

# TERMS & CONDITIONS OF HIRE



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## 1. DEFINITIONS

- 1.1. 1.1. “Company” means Visual Impact Broadcast Solutions (Pty) Ltd trading as Visual Impact Sales, or its successor;
- 1.2. 1.2. “Customer/s” means the party who or which purchases the Products from the Company, and includes the Customer’s representatives, successors and permitted assigns, and shall also include, where applicable, any user of the Website;
- 1.3. “CPA” means the Consumer Protection Act, 68 of 2008;
- 1.4. “Contract” means any contract or agreement arising out of the acceptance of any offer, whether that contract arises out of an offer made by the Company and accepted by the Customer, or an offer made by the Customer and accepted by the Company, and includes the terms and conditions of any agreement between the parties regarding installation, if applicable;
- 1.5. “ECTA” means the Electronic Communications and Transaction Act 2 of 2002;
- 1.6. “Products” means the products sold to the Customer by the Company which form the subject matter of the Contract, including but not limited to broadcast accessories and film consumables;
- 1.7. “Website” means <[www.visuals.tv](http://www.visuals.tv)>.

## 2. IMPORTANT NOTICES

- 2.1. **This document contains the standard terms and conditions of sale on which the Company sells the Products or provides the services to Customers.**
- 2.2. **These terms and conditions shall be binding between the parties for all current and future online sales of the Products, unless the parties have signed new terms and conditions.**
- 2.3. **If the Customer is a consumer for the purposes of the “CPA”, then the provisions of clauses 13.2.4 and 14.4 will not apply to the Customer for the provision of the services or the sale of the Products to the Customer by the Company.**
- 2.4. **Nothing in this agreement is intended to or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either of the Customer or the Company in terms of the CPA.**

### 3. INTRODUCTION

- 3.1. The Company (**registration number: 2001/019706/07**) is in the business of Rentals and sales of Broadcast equipment, and a representative of the Company can be contacted at **1 Glynville Terrace Gardens, Cape Town, South Africa.**  
Email: **sarentals@visuals.tv**
- 3.2. The Website is run by the Company.

### 4. GENERAL

- 4.1. These standard online terms and conditions form the entire agreement between the parties. No other terms or conditions, whether express, tacit or implied shall apply to a Contract irrespective of the circumstances under which the Contract arose. No alteration or variation of these terms and conditions shall be of any force or effect unless and until recorded in writing and approved by the Company. All provisions and the various clauses of this contract are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this contract which becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as not forming part of the contract and the remaining provisions and clauses of this contract shall remain of full force and effect.
- 4.2. These standard online terms and conditions of sale may be periodically modified and/or amended by the Company at any time and in their sole discretion, and it is the Customer's responsibility to ensure that they are familiar with the updated and/or amended terms. The Customer's continued use of this Website signifies the Customer's acceptance hereof.

### 5. PURCHASE PRICE

- 5.1. Prices of the Products are displayed with each Product on the Website and may be withdrawn and/or altered by the Company at any time.
- 5.2. All prices quoted on the Website exclude VAT, charges for installation of the Products, surcharges and delivery, unless otherwise stated therein.
- 5.3. Where a Product is offered on discount or at a particular price the Company will

not be held liable where a sale cannot be concluded because such discount or particular price can no longer be offered to the Customer as the purchase price of the Product has increased, for whatsoever reason, between the period of adding a Product to a shopping trolley and the Customer attending to the checkout and payment of the Product.

## **6. ACCEPTANCE OF CONTRACT**

- 6.1. Any Product selected by the Customer may either be placed in a shopping trolley or added to a Customer's wishlist. Placing Products in either a shopping trolley or wishlist does not constitute a contract of sale between the parties and the Company cannot be held liable for any reason whatsoever if the Product is not available when the Customer wishes to checkout and complete the purchase process. The Company furthermore reserves the right to unilaterally remove a Product from a Customer's shopping trolley and/or wishlist should the selected Product no longer be available or in stock.
- 6.2. A contract shall come into existence and effect if and when a credit card authorisation is received from the issuing bank alternatively a deposit received into the Company's nominated bank account resulting from an electronic funds transfer within 5 (five) days from the completion of the checkout process.
- 6.3. The Customer's order or acceptance of a price quoted on the Website is binding on the Customer and in the event that the Customer cancels the order or accepted quote, the Company may charge the Customer a reasonable cancellation fee, taking into account expenses incurred by the Company and commitments made by the Company.
- 6.4. Notwithstanding what is contained in clause 6.3, the Customer may not cancel an order or accepted quote where that order relates to Products that the Company has been expressly or implicitly required or expected to procure, create or alter specifically to satisfy the Customer's requirements.
- 6.5. The Customer acknowledges that it is aware that the Company's sales persons, where applicable, have no authority to vary these standard terms or conditions of online sale and the Company assumes no liability and shall not be bound by any statements, warranties or representations made by such sales persons save as expressly stated in writing and signed by a manager or director of the Company, duly authorised.
- 6.6. The Company may cancel any orders made by the Customer, in part or in full,

without reason and shall be liable only to refund to the Customer monies already paid in respect to the cancelled Product.

- 6.7. While the Company makes every effort to ensure that the information and stock listing on their Website is correct and accurate the Company will not be held liable for any inaccuracies and will endeavour to inform the Customer of any delays or Products out of stock.

## **7. PRODUCT AVAILABILITY**

- 7.1. The stock quantities of each individual Product on offer for sale on the Website are limited.
- 7.2. The Company endeavours to take all reasonable steps to remove a Product from the Website or indicate on the Website accordingly that the specific Product is out of stock.
- 7.3. Should a Product be sold to the Customer that is out of stock, the Company will be liable to refund the Customer where the Company is unable to fulfil the order of the Product at the advertised purchase price. The Company shall inform the Customer of any change in the delivery date where a Product is out of stock but the order is able to be fulfilled as aforementioned.

## **8. PAYMENT**

- 8.1. Payment of the purchase price of the Products, including VAT and any other applicable costs, shall be made to the Company, without deduction or set-off, upon order of the Products by the Customer and upon checkout on the Website.
- 8.2. The Products shall not be collected from or delivered to the Customer without full payment of the purchase price having been made by the Customer to the Company, and the checkout purchase process being completed.
- 8.3. Ownership in the Products shall not vest in the Customer and shall remain with the Company until such time as the full purchase price, including all and any additional and applicable costs have been paid by the Customer to the Company.
- 8.4. Payment may be made via:
  - 8.4.1. Visa, Mastercard, Diners or American Express credit cards or debit cards in accordance with clause 8.7; or
  - 8.4.2. made by bank transfer into the Company's nominated bank account, the details of which will be provided upon the request of the Customer.

- 8.5. Should the Customer request to make payment by bank transfer then such payment shall be reflected in the bank account of the Company within 5 (five) days of the online checkout purchase process having been completed. Should the purchase price not reflect in the Company's nominated bank account as aforementioned then the Company may sell the Product to a third party in order to defray costs and the Customer shall have no claim whatsoever against the Company in such circumstances. This shall not release the Customer from liability and/or damages in respect thereof, as the case may be.
- 8.6. Should the Customer fail to make any payment on due date then all amounts owing by the Customer to the Company from whatsoever cause will immediately become due and payable by the Customer and the Customer shall immediately forfeit all discounts of whatsoever nature which may have been expressly granted to it by the Company.
- 8.7. Credit card transactions will be acquired for the Company via Paygate (Pty) Ltd ("Paygate") who are the approved payment gateway for Standard Bank of South Africa Limited. Paygate uses the strictest form of encryption, namely Secure Socket Layer 3 ("SSL3") and no credit card details are stored on the Website. The Customer may visit Paygate's website at [www.paygate.co.za](http://www.paygate.co.za) to view their security certificate and security policy.
- 8.8. The Customer's personal details will be stored by the Company separately from the Customer's credit card details which are entered by the Customer on the Paygate secure website.
- 8.9. The Company's outlet country at the time of presenting payment options to the credit card holder is South Africa and the transaction currency is South African Rand.

## **9. DELIVERY OF THE PRODUCTS**

- 9.1. Delivery of the Product shall take place at the address specified by the Customer on the Website and the Customer shall be deemed to have accepted the Product upon their delivery to such address. The Customer shall make all necessary arrangements to take delivery for the Product whenever they are tendered for delivery.
- 9.2. The Customer undertakes to notify the Company forthwith in writing of any change in address timeously.

- 9.3. The Product may be collected directly from the Company if agreed to in writing between the parties.
- 9.4. Deliveries take place during normal business hours from Monday to Friday, unless otherwise agreed between the parties, and all deliveries will be subject to a delivery fee calculated according to the delivery address of the Customer. This delivery fee will be communicated to the Customer at the time of placing the order for the Product and will be paid for by the Customer at the time of completing the checkout process and making payment for the Product. Additional delivery fees will be charged to the Customer in instances where delivery is impossible due to inaccessibility and/or failure to adhere to appointment time.
- 9.5. The Customer agrees that the signature of the Customer, any agent, contractor, sub-contractor or employee of the Customer on the Company's official trip sheet / delivery note / invoice / waybill, or the delivery note of any authorised independent carrier will constitute delivery of the Product purchased. Delivery shall furthermore be deemed to have taken place against proof of posting if the Product is posted to the Customer or delivery to the South African transport services or road carriers if the Products are railed or transported by the Company to the Customer in this manner. The post office / South African transport service / road carrier shall act as an agent of the Customer.
- 9.6. The Customer acknowledges that the delivery dates given by the Company in advance are estimated. The Company will use its best endeavours to ensure that delivery is completed as soon as is reasonably possible after the estimated delivery date. Notwithstanding the foregoing, the Company shall not be liable for failure to perform or delay in performance hereunder resulting from any cause beyond the Company's control, fire, labour difficulties, transportation difficulties, interruptions in power supply (including but not limited to what may be termed "load shedding" or "black-outs") and delays in usual sources of supply, major changes in economic conditions, breakdown of machinery or any cause beyond the Company's control, or whether caused by negligence or otherwise.
- 9.7. If Products, when ordered together, have various delivery dates then the date of the Product which is latest in time shall be the estimated date of delivery of all the Products specified in the order, unless the Customer requests part delivery of certain Products, subject to additional delivery fees.
- 9.8. If the Company is unable to deliver the Product to the Customer for reasons beyond its control, then the Company shall be entitled to place the Product in storage until such time as delivery may be affected and the Customer shall be liable

- for any expense associated therewith, including, without limitation, storage costs.
- 9.9. Subject to a quote or written agreement between the parties providing to the contrary, risk in and to the Products shall pass to the Customer upon delivery, regardless of whether or not the Company has agreed to effect installation of the Products.
- 9.10. The Customer shall immediately upon receipt of the Products from the Company be allowed to inspect the Products and the Customer must inform the Company of any errors by way of written notice, to be received by the Company within 10 (ten) days of receipt of the Products by the Customer. Should the Customer fail to notify the Company of any claim the Customer may have in terms hereof within the specified 10 (ten) day period such failure shall constitute a complete waiver of any such claim.
- 9.11. Any of the Products delivered to the Customer in error will only be considered for return by the Company provided that such Products are undamaged, have not been tampered with in any way and are not defaced in any way.
- 9.12. If the Customer, due to some fault of its own, cannot accept or should it request the Company in writing to suspend or delay delivery of the Products, the Company reserves the right to claim any additional costs, including storage costs, involved from the Customer.

## **10. RETURNS POLICY**

- 10.1. Subject to the provisions of sections 42 and 44 of ECTA the returns policy of the Company is as follows:
- 10.1.1. Products sold may only be returned within 7 (seven) days of delivery date, upon presentation of a receipt and on condition that they are returned in their original condition undamaged;
- 10.1.2. Notwithstanding what is contained in clause 10.1.1, the Customer may not return Products that have been discounted, are on sale or that the Company has been expressly or implicitly required or expected to procure, create or alter specifically to satisfy the Customer's requirements;
- 10.1.3. The Customer shall return the Product at its own expense and be liable for all courier or similar fees involved. These fees will be deducted from the purchase price of the Product if a refund is required;
- 10.1.4. In the instance of an exchange of Product, the Customer will be liable for the courier fees in returning the Product and resending the replacement Product



to the Customer.

- 10.2. Refunds, where applicable, on credit cards will reflect on the credit card used to purchase the Product. Bank transfer refund, where the Product was purchased with a debit card or via an electronic funds transfer will be processed within a reasonable period after all the necessary banking details of the Customer have been verified.

## 11. INSTALLATION

The Company is under no obligation to effect installation of the Products at the premises of the Customer. However, if the Company agrees in writing, to effect installation of the Products, the following terms and conditions shall apply, unless otherwise agreed in writing:

- 11.1. the Company may use any contractor or sub-contractor of its choice to effect installation;
- 11.2. any payment made in respect of the installation, which may be requested by the Company will, in addition to any other rights which the Company may have in law, be forfeited by the Customer as liquidated damages in the event of a breach by the Customer of any of the terms of the contract;
- 11.3. to the extent applicable, the Company shall not commence installation unless the area to which the Products will be attached has been prepared according to the specifications of the Company. The Company shall not be responsible for any delays or additional costs arising out of the failure of the Customer to procure that the relevant area complies with the specifications of the Company;
- 11.4. the Company will use its best endeavors to ensure that installation is completed as soon as is reasonably possible after the date on which installation commences, but time for the completion of installation shall only be of the essence if a completion date is agreed in writing with the Company. Notwithstanding this, no responsibility will be accepted by the Company for delays due to forces beyond its reasonable control; and
- 11.5. the Customer indemnifies and holds harmless the Company against any and all liability which may arise in the event of death or injury to, or pecuniary loss suffered by, any contractor, sub-contractor or employee of the Company in the course and scope of his/her employment in connection with the installation, as a result of the negligence or wilful misconduct of the Customer, its officers, employees or agents.

## **12. OWNERSHIP**

The passing of risk, ownership of and title to the Products shall remain vested in the Company until the purchase price, and any other amounts owing to the Company in respect of the Products or the installation thereof (if applicable), have been paid in full and without set-off, on which date ownership of the Products will be deemed to be transferred to the Customer.

## **13. WARRANTIES**

- 13.1. The Company gives only the following warranties in respect of the Products:
- 13.1.1. it has title to the Products and has the unencumbered right to sell and install the Products; and
  - 13.1.2. if the Products are new, then they carry the manufacturer's warranty against defects and the Company will assist the Customer with the implementation of the warranty only if the Customer notifies the Company in writing of any defects in respect of the Products within 12 (twelve) months from the date of delivery and such Products are determined by the manufacturer on a good faith inspection thereof, to be defective in respect of materials and/or workmanship. The Company will not be liable to compensate the Customer for any damages sustained by the Customer whilst the Products are being repaired, nor shall it be liable for any other damages, including consequential damages, relating to the replacement or repair of the Products.
  - 13.1.3. Only in the event of the Consumer being a consumer for the purposes of the CPA, then: (a) in addition and concurrent to the warranty given in 13.1.2 above, the Products are supplied to the Consumer with a six month warranty of quality against defects (within the meaning of the CPA), and (b) unless the Customer has specifically informed the Company of the intended use of the Product, the Company does not warrant that the Products purchased by the Customer will be fit for the purpose that the Customer intends using the Products for.
- 13.2. Notwithstanding the provisions of clause 13.1 above:
- 13.2.1. if any defect in the Products, or the components of the Products, relates to alterations contrary to the Product and/or Company instructions or after leaving the control of the Company, the Company will not be liable for those defects, including in respect of any possible liability in terms of the implied

- warranty of quality contained in the CPA;
- 13.2.2. any warranty provided by the Company will cease to apply if any material information provided by the Customer, specifically insofar as the intended use of the Product is concerned, is incomplete or incorrect or if there is any material change in operating conditions or any misuse, abuse or material neglect of the Products by the Customer.
  - 13.2.3. If the Products are second hand then they do not carry any warranty unless the manufacturer's warranty is still in place.
  - 13.2.4. **Other than the warranties stated herein, the Customer acknowledges that the Company has made no representations or warranties to the Customer in connection with the agreement prior to the agreement being made.**

## 14. LIMITATIONS

- 14.1. **In addition to any other specific exclusions of liability contained herein and unless otherwise expressly stated herein, the parties agree that the Customer shall have no claim against the Company for any loss or damage, of any nature, including but not limited to damage to camera components in underwater housings, corruption of data or software programs, any costs of recovering, programming, or reproducing any program or data stored or used and any failure to maintain the confidentiality of data stored on the Products sold, occasioned by any defect in any Products supplied, or any failure to provide adequate instructions in respect of any hazards that might arise from the use or incorrect use of the Products, or the Customers use or inability to use any Product sold on the Website, save to the extent that the Customer is a Consumer for the purposes of the CPA and such loss or damage is contemplated in section 61 of the CPA, and provided that nothing in these terms and conditions must be construed as in any way limiting the rights of the Company to raise such defences as may be available to it at common law or in terms of any statute.**
- 14.2. **Notwithstanding the provisions set out in clauses 13.2.1 and 14.1 above, in the event that the Company provides advice regarding the application of the Products at the request of the Customer, the liability of the Company in respect of the non-suitability of the Products for the purpose for which they are used will be limited to the selling price of those Products.**
- 14.3. **Furthermore, in the event of the breach of these standard terms and conditions**

of sale by the Company, the Customer's remedies shall be limited to damages which shall under no circumstances exceed the purchase price of the Product.

- 14.4. The Customer hereby indemnifies and holds the Company harmless against any losses, expenses, costs or damages of whatsoever nature incurred by the Customer arising from any wilful misconduct or gross negligence of the Company.
- 14.5. In order to limit any possible damage, the Customer is advised to make periodic backup copies of software, data and any information installed by the Customer to protect the contents and as a precaution against possible operational failures.
- 14.6. Save for the provisions of section 43(5) and 43(6) of ETCA, neither the Company, nor its duly authorised agents or representatives shall be liable for damages, loss or liability of any nature whatsoever and howsoever arising through the use or inability to use this Website, the services or content provided herein. The Company furthermore makes no representation or warranties whatsoever that the content and/or the technology available on this Website are free of errors, omissions or free of interruption.
- 14.7. Any and all information on this Website should not be regarded as professional advice or the official opinion of the Company, and it is the Customer's responsibility to ensure the correctness of any of the content displayed on the Website.

## 15. DEFAULT

- 15.1. Should the Customer fail to make payment upon due date of any amount due and owing, or commit any other breach of the terms of a contract, the Company shall be entitled, at its option without notice and without prejudice to any other right which it may have, including the right to claim damages arising out of the breach or the termination of the contract, to cancel such contract forthwith, and/or to declare all amounts owing by the Customer to be immediately due and payable; and/or to suspend the carrying out of any of its then uncompleted obligations until payment is made.
- 15.2. No relaxation which the Company may have permitted on any occasion in regard to the carrying out of the Customer's obligations shall prejudice or be regarded as a waiver of the Company's rights to enforce those obligations on any subsequent occasion.

## 16. RESPONSIBILITY

The Company takes responsibility for all aspects relating to the transaction, including sale of the Products on the Website, customer service and support, dispute resolution and delivery of the Products, the details of which are more fully described in these standard terms and conditions of sale.

## 17. INTELLECTUAL PROPERTY

No right or license is hereby granted to any user of this Website, whether juristic or otherwise, to any trademark, mark, branding, design or any other intellectual property of the Company whatsoever.

## 18. PRIVACY POLICY

- 18.1. The Company shall take all reasonable steps to protect the personal information of the Customer collected by the Company through the Website. For the purposes of this clause "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 ("PAIA"). The PAIA may be downloaded at [http://www.polity.org.za/attachment.php?aa\\_id=3569](http://www.polity.org.za/attachment.php?aa_id=3569).
- 18.2. The personal information will not be made available to any third party without the Customer's consent or unless required in legal process or proceedings or to protect the rights, property or safety of the Company or other parties.
- 18.3. The Customer agrees that the Company may its confidential information to communicate with the Customer from time to time, unless otherwise specified by the Customer in writing.
- 18.4. The Company's detailed Privacy Policy can be access at <INSERT WEB LINK>.

## 19. ASSIGNMENT

The Customer may not actually or purportedly cede, assign or otherwise alienate any rights or obligations which it may have in terms hereof or in terms of any contract with the Company, without the Company's written consent, which consent will not be unreasonably withheld.

## **20. NOTICES AND DOMICILIUM**

- 20.1. The parties hereto select as respective addresses for service of any documents the addresses set out in any order contemplated in terms hereof.
- 20.2. Any written notices in respect of this contract shall be sent by email and shall be deemed to have been received on the day of transmission.

## **21. GOVERNING LAW & JURISDICTION**

- 21.1. This Website, these online terms and conditions, the contract and any contract shall be subject to the laws of the Republic of South Africa.
- 21.2. In terms of Section 45 of the Magistrates Court Act of 1944, as amended, the Customer hereby consents to the jurisdiction of the Magistrates Court having jurisdiction in terms of Section 28 of the said Act in respect of any action to be instituted against the Customer by the Company in terms of the contract. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Customer in such Magistrates Court or any other court having jurisdiction.
- 21.3. In the event of the Customer committing any breach of the contract or in the event of the Company being required to take any legal action, the Customer agrees and undertakes to pay the Company's legal costs as between attorney and own client including collection commission, tracing fees, valuation charges, transport costs and other expenses in connection therewith.