

# HYPERFOCAL™ - TERMS AND CONDITIONS

## 1. DEFINITIONS

In these Terms and Conditions unless the context otherwise requires:

- a) "HyperFocal™" means HyperFocal™ Pty. Limited (ACN 142 705 253)
- b) "The Hirer" means the person (including his successors, personal representatives and permitted assigns) hiring the Equipment from HyperFocal™.
- c) "Equipment" means any and all items hired by The Hirer from HyperFocal™.

## 2. ASSIGNMENT

The Hirer may not assign any of its rights under this agreement except with the written consent of HyperFocal™. That consent may be withheld at HyperFocal™'s absolute discretion. HyperFocal™ may assign its rights under this agreement provided it has given fourteen (14) days written notice to the Hirer of its intention to do so.

## 3. NO WAIVER

The fact that HyperFocal™ fails to do, or delays doing, something HyperFocal™ is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, The Hirer. A waiver by HyperFocal™ is only effective if it is in writing.

## 4. GOVERNING LAW

This agreement is governed by the laws of the state of New South Wales, Australia. Each party hereby submits to the exclusive jurisdiction of the courts of New South Wales, Australia.

## 5. SEVERANCE

Any provision of this agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or un-enforceability and will not invalidate the remaining provisions of this agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

## 6. NOTICES

Any notice required to be given under this agreement by any party to another shall be in writing addressed to the intended recipient at the address last notified by the intended recipient to the party giving the notice.

## 7. WHOLE AGREEMENT

These Terms and Conditions shall be deemed to be incorporated into all contracts for the supply of the Equipment to The Hirer. These Terms and Conditions constitute the whole of the agreement between HyperFocal™ and The Hirer and shall not be varied in any way unless with the written agreement of HyperFocal™ and there are no other conditions, warranties, promises, representations or obligations, express or implied by law. Any order placed by The Hirer is deemed to be an order unconditionally accepting these Terms and Conditions.

## 8. PAYMENT CONDITIONS

a) Unless otherwise stated on the invoice all prices quoted are strictly net. Unless otherwise demanded by HyperFocal™. The Hirer shall make payment within thirty (30) days from the date of HyperFocal™'s invoice.

b) Any payment made by or on behalf of The Hirer which is later voided by the application of any statutory Provision shall be deemed not to discharge The Hirer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.

c) If The Hirer fails to make payment in accordance with clause 8(a) HyperFocal™ shall be entitled to:

i) Charge default interest at the rate of two and a half percent (2.5%) per month on a cumulative basis on all overdue amounts (including late payment charges and amounts other than the price) calculated on a day to day basis on any monies due but unpaid, such interest to be computed from the due date for payment. The Hirer agrees that such default interest is not a penalty but is a true measure of the damage incurred by HyperFocal™ due to The Hirer's default. Payments received from The Hirer will be credited first against any default interest owing.

ii) Claim from The Hirer all costs relating to any action taken by HyperFocal™ to recover monies due from The Hirer including any mercantile agents costs and legal costs and disbursements on a solicitor-client basis; and

iii) Cease any further deliveries to The Hirer and to terminate any agreement in relation to Equipment that has not been delivered.

## 9. COLLECTION AND RETURN

The Hirer shall be responsible for the collection and return of the Equipment except where a prior arrangement has been made with HyperFocal™ for delivery and return. HyperFocal™ shall have absolute discretion as to the mode of delivery and The Hirer will at all times bear the risk and cost of such delivery.

## 10. CONDUCT DURING PERIOD OF HIRE

a) The Hirer shall take all reasonable precautions to avoid loss or damage to the Equipment during the period of hire.

b) The Hirer shall at all times retain the Equipment in its custody and will ensure that only The Hirer and/or its employees or servants having appropriate qualifications and experience will be permitted to use the Equipment.

c) The Hirer shall not attempt repairs nor shall it mechanically alter the Equipment.

d) The Hirer shall, within twenty four (24) hours of discovery, advise HyperFocal™ of any fault found with the Equipment.

e) The Hirer shall not lend or re-hire the Equipment to any other person or entity.

f) The Hirer agrees to compensate HyperFocal™ for the costs of cleaning & servicing equipment, if it is returned to HyperFocal™, on completion of the hire, in a condition which is less than satisfactory.

g) The Hirer agrees that it shall not, without the prior written consent of HyperFocal™ use the Equipment on any abnormal or hazardous assignment or transport the Equipment by aerial means other than on a regular scheduled flight by a recognised commercial airline.

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## 11. COSTS OF HIRE

a) Hire charges for Equipment are as set out in the rate card or as agreed to by HyperFocal™ in writing and HyperFocal™ reserves the right to alter its hire charges without notice.

b) The Hirer agrees to pay to HyperFocal™ the hire charges, as set out in the rate card, for the Equipment supplied and will pay to or reimburse HyperFocal™ for all delivery costs, and all other costs and expenses for which HyperFocal™ may be liable to pay in connection with the hire of the Equipment to The Hirer.

c) Hire charges for Equipment are calculated from the time the Equipment leave HyperFocal™'s premises until the end of the period of hire or when the Equipment is returned to HyperFocal™'s premises and accepted by HyperFocal™, whichever is the later. In the event that the Equipment is not returned by 9.00 AM on the working day following the last day of the hiring period, The Hirer shall be liable for additional fees at the full daily rate in respect of each day until the Equipment is returned.

## 12. CHARGES.

a) Hiring fees must be paid within 30 days from the date of HyperFocal™'s invoice. Discounts are offered by HyperFocal™ on this basis and HyperFocal™ reserves the right to re-invoice minus discount offered for accounts not settled within the 30 day period.

b) Notwithstanding Clause 12(a) herein, HyperFocal™ reserves the right to demand payment in cash upon confirmation of order, delivery or collection of the Equipment.

c) HyperFocal™ reserves the right to set a minimum invoice value.

d) HyperFocal™ may refuse to hire the Equipment to The Hirer in the event that The Hirer fails to comply with HyperFocal™'s terms of payment.

e) Servicing and/or repair charges must be paid upon or prior to collection of the Equipment from HyperFocal™.

## 13. IMPLIED TERMS

a) The Hirer acknowledges that neither HyperFocal™ nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in this agreement whether as to the fitness of the Equipment for any particular purpose or any other matter.

b) The Hirer further acknowledges that it has determined the Equipment as specified on HyperFocal™ rate card will be fit for its purposes and that it has not relied on the skill or judgment of HyperFocal™ or any person purporting to act on its behalf in selecting the Equipment and that before taking delivery The Hirer has checked the Equipment for completeness, correct functioning and suitability, including testing all Equipment.

## 14. LIMITATION OF LIABILITY

a) The Hirer acknowledges and agrees that unless expressly provided for in this agreement HyperFocal™ 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 the 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.

b) Without in any way limiting clause 14(a) above, The Hirer hereby acknowledges and agrees that in the event that the Equipment fails or malfunctions during a film shoot:

i) HyperFocal™'s liability is limited to total cost of hire;

ii) HyperFocal™ shall bear no liability whatsoever if, due to shortage of inventory, it is unable to provide replacement Equipment to The Hirer; and

iii) HyperFocal™ shall bear no liability whatsoever for the transport costs associated with providing replacement Equipment, if available, to The Hirer.

## 15. RISK AND INSURANCE

a) The Equipment shall be at The Hirer's risk from the time the Equipment leaves HyperFocal™'s premises or from the time The Hirer takes possession of the Equipment, whichever is the earlier, until the time the Equipment is returned and accepted by HyperFocal™. Such acceptance of the Equipment does not release The Hirer from responsibility for loss or damage of the Equipment.

b) Unless The Hirer elects to rely on HyperFocal™'s insurance cover in accordance with the terms of clause 16 of these Terms and Conditions, insurance for the Equipment must be effected by the Hirer with a reputable insurance company and copies of insurance documents must be delivered to HyperFocal™ before the period of hire commences.

c) HyperFocal™ must be noted as joint insured under all policies of insurance effected by the Hirer and The Hirer agrees to inform its nominated insurer where the Equipment may be subjected to abnormal or hazardous conditions or possible damage by foreign materials such as but not limited to salt, water, dust, sand or any liquid, and also where the Equipment will be exposed to any of the situations contemplated by clause 16(B) of these Terms and Conditions, so that the full and appropriate insurance cover may be taken out.

d) All insurance policies must include an extension to include loss of rental income to HyperFocal™ on any lost or damaged Equipment whilst it is being repaired or replaced.

e) In the event the Equipment is lost or damaged (fair wear and tear excepted) while at the risk of The Hirer, The Hirer shall be liable for and agrees to compensate HyperFocal™ for the total replacement cost with new or the cost, at market rate, of repairing the Equipment as the case may be. Further The Hirer agrees to compensate HyperFocal™ for the hire charges identified in this category for the Equipment until the Equipment is

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repaired or replaced.

## 16. LOSS OR DAMAGE RELEASE

If at the request of The Hirer, HyperFocal™ agrees in writing to accept responsibility for loss or damage to the Equipment during the period of hire, The Hirer hereby agrees and accepts the following charges, limitations and conditions.

### A. CHARGES

- i) The Hirer shall pay to HyperFocal™ an additional ten percent (10%) of the total rental charge.
- ii) The Hirer acknowledges that in the event of loss of or damage to the Equipment, The Hirer shall pay to HyperFocal™ on demand the first two thousand dollars (A\$2000.00) plus G.S.T. in relation to each and every claim.

### B. LIMITATIONS

HyperFocal™ will accept responsibility for loss or damage to Equipment within or outside Australia as specifically agreed to in writing, but such responsibility EXCLUDES loss or damage to Equipment in the following circumstances.

- i) Loss or damage caused by misuse, mechanical or electrical derangement.
- ii) Loss or damage caused by exposure to salt, exposure to water, exposure to dust sand or dirt.
- iii) Loss or damage resulting from leaving Equipment in an unattended vehicle whether locked or unlocked.
- iv) Loss or damage resulting from using the Equipment in a helicopter, airplane or other aerial craft (except where the Equipment is being transported by a recognised commercial airline on a regular scheduled flight).
- v) Loss or damage caused to the Equipment whilst it is being used during the carrying out of stunts, or placed near where stunts are being carried out.
- vi) Loss or damage caused by or arising from war, invasion, act of foreign enemy, hostilities (Whether war be declared or not) civil war, rebellion, revolution, insurrection or military or usurped power.
- vii) Loss or damage howsoever caused through confiscation or otherwise by Australian Customs Services or any other Customs Services or other authorities of any country regardless of whether or not an approved Carnet has been granted to cover the equipment. In this instance, equipment will remain rented by the hirer at the same quoted rate until returned or replaced with new by the hirer.
- viii) Loss or destruction of or damage to any Equipment whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss of any legal liability of whatsoever nature directly or indirectly caused or contributed to, by or arising from:
  - a) Ionising radiations or contamination by radioactivity from any irradiated nuclear fuel or from any nuclear waste from the combustion of fuel.
  - b) The radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### C. CONDITIONS

In the event of loss or damage The Hirer shall:

- a) Immediately notify HyperFocal™ and the police

where necessary and take any practicable steps towards discovery and recovery.

- b) As soon as practicable, give a full written report of the circumstances of the loss or damage to HyperFocal™ and furnish HyperFocal™ with any particulars or evidence as may reasonably be required.

- c) The due observance and fulfilment of the terms, conditions and endorsements as stated above in so far as they relate to anything to be done or complied with by The Hirer and the truthfulness of statements and answers made by The Hirer at the time of instigating the loss and damage waiver are conditions precedent to HyperFocal™ accepting any liability for loss or damage of the Equipment.

### 17. GENERAL INDEMNITY

The Hirer shall indemnify and keep indemnified HyperFocal™ and HyperFocal™'s servants and agents for a minimum of A\$10,000,000.00 from all damages, suits, actions, claims and demands of every description whatsoever and howsoever arising either, directly or indirectly from the use, maintenance, transport, operation of the Equipment or otherwise arising out of or in connection with this agreement.

### 18. TERMINATION BY HYPERFOCAL™

HyperFocal™ may, notwithstanding the specified period of hire and notwithstanding any waiver of some previous default, forthwith terminate this agreement and repossess the Equipment in any of the following events

- i) If The Hirer shall fail to pay any hiring charges within two (2) days of the due date.
- ii) If The Hirer shall do or permit any act or thing whereby HyperFocal™ 's rights in the Equipment may be prejudiced.
- iii) If The Hirer should become or be made insolvent or bankrupt or make any agreement or composition with its creditors or in the case of The Hirer being a limited company, should an order be made or a resolution passed for the winding up of such company.
- iv) If The Hirer commits any breach of this agreement.

### 19. CANCELLATION CHARGES.

- i) If The Hirer, after confirming a rental with HyperFocal™, cancels it or seeks to reduce its requirement for services or Equipment, HyperFocal™ reserves the right to charge The Hirer a sum which reflects the cost of HyperFocal™ entering into the agreement and preparing for the supply of the Equipment or services regardless of notice given.

- ii) If The Hirer following the commencement of the agreement, cancels it or seeks to reduce its requirement for equipment or services within 48hrs of the agreed date of delivery HyperFocal™ reserves the right to charge The Hirer a cancellation fee of 75% of the rental cost.

- iii) The Hirer, following the commencement of an agreement greater than 2 weeks duration, may terminate the agreement upon return of the equipment to HyperFocal™, and by paying a

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cancellation fee equivalent to 50% of the agreed rental charge, for the remainder of the agreed period of hire, or for 8 weeks, whichever is the lesser.

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iv) In the event of the Hirer's production being postponed or cancelled solely in response to COVID-19 or other worldwide pandemic government restrictions or regulations, The Hirer may elect to pause the rental, in this event the equipment may be retained by The Hirer, under quarantine, for a mutually agreed period of time, at 50% of the agreed rental charge per week, before production recommences for the remainder of the agreed hire period.

## **20. RECOVERY OF EQUIPMENT**

a) HyperFocal™ or its appointed agent retains the right of entry for the purpose of recovery of the hired Equipment.

b) For the purposes of repossessing the Equipment HyperFocal™ may enter into or upon any such premises where the Equipment may be, without prejudice to the rights of HyperFocal™ to recover from The Hirer any monies due here under or any damages for breach hereof and The Hirer indemnifies HyperFocal™ in respect of any claims, damages or expenses arising out of any action taken under this clause.

## **20. ACKNOWLEDGEMENT BY HIRER**

By signing below The Hirer:

a. acknowledges that it has read these Terms and Conditions and hereby agrees to be bound by them;

b. agrees that, where it has elected to effect its own insurance in relation to the Equipment pursuant to clause 15 of these Terms and Conditions, it has irrevocably waived its right to make any claim under HyperFocal™'s insurance policy in relation to any damage or loss to the Equipment, or to require HyperFocal™ to make such a claim; and

c. acknowledges that where it has elected under clause 16 of these Terms and Conditions to rely on HyperFocal™'s policy of insurance in relation to the Equipment, it must advise HyperFocal™ immediately if the Equipment will be exposed to any of the situations contemplated by clause 16(B) of these Terms and Conditions.

**Company Name**

\_\_\_\_\_  
**Name of The Hirer (Printed)**

\_\_\_\_\_  
**Signature of The Hirer**

\_\_\_\_\_  
**Date**