

TERMS AND CONDITIONS OF AGREEMENT

In this Agreement the following expressions should have the following meanings:

- (a) "The owner" means **Flinders Island Car Rentals**
- (b) "The renter" includes any person or persons who sign this Agreement and any person whose agent signs this Agreement;
- (c) "the vehicle" means the vehicle or vehicles described on the face hereof or any other replacement vehicles provided to the renter by the owner;
- (d) "Damage to the vehicle" includes loss of and damage to the vehicle, its tyres, tools and accessories and any costs incurred by the owner in connection with the loss or damage.
- (e) "The rate schedule" means the owner's rate schedule at the time of renting;
- (f) "the excess" means the amount referred to as "excess" in the rate schedule;
- (g) "the insurance" means the policy of insurance arranged by the owner for the purpose of Clause 4 covering damage to property other than the vehicle or property owned or in the physical or legal custody or control of the renter or any member of his family;
- (h) "the recovery vehicles" means any vehicles (not described on the face of this agreement) used in assisting the renter or the owner in recovering the vehicle.

Words importing the masculine gender shall include other genders and words importing the singular shall include the plural. References to persons shall include corporations.

- (a) The renter warrants that he; holds a current motor vehicle driver's license valid on the place of rental for the class of vehicle rented.
- (b) The renter warrants that all particulars shown on the face hereof are correct and acknowledges that the owner relies on the truth of these representations.

The renter agrees:

- (a) (i) To return the vehicle as specified on the face hereof and to pay the owner on demand all rental, sundry charges and other moneys due pursuant to this Agreement.
(ii) if it is indicated on the face hereof that payment is to be made through a credit card system approved by the owner then payment shall be made in accordance with the arrangements between the renter and the credit card system operator.
(iii) if payment is invoiced to a person other than the renter and that person fails to make payment the renter shall on demand by the owner promptly make such a payment.
- (b) That no person other than the renter is authorised to drive the vehicle without the written consent of the owner provided that the renter is a company or government department the renter's agent may drive the vehicle on the basis that that agent complies with the warranties listed in Clause 2(a) and the obligations of the renter under this Agreement. The renter shall be liable to the owner for any breach or failure to comply with those warranties or obligations by the agent whether such breach is within the scope of the agent's authority or employment or not.
- (c) To report immediately to the owner any damage to the vehicle or any accident involving the vehicle, to complete within 24 hours of any such damage or accident the owner's Accident Report Form and to comply with all requests of the owner to provide assistance in any litigation or investigation relating to such damage or accident.
- (d) To drive and maintain the vehicle in a cautious and prudent manner and to return the vehicle in a clean and roadworthy condition, fair wear and tear accepted.
- (e) Not to use the vehicle for any illegal purpose or in any race or speed test or in contravention of any law concerning the use of motor vehicles, or when the vehicle is in any way damaged or unsafe.
- (f) Not to drive the vehicle under the influence of any alcohol or drug or with a blood alcohol level as indicated by analysis of the driver's breath or blood in excess of that permitted by the law applicable to the area in which the vehicle is driven.
- (g) "To drive the vehicle on sealed bitumen and formed gravel roads ONLY."
- (h) Where the vehicle is a truck, not to use it for the transportation of any commodity unless referred to on the face hereof, nor to convey any load which is incorrectly loaded or secured, or in excess of that for which the vehicle was constructed.
- (i) Not to use the vehicle for the conveyance of passengers for reward.
- (j) To pay all fines for traffic or other offences committed by the renter or its agent and to pay all toll levies and other charges imposed by any law or government body, and to reimburse the owner for any fines paid or cost incurred by the owner in any way connected with the renter's use of the vehicle.
- (k) To reimburse the owner any cost relating to a breach of the renter's obligations and to indemnify the owner against any liability arising out of a breach in the renter's obligations.
- (l) To pay to the owner interest at the rate of 12 per centum per annum on any amount due to the owner under this Agreement.
- (1) In the event of damage to the vehicle or damage arising out of the use of the vehicle then,
 - (a) If the renter has not breached this Agreement,
 - (i) subject to sub-clause(ii), he shall pay the excess to the owner. Upon such payment he shall be under no further liability to the owner for damage to the vehicle and he shall be entitled to claim on the insurance. If the total amount of the damage to the vehicle and the damage arising out of the use of the vehicle is less than the excess then the owner shall refund the difference to the renter;
 - (ii) the renter need not pay the excess, shall not be liable to the owner for any damage to the vehicle and shall be entitled to claim on the insurance if he has acknowledged by his signature in the appropriate frame on the face hereof that he has agreed to pay the "damage cover fee";
 - (b) If the renter has breach this Agreement he shall not be entitled to claim on the insurance and shall be liable to the owner for all damage to the vehicle howsoever caused.
- (2) The insurance does not in any circumstances extend to any renter carrying volatile liquids, gases, explosives, or corrosive materials with or without the owner's consent.
- (3) The renter's right to claim on the insurance is subject to the terms of the insurance policy a copy of which is available from the owner and is conditional upon the renter not being otherwise entitled to claim under another policy.
- (4) In the event that damage is not covered or not fully covered under the insurance the renter agrees to indemnify the owner against all claims by any party for damage suffered as a result of any accident involving the vehicle, whether as a result of the owner's negligence or howsoever caused, subject to the same proviso as set out in Clause 6(a).
- (5) The renter acknowledges that the owner shall not be bound by any representations as to the existence or extent of any insurance and that the provisions of this Agreement and the Insurance Policy referred to constitute the totality of the Agreement between the owner and the renter in relation to insurance.
- (6) Notwithstanding the above, the renter shall be liable to the owner for all damage to the vehicle at a point above the hood of the driver's cabin caused by a failure to clear low objects provided that such liability shall not exceed the limit specified in relation to "overhead damage" in the rate schedule.

The owner may at any time for any reason take repossession of the vehicle. If the renter has not breached this Agreement, the owner shall at the time of repossession provide the renter with a replacement vehicle similar to the vehicle repossessed.

- (a) The owner shall not be liable for any damage suffered by the renter including that caused by the negligence or default by the owner, but not including defects in the owner's title, save and except for, at the option of the owner, the replacement of the vehicle or the payment to the renter of the cost of obtaining a replacement vehicle.
Proviso: nothing in this clause shall limit or vary any liability which may arise under the Trade Practises Act 1974 and Consumer Transactions Act (S.A) 1972-3 except to the extent that that liability may be limited or varied.
- (b) The owner shall not be under any liability for any property stolen from the vehicle or damage while in the vehicle or left in the vehicle after its return to the owner.

The renter acknowledges that he has no authority to pledge the owner's credit and agrees not to dispose of, encumber or assign any right or interest in the vehicle and not to create any lien on the vehicle for repairs.

Where the renter is more than one person liability shall be joint and several.

Waiver by the owner of any breach of this Agreement shall not constitute a waiver of any subsequent or continuing breach.

(7) In the event the renter requires assistance where he/she has breached the terms and conditions of this agreement a \$200.00 towing and recovery fee shall be payable. The renter will be liable to the owner for all damage sustained to the recovery vehicles after the recovery vehicles leave sealed bitumen or formed gravel roads to provide assistance.