

## Terms & Conditions

### 1. Definitions

- a. ACL means the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth),
- b. Booking Deposit means a financial deposit equal to 50% of the total Rental/Hire (as the case maybe) Charge, to secure booking and reserve availability of Equipment. The booking deposit is payable strictly within 5 days of receiving the invoice.
- c. TOAC means Tassie Open-Air Cinemas (ABN 27976969739) of 5 Estate Drive, Acton Park, Tasmania, 7170,
- d. Customer means the person hiring/renting (as the case may be) the Equipment from TOAC, including all persons acting on behalf of, or under the instructions of the Customer,
- e. Equipment means the equipment listed on the booking form or invoice overleaf,
- f. Hire means that the customer is hiring a fully serviced screening, including technician/s and equipment for either an existing event, or a standalone event,
- g. Hire/Rental Charge (as the case maybe) means the charge set out within written quotation or tax invoice, together with any applicable taxes and duties and must be paid in full prior to the event,
- h. Late Return means return of Rental equipment after agreed date and time of return, as specified in schedule (where no time is specified, return time is 10am on final day of rental),
- i. PPSA means the Personal Property Securities Act 2009 (Cth),
- j. Rental means the customer is renting a Do it Yourself system and associated Equipment from TOAC,
- k. Rental of Equipment – TOAC agrees to rent the Equipment to the Customer for the Term and the Customer agrees to take the Equipment on rental for the Term and pay the rental Charge. The rental Charge must be paid in full prior to the Equipment being removed from TOAC's premises, unless the Customer is an approved account customer, in which case terms of payment are strictly 30 days from the date of the invoice. In the event of cancellation of the rental within 48hours of agreed commencement of Term, TOAC reserves the right to charge a cancellation fee equivalent to 25% of the rental Charge rate as is current at time of cancellation,
- l. Return means the delivery of ALL equipment to TOAC,
- m. Return Period means the date and time as agreed in the schedule that equipment is to be returned to the possession of TOAC. (Where no date or time has been specified in the schedule, return period is by 10am on final day of Hire),

- n. Schedule means the rental contract, Tax Invoice or quotation outlining details and specifics of Rental/Hire, including but not limited to; Term, Return Period, Hire Charge, Customer,
- o. Security Bond means financial security deposit held by TOAC; this amount is equal to the Rental Charge or \$3000 whichever is lesser, and
- p. Term means the period specified within schedule. Terms and Conditions, Equipment is rented strictly on the basis of the terms and conditions contained in this agreement. Modification of these terms and conditions expressed in any document of the Customer will not apply to the hire/rental (as the case may be) of the Equipment unless expressly accepted in writing by TOAC.

**2. Cancellation** Any Customer cancellation must be made no less than 3 days prior to the Event Date or else no fees will be refunded

- a. Cancellation of bookings will only be accepted when made in writing, and will result in the forfeit of the Booking Deposit,
- b. Cancellation or postponement of an event due to unforeseen, and unsuitable weather conditions will be through consultation with the Customer; however TOAC reserves the right to the ultimate decision,
- c. Postponement of an event due to weather conditions will incur additional technician charges and any rehire of equipment for the rescheduled event once the technician has begun travel to the venue of initial booking and where less than 75% of the film has been screened. TOAC reserves the right to require reimbursement of reasonable expenses beyond the control of TOAC or its staff.
- d. In the event of postponement due to weather prior to technician departing for the event, TOAC agrees to reschedule a substitute event within 12months of the original Event Date at NO ADDITIONAL COST to the Customer.

**3. Obligations of the Customer.** In all cases the Customer must:

- a. advise TOAC of the situation of the Equipment at all times,
- b. not take the Equipment out of Tasmania, without the prior written consent of TOAC,
- c. not use or allow the Equipment to be used on any abnormal or hazardous assignment, or contrary to the instructions of use, unless TOAC has given its prior written consent,
- d. take all reasonable precautions for the safety and security of the Equipment and not use the Equipment where it could be affected by salt, water or climatic or atmospheric conditions,
- e. comply with all relevant laws and regulations when using the Equipment,
- f. in the case of rental only, return the Equipment to TOAC by the expiry of the Term in good working order and condition, and inform TOAC of any damage or defect arising during the hiring or any incident that occurred during the hiring likely to cause such defect or damage,

- g. not attempt to adjust, repair or interfere with the Equipment except where it is necessary for its proper and normal use, and
  - h. Ensure the Equipment is used in a skillful and proper manner by persons with the necessary experience and familiarity with that type of equipment.
  - i. In the case of event hire, allow TOAC to advertise your event on TOAC Social media. The customer also agrees to allow TOAC to promote upcoming events, services and TOAC sponsors at your event.
4. **Delivery & Collection** delivery and/or collection of Equipment from TOAC is the responsibility of the Customer, including any associated delivery, freight and transportation costs. The Customer agrees that all transport charges, including handling and insurance is at the expense of the Customer. Collection of equipment shall be no earlier than 2 pm on first day of rental.

## 5. State of Equipment

- a. The Customer will check the Equipment upon receipt and unless it notifies TOAC promptly upon receipt will be deemed to accepted the Equipment as being complete and in good working order,
- b. Return of rental Equipment in a dirty or improperly packaged condition, but otherwise complete and undamaged, will attract the following charges at the discretion of TOAC:
  - 1) Screen & accessory cleaning - \$50.00,
  - 2) Speakers & accessory cleaning - \$50.00,
  - 3) Projector & accessory cleaning - \$50.00, and
  - 4) Optional extras & accessories cleaning- \$50.00.
- c. TOAC may deduct such amounts from the security bond and the Customer shall be liable for any additional amounts in excess of the security bond (where applicable).

## 6. Return of Equipment

- a. All Equipment contained in the Rental transaction is to be returned not later than 10am on the final day of hire, unless otherwise agreed in writing prior to commencement of Rental,
- b. Late Return will be subject to a surcharge equal to the daily Rental Charge for every 24hours or part thereof after agreed Return Period, and
- c. Return of Equipment constitutes an implied warranty from the Customer that all components and items have been returned in full working condition (less reasonable wear and tear from acceptable use) unless written notification is provided at time of Return. Where the TOAC technician is not available for testing the equipment on return, TOAC reserves the right to test the equipment in the absence of the customer. The customer will be notified of any lost, damaged or dirty equipment immediately.

## **7. Title**

- a. The Customer acknowledges that TOAC holds a security interest in the Equipment, which TOAC may register,
- b. The Customer waives its right to receive a notice or statement under sections 95, 141(4), 130 and 157 of the PPSA, and
- c. In this clause 7, the terms “security interest” have the same meanings as under the PPSA.

## **8. Risk, broken, loss or damage of Equipment and insurance**

- a. The Customer accepts responsibility for the care and safekeeping of the rental 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 TOAC's premises until the time the Equipment is returned, including occasions where TOAC agrees to deliver or pick up the Equipment.
- b. TOAC will be entitled to demand and recover from the Customer any losses (including costs) incurred by TOAC in respect of loss or damage to the Equipment, howsoever arising.
- c. 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 Rental Charge for the Equipment at the rate applicable for the Term until the Equipment is replaced or repaired as the case may be.
- d. Any loss of or damage to the Equipment must be immediately notified to TOAC and the Customer will, at the request of TOAC, take any steps reasonably required of the Customer in respect of making reports to TOAC, the insurer, the police or other appropriate authorities concerning any such loss or damage.
- e. Some equipment must be completely replaced even if only part of the equipment is damaged, as components are not sold separately. These items include:
  - 1) Screen blower,
  - 2) Additional items such as cables and pegs,
  - 3) All other equipment not stated here will be quoted on the day, by sourcing the same item or suitable replacement.
- f. Any claim on the Customer's own insurance policy will be at the discretion of the Customer and will not be an obligation or requirement of TOAC.
- g. The Customer will not do any act or thing whereby any warranty or insurance in respect of the Equipment may be voided or prejudiced in any way. The Customer acknowledges that installation to the Equipment of non-authorized third party hardware, and use other than in accordance with manufacturer's instructions will in most cases void the cover.
- h. The Customer acknowledges and agrees that insurance held by TOAC does NOT extend to cover damage to the Equipment, loss or theft during Hire/Rental (as the case maybe) and whilst in the possession of the Customer.

- i. A standard Security Bond is payable and held by TOAC in the form of cash (to the value of the Equipment rental) for each and every instance of rental. This bond is refundable upon full compliance with the return times and Equipment being returned, complete in good, clean working order. This bond is applicable to all forms of Customer, including COS and 30day account holders. TOAC may deduct such amounts from the security bond and the Customer shall be liable for any additional amounts in excess of the security bond (where applicable).

## **9. Pricing & Quotation**

- a. Any and all advertised or otherwise communicated pricing is subject to change and variation at any time without notice to the Customer,
- b. Any prices, charges, costs or estimations provided either verbally or in writing (other than by means of formal written quotation) are defined as estimates only and are not legally or financially binding to any or either party.
- c. All pricing (unless otherwise specified in writing) excludes freight, delivery, transport, operator, technician, labor, insurance or licensing costs.

## **10. Availability & Reservations**

- a. TOAC makes no offer, agreement or assurance of availability of Equipment whether in writing or verbally prior to receipt of booking confirmation, signed rental agreement and payment of Booking Deposit.
- b. TOAC reserves the right to provide Equipment to an alternative customer in the event a Booking Deposit has not been received to confirm the booking,
- c. The Customer agrees and acknowledges that TOAC shall not be held liable for any loss, financial or otherwise due to unavailability of Equipment where that Equipment has been booked by another customer prior to the Booking Deposit being paid.
- d. TOAC cannot, and does not guarantee the availability of Equipment until Booking Deposit has been received.

## **11. Exclusion of Warranties**

- (a) Except to the extent:
  - (i) that the exclusion, restriction or modification of certain conditions, warranties, liabilities and rights is prohibited by the ACL; and
  - (ii) of any express warranty against defects,

then:

- (iii) any conditions, warranties or rights implied to the Customer's benefit by legislation, conduct or common business practice are hereby excluded to the maximum extent permissible; and

- (iv) TOAC will not be liable for any defects or damage caused in whole or in part by misuse, abuse, neglect, or accident;
  - (v) TOAC's total maximum liability in relation to or arising from any Hire of Equipment is the Hire Charge paid by the Customer.
- (b) Where the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer's remedy under Part 3-2 of the ACL, other than in respect of sections 51, 52 or 53, is limited to one or more of:
- (i) the replacement of the goods;
  - (ii) the supply of equivalent goods; or
  - (iii) the cost of replacing the goods or of acquiring equivalent goods;
  - (iv) the cost of having the goods repaired.
- (c) Where any services supplied by TOAC are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer's remedy under Part 3-2 of the ACL is limited to one or more of:
- (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again.
- (d) Where TOAC is deemed to be a "manufacturer" for the purposes of Part 5-4, Div 3 of the ACL, then where the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, TOAC's liability under section 274 of the ACL is limited to the lowest of:
- (i) the cost of replacing the goods;
  - (ii) the cost of obtaining equivalent goods;
  - (iii) the cost of having the goods repaired.
  - (iv) the limitation in paragraphs (b), (c) and (d) above do not apply where the Customer establishes that the limitation is not fair and reasonable.

## **12. Termination**

- a. If the Customer defaults in punctual payment of any amount due under this agreement, is in breach of any term of this agreement, is declared bankrupt or enters into any agreement for the benefit of its creditors or if any execution of distress is levied against it and remains unsatisfied, or being a company, is placed into receivership, receivership or liquidation, then in any such case TOAC may without further notice, and without prejudice to any of its rights, terminate this agreement.
- b. In the event of termination the Customer must immediately at its own risk and cost deliver up the Equipment to TOAC PROVIDED HOWEVER that in the event that the Customer neglects or refuses to do so, it is agreed that TOAC, its servants and agents may without prior notice and without liability for trespassing or any resulting damage, enter any premises where the Equipment is situated and seize and retake possession of the Equipment. It is further agreed that the Customer will be liable to pay upon demand all costs and expenses which are incidental to any such retaking of possession incurred by TOAC, together with

penalty interest calculated at a rate which is 3% above the 90 day bank bill rate of TOAC's bank from time to time.

- 13. 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.
- 14. Governing Law** This agreement will be governed by the laws applicable in the state of Tasmania, Australia and both TOAC and the Customer submit to the jurisdiction of the courts of that state and any courts competent to hear appeals from those courts.
- 15. Agreement** I ALSO ACKNOWLEDGE THAT IT IS MY RESPONSIBILITY TO UNDERSTAND THE OPERATION OF THE RENTED GOODS and I accept full responsibility for operation, care and maintenance for the period the equipment is in my care, and will not hold TOAC or its staff, responsible for injury or accident incurred while using the Equipment. I understand that I am responsible for returning this Equipment on the date indicated within the Schedule.
- 16. Other charges.** All other charges including, packing and shipping and handling, Freight, duties and taxes are payable by the hirer.

**Executed as an Agreement**