

# DAMAGE LIABILITY WAIVER (DLW) PROVISION

(This Damage Liability Waiver (DLW) Provision does not operate in respect to your intentional or negligent acts)

Under the Damage Liability Waiver (the "DLW" Fee) Provision in the "Loss or Damage" section of your Rental Agreement, you (the Customer) agree to pay a monthly Damage Liability Waiver Fee in respect to *each* item of rental equipment the subject of your Rental Agreement. The excess payable under the Damage Liability Waiver (DLW) Provision in the event of loss or damage shall equal the excess sum as recorded on this contract. Subject to your compliance with the conditions of this Damage Liability Waiver (DLW) Provision, DTR agrees to forego its right to receive the amount otherwise payable by you to DTR in respect to loss or damage and **reduce your liability** to DTR to the sum indicated as the "Excess" set out above in respect to each item of rental equipment if the rental equipment is damaged, or destroyed or lost through:

- |                     |                 |                                     |  |
|---------------------|-----------------|-------------------------------------|--|
| <b>1. Lightning</b> | <b>3. Flood</b> | <b>5. Fire</b>                      | <b>7. Bursting or leaking of fixed</b> |
| <b>2. Windstorm</b> | <b>4. Smoke</b> | <b>6. Burglary or Housebreaking</b> | <b>water installations</b>             |

For the Damage Liability Waiver (DLW) Provision to apply you must have:-

- (a) Paid all periodic rental payments and the DLW Fee up to and including the date of loss or damage;
- (b) Complied with all the conditions of the Rental Agreement;
- (c) Provided correct details in your Rental Application Form;
- (d) Reported any loss or damage to the Police within 7 days and your nearest DTR store within 24 hours of the loss or damage occurring;
- (e) Fully and correctly completed a DTR Incident Report Form;
- (f) Paid to DTR the applicable "Excess" sum as indicated above within 30 days of the loss or damage occurring.

**As used here "Burglary or Housebreaking" means the criminal taking of the Equipment from the residence at the Installation Address under your Rental Agreement by a person feloniously entering the residence through force or violence as shown by visible marks or damage to the residence's exterior made by tools or other means at the point of entry.**

The Damage Liability Waiver (DLW) Provision **does not** apply to loss or damage due to moisture, scratches, mysterious disappearance, vandalism, abandonment of the Equipment, your neglect or intentional acts.

## TERMS AND CONDITIONS:

**1. Short Term Hire Agreement:** In consideration for the Customer making rental payments in advance and otherwise in the manner required, DTR rents to the Customer the Equipment for the Minimum Term. The Customer has not agreed to purchase the Equipment and the Equipment remains the property of DTR but at the risk of the Customer. The Customer shall not remove the Equipment from the Installation Premises specified without the prior written consent of DTR. The Customer shall notify DTR immediately if the Equipment is taken out of the Customer's possession for any reason whatsoever and shall give full particulars of the address (if known) to which the Equipment has been removed. On expiry of this Agreement, the Customer shall return the equipment to DTR in good working order and repair with all attachments and manuals originally supplied.

**2. Payment:** The Customer agrees to authorise DTR to debit their credit card for any costs incurred relating to this Agreement that are outstanding at the end of this Agreement.

**3. Payment:** Payment will be at the time of hire unless other terms are agreed with DTR.

**4. Renewal Payments:** The Customer may renew this Agreement beyond the Minimum Term as shown on the front of the contract, by continuing to make the Rental Payments in advance of the return date and in such case this Agreement continues until the next agreed end date.

**5. Substitution of Equipment:** DTR may replace the Equipment for such periods as it deems necessary with other Equipment of a similar type or model as may be available. The substitute Equipment shall be subject to the terms and conditions of this Agreement. The decision to repair or replace the damaged Equipment is at the sole discretion of DTR. If DTR decides it is uneconomic to replace or repair the Equipment then DTR may terminate this Agreement without any liability to the Customer.

**6. Access to the Equipment:** The Customer will give DTR, its servants and agents at all reasonable times access to the Installation Premises or any other premises on which the Equipment is situated for the purpose of inspection, repair, adjustment or collection.

### **7. Recovery of Loss:**

(a) If the Customer does not make any payment due under this Agreement by the date specified for payment and such failure to comply is not remedied on or before the 14th day after the day on which compliance was due, then the Customer shall pay to DTR, upon demand, interest as liquidated damages on the unpaid amount from the due date until the date of payment at the rate from time to time specified by DTR but not exceeding 33.5% per annum together with all reasonable costs incurred by DTR including solicitor/client costs.

(b) Notwithstanding subclause (a) above, DTR also reserves the right to charge to the Customer an administrative fee of up to \$15.00 per contract per month together with any additional costs incurred by DTR in dealing with a default by the Customer of this Agreement including, without limitation, solicitor/client costs.

### **8. Default: If:**

(a) the Customer makes default in payment of any Rental Payments and such default continues for a period of 7 days (whether payment has been demanded or not)

(b) the Customer permits or commits a breach of any term or condition of this agreement

(c) the Customer makes any misstatement to DTR.

(d) the Customer is in breach of or defaults in the performance of its obligations under any other contract, Agreement or arrangement with DTR including an obligation of the Customer to pay any other indebtedness to DTR under any such Agreement, contract or Agreement

(e) the Customer allows any of its assets or the Equipment to be seized to satisfy its debts

(f) the Customer is a company, an order is made or resolution is passed or any other steps taken for the winding up of the Customer

(g) the Customer enters into or takes any steps to enter into a scheme of arrangement, composition or assignment for the benefit of its creditors generally

(h) the Customer commits an act of bankruptcy or is adjudged a bankrupt

(i) the Customer has a receiver appointed to the Customer or any of its assets or the Customer is deemed to be unable to pay its debts as they fall due

(j) the Customer has an execution order or distress levied upon any of its property or the Equipment

(k) the Customer does or causes to be done or permits or suffers any act or thing which prejudices or jeopardises DTR's rights in the Equipment

(l) the Customer allows a financing statement (as defined in the Personal Property Securities Act 1999) to be filed against the Equipment

then DTR may cancel this Agreement and retake possession of the Equipment and for such purposes may by its servants or agents enter into any premises in which the Equipment may be located without being liable for any action for trespass and the Customer shall indemnify DTR against any claims for consequential loss or damage.

**9. Ownership and Possession:** The Customer shall not deal with or permit any dealing with the Equipment in a manner prejudicial to DTR's property and in particular (but without limiting the generality of this clause) the Customer shall:

- (a) not sell, assign, pledge, underlet, lend or otherwise part with possession of the Equipment; and
- (b) not remove the Equipment from the installation premises; and
- (c) protect the Equipment against distress, execution or seizure; and
- (d) use the Equipment in a careful and proper manner and keep the premises in which the Equipment is situated secure against unauthorised entry.

(e) keep the Equipment in good order, fair wear and tear excepted.

### **10. Loss or Damage:**

(a) The Customer indemnifies DTR against all loss of or damage to the Equipment (fair wear and tear excepted) but only to the extent DTR is not indemnified and fails to recover for such loss or damage under any insurance policy.

(b) In the event of loss or damage to the Equipment DTR may during the Term replace the Equipment but such replacement shall be without prejudice to DTR's right of indemnity against the Customer and the Equipment substituted will be subject to the terms and conditions of this Agreement.

**11. Other Damage:** DTR shall not be liable for and the Customer indemnifies DTR against all claims for loss or damage to any equipment or thing used in the Equipment, which is not the property of DTR, whether caused by the Equipment or not.

### **12. Damage Liability Waiver (DLW):**

(a) The Customer is obligated to use the Equipment in a careful and proper manner and keep the premises in which the Equipment is installed or situated secure against unauthorised entry. Payment of the monthly DLW payments under this Agreement means that the Customer is not obligated to keep the Equipment insured and the Equipment will be to the liability of DTR subject to the Customer complying with the obligations imposed by this Agreement on the Customer.

(b) Subject to compliance with all of the obligations imposed by this Agreement on the Customer if the Equipment is lost or damaged DTR may replace the Equipment and the Equipment so substituted will be subject to the terms and conditions of this Agreement. DTR is not obligated to replace Equipment under the Damage Liability Waiver more than once.

(c) DTR shall not be liable and accepts no liability for any loss or damage to any recorded material played on any Equipment subject to this Agreement or for any damage howsoever caused to any television receiver which is not the property of DTR and to which such video equipment may be connected.

**13. Copyright:** DTR is not liable for and the Customer indemnifies DTR against any claim, action, proceeding or cost which may arise as a result of any infringement of the Copyright Act 1994 or any other intellectual property rights of any person.

### **14. Warranties:**

(a) This Agreement represents the entire agreement between you and DTR as to its subject matter and all warranties, representations, undertakings, and conditions and other terms whether expressed or implied, oral or written are hereby excluded to the fullest extent permitted by law.

(b) The parties agree that where the Customer enters into this Agreement or holds itself out as entering into this Agreement for business purposes and where these terms would otherwise be subject to the Consumer Guarantees Act 1993 ("the Act"), the Act does not apply to the supply of the Equipment to the Customer.

### **15. Payments:**

(a) For the purposes of calculation of payments due under this Agreement and determination of the timing of those payments, each day shall end at 4pm on that day, and any payments received or required to be made after 4pm shall be deemed to have been made or received after the end of that day.

(b) Unless otherwise agreed, each payment made to DTR by the Customer is to be made on the due date by direct credit to DTR's nominated bank account as specified by DTR from time to time. Each payment by the Customer to DTR is to be made free of any condition and without any deduction or withholding for any other account by way of set-off, counterclaim or otherwise.

(c) Payments that are made to or accepted by DTR prior to the due date of payment by the Customer shall be held unallocated by DTR, and shall not be credited to the Customer's account until the due date for payment.

(d) DTR may, at its absolute discretion, decline to accept any payment (other than a payment in full of all amounts due under this Agreement) from a Customer until the due date of that payment has arrived.

**16. OSH Legislation:** The Lessee acknowledges and accepts that DTR accepts no liability to the Lessee for any damage caused or any expense incurred due to non-compliance with the In-Service Safety Inspection and Testing of Electrical Equipment Standard AS/NZS 3670:2001 or any replacement or updated Standard, if the Equipment is moved from the site where it was originally installed or approved for installation by DTR.