

TERMS AND CONDITIONS OF TRADING of
GEAR HEAD FILMS PTY LTD
ABN: 95 130 479 015
AND OR BILLABONG PRODUCTIONS PTY LTD
ABN: 20 059 911 527

DEFINITIONS

"GH" means GEAR HEAD FILMS Pty Limited,
A.B.N. 95 130 479 015
&
BILLABONG PRODUCTIONS PTY LTD
ABN: 20 059 911 527

"You" means the person or entity (or his, her or its designated representative) that has hired Equipment from GHF "Equipment" means any and all film, video or other equipment, which has been hired to you by GHF.

AGREEMENT TO HIRE

GH has agreed to hire the Equipment to you on the terms and conditions set out in this document, including the attached Hire Agreement. These terms and conditions constitute a binding contract between you and GH, and replace all previous agreements or understandings between you and GH.

HIRE CHARGES

You hire each piece of Equipment specified in the Hire Agreement at the daily or weekly rates specified.

The daily rate will be charged for all or part of a day on which the Equipment is hired to you or is in your possession, custody or control. For the purposes of this Hire Agreement, a "day" is from 9am until 4.30pm, and a "week" is 7 consecutive days.

Unless otherwise agreed in writing between the parties, You will be charged for hiring the Equipment from the time the Equipment leaves GF's premises until the end of the specified hire period or until the time the Equipment is returned to GH, whichever is later.

You will be liable to reimburse GH for all delivery costs, stamp duty and any other taxes (including GST) applicable and other expenses, which GH may be liable to pay in respect of the hire of the Equipment to You. The minimum hiring fee for interstate use of Equipment is 2 days and for Overseas use 1 week. GEAR HEAD FILMS PTY LTD reserves the right to alter the rates set down in our Rental Catalogue.

PAYMENT

GHF will issue you with an invoice for the total hire charges (including expenses and taxes) at the end of the hire period (including any extensions of that period). If you have hired Equipment for more than 1 week, GH may issue you with invoices at the end of each week of hire. All invoices are payable within 30 days from the date on the invoice unless otherwise specified. Past due dates shall bear interest at a rate of 1 ½% per month and parties agree that such default interest is not a penalty but is a true measure of Damages incurred by GEAR HEAD FILMS PTY LTD. Payments received from the Customer will be credited first against any default interest and all such charges shall be payable on demand. In the event that the Customer fails to pay Hiring Fees when due, the Customer shall be liable for all out-of-pocket cost incurred by GEAR HEAD FILMS PTY LTD in collecting such amounts, including but not limited to reasonable outside legal cost and disbursements on a solicitor-client basis.

TAXES: The Customer will be solely responsible for any and all taxes (including GST), transportation charges duties, broker fees, bond, and all other cost arising out of the Customer's hire, use or transportation of the Equipment or otherwise resulting from the customer's hire of the Equipment

COLLECTION & RETURN OF EQUIPMENT

You must return all of the Equipment hired by you at the end of the hire period stated in the Hire Agreement in good working condition. If the Equipment is not returned by this time, resulting in GH incurring costs and/or expenses in order to meet its obligations to subsequent hirers, you will be invoiced for those costs and expenses.

You are responsible for collecting and returning the Equipment from and to GH's premises. Collection and return of the Equipment is at your risk and expense.

USE OF THE EQUIPMENT

You and Your employees are the only persons permitted to use the Equipment during the period of hire. The Equipment may not be hired to or used by third parties. The Equipment must not be taken interstate or overseas, or used for aerial or underwater photography, without GH's prior approval. Any such approval may be given with or without conditions, save that the following minimum conditions will always apply:
If you are travelling by air and you have hired a camera, it must be taken on board as cabin baggage (unless otherwise agreed with GH in advance); and
If the Equipment is to be used in a helicopter, it must be securely anchored to the helicopter. You must keep the Equipment safe at all times, and ensure that the Equipment is handled and used in a proper manner by people with the appropriate experience. The Equipment must not be left unattended at any time. You must not use the Equipment, or allow the Equipment to be used in dangerous or hazardous circumstances. You or your agent's must not modify or disassemble the Equipment.

CANCELLATION & TERMINATION

If you cancel an agreement for the hire of Equipment within 48 hours of the time specified in the Hire Agreement for collection of the Equipment, You will be liable to pay 50% of the hire charges for the period specified in the Hire Agreement. GH may terminate the Hire Agreement at any time without notice if:

- You do, permit to do or fail to do anything, which prejudices or may prejudice GH's rights in the Equipment;
- You fail to pay the hire charges; or
- You breach any of these terms and conditions.

LIABILITY

In the event that all or part of the Equipment is lost, stolen or damaged during the period that the Equipment is hired to You or is in Your possession (not including normal wear and tear), you will be liable as follows:

- If GH is unable to fulfil its obligations to subsequent hirers as a result of any Equipment being lost, stolen or damaged, you will be liable for any and all costs and expenses incurred by GH to enable it to meet those obligations;
- If GH makes a claim against any insurance policy held in respect of the Equipment (which decision is in GH's absolute discretion) in relation to any loss, theft or damage arising out of or relating to the hire of the Equipment by You, You will be liable to pay GH the sum of \$2,000 representing (amongst other things) loss of hire fees by GH and insurance excess;
- If for any reason GH's insurer denies liability for the damage to or loss or theft of any Equipment, or if by Your conduct or the conduct of any of Your employees or agents (either directly or indirectly) GH is excluded from making a claim under any insurance policy, You must compensate GH for the full replacement cost of the lost, stolen or damaged Equipment; and
- You fully indemnify GH in relation to any costs and/or expenses arising out of the damage to, or loss or theft of any Equipment. You must immediately notify GH of any damage to, or loss or theft of any Equipment. GH shall not be liable to You or Your employees, officers or agents for any direct or indirect loss, injury or damages of any nature, including but not limited to loss of production, loss of sales, expenses or damage to equipment, relating to or arising out of the hire of the Equipment by you.

You hereby agree to indemnify and keep indemnified GH, its employees, officers and agents, in respect of any claim, action, suits and demands brought by third parties arising out of or relating in any way to Your use of the Equipment

LOSS, DAMAGE, INSURANCE:

Risk.

0.1 The Equipment shall be at the Customer's risk from Delivery until Return except that acceptance of Equipment by GEAR HEAD FILMS PTY LTD staff upon Return does not release the Customer from responsibility for loss or damage to Equipment pursuant to these Conditions of Business.

0.2 Losses.

Subject to Section 0.5 below, in the event that Equipment is lost, Stolen, missing, destroyed, or damaged beyond repair while at the risk of the Customer, the Customer shall be liable for and agrees to compensate GEAR HEAD FILMS PTY LTD for the greater of replacement cost (without deduction for depreciation) or the insurance value prescribed on GEAR HEAD FILMS PTY LTD schedule of Insurance values, which is available upon request and subject to update from time to time. Further, the Customer Agrees to compensate GEAR HEADFILMS PTY LTD for the Hire Fee for the Equipment until the Equipment is Repaired or replaced, provided that such charges will not exceed thirteen weeks hire.

0.3 Customer Insurance. Subject to Section 0.5 below, the Customer, at its expense, obtain and maintain In full force and effect insurance covering any and all liability, claims, demands, actions, cause of action, loss, costs, damage and expenses arising out of or based upon the use or Design, condition, repair, merchantability, functioning, performance or malfunctioning of Equipment, or its material or workmanship, no matter how caused or occasioned, but excluding gross negligence or willful misconduct of GEAR HEAD FILMS PTY LTD, its officers, directors, employees, agents, or representatives. Such insurance (a) shall be written by a reputable insurance company maintaining (a) AM Best Rating of A- and Financial size 5 (the Customer's insurers must be primary insurers of the Equipment during the period of hire and coverage must be on a non-contributor basis), and (b) must include an extension to include hire charges incurred on lost or damaged Equipment whilst it is being replaced or repaired
In accordance with Section 0.2

0.4 Insurance Certificates. Subject to Section 0.5 below, prior to Delivery of the Equipment, the Customer shall provide to GEAR HEAD FILMS PTY LTD valid Certificates of insurance in accordance with Section -4 and for the values requested by GEAR HEAD FILMS PTY LTD and shall provide at least 30 days prior notice of any proposed modification, alteration or cancellation of any such insurance. GEAR HEAD FILMS PTY LTD **Must be noted** on the Insurance certificates as a co-insured Under all policies of insurance and the Customer agrees to inform its nominated insurer where any Equipment may be subjected to abnormal or hazardous conditions or possible damage by foreign materials such as salt, water, dust or sand so that full and appropriate insurance cover may be effected. Notwithstanding anything else in this Section -4, the Customer shall remain primarily liable to GEAR HEAD FILMS PTY LTD pursuant to the provisions of Section -2 above, and GEAR HEAD FILMS PTY LTD may enforce its remedies hereunder directly against the Customer without proceeding against the insurer.

0.5 GEAR HEAD FILMS PTY LTD RISK OPTION.

If at the request of the Customer, Gear Head agrees in writing, prior to Delivery, to accept responsibility for loss or damage to the Equipment, the Customer; (a) shall, if the Customer is an Account Customer, pay GEAR HEAD FILMS PTY LTD an additional 10% of the total Hiring Fee; (b) shall, if the Customer is a COD Customer, Pay to GEAR HEAD FILMS PTY LTD an additional charge of 20% of the total Hiring Fee; (c) acknowledges that In the event of loss of or damage to the Equipment, the Customer shall pay to GEAR HEAD FILMS PTY LTD on demand the first \$2,000 plus GST in relation to each and every claim. **However, any such acceptance of risk by GEAR HEAD FILMS PTY LTD pursuant to this Section 0.5 shall EXCLUDE, and the Customer shall remain liable for, loss or damage or liability of any kind directly or indirectly caused or contributed to or arising from (a) misuse, mechanical or electrical derangement; (b) exposure to salt, exposure to water, exposure to dust or sand; (c) leaving Equipment in an unattended vehicle whether locked or unlocked (d) war, invasion, act of foreign enemy, hostilities (weather war be declared or not) civil war, Rebellion, revolution, insurrection or military or usurped power; (e) confiscation by Customs or other authorities. In addition, the Customer shall remain liable for any loss**

GENERAL CONDITIONS:

Subject to the terms of this Hire Agreement may only be varied or amended by agreement in writing between you and GH. If you require an extension of a Hire Agreement, GH may give its consent without issuing a written confirmation. In those circumstances, you agree that you are liable for the hire charges for the extended hire period. Failure by GH to insist upon strict performance by you of any of your obligations under this Hire Agreement does not constitute a waiver of GH's rights in relation to those or any other obligations. Except as required by law, gives GH no warranty as to the performance of the Equipment, its suitability or fitness for purpose and all statements or representations express or implied relating to the Equipment, its quality or fitness for any purpose are excluded. Nothing in this document is to be construed as excluding, restricting or modifying any warranty implied by the Trade Practices Act (1975). Any liability of 's in respect of a breach of a warranty implied by the Trade Practices Act is limited at GH's sole discretion to: the re-hire of the Equipment; or the cost of the hire of Equipment. GH takes no responsibility of loss of Data field recorded material. Data management and postproduction workflows arising from operational misuse from Operational errors from your employees' or contractors. You indemnify Gear Head Film's from any Liability and such claims.