



ABN 16 653 465 313

Terms & Conditions

1 Agreement

- 1.1 This contract between You and Us to rent the Vehicle consists of:
- (a) the Rental Agreement; and
 - (b) these Terms & Conditions,
- collectively, this **Agreement**.
- 1.2 If there is any inconsistency between any part of this Agreement, these Terms and Conditions will prevail to the extent of that inconsistency.
- 1.3 Nothing in this Agreement is intended to limit Your rights under the Australian Consumer Law and Your consumer rights under that law are not excluded, restricted or modified by this Agreement and any provision in this Agreement is subject to the specific protections and guarantees in that and any corresponding Territory legislation.
- 1.4 We reserve the right to refuse any rental on reasonable grounds.

2 Rental Period

- 2.1 We agree to rent the Vehicle to You for the Rental Period in exchange for the Rental Charges and subject to the terms of this Agreement.
- 2.2 If, during the Rental Period, You wish to change the Return Location and/or extend the Rental Period, You must obtain Our prior written approval and additional charges may apply. We may withhold Our approval for any reason, including availability of the Vehicle.
- 2.3 The extra cost of an extended rental must be paid by Credit Card over the telephone or at Our office immediately on confirmation of the rental extension. The additional days will be at the daily standard gross rental charge for the Vehicle applicable at the time of the extension.
- 2.4 Minimum rental periods apply. If You wish to rent a Vehicle for less than the minimum Rental Period applicable at the time of booking, and We agree, the daily charge will be the number of hire days in the minimum Rental Period multiplied by the applicable daily rental rate. Minimum rental periods are subject to change.

3 Vehicle Collection and Return

3.1 Collecting the Vehicle

When collecting the Vehicle, You must:

- (a) physically present Yourself and any Authorised Driver and electronic presentation is not acceptable;
- (b) present Your driver's licence, and that of any Authorised Driver, and permit Us to take and keep a copy of each driver's licence;
- (c) inspect the Vehicle; and
- (d) record all existing damage to the Vehicle in the Vehicle Condition Report in the Rental Agreement. Subject to clause 22, any damage which has not been noted in the Vehicle Condition Report will constitute Loss or Damage which has occurred subsequent to the commencement of this Agreement for which You will be charged, unless it is a result of Our negligence or wilful act or omission.

3.2 Return of the Vehicle

You must return the Vehicle:

- (a) to the Return Location by the Return Time;
- (b) without alternation or addition and in the same condition that it was in when it was provided to You (except for ordinary wear and tear), as noted on the Vehicle Condition Report;

- (c) together with all tools, tyres, accessories and equipment provided with the Vehicle; and
- (d) lock the Vehicle, give the keys back to one of Our staff and provide reasonable notice to that staff member that the Vehicle has been returned.

3.3 **Failure to return**

If You fail to return the Vehicle by the Return Time, We may report the Vehicle as stolen.

3.4 Subject to clause 0, if You return the Vehicle:

- (a) after the Return Time without Our prior written consent, You will be charged a late fee of \$165 including GST; or
- (b) to a different location to the Return Location, We may charge You for:
 - (i) costs associated with transporting or towing the Vehicle to the Return Location; and
 - (ii) a relocation charge of up to \$770 including GST.

3.5 **Public holidays**

For public holidays please note:

- (a) Our office is closed on Christmas Day, New Year's Day, Good Friday and Australia Day public holidays; and
- (b) an additional fee of \$110 including GST will apply to all rentals picked up and/or dropped off on public holidays in the Northern Territory.

3.6 **Late return**

If You attempt to return the Vehicle to the Return Location after the Return Time and the Return Location is not open for business at the time You return the Vehicle:

- (a) the Vehicle will be deemed to have been returned at the time when that Return Location next opens for business;
- (b) the Rental Period continues until that time;
- (c) You remain fully responsible for the Vehicle, unless other arrangements have been agreed to in writing by Us; and
- (d) You will be charged:
 - (i) the then current daily rental charge for the Vehicle for each 24-hour period or part thereof until the Vehicle is returned;
 - (ii) the then current daily rate charge applicable to Your chosen Damage Excess Waiver; and
 - (iii) a late return fee of \$165 including GST.

3.7 **Delayed return because of road closures or natural disasters**

If You are unable to return the Vehicle to the Return Location by the Return Time due to road closures caused by cyclones, bushfires, flash floods and other acts of God, We will use commercially reasonable efforts to accommodate delays.

4 Drivers

4.1 You acknowledge and agree that:

- (a) only You or an Authorised Driver may drive the Vehicle;
- (b) You must not, and must take reasonable steps to ensure that each Authorised Driver does not, refuse or fail to take any blood analysis, breath test or drug impairment assessment requested by the police or as required by law; and
- (c) You and each Authorised Driver:
 - (i) are 25 years of age or older but not more than 75 years of age;
 - (ii) have not given a false name, age, address or driver's licence detail;
 - (iii) hold a current a valid licence (not being a learner's, provisional or probationary licence) to drive vehicles of the same class as the Vehicle, which You or the Authorised Driver is able to produce in hardcopy at the time of hire, or an international licence (with a valid International Driving Permit or an approved translation into English if the licence is not issued in English); and
 - (iv) have not had Your driver's licence cancelled or suspended within the last three (3) years.

4.2 Additional Authorised Driver fees are included in the daily vehicle rates.

5 Use of Vehicle

5.1 You must not:

- (a) operate the Vehicle:
 - (i) whilst intoxicated or under the influence of drugs or alcohol, or with a blood alcohol content or drug concentration that exceeds the legal limit set by law in the Northern Territory;
 - (ii) in a dangerous, wilful or reckless manner;
 - (iii) whilst using a mobile phone in the following situations:
 - (A) to make or receive a phone call, perform any audio function or as a navigational device, unless the Vehicle is stationary and the body of the phone is secured in a mounting affixed to the Vehicle and its use does not require manual operation of the phone; or
 - (B) to send a text message, video message, email or similar communication unless the Vehicle is parked,
 - (iv) whilst the Vehicle is unsafe or in an unroadworthy condition unless directed by a government authority; or
 - (v) outside city limits between 6.30 pm and 6.30 am from May to September and between 7.00 pm to 6.00 am from October to April, unless authorised by Us in writing;
- (b) use the Vehicle:
 - (i) for any illegal purpose;
 - (ii) in any area where applicable travel restrictions of clause 11 of this Agreement apply unless authorised by Us in writing;
 - (iii) for carrying persons for hire, fare or rideshare purposes;
 - (iv) to carry any inflammable, explosive or corrosive materials, fuel or generators;
 - (v) for pushing or towing any Vehicle, trailer, boat or other object;
 - (vi) for carrying any greater load and/or more persons and/or for a purpose for which the Vehicle is not designed and constructed;
 - (vii) for racing, pace making, reliability trials, speed trials, hill climbing or being tested in preparation for those activities;
 - (viii) for illicit drug use or carrying illegal substances, product or drug paraphernalia;
 - (ix) for commercial purposes or financial gain;
 - (x) for carrying passengers when You, any Joint Renter or Authorised Driver are not appropriately licensed; or
 - (xi) for subletting or hiring the Vehicle to any other person,
- (c) modify or make any alteration to the Vehicle;
- (d) damage the Vehicle deliberately or recklessly or allow anyone else to do so; or
- (e) sell, rent, lease or dispose of the Vehicle or attempt to register a security interest under the Personal Property Securities Act 2009 (Cth).

5.2 You must:

- (a) keep the Vehicle locked when not in use and keep the keys in Your possession; and
- (b) take reasonable care of the Vehicle and drive the Vehicle in a safe and legal manner.

5.3 You must turn off all the Vehicle's lights when the Vehicle is parked or otherwise not in use.

5.4 You must not:

- (a) smoke in the Vehicle and must prevent any other person from doing so; or
- (b) use the Vehicle to carry any pets or animals, except registered or trained Assistance Animals.

Additional cleaning fees apply.

6 Rental Charges and Payments

- 6.1 At the start of the Rental Period, You must provide Us with an acceptable credit card or debit card (**Bank Card**).
- 6.2 We accept Visa, MasterCard and American Express. Surcharge fees are contained in the Rental Agreement and are subject to change.
- 6.3 You authorise Us (acting reasonably) to charge the Bank Card for Rental Charges and any other amounts under the Agreement.
- 6.4 If any additional Rental Charges are incurred or charged after the Rental Period (for example, parking charges or infringement notices received after the Rental Period), We will charge the Bank Card with prior notification (where You have provided a valid email address). You acknowledge that this clause is reasonably necessary for Us to protect Our interests.
- 6.5 If You wish to dispute any amounts charged to the Bank Card, please contact Us on: enquiries@topendcarrentals.com.au.
- 6.6 All amounts due under this Agreement must be paid in Australian dollars. Cash payments will not be accepted in any circumstances.
- 6.7 If You wish to pay Rental Charges by bank transfer, these must be received by Us at least 21 days prior to commencement of the Rental Period. Bank transfers are not acceptable for the Security Bond.
- 6.8 Due to exchange rate fluctuations, in some instances there may be some variance between the amount initially debited against the Bank Card and the amount refunded at the expiration of the Rental Period. Any such variation does not entitle You to a refund.
- 6.9 Refunds by credit card including Security Bond refunds can take up to 14 business days depending on the terms and conditions adopted by Your nominated financial institution.

7 Fines, infringements and legal action

- 7.1 You are liable for and must pay for all:
- (a) fines, infringements and penalties arising from parking, clamping, towing, or release of the Vehicle from compounds;
 - (b) speeding and traffic fines, infringements and penalties arising from the use of the Vehicle; and
 - (c) court fees or costs arising from the above.
- 7.2 If We receives a notice from any regulatory or enforcement authority in relation to any fines, infringements and penalties in relation to the Vehicle during the Rental Period, We will supply Your details to any regulatory or enforcement authority to enable the enforcement authority to issue the infringement notice and any reminder notice directly to You as soon as practicable, in which case an administrative fee of \$55 including GST may apply.
- 7.3 If We pay any amount for which You are liable pursuant to clause 7.1, You must pay Us that amount, together with an administrative fee of \$55 including GST per charge, fine or infringement.
- 7.4 You must:
- (a) immediately upon receipt, provide Us with every summons, complaint or paper in relation to any Accident or loss involving the Vehicle; and
 - (b) make Yourself available to assist Us in any legal action mentioned in this Agreement that may arise out of Your hire of the Vehicle.

8 Fuel

- 8.1 The Vehicle must be returned with the amount of fuel equal to that recorded at the start of the Rental Period. If the Vehicle is returned with less fuel, You will be charged a service fee of \$75 plus the cost of the fuel.
- 8.2 You must:
- (a) only use the fuel type specified by the manufacturer of the Vehicle; and
 - (b) not use any bio-diesel, ethanol or any organic hybrid fuel (except for E10, which is acceptable).
- 8.3 You will be liable for any costs associated with Loss or Damage to the Vehicle caused by Your use of the wrong fuel.

9 Vehicle Cleaning

- 9.1 The Vehicle must be returned in a reasonable state of cleanliness, completely free of mud, rubbish and pet hair.
- 9.2 A cleaning fee of \$110 including GST will be charged if the Vehicle is returned in an unreasonable state of cleanliness or should the Vehicle need deodorising as a result of smoking.

10 Kilometre Allowance

- 10.1 All two wheel drive Vehicles (**2WD**) have unlimited kilometres included per rental day.
- 10.2 For rental periods of less than five (5) days, all four wheel drive Vehicles (**4WD**) have 200 kilometres included per rental day. Thereafter a charge of \$0.55 including GST per excess kilometre will apply.
- 10.3 For rental periods for five (5) days or more, all 4WD Vehicles will have unlimited kilometres included per rental day.

11 Travel Restrictions

- 11.1 You must tell us in the Rental Agreement the locations You will be taking the Vehicle.
- 11.2 The Vehicle must not be taken more than 500 kilometres from the Rental Location.
- 11.3 You must not, and must ensure that each Authorised Driver does not, operate the Vehicle on:
 - (a) roads that are prone to flooding or are flooded;
 - (b) beaches, streams, rivers, creeks, dams and floodwaters;
 - (c) any road where the police or an authority has issued a warning;
 - (d) any road that is closed; or
 - (e) any road where it would be unsafe to drive the Vehicle.
- 11.4 If the Vehicle is a 2WD , You must not, and must ensure that each Authorised Driver does not, operate the Vehicle on any unsealed road:
- 11.5 If the Vehicle is a 4WD, You must not, and must ensure that each Authorised Driver does not, operate the Vehicle in 2WD mode on sealed roads.
- 11.6 We may notify You of additional travel restrictions for any reason including adverse road or weather conditions either at the time of collection or by email if an update occurs after the Rental Period has started.

12 Seat Belts and Child Restraints

- 12.1 You must comply with, and ensure that all passengers in the Vehicle comply with, all laws regarding seat belts and child restraints.
- 12.2 We give no warranty as to the appropriateness, correctness or adequacy of any child restraints fitted in the Vehicle and You accept full responsibility for the fitting and suitability of any such restraints fitted.

13 Vehicle maintenance

- 13.1 You must report to Us as soon as possible, where the oil is above or below the recommended level or the warning indication light is illuminated.
- 13.2 You must add water/coolant to the cooling system and an appropriate Australian Society of Automotive Engineers rated oil for petrol or diesel powered vehicles (as applicable) to the engine if the indicator level is below minimum.
- 13.3 You agree to maintain the Vehicle in these conditions and acknowledge that any mechanical damage occasioned as a result of Your failure to maintain the Vehicle in accordance with this clause must be paid by You.

14 Breakdowns and Repairs

- 14.1 If:
 - (a) a dashboard warning light or fault message appears;
 - (b) You see or become aware of low engine or brake oils, engine coolant levels or tyre pressures; or
 - (c) the Vehicle or any equipment experiences a fault, failure or breakdown during the Rental Period,You must:
 - (d) notify Us as soon as practicable; and
 - (e) not use the Vehicle unless We or a government authority authorises You to do so.
- 14.2 If You fail to notify Us and continue to use the Vehicle, You will be responsible for Loss or Damage resulting from such use and any cost incurred in You traveling to Our Rental Location is Your responsibility unless it is a result of Our negligence or wilful act or omission.
- 14.3 If the Vehicle cannot be driven as a result of a breakdown, We will refund an amount equal to the Rental Charges applicable during the time that the Vehicle was not available for use. Subject to availability, We will provide a replacement vehicle.

- 14.4 You must not let anyone work on the Vehicle or arrange or undertake any repairs to the Vehicle or towing or salvage of it unless We have given You Our prior authority.
- 14.5 If repairs are required to the Vehicle and such repairs:
- (a) cost less than \$100 including GST, You may proceed with such repairs without Our prior approval; or
 - (b) cost \$100 or more including GST, You must obtain Our prior written approval before letting anyone work on the Vehicle or arrange or undertake any repairs to the Vehicle or towing or salvage of it.
- 14.6 You must keep and produce to Us the original tax invoices and receipts for any repairs, towing or salvage and You will be reimbursed only if these expenses have been authorised by Us (unless the amount is less than \$100 including GST). Any entitlement to reimbursement is subject to there being no Substantial Breach.
- 14.7 You acknowledge and agree that:
- (a) the failure of accessories such as air-conditioners do not constitute a breakdown and no amount is payable by Us to You;
 - (b) We are not responsible for any accommodation charges, meals, change of itinerary or out of pocket expenses resulting from a breakdown of the Vehicle or as a result of any Accident unless it is a result of Our negligence or wilful act or omission; and
 - (c) it can often be difficult to carry out repairs during weekends and holiday periods and/or in remote areas due to limited opening times and/or spare parts.
- 14.8 If You request roadside assistance to assist with a circumstance arising due to negligence or wilful misconduct by You or an Authorised Driver (for example, keys being locked in the Vehicle or flat batteries caused by lights having been left on), You may be charged the cost of such roadside assistance (unless the roadside assistance is required due to Our negligence or wilful act or omission).

15 Tyres and windscreens

- 15.1 You must obtain Our prior written approval to replace any tyres or windscreens.
- 15.2 You are responsible for replacing damaged tyres (for example, blowouts, punctures, sidewall damage, tyre staking etc.) unless caused by normal wear and tear or the actions of a third party where the details of that third party are provided to Us.
- 15.3 You must maintain tyre pressures as per the Vehicle manufacturer's manual and You must only purchase new steel radial tyres of the same size and ply rating as are fitted to the Vehicle. If You purchase tyres of a different size or ply rating We will not refund You for the purchase cost.

16 Accidents

- 16.1 In the event of an Accident, the towing and retrieval of the Vehicle to Our Rental Location is at Your expense up to the amount of Your Damage Excess where it applies or for the full amount where it does not apply.
- 16.2 There is no refund for monies paid for the unused portion of the Rental Period unless it is a result of Our negligence or wilful act or omission.
- 16.3 In the event of an Accident in which there is Loss or Damage to the Vehicle, the availability of a replacement Vehicle is not guaranteed and its provision is subject to availability, Your location, remaining hire duration and whether the Accident was the result of a Substantial Breach. Additional charges may be incurred.
- 16.4 If a replacement Vehicle is required as a result of an Accident:
- (a) You are responsible for making Your own way to Our Rental Location at Your own cost unless it is a result of Our negligence or wilful act or omission;
 - (b) We may offer You the option of paying a "Replacement Vehicle Relocation Fee" to send a driver to deliver the replacement vehicle to Your location; and
 - (c) You must pay for any costs relating to delivery of a replacement Vehicle as a result of any vehicle Accident unless it is a result of Our negligence or wilful act or omission. This charge applies irrespective of any Damage Excess Waiver taken.

17 Accident reporting

- 17.1 **Reporting an Accident or theft to Us**
- (a) If You or an Authorised Driver has an Accident or if the Vehicle is stolen You must report the Accident or theft to Us as soon as practicable but in no case more than 24 hours of it occurring and fully complete an Incident Report Form.
 - (b) The Incident Report Form should include as much information as is reasonably practical, including:

- (i) the information listed in clause 17.3 regarding the contact details for the other driver and witnesses and an accurate written and diagrammatic description of the Accident and its location; and
 - (ii) the circumstances under which the Accident or theft occurred.
- (c) The Incident Report Form must be submitted to Us
- (i) within seven (7) days of the Accident or theft, or upon the return of the Vehicle if it is returned to Us within that seven (7) day period; or
 - (ii) if the Vehicle is stolen, immediately the theft of the Vehicle is reported to the police.

17.2 Reporting an Accident or theft to the police

If the Vehicle is stolen or if You or an Authorised Driver of the Vehicle has an Accident where:

- (a) any person is injured;
- (b) the other party has failed to stop or leaves the scene of the Accident without exchanging names and addresses; or
- (c) the other party appears to be under the influence of drugs or alcohol,

You or the Authorised Driver must also report the theft or Accident to the police by phoning **131444**.

17.3 Steps You must take following an Accident

If You or an Authorised Driver have an Accident You and the Authorised Driver must:

- (a) make the Vehicle secure;
- (b) exchange names and addresses, phone numbers and email addresses with the other driver;
- (c) obtain the name of the other driver's insurance company;
- (d) take a photo of the other driver's licence;
- (e) take the registration numbers of all vehicles involved;
- (f) take as many photos as is reasonable showing:
 - (i) the position of the Vehicles before they are moved for towing or salvage;
 - (ii) the Loss or Damage to the Vehicle;
 - (iii) the damage to any third party vehicle or property; and
 - (iv) the general area where the Accident occurred, including any road or traffic signs; and
- (g) obtain the names, addresses, phone numbers and email addresses of all witnesses.

17.4 Subsequent assistance

Subsequent to the Accident of theft You and any Authorised Driver must:

- (a) forward all third party correspondence or court documents to Us within seven (7) days of receipt;
- (b) co-operate with Us in the investigation of any Accident or theft claim and supply such further information as We or Our investigator may reasonably request within seven (7) days of receipt of such a request; and
- (c) co-operate with Us in the prosecution of any legal proceedings that We may institute or the defence of any legal proceedings which may be instituted against You or Us as a result of an Accident, including attending:
 - (i) Our lawyer's office; and
 - (ii) any Court hearing.

17.5 What You must not do

You and any Authorised Driver must not:

- (a) make any admission of fault;
- (b) make any offer or promise to pay or settle any claim for Third Party Loss; or
- (c) agree to indemnify, waive, or release any other party from liability to pay for Loss or Damage as a result of an Accident, theft of attempted theft.

17.6 Consequences of delayed co-operation

Your entitlement to Damage Cover will be reduced according to the extent We are prejudiced as a direct result of any delay in complying with:

- (a) the reporting obligations in clauses 17.1 and 17.2; and
- (b) the obligations in clause 17.4 to forward third party correspondence and court documents to Us within seven (7) days and to co-operate with Us in the investigation of any Accident of theft claim and the prosecution or defence of any legal proceedings.

18 Personal Injury

- 18.1 The Vehicle is provided with third party personal injury insurance cover.
- 18.2 Depending on the circumstances of the Accident, You may be entitled to claim for Your personal injury against the third party personal injury insurance of the party which is responsible for the Accident. We will provide You details of the third party personal injury insurer if requested.

19 Security Bond and Security Bond Payment Consent

- 19.1 You hereby give Us Your express consent to deduct the Security Bond from the Bank Card.
- 19.2 The Security Bond is payable at pick-up by a Bank Card and cannot be paid with a pre-paid card, cash or bank transfer.
- 19.3 The Bank Card holder must be present and be able to sign for the Security Bond upon collection of the Vehicle.
- 19.4 The Bank Card holder is jointly and severally liable for any Damage to the Vehicle.
- 19.5 The Security Bond is fully refundable, including the credit card administration fee, when the Vehicle is returned to the Return Location on time, is full of fuel, with no Damage (which did not exist at the time of collection or unless We caused or contributed to the damage) and all other terms of this Agreement have been complied with.
- 19.6 If there is Loss or Damage to the Vehicle, the Security Bond will be used to cover the cost of such Loss or Damage up to the amount of the relevant Security Bond except where there has been no breach of the Agreement and it is determined by Us acting reasonably that You were not at fault.
- 19.7 However, if there is a Substantial Breach and the Security Bond is insufficient to cover the Loss and Damage, any extra cost will be charged to You.
- 19.8 Security Bond refunds to Your Bank Card may take up to 14 business days depending on Your financial institution.

20 Damage Cover

20.1 Damage Excess

- (a) Standard Damage Cover is included in the Rental Charges.
- (b) Subject to these Terms and Conditions, We will indemnify You and any Authorised Driver for any Loss or Damage to the Vehicle, its theft and Third Party Loss but You must pay up to the Damage Excess shown on the Rental Agreement for each Accident or theft claim unless You have purchased Damage Cover Waiver.

20.2 When is the Damage Excess payable?

Unless You have expressly authorised a charge to Your Bank Card at an earlier time an amount up to, but not exceeding, the Damage Excess will be charged to Your Bank Card:

- (a) for Single Vehicle Accidents, after a repairer's estimate or tax invoice verifying the amount charged for Loss and Damage has been sent to You;
- (b) if the Vehicle has been stolen, after We have made reasonable enquiries and in Our opinion it is unlikely the Vehicle will be recovered; and
- (c) for Accidents in which there is also Third Party Loss, after We have made an estimate of Your total liability. Supporting documents and particulars of the claim for Third Party Loss will be forwarded to You as soon as practicable.

20.3 Exemption from paying the Damage Excess

You will not have to pay the Damage Excess shown in the Rental Agreement for a claim for Loss or Damage or Third Party Loss if:

- (a) You have fully completed an Incident Report Form with:
 - (i) the name, residential address, contact phone, email address and licence number of any person involved (**Third Party**);
 - (ii) the registration number of all vehicles involved;
 - (iii) an accurate written and diagrammatic description of the Accident and location; and
 - (iv) the names and addresses of all attending police officers and the stations at which they are based;

- (b) You have taken all necessary steps to assist Us in Our investigation of the Accident or theft claim;
- (c) We believe You were not at fault; and
- (d) You have supplied or We have established the name of the insurer of any Third Party You believe was at fault and the insurer will agree to pay Us for the Loss or Damage.

20.4 Further Security Bond for subsequent claims

In the event of a claim, We require that You pay a second Security Bond equivalent to the Damage Excess liability if You are continuing with Your rental.

20.1 Refund of Damage Excess paid

- (a) We will refund any amount You have paid for the Damage Excess as soon as practicable:
 - (i) in full, if We recover the Loss or Damage from a responsible third party or their insurer or successfully reject or defend a claim for Third Party Loss;
 - (ii) in part, if the repair cost to the Vehicle is less than the amount You have paid;
 - (iii) in part, if a claim for Third Party Loss is rejected or defended for an amount less than the Damage Excess; or
 - (iv) on a pro rata basis if We recover only a proportion of any amount We have claimed against a Third Party for Loss or Damage.
- (b) In making a refund We may take into account all reasonable administrative, collection agency and legal costs incurred in connection with the recovery of the Loss or Damage cost or rejection or defence of a claim for Third Party Loss.

20.2 Claims Administration fee

All Accident, attempted theft and theft claims will incur a claims administration fee of \$100 in addition to the Damage Excess liability. This fee is to compensate Us for the labour and associated costs with processing Your claim.

21 Damage Cover Exclusions

21.1 General exclusions

Even if You have paid the Damage Excess, there is no Damage Cover, and You and any Authorised Driver are liable for:

- (a) Loss or Damage or Third Party Loss arising from:
 - (i) a Substantial Breach of the Agreement;
 - (ii) any deliberate, intentional, malicious or criminal act by You, an Authorised Driver or any person who is acting with Your express or implied consent; or
 - (iii) the use of the Vehicle by any driver who is not an Authorised Driver or who is less than 25 or more than 75 years of age;
- (b) Overhead Damage;
- (c) Underbody Damage;
- (d) Damage caused by immersion of the Vehicle in water, including salt water;
- (e) the full cost of replacing or repairing any accessories supplied by Us including, but not limited to GPS units, lost keys, keyless start and remote-control devices.
- (a) Loss or Damage caused in a Single Vehicle Rollover regardless of cause, except where You have purchased Single Vehicle Rollover Option cover and it applies;
- (b) Loss or Damage due to:
 - (i) Your failure to maintain all fluid, fuel and oil levels of the Vehicle or a failure to immediately rectify or report to Us any defect in the Vehicle of which You become or ought to have become aware;
 - (ii) the wrong fuel type or contaminated fuel was used or where water or AdBlue® being put in the fuel tank;
 - (iii) fuel or other contaminants, such as AdBlue®, being put in the water tank;
 - (iv) if the Vehicle is a 4WD, it being driven in 4WD mode on sealed roads;
 - (v) driving with the handbrake on;
- (c) Loss or Damage to the Vehicle while it is being:

- (i) transported over water; or
- (ii) loaded or unloaded on a watercraft and/or tow truck;
- (d) damage to the tyres, excluding normal wear and tear, except where You have purchased an Additional Cover or 4WD Additional Cover and it applies;
- (e) damage to the windscreen of the Vehicle, except where You have purchased an Additional Cover or 4WD Additional Cover and it applies;
- (f) damage to the interior of the Vehicle, except where there is a collision with another vehicle;
- (g) recovery costs (including towing) the Vehicle if it is bogged; and
- (h) the replacement cost of lost fuel, oil or water caps.

21.2 **Delayed co-operation exclusion**

Your entitlement to Damage Cover will be reduced to the extent We are prejudiced as a result of any delay by You or any Authorised Driver in complying with Your obligations under clause 16 of these Terms and Conditions.

21.3 **Exclusion of personal items**

There is also no Damage Cover for personal property in the custody of or owned by:

- (a) You;
- (b) Your relative, friend or associate who ordinarily resides with You or with whom You ordinarily reside;
- (c) any relative, friend or associate of an Authorised Driver; or
- (d) Your employees,

that is stolen from the Vehicle, lost or damaged during the Rental Period or left in the Vehicle after the Vehicle is returned to the Rental Station and We strongly recommend You purchase a travel insurance policy that covers such loss.

22 **Our Responsibilities and Disclaimers**

- 22.1 We will provide a Vehicle that is of acceptable quality and in good working order for the Rental Period.
- 22.2 If the Vehicle breaks down during the Rental Period because of Our negligence, We will recover and repair the Vehicle as soon as possible. If the Vehicle cannot be repaired, We will use its best endeavours subject to availability to provide a replacement Vehicle of an equivalent size and standard to the previous Vehicle for the remainder of the Rental Period.
- 22.3 Subject to the Australian Consumer Law, We are only responsible for any direct loss You suffer as a result of Our breach of this Agreement. We are not responsible for missed flights, disrupted travel or holiday plans, loss of enjoyment or opportunity, indirect or consequential loss.
- 22.4 You acknowledge and agree that:
 - (a) We have not in any way represented itself to You as an entity carrying on the business of insurance; and
 - (b) Our brochures, websites and other advertising material contain only representations of its vehicles, and such pictures, illustrations, descriptions and measurements of the vehicles may be different to the Vehicle offered to You due to modifications and/or upgrades.

23 **Substantial Breach and termination**

23.1 **Substantial Breach**

You and any Authorised Driver commit a Substantial Breach of the Agreement if:

- (a) there is a breach of any of the following:
 - (i) clause 4 (Drivers);
 - (ii) clauses 5.1, 5.2(Users);
 - (iii) clause 11 (travel restrictions);
 - (iv) clause 13 (Vehicle maintenance);
 - (v) clause 14.1 (notification of Vehicle fault);
 - (vi) clause 14.4 (repair without authority);
- that causes Loss or Damage, theft of the Vehicle or Third Party Loss;

- (b) there is a breach of:
 - (i) clause 17 (Accident reporting) that prevents Us from properly investigating a claim arising from an Accident or theft or from prosecuting or defending any Accident or theft claim; or
 - (ii) clause 25.4 (removal of or tampering with the Tracking Device or Dash Cam); or
- (c) the Vehicle is stolen by You or an Authorised Driver or by any person acting for You, at Your direction or on Your behalf.

23.2 No Damage Cover

If You or any Authorised Driver:

- (a) commit a Substantial Breach of the Agreement; or
- (b) drive the Vehicle in a reckless manner so that a substantial breach of road safety legislation has occurred,

You and any Authorised Driver:

- (i) have no Damage Cover;
- (ii) are liable for all Loss or Damage, theft of the Vehicle and Third Party Loss; and
- (iii) are liable for and must pay any additional costs or expenses We incur in recovering the Vehicle.

23.3 Termination and repossession

Acting reasonably, We may terminate the Agreement and take immediate possession of the Vehicle if:

- (a) there has been a Substantial Breach;
- (b) there has been a breach of clause 23.2(b);
- (c) the Vehicle has been illegally parked for longer than 24 hours; or
- (d) the Vehicle is apparently abandoned.

24 Title to Vehicle

24.1 You acknowledge and agree that:

- (a) the Vehicle is Our sole property ;
- (b) this Agreement creates a bailment between Us and You in respect of the Vehicle and Your interest in the Vehicle is as a bailee only; and
- (c) nothing contained in this Agreement shall be construed as granting or entitling You to any ownership right or any other inconsistent proprietary right in, or to, the Vehicle.

24.2 You must not to part with possession, sell, lease, dispose of, encumber or assign any right or interest in the Vehicle and not create any security interest under the Personal Property Securities Act 2009 (Cth) or any lien over the Vehicle (including in respect of repairs) other than security interests granted in favour of Us.

24.3 We may take possession of the Vehicle without prior demand to You, and at Your expense, if there has been a Substantial Breach of this Agreement. In such circumstances, You irrevocably authorise Us, Our employees and agents to enter any property where the Vehicle is situated.

25 Electronic tracking and Dashboard Cameras

25.1 We may use Global Positioning System (**GPS**) tracking or other electronic tools (**Tracking Device**) to enable the geographical location of Our Vehicles to be tracked or located for the following purposes:

- (a) to provide police or other authorities in the event that the Vehicle is stolen or is not returned at the end of the Rental Period;
- (b) in the event of an Accident or incident relating to the Vehicle during the Rental Period, e.g. to verify the location of the Vehicle at the time of the alleged Accident;
- (c) to identify the exact location of the Vehicle in the event of a recorded breakdown and to provide that location to breakdown responders (e.g. AANT);
- (d) to locate the Vehicle in an emergency; and
- (e) for any other purpose allowed under the *Privacy Act 1988* (Cth) or any other law.

- 25.2 We may use Dashboard cameras (**Dash Cams**) including dual or 'two channel' dash cams which record both the front and rear of the Vehicle for the following purposes:
- (a) in the event of an Accident or incident relating to the Vehicle during the Rental Period, e.g. to provide evidence to the police and/or Our insurer regarding the circumstances of an Accident;
 - (c) to provide evidence of where and when the Vehicle was driven in circumstances where the Vehicle is alleged to have been taken outside the area, or used outside the time, prescribed under this Agreement; and
 - (d) for any other purpose allowed under the *Privacy Act 1988* (Cth) or any other law.
- 25.3 You expressly consent, and will procure that each Authorised Driver consents, to Our use of Tracking Devices and Dash Cams.
- 25.4 You and any Authorised Driver must not tamper with, or remove, the Tracking Device or the Dash Cam from the Vehicle .

26 General

- 26.1 This Agreement including the schedules and annexures to it, contains the entire understanding of the parties with respect to its subject matter and supersedes all prior agreements and undertakings between the parties in connection with it.
- 26.2 This Agreement is governed by the laws of the Northern Territory of Australia. The parties submit to the exclusive jurisdiction of the courts of the Northern Territory of Australia in respect of any actions, claims, demands or suits arising out of or in respect of this Agreement.
- 26.3 Except as expressly provided in this Agreement:
- (a) nothing in this Agreement is intended to constitute a fiduciary relationship, employment relationship or an agency, partnership or trust; and
 - (b) no party has authority to bind any other party.
- 26.4 No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.
- 26.5 In this Agreement, unless the context otherwise requires:
- (a) a reference to the singular includes the plural and vice versa;
 - (b) other grammatical forms of defined words or expressions have corresponding meanings;
 - (c) headings and sub-headings are used for convenience only and do not affect interpretation;
 - (d) wherever "include", "for example", or any form of those words or similar expression is used, it means including without limitation;
 - (e) a reference to "person" includes a natural person, partnership, body corporate, association, government or local authority, agency and anybody or entity whether incorporated or not;
 - (f) a reference to a party is to a party to this Agreement and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes (including by novation);
 - (g) if something is to be or may be done on a day that is not a business day then it must be done on the next business day;
 - (h) a reference to "month" means calendar month and the word "year" means 12 months;
 - (i) money amounts are stated in Australian currency;
 - (j) a reference to a time of day is a reference to the prevailing time in Darwin, Australia;
 - (k) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
 - (l) if a party must do something under Agreement on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
 - (m) any agreement, representation, warranty or indemnity in favour of two or more parties (whether those parties are included in the same defined term or not) is for the benefit of them jointly and severally;
 - (n) any agreement, representation, warranty or indemnity by two or more parties (whether those parties are included in the same defined term or not) binds them jointly and severally; and

- (o) a provision of this Agreement must not be interpreted against a party just because that party prepared the provision.

27 Definitions and interpretation

27.1 Definitions

In these Terms and Conditions:

Accident means an unintended, unexpected and unforeseen incident, including:

- (a) a collision between the Vehicle and another vehicle or object, including animals and roadside infrastructure;
 - (b) rollovers; and
 - (c) weather events, including hail Damage,
- that results in Loss or Damage or Third Party Loss.

Agreement has the meaning given in clause 1.1.

Assistance Animal means 'Assistance Animal' as defined in the *Disability Discrimination Act 1992* (Cth).

Australian Consumer Law means The Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Authorised Driver means any driver approved by Us, including as noted in Rental Agreement as an authorised driver.

Bank Card has the meaning given in clause 6.1.

Damage Cover means the cover You and an Authorised Driver have for Loss or Damage, theft, attempted theft and Third Party Loss under clause 20, subject to the Damage Cover Exclusions in clause 21.

Damage Excess means the amount, including GST, up to which You must pay Us in the event of an Accident or attempted theft that causes Loss or Damage or Third Party Loss or the Vehicle has been stolen and not recovered and includes the additional amount for younger drivers that is payable pursuant to clause 20.3.

Damage Excess Waiver means the waiver purchased by You at additional cost to reduce Your potential Damage Excess liability.

Incident Report Form means the document You must complete and submit to Us if there is Loss or Damage to the Vehicle or it has been stolen.

Joint Renter means any person who is noted as a renter with any other person in Rental Agreement Part A. A Joint Renter is jointly and severally liable for all of the obligations under this Agreement;

Loss of Use means Our loss calculated on a daily basis at the daily rate shown in the Rental Agreement because the Vehicle is being repaired or replaced if it is written off as a result of an Accident or it has been stolen.

Loss or Damage means any loss or damage to the Vehicle that is not reasonable wear and tear, which is not noted on the Vehicle Condition Report, including that caused in an Accident, by theft of the Vehicle or by adverse weather events, that requires repair or replacement and includes:

- (a) the Loss of Use of the Vehicle;
- (b) legal expenses;
- (c) assessment fees;
- (d) towing and recovery costs;
- (e) storage;
- (f) service charges; and
- (g) any appraisal fees of the Vehicle.

Overhead Damage means any damage to the Vehicle or to any third-party property that is caused by:

- (a) contact between any part of the Vehicle that is at or above the level of the top of the front windscreen with objects overhanging or obstructing its path;
- (b) the Vehicle hitting a signed height restricted structure such as but not limited to bridges, car parks and drive throughs; or
- (c) objects being placed on the roof of the Vehicle;

Rental Charges means the fees, costs, amounts and charges payable under this Agreement, including as listed in Rental Agreement and Terms and Conditions.

Rental Location means 7/143 Coonawarra Road Winnellie NT 0820.

Rental Period means the period commencing on the date shown in the Rental Agreement and ending on the date You return the Vehicle to Us.

Rental Agreement means the document titled Rental Agreement.

Repair Event means each individual event where repairs are required in respect of the Vehicle.

Return Location means the location from which the Vehicle was hired and which is shown in Rental Agreement.

Return Time means the time and date by which the Vehicle must be returned, as shown in Rental Agreement, or such other time and date agreed with Us in writing.

Security Bond means the amount for which You will be liable to pay in the event of Loss or Damage to the Vehicle as set out in Rental Agreement, which may be reduced by purchase of Damage Excess Waivers subject to the terms and conditions of this Agreement.

Single Vehicle Rollover means any incident where there is Loss or Damage to the Vehicle that does not involve an impact between the Vehicle and another vehicle and is caused by the Vehicle rolling, tipping or overturning whilst being driven or used by You.

Substantial Breach has the meaning given in clause 23.1.

Terms & Conditions means this document.

Underbody Damage means any damage to the Vehicle caused by or resulting from contact between the underside of the Vehicle and any part of the roadway or any object or obstruction, including kerbs, gutters, speed or road humps, barriers or wheel stops and does not arise as a result of an impact with another vehicle.

Vehicle means the vehicle identified in Rental Agreement Part A including all its accessories, tools, tyres and equipment as well as any replacement vehicle.

Vehicle Condition Report means the pre-existing condition diagram contained in the Rental Agreement – Part A provided to You when You collect the Vehicle identifying any pre-existing damage that there may be to the Vehicle.

You means the party renting the Vehicle, as identified in Rental Agreement, and includes any Joint Renter.

27.2 Interpretation

In these Terms and Conditions, **unless** the context otherwise requires:

- (a) headings are for convenience only and do not form part of the Terms and Conditions or affect their interpretation; and
- (b) where You comprises two or more persons each is bound jointly and severally.