

# EARTHLIGHT - HIRE AGREEMENT

## TERMS AND CONDITIONS OF HIRE

### 1. Definitions:

- (a) Tom Spark trading as **Earthlight ABN 71 364 560 499** hereinafter referred to as 'the Company'.
- (b) The corporation, persons, or appointed agent, dealing with the Company is referred to as 'the Customer'.
- (c) 'Equipment' means the equipment listed on the quote, contract or invoice.
- (d) 'Hire Charge' means the rental prices for any equipment together with any applicable taxes and duties.
- (e) 'Term' means the period of hire specified.

### 2. Terms and Conditions

- (a) These terms and conditions are deemed to be incorporated into all contracts, whether written or verbal for the supply of equipment to the Customer and supersede all terms and conditions previously issued by the Company.
- (b) These terms and conditions shall not be varied in any way without written consent by the Company. Any order placed by the Customer is deemed to be an order unconditionally accepting these terms and conditions.

### 3. Hire of Equipment

- (a) The Company agrees to hire the Equipment to the Customer for the Term and the Customer agrees to take the Equipment on hire for the Term and pay the Hire Charge as agreed and will pay all delivery costs, GST, stamp duty or other Government or Customs duties, taxes and expenses for which the Company may be liable to pay in connection with the hire of Equipment to the Customer, except where such payment is expressly prohibited by statute.
- (b) The Hire Charge must be paid in full strictly within 30 days from the date of the invoice, or as agreed to by the Company as stated in writing via email, the equipment hire quote document or verbally. In the event of cancellation of the Hire, the Company reserves the right to charge a cancellation fee equivalent to 50% of the hire charge.
- (c) The Company reserves the right to charge an additional fee of 2% of the Hire Charge total per month for overdue accounts.
- (d) The Company reserves the right to alter its hire charges without notice, and it is the responsibility of the Customer to request a quote if there is any question as to the amount of the hire charges.
- (e) Hire Charges are as set out in our Price List or by written or verbal agreement between the Company and the Customer.

### 3. Obligations of the Customer

- (a) The Customer shall take all reasonable precautions to avoid loss or damage to the Equipment during the period of hire, and at all times retain the Equipment in its custody and ensure that only the Customer and or its employees, servants or subcontractors having appropriate qualification and experience, be permitted to use the Equipment;
- (b) The Customer shall not attempt to repair or interfere with the Equipment except where it is necessary for its proper and normal use.
- (c) The Customer acknowledges that it has determined independently of the Company that the Equipment hired as ordered will be fit for its purposes and that the Customer has checked the Equipment for completeness, correct functioning and suitability.
- (d) The Customer shall not lend or rehire the Equipment to any other person or company without prior consent of the Company.
- (e) The Customer agrees that it shall not use the Equipment on any abnormal or hazardous assignment or transport the Equipment from the ground other than on a regular scheduled flight by a recognized airline without prior written consent of the Company.
- (f) The Customer agrees that it will not take the equipment out of Australia, without the prior written consent of the Company
- (g) The Customer agrees to take all reasonable precautions for the safety and security of the equipment, and shall not use the Equipment where it could be affected by salt water or adverse climatic or atmospheric conditions that could damage the equipment;
- (h) The Customer agrees to comply with all relevant laws and regulations when using the equipment.
- (i) The Customer acknowledges and agrees that unless expressly provided for in this agreement, the Company shall not be liable to the hirer or the hirer's servants or agents for any direct, indirect, incidental or consequential loss, injury or damages of any nature howsoever caused (whether based on contract, tort or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to Equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of or failure to perform this contract.

### 4. Title

- (a) In the case of the Hire of the Equipment, the Customer acknowledges that:
  - (i) the Company retains the title of the Equipment and that the Customer has rights to possess the Equipment as a mere bailee only;
  - (ii) the hirer does not have the right to pledge the Company's credit in connection with the Equipment and agrees not to do so; and
  - (iii) the Customer must not agree, attempt, offer or purport to sell, assign, subhire, lend, pledge, mortgage, let on hire, encumber, or otherwise part with or attempt to part with the Equipment, and must not conceal, alter or make any addition or alteration to, or repair of, the Equipment.
- (b) In the event the Customer defaults in payment of any monies owing to the company or any term hereof or any contract between parties, or any credit account is terminated by the Company, or the Customer enters into liquidation, administration, has a receiver, receiver and manager or mortgagee in possession appointed, becomes insolvent, the Company shall be entitled, at its election, to the immediate return of the Equipment and shall have the right to enter, and is hereby expressly authorized to enter, upon the premises of the Customer or any other premises at which the Equipment is stored to re-possess any of the equipment supplied by the Company. In the event the permission of any third party is required for access to repossess the Equipment, the Customer shall obtain that permission at its own expense.

### 5. State of Equipment

- (a) The Customer acknowledges receipt of the Equipment in good working order and good condition. Although the Company uses a thorough checking system, the Company will not be responsible for incomplete kits, incorrect functioning of Equipment or incompatibility of the Equipment with any other Equipment or software used by the customer.
- (b) The Company makes no warranties as to the adequacy of the equipment for any task required of it by the Customer.
- (c) Return of hired Equipment in a dirty or improperly packaged condition will attract a 10% surcharge at the discretion of the Company.

### 6. Risk and Insurance

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(a) The Customer accepts responsibility for the care and safekeeping of the equipment and is liable for any damage to or loss or destruction of the Equipment from any cause whatsoever (including the acts and omissions, whether negligent or not, of technicians) from the time the equipment leaves the Company's premises until the time the Equipment is returned to the Company's premises or an agent for the Company.

(b) Unless otherwise agreed to by the Company, Equipment insurance must be effected by the Customer with a reputable insurance company.

(c) The Customer agrees to inform its nominated insurer where 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.

(d) All insurance policies must include an extension to include hire charges incurred on lost or damaged Equipment whilst it is being replaced or repaired up to the Term of 12 weeks.

(e) Notwithstanding any insurance cover in respect of the Equipment, the Customer remains liable under the provisions of this agreement and will also be liable to pay the Hire Charge for the Equipment at the rate applicable for the Term until the Equipment is replaced or repaired as the case may be.

(f) The Company will be entitled to demand and recover from the Customer any losses (including costs) incurred by the Company in respect of loss or damage to the Equipment, howsoever arising.

(g) It is a requirement that all cameras have a safety line fitted when the Company's cameras are used on any rig, boat, car, helicopter, cycle, motorcycle or similar rig.

### 7. Limitation of the Customer's liability.

If, at the request of the hirer in writing, the Company agrees to limit any claim for loss or damage to the Equipment, the Customer hereby agrees and accepts the following charges, limitations and conditions and exclusions.

(a) The Customer acknowledges that in the event of the Company accepting liability for loss or damage to the Equipment, **the Customer shall be liable for the first \$750 in relation to each and every claim, increasing to \$1500 for each and every water damage loss.**

(b) Any loss of or damage to the equipment must be immediately notified to the Company and the Customer will, at the request of the Company, take any steps reasonably required of the Customer in respect of making reports to the Company, the insurer, the police or other appropriate authorities concerning any such loss or damage.

(c) The Customer will not do any act or thing whereby any insurance in respect of the Equipment may be voided or prejudiced in any way. In particular, the Company shall not be liable for the failure, under performance or incompatibility of the equipment resulting from the installation of non-authorized third party software and/or hardware installed subsequent to the Company installation unless otherwise approved and carried out by the Company.

(d) The Customer acknowledges that failure to comply with the conditions specified in this agreement for the proper use and handling of the Equipment will in most cases void the Company's insurance cover. The customer therefore agrees that any costs therefore specifically incurred because of the Customer's failure to comply with these conditions will be passed on to the Customer.

(e) The customer acknowledges that insurance cover extended by the Company does not cover loss or damage arising from theft from an unattended vehicle unless at the time of the theft its windows, doors and compartments were closed and locked; loss or damage caused by or resulting from theft or misappropriation by an employee of the customer; loss of market and/or loss arising from delay or consequential loss of any description; loss or damage to goods caused by mold and or mildew arising from atmospheric or climatic conditions; loss or damage arising from war, including any civil war, invasion, acts of foreign enemies, hostilities, rebellion, revolution, insurrection, riot or commotion, military or usurped power, confiscation of or damage to property by a government authority, ionizing radiations, nuclear radioactivity, mechanical breakdown, application of wrong current, derangement, breakage of valves, bulbs and filaments, climatic and atmospheric conditions, wear and tear, loss of magnetism, overheating, faulty projection or manipulation of Equipment, scratching and denting, repairs, pressure waves caused by aircraft or other aerial devices, inappropriate uses and modes of transport of the Equipment and circumstances where all reasonable precautions are not taken at all times to ensure the safety of the Equipment.

### 8. Exclusion of Warranties

(a) Except to the extent implied by any statute or regulation in force, the Company makes no warranted or representations in respect of the Equipment, including its fitness for any particular use, and the Customer accepts the Equipment solely relying on its own knowledge and opinion of the Equipment.

(b) If Equipment is found to be defective, the Customer must immediately notify the Company, which will endeavor, in its sole discretion to replace or repair the item as expeditiously as possible, or authorize a competent repairer to repair the equipment.

(c) The Company is solely responsible for carrying out all service and repairs to the equipment, and no repairs are to be carried out without prior consent of the company.

(d) The Company will not be held liable for any loss, damage, indirect or consequential loss (financial or otherwise) caused by the Equipment to the Customer or to any property or persons, or as a result of the equipment not being fit for any use to which it is put to by the Customer.

### 9. Termination

The Company reserves the right to terminate the hire of its Equipment if any of its terms and conditions are not fulfilled, or if any information comes to the Company's notice as to the suitability or reputation of the hirer.

The Company or its appointed agent reserves the right of entry for the purpose of recovery of hired Equipment.

### 10. Authority

Where any person signs this agreement on behalf of the Customer, the person so signing warrants that he or she is duly authorized by the Customer to enter into this agreement.

Updated: May 2021