



# TERMS & CONDITIONS

2ND GENERATION GRIPS PTY LTD | ABN 34 141 542 547  
PO Box 4231 Knox City Centre Victoria 3152 Australia

## DEFINITIONS

- (1.1) The Company means 2nd Generation Grips Pty Ltd of PO Box 4231 Knox City Centre Victoria 3152 Australia- its members & assigns.
- (1.2) The Customer means the person, Company, Partnership or personnel hiring Equipment or purchasing goods from the Company.
- (1.3) The Equipment means the Equipment & all articles, materials & vehicles hired out or supplied by the Company to the Customer of any replacements or substitutes & all accessories & additions made there to.
- (1.4) Company Personnel means the employees, agents, sub-contractors or other representatives of the Company whose services are employed by the Customer whether in conjunction with the hire of Equipment, sales or purchase of goods or otherwise.
- (1.5) The Contract means the agreement between the Company & the Customer for the hire of the Equipment or Company personnel or the sale & purchase of goods in accordance with & incorporation these Terms & Conditions.

## ACCEPTANCE OF TERMS & CONDITIONS

- (2.1) Unless otherwise agreed in writing by a Director or the Company any order by the Customer for the supply of Equipment & or Company Personnel & or goods shall be construed as an express acceptance of these Terms & Conditions which shall prevail to the exclusion of all others.

## HIRE PERIOD FOR EQUIPMENT/DURATION

- (3.1) The hire period for Equipment ("the hire period") shall commence on the date when the Equipment leaves the premises of the Company for delivery to the Customer or has been collected or made available for collection by the Customer & (unless terminated in accordance with these Terms & Conditions) shall continue until the termination date agreed between the Customer & the Company or, if later, the date on which the Equipment is delivered back to the Company (or as it may direct).
- (3.2) The Company will use all reasonable endeavors to have the Equipment available for delivery or collection on the date requested by the Customer at the time or order but the Company shall not incur any liability whatsoever in the event of any delay.
- (3.3) In the event that the Equipment is lost, damaged or destroyed, the period in respect of which a hire charge shall be payable shall continue until such time as the Equipment is recovered & returned to the Company or until such time as the Equipment is repaired & available for hire (in the case of damage) or until such time as the replacement Equipment is available for hire (in the case of Equipment replacement) or the replacement value has been paid to the company.
- (3.4) If the Customer, following the commencement of the hire, cancels it or seeks to reduce its requirement for services or Equipment, the Company reserves the right to charge the Customer at sum which reflect the cost of the Company entering into the agreement & preparing for the supply of the Equipment or Services.

## RATES & PAYMENT

- (4.1) During the hire period & (without prejudice to any termination of the Contract & any consequent rights of the Company) until redelivery of the Equipment to the Company, the Equipment shall (subject to these Terms & Conditions) be let & hired at the rate set out in the Company's list of hire rates current at the commencement of the hire period - copies of which are available on request. The rates are quoted & all charges are payable in Australian Dollars.
- (4.2) The Customer shall pay hire charges weekly in advance & the charges for the initial week or part of a week are due immediately prior to the date of the proposed commencement of the hire period.
- (4.3) The rates & charges in the price list are subject to increase by the Company to cover variations in cost to the Company of goods, components, materials, labor, packing, loading, carriage & insurances.
- (4.4) All sums due from the Customer to the Company under the Contract shall be increased to include value added tax (or similar or replacement tax) at the rate for the time being in force.
- (4.5) The Customer shall be exclusively responsible for all customs & other duties & all related costs & expenses payable on any international transaction.
- (4.6) The Customer may in certain circumstances & at the Company's discretion become entitled to a discount on the Equipment hire charges payable under the Contract. Any such discount shall be strictly conditional on the Customer complying with the Company's payment terms & the Company reserves the right without notice to revoke it any time prior to receiving payment in full.
- (4.7) The Customer shall pay interest at 5 per cent p.a. above the Prime Lending rate for the time being as defined by the Commonwealth Bank on all sums which may be due from the Customer to the Company under the Contract & remain unpaid, such interest being calculated from the due date until actual payment compounded quarterly & payable as well after as before any judgment obtained in respect thereof.
- (4.8) For so long as there are any sums due to the Company from the Customer under any Contract which remain unpaid the property of the Customer then in or later coming into the custody possession or control of the Company shall be subject to a lien in favour of the Company for such unpaid sums.
- (4.9) All payments shall be made without deduction & free of bank charges or any other charges to the Company at the Company's place of business or to the Company's bank account.
- (4.10) As long as the Contract remains in force the Customer shall not be entitled to withhold any payment for any reason whatsoever & in the event of any dispute arising between the parties, the Customer shall, pending settlement of or a decision in such dispute, continue to pay all amount on the due dates. Should the Customer at any time fail to pay by the due dates, the Company reserves the right, without prejudice, to any other rights available to it, to recover such amounts.

## INSPECTION & CONDITION

- (5.1) The Customer shall inspect & satisfy itself as to the condition & suitability of the Equipment before it is accepted by the Customer & the acceptance of delivery or use of the Equipment (whichever is the earlier) by or on behalf of the Customer shall be conclusive evidence that the Equipment is in satisfactory condition, good working order & properly maintained at the date of such acceptance.
- (5.2) The Customer is responsible for returning the Equipment at the end of the hire period in the same condition it was in at the commencement of the hire period. The Customer shall make good to the Company all & any loss suffered as a result of loss & damage to the Equipment of whatsoever kind & from whatsoever cause & the lesser of the full replacement cost of the Equipment or of reinstating the Equipment to the condition it was in at the commencement of the hire period & (without limitation to the foregoing) the Customer shall pay hire charges for the period during which the Equipment (or its replacement) is unavailable for hire as a result of such loss or damage.

## INSURANCE

- (6.1) The Customer shall (without prejudice to the liability of the Customer to the Company) keep the Equipment insured for its full replacement value throughout the hire period against all risks including third party risks, loss or damage by fire, theft (whether or not involving forcible or violent entry or exit to premises) & other risks usually covered by comprehensive insurance of products of the type of the Equipment.
- (6.2) The Customer shall in addition (without prejudice to the liability of the Customer to the Company) take out & maintain insurance against loss, damage or liability arising in connection with the use or storage of the Equipment & or loss due to breakdown, accident, damage or delay & or against loss damage or liability arising in connection with acts, omissions or default of Company Personnel in carrying out orders incidental to their duties. Under the Contract such insurance to be for such sum as is stipulated by the Company or in the absence of such stipulation for a minimum of AUD 10 million for public & product liability in respect of one occurrence.
- (6.3) The Customer shall in respect of such insurance, produce to the Company on dem & a current insurance policy & a receipt for the last premium paid.
- (6.4) Such insurance shall be free from unreasonable restrictions or excess & shall (if the Company elects) be in the joint names of the Company & the Customer & shall be with a reputable insurance company or companies who shall be notified that the Equipment is on hire from the Company.
- (6.5) The Company shall itself be entitled (but not obliged) at any time & from time to time to effect at the expense of the Customer insurance against all or any of the contingencies above referred to & against any other contingency which the Company may in its absolute discretion decide.
- (6.6) The Customer shall not use or allow the Equipment to be used for any purpose or by any person not permitted by the terms & conditions of the policy of insurance (by whomsoever effected) & shall not do or allow any act of thing whereby such insurance may be invalidated. The Customer shall indemnify the Company against all loss, damage or liability whatsoever not recoverable under the policy of insurance.
- (6.7) The Customer shall (within 24 hours of the occurrence) give written notice to the Company of any occurrence which will or may give rise to a claim being made on any insurance pursuant to this condition. The Customer shall not compromise any claim without the consent of the Company, & shall allow the Company to take over the conduct of negotiations (except in relation to claims of the Customer for personal injuries, loss of use of the Equipment, or loss or damage to the property of the Customer unconnected with the Equipment) & shall at the expense of the Customer take such proceedings (in the sole name of the Customer or jointly with the Company) as the Company shall direct, holding all sums recovered, together with any monies received by the Customer under its policy of insurance, on trust for the Company & paying or applying the same as the Company directs & as herein provided.

**LIMITATION OF LIABILITY & INDEMNITIES**

- (7.1) The Company shall have no liability under or arising out of breach of or negligence in connection with the Contract either to the Customer or to any other person, firm or company in respect of any claim howsoever arising in connection with the acquisition, use, operation or possession of the Equipment or the acts, omissions or default of Company Personnel including (without limitation) any claim for consequential loss or consequential damage other than liability (if any) of the Company for death or personal injury arising out of negligence on the part of the Company.
- (7.2) The Customer shall indemnify the Company against all claims or actions by &/or loss or damage to any other person, firm, company or property directly or indirectly connected with the acquisition, use, operation or possession of the Equipment whether such claim, action, loss or damage arises from breach of Contract or of third party rights or from the negligence of the Company, its employees, suppliers, subcontractors or agents or otherwise & such indemnity shall continue in force in relation to the subject matter of the Contract notwithstanding that the parties remaining obligated under the Contract shall have been discharged or otherwise terminated.
- (7.3) The Company will not be liable for any loss suffered by the Customer as a result of trade disputes, difficulties in obtaining Equipment or components from suppliers, or manufacturers or anything otherwise outside the control of the Company.
- (7.4) The Company will not be liable for damage to the Equipment after delivery to the Customer or to a carrier nominated by the Customer or to any person acting under authority of the Customer either expressed or implied or for any damage to Equipment caused by any delay in delivery, adverse weather conditions or unsuitable storage after the Equipment has left the premises of the Company.
- (7.5) In no circumstances shall the liability of the Company to the Customer (under the Contract or otherwise) exceed the invoice value of the Contract to the Company.

**TERMINATION OF HIRE & REPOSSESSION**

- (8.1) If the Customer shall fail to pay any sum payable under the Contract (or under any other agreement between the Company, or any associated company of the Company, & the Customer) when due (whether demanded or not) or shall commit a breach of the other terms & conditions whether express or implied of the Contract (or of the terms & conditions of any such agreement as aforesaid) or shall do or allow to be done any act or thing which in the opinion of the Company may prejudice or jeopardize the Company's rights in the Equipment or any part thereof or may in the opinion of the Company affect the Customer's creditworthiness (including, without limitation, the service on the Company of any legal proceedings), then in each & every such case the Customer shall be deemed to have repudiated the Contract & the Company may thereupon or at any time within 3 months thereafter forthwith terminate the leasing constituted by the Contract.
- (8.2) If any of the following events shall occur, namely:
- (8.2.1) if any distress, execution or other legal process shall be levied on or against the Equipment or any part thereof or against any premises where the same may be or against any of the Customer's goods or other property or the Customer shall permit any judgment against it to remain unsatisfied for 7 days; or
- (8.2.2) if the Customer, being an individual, shall die, shall suffer an interim order (within the meaning of the Insolvency Act 1986) to be made against him or enter into a voluntary arrangement or suffer the making of a statutory demand or the presentation of a petition for a bankruptcy order; or
- (8.2.3) if the Customer, being a body corporate, shall enter into any liquidation, shall call any meeting of its creditors or shall have a receiver or receiver manager of all or any of its undertaking or assets appointed, or shall suffer the appointment or the presentation of a petition for the appointment of an Administrator under the provisions of Part II of the Insolvency Act 1986, or shall be deemed by virtue of S123 of the Insolvency Act 1986 to be unable to pay its debts. Then in each & every such case the hire constituted by the Contract shall ipso facto & without notice terminate & no payment subsequently accepted by the Company with or without knowledge of such termination shall in any way prejudice or affect the operation of this clause.
- (8.3) The Customer shall upon termination under clauses 8.1 or 8.2 above, pay to the Company all arrears of hire charge then due & all other sums accrued due & unpaid at the date of termination, together with interest thereon payable under clause 4.7 hereof; & the cost of all repairs & or replacements required as at the date of termination; & compensation for the loss suffered by the Company as a result of such termination, such loss being determined by the Company having regard to all relevant circumstances; & any other sums which are or become due to the Company or to which the Company is entitled by way of damages.
- (8.4) The termination of the hire constituted by the Contract shall not affect any rights of the Company or liabilities of the Customer subsisting at the date of termination.
- (8.5) On termination of the hire or on expiry of the Hire Period, the Customer shall no longer be in possession of the Equipment with the Company's consent & shall (unless otherwise agreed with the Company) forthwith return the Equipment to the Company at such address as the Company may direct & at the Customer's expense & risk. Without prejudice to the foregoing or to the Company's claim for any arrears of hire charge or damages for any breach by the Customer of the Contract or any other rights hereunder, the Company or its authorized representatives may at any time after such termination or expiry of the Hire Period without notice, retake possession of the Equipment & for such purpose enter upon any premises belonging to or in the occupation or control of the Customer or any premises where the Equipment is stored & the Customer shall be responsible for all costs, charges & expenses so incurred in retaking possession of the Equipment. The Customer shall also bear the reasonable costs incurred by the Company at any time in ascertaining the whereabouts of the Equipment & or the Customer.

**CUSTOMER'S DUTIES**

- (9.1) During the period of the Contract the Customer shall:
- (9.1.1) keep the Equipment in its custody & control & shall not sell, loan, assign, pledge, encumber, or part with possession of or suffer any lien to be created over the Equipment or any part thereof (unless otherwise agreed in writing by the Company);
- (9.1.2) ensure that the Equipment is used in a skilful & proper manner & only by persons having the appropriate qualifications & experience & who are familiar with the Equipment & not on any abnormal or hazardous assignment;
- (9.1.3) take proper care of the Equipment & ensure that it is properly stored & protected from interference & damage from any source whatsoever including inter alia the effect of the elements & interference from strangers.
- (9.1.4) not take or allow any of the Equipment to be taken out of the borders of Australia without the prior written authority of the Company & in the event of that authority being given only on such terms as the Company deems fit.
- (9.1.5) may examine & test the Equipment at the time of rental, the Company will provide assistance in this regard, however the company does not guarantee, assume responsibility, or make any representation for the performance or results of the Equipment. The Customer acknowledges that the Company has no particular knowledge of the Customer's specific requirements & although the Company is available to advise the Customer on selection & use of the Equipment, the Customer bears full responsibility for its correct choice & use of Equipment.
- (9.1.6) may not sub-hire any Equipment to a third party without the express permission of the Company & the hirer may not alter the packaging, packing arrangements, or alter or remove the labeling of the Equipment in any way whatsoever.

**REPLACEMENT & REPAIRS**

- (10.1) The Customer shall at all reasonable times permit the Company & its agents access to the Equipment to inspect, test, adjust, repair, alter or replace the same.
- (10.2) If at any time during the period of the Contract the Equipment or any part thereof is in need of adjustment or repair or if there are any accidents or incidents involving the Equipment or any part thereof then:
- (10.2.1) the Customer shall forthwith (at whatever time of night or day) give notice to the Company by telephone followed by confirmation in writing to be received by the Company within three days.
- (10.2.2) in the case of adjustment or repair for which the Company is responsible, the Company shall either carry out the necessary adjustment or repair on site or at its discretion shall arrange for the removal of the Equipment or part or parts thereof to the Company's premises for adjustment or repair
- (10.2.3) in the event of the Company removing the Equipment or any part thereof then the Company may at its option adjust or repair or redeliver the Equipment or such part or parts thereof or determine this Contract forthwith in relation to the Equipment or part thereof or the Company may replace the Equipment or such part or parts thereof in which case the Contract shall continue as if the substituted product or such part or parts had been included in the subject matter of the Contract.
- (10.2.4) in the case of adjustment, repair or substitution the Company may at its option apply new hire rates current at the date of completion of the adjustment, repair or substitution in place of those set out in the list of rates current at the date of the Contract in respect of any adjusted repaired or substituted product as from the date of such completion.
- (10.3) If the Equipment's condition results in damage or the need for adjustment or repair to the whole or any part (other than where due to fair wear & tear) then:
- (10.3.1) the Customer shall (in addition to its other liabilities set out in the Contract) be liable for all costs of inspection, loading, unloading & transport & other labor costs & replacement parts or other materials in connection with the carrying out of the adjustments or repair the removal of the Equipment or any part or parts thereof & the redelivery thereof or any substitute thereof & for the avoidance of doubt should the Customer request that any repair be carried out on location by Company Personnel then all additional labor costs & all other expenses (including travel & accommodation) shall be paid by the Customer.
- (10.3.2) hire charges shall continue to be payable as if the Equipment had not been in need of adjustment or repair.

**VEHICLES**

- (11.1) Where the Equipment hired includes any vehicle or vehicles ("the Vehicles") the provisions of this condition shall apply.
- (11.2) The Customer may use the Vehicles for the storage & transportation of the Company's Equipment only. The Vehicles are not to be used, & the Customer will not permit them to be used, for any purposes for which they are not expressly designed.
- (11.3) The Customer agrees that it will not:
- (11.3.1) without the prior written consent of the Company effect any mechanical or other modification to the Vehicles, make any alterations or additions, fit any towing Equipment or other accessories or non-standard tyres, & any such additions alterations or modified parts which may be made (whether with or without consent) shall be made at the cost of the Customer & shall become part of the Vehicles & shall belong to the Company.
- (11.3.2) remove or interfere with any identification marks or plates affixed to the Vehicles nor attempt or purport to do so nor permit the same or deface the paintwork or bodywork of the Vehicles nor add or erect any painting, sign writing, lettering, or advertising to or on the Vehicles
- (11.4) The Customer shall during the continuance of the Contract:
- (11.4.1) ensure that the Vehicles are operated properly & safely by drivers who at all times hold valid & current driving licenses in the appropriate classes;
- (11.4.2) indemnify the Company against all fines, penalties & liabilities imposed on the Company or arising in respect of any non-compliance or contravention of any transport, traffic or other law or regulation, together with any cost or expense relating thereto incurred by the Customer;
- (11.4.3) not use or permit the Vehicles to be used or operated in a manner contrary to any statutory provision or regulation or in any way contrary to law, having regard in particular (but without prejudice to the generality of the foregoing) to the regulations affecting maintenance & usage of tyres, tachometers & drivers' hours.
- (11.4.4) The Customer shall pay for the mileage travelled by the Vehicles at the rate charged by the Company from time to time in respect of such type of vehicle. Fuel & lubricants shall be paid for as used at the Company's rates then current.

**SERVICES OF COMPANY PERSONNEL**

- (12.1) During any period when the services of Company Personnel are employed by the Customer then such Company Personnel shall be deemed to be the servants or agents of the Customer & the Customer shall be responsible for & shall indemnify & keep indemnified the Company against
- (12.1.1) The compliance with all health & safety legislation in relation to the services performed by the Company Personnel & the place & method of work & in particular (but without limitation) the Customer shall ensure that (a) all Company Personnel working at heights in excess of 2 metres (without guardrails or equivalent protection) or 15 meters (in any event) shall wear safety harnesses which shall be provided by the Customer; (b) drivers of vehicles shall not exceed the maximum hours allowed by statute the Customer paying for a replacement driver & all associated expenses as necessary & the Customer shall provide such facilities & locations as shall enable the Company to comply with all & any similar legislation & regulations which are applicable.
- (12.1.2) all claims costs expenses proceedings or demands made by a third party in connection with or arising from any acts omissions or default of Company Personnel
- (12.1.3) all claims costs expenses proceedings or demands made by Company Personnel in connection with or arising from any act omission or default of the Customer under the Contract or otherwise
- (12.2) The rates applicable to the hire of the services of Company Personnel are available upon request & which is subject to variation from time to time.
- (12.3) The period for the hire of services of Company Personnel shall (unless terminated in accordance with these Conditions) continue until the termination date agreed between the Company & the Customer or, if later, the date on which the said services are actually terminated.

**SALE OF GOODS**

- (13.1) The provisions of this condition shall apply to all contracts for the sale of consumables or other goods ("Goods") by the Company to the Customer whether such sale is made in conjunction with the hire of Equipment or Company Personnel or otherwise.
- (13.2) The price payable by the Customer shall be the Company's price for such goods current from time to time which is stated exclusive of value added tax
- (13.3) All implied terms, conditions & warranties relating to the quality or fitness for purpose of the Goods are excluded.
- (13.4) Delivery of the Goods shall be made at the Company's address. Risk in the Goods shall pass to the Customer upon such delivery taking place. The Customer shall be deemed to have accepted the Goods immediately upon delivery/ collection. After acceptance the Customer shall not be entitled to reject Goods which are not in accordance with the Contract. Where the Customer rejects any Goods then the Customer shall have no further rights whatever in respect of such Goods or the failure by the Company to supply goods which conform to the Contract.

**CREDITS**

- (14.1) If credits or acknowledgments are being made to the suppliers of Equipment in the front or end titles of a production for which the Equipment is being used & or which Company Personnel are engaged then the Customer shall include a similar size credit to read:  
"Grip Equipment supplied by 2nd Generation Grips | Chris 'Fizz' Hansford & Jason Hansford"

**MISCELLANEOUS**

- (15.1) The Contract incorporating these Terms & Conditions constitutes the entire understanding & agreement between the parties hereto & any variation shall be binding only if it is in writing signed on behalf of the Company.
- (15.2) The waiver by the Company of any breach of any term of the Contract or these Terms & Conditions shall not prevent the subsequent enforcement of that term & shall not be deemed a waiver of any subsequent breach.
- (15.3) Any notice under the Contract shall be in writing & telexed or sent by facsimile transmission or prepaid first class post or delivered to the address stated herein or to the last known address of the addressee. Service shall be deemed to be effective on the date of the telex or facsimile & in the case of posting on the day following the day of posting & any notice delivered to an address by h& shall be deemed to be effective from the date of such delivery.
- (15.4) Where there are two or more parties to the Contract as Customer, their liability shall be joint & several. In the Contract & these Terms & Conditions & where the context so admits or requires the masculine shall include the feminine or neuter (& vice versa) & the singular shall include the plural
- (15.5) The Contract & these Terms & Conditions & any disputes which may arise in connection with it shall be governed in all respects by the Laws of Australia.
- (15.6) Time is not of the essence of the Contract. Any time or date stipulated by the Company for delivery is intended as an estimated time only & the Company shall not be liable in any way for any loss or damage (including consequential loss) which may result from non-delivery or late delivery of the Equipment or from timeous or late delivery of erroneous Equipment, nor shall any such delay or error confer upon the Customer any right to rescind the Contract.
- (15.7) If any of the company's obligations in terms of this Contract shall be interfered with for any reason whatsoever beyond the Contract without the Company's reasonable control, the Company shall have the right to suspend or cancel prejudice to the Company's right to recover all the monies as owed to the Company at the date of suspension or cancellation.