



TERMS & CONDITIONS OF HIRE

1. DEFINITIONS

“VISUAL IMPACT” means Visual Impact Broadcast Solutions (Pty) Ltd t/a Visual Impact: Magus, a company incorporated in the Republic of South Africa under company registration number 2001/019706/07 and having its registered business address at: 60 Cradock Avenue, Dunkeld, Johannesburg, 2196;

“Customer” means the hirer of the Equipment, namely the person or company whose details are set out in the Quotation or Rental Collection Note;

“Contract/s” means these Conditions of Hire together with where applicable, the Quotation, the Rental Collection/Delivery Note, the Credit Application, the Order and all schedules and appendices thereto;

“Equipment” means all equipment hired to the Customer by VISUAL IMPACT under these Conditions of Hire as detailed in the Quotation;

“Hire Period” means the period in respect of which the Equipment is hired by VISUAL IMPACT to the Customer as detailed in the Quotation;

“Order” means the written acceptance of a Quote by the Customer;

“Quotation” means the quotation to which these terms and conditions are attached, and.

“Commencement Date” means the start date as set out in the Quotation.

2. HIRE OF EQUIPMENT

2.1. The Quotation is an offer by VISUAL IMPACT to hire the Equipment as detailed in the Quotation and subject to these Conditions of Hire.

2.2. Acceptance of the offer will be the signature of the Quotation and the return thereof by no later than the quote expiry date. Alternatively the Customer shall be deemed to have accepted the Quotation subject to the Conditions of Hire by:

2.2.1. the written confirmation of the Quotation, or

2.2.2. the payment thereof, or

2.2.3. collecting the Equipment from Visual Impact.

2.3. These Conditions of Hire are deemed to be incorporated into all Contracts for the hire of Equipment to the Customer and supersede all terms and conditions previously issued by VISUAL IMPACT;

2.4. The Contract constitutes the whole of the agreement between VISUAL IMPACT and the Customer and should not be varied in any way unless done so in writing and signed by both parties;

3. TITLE

Notwithstanding anything herein contained, VISUAL IMPACT shall remain the sole and absolute owner of the Equipment. Without prejudice to any provision in these Conditions of Hire, the Customer shall at all times use its best endeavors to assist VISUAL IMPACT to resume possession of the Equipment whether during or after the Hire Period if the Customer has lost or relinquished possession of the Equipment or at the expiration of the Hire Period if it is not then returned to VISUAL IMPACT, and hereby authorizes VISUAL IMPACT to enter upon the Customer’s premises during normal working hours for those purposes.

4. PRICES

4.1. The cost of the hiring of the Equipment shall be the cost as set out in the Quotation and shall be subject to VAT at the prevailing rate. VISUAL IMPACT shall have the right to

adjust its price list for any increase in any costs of any kind arising for any reason after the commencement of the Hire Period.

- 4.2. Payment of all invoices are due by the Customer prior to collection of the Equipment unless credit facilities have been granted to the Customer in which case payment will be due without set off within 30 days from date of invoice and the Customer shall pay interest on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) at the maximum prevailing rate in terms of the National Credit Act, 2005 on a daily basis or the legal rate of interest, whichever is higher and reimburse to VISUAL IMPACT all costs and expenses (including legal costs incurred on an attorney and client basis) incurred in the collection of any overdue amount.
- 4.3. Any discount provided is on the basis that the Customer has agreed to make payment of its account within the specified settlement period. Failure to make payment within the settlement period will amount to forfeiture of the discount and the Customer will then be liable for payment of the discounted portion, which will be invoiced to the Customer.

5. EXTENSION OF HIRE PERIOD

Any extension to the Hire Period or addition to the Equipment hired by the Customer shall be agreed to in writing by VISUAL IMPACT and shall be invoiced separately and shall be subject to the then current price list of VISUAL IMPACT.

6. TERMINATION

Without prejudice to any right or remedy of VISUAL IMPACT, this Contract may be terminated by VISUAL IMPACT forthwith by notice in writing to the Customer:-

- 6.1. upon breach of the terms and conditions of this Contract by the Customer, in which event VISUAL IMPACT may demand the immediate return of the Equipment, together with compensation for any damages or loss suffered as a result of such breach.
- 6.2. if the Customer enters into liquidation (other than for the purposes of bona fide amalgamation or reconstruction) whether voluntary or otherwise or a receiver, business rescue practitioner or administrator is appointed over all or part of its assets or enters into a voluntary arrangement with its creditors or suffers any insolvency event or suffers any process analogous to the above under foreign laws; or
- 6.3. if the Customer comes under the control of any third party or parties other than that by which it is controlled at the date hereof or other than by an affiliate of it for the purposes of a bona fide reorganization. For the purposes of this paragraph, control shall mean either the ownership of fifty percent (50%) or more of the ordinary share capital of the company carrying the right to vote at general meetings of either party or the power to nominate a majority of the board of directors of either party.

7. USE OF EQUIPMENT

The Customer undertakes to:

- 7.1. use and maintain the Equipment at all times strictly in accordance with the manufacturer's instructions and all user manuals, pamphlets and booklets provided by VISUAL IMPACT to the Customer and to comply with all safety instructions and regulations relating thereto;
- 7.2. only allow persons with appropriate qualifications and experience to use the Equipment,
- 7.3. ensure that only qualified underwater camera operators make use of the underwater camera's and housing;
- 7.4. not use the Equipment on any hazardous assignment or in any high risk areas without the prior written consent of VISUAL IMPACT;
- 7.5. take all reasonable precautions to avoid loss or damage to the equipment;
- 7.6. not remove the Equipment from the territory of South Africa.

8. DELIVERY, COLLECTION AND RETURN OF THE EQUIPMENT

- 8.1. Unless otherwise agreed to by VISUAL IMPACT in writing, the Customer shall collect the Equipment from VISUAL IMPACT's premises;

- 8.2. All vehicles brought onto VISUAL IMPACT'S premises will be at the vehicle owner's risk. VISUAL IMPACT accepts no liability whatsoever for loss or damage to vehicles or personal property.
- 8.3. The person authorized to collect the Equipment on behalf of the Customer shall be deemed to have authority to bind the Customer in signing any agreement with VISUAL IMPACT on behalf of the Customer;
- 8.4. Where the parties have agreed in writing that VISUAL IMPACT shall deliver the Equipment to the Customer and VISUAL IMPACT is unable to deliver or collect such Equipment due to the fault or negligence of the Customer, the Customer shall be obliged to pay all delivery and/or collection charges at VISUAL IMPACT's standard transport rates as applicable at the date of such attempted delivery or collection.
- 8.5. Delivery or collection of the Equipment, as the case may be, shall be deemed to take place at the time VISUAL IMPACT makes the Equipment available to the Customer, any duly authorised agent of the Customer or any carrier deemed to be the Customer's duly authorised agent at VISUAL IMPACT's premises or other delivery point agreed to in writing by the parties and all risk in and to the Equipment shall pass upon the Equipment being handed over to the Customer at such delivery or collection point.
- 8.6. VISUAL IMPACT shall not be liable for any penalty, loss, injury, damage or expense arising from the delay or failure to timeously deliver the Equipment or the delay or failure to make the Equipment timeously available to the Customer for collection.
- 8.7. If the Customer fails to collect or take delivery of the Equipment or any part thereof on the Commencement Date or fails to provide any instructions or authorisations required to enable the Equipment to be collected by or delivered to the Customer, as the case be, on the Commencement Date, VISUAL IMPACT shall be entitled upon written notice to the Customer to terminate the Contract forthwith and claim from the Customer all damages and loss suffered as a result thereof.
- 8.8. The Customer acknowledges that on signature of the Rental Collection Note, whether signed by the Customer, an employee, an agent or representative of the Customer, he has inspected and tested the Equipment and he is satisfied with its condition, quality, safety, suitability and correct functioning (including the film testing of all cameras and underwater housing) for his purpose and agrees no warranty, condition, description or representation on VISUAL IMPACT's part is given other than as may be contained in a written document signed by VISUAL IMPACT and the Customer's obligation to pay hire prices and otherwise comply with these Conditions of Hire shall continue notwithstanding any subsequent defect or breakdown of the Equipment.
- 8.9. Unless otherwise agreed in writing by the parties, the Customer shall be responsible for the return of the Equipment to VISUAL IMPACT's premises and handed to an authorized representative of VISUAL IMPACT upon expiration of the Hire Period or termination of the Contract. All costs incurred in or as a result of the return of the Equipment shall be borne solely by the Customer.
- 8.10. In the event that the Customer returns Equipment after hours and hands the Equipment to security personnel then the Equipment will only be accepted on the basis that the sole risk of loss or damage to the Equipment will remain vested in the Customer until such time as VISUAL IMPACT has recorded the return of the Equipment.
- 8.11. Any return note for the Equipment issued by VISUAL IMPACT at or after the end of the Hire Period shall not be evidence of the condition of the Equipment described in it.
- 8.12. On the return of the Equipment by the Customer, VISUAL IMPACT's engineers ("the Engineers") shall conduct a thorough inspection of the Equipment to ensure that the Equipment has been returned in the same condition as received by the Customer at the Commencement Date.
- 8.13. The Engineers' report shall be forwarded to the Customer upon completion thereof and shall detail any loss or damage caused to the Equipment during the Hire Period. Such report shall constitute prima facie evidence of any loss or damage caused by the Customer to the Equipment during the Hire Period. The liquidated amount of the loss or damage to the Equipment shall be paid on demand by the Customer to VISUAL IMPACT. In the event of the Equipment being damaged beyond repair, then the loss will

be in accordance with VISUAL IMPACT's then current replacement list price of the Equipment.

- 8.14. On the return of the Equipment, all data on the memory devices, including but not limited to hard drives, discs or tapes shall be deleted by VISUAL IMPACT, unless the Customer has specifically instructed VISUAL IMPACT otherwise in writing prior to the return of the Equipment.
- 8.15. The Customer shall pay delivery and collection charges at VISUAL IMPACT's standard transport rates from time to time to VISUAL IMPACT on demand as an extra cost.

9. INSURANCE

- 9.1. Unless otherwise agreed by VISUAL IMPACT, the Customer shall contribute the rate of 10% of the total cost of hire to VISUAL IMPACT for the cost of insurance, indemnifying VISUAL IMPACT and the Customer against physical loss of or damage to the Equipment during the hiring, on terms which are available from VISUAL IMPACT upon request. Those terms will exclude liability of the insurers for the stipulated excess of loss arising from each and every identifiable loss. **The Customer will be liable to pay VISUAL IMPACT for the full excess amount on demand, which excess will be a minimum of R 5,000.00. The excess will be calculated as 20% of the claim for each and every loss due to theft or accidental damage and 10% of the claim in respect of every other loss.**
- 9.2. Such indemnifying of the Customer is subject to the terms, exclusions, and conditions of the policy of such insurance and to the Customer complying with all the terms and conditions of this Contract. The exclusions include the insurer not being liable for:
 - 9.2.1. Loss of or damage to Equipment resulting from or caused by:
 - 9.2.1.1. **Theft from unattended vehicles;**
 - 9.2.1.2. **Its undergoing a process of cleaning, repair, dyeing, bleaching, alteration or restoration;**
 - 9.2.1.3. **Inherent vice, latent defect, vermin, insects, shrinkage, evaporation, loss of weight, rust contamination, mildew, or leakage of contents, unless caused by a peril not otherwise excluded;**
 - 9.2.1.4. **The dishonesty of any principal, partner, director or employee of the insured whether acting alone or in collusion with others;**
 - 9.2.1.5. **Detention, confiscation or requisition by customs or other officials or authorities, shortage of inventory or any unexplained loss or mysterious disappearance.**
 - 9.2.2. **Wear and tear or gradual deterioration (including the gradual action of light or climatic or atmospheric conditions) unless following an accident or misfortune not otherwise excluded;**
 - 9.2.3. **Mechanical, electronic or electrical breakdown, failure, breakage or derangement;**
 - 9.2.4. **Loss of or damage to goods consigned under a bill of lading;**
 - 9.2.5. **Aerial and underwater photography;**
 - 9.2.6. **Absconsion.**
- 9.3. Notwithstanding the terms, exclusions, and conditions of the policy of the insurer, the Customer agrees that it is a term of this Contract that the Customer will not have a claim for insurance in the event of the physical loss of or damage to the Equipment during the hiring being as a result of the Customer's unprofessional use or deficiency in the technical use and knowledge of the Equipment or gross negligence.
- 9.4. The Customer will be liable to pay VISUAL IMPACT the full replacement cost of the Equipment in the event of the insurer repudiating the claim, which amount will be in accordance with VISUAL IMPACT's then current replacement list price of the Equipment.
- 9.5. Should the Quotation not specify an amount for the Customer's contribution to the cost of insurance, the Customer shall be solely responsible for insuring the Equipment

against any loss or damage of the Equipment during the Hire Period, for any reason whatsoever.

9.6. The Customer agrees:

9.6.1. not to do, suffer or admit any act, matter or thing which may prejudice any policy of insurance effected by VISUAL IMPACT for the benefit of VISUAL IMPACT and the Customer;

9.6.2. to immediately notify VISUAL IMPACT and the Police where necessary and take any practicable steps towards discovery and recovery in the event of theft and, as soon as practicable, provide to VISUAL IMPACT a full written report of the circumstances of any loss or damage with any particulars or evidence as is reasonably required by the VISUAL IMPACT.

9.7. No underwater equipment will be insured by VISUAL IMPACT and the Customer must take out appropriate insurance for all underwater equipment with a reputable insurance company and proof of insurance must be delivered to VISUAL IMPACT before the hire commences. VISUAL IMPACT's interest in the equipment must be noted on all insurance documents. The Customer must inform the insurer of the potential hazardous conditions associated with the use of the underwater equipment including exposure to salt water. The insurance policy must include an extension to include hire charges incurred on lost or damaged underwater equipment whilst it is being replaced or repaired.

10. LOSS, DAMAGE AND LATE RETURNS

Notwithstanding the provisions of clause 9, should any Equipment while at the risk of the Customer be lost, destroyed, damaged or returned after the Hire Period, the Customer will be liable to pay to VISUAL IMPACT the following on demand:

10.1. any expenditure VISUAL IMPACT may incur by reason of tracing or endeavouring to trace the whereabouts of or retaking or attempting to retake possession of the Equipment including, but without limiting the generality of the foregoing, any moneys paid by VISUAL IMPACT in releasing any lien claimed over the Equipment and any repairs to the Equipment;

10.2. the loss of hire charges, which charges will not exceed 13 weeks hire;

10.3. storage charges for the Equipment;

10.4. the replacement cost of the Equipment in the event of loss, which amount will be in accordance with VISUAL IMPACT's then current replacement list price of the Equipment.

11. DEPOSIT

11.1. As security for the hiring and use of the Equipment for the Hire Period, the Customer shall at the election of VISUAL IMPACT make payment to VISUAL IMPACT of a refundable deposit as set out in the Quotation of the value of the Equipment. The full refund of the deposit shall be conditional upon VISUAL IMPACT not suffering any loss or damage to the Equipment during the Hire Period.

11.2. The Customer shall on demand pay VISUAL IMPACT such amount/s as VISUAL IMPACT may from time to time in its absolute discretion require as security for hire charges for any period of the hiring and the return of the Equipment not covered by sums previously paid as security.

11.3. The balance of any sums to be paid by the Customer shall be refunded after all liabilities of the Customer to VISUAL IMPACT have been satisfied in full.

12. NOTICE OF DEFECT

12.1. The Equipment shall be deemed to be in good repair and condition in accordance with the Conditions of Hire and to the Customer's satisfaction upon collection or delivery thereof, as the case may be.

12.2. Any alleged defect shall be notified by the Customer in writing to VISUAL IMPACT within 40 hours of the receipt of the Equipment or, in the case of any defect which is not reasonably apparent on inspection, within 1 day of the defect coming to the Customer's

attention and in any event not more than 3 days from the date of receipt of the Equipment.

12.3. VISUAL IMPACT shall have no liability with regard to any claim in respect of which the Customer has not complied with the Conditions of Hire.

12.4. The Customer shall not allow any technician to do any repair work upon the Equipment without VISUAL IMPACTS prior written consent in which event the Customer shall not have any authority to create any lien or charge upon the Equipment and the Customer shall give notice of this provision to any technician before such technician does any repair work upon or service of the Equipment

13. INDEMNITY AND LIMITATION OF LIABILITY

13.1. The Customer hereby indemnifies VISUAL IMPACT, its respective officers, directors, employees, shareholders, agents and representatives and holds them harmless against all and any claims, actions or proceedings of whatsoever nature made or instituted by any third party in respect of any liability or liabilities (including any contingent liabilities) relating to or arising out of the hiring of the Equipment in terms of this Contract or the operation of the Equipment.

13.2. The Customer shall at all times and in all respects indemnify VISUAL IMPACT in respect of all actions, proceedings, costs claims, and demands whatsoever brought by any person for the death of or injury to any person/s other than death or injury due to the negligence of VISUAL IMPACT or damage to property caused by or arising out of the use of the Equipment in any manner whatsoever whether such liability arise under statute or common law howsoever

13.3. VISUAL IMPACT shall not be liable to the Customer for any damage, loss or destruction howsoever caused, which shall include but not be limited to transportation of the Equipment (including transportation by VISUAL IMPACT), use of the Equipment, instances where the solid state memory, hard drives, discs, tape or any form of media fails to render the results required, expected, stipulated or contracted for by the Customer or, its agents or any third party either within the time period as required, expected, stipulated or contracted for by the Customer or, its agents or any third party at all, trans-coded files not rendering the results required, expected, stipulated or contracted for by the Customer or, its agents or any third party either within the time period as required, expected, stipulated or contracted for by the Customer or, its agents or any third party at all, data loss in part or partial or corruption of solid state memory, hard drives, laser discs, tape or any form of media.

14. CANCELLATION

If the Customer purports to cancel this Contract (whether prior to or during the Hire Period) or fails to accept delivery of the Equipment for any reason whatsoever, the Customer shall pay VISUAL IMPACT by way of liquidated damages the full amount of the total hire price payable for the Hire Period and any discount granted to the Customer in terms of the Quotation shall be forfeited. Such payment shall be made without prejudice to any other right or remedy of VISUAL IMPACT under this Contract.

15. SURETY

The person signing the Quotation on behalf of the Customer ("the Surety") does hereby bind himself/herself jointly and severally with the Customer as surety and co-principal debtor, in favour of VISUAL IMPACT for the due fulfillment of any and all obligations of the Customer to VISUAL IMPACT, arising out of this Contract. The Surety hereby renounces the benefits of excussion and division, and the benefits of cession of action, "non numeratae pecuniae", "non causa debiti", "revision of accounts and no value received, the full meaning and effect of which he/she declares to understand and accept.

16. AUTHORITY TO CONTRACT

If the person signing the Contract is not the Customer he warrants that he/she has the authority of the Customer to enter into this Contract on the Customer's behalf and shall indemnify VISUAL IMPACT against all losses, damages, actions, proceedings, costs, claims, or demands whatsoever suffered or incurred by VISUAL IMPACT as a result of the lack of such authority.

17. NON-ASSIGNMENT

The Customer shall not assign this contract or rehire or part with possession of any of the Equipment without VISUAL IMPACT's written consent.

18. GOVERNING LAW AND JURISDICTION

The laws of the Republic of South Africa shall govern this contract, its implementation and interpretation and any arbitration or litigation arising out of or in relation to this Contract shall be conducted in Cape Town, South Africa.

19. OTHER TERMS

19.1. During all times the Equipment is in the actual or constructive possession of the Customer, Visual Impact, its agents or employees may inspect the Equipment, enter upon any premises where the Equipment is being stored or used, and if it is found that the Equipment is being misused, abused or not being used in accordance with clause 7 hereof, repossess the Equipment or any part thereof prior to the expiration of the Hire Period.

19.2. The Customer acknowledges that he is not entitled to grant possession of the Equipment to any other person or company and is not entitled to hire the Equipment to any other person or to assign this Contract to any other person.

19.3. These Conditions of Hire are available on VISUAL IMPACT's website at www.visuals.tv/rental/86-rental-tcs/.