

Eleven40 PTY LTD Terms & Conditions of Hire



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Hire Period: a) Equipment is hired on a “per day” basis. b) The term Daily Hire as used herein shall mean the Equipment is hired on the basis of a 24 hour period or part thereof, commencing from the time of Delivery (or pickup of the Equipment and terminating upon the return of the Equipment (“Daily Termination Date”). Equipment not returned within the agreed hire period

2. Hire Fees: a) The Hire Fees set forward in the attached schedule are applicable to this agreement. b) Customer shall pay the Daily Hire Fee as applicable from time to time to Eleven40 Pty Ltd by either daily, with the first instalment due upon the date of delivery of the Equipment to the Customer. In the event that Equipment is not returned by due return date and time (as indicated on this agreement or in subsequent communications from Eleven40 then a further Daily Hire Fee shall become due and payable and such shall continue to accrue on the appropriate Daily basis until the Equipment is returned. c) Where the Customer has paid a security deposit and fails to make any payment when due and payable, Eleven40 Pty Ltd may deduct from the security deposit the amount due and payable by the Customer. d) Weekly hire (7 days) shall be charged at the rate equivalent to 4 days hire. e) Unless otherwise agreed by the Company, cancellation of booked or reserved Equipment or Studio Hire within 48 hours of the commencement of the Agreed Hire Period will incur a cancellation charge up to a maximum of up to 100% of the Hiring Fee set out in the Order with respect to the applicable Equipment and/or Studio. The amount charged will be at the Companies sole discretion.

3. Interest: If payment is not made within the time the payment is due, the Customer must pay interest at the rate of 10%PA computed on the amount overdue from the due date until that money is paid in full. The interest accrues daily and will be capitalised monthly on the first day in each month.

5. Delivery and Return of the Equipment: Delivery of equipment to Customer shall take place at such premises of Eleven40 Pty Ltd as set forth in this document above or on delivery note or hire agreement attached and return of such Equipment is supplied. Shipment of Equipment when required by customer may be effected if approved by Eleven40 Pty Ltd in writing to an address specified by Customer and at the expense and risk of Customer. Customer agrees not to ship equipment by post. The Customer must return the Equipment at the Customer’s expense to the Eleven40 Pty Ltd’s place of business in the same condition as when received by the Customer, subject to reasonable wear and tear. The Equipment is at the Customer’s risk from Delivery until Return, except that acceptance of Equipment by the Company’s staff upon Return does not release the Customer from responsibility for loss or damage to Equipment pursuant to these Terms and Conditions and Eleven40 Pty Ltd may take up to 14 days to identify loss or damage to the equipment and notify the customer and take payments from the customer pursuant to these terms and conditions.

6. Customer’s Covenants: Customer agrees with Eleven40 Pty Ltd that: a) the Equipment shall remain the property of Eleven40 Pty Ltd b) the Customer shall not sell, charge, pledge or part with possession of Equipment c) the Customer shall keep Equipment at the address specified in Schedule 1 attached hereto unless written permission has been obtained from Eleven40 Pty Ltd to relocate the Equipment elsewhere. d) The Customer shall use Equipment in a careful and proper manner and in accordance with the manufacturers specifications. The customer shall not interfere or tamper with, attempt to repair or service The Equipment or let anyone else do so. e) The Customer shall notify Eleven40 Pty Ltd immediately if any judgment or order is levied against Customer or property of Customer or if petition is presented for the liquidation of the Customer or a Receiver is appointed or a scheme of arrangement is proposed. f) The Customer shall permit Eleven40 Pty Ltd it's agents or servants to enter the premises where Equipment is located at all reasonable times in order to inEleven40t Equipment or carry out repairs to Equipment.

7. Warranty: Eleven40 Pty Ltd warrants that each item of Equipment hired is of merchantable quality and reasonably fit for the purpose for which it is designed. Customer acknowledges that it has not relied upon any statement by Eleven40 Pty Ltd in respect of Customer's purpose for utilisation of equipment and the Eleven40 Pty Ltd is not responsible or liable for the failure of the Equipment to perform the purpose required by the Customer.

8. Maintenance: Eleven40 Pty Ltd shall at its expense provide routine maintenance for the Equipment and shall use its best endeavours to expeditiously repair or replace Equipment which becomes defective during the Hire period through no fault of the customer. In the event that the Equipment does not operate properly Customer shall notify Eleven40 Pty Ltd and request instructions before taking remedial action. All repairs shall be done on the basis of return to base. Eleven40 Pty Ltd may at its option and for such length of time as it deems expedient replace Equipment with another of such type or model as shall for the time being be available and Equipment so substituted shall be subject to these conditions.

9. Early Cessation: Notwithstanding the Hire Period Eleven40 Pty Ltd expressly reserves to itself the right of early cessation which may be exercised on demand and at the absolute discretion of Eleven40 Pty Ltd the Hire Fee paid by the Customer may be adjusted on a pro rata basis. For the purpose of pro rating a week shall be seven days and a month shall be thirty days.

10. Safekeeping: Customer is responsible for safekeeping of the Equipment and shall bear the risk of any loss, theft, damage or destruction of Equipment and in the event that the Equipment shall require repair or recalibration as a result of Customer negligence, misuse or abuse Customer shall bear cost of any such repair or recalibration including any freight charges there occasioned. Customer shall forthwith pay to Eleven40 Pty Ltd the Total Replacement Value as itemised on Eleven40 Pty Ltd documents supplied. In the event that Customer fails to pay to Eleven40 Pty Ltd any amounts due under this Agreement, Customer authorises Eleven40 Pty Ltd to deduct and retain any outstanding amounts from the Security Deposit or Credit Card Authorisation which has been previously lodged with Eleven40 Pty Ltd.

11. Customer's Default: At any time after the expiration of the Hire Period or in the event that Customer is in default pursuant to the provisions of this agreement, Equipment shall forthwith upon request being made by Eleven40 Pty Ltd be delivered by Customer to Eleven40 Pty Ltd and the Hire Period upon delivery of the Equipment to Eleven40 Pty Ltd pursuant to the provisions of the agreement be terminated without prejudice to the right of Eleven40 Pty Ltd to require from Customer immediate payment of such monies as may be or become owing to Eleven40 Pty Ltd by Customer.

12. Separate Items of Equipment: Where more than one item of Equipment is supplied under this Agreement in interpreting this Agreement the singular shall be read as the plural where appropriate and the Hire Fee shall be apportioned to each item of Equipment as set forth in the attached hereto and the conditions herein set forth shall apply separately to each individual item of Equipment as though each item of Equipment were subject to separate Agreement.

13. Sundry: The conditions herein before set forth constitute the entire Agreement between Eleven40 Pty Ltd and the Customer with respect to Equipment and shall not be amended except in writing signed by both parties and Customer does acknowledge and agree that all other (if any) warranties or suitability of the Equipment for particular use or purpose whether implied or statutory are hereby excluded.

14. Property: In the event that Customer seeks to purchase the Equipment and Eleven40 Pty Ltd agrees to sell the Equipment the property therein shall not pass until and unless all payments by way of Hire and by way of purchase price have been received by Eleven40 Pty Ltd.

15. Intellectual Property Rights: All rights pertaining to industrial or intellectual property including but not limited to copyrights, patents and trademarks are expressly reserved. Customer shall not and shall not authorise any copying or breach of rights. All copies or articles made in breach of rights shall be destroyed or surrendered to the owner of the rights.

16. Limitation of Liability: a) Except as expressly provided to the contrary in these conditions, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory relating in any way to the Equipment or these conditions are excluded and without limitation Eleven40 Pty Ltd will not be under any liability to the Customer in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the Equipment or the failure or omission on the part of Eleven40 Pty Ltd to comply with its obligations under these conditions. b) Where any Act of Parliament implies in this agreement any terms, conditions or warranties and that Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such term, condition or warranty, such term, condition or warranty is deemed to be included in this agreement. However, the liability of Eleven40 Pty Ltd for any breach of such term, condition or warranty is limited when permitted by law, at the option of Eleven40 Pty Ltd to any one or

more of the following: a) replacement of the Equipment or the supply of equivalent Equipment; b) repair of the Equipment; c) payment of the cost of replacing the goods or acquiring equivalent Equipment; or d) payment of the cost of having the Equipment repaired.

17. GST: In this clause: "GST" means GST within the meaning of the GST Act

18. Indemnity: The Customer indemnifies Eleven40 Pty Ltd from and against any and all costs, losses or charges incurred by Eleven40 Pty Ltd as a result of the use of the equipment by the Customer.

19. Loss, Damage, Theft of Equipment: *The Customer (including their assignees and representatives) hereby accept full responsibility for loss or damage of the equipment. If Equipment is lost, stolen, missing, destroyed, or damaged beyond repair while at the risk of the Customer, the Customer is liable for and agrees to compensate the Company for the amount as itemised as the Total Replacement Value (without deduction for depreciation). Without limiting the Customer's obligation with respect to hired vehicles, if the Customer hires a vehicle, the Customer is responsible for all damage to such vehicle, including to tyres, windscreens and windows. In respect to damage or loss or Equipment, Hire Period shall continue until item has been repaired by Eleven40 Pty Ltd, or the Total Replacement Value has been paid by the Customer.*

20. Insurance & Damage Waiver: *Subject to Section 19 where requested by the Customer, the Eleven40 Pty Ltd may, at its sole discretion, agreed in writing, prior to Delivery, to offer appropriate insurance (Damage Waiver) and charge the Customer an additional 10% fee for such insurance coverage. If arranged, this insurance coverage does not apply to additional costs associated with or hire of, replacement equipment for that which was lost, destroyed or damaged. In all cases, the Customer must pay the applicable premium as itemised as Damage Waiver on Eleven40 Quotes, Estimates, Rental Agreements or other documentation supplied to the Customer by Eleven40 Pty Ltd. An excess of \$500 is also payable by the Customer for each and every claim and the exclusions as itemised in section 21 following shall also apply.*

21. Insurance & Damage Waiver Exclusions: *Any such acceptance of risk by Eleven40 Pty Ltd pursuant to Section 20 expressly excludes, and the Customer remains 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 the Equipment in an unattended vehicle whether locked or unlocked;

d) Loss Procedures. In the event of loss or damage of any kind to the Equipment, the Customer must:

e) immediately notify the Company (and the Police where appropriate) and take all practicable steps towards discovery and recovery

f) as soon as practicable, provide Eleven40 Pty Ltd with a full written report of the circumstances of the loss or damage and furnish the Eleven40 Pty Ltd with any particulars or evidence as may reasonably be required by the Company.

22. Cancellation - Studio Hire: *If a studio booking is cancelled 7 days or more prior to the booking no cancellation fee will apply. If a booking is cancelled between 3 - 7 prior then a 25% cancellation fee will apply. If a booking is cancelled less than 48 hour prior a 100% cancellation fee will apply. Eleven40 may waive the cancellation fee at its discretion if the booking is rescheduled.*

23. Cancellation - Equipment Hire: *If an equipment hire booking is cancelled 3 days or more prior to the booking no cancellation fee will apply. If an equipment hire booking is cancelled between 2 - 3 days prior then a 25% cancellation fee will apply. If an equipment booking is cancelled less than 24 hours prior 50% cancellation fee will apply to Eleven40 equipment and 100% cancellation fee will apply to any 'sub-hire' equipment. Eleven40 may waive the cancellation fee at its discretion if the booking is rescheduled.*