



HIRE OF EQUIPMENT AGREEMENT

THIS AGREEMENT to hire equipment is made the _____ Day of _____ 200____
BETWEEN

FATS Digital Pty Ltd (ABN 17 005 554 816) of 1b 372 Eastern Valley Way Chatswood NSW 2067, ("FATS"), its assigns. Successors in title, personal representatives or transferees
AND

..... of
in the state of _____ ("the hirer") its successors in title, personal representatives or transferees.

WHEREAS:

- A. FATS is the owner of certain specialised and highly sensitive equipment being all the items hired by the hirer from FATS ("the Equipment") as described Item 1 of the Schedule attached hereto (The Schedule")
- B. The Hirer desires to hire the Equipment for the period set out in Item 2 of the Schedule as the rate specific in Item 4 of the Schedule.

AND THE PARTIES AGREE as follows:

General:

1 In consideration of the hirer paying the equipment hire charge set out in Item 4 of the Schedule in advance of the hiring, FATS hereby agrees to hire the Equipment to the hirer upon the terms set out in this Agreement. These terms are deemed to be incorporated into all contracts for hire of the Equipment constitute the whole agreement between FATS and the hirer and shall not be varied unless with the written Agreement of FATS. All other warranties conditions and representations whether express or implied other than any express warranty stated by FATS in writing are hereby expressly negated and excluded except where FATS is unable by law to exclude or limit its liability.

Terms of Hire:

- 2. (i) The hirer shall take all reasonable precautions to avoid loss or damage to the Equipment during the period of hire.
- (ii) The hirer shall at all time retain the Equipment in its custody and will ensure that only the hirer and/or its employees or servants having appropriate qualifications and experience shall be permitted to use the Equipment
- (iii) The hire shall not lend or sub-hire the Equipment to any other person.
- (iv) The hirer agrees that it shall not use the Equipment on any hazardous or abnormal assignment or transport the Equipment other than by a transport operation approved by FATS for the purposes of returning the Equipment to FATS.
- (v) Failure by FATS to deliver the Equipment shall not give the hirer a cause of action against FATS.

Hire Charges:

- 3. (i) The hirer agrees as set out in the Schedule to FATS or as FATS directs and to pay or reimburse to FATS all delivery costs, stamp duty and other government duties, taxes and expenses unless prohibited by Statute. Signing of this Agreement by the hirer shall constitute acceptance of the offer and is an acknowledgement that the hirer accepts the terms and conditions of this Agreement. Each order is subject to acceptance by FATS, which shall be under no obligation to hire the Equipment to the hirer.
- (ii) If the Equipment is not returned by 4pm on the date of the last date of the hire period as specified in Item 2 of the Schedule hereto, the hirer shall be liable for a full further hire charge assessed on a daily basis until the Equipment is returned.
- (iii) Insurance charges shall be added to the hire charges and shall be paid by the hirer in addition to the hire charges but as a part of the hire charges.
- (iv) The hirer shall lodge with FATS such amount as is specified in Item 3 of the Schedule by way of a security deposit. In the event the equipment is returned late or if there is any damage or loss whatsoever, the hirer acknowledges and agrees that this security deposit is absolutely forfeited to FATS without limiting the rights of FATS to recover against the hirer.

Payment:

- 4. (i) Hiring fees must be paid in full prior to the hire of the Equipment and in the case of regular approved customers, within 30 days of FATS's invoice.
- (ii) Notwithstanding Clause 4 (1) hereof, FATS reserves the right to demand payment in cash upon confirmation of the order, delivery or return of the Equipment at FATS's absolute discretion.
- (iii) At the discretion of FATS, in the event of non-payment by the due-date, the Customer agrees to pay interest to FATS on any monies payable calculated from the date of invoice payable at 1.5 times the National Australia Bank Limited Business Loan Term Base Rate.

Implied Terms:

- 5. (i) The hirer acknowledges that neither FATS or 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 except as provided in the Trade Practises Act 1974.
- (ii) The hirer has satisfied itself that the Equipment conforms to the contract description and that it will be fit for its purposes and that it has not relied on the skill or judgement of FATS in selecting the Equipment and that before taking delivery the hirer has checked the Equipment for completeness, correct functioning and suitability.

Limitation of Company Liability:

- 6. (i) Except to the extent prohibited by law, the hirer acknowledges and agrees that FATS shall not be liable to the hirer, its servants or agents for any direct or indirect, incidental or consequential loss, damage or injury of any nature however caused or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of or failure to perform this agreement.
- (ii) Except as provided by law, the liability of FATS shall be limited as it shall determine to payment of the cost of providing the Equipment for hire or for acquiring Equipment of equivalent value for so much of the hire period as remains at the time such replacement Equipment is required.

Risk and Title:

- 7. (i) The Equipment shall be at the hirer's risk from the time of delivery of the Equipment by FATS or its agent to or to the order of the hirer until the Equipment is safely returned to FATS or to the order of FATS. Acceptance of the Equipment does not release the hirer from liability for loss or damage including damage by fire, rain, salt, temperature, dust, storm or howsoever caused the equipment.
- (ii) Title in and to the equipment shall at all times remain with FATS.

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Indemnity:

- 8. (i) The hirer shall indemnify and keep indemnified and save harmless FATS, its servants and agents for a minimum of \$1,000,000.00 from all damages, suits, actions, claims and demands of every description whatsoever and howsoever arising either directly or indirectly from the maintenance, transport or operation of the Equipment or otherwise arising out of or in connection with this Agreement whether resulting from the negligence of FATS, its servants, agents or otherwise in the event of a dispute it is agreed and acknowledged that the security deposit is forfeited and may be applied by FATS towards the cost of repairs or replacement of the Equipment. The hirer shall have no recourse against FATS whatsoever and hereby agrees to waive any such rights against FATS or its representative.
(ii) The hirer shall indemnify and keep indemnified FATS against all loss and damage caused to the Equipment from the time of delivery of the Equipment to the hirer until it is safely returned to FATS including but not limiting to loss and/or damaged caused by fire, rain, salt, temperature, dust, storm, leaving the Equipment unattended, misuse, neglect or electrical disturbance.

Representation:

- 9. The hirer represents that it is in an adequate financial condition to make the required payments and that it can meet the terms and obligations of the Agreement.

Covenant:

- 10. The hirer covenants that it will take the utmost care and skill with the Equipment and will not allow any untrained or unauthorised personnel to use, touch or interfere with it in any way. The Equipment shall be returned to FATS in the same condition that it was in at the time of delivery

Termination:

- 11. FATS may terminate this Agreement any time it determines appropriate to do so and the hirer shall forthwith upon request return the Equipment to FATS and FATS or its appointed agents retains the right of entry for the purposes of recovery of the Equipment without any court action or other process at law and then recover the cost of such repossession as a debt due under this Agreement from the hirer. The hirer hereby waives any rights it may have against FATS and against any claims, damages or expenses arising out of any action taken under this clause.

Insurance Proceeds:

- 12. If any Equipment is damaged, lost or destroyed, FATS shall be entitled, without prejudice to any of its other right to receive all insurance proceeds which are payable in respect of damaged, lost or destroyed Equipment. Any such proceeds shall be applied first in payment of the hire fees under this Agreement, secondly in payment of any outstanding accounts of hirer whether under this Agreement or otherwise and thirdly in payment of any other sums payable to FATS by the hirer under this Agreement.

Guarantee and Indemnity:

- 13. If the hirer is a Company, the directors of the hirer agree to enter into and be bound by this Guarantee and Indemnity to guarantee the performance of its obligations under this Agreement and to repair or make good any loss or damage caused to the Equipment by the hirer.

"I....., of
Name Address

in the State of

IN CONSIDERATION of FATS at my request entering into this Hire of Equipment Agreement with

(ACN.....)

Name of company hirer

(" the hirer) and agreeing to extend credit to FATS in the future and / or delay legal action for monies already due HEREBY GUARANTEE the due and punctual performance and observance by the hirer of the terms and condition herein contained and the timely payment of any debt or obligation incurred by the hirer to FATS on any account whatsoever. I acknowledge that my liability is an unconditional continuing liability until all the said terms and conditions are duly performed by the hirer and that this guarantee binds my personal representatives and shall not be affected by any time or indulgence FATS may extend to the hirer. I hereby further agree to indemnify FATS against all loss, damage, expenses, suits or claims whatsoever arising out of hire of the Equipment to the hirer and the failure of the hirer to pay the same.

SIGNED by the said

.....
Guarantor's Signature

In the presence of:

.....

Witness

Dated the Day of , 200

HIRE OF EQUIPMENT SCHEDULE

ITEM 1. The Equipment and all the items being hired by FATS to the hirer are:

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.....

ITEM 2. The period of hire is from: , 200

To 4 pm on the Day of , 200 , (inclusive)

ITEM 3. The amount of the security deposit is \$ (Min \$1,000.00)

ITEM 4. The rate of the Equipment Hire is \$ Per day
\$ Per 1/2 Day
\$ Per Hour
Delivery / Collection \$ Per Conditions of Hire
Insurance \$ 10% of total value of hire

ITEM 5. Guarantor (if hirer is a company this must be completed)

.....
Persons Name (not a company or business name)

.....
Persons Address

.....
Persons proof they are authorized to order on behalf of FATS

Persons Proof of Identification:

License Number:
Passport Number.

1
Tel:
2.
Tel:
3
Tel:

Trade References: