

# Lightworkx Photography

## EQUIPMENT RENTAL TERMS AND CONDITIONS:

### 1 DEFINITIONS

1.1 "Day Rental" means a rental term of up to ten (10) consecutive hours on any day of the week.

1.2 "Half Day Rental" means a rental term of up to five (5) consecutive hours, in which equipment is charged to the Hirer at 60% on all rental fees.

1.3 "Rental Term" means the period commencing from the Pick Up Date and Time to the Return Date and Time.

1.4 "Week Rental" means a rental term of five (5) consecutive days, falling on any days of the week and is charged at four (4) times the daily rate.

1.5 "Weekend Day" means a day falling on a Saturday or Sunday, in which the rental fees are the same as on a Working Day.

1.6 "Working Day" means any day falling on a Monday, Tuesday, Wednesday, Thursday or Friday.

### 2 CONSTRUCTION

2.1 A reference to either party includes that party's successors and permitted assigns and transferees.

2.2 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

### 3 RENTAL OF EQUIPMENT

3.1 Upon request by the Hirer to rent equipment from the Owner, the Owner in its absolute discretion may either accept or reject such request. In the event that the Owner accepts the Hirer's request, the Owner will confirm such in writing and reserve the requested rental equipment for the Hirer on the requested day(s) of rental. Once a rental request has been confirmed, the Owner accepts no liability for its later notice of cancellation, due to damage or loss of equipment.

3.2 In the event that the Hirer wishes to cancel their confirmed rental reservation, the Hirer must give two (2) days written notice to the Owner, prior to the commencement of the Rental Term. If the cancellation by the Hirer falls within twenty-four (24) hours of the Rental Term, the Hirer must pay to the Owner a cancellation fee equivalent to one (1) day's rental.

3.3 Once both parties have signed this Agreement and payment has been made by the Hirer to the Owner or an alternative method for payment has *been agreed upon by the parties, this Agreement will come into effect between the parties for the rental of equipment on the terms and conditions as set out in this Agreement.*

3.4 At the above Return Date and Time or earlier termination (for whatever reason) of this Agreement, the Hirer will at its expense deliver up the equipment item(s) in good working order and undamaged condition (reasonable wear and tear excepted) to the Owner's premises or other location as reasonably directed by the Owner.

3.5 Late returns will incur a penalty charge of double the daily rental fee for each day the rental equipment item(s) remain late until the day all the rental equipment item(s) are returned. This penalty charge is calculated on each individual rental equipment item that is late in being returned. In addition, the Hirer must pay any debt collection costs.

3.6 *Notwithstanding the Owner's rights to charge the Hirer late penalty fees in clause 3.5 for late returns, if the Hirer does not return the equipment items by the Return Date and Time, the Owner may choose to enter any premises where the Owner reasonably believes the equipment item(s) may be located and the Hirer will provide all reasonable authority and assistance to enable recovery of the equipment item(s) by the Owner. In such event, the Hirer releases the Owner from any liability or damage incurred in retaking or attempting to retake possession of the equipment item(s).*

3.7 Where the Hirer wishes to extend their Rental Term past the above Return Date and Time, they must inform the Owner of this in writing. The Owner in its absolute discretion, may either accept or reject such request for an extension. In the event that the Owner accepts an extension to the Hirer's current Rental Term, it will accordingly amend this Agreement's Return Date and Time and rental fees payable by the Hirer.

### 4 COLLECTION

4.1 The Hirer shall collect all equipment required for its rental from the

premises of the Owner, unless the Owner, at its discretion, chooses to deliver the equipment to the Hirer for either a small fee or free of charge, such fee being at the discretion of the Owner.

## **5 PAYMENT**

5.1 Before taking possession of the rental item(s), the total rental price must be paid by the Hirer to the Owner, unless the Owner, at its discretion, chooses to allow the Hirer to pay at a later date upon the Owner's invoice or to pay a deposit only, the sum of which will be decided by the Owner upon the Hirer's collection or Owner's delivery. In every event, the Hirer shall provide its credit card imprint to the Owner. The Hirer authorizes the Owner to charge the Hirer's credit card for any additional rental fees and other charges incurred as a result of late return of equipment.

5.2 The Hirer's obligation to pay the rental fees and any other moneys under this Agreement is absolute and unconditional. Without limitation, the Hirer's payment obligations will continue notwithstanding any defect, breakdown, accident, loss, theft or damage to the Equipment. The Hirer's payment obligations are absolute and are not to be subject to withholding or deduction for any reason (and whether by set off, counterclaim or otherwise).

5.3 If in the opinion of the Owner, there has been any defects or damage of the Owner's equipment item(s), howsoever arising, during the Hirer's Rental Term or whilst in the possession of the Hirer, the Hirer must pay the Owner the insurance excess of NZ\$1000.00 and all freight and associated costs, or the Owner may charge the Hirer for replacement costs for applicable equipment item(s). In the event that any or all of the equipment is lost through an act of theft arising during the Rental Term through to the time the item(s) are returned to the Owner, the Hirer must pay the Owner the insurance excess of NZ\$2000.00 and all freight and associated costs, or the Owner may charge the Hirer for replacement costs for applicable equipment item(s).

5.4 The Hirer is aware that the Owner's Insurance does not cover for equipment item(s) that is/are lost from an unlocked vehicle or in the open air.

5.5 In the event that the Owner's Insurance Company refuses to compensate the Owner for any reason whatsoever, the Hirer agrees to pay the Owner for full replacement costs of any damaged and/or lost equipment item(s) hired during the Hirer's Rental Term. The Hirer is also liable for any debt collection costs, interest and associated costs in the course of the Owner collecting such payment from the Hirer.

5.6 The Hirer must pay to the Owner a penalty fee, for overdue rental fees outstanding and unpaid, of 4% charged on every 30 days the amount remains outstanding until paid.

## **6 DEFECTS NOTED BEFORE AND AFTER POSSESSION**

6.1 The Hirer shall examine and inspect the rental equipment item(s) before taking possession. The Hirer shall note any defects to the equipment item(s) and bring them to the attention of the Owner. The Owner shall note the defects to which the Hirer has referred to. The Hirer shall not be liable to the Owner for the defects noted by the Owner.

6.2 Upon return of equipment item(s), the Owner shall examine and inspect same. In the event that the Owner discovers any defects or damage to any of the equipment item(s), not already noted by the Owner before the Hirer's possession, or deems that the equipment item(s) have been subject to adverse conditions or use by the Hirer, the Owner may charge the Hirer for the cost of professional inspection, cleaning, servicing and repair by a qualified agent appointed by the Owner. Or, the Owner in its absolute discretion can elect to invoke clause 5.3.

## **7 USE OF EQUIPMENT**

7.1 The Hirer shall use the equipment item(s) only for the purpose as disclosed to the Owner and stated above.

7.2 During its Rental Term, the Hirer must keep all the equipment item(s) in good working order and condition and to return the equipment item(s) to the Owner in the same condition as when the Hirer took possession. Reasonable wear and tear is excepted.

7.3 The Hirer must ensure the equipment item(s) are used only by suitably trained personnel.

7.4 The Hirer must retain possession of all equipment item(s) throughout the duration of its Rental Term and must not attempt to sell, assign, transfer or otherwise dispose of (whether by security or otherwise) the equipment item(s) to any third party or encumber the equipment item(s) in any way.

7.5 The Hirer must not assign, transfer or otherwise dispose of (whether by way of security or otherwise) or encumber this Agreement or the Hirer's rights under this Agreement without the prior written consent of the Owner.

7.6 The Hirer must not alter any identifying markings on the equipment item(s).

7.7 The Hirer must not replace any item(s) or parts of the equipment, or make any alterations, additions or modifications to the equipment item(s), except with the express permission from the Owner first.

7.8 Where the Owner authorizes the Hirer to replace any item(s) or parts of the equipment, such replacement must be of similar quality, standard and design to the material as the item or part that is being replaced and the costs for such replacement shall be borne by the Hirer, who shall indemnify the Owner for such costs.

7.9 Where the Owner authorizes the Hirer to make any alterations, additions or modifications to any of the equipment item(s), all costs, expense and liability for such alteration, addition or modification shall be borne by the Hirer, who shall indemnify the Owner against any such costs, expense or liability. Where such alteration, addition or modification diminishes the utility of the equipment or impairs the condition of the equipment below the utility and condition of that equipment immediately prior to such alteration, addition or modification, the Owner has the right to charge the Hirer for any professional costs of inspection, cleaning, servicing and repair or other to restore the equipment item(s) to a condition that is satisfactory to the Owner. The professional will be a qualified agent appointed by the Owner.

7.10 Where the Hirer has replaced any item or part of the equipment or made any alteration, addition or modification, immediately upon that item or part becoming incorporated or installed in or attached to the equipment, title to such item or part shall vest in the Owner and be subject to this Agreement and be deemed to be included in the equipment for all purposes hereof, to the same extent as if the item or part had been originally incorporated or installed in or attached to the equipment.

7.11 The Hirer must not attempt to open the internal body of any camera or attempt to clean the sensor. Such action will damage the equipment. In the event that the Owner deems any equipment item(s) to have been subject to such action once returned, the Owner may charge the Hirer for the cost of professional inspection, cleaning, servicing and repair or other by a qualified agent appointed by the Owner. Or, the Owner in its absolute discretion can elect to invoke clause 5.3.

7.12 The Hirer must not attempt to repair or adjust the equipment item(s) other than to perform normal manufacturer specified operator adjustments.

7.13 The Hirer must notify the Owner immediately following any loss of, or damage to, the equipment item(s), howsoever arising.

7.14 The Hirer must advise the Owner of any situation that may have exposed the equipment item(s) to any future potential damage.

7.15 The Hirer must allow the Owner to inspect the equipment item(s) at any reasonable time upon the Owner first giving the Hirer reasonable notice.

7.16 The Hirer must notify the Owner immediately in writing of any change in the Hirer's address, telephone or facsimile numbers or position of authorized persons renting the equipment item(s).

7.17 The Hirer must not use or install the equipment item(s) in any manner that would lead to the equipment item(s) becoming a fixture.

7.18 The Hirer must comply with all relevant statutes, regulations and other laws relating to the use, regulation or licensing of the equipment item(s) and pay all requisite fees and charges.

7.19 The Hirer permits the Owner, at the Owner's expense, to use the name of the Hirer and to act on behalf of the Hirer, in exercising any rights or instituting, carrying on or enforcing any legal proceeding the Owner believes is reasonably required to protect the rights of the Owner in the equipment item(s) (including in relation to recovery of the equipment item(s)), and the Hirer hereby irrevocably authorizes the Owner accordingly, and, in this regard, the Owner agrees to act in such a manner so as to not be prejudicial to the Hirer's business reputation.

7.20 The Hirer must notify the Owner of the address(es) of the location(s) where the equipment item(s) will be used for the duration of the Rental Term.

7.21 The equipment item(s) must not be taken outside New Zealand without the prior written consent of the Owner.

## **8 REPOSSESSION AND TERMINATION**

8.1 The Owner has absolute discretion to terminate this Agreement, at any time, without notice or cause and shall not be liable for any consequent loss or profit or loss of bargain, suffered by the Hirer in relation to third parties, dependent on the use of the equipment item(s) in this Agreement.

8.2 The Owner reserves the right to, without notice or cause, enter the premises where the Hirer is using the equipment item(s) and take repossession of same from the Hirer. In the event that the Owner deems any equipment item(s) to be lost, stolen or damaged beyond economic repair, the Owner can elect to terminate this Agreement, whereupon the Hirer will be liable for the total rental fee payable under this Agreement and all costs payable under clause 5.3.

8.3 A termination of this Agreement does not affect the Hirer's obligations to pay the Owner for any sums payable under this Agreement and does not affect any other rights the Owner has under this Agreement.

8.4 In the event that the Owner terminates this Agreement, the Hirer will pay the Owner for the Owner's loss of bargain, in regard to presently confirmed rental reservations which the Owner may have with other parties, pertaining to the equipment item(s) in this Agreement. The amount payable is the full value of the presently confirmed rental reservations.

## **9 INDEMNITY**

9.1 The Hirer agrees to indemnify the Owner or their duly authorized agents against all costs, including but not limited to, debt collection costs and legal fees incurred by the Owner in relation to the recovery of monies, goods or services that may be required and due from time to time, pursuant to the terms and conditions of this Agreement.

9.2 In addition to clause 9.1, the Hirer indemnifies the Owner against:

9.2.1 Any loss of or damage to the equipment, howsoever arising;

9.2.2 Liability for any death, injury or damage to any person or property arising directly or indirectly from the equipment or its use;

9.2.3 Any claim for breach of intellectual property rights arising in connection with the equipment or its use;

9.2.4 Any loss arising from all or any part of this Agreement being invalid, void, voidable or unenforceable for any reason;

9.2.5 Any loss or liability incurred by the Owner resulting from the Hirer's possession, use or operation of the equipment; and

9.2.6 Any liability which the Owner may incur under any tax legislation by reason of use of the equipment for any purpose other than as stated by the Hirer to the Owner.

9.3 Each indemnity in clause 9.2 is a separate and independent obligation and continues after termination of this Agreement.

## **10 HIRER'S REPRESENTATIONS AND WARRANTIES**

The Hirer represents and warrants in respect of this Agreement that:

10.1 It is authorized to enter into this Agreement and that its entry into and performance of its obligations under this Agreement do not and will not breach any law or any material agreement affecting the Hirer;

10.2 In deciding to rent the Owner's equipment the Hirer has relied entirely on its own skill and judgement and not on any advice, information, representations or warranties from the Owner or from any person acting, or purporting to act, on behalf of the Owner;

10.3 It has not made known to the Owner any specific requirements or purpose for which the equipment will be used, and has not received and/or does not rely upon any representation, condition, warranty or undertaking as to the condition, suitability of the item(s), their quality, fitness for purpose or safety from the Owner, or from any person acting, or purporting to act, on behalf of the Owner;

10.4 It will not itself and will not permit any copying or breaching of intellectual property rights including but not limited to copyrights, patents and trademarks in the equipment item(s).

## **11 OWNER'S REPRESENTATIONS AND WARRANTIES**

The Owner represents and warrants in respect of this Agreement that:

11.1 It is authorized to enter into this Agreement and that its entry into and performance of its obligations under this Agreement do not and will not breach any law or any material agreement affecting the Owner;

11.2 It has ownership of all equipment item(s) under this Agreement;

11.3 While the Hirer pays the rental fee and fulfills all of its other obligations under this Agreement the Hirer shall, subject to the terms of this Agreement, have quiet enjoyment of the equipment item(s);

11.4 Should any of the equipment item(s) fail the Owner will endeavour, where possible, to replace the equipment with the same or alternative

11.5 Exclusions of Liability – The Owner has no liability (except where

mandatorily imposed by law and which cannot be excluded by contract) with respect to:

11.5.1 Any implied warranty as to the condition, design, merchantability, suitability, or fitness for or purpose of any equipment;

11.5.2 Any implied warranty arising from the course of performance or dealing or from the usage of trade;

11.5.3 Any obligation, liability, right, claim or remedy in tort arising from or in connection with the equipment;

11.5.4 The taxation or accounting treatment or compliance with any law of any agreement or any payments by or obligations of the Hirer under this Agreement.

## **12 HIRER ACKNOWLEDGEMENTS**

The Hirer acknowledges that:

12.1 The Hirer has examined the equipment before accepting it and satisfied itself as to the equipment's condition and suitability for the Hirer's purposes and the equipment's compliance with any prescribed safety standards;

12.2 The Owner has given no representation or warranty regarding the quality, fitness, safety or suitability of the equipment, and no person is authorized by the Owner to do so;

12.3 The Hirer has no ownership rights to the equipment item(s) at anytime before, during or after the existence of this Agreement. All equipment item(s) remain the sole property of the Owner;

12.4 No intellectual property rights, including but not limited to, copyrights, patents and trademarks in the equipment shall pass under this Agreement.

12.5 For the purposes of section 43(2) of the Consumer Guarantees Act 1993, the equipment is acquired for the purposes of a business.

### **13 EXCLUSION AND LIABILITY**

13.1 To the fullest extent permitted by law, all express and implied terms, conditions and warranties (other than those expressly set out in this Agreement) are excluded.

13.2 The Owner is not liable for any damage, injury or loss to any person or property arising from the Hirer's possession, operation or use of the equipment.

### **14 GST NOT INCLUDED**

14.1 The Hirer agrees that the basic consideration (that is, the rental fee payable by the Hirer) is not inclusive of Goods and Services Tax (GST). In addition to the basic consideration, the Hirer must pay to the Owner the amount of all GST chargeable on any taxable supply by the Owner under this Agreement.

### **15 CONFIDENTIALITY**

15.1 The Owner and the Hirer must each keep confidential all information about each other which is, in its nature, or is advised by the other party in writing to be, confidential and which comes into the possession of the Owner or the Hirer respectively.

15.2 Neither the Owner nor the Hirer is permitted to disclose any confidential information about the other without the consent of the other unless:

15.2.1 That information has become publicly available; or

15.2.2 Disclosure is required by law

15.2.3 Disclosure is to any other person participating, or potentially

participating, in the funding, discounting or assignment of the equipment or this Agreement; or

15.2.4 Disclosure is merely of the existence of a party as having a business relationship with the disclosing party.

### **16 MISCELLANEOUS**

16.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable, such provision shall, to the extent permitted by law, be severed and the remaining provisions shall continue unaffected.

16.2 This Agreement is governed by the laws of New Zealand. The Owner and Hirer both agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

16.3 No waiver by either party of any breach or repudiation by either party will affect the rights of either party in respect of any further or continuing breach or repudiation.

16.4 The Owner may, in its absolute discretion, agree to a request by the Hirer to vary any terms of this Agreement, including a variation of equipment item(s).

16.5 No variation of this Agreement will be effective unless it is in writing and signed by or on behalf of both the Owner and the Hirer.

### **17 SUCCESSORS**

17.1 This Agreement binds the Hirer, its successors, executors, administrators and assigns and shall ensure for the benefit of the Owner, its successors, assigns and transferees.

### **18 LIQUIDATION**

18.1 The obligations of one party to the other under this Agreement shall continue notwithstanding the placing of either party into liquidation or it otherwise becoming insolvent.

### **19 NOTICES**

19.1 Unless there is a specific requirement to the contrary contained in this Agreement, any notices or communications to a party in respect of this Agreement may be given by hand delivery, pre-paid mail or facsimile transmission to the address of that party as set out in this Agreement or as last notified by that party to the other.

19.2 Any such notices or communications sent by pre-paid mail will be deemed to be received on the third (3rd) Working Day after posting.

19.3 Any such notices or communications sent by facsimile transmission will be deemed to be received at the time they are indicated to have been successfully transmitted as evidenced by the production of a transmission report from the facsimile machine indicating a successful transmission.