

## TERMS AND CONDITIONS

**INTERPRETATION** For the purposes of these terms and conditions, any term corresponding to a heading contained in the hire agreement overleaf ("Hire Agreement") shall mean and include the information inserted with regard to that heading. For the avoidance of doubt: (a) "Agreement" means the Hire Agreement read in conjunction with these terms and conditions; (b) "Customer" includes the customer's employees, servants and agents; (c) "Equipment" includes all items, articles, accessories and documents (including operating manuals) supplied with the Equipment whether listed under the heading "Accessories" in the Hire Agreement or not. **AGREEMENT** The customer hereby hires from Vidcom NZ Limited the Equipment upon the following terms and conditions:

**1. TERM OF HIRE:** (a) The period of hire of the Equipment ("Hire Period") will run from the Pick up/Delivery Time on the Hire Commencement Date until the Return/Pickup time on the Equipment Return Date. (b) The Customer agrees to return the Equipment or (where applicable) to make the Equipment available for collection by the Return/Pick-up Time on the Equipment Return Date. If the Equipment is not returned or made available for collection as stated above then hire charges will continue to accrue until the Equipment is returned. Any such further hire charge will be determined by Vidcom NZ at its sole and absolute discretion and may include any additional costs Vidcom NZ incurs. (c) The Hire Period may be reduced by return of the Equipment to Vidcom prior to the Equipment Return Date (or the Return/Pick-up Time on that date). In the event of such early return of the Equipment Vidcom NZ may, at its sole and absolute discretion, elect to adjust the hire charge to reflect the shorter duration of the Hire Period. (d) If the Customer, having indicated on the Hire Agreement that it would return the Equipment, is unable to comply with paragraph (b) then the Customer may elect by one day's prior notice in writing to have Vidcom NZ call and collect the Equipment. In such case, provided that the Customer makes the Equipment available for collection by the Return Time, no additional hire charges will be payable by the Customer. A pick-up fee will however be charged. (e) When the equipment is not returned at the end of the rental period specified in the hire agreement, then rental charges will continue to accrue at the same daily rate set out in the rental agreement until the business day on which the equipment is returned complete with all the accessories and undamaged. (f) A rental fee at the daily rental rate and subject to a minimum total charge set out in the hire agreement will continue to be charged until the equipment is returned complete with all the accessories and undamaged. Where equipment or accessories are lost or equipment or accessories are damaged and the hire agreement did not include damage waiver under clause 20 of these terms and conditions, the rental fee at the daily rate will continue to be charged and payable until replacement equipment or accessory(ies) is/are purchased and delivered to Vidcom and/or damaged equipment or accessories are replaced or repaired to serviceable condition and returned to Vidcom.

**2. PRICE:** GST and other taxes applicable to the hire of the Equipment to the Customer will be added to the prices charged.

**3. PAYMENT OF HIRE CHARGES:** The due date for payment of hire charges levied under this Agreement including, without limitation, additional hire charges incurred by the Customer pursuant to clauses 1(b) and 12(c), will be on or before the 20th day of the month following the date of issue of the relevant invoice.

**4. DEBIT AUTHORITY:** When the Customer has given a credit card or account debit authority, Vidcom are hereby authorised to debit all fees and charges payable under this agreement to the Customer's card or account, whether owing now or in the future.

**5. OVERDUE PAYMENTS:** If any amount under this Agreement is not paid upon the due date for payment the Customer will pay to Vidcom NZ interest on the overdue amount at the rate of 7% above the advertised business overdraft interest rate of Vidcom NZ's bank (as advised to Vidcom NZ by its bank) calculated daily for the period from the due date for payment until payment is made together with all additional costs incurred by Vidcom NZ, including legal, administrative and collection costs in recovering such overdue amounts.

**6. ACCESS TO THE EQUIPMENT:** The Customer will permit Vidcom NZ its servants or agents to enter the premises where the Equipment is located for the purposes of inspection, repair, adjustment or collection of the Equipment.

**7. DEFAULT AND REPOSSESSION:** If the customer, (a) permits or commits a breach of any term or condition of this Agreement (b) allows any of its assets or the Equipment to be seized to satisfy other debts (c) is a company and an order is made or resolution is passed or any other steps taken for the winding up of the Customer (d) enters into or takes any steps to enter into a scheme of arrangement composition or assignment for the benefit of its creditors generally (e) commits an act of bankruptcy or is adjudged a bankrupt (f) has a receiver appointed to the Customer or the Customer is deemed to be unable to pay its debts as they fall due (g) has any execution order or distress levied upon any of its property or the Equipment (h) does at causes to be done or permits or suffers any act or thing which prejudices or jeopardises Vidcom NZ's rights in the Equipment (i) allows a financing statement (as defined in the Personal Property Securities Act 1999) to be filed against the Equipment (j) supplies false or misleading information pursuant to this Agreement to Vidcom NZ; then Vidcom NZ may immediately cancel this Agreement and retake possession of the Equipment and for such purposes may by its servants or agents enter into any premises in which the Equipment may be located, using such force as is necessary, without being liable for any action for trespass and the Customer shall indemnify Vidcom against any claims for consequential loss or damage. The Customer must provide Vidcom NZ with all reasonable assistance in order to locate and collect the Equipment. Vidcom NZ will not be liable for any damage to property caused by any person in collecting the Equipment. In the event that this Agreement is cancelled by Vidcom then all monies payable or to become payable under this Agreement will become immediately due and payable and the rights and obligations of Vidcom NZ and the Customer will be settled on that basis. Cancellation will be without prejudice to the right of Vidcom NZ to recover any unpaid monies and to the rights and obligations under clause 12 (Loss or Damage).

**8. OWNERSHIP AND POSSESSION:** The Customer agrees that the Equipment will remain the property of Vidcom NZ and that the Customer is a bailee only of the Equipment on the terms and conditions as set out in this Agreement. The Customer agrees not to deal with nor to permit, cause or suffer the Equipment to be dealt with in a manner prejudicial to Vidcom NZ rights in the Equipment. In particular (but without limiting the generality of the foregoing) the Customer agrees: (a) not to sell, assign or pledge the Equipment (b) subject to the provisions of clause 21, not to underlet, lend or otherwise part with possession of the Equipment; (c) to protect the Equipment against distress, execution or seizure; (d) not to remove any sticker from the Equipment giving notice of Vidcom NZ ownership of the equipment.

**9. EARLY CESSATION:** Notwithstanding the rental period Vidcom expressly reserves to itself the right to require early cessation which may be exercised on demand and at the absolute discretion of Vidcom. If Vidcom so demands the Customer shall forthwith return Equipment to Vidcom. The applicable rental fee shall be adjusted and payable at the daily rate on the rental agreement for the period between the Rent Start Date and the date the equipment, complete with accessories and undamaged, is returned to Vidcom.

**10. SEPARATE ITEMS OF EQUIPMENT:** Where more than one item of Equipment is supplied under this Hire Agreement, in interpreting this Hire Agreement, the singular shall be read as the plural where appropriate and the conditions herein set forth shall apply separately to each individual item of Equipment as though each item of Equipment was subject to a separate Agreement.

**11. CUSTOMER COVENANTS:** The Customer agrees that the Customer will: (a) keep the Equipment in good working order, fair wear and tear excepted (b) subject to the provisions of clause 21, keep the Equipment at the

Equipment Location unless prior written permission has been obtained from Vidcom NZ to relocate the Equipment elsewhere, (c) keep the Equipment Location or other premises in which the Equipment is located secure against unauthorised entry, (d) use the Equipment in a careful and proper manner and not interfere or tamper with the Equipment or permit or suffer such tampering or interference, (e) not alter or modify the Equipment without the prior written consent of Vidcom NZ, (f) in respect of the Customer's use of the Equipment, comply with any operating instructions provided and all applicable legislation, regulations, bylaws and the directions of any competent local authority.

**12. LOSS OR DAMAGE:** (a) The Equipment will at all times whilst in the care, custody or control of the Customer including, for the avoidance of doubt, during the period of any ermitted underletting or lending of the Equipment in accordance with clause 21, be at the risk of the Customer. The Customer will bear the risk of any loss, theft, damage or destruction and if the Equipment will require repair or replacement as a result of the Customers use of the Equipment the Customer will bear the cost of any such repair or replacement including any freight charges incurred. (b) In the event of the Equipment or any part thereof being lost, stolen, destroyed or damaged beyond repair, the Customer will pay to Vidcom NZ the new replacement cost of such Equipment as assessed by Vidcom NZ. (c) In respect of any loss, theft, damage, destruction or failure to return any part of the Equipment which may render the Equipment unusable, the Hire Period will continue and the Customer shall continue to pay hire charges until the Equipment has been returned or repaired, or the replacement cost of new Equipment has been paid by the Customer.

**13. OTHER DAMAGE:** Vidcom will not be liable for and the Customer indemnifies Vidcom NZ against all claims for loss or damage to any equipment or thing used in or connected to the Equipment which is not the property of Vidcom whether caused by the Equipment or not.

**14. INDEMNITY:** The Customer agrees to indemnify Vidcom NZ and to be responsible for all costs, charges and other liabilities incurred by Vidcom NZ as a result of the Customers breach of any of the terms of this Agreement or as a result of Vidcom NZ enforcement of any of this Agreement conditions or arising out of or in any way connected with the use of the Equipment by the Customer. Vidcom shall not be liable for any loss or damage suffered by the Customer or claim made against the Customer in connection with any failure or malfunction of the Equipment or any delay in Vidcom's delivery of the Equipment. In no event will Vidcom be liable for any economic or consequential loss, including but not limited to loss of use, contract, goodwill, revenue or profit. If despite the other provisions of this Agreement, Vidcom is liable to the Customer, Vidcom's liability shall in no event exceed 10% of the GST exclusive price payable by the Customer for the hire of the Equipment.

**15. MAINTENANCE:** Vidcom NZ will at its expense when it deems necessary provide maintenance for the Equipment and shall use its best endeavours to expeditiously repair or replace any Equipment which may become defective during the Hire Period through no fault of the Customer. Vidcom may at its sole and absolute discretion and for such length of time as it deems expedient replace the Equipment or any part thereof with other equipment of such type of model as shall for the time being be available and the equipment so substituted will be subject to the terms of this Agreement.

**16. DAMAGE WAIVER:** (a) Vidcom has available and may offer at its discretion an optional rental equipment damage waiver facility for certain items of Equipment. If the Customer seeks the waiver and it is available, the rental rate will be increased by a fee. This waiver does not cover theft or loss of the Equipment or damage to the Equipment caused by the negligence of the Customer or to any damage caused to the Equipment other than in the course of its proper use and provided further that the Customer notifies Vidcom of the damage within 2 business days. (b) The waiver option does not apply and the Customer will continue in all respects to be fully responsible if the damage to Equipment was directly or indirectly the result of: (i) Misuse or use contrary to instructions; or (ii) Malice or any deliberate act; or (iii) Negligence or want of care; or (iv) An act or omission by any person who is not the Customer or in the Customer's direct employ; or (v) Damage by any cause at or from a place which has not been approved as a rental location. (c) The waiver option does not apply and the Customer will continue in all respects to be fully responsible if damage was directly or indirectly the result of: (i) The Customer is in breach of any item or condition of the Hire Agreement; or (ii) The Equipment has a value, or its price, is in excess of \$100,000. (d) The waiver option does not apply and the Customer will continue in all respects to be fully responsible for the return of all accessories and manuals in good order and condition. (e) The waiver option does not apply to any item comprising the Equipment which is noted as being excluded on the accessory list provided with the Equipment. The cost for repair or replacement of these items of the Equipment will be invoiced to and payable by the Customer.

**17. INTELLECTUAL PROPERTY RIGHTS/COPYRIGHT:** (a) All rights pertaining to intellectual property including but not limited to copyrights, patents and trademarks are expressly reserved by Vidcom NZ. The Customer will not make any copies or authorise or allow any copying of items supplied including, without limiting the generality of the foregoing, software programs and operating manuals except with the prior written authority of Vidcom NZ. (b) Vidcom NZ is not liable for and the Customer agrees to indemnify Vidcom NZ against any claim, action, proceeding or cost which may arise as a result of any infringement of the Copyright Act 1994 or any other intellectual property rights of any person.

**18. PERSONAL PROPERTY SECURITY ACT 1999:** The customer acknowledges that Vidcom has a Security Interest (as that term is defined in the Personal Property Security (PPS) Act 1999) in all goods supplied. They will assist as required to ensure that that Security Interest becomes a "Perfected Security Interest" (as defined in the PPS Act 1999).

**19. ENTIRE AGREEMENT:** This Agreement represents the complete understanding between Vidcom NZ and the Customer with respect to the Equipment. Any amendment to this Agreement will be made by agreement in writing and signed by both parties. Other than expressly provided for in this Agreement the Customer acknowledges that it has not relied upon any statement or representation by Vidcom NZ in respect of the Equipment or the use of the Equipment by the Customer irrespective of whether the Customer's purpose for the use of the Equipment is known to Vidcom NZ. The Customer acknowledges that under no circumstances is Vidcom NZ responsible or liable for any failure of unsuitability of the Equipment to perform the purpose required by the Customer.

**20. CONSUMER GUARANTEES ACT 1993 ("CGA")/OTHER LAW:** (a) Where the Customer enters into this Agreement for the purposes of a business as the term "business" is defined in the CGA the Customer expressly agrees that the provisions of the CGA do not apply. (b) Nothing in this Agreement shall restrict, modify or exclude any conditions, warranties, rights or liabilities which may at any time be implied in this Agreement by any law where to do so would be unlawful.

**21. TRADE CUSTOMERS:** Where the Customer has indicated on the Hire Agreement that it is a Trade Customer and this notation has been endorsed on behalf of Vidcom then: (a) the Customer will be entitled to underlet or lend the Equipment to its own customers in accordance with its customary business practices, (b) except to the extent to which they are varied by the preceding provisions of this clause 21 the covenants, terms and conditions of this Agreement including, without limitation, the Customer's obligations pursuant to clause (c) (Loss or Damage), will apply to the Customer irrespective of any permitted underletting or lending of the Equipment.