



## EQUIPMENT RENTAL AGREEMENT

### (Terms and Conditions)

This Equipment Rental Agreement ("**Agreement**") is entered into by and between the Customer and IMAGEZONE NZ LIMITED (which shall be known in this agreement as "**IMAGEZONE**"). This Agreement is subject to the following Terms and Conditions and the Customer agrees to be bound hereby. In the event of any conflict between the Annexes and this Agreement, this Agreement shall control.

#### INTERPRETATION

"**Hire Period**" means the period of time the Equipment is rented, as agreed (whether orally or in writing) between IMAGEZONE and the Customer, or where the Customer retains Equipment for a longer period than agreed by IMAGEZONE, the period commencing from when the Customer takes possession of the Equipment until such time as the Customer returns the Equipment to IMAGEZONE, being the period of time for which the Customer will be liable for Rent in respect of the Equipment.

"**GST**" means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985, and any penalties, additional tax or interest payable in respect of goods and services tax.

"**Rent**" means all amounts payable to IMAGEZONE by the Customer under this Agreement in connection with the use of the Equipment during the Hire Period and shall be paid in New Zealand dollars (unless otherwise agreed between the parties).

- HIRE OF EQUIPMENT AND VEHICLE:** IMAGEZONE agrees to let and the Customer agrees to take on hire, certain motion picture equipment (the "**Equipment**") and, if required by the Customer, a vehicle or vehicles for transporting the Equipment ("**Vehicle**") for the term and rental rate(s) as set out in written invoices, lease schedules or other addenda prepared for that purpose (the "**Annexes**"), each of the Annexes forming part of this Agreement.
- USE OF EQUIPMENT:** The Customer agrees to use, operate, maintain and store the Equipment with due and professional care, in the manner for which the Equipment is intended and in compliance with manufacturer specifications, any warranty restrictions, and applicable insurance requirements. The Equipment shall be used only by the Customer's duly authorised employees or contractors who possess the appropriate qualifications and experience. IMAGEZONE shall have no responsibility for the conduct of any of the operators of the Equipment whether or not they are agency clients of IMAGEZONE and the supervision of and responsibility for the operators remains always the Customer's responsibility. The Customer shall retain exclusive control and custody of the Equipment and shall adopt such precautions, security and other measures as are reasonably necessary and appropriate to protect the Equipment from loss, damage or deterioration during the Hire Period. The Customer shall not make any alterations, additions or improvements to the Equipment without IMAGEZONE's prior written consent. Any alterations, additions or improvements that are made to the Equipment during the Hire Period shall be deemed IMAGEZONE's property, and subject to the terms of this Agreement. In the event the Customer uses any equipment or components from any other provider (for example, personal gear, batteries or power cables) together with IMAGEZONE's Equipment, then IMAGEZONE shall not be responsible for any equipment malfunction or damage of any kind resulting from such use.
- USE OF A VEHICLE:** The Customer guarantees that where the hire includes a Vehicle, the Vehicle will only be driven by persons with an appropriate and current licence and that such vehicles will be used in accordance with all laws governing their use.



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4. **HIRE PERIOD:** The Hire Period shall commence on the date that is agreed between the parties that the Equipment be collected, or the date when the Equipment is in fact collected, from IMAGEZONE (whichever is earlier) and shall continue until the date that is agreed between the parties that the Equipment be returned, or the date when the Equipment is in fact returned, to IMAGEZONE (whichever is later).
5. **RENT:** The Customer shall be liable for Rent payable to IMAGEZONE under this Agreement in respect of the duration of the Hire Period. Unless otherwise specified in writing, full daily rates shall be charged for each day or portion of the Hire Period thereof (Sundays and holidays included) that the Equipment has not been returned. A full day's rental will be charged for any Equipment not returned by 10:00 am. Unless otherwise agreed by IMAGEZONE, cancellation of any booking of Equipment within 24 hours of the commencement of the Hire Period will incur a cancellation charge of up to 100% of the Rent payable for the term of the Agreement. IMAGEZONE reserves the right to alter its rental rates without notice.
6. **PAYMENT:** The Customer's obligation to pay the Rent is absolute and unconditional. IMAGEZONE will provide invoices to the Customer setting out the Rent required to be paid in relation to the rental of the Equipment under this Agreement. Payment is due on or before the due date as stated on the invoice. Late payment of Rent under this Agreement shall incur a late fee of 10% percent (of the total Rent payable) for every month (or part thereof) that Rent is due and not paid. Minimum late penalty fee is \$50 plus GST. The Customer shall pay the Rent, net all applicable charges and without offset of any kind. The Customer is responsible for the payment of all applicable taxes including GST, transport charges, duties, levies, broker fees and all other costs occurring from or resulting from the Customer's rental of the Equipment under this Agreement.
7. **DELIVERY / RETURN OF EQUIPMENT:** The Customer is responsible for the collection and return of the Equipment, excluding where prior alternate arrangements have been made with IMAGEZONE. Delivery/risk of the Equipment is deemed to take place/pass at the time the Equipment is placed on the vehicle or with a carrier which is to take it from IMAGEZONE's place of business to the Customer's specified location. IMAGEZONE has discretion as to the mode of delivery and the Customer must, at all times, bear the risk and the cost of delivery. The Equipment will be deemed to be free from damage and defects at the time the Customer takes possession unless otherwise agreed. IMAGEZONE is not responsible for any delay or default by the Customer, the carrier, or any third party in the pickup, delivery, shipping or storage of the Equipment. The Customer shall return the Equipment at its own expense to IMAGEZONE's place of business in the same condition in which it was received by the Customer, subject to reasonable wear and tear. If additional technical checks or internal cleaning are required, the Customer will pay for such work.
8. **OUT--OF--COUNTRY USAGE:** Unless otherwise provided in this Agreement, the Customer shall not remove the Equipment from New Zealand without IMAGEZONE'S prior written consent.
9. **STORED DATA:** The Customer agrees to ensure that the Equipment is returned to IMAGEZONE clear of all content or other data of any kind acquired during the Hire Period, such that the Equipment is returned in a state that is suitable for subsequent immediate hire following the Hire Period. The Customer is solely responsible for protection and back up of the Customer's data and IMAGEZONE has no obligation or liability for taking, or failing to take, any action with respect to such content or data, including maintaining or safe guarding any content or data that may remain on or within the Equipment following the Hire Period, including in relation to confidentiality.
10. **INSURANCES:** By entering into this Agreement, the Customer agrees to hold the following insurances:
  - a) **Property:** The Customer shall provide and maintain all risk property insurance covering all Equipment rented hereunder for full replacement cost ("new for old", without deduction for depreciation or allowance for alleged "betterment") and loss of rental value, for the duration of the Hire Period, including any damage



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caused while the Equipment is being tested or used by the Customer's agents or employees, or is in transit or storage. The insurance shall name IMAGEZONE as loss payee, and expressly provide that IMAGEZONE's rights shall not be affected by any act or neglect or breach of condition by the Customer. Insurance shall cover all risks of physical loss or damage, including risks of mobile operation (such as airborne, aquatic, or vehicular use) and loss from unattended vehicles.

- b) **Liability:** The Customer shall at all times maintain liability insurance for property damage and bodily injury, including contractual liability. The Customer shall name IMAGEZONE as an additional named insured on all liability insurance. IMAGEZONE provides no liability insurance coverage for any equipment.
- c) **All Policies:** All insurance required by this Agreement shall be written by insurers licensed to do business in New Zealand, with experience insuring film production, and/or having a "Best's" rating of not less than B+\VIII. The Customer shall provide IMAGEZONE with a Certificate of Insurance before any Equipment is rented. No insurance will be cancelled during this Agreement, nor may any be materially modified or reduced upon less than 30 days prior written notice to IMAGEZONE. They must cover any hire charges incurred while Equipment is lost, damaged or destroyed.
- d) **Company Risk Option:** Where requested by the Customer, IMAGEZONE may agree to arrange appropriate property insurance. In this case the Customer shall be liable to pay an insurance waiver fee of 10% of the Rent charged in respect of the hire, with a minimum fee of \$50 plus GST, which shall be added to the Customer's invoice. In all cases the Customer must pay any excess, deductible or exclusion and applicable premium in relation to each and every claim in relation to this Agreement.

- 11. **TITLE:** IMAGEZONE shall retain title and ownership of all Equipment throughout the Hire Period. The Customer agrees not to remove or cover IMAGEZONE's identification or allow it to be covered or removed from the Equipment. The Customer will not lend or sub-hire the Equipment to any other person or persons.
- 12. **SCREEN AND OTHER CREDITS:** The Customer shall give IMAGEZONE screen and/or other credits as specified by IMAGEZONE, and in no less than the same form, size and manner given to other suppliers or service providers. IMAGEZONE shall have the absolute right to publicise the use of its equipment in the production subject to this Agreement.
- 13. **NO WARRANTIES / RESPONSIBILITY:** By its inspection, waiver of inspection, and/or acceptance of delivery of the Equipment, the Customer accepts the Equipment as fit for the purpose intended, and waives any claim that may suggest otherwise except for any latent defect that is not apparent on delivery. To the fullest extent permitted by law, the Equipment is rented without any express or implied warranties or guarantees of any kind, including but not limited to implied warranties of merchantability, against interference or infringement, or that it will be fit for any particular purpose or performance. IMAGEZONE assumes no responsibility for any actual or consequential damage resulting from or associated with the performance or non-performance of its equipment after it has left IMAGEZONE's custody and control, whether the alleged failure is caused by the Customer, its personnel, or any other party, entity or cause.
- 14. **RISK OF LOSS OR DAMAGE AND INDEMNITY:** The Customer assumes all risk of loss or damage to the Equipment or resulting from its inspection, shipment, or use for the duration of the Hire Period. The Customer hereby indemnifies and holds harmless IMAGEZONE, including its owners, directors, agents and employees, from and against any and all loss, damage, claim, or liability of any kind or nature whatsoever, including legal expenses, arising from the condition (including, without limitation, latent and other defects), use, or operation of the Equipment, or any malfunction of any kind during the Hire Period. This indemnification shall survive this Agreement for any and all causes or events arising during its term.



15. **CUSTOMER'S EXCLUSIVE REMEDY:** The Customer will immediately notify IMAGEZONE if any item of Equipment is found not in working condition, and shall return any such Equipment to IMAGEZONE at the Customer's sole cost and expense. IMAGEZONE shall use reasonable efforts to repair or replace any Equipment which was damaged or defective before delivery or, at IMAGEZONE's option, refund any Rent for such items based pro rata on their rate as set forth in the Annexes. IMAGEZONE assumes no liability for the performance or non-performance of Equipment.

16. **INSPECTION BY IMAGEZONE:** IMAGEZONE may inspect rented Equipment at any time, and the Customer shall provide IMAGEZONE with access to the Equipment's location. Any breach of this provision shall be deemed a material breach of this Agreement, and entitle IMAGEZONE to any of its remedies herein.

17. **LOSS AND DAMAGE:**

**(A) Equipment**

- a) **Repair:** The Customer will be responsible for all repair costs for any damaged or malfunctioning Equipment. If any item of Equipment is returned in damaged or non-working condition, the Hire Period shall be deemed to be extended by the shortest time reasonably necessary to repair such malfunction or damage or to replace the Equipment. The extended Hire Period shall apply only to the damaged or malfunctioning item, unless it forms an essential component or part of other Equipment (in the discretion of IMAGEZONE). IMAGEZONE reserves the right to charge the customer for this extended rental period. Rent due pursuant to this clause shall accrue at the initially contracted rate.
- b) **Replacement:** IMAGEZONE alone shall determine whether an item of Equipment is eligible for repair or whether it is considered to be so damaged that it must be replaced. If any item of Equipment is lost, stolen, damaged beyond repair, destroyed or otherwise not returned to IMAGEZONE for any reason, the Customer shall pay to IMAGEZONE the full replacement cost of such Equipment or the closest comparably equipped model ("new for old", without deduction for depreciation, credit for "salvage value", or allowance for alleged "improvement", in addition to Rent accrued at the time of actual replacement, or for any extension of the Hire Period which occurs as a result of said damage, destruction or loss). IMAGEZONE may apply rental payments, advances or deposits obtained from the Customer to the cost of repair or replacement of lost or damaged Equipment at its sole discretion without waiving any of its other rights under this Agreement.
- c) **Other:** The Customer shall remain primarily liable for the cost of Equipment repair or replacement including related costs e.g. shipping, customs, labour, and shall pay IMAGEZONE's invoices for the same when due, without delay. The Customer shall bear sole responsibility for seeking a recovery from its insurer for any of IMAGEZONE's repair or replacement costs.
- d) The Customer shall not allow the Equipment to be used on any abnormal or hazardous assignment without prior written permission of IMAGEZONE. This includes but is not limited to environments where the equipment could be affected by atmospheric or environmental corrosion, including volcanic or salt laden atmospheres, sandy, dusty, salt water or fresh water environments, and on boats or over water.

**(B) Vehicle**

- a) Where the damage is covered by IMAGEZONE'S insurance, the Customer is liable for an excess fee of \$1,750, unless they have purchased Reduced Insurance Cover from Imagezone:
- b) Where the Customer has purchased Imagezone's Reduced Insurance Cover then the Customer is liable for an excess fee of \$500, unless;
  - (i) If the driver of the Vehicle is between the ages of 21 and 24 years old the excess fee will be reduced to \$1,000.
  - (ii) If the driver of the Vehicle is under the age of 21 the excess fee will be reduced to \$1,200



(iii) If the driver of the Vehicle has had their license for less than 12 months the excess fee will be \$1000

c) Where the damage is not covered by IMAGEZONE's insurance (for example damage to tyres) or if IMAGEZONE'S insurer declines cover for any reason the Customer shall be liable for the full amount of damage/loss.

**18. DEFAULT AND BREACH OF TERM:**

a) In the event of:

- (i) default by the Customer in the payment of Rent under this Agreement; or
- (ii) breach of, failure to perform or observe any of the terms, covenants or conditions of this Agreement when due; or
- (iii) the Customer assigning or attempting to assign the Equipment or any interest therein as security or otherwise, or
- (iv) any lien or encumbrance being placed against any item of the Equipment by any person or entity claiming rights against the Customer; or
- (v) the Customer becoming insolvent or executing an assignment for the benefit of creditors; or
- (vi) a voluntary or involuntary petition in bankruptcy being filed by or against the Customer; or
- (vii) the Customer misusing, mishandling or damaging the Equipment and/or refusing to provide IMAGEZONE access to inspect it; or
- (viii) the Customer attempting to remove the Equipment from New Zealand without IMAGEZONE's prior written consent; or
- (ix) any legal process of any kind being initiated with respect to IMAGEZONE's Equipment,

b) then, IMAGEZONE may, at its option, exercise one or more of the following remedies:

- (i) declare the entire amount of Rent payable under this Agreement to be immediately due and payable from the time of breach; or
- (ii) sue for and recover all Rent or other sums due or payable under this Agreement; or
- (iii) take possession of the Equipment without demand or notice and without liability for trespass or other damages in connection with such taking, the exercise of any of the foregoing remedies not amounting to a termination of this Agreement unless IMAGEZONE notifies the Customer thereof in writing; however, in addition:
- (iv) IMAGEZONE may terminate this Agreement at its reasonable business discretion, and may recover from the Customer the difference between any Rent which would have accrued for any continued Hire Period and the Rent IMAGEZONE may actually receive from re-renting such Equipment (if any); and
- (v) IMAGEZONE may pursue any other remedy at law or in equity, and all such remedies are cumulative and may be exercised concurrently or separately.

In the event IMAGEZONE is required to take any legal or other action to enforce this Agreement or secure payment for damages or lost Rent, including arbitration or any other form of alternative dispute resolution, IMAGEZONE shall be entitled to recover attorney fees, expert witness fees, and all other costs of such action(s), regardless of whether the Customer or its insurer is held ultimately responsible for IMAGEZONE's damages or loss.

**19. APPLICABLE LAW:** This Agreement shall be deemed to have been made in New Zealand and shall be interpreted and governed in accordance with the laws of New Zealand.



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20. **NOTICES:** Every notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed effective: if personally delivered, at the time of delivery; or if by overnight mail or courier, on the date which is specified as the date on which it is expected to arrive at its destination. For the purposes of notice, the addresses of IMAGEZONE and the Customer shall be included in the Annexes to this Agreement.
21. **WAIVER:** Any waiver by IMAGEZONE of any term or condition of this Agreement must be in a writing signed by IMAGEZONE in order for it to be effective. Any waiver is limited to the specific circumstances; place and time identified therein, and shall not be applicable to any other circumstances, place or time.
22. **FORCE MAJEURE.** Except for the payment of money, neither party hereto shall be liable for any failure of or delay in the performance of any duty hereunder for the period and to the extent that such failure or delay is due to Acts of God or the public enemy; war, insurrection or riots; fires, governmental actions; strikes or labour disputes; inability to obtain materials, accessories, equipment, or parts from vendors; or any other cause beyond the affected party's absolute control. Upon the occurrence of any such event, the time required for performance by the affected party of its obligations arising under this Agreement shall be extended by a period equal to the duration of such event, provided that the affected party shall take all reasonable efforts to limit the duration of any such event, and keep the other party apprised of the event, and any such efforts to perform notwithstanding same.
23. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties regarding the transactions to be performed hereunder. This Agreement supersedes any previous agreement, understanding or arrangement whether written or oral. This Agreement may not be amended or modified except by an instrument in writing signed by the parties.