incorporated into all contracts for the supply of Equipment to the Customer and supersede all terms and conditions previously issued by Red Pix.
- b) Red Pix is only prepared to hire Equipment upon these terms and conditions and no contract for the hire of Equipment shall exist between Red Pix and the Customer except upon these terms and conditions unless their exclusion or modifications are agreed to in writing by Red Pix.
- c) Any order placed by the Customer is deemed to be an order incorporating these Terms and Conditions notwithstanding any inconsistencies in the Customer's order.

3. DELIVERY

- a) The Customer shall be responsible for the collection and return of Equipment, unless the Customer arranges the delivery and return of Equipment by Red Pix.
- b) Where at the Customer's request, Equipment is delivered or collected by Red Pix, Red Pix shall have an absolute discretion as to the mode of delivery, and the delivery and collection will be at the Customer's risk and expense.
- c) Equipment must be collected from and returned to Red Pix's premises.

4. HIRE CHARGES

- a) Hire charges for equipment are as set out in the Equipment Rental Catalogue. Red Pix reserves the right to alter its hire charges without notice. A minimum charge for invoiced services applies.
- b) Hire charges for Equipment are calculated from the time the Equipment leaves Red Pix's premises until the end of the period of hire, or when the Equipment is returned to Red Pix's premises, whichever is the later.
- c) In the event that the Equipment is not returned by 10.00am on the working day following the last day of the hiring period, the Customer shall be liable for additional fees at the full daily rate in respect of each day or part thereof until the Equipment is returned.
- d) In addition to normal hire charges, Red Pix shall be entitled to charge an opening fee for services outside of normal business hours.
- e) Except where such payment or reimbursement is expressly prohibited by statute, the Customer will pay to or reimburse Red Pix for all delivery costs and other government duties, taxes and expenses Red Pix may be liable to pay from time to time, in connection with the hire of the Equipment to the Customer.

5. PAYMENT

- a) Hiring fees must be paid prior to the hiring of Equipment or, in the case of Account Customers, within 30 days from the date of Red Pix's invoice, unless otherwise expressly agreed to in writing by Red Pix.
- b) Credit Accounts will only be opened where warranted by the Customer's volume of business and where the Customer can establish its credit-worthiness to the satisfaction of Red Pix.
- c) A signed Equipment Rental Agreement is required prior to hiring, even on a COD basis.
- d) All first time rentals are on a COD basis, unless they are to be shipped.
- e) If equipment is to be shipped, first orders are to be pre-paid.
- f) Notwithstanding Clause 5 (a), Red Pix may at any time of any order, delivery or collection of Equipment demand payment in cash upon such order, delivery or collection.
- g) Red Pix reserves the right to charge interest on overdue accounts without prior notice to the Customer at the rate of 10% per month or at such other rate as may be fixed from time to time by Red Pix such interest to be computed from the date a payment becomes overdue until payment of such monies is received in full. A certificate signed by any Proprietor of Red Pix shall be deemed conclusive evidence of such rate of interest.
- h) Red Pix reserves the right to set a minimum invoice value from time to time at its discretion and reserves the right to refuse to hire Equipment to the Customer in the event that the Customer fails to comply with Red Pix's terms of payment.

6. IMPLIED TERMS

- a) All warranties and conditions expressed or implied by statute, common-law, equity, trade and customer usage or otherwise, are to the extent permitted by law, expressly excluded from this Equipment Rental Agreement.
- b) The Customer acknowledges that neither Red Pix or any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing in the Equipment Rental Agreement, whether as to the fitness of the Equipment for any particular purpose, or any other matter.
- c) The Customer acknowledges that without relying upon the skill or judgment of Red Pix or any person purporting to act on its behalf, it has determined that Equipment conforming to the contract description will benefit for its purposes.
- d) The provisions of this Clause shall not apply insofar as their application is prevented by the Trade Practices Act 1974 or any other State or Territory laws.

7. LIMITATION OF LIABILITY

- a) Save as expressly provided for in this Equipment Rental Agreement, Red Pix shall not be liable to the Customer or the Customer's servants or agent for any direct, indirect, incidental or consequential loss, injury or damages of any nature howsoever caused (whether based on tort contract or otherwise) including but not limited to loss of profits, loss of production, loss of data, loss of sales opportunity or business reputation, direct or indirect labour costs, overhead expenses, damage to equipment or property or any other claim whatsoever, arising directly or indirectly from the performance of or failure to perform this contract whether resulting from the negligence of Red Pix, its servants, agents or otherwise.
- b) The Customer agrees to indemnify and to keep indemnified Red Pix and Red Pix's servants and agents against any claims actions, suits and demands brought by third parties arising out of the use of the Equipment or otherwise arising out of or in connection with this Equipment Rental Agreement.
- c) The provisions of this Clause 7 shall not apply insofar as their applications is prevented by the Trade Practices Act 1974 or any other State or Territory laws.
- d) Notwithstanding anything contained herein and subject to the qualifications of Section 68A of the Trade Practices Act 1974, if the Customer is a "consumer" as defined in the Trade Practices Act, and the Equipment being supplied herein is other than of a kind ordinarily acquired for personal domestic or household use or consumption, the liability of Red Pix for a breach of a condition or warranty implied by Division 2 Part V of the Trade Practices Act, is limited at Red Pix's option to the replacement of the Equipment or the supply of equivalent Equipment or the repair of the Equipment.

8. RISK AND INSURANCE

- a) The Equipment shall be at the Customer's risk from the time the Equipment leaves Red Pix's premises, or from the commencement of testing within Red Pix's premises, whichever is the earlier, until the time it is returned and accepted by Red Pix. Acceptance does not release the Customer from the responsibility for the loss or damage of hired Equipment.
- b) Unless otherwise agreed to by Red Pix in writing, the Customer is required to effect suitable insurance in respect of the Equipment and must provide documentary evidence of such insurance prior to the hiring of any Equipment by the Customer. Such insurance must be written by a reputable insurance company of acceptable financial size and rating to Red Pix.
- c) Red Pix should be included and named as joint insured under all policies of insurance, particularly "negative" insurance effected by the Customer.
- d) In the event the Equipment is lost or damaged (fair wear and tear excepted) while at the risk of the Customer, the Customer shall be liable to compensate Red Pix for the greater of the full replacement cost (without deduction for depreciation) or the insurance value prescribed on Red Pix's schedule of insurance values (which is subject to update from time to time), or in the case of damage Red Pix's full cost of repairing or replacing the Equipment as the case may be.
- e) If Equipment is lost or damaged the Customer is responsible for hire charges up to the time the Equipment is repaired or replaced for a maximum of 13 weeks. Customers are to make sure adequate insurance cover is obtained to cover this contingency and must include an evidence of the extension on the insurance policy.
- f) The Customer and employees of the Customer are the only persons permitted to use the Equipment and, without limiting the generality of the foregoing, the Customer shall not lend or rehire the Equipment to any other person.

9. CANCELLATION CHARGES

Except where otherwise agreed by Red Pix, cancellation of booked or reserved Equipment within forty-eight hours of the time specified for collection will incur a cancellation charge equal to 50% of the hiring fee from the period originally booked or reserved.

10. CUSTOMER LIMITATION OF LIABILITY

If, at the request of the Customer, Red Pix agrees in writing to limit any claim for loss or damage to the Equipment, the Customer hereby agrees and accepts the following charges, terms and conditions:

- a) The Customer acknowledges that Red Pix has not in any way represented itself to the Customer as a person carrying on the business of insurance.
- b) Where the Customer is an account customer, the Customer shall pay an additional charge equal to 10% of the total list Equipment rental charge for Equipment rented for use within Australia. Overseas usage charge is on application.
- c) Where the Customer is a COD customer, the Customer shall pay to Red Pix an additional charge equal to 20% of the total list Equipment rental charge for Equipment rented for use within Australia. Overseas usage charge on application.
- d) The Customer acknowledges that in the event of loss or damage to the Equipment Red Pix will limit the claim to three thousand, five hundred dollars inc. GST (\$3,500.00 inc. GST) in relation to each and every claim.
- e) Red Pix will limit any claim for loss or damage to Equipment within or outside Australia as specifically agreed to in writing, but such limitation EXCLUDES loss or damage to the equipment in the following circumstances:
 - i. Loss or damage caused by misuse, mechanical or electrical derangement, exposure to salt water, exposure to water, exposure to dust or sand, or confiscation by Customs or other authorities;
 - ii. Loss or damage directly or indirectly caused by or arising from war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
 - iii. Loss or destruction of or damage to any Equipment whatsoever or any loss or expense whatsoever resulting or arising from or any consequential loss or legal liability of whatsoever nature directly or indirectly caused or contributed to, by or arising from: ionising radiations or contamination by radioactivity from any irradiated nuclear fuel or from any nuclear waste from combustion of fuel; or the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
 - iv. Loss or damage resulting from leaving Equipment in vehicles whether locked or unlocked, but unattended.
 - v. Loss or damage to two way radios.
 - vi. Loss or damage to electric globes.
- f) All ordinary and reasonable precautions for the safety of the Equipment must be taken.

- g) In the event of loss or damage the Customer shall:
 - i. immediately notify Red Pix and the Police where necessary, and take any practicable steps towards the discovery and recovery;
 - ii. as soon as practicable give full written report of the circumstances of the loss or damage to Red Pix;
 - iii. and at the same time furnish to Red Pix any particular or evidence as may be reasonably be required by Red Pix or its insurer including attending at a lawyer's office and at Court to give evidence.
- h) The due observance and fulfillment of the Terms and Conditions and Endorsements as stated above in so far as they relate to anything to be done or complied with the Customer and the truth of the statements and answers made by the Customer at the time of instigating the loss and damage waiver, are conditions precedent to Red Pix limiting the liability of the Customer for any claims for loss or damage of the Equipment.

11. POWER OF ENTRY

Red Pix may enter any premises where Red Pix reasonably believes the goods are located for the purpose of inspecting, testing or taking possession of the goods in accordance within this Agreement and the Customer hereby indemnifies Red Pix against any liability Red Pix may incur in the exercise of its rights under this clause.

12. TERMINATION BY COMPANY

- a. Red Pix may, notwithstanding the specified period of hire and, notwithstanding any waiver of some previous default, forthwith terminate this contract and repossess the Equipment in any of the following events:
 - i. if the Customer shall fail to pay any hiring charges within two (2) days of the due dates;
 - ii. if the Customer shall do or permit any act or thing whereby Red Pix's rights in the Equipment may be prejudiced;
 - iii. if the Customer commits any breach of contract;
 - iv. if the Customer should become or be made insolvent or bankrupt or make any agreement or composition with its creditors or in case of the Customer being a limited company, should an order be made or a resolution passed for the winding up of such company.
- b. If such termination occurs the Customer will pay Red Pix all costs and charges already incurred under this contract.

13. OTHER CONDITIONS

- a. The minimum hiring period for Equipment hire for use interstate is two(2) days and overseas is one week.
- b. Equipment must not be used on any abnormal or hazardous assignment or taken from the ground other than on a regular schedule flight by a recognised airline other than with the prior written consent of Red Pix.
- c. The Customer is required to keep hired Equipment in safe custody and must ensure that it is used in a skillful and proper manner by persons having the appropriate qualifications and experience.
- d. The Customer must take all reasonable precautions to ensure that the equipment is not damaged or destroyed.

14. WAIVER

Failure of Red Pix to insist upon strict performance by the Customer, of any terms or conditions contained herein, shall not be taken to be as a waiver these terms or conditions, or of any right of Red Pix in relation thereto, and shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion.

12. GOVERNING LAW AND JURISDICTION

These terms and conditions and the contract governed thereby shall be governed by and construed in accordance with the laws from time to time, of the State of Queensland which is where the head office of Red Pix is located and any proceedings shall be brought and heard in Brisbane, Queensland, Australia.

13. GENERAL INSTRUCTIONS TO CUSTOMERS

- a. Hire charges are levied on a daily or weekly basis. Unless other arrangements are made with Red Pix, for the purposes of the calculation of hire rates, a day is deemed to commence and conclude at midnight. The weekly rate is equal in most cases to three times the daily rate but for some items is four times the daily rate. A week consists of any consecutive seven day period.
- b. Red Pix should be included and named as joint insured under all policies of insurance, particularly "negative" insurances effected by the Customer.
- c. It is recommended that the Customer makes in ample time, its own checks of the completeness and correct functioning of Equipment including film testing of all cameras and takes adequate reserves of all essential times.
- d. Filters including diffusers, graduateds, fogs, neutral densities and polascreeens, electric bulbs, etc, are subject to Clause 7 and 8 of the Terms and Conditions, and are only supplied on the understanding that all deterioration and/or damage while in the Customer's possession is the responsibility of the Customer. Each such item is examined before dispatch from Red Pix's premises to ensure that it is in good condition and, subject to Clause 7 and 8 of the Terms and Conditions, if any deterioration subsequently occurs (including during transit by air or other means) the Customer will be charged with its replacement cost. Filters etc, as provided in standard sets cannot be supplied separately or in part sets.

- e. All items are serviced at termination of each hire period but for extended hire, service and general maintenance may be arranged through Red Pix.
- f. Customers using Red Pix's testing/production areas are advised to insure all personnel and equipment used in those areas for the production as they would for a normal studio/location shoot.
- g. Equipment damaged by salt water is, unless treated immediately, in most cases subject to re-occurrence of salt water residue. This makes certain electronic items and components unusable. Special mention of production shooting in the vicinity of salt water should be made to Red Pix when ordering Equipment and to your insurance company.
- h. Customers are advised that any electrical equipment NOT belonging to Red Pix cannot be used or attached to the Equipment without the prior consent and testing by Red Pix and such testing will be subject to an additional charge. Failure to do this will render the Customer liable for all loss, including time, incurred as a result of this usage.
- i. Customers using digital equipment need to especially note that the management and back up of their data is entirely the Customer's responsibility. Customers are advised that data on hard drives may be corrupted if power supply to the hard drive is terminated. Customers are responsible for ensuring batteries are sufficiently charged and in good working order when recording or transferring or other Customer's data should not be left on CF cards/hard drives on returning equipment. If data is left it may be erased as a part of our service and preparation for the next customer. Red Pix will not be held responsible for any loss of data or possible privacy issues relating to left data.
- j. To avoid inconvenience to other hirers, any extension of hire must be arranged prior to termination of the original hire period.
- k. Any shortage of, damage to or malfunctioning of Equipment should be reported to Red Pix as soon as is possible or upon the return of Equipment whichever is the earlier.

14. RED PIX CONTACT DETAILS

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