

Terms & Conditions (Terms) for Vehicle Hire

1. General

- 1.1 The following Terms govern the hire of a Vehicle from the Owner to the Hirer.
- 1.2 Any order or request for the hire of a Vehicle accepted by the Owner brings into effect a Hire Contract governed by these Terms.
- 1.3 These Terms supersede all other terms, conditions and agreements between the Owner and Hirer and no variation of these Terms will apply unless accepted in writing by the Owner. No other terms and conditions contained in any document provided by the Hirer shall apply unless agreed in writing by the Owner.
- 1.4 The Owner may amend these Terms from time to time. These changes shall be deemed to take effect from the date on which the Hirer hires a further Vehicle from the Owner.

2. Definitions and Interpretation

- 2.1 In these Terms:
 - 2.1.1 **Business Day** means a day other than Saturday, Sunday or public or anniversary holiday in the Owner's location from which the Vehicle is hired;
 - 2.1.2 **CGA** means the Consumer Guarantees Act 1993;
 - 2.1.3 **Credit Account Application** means an application for a credit account with the Owner;
 - 2.1.4 **Default Interest Rate** means 5% per annum greater than the Owner's business overdraft interest rate;
 - 2.1.5 **Event of Default** has the meaning given in clause 24.1;
 - 2.1.6 **FTA** means the Fair Trading Act 1986;
 - 2.1.7 **GST** means goods and services tax payable under the Goods and Services Tax Act 1985;
 - 2.1.8 **Hire Charges** means the charges for the hire of the Vehicle as agreed between the Owner and the Hirer;
 - 2.1.9 **Hire Contract** means any contract for the hire of a Vehicle made between the Owner and the Hirer and governed by these Terms;
 - 2.1.10 **Hire Form** means the order form or other document agreed between the Owner and the Hirer or other communication between the Owner and the Hirer, setting out the key terms relating to the hire of the Vehicle;
 - 2.1.11 **Hire Period** means the period of the hire of the Vehicle, as more particularly described in clause 9;
 - 2.1.12 **Hirer** means the person hiring the Vehicle including the Hirer's successors;
 - 2.1.13 **HSWA** means the Health and Safety at Work Act 2015;
 - 2.1.14 **Owner** means the person hiring the Vehicle to the Hirer;
 - 2.1.15 **PPSA** means the Personal Property Securities Act 1999;
 - 2.1.16 **Vehicle** means the vehicle hired by the Hirer from the Owner as described in the Hire Form.
- 2.2 In these Terms
 - 2.2.1 Headings are for convenience only and will not affect the interpretation of these Terms;
 - 2.2.2 References to clauses are to clauses of these Terms;
 - 2.2.3 All references to legislation are references to New Zealand legislation in force and include any

subordinate legislation, by-law, regulation, order, statutory instrument or determination made under it, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation;

- 2.2.4 The term "includes" or "including" (or similar terms) is deemed to be followed by the words "without limitation";
- 2.2.5 References to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity; and
- 2.2.6 Where more than one person is the Hirer, each of those people shall be jointly and severally liable for all payments for the hire of the Vehicle and all other obligations under these Terms.

3. Hire of Vehicle

- 3.1 The Owner is not obliged to accept any order or request for the hire of a Vehicle.
- 3.2 The Owner may require the Hirer to pay a bond as a condition of the hire of the Vehicle, which shall be refundable in accordance with and subject to clause 5.4.
- 3.3 The Owner may require a guarantee to be provided by the Hirer's directors and/or shareholders as a condition of the hire of the Vehicle.
- 3.4 If the Owner cannot provide the Vehicle to the Hirer, then by written notice to the Hirer the Owner may cancel any order for the Vehicle (even if it has been accepted) and refund any prior payments to the Hirer but otherwise the Owner will have no further liability to the Hirer.

4. Hire Charges

- 4.1 The Hire Charges are (except in the case of manifest error or fraud) as set out in the Hire Form or as otherwise agreed between the parties.
- 4.2 The Hire Charges are exclusive of GST, which shall also be payable by the Hirer (except where otherwise agreed).
- 4.3 Hire Charges are based on the length of hire.

5. Payment

- 5.1 The Hirer shall pay the Hire Charges as specified in the Hire Form or as otherwise agreed between the parties:
 - 5.1.1 In full without deduction or set-off of any kind; and
 - 5.1.2 To the bank account nominated by the Owner in writing from time to time or by such other method approved by the Owner.
- 5.2 Where the Hirer is a credit account customer the Hire Charges are payable by the 20th of the month following the month of invoice (except where otherwise agreed).
- 5.3 Where the Hirer is not a credit account customer the Hire Charges are payable prior to commencement of hire or on such other date or dates set out on the Hire Form or agreed between the parties.
- 5.4 Any bond paid by the Hirer will be refunded if the Vehicle is returned in accordance with these Terms after deducting such amounts that are owing by the Hirer to the Owner under all Hire Contracts between the Owner and the Hirer.

6. Additional Payments by Hirer

- 6.1 In addition to the Hire Charges the Hirer shall on demand pay:
- 6.1.1 The cost of remedying any failure of the Hirer to return the Vehicle in compliance with these Terms;
- 6.1.2 Without limiting the previous clause charges for cleaning the vehicle's interior if the vehicle is returned in a dirty condition including remedying spillage of fluids or food, cleaning stains, and removing odours such as cigarette smoke;
- 6.1.3 The cost of recovering possession of the Vehicle;
- 6.1.4 The cost of any fuel used by the Hirer in the operation of the Vehicle and not replaced on return of the Vehicle;
- 6.1.5 The cost of any other consumables used by the Hirer in the course of operating the Vehicle;
- 6.1.6 The cost of repair and/or replacement of any of the parts of the Vehicle required due to the Hirer's use of the Vehicle;
- 6.1.7 Any costs incurred in enforcing any of these Terms including any legal fees incurred by the Owner;
- 6.1.8 Any costs incurred by the Owner in registering or protecting its interest in the Vehicle under clause 19;
- 6.1.9 Fees and penalties relating to traffic offences, tolls, and parking (as further detailed in clause 11);
- 6.1.10 Any insurance excess payable under clause 12.
- 6.2 If any amount owing by the Hirer is not paid on its due date (whether in respect of the Hire Charges or otherwise), without limiting any of the Owner's rights or remedies interest will accrue on the outstanding amounts at the Default Interest Rate.

7. Hirer Warranties

- 7.1 The Hirer warrants that all information provided to the Owner, including any information contained in any Credit Account Application, is true and accurate in all material respects.

8. Hirer Acknowledgements

- 8.1 Any advice, recommendation, information or assistance provided by the Owner is given in good faith and is based on the Owner's own knowledge and experience. However the Hirer acknowledges that it is its responsibility to ensure that:
- 8.1.1 The Vehicle is suitable for its purposes;
- 8.1.2 The use of the Vehicle will not be in breach of any restriction or covenant or any other legal or regulatory requirement.

9. Hire Period

- 9.1 The Hire Period will commence on the date the Hirer collects the Vehicle or the agreed date for commencement of the Hire Period, for example as specified on the Hire Form, (whichever occurs first).
- 9.2 The Hire Period will continue for the period that has been agreed between the Owner and Hirer, typically specified on the Hire Form.
- 9.3 The Hirer will return the Vehicle at the end of the Hire Period in such condition and repair required by these Terms.
- 9.4 If the Hirer fails to return the Vehicle at the end of the Hire Period without the Owner's consent, then without limiting any of the Owner's rights, until such time as the Vehicle is returned the Hirer will continue to pay to the

Owner the Hire Charges for such further period until the Vehicle is returned.

10. Use and Operation of the Vehicle

- 10.1 The Hirer shall:
- 10.1.1 Maintain the Vehicle in the same order, condition and repair than at commencement of the Hire Period (but shall not arrange or undertake any repairs to the Vehicle without the consent of the Owner);
- 10.1.2 Keep the Vehicle secure and safe and take all reasonable steps to protect the Vehicle against vandalism, damage, theft or unauthorised distress or seizure including but not limited to ensuring that the Vehicle is locked and/or stored in secured premises;
- 10.1.3 Pay for all fuel used in the operation of the Vehicle;
- 10.1.4 Use the Vehicle only for its intended use;
- 10.1.5 Use the Vehicle in accordance with any relevant laws, regulations and requirements;
- 10.1.6 Operate the Vehicle in accordance with the Owner's and manufacturer's recommendations and requirements;
- 10.1.7 Operate the vehicle carefully and competently at all times;
- 10.1.8 Obtain at its own expense all certificates, licences and approvals that may be required for the hire of the Vehicle.
- 10.1.9 Not operate the Vehicle outside its agreed purposes or rated capacity or in a manner likely to cause undue wear and tear.
- 10.1.10 Inspect the Vehicle regularly;
- 10.1.11 Comply with all relevant laws in the use of the Vehicle;
- 10.1.12 Ensure that the water, oil and fuel are maintained at the correct level;
- 10.1.13 Use the correct fuel for the Vehicle;
- 10.1.14 Maintain the tyres of the Vehicle at the recommended pressure.
- 10.2 The Hirer shall not:
- 10.2.1 Use or allow the Vehicle to be used for the transport of passengers for hire or reward;
- 10.2.2 Use or allow the Vehicle to be operated in any race, speed test, reliability trial, rally or contest;
- 10.2.3 Use or allow the Vehicle to it to be operated, in breach of the Land Transport Act 1988 or any other Act, regulations, rules or bylaws relating to road traffic;
- 10.2.4 Use or allow the Vehicle to be operated for the transport of more passengers or goods than the legal or recommended maximum;
- 10.2.5 Allow the Vehicle to be driven by any person who is not named in the Hire Form or authorised in writing by the Owner;
- 10.2.6 Allow the Vehicle to be driven by any person who does not have a full valid driver licence for the Vehicle or who is not properly skilled, competent, qualified or licensed to use it;
- 10.2.7 Allow the Vehicle to be driven on any unformed road including any beach or other surface likely to damage the Vehicle;
- 10.2.8 Transport any animal in the Vehicle (except with the consent of the Owner);
- 10.2.9 Allow the Vehicle to be used in connection with any illegal activity;
- 10.2.10 Allow any person to smoke in the Vehicle.
- 10.2.11 Operate the Vehicle whilst it is in a defective, damaged or dangerous condition;
- 10.2.12 Exceed the recommended or legal load and capacity limits of the Vehicle;

- 10.2.13 Use the Vehicle under the influence of drugs or alcohol;
- 10.2.14 Use or carry any illegal, prohibited or dangerous substance in or on the Vehicle; or
- 10.2.15 Modify or alter the Vehicle or allow anything to be added to it;
- 10.2.16 Interfere with the Vehicle's odometer or speedometer;
- 10.2.17 Interfere with the Vehicle's engine, transmission, braking or suspension systems.
- 10.3 The Hirer shall on the Owner's request provide the Owner with such information that the Owner requires in relation to the use of the Vehicle.
- 11. Traffic Offences**
- 11.1 The Hirer is responsible for all fees and penalties relating to traffic offences, tolls, and parking relating to the use of the Vehicle.
- 11.2 The Owner may pay and / or charge the Hirer for any such fees and penalties received.
- 12. Insurance**
- 12.1 Unless the Owner agrees that the Hirer may put in place its own insurance (as governed by clause 13) the Owner shall arrange insurance to be put in place in respect of loss, theft or damage to the Vehicle.
- 12.2 The Hirer shall pay any insurance excess payable following a claim for loss, theft or damage to the Vehicle but shall not otherwise be liable (subject to clause 13 and 14).
- 12.3 The Owner may allow the Hirer to elect to pay additional amounts to reduce the amount of excess payable by the Hirer.
- 13. Hirer Insurance**
- 13.1 The Owner may in its absolute discretion agree that the Hirer may put in place its own insurance in respect of loss, theft or damage to the Vehicle.
- 13.2 Where the Owner agrees that the Hirer may put in place its own insurance the Hirer indemnifies the Owner against any loss, damage, liabilities, costs or expenses in respect of the loss or theft of the Vehicle, any or damage caused to the Vehicle or to the Owner or any third party or third party's property arising from the hire or the use of the Vehicle by the Hirer.
- 14. Insurance Exclusions**
- 14.1 The insurance cover put in place by the Owner does not apply to any damage or loss or theft of the Vehicle caused by:
- 14.1.1 The Hirer failing to comply with these terms, including the Hirer failing to use or operate the Vehicle in compliance with these Terms;
- 14.1.2 The Hirer using or allowing the Vehicle to be used when it is not roadworthy where the Hirer should have been aware of that;
- 14.1.3 The Hirer using or allowing the Vehicle to be used when a mechanical or electrical failure or breakdown has occurred where the Hirer should have been aware of that;
- 14.1.4 The Hirer wilfully or recklessly damaging or losing the Vehicle (or allowing it to be so damaged or lost);
- 14.1.5 The Hirer (or other person authorised to operate the Vehicle) committing a traffic offence while driving the Vehicle;
- 14.1.6 The Vehicle being loaded in excess of the manufacturer's specifications.
- 14.2 Where the insurance cover does not apply pursuant to clause 14.1, the Hirer indemnifies the Owner against any loss, damage, liabilities, costs or expenses in respect of the loss or theft of the Vehicle, any damage caused to the Vehicle or to the Owner or any third party or third party's property arising from the hire or the use of the Vehicle by the Hirer.
- 14.3 The insurance cover effected by the Owner does not cover, and the Hirer shall be liable in respect of, any of the following:
- 14.3.1 Any overhead damage caused to the Vehicle;
- 14.3.2 Any puncture, cut or bursting of any tyre, or damage to any tyre by application of brakes; or
- 14.3.3 Any wear and tear to the vehicle (other than reasonable wear and tear).
- 15. Accidents and Damage**
- 15.1 The Hirer shall notify the Owner immediately on the occurrence of:
- 15.1.1 Accident involving the Vehicle;
- 15.1.2 Damage to the Vehicle;
- 15.1.3 The Vehicle breaking down; or
- 15.1.4 Destruction, loss or theft of the Vehicle.
- 15.2 The Hirer shall not arrange or undertake any repairs to the Vehicle without the consent of the Owner.
- 15.3 If the Vehicle is damaged, breaks down or fails to operate the Owner in its absolute discretion may repair or replace the Vehicle (and suspend the Hire Charges) or may terminate the hire of the Vehicle.
- 15.4 Clause 15.3 does not affect the Hirer's liability under clause 13 or 14.
- 16. Access**
- 16.1 The Hirer grants the Owner and its employees, representatives and agents access to any of its premises at which the Vehicle is located and the Vehicle (whether or not during business hours) to deliver, collect, inspect, test, adjust, maintain, repair or replace the Vehicle, or to exercise any of its rights, remedies or obligations under these Terms.
- 17. Assignment and no dealing**
- 17.1 The Hirer may not assign any of its rights under any Hire Contract or these Terms, or sublet, sell, cross-hire or charge the Vehicle.
- 17.2 The Hirer shall keep the Vehicle in its own possession and control.
- 17.3 The Owner may assign, sub-contract or license all or any part of its rights and/or obligations under any Hire Contract without the Hirer's consent.
- 18. Health and Safety at Work Act**
- 18.1 To the extent permitted by law the Owner is not responsible for any obligations imposed on the Hirer from time to time pursuant to the HSWA.
- 19. Title and Security Interest**
- 19.1 Each Hire Contract is a contract for the right to use the Vehicle only and the Owner at all times retains ownership of the Vehicle.
- 19.2 The parties acknowledge that the hire of the Vehicle may create a security interest in the Vehicle in favour of the Owner under the PPSA (in particular where the Vehicle is hired for a period of more than 1 year) and that in those circumstances the Hire Contract creates a security agreement for the purposes of the PPSA. The Owner may register a financing statement in respect of its security interest in the Vehicle.

- 19.3 The Hirer shall do everything that the Owner reasonably requires to ensure that the Owner has a perfected security interest in the Vehicle (including providing and updating any debtor information). The Hirer agrees that it will not register a financing change statement or a change demand in respect of the Vehicle.
- 19.4 The following sections of the PPSA shall not apply to any Hire Contract or any security interest and the Hirer waives its rights under the following sections of the PPSA: 114(1)(a), 116, 120(2), 121, 122, 125, 129, 131, 132, 133, and 134. The Hirer waives its right to a verification statement upon registration of the Owner's security interest.
- 20. Warranties and Guarantees**
- 20.1 The Owner warrants as follows (subject to the other provisions of this clause 20 and clause 21):
- 20.1.1 It has the right to hire the Vehicle to the Hirer;
- 20.1.2 The Vehicle matches the description;
- 20.1.3 The Vehicle complies with any agreed specifications.
- 20.2 Where the Hirer is a consumer (as defined in the CGA) certain guarantees may also apply in respect of the hire of the Vehicle pursuant to the CGA. These guarantees may only be limited by clause 21.4.
- 21. Exclusion of Terms**
- 21.1 Apart from the warranties or guarantees described in clause 20 or any express warranties provided by the Owner, the Owner makes no representations and give no assurances, warranties or guarantees to the Hirer in relation to the hire of the Vehicle. To the maximum extent permitted by law, any representation, assurance, warranty or guarantee implied by law, custom or practice is excluded.
- 21.2 To the maximum extent permitted by law none of the Owner's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by any of the Owner's directors in writing.
- 21.3 Where the Hirer acquires the Vehicle in trade, the Owner and the Hirer agree to contract out of the following sections of the FTA in accordance with section 5D of the FTA:
- 21.3.1 Section 9: Misleading and deceptive conduct generally;
- 21.3.2 Section 12A: Unsubstantiated Representations;
- 21.3.3 Section 13: False or misleading representations.
- 21.4 Notwithstanding clause 20.2, where the Hirer hires the Vehicle or acquires the Vehicle in trade, the Owner and Hirer agree to contract out of the CGA in accordance with section 43 of the CGA.
- 21.5 The parties agree that it is fair and reasonable to be bound by clauses 21.3 and 21.4.
- 22. Liability**
- 22.1 The Owner shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these Terms.
- 22.2 The Owner's aggregate liability in respect of a Hire Contract shall be limited to the Hire Charges in respect of that Hire Contract.
- 23. Indemnities**
- 23.1 The Hirer indemnifies the Owner against any loss, damage, liabilities, costs or expenses in respect of any breach of these Terms by the Hirer.
- 24. Default**
- 24.1 The Hirer commits an Event of Default if:
- 24.1.1 The Hirer fails to make payment in accordance with these Terms;
- 24.1.2 The Hirer breaches any of these Terms and such breach is irremediable or if it is remediable it is not remedied within 5 Business Days of the Owner giving notice to the Hirer requiring it to be remedied;
- 24.1.3 In the Owner's opinion the Hirer will be unable to pay its debts as they fall due;
- 24.1.4 The Hirer commits an act of bankruptcy or is declared bankrupt;
- 24.1.5 The Hirer becomes insolvent, convenes a meeting with its creditors or propose or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;
- 24.1.6 A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any of the Hirer's assets.
- 24.2 Where the Hirer hires the Vehicle for the purposes of a business the Hirer also commits an Event of Default if it ceases or threatens to cease to carry on business.
- 24.3 If an Event of Default occurs, without prejudice to any other rights or remedies available to the Owner under these Terms or otherwise, the Owner may:
- 24.3.1 Terminate any Hire Contract by giving notice to the Hirer; and
- 24.3.2 Recover the Vehicle.
- 24.4 Termination will not affect any rights that have accrued to the date of termination and in particular the Owner's right to recover any unpaid Hire Charges and any other loss, damage, costs and expenses provided for in these Terms or any of these Terms which expressly or by implication survives termination.
- 25. Use of Third Parties**
- 25.1 The Owner may subcontract with any other person, firm or company to provide the Vehicle.
- 26. Collection, Use and Disclosure of Information**
- 26.1 The Hirer agrees that the Owner may collect personal information from the Hirer that the Owner reasonably requires to:
- 26.1.1 Provide the Vehicle;
- 26.1.2 Assess the Hirer's creditworthiness;
- 26.1.3 Administer and enforce any Hire Contract;
- 26.1.4 Maintain credit records held by the Owner, any related company and external agencies;
- 26.1.5 Conduct market research, data processing and statistical analysis; and
- 26.1.6 Market the Owner's goods and services.
- 26.2 The Hirer may in accordance with the Privacy Act 2020 request access to or correction of the personal information that the Owner holds by contacting the Owner.
- 27. Notices**
- 27.1 Without limiting any other means of service, any notice given to the Hirer under these Terms may be given by email (effective upon transmission) or post (effective 2 Business Days after sending) to the addresses specified on the Hire Form or Credit Account Application or such

other email address or address by which the Hirer has communicated with the Owner.

28. **General**

- 28.1 The Owner shall not be liable for any delay or failure to comply with its obligations under these Terms which are caused by any act of God, terrorism, war, strike, lock out, industrial action, flood, storm, epidemic, pandemic, or other event beyond the Owner's reasonable control.
- 28.2 The Owner does not waive a right, power or remedy if it fails to exercise or delay in exercising the right, power or remedy.
- 28.3 The rights powers and remedies provided in these Terms are cumulative and not exclusive of any rights powers or remedies provided by law.
- 28.4 If any of these Terms is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining Terms will not be affected, prejudiced or impaired.

29. **Governing Law**

- 29.1 These Terms and all Hire Contracts are governed by the laws of New Zealand.
- 29.2 The Hirer submits to the non-exclusive jurisdiction of the courts of New Zealand.