

EzyFleet & Bunbury Bus Service

Standard Terms and Conditions of Hire - Dry Hire

These Terms and Conditions of Hire together with the Quotation or Proposal (if applicable), Credit Card Letter of Authority or Account Application (if applicable), whether signed or not, represent the “**Offer**” by the Company to the Hirer to hire Vehicles or Plant (“**Fleet**”) and/or provide the Service and, if the Customer accepts this offer, together constitute the whole of the “**Rental Agreement**”.

1. DEFINITIONS

In these Terms and Conditions of Hire these words and phrases have the following meanings:

“**Accepting**”, “**Accepted**” and “**Acceptance**” means express or implied acceptance of the Company’s Terms, Quotation or Proposal by the Hirer (including, without limitation, acceptance in writing, verbally, or by conduct).

“**Accident**” means any collision between the Vehicle and any other object, including a vehicle, or any other incident or occurrence that results in the Vehicle being damaged, lost or destroyed and/or an incident that results in damage or injury to a person or property.

“**Account Application**” means the application by the Hirer to the Company to open a Credit Account, being in the form approved by the Company.

“**Administration Fee**” means a fee of no more than 10% of the amount of loss, cost and damage in addition to any amount claimed for any loss, cost or damage as reasonable compensation for the Company having to deal with any situation of loss, cost or damage occasioned by the Hirer’s failure to comply with its obligations under the Rental Agreement. This fee is chargeable in circumstances including but not limited to where the Company must process fines, recover Vehicle, or liaise with Relevant Authorities.

“**Approved Unsealed Road**” means an Unsealed Road for which the Company has expressly agreed in writing shall be an Approved Unsealed Road. It is a condition of approval as an Approved Unsealed Road that the road must be a gravel road which is well formed, graded, well maintained and in good condition at the time of driving the Vehicle or transporting Plant upon the road. Further, for driving the Vehicle, the approval is subject to the Hirer first obtaining any requisite permission from a Relevant Authority.

“**Cancellation**” means the cancellation by the Hirer of this Rental Agreement, which cancellation must be communicated to the Company by email, facsimile or letter and be to that effect.

“**Cancellation Fee**” means the cancellation fee that the Company may charge and invoice to the Hirer in accordance with Clause 14.

“**Certificate of Currency**” means a certificate of currency evidencing to the satisfaction of the Company that insurance cover exists in respect of the Hirer’s business that is sufficient to cover loss/damage to or destruction of the Vehicle.

“**Company**” means Multifleet Pty Ltd as trustee for the Brad Pilatti Family Trust (abn: 76 059 613 191) trading as Ezy Fleet & Bunbury Bus Service and each related entity, subsidiary, subsidiaries, company or companies, the addressor or addressors (as the case may be) named in the Quotation or Proposal, as defined in the Corporations Act 2001 (Cth) and includes a reference to the Company’s employees, agents, contractors, lawful successors and assignees.

“**Company’s Premises**” means the premises which the Company may designate (from time to time) for the collection or return of any Vehicle.

“**Credit Account**” means a credit account that the Hirer has with the Company, which account the Company has approved and opened upon the Hirer completing and submitting to the Company an Account Application.

“Credit Card Letter of Authority” means the Company’s form that must be completed by the Hirer providing authorised credit card details where the Hirer does not have a Credit Account with the Company.

“Dangerous Substances” includes inflammable liquids, gases or solids having a true flash point of less than 23 degrees Celsius (73 F) or any goods, materials or substances of an explosive or corrosive nature.

“Default Event” means an event of default set out in Clause 11 of these Terms and Conditions.

“Deposit” means any sum stated in the Quotation or Proposal as a deposit required to be remitted by the Hirer prior to commencement of the hire.

“Dry Hire” means the hiring of the Vehicle or Plant to the Hirer without provision by the Company of persons to drive the Vehicle or operate the Plant.

“Effective Control” means actual physical control and use of the Vehicle at relevant times. As the Vehicle is provided to the Customer on a Dry Hire basis, it will be deemed to be under the Effective Control of the Hirer.

“Essential Term” means any term in these Terms and Conditions of Hire which is expressly stated to be an essential term and which, by its nature and importance, one or other of the parties would not enter into this Rental Agreement without that term being included.

“Excluded Area” means areas/roads defined in the Rental Agreement where the Vehicle must not be driven or taken.

“Gazetted Road” means a sealed or unsealed road regularly maintained by a local, state or government body or council and upon which the general public have unlimited rights of access, as published in the Western Australian Gazette.

“GST” means Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Harsh Conditions” include constant use of Vehicle in dusty, rough, corrosive or muddy conditions, Vehicles used in low range drive mode, use in heavy towing, short trips (less than 15kms) in sub zero temperatures, and water immersion to any depth.

“Hire Charge” means the fee exclusive of GST which the Hirer has by this Rental Agreement agreed to pay to the Company for the hire of the Vehicle for the Hire Period. The Hire Charge is set out in the Quotation or Proposal and is based on the Vehicle type and duration of the requested Hire Period.

“Hire Day” unless otherwise stated in the Quotation or Proposal, is calculated from the Vehicle booking or collection time (whichever is the earlier) on the date of commencement of the Hire Period and ceases at the same time the following day.

“Hire Period” means the period or term of at least 1 (one) Hire Day for which the Vehicle is hired by the Hirer from the Company, commencing on the date specified in the Quotation or Proposal (as amended by any written agreement by the Hirer and the Company), including weekends and public holidays, and continuing until the Vehicle is returned to the Company in the condition that it was in at the commencement of the period or term (fair wear and tear excepted). Where Vehicle is to be returned on a day on which the Company is not open for business, the Hire Period will continue until the Company is next open for business.

“Hirer” means the addressee or applicant (as the case may be) named in the Quotation or Proposal, Credit Card Authorisation form, Account Application or the Company’s “Form 086 – On Hire/Off Hire Form”. If the Hirer comprises more than one person or entity, each is jointly and severally liable for the performance of all the Hirer’s obligations under the Rental Agreement. For the sake of clarity, “Hirer” includes all employees, agents, contractors or authorised representatives of the Hirer and any person, company, corporation or government department which is or becomes vicariously liable at law to third parties for loss or damage caused by the driver or operator of Vehicle where it is established that the hiring was made by the driver or operator as agent for and on behalf of such person, company, corporation or government department.

“Manufacturer” means in respect of each item of Vehicle the identified Manufacturer of that make and model of Vehicle.

“Other Charges” includes but is not limited to:

- (a) site medicals/inductions;
- (b) fuels (charged per litre including labour if a Motor Vehicle is returned with less than a full tank of fuel);
- (c) excess kilometres;
- (d) late return fees (1/5 (20%) of the daily Hire Charge per hour up to 4 hours late, then full daily Hire Charge applies);
- (e) mobilisation and demobilisation charges;
- (f) remote location charges (including for airport locations);
- (g) reduced Damage Liability (if applicable);
- (h) In Vehicle or Plant monitoring/GPS devices;
- (i) excess cleaning and detailing – the Company allows 1 hour for small Vehicles, 2 hours for medium and large Vehicles. Excess hours required will be charged to the Hirer;
- (j) duties, levies or other government charges;
- (k) damage repairs, Vehicle equipment and accessories, keys etc lost or stolen during the Hire Period;
- (l) charges for payments made by credit card;
- (m) interest charges for late account payment;
- (n) fines for traffic, toll or parking offences/infringements arising from the use of the Vehicle or imposed on the Hirer during the Hire Period;
- (o) expenses incurred by the Company in repossessing the Vehicle where it has been impounded or confiscated by the police or other Relevant Authority due to the negligent or reckless acts of the Hirer.

“PPSA” means the Personal Property Securities Act 2009 (Cth) and any associated or amending legislation or regulations.

“Plant” means any plant or equipment provided for hire by the Company to the Hirer, including any associated or attached tools, accessories, tyres and parts.

“Quotation or Proposal” means the Quotation or Proposal for the supply of Vehicles or Plant and/or provision of Services which the Company submits to the Hirer.

“Reduced Damage Liability Excess” is the amount the Hirer has to pay for each separate instance of damage to or loss of Vehicle, or for damage to other property, and for any associated costs, capped at a maximum level in respect of each separate instance.

“Relevant Authority” includes a police force, a government or other statutory authority and where a quasi-government or private organisation is responsible for managing an area, issuing permits, tickets or fines (e.g. to use private roads) then that organisation.

“Road” means a “Sealed Road” and, subject to express written agreement, may include an “Approved Unsealed Road”.

“Service” means the provision of labour by the Company (its servants, agents or lawful Rental contractors) including but not limited to labour for planning, Vehicle mobilisation, operation, servicing, demobilisation, and all associated travel costs.

“Sealed Road” means a road sealed with a hard material such as tar, bitumen or concrete.

“Site” means the site, place, or location at which the Vehicle is, or is to be, located during the Hire Period or any holding over period.

“Special Conditions” means the special conditions (if any) as set out in the Quotation or Proposal.

“Terms” means all of the terms and conditions of and incorporated in the Rental Agreement, being the terms and conditions set out in these Terms and Conditions of Hire and in the Quotation or Proposal (including any Special Conditions), and in the Account Application (if completed by the Hirer).

“Unsealed Road” means a road which is not sealed with a hard material such as tar, bitumen or concrete.

“Vehicle” means any motor vehicle provided to the Hirer by the Company for hire and includes all Vehicle parts, tyres, tools, accessories in or fitted to the Vehicle.

2. INTERPRETATION

2.1. In these Terms and Conditions of Hire, unless the context requires otherwise:

- (a) a reference to a statute, rule, legislation or regulation is a reference to that statute, rule, legislation or regulation as amended, re-enacted or modified from time to time;
- (b) the headings are for convenience only and do not affect their construction or interpretation;
- (c) a reference to any party includes a permitted assign of that party;
- (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal entity, and any executor, administrator or successor;
- (e) a singular word includes the plural and vice versa;
- (f) a word which suggests one gender includes all others;
- (g) “act” includes an omission to act.

2.2. All words and phrases appearing in the Terms which are defined in the PPSA have the same meaning in the Terms as they do in the PPSA, including (without limitation) the following words and phrases: “collateral”, “financing charge statement”, “financing statement”, “interested person”, “proceeds”, “purchase money security interest”, “register”, “registration”, “security agreement”, “security interest”, and “verification statement”.

3. BINDING RENTAL AGREEMENT

3.1. To the fullest extent legally possible, all dealings between the Company and the Hirer are entered into subject to the Terms and will bind the Company and the Hirer upon Acceptance, even if the Hirer does not receive a copy of the Terms at that time.

3.2. The Terms supersede any prior negotiations, representations, understandings or arrangements between the Company and the Hirer and replace any terms and conditions of the Hirer to the extent of any inconsistency between them, including any terms and conditions in the Hirer’s purchase order.

3.3. The Terms may only be amended, supplemented or replaced by agreement from the Company in writing.

3.4. If a provision or part of a provision of the Terms still is or becomes legally ineffective:

- (a) but would not have such effect if it were read down and, if it is capable of being read down, such provision or part of a provision shall be read down accordingly;
- (b) but the provision would be effective if a word or words were omitted, that word or those words are hereby severed; and
- (c) in any other case, the whole provision is hereby severed;

and the remainder of the Terms shall be of full force and effect.

3.5. Until the Hirer has Accepted this Offer, the Company may at any time withdraw the Offer by email, facsimile or letter to the Hirer to that effect.

3.6. The Hirer hereby acknowledges that it has had the full opportunity to review and understand the Terms and obtain independent legal advice.

3.7. The Hirer represents and warrants that any person who, with apparent authority, accepts the Quotation or Proposal on the Hirer's behalf:

(a) has the authority to make this agreement on the Hirer's behalf;

(b) is empowered by the Hirer to bind the Hirer to this Rental Agreement;

and hereby indemnifies the Hirer against all losses and costs incurred by the Hirer arising out of the person so Accepting this agreement failing to have such power and/or authority.

3.8. All Vehicles are available as listed at the time the Quotation or Proposal is sent to the Hirer. The Company will endeavour that the Vehicle specified in the Quotation or Proposal is available for the Hirer if the Quotation or Proposal is Accepted within 24 hours of the Quotation or Proposal being sent to the Hirer or in such other time as may be specified in the Quotation or Proposal. All quotations are on a best endeavours basis and no guarantee of supply is given or implied.

3.9. The Hire Period of the Vehicle will not be indefinite nor automatically renewable or have a duration of greater than 2 (two) years without the express written consent of the Company.

3.10. The Company has no obligation to the Hirer to supply the Vehicle named in the Quotation or Proposal if the Acceptance by the Hirer is received by the Company outside the time period set out in Clause 3.8.

3.11. Nothing in the Rental Agreement shall be construed so as to create a partnership or joint venture between the Company and the Hirer or making any employee of the Company a servant of the Hirer or any employee of the Hirer a servant of the Company.

4. TERMS OF PAYMENT

4.1. The Company will provide a tax invoice in \$AUD to the Hirer for the Hire Charge, Services and Other Charges ("**Total Charges**"). The Hirer will pay the Total Charges to the Company in strict accordance with the payment terms as stated in the Quotation or Proposal, Account Application, or otherwise as agreed in writing between the Company and the Hirer. The Hirer must also pay the GST as stated on the tax invoice when paying the Total Charges to the Company.

4.2. The Hire Charge does not include a provision for late payment by the Hirer, therefore time shall be of the essence in relation to payments by the Hirer to the Company under this Rental Agreement.

4.3. The Company may charge a security bond on the hire of the Vehicle to non-account holding Hirers. This security bond is fully refundable provided the Vehicle is returned without damage and all charges relating to the Hire Period are paid to the Company.

4.4. Without limiting the circumstances in which the Company may require the Total Charges to be paid in advance, the Company may require advance payment of the Total Charges or a Deposit thereof before any hiring takes place where the vehicle to be hired needs to be purchased specifically, adapted, or any process has to be applied to an existing Vehicle to match with the Hirer's specific requirements.

4.5. Any such Deposit shall when paid be applied against the Total Charges, or if the Hirer cancels the Rental Agreement, the Company may, at its discretion, apply such Deposit as a credit against any such Cancellation Fee per Clause 14.

4.6. No variation to the Hire Period (including off-hires), the Hire Charge, Services or Other Charges will be acknowledged by the Company unless agreed to in writing by the Company.

4.7. The Hirer acknowledges and agrees that the Company may, at its absolute discretion and unless specifically catered for in the Quotation or Proposal, amend any of the charges or fees specified, including introducing additional charges or fees, with such amendment taking effect upon the Company providing written notice to the Hirer.

4.8. A minimum Hire Period may apply in respect of the Vehicle hire ("**Minimum Hire Period**"). The Company will advise the Hirer on the Quotation or Proposal if a Minimum Hire Period applies. If the Hirer returns the Vehicle before the expiration of the Minimum Hire Period, the Company reserves the right to charge the Hirer for the shortfall between the Hire Charge for the requested Hire Period and a corrected Hire Charge based on the actual Hire Period.

4.9. The Hirer shall notify the Company in writing within 7 (seven) days of receipt of any disputed invoice whether in whole or in part. Failure to notify the Company of any dispute within this period will render the invoice irrevocable and payment will be due and payable in accordance with Clause 4.1. In any event, where an invoice is disputed in part, such other part remains due and payable in accordance with Clause 4.1.

4.10. No claims for credit will be recognised after 14 (fourteen) days from the date of the tax invoice.

4.11. Without prejudice to any other rights or remedies available to the Company, if the Hirer fails to pay the full amount payable of an invoice within the period specified in Clause 4.1, the Hirer must pay to the Company on demand interest on the amount outstanding at the rate which is 5.0% above the business overdraft interest rate of the Company's principal banker as determined from time to time, calculated daily, and reimburse the Company for any costs (including legal fees or commissions) incurred by the Company in recovering any unpaid amounts.

4.12. The Hirer must notify the Company of any overpayment made by or adjustment or refund due to the Hirer within 6 (six) months of the date of the applicable tax invoice, adjustment or credit. The Company will not be obliged to provide a refund for any adjustment, credit or refund not claimed within the 6 (six) month period.

4.13. The Hirer cannot assign its debt to the Company to another party, including but not limited to the event of an insurance claim.

4.14. The Company may from time to time review any Credit Account and, at the Company's absolute sole discretion, stop or suspend the Credit Account of the Hirer for any reason including but not limited to the Hirer's failure to make payments in accordance with Clause 4.1 or failure to use the Vehicle in accordance with this Rental Agreement.

4.15. The Rental Agreement is a claim for payment under the Construction Contracts Act 2004 (WA).

4.16. The Company reserves the right to account offset against monies owed to the Hirer but this cannot be effected against the Company.

5. HIRER'S OBLIGATIONS AND RESPONSIBILITIES

5.1. The Hirer's primary obligations and responsibilities are:

(a) unless the Quotation or Proposal provides otherwise, the Hirer is responsible for collecting the Vehicle from and returning the Vehicle to the Company's Premises as per the dates and times specified in the Quotation or Proposal. Where the Hirer requires the Company to arrange delivery to or collection of the Vehicle from the Hirer, the Hirer must reimburse the Company for all costs to mobilise and demobilise the Vehicle to or from the Hirer;

(b) Upon collection or delivery, to inspect the Vehicle to determine whether the Vehicle is complete in accordance with the Rental Agreement and in good order and working condition. Unless otherwise stated in the Quotation or Proposal, the Hirer will on completion of the inspection be deemed to have satisfied itself that the Vehicle is suitable to meet all the requirements of the Hirer.

(c) to pay the Total Charges;

- (d) to safeguard and take proper care of the Vehicle;
- (e) to comply with the limitations placed on the use of the Vehicle;
- (f) to return the Vehicle to the Company in the condition it was in at the commencement of the Hire Period (fair wear and tear excepted);
- (g) to return applicable Vehicle to the Company during the Hire Period for preventative maintenance, annual registration inspection, and recommended periodic servicing as per the Company's policies and schedules;
- (h) to keep Vehicle tyres inflated to the correct pressure and maintain sufficient fluid levels (including radiator, brake, gearbox, power steering, engine oil etc) as appropriate;
- (i) if the Site is more than 150km from a Company depot for servicing and preventative maintenance, to enter into the Company's Preventative Maintenance, Inspection and Servicing Agreement.

5.2. Should the Hirer not collect the Vehicle on the date specified in the Quotation or Proposal (or as otherwise agreed with the Company in writing):

- (a) the Hire Period commences irrespective, and the Hirer will be charged for all Hire Days for which the Vehicle has not been collected by the Hirer; and
- (b) should the Vehicle not be collected during the first 3 (three) days of the Hire Period without notice to the Company from the Hirer, the remaining hire of the Vehicle is forfeited and the Hire Charges for the first 3 (three) days remain due and payable by the Hirer to the Company.

5.3. The Hirer agrees to ensure the Vehicle is subjected to daily checks. These checks include visual inspection of mechanical components and for Vehicles cleaning (or replacement if applicable) of the air cleaner element and cleaning corrosive materials from the body and undercarriage with suitable clean water.

5.4. The Hirer covenants with the Company that the Hirer will comply with all relevant laws relating to the operation of motor vehicles and without limiting the generality thereof will pay all taxes, tolls, levies, charges, duties, fines and penalties imposed, airport collection and parking fees arising out of the use or possession of the Vehicle by the Hirer and indemnifies the Company in respect of any liability incurred by the Company in respect thereof.

5.5. At the end of the Hire Period, if the Hirer fails or refuses for any reason whatsoever to return or make available for collection the Vehicle to the Company then the Hirer will be in breach of an Essential Term of this Rental Agreement and without prejudice to any other rights which the Company may have, either pursuant to these Terms or at law, the Hirer will be liable to pay the Company on a day-rate basis for the hiring of the Vehicle for such further period of time until returned to the Company's Premises.

5.6. For the purposes of Clause 5.5 above, such further period of time will conclude at the earliest to occur of:

- (a) the date when the Vehicle is returned to the Company's Premises in good working order and condition; or
- (b) the date when the Company receives from the Hirer full monetary compensation for the replacement of, loss, damage or destruction to the Vehicle.

In addition, the Hirer fully indemnifies the Company for any other liability, loss or cost that the Company might sustain as a result of the Company being unable to hire that Vehicle (or any other item thereof) to any other person.

5.7. The Hirer shall take out and maintain at its own expense:

(a) all-risk insurance cover that is sufficient to cover theft, damage to or destruction of the Vehicle for an amount not less than the new replacement value of the Vehicle (unless the Hirer has accepted the Company's Reduced Damage Liability Option per Clause 10) and lost Hire Charges. The Hirer must before the Hire Period provide an insurance Certificate of Currency acceptable to the Company which:

- (i) notes the Company as an interested party;

(ii) includes a waiver of subrogation in favour of the Company.

(b) Insurance (including insurance required by all applicable laws) for any liability for loss or damage to third party property and death or injury to any third-party person arising out of or in connection with the Vehicle (whether they are used for the purpose of conveying people or property or otherwise and whether they are licensed or unlicensed).

(c) public liability insurance for a minimum of \$10,000,000;

(d) workers compensation and occupational/industrial disease and any other insurance required by any law relating to the Hirer's workers compensation liability to any person, including common law cover for not less than \$50,000,000; and

(e) any other insurance as reasonably required to protect the interests of the Hirer.

5.8. The Hirer is responsible for any excess and any other costs associated with the Hirer's insurance and for any shortfall in repair or replacement costs following payment of any amount received under the Hirer's insurance.

5.9 Permits and Accreditation. Where the Vehicle hired requires a permit, accreditation or certification the Hirer shall be responsible for obtaining the appropriate permit from the relevant authority and shall not rely on any existing permit held by the Company, without the express agreement of the Company.

6. VEHICLE USE

6.1. The Hirer agrees and undertakes that no person:

(a) shall drive the Vehicle unless he/she:

(i) holds a current unrestricted driver's licence for the class of Vehicle hired and which must be valid in the place in which the Vehicle is used;

(ii) has never been refused motor vehicle insurance;

(iii) for the avoidance of doubt is not a learner driver; and

(iv) has been authorised to do so by the Hirer.

(b) shall operate the Plant unless he/she:

(i) are suitably trained on its safe and proper use, qualified to use the Plant and where necessary and hold a current licence to perform high risk work;

(ii) wears suitable clothing and protective equipment when operating the Plant as required or recommended by the manufacturer;

(iii) conducts a job safety analysis prior to using the Plant.

6.2. Where the Company is to collect the Vehicle from the Site, the Hirer must make it available for collection in good order and working condition and if a Vehicle, fully fuelled. The Company will use all endeavours to collect the Vehicle promptly however the Hirer remains responsible for safeguarding the Vehicle from loss, damage or destruction until collected. The Vehicle remains on hire and chargeable to the Hirer until the Company is notified that the Vehicle is ready for collection per this clause 6.2;

6.3. Where the Hirer is in Effective Control of the Vehicle, the Hirer will:

(a) at all times exercise all reasonable care and diligence in the use of the Vehicle in accordance with Manufacturer's specifications (the Company will provide a copy on request);

(b) ensure that any users of the Vehicle are not under the influence of alcohol, intoxicating or drowsiness-inducing drugs whether prescribed or illicit. The Hirer will not refuse or fail to undergo a breath, blood or similar

test or analysis in compliance with the directions of the police or other Relevant Authority. Such refusal will give the Company the right to terminate the Rental Agreement.

(c) not allow the driver to use a mobile phone, music player or GPS unit in a Vehicle (except when it is parked and the engine turned off) unless the body of the device is affixed to the Vehicle and is being accessed hands-free (e.g. via Bluetooth connection);

(d) not smoke in a Vehicle. Any evidence of smoking in a Vehicle will result in \$2,000 of charges being applied to cover steam cleaning and deodorising of the interior of the Vehicle;

(e) return the Vehicle to the Company in good order and working condition, fair wear and tear excepted, and if a Vehicle, fully fuelled. The Vehicle remains on hire and chargeable to the Hirer until this date and the Company reserves the right to charge for any fuel not returned in a Vehicle and a cleaning/detailing fee should the Vehicle be returned in an unsatisfactory condition;

(f) be responsible for all accidental damage to the Vehicle, save and except where such damage is caused by the Company;

(g) be responsible for all loss or damage to the Vehicle occasioned by theft, malicious damage, or other unlawful act;

(h) not leave the Vehicle unattended following an accident and before the arrival of a tow or salvage operator;

(i) ensure that the Vehicle is secure at all times and when being stored in an unlocked Site, supply such security measures to ensure that the Vehicle is safe and secure from theft, seizure, loss or damage at all times during the Hire Period;

(j) not leave the keys to the Vehicle or any keyless start or remote-control door device in a Vehicle while it is unattended or unoccupied by the Hirer;

(k) not take or use the Vehicle:

(i) on private roads, whether sealed or not, if the Hirer has not first obtained a relevant permit if required;

(ii) on beaches, boat ramps, rivers, lakes or other places where the Vehicle enters the water or could be immersed or partially or totally submerged in water;

(iii) underground without the Company's prior written consent;

(iv) in Excluded Areas.

(l) at no time during the Hire Period remove, vary or deface any label, Manufacturer's serial numbers or other marks identifying the Vehicle and/or the Company's ownership of the Vehicle or in any way deal with it in a manner inconsistent with the rights of the Company as owner;

(m) not modify the Vehicle in any way. Roof racks or towbars are not permitted on a Vehicle unless installed by the Company;

(n) not permit any person to improperly use the Vehicle;

(o) not use the Vehicle:

(i) in any illegal manner or for any illegal purpose;

(ii) to transport passengers or property for hire, fare or reward unless the Vehicle is a commercial vehicle and the Hirer has received prior written consent from the Company;

(iii) for the carriage of Dangerous Substances;

(iv) to propel or tow any vehicle or trailer in excess of that for which the Vehicle was constructed;

(v) to transport animals unless specifically approved by the Company in writing. Additional cleaning and/or detailing charges may apply.

If the Hirer thinks it may wish to use the Vehicle for a purpose contrary to this Clause 6.3(o) the Hirer must first obtain the Company's written consent and may need to negotiate special Hire Charges and additional charges;

(p) not allow the Vehicle to be moved from the State or Territory in which it was hired without the Company's written consent;

(q) not allow or authorise another person or entity to use or have possession of the Vehicle without the written permission of the Company;

(r) keep the Vehicle free from contamination or hazardous substances and advise the Company of any risk as soon as they become apparent. If the Vehicle becomes contaminated the Hirer must thoroughly decontaminate the Vehicle and provide a written report of the processes applied. If the Company is not reasonably satisfied that the Vehicle has been or can be decontaminated, the Company reserves the right to charge the Hirer for the new replacement cost of the Vehicle.

(s) not remove or cover over and decals and identification markings. Should you wish to add your decals and identification markings to any dry hired Vehicle then approval must be gained in writing from us. At the conclusion of the hire period any costs associated with returning the Vehicle markings to the original condition will be to your account.

6.4. Where the Hirer replaces a tyre at its own cost, the replacement tyre must be the same brand and tread pattern as already on the item of Vehicle, otherwise the Company may charge the Hirer for an entire replacement set of tyres (of no lesser standard than the replaced set).

7. OFF-ROAD USAGE

7.1. For the avoidance of doubt, "**Off-Road**" means and includes:

(a) any road which is not a Sealed Road or a Gazetted Road or an Approved Unsealed Road and includes driving surfaces which are not traditionally paved or sealed/bituminised such as beaches, sand, gravel, riverbeds, mud, snow, rocks and other natural terrain.

(b) roads for which an access permit is required from a Relevant Authority unless the Hirer first obtains the access permit).

Note that any Unsealed Road, whether Gazetted or not, must be graded, well maintained and in good condition at the time of driving the Vehicle or towing the Plant, or it shall be deemed to be Off-Road.

7.2. The Vehicle must not be taken or used Off-Road unless the Hirer has received written permission from the Company.

7.3. If permission is given to the Hirer for Off-Road use the Hirer agrees to undertake the following daily maintenance in addition to any other obligations set out in the Rental Agreement:

(a) Air-cleaners must be cleaned;

(b) Air-conditioning filters must be cleaned;

(c) Oil must be checked and at the correct level;

(d) Water must be checked and at the correct level;

(e) Tyres must be inflated to the correct operational pressure.

8. BREAKDOWNS

8.1. During the Hire Period, in the event that the Vehicle breaks down or becomes unsafe to use, the Hirer must:

(a) immediately cease using the Vehicle and notify the Company;

- (b) take all necessary steps to prevent injury to any persons or property, as a result of the condition of the Vehicle;
- (c) take all necessary steps to prevent any further damage to the Vehicle itself; and
- (d) not tamper, modify or in any way interfere with, or repair or attempt to repair or alter the Vehicle without the prior consent of the Company.

8.2. The Company will take all reasonable steps to repair the Vehicle or provide a suitable replacement as soon as reasonably possible after being notified by the Hirer.

8.3. The Hire Charge will not be payable from the time the Company is notified of a breakdown until rectified, unless such condition is due to negligence or misuse of the Vehicle on the part of or attributable to the Hirer or otherwise caused by the Hirer as a result of breaching any of the Terms.

9. HIRER'S LIABILITY FOR ACCIDENTS, LOSS & DAMAGE

9.1. The Hirer is responsible for any loss, theft or damage to the Vehicle from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period and will indemnify the Company for the cost and expenses of the new replacement of such lost or stolen Vehicle and/or for the new replacement of the Vehicle which, in the sole determination of the Company, is damaged beyond repair and/or for the costs and expenses of repairing or reinstating the damaged Vehicle.

9.2. The Hirer agrees that:

- (a) the Hirer shall be liable to the Company for the full amount of any damage to the Vehicle (howsoever caused) which occurs on or after any breach by the Hirer of any term, condition, warranty or undertaking contained in this Rental Agreement and for the negligence or misconduct of the Hirer and its servants and agents.
- (b) unless expressly and separately agreed, the Company and any insurance which may be placed by the Company does not cover damage or injury to any persons or property (including the Vehicle) howsoever caused.
- (c) the Company may claim reimbursement from the Hirer for the costs of replacing lost or damaged equipment, costs of repossessing the Vehicle (including fines, freight and towage charges) and the loss of hire charges for the period when the Vehicle is out of commission or has been impounded or confiscated pursuant to statutory laws or legislation.
- (d) the Company reserves the right to decide if and when it will proceed with any repair work and may at its discretion, elect simply to charge the amount of loss, cost and damage, including the cost of repairs, plus the Administration Fee or the cost of new Vehicle plus the Administration Fee if the Vehicle is written off.

9.3. The Hirer will immediately report any accident or incident which may give rise to a claim which occurs during the Hire Period.

- (a) The Hirer will immediately complete and furnish to the Company (or the Company's solicitors) such statements, police report, information and assistance as the Company may reasonably require in respect of any event or accident involving damage to the Vehicle or to the property of any person or injury to any person.
- (b) The Hirer must not, without the prior written consent of the Company, make or give any offer, promise of payment, settlement waiver, release indemnity or admission of liability in respect of any accident, damage to the Vehicle or to the property of any third person or injury to any person.
 - (i) The Hirer acknowledges and agrees that initial assessments and repair costs of any damage to the Vehicle shall whenever reasonably possible be assessed by an authorised and qualified representative of the Company who shall certify the amount of such assessment.
 - (ii) Whenever the services of such an expert are not available such assessments shall be made by any authorised representative of the Company who shall certify the amount of such assessment.

(iii) In the event of dispute of repair costs the hirer can arrange an independent quote by a suitably qualified repairer (whom may be a repairer with a minimum of 5 years post qualification experience) at the Hirer's expense.

(c) The Hirer acknowledges the Vehicle remains on hire until all repair quotes are agreed upon and the Vehicle is restored to the same state as at the commencement of the Hire Period (fair wear and tear excepted).

9.4. Loss, cost and damage for which the Hirer is liable includes without limitation the cost of:

- (a) returning the Vehicle to the Company should the Vehicle for any cause be damaged or need towing;
- (b) rectifying all tyre damage not attributable to normal wear and tear;
- (c) rectification of all damage to the under carriage or to the over carriage;
- (d) repairing all body or roof damage;
- (e) rectification of damage to suspension, steering, chassis, differential, gear box, transfer case, axles, wheels or other damage caused by abnormal use, misuse or abuse of the Vehicle;
- (f) replacing spare wheels, equipment, tools and jacks;
- (g) repair or replacing window glass;
- (h) rectification of engine damage caused by dust.

10. REDUCED DAMAGE LIABILITY OPTION

10.1. A Reduced Damage Liability Fee will be charged to the Hirer if the Hirer elects not to provide their own comprehensive insurance cover for the Vehicle during the Hire Period. The Reduced Damage Liability Fee will be outlined in the Quotation or Proposal and varies according to the type of Vehicle hired.

10.2. The Reduced Damage Liability Fee is not insurance. Where it has been charged to the Hirer, the Company agrees to limit the Hirer's liability in specific circumstances for loss, theft, damage to or destruction of the Vehicle during the Hire Period. Note it does not cover the ongoing daily Hire Charge (refer Clause 9.3(c)).

10.3. Where the Hirer has paid the Reduced Damage Liability Fee to the Company, the Company will waive its right to claim against the Hirer for loss, theft, damage to or destruction of the Vehicle caused by fire, storm, flood, collision, accident, and burglary, so long as the Hirer has:

- (a) taken adequate precautions to reasonably safeguard the Vehicle;
- (b) where applicable, promptly reported the incident to the police and provided a copy of the police report to the Company;
- (c) fully cooperated with the Company and provided their own written report detailing the incident, including photographs where required;
- (d) paid to the Company the Damage Liability Excess referred to in Clause 10.4.

10.4. The Reduced Damage Liability Excess for each item of Vehicle is an amount the Hirer must pay for each separate instance of damage to or loss of the Vehicle.

10.5. In some circumstances, the Reduced Damage Liability Excess may be charged more than once as it applies to each instance of damage to or loss of the Vehicle, or for damage to other property, and for any associated costs. This may happen, for example, if during the Hire Period the Hirer is involved in an incident which causes damage to a vehicle, and in a separate and unrelated incident, further or additional damage is caused to a vehicle. Reduced Damage Liability Excess would be payable in respect of both incidents.

10.6. Irrespective of whether the Hirer has been charged the Reduced Damage Liability Fee, the Company will not waive its rights to claim against the Hirer for loss, theft, damage to or destruction of the Vehicle where such event:

- (a) has resulted from a negligent act, omission or failure to act by the Hirer;
- (b) has been caused by a breach of a clause of this Rental Agreement by the Hirer;
- (c) has resulted from the improper use of the Vehicle in violation of any statutory laws and regulations, including but not limited to:
 - (i) the driver does not have a current unrestricted driver's licence for the class of Vehicle hired;
 - (ii) the driver is/was driving while affected by alcohol or any drug which affects the ability to drive the Vehicle, or is an illegal drug, toxin or substance;
 - (iii) the Vehicle is/was being used in the course of committing a crime.
- (d) is the result of the Vehicle being unattended and unlocked, or the keys were not stored securely;
- (e) was caused by vandalism;
- (f) was caused during transport of the Vehicle by the Hirer;
- (g) was caused to the interior of the Vehicle by food or drink, stains and marks requiring extra cleaning, professional detailing, deodorising or repair;
- (h) occurred due to the Vehicle being driven off-road without the Company's prior written authorisation or on an unsealed road (the latter does not apply to 4WD Vehicles);
 - (i) results in damage to the undercarriage arising from contact with any object, obstruction or road surface regardless of cause. For the avoidance of doubt, "undercarriage" refers to exposed components including but not limited to wheels and tyres, engine, transmission, sumps, differential, suspension, exhaust system, fuel tank, floor pan, tailgate lifters and ramps or any other mechanical or structural item.
- (j) is the result of the Vehicle being towed without the Company's prior permission;
- (k) relates to windscreen damage such as chips, cracks and stars;
- (l) occurs due to misuse or abuse of the Vehicle or failure to use in accordance with the Company's or Manufacturer's instructions. This includes damage caused by using the incorrect type or grade of fuel;
- (m) was caused by the unauthorised modification or conversion of the Vehicle by the Hirer;
- (n) results in the loss of or damage to items supplied with the Vehicle as noted on the On Hire/Off Hire Form;
- (o) caused damage to the tyres and wheels not attributable to wear and tear, such as punctures, cuts, abrasions, stakes;
- (p) has been caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
- (q) results from the Hirer failing to adequately service or maintain the Vehicle (if required by the Rental Agreement);
- (r) has been caused by exposure to corrosive or abrasive substances such as caustic, cyanide, acid, salt and salt water etc or by carrying any dangerous goods, flammable items or toxic substances;
- (s) occurs when the Vehicle is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind, or is deliberately or negligently driven into any body of water.

10.7. No claims for credit will be recognised for the Reduced Damage Liability Fee that was charged prior to the Hirer submitting a Certificate of Currency that complies with Clause 5.7.

11. DEFAULT / BREACH EVENTS

11.1. If the Hirer is found to be in breach of any term, condition or warranty herein or has made any misrepresentation to the Company, or if the Company considers on reasonable grounds that the conduct of the Hirer is likely to affect prejudicially the interest of the Company or the condition of the Vehicle then the Company may terminate this agreement and without notice repossess the Vehicle whereupon all moneys previously paid by the Hirer shall be forfeited to the Company but without prejudice to any claims or rights of the Company in respect of any arrears of Hire Charges or any moneys due to the Company.

11.2. The Hirer will be in default under the Rental Agreement if:

(a) it breaches any of its obligations under this Rental Agreement and fails to remedy such breach within 7 (seven) Days of being requested by the Company to do so;

(b) it breaches any Essential Term of this Rental Agreement;

(c) where the Hirer being a corporation becomes insolvent, is wound-up or goes into Liquidation or has an Administrator appointed to it or has a Receiver appointed over any of its assets; or

(d) where the Hirer is a natural person, he or she is or becomes insolvent or makes an assignment for the benefit of his or her creditors or commits an act of bankruptcy under the Bankruptcy Act 1966 (Cth) or is declared bankrupt.

11.3. The Hirer irrevocably and to the full extent permitted by law authorises the Company to, without prior notice to the Hirer, do any or all of the following if a Default Event occurs (reserving all other rights and remedies whatsoever available to the Hirer):

(a) terminate the Rental Agreement;

(b) enter any Site or any property at which the Company reasonably believes the Vehicle to be located, for the purpose of doing anything reasonably necessary:

(i) to remove the Vehicle from the Site or property; or

(ii) to re-take possession of the Vehicle.

11.4. The Hirer indemnifies the Company, and must keep the Company indemnified, against any loss or liability, expense, claim or cost which might be incurred by the Company in exercising its rights under Clause 11.3. This indemnity covers (without limitation) any liability to any third party for trespass or for damage to any property occasioned by the Company exercising its rights under Clause 11.3(c).

11.5. Without limiting any other rights the Company may have, the Hirer must immediately return the Vehicle to the Company on the Company's request:

(a) if a Default Event occurs; or

(b) if the Company reasonably believes that a Default Event has occurred or will occur and notifies the Hirer of the grounds for the belief.

12. WARRANTIES

12.1. Except where specifically agreed in the Quotation or Proposal and to the maximum extent permitted by law, the Hirer acknowledges that the Company has not, in the provision of the Vehicle or Service, whether expressly or impliedly, directly or indirectly, statutory or otherwise, made any representation or given any inducement, warranty, undertaking or guarantee as to any fact, matter, circumstance or thing.

12.2. Unless the Company has been expressly retained in writing to advise on the suitability, fitness and merchantability of the Vehicle for the Hirer's purpose, any warranties as to suitability, fitness or merchantability are hereby expressly excluded to the fullest extent legally permitted.

12.3. The Hirer warrants that it will not at any time make any claims against the Company for any loss or damage for delays through breakdown, mechanical difficulty or accident or by reason of the Vehicle being found to be unsuitable for the purposes of the Hirer or with respect to any loss or damage to any property

stolen from the Vehicle or damaged or otherwise during the Hire Period or left in the Vehicle after the return of the Vehicle to the Company and the Hirer hereby agrees to indemnify the Company in respect of all claims, damages and actions brought against the Company in respect thereof.

12.4. All warranties implied by the Competition and Consumer Act 2010 (Cth) and any other statutes (if any) that can be expressly excluded are hereby expressly excluded.

12.5. Where permitted by statute, the Company's liability for breach of any warranty is limited to:

- (a) the supply to the Hirer of substituted equivalent Vehicle; or
- (b) the payment of the costs of supplying to the Hirer a substituted equivalent Vehicle; or
- (c) the repayment to the Hirer of the Hire Charge.

12.6. The Hirer warrants that it:

- (a) does not have a conflict of interest with the Company;
- (b) will not allow a conflict of interest to arise during the Hire Period;
- (c) will not provide or offer to provide any gift or inducement by way of fees, rebates, grants, gifts or commissions to the Company;
- (d) will immediately inform the Company of the existence of or potential for a conflict of interest.

12.7. During the term of this Rental Agreement and for 12 (twelve) months thereafter, the Hirer warrants that it will not directly or indirectly retain the services (whether as an employee, independent contractor or otherwise) of any employee of the Company (or ex-employee within three months of the employee's termination from the Company) who has provided services to the Hirer on behalf of the Company.

12.8. The Hirer acknowledges that it is upon reliance of the truth of the above representations and the accuracy of all information provided by the Hirer that the Company enters into the Rental Agreement with the Hirer.

13. LIABILITY AND INDEMNITY

13.1. Subject to Australian Consumer Law, the liability of the Company is limited as follows:

- (a) the Company is not liable to the Hirer for any loss or damage which the Hirer might sustain as a consequence of the Hirer requesting the wrong Vehicle, or where the Vehicle is hired for a purpose which is outside of the Vehicle's specifications;
- (b) the Company is not liable for any damage or loss suffered by the Hirer as a consequence of any late delivery of the Vehicle to the Site whether or not the Company has contributed to the cause of the late Delivery by any means;
- (c) the Company has no liability to the Hirer for any damage or loss which the Hirer might sustain where the cause of that damage or loss is due to the negligence of the Hirer or any of its servants, agents or contractors;
- (d) in the event of the Hirer suffering any loss, damage or claim howsoever arising as a result of hiring the Vehicle, the liability of the Company does not include indirect, liquidated, economic or consequential damages, loss of actual or anticipated profits, or loss of business or business interruption costs, of any nature whatsoever;
- (e) in any event liability is restricted to the amount of the Company's insurance coverage.

13.2. Where it is the responsibility of the Hirer to ensure that the Site is safe for delivery and use of the Vehicle, then the Hirer indemnifies the Company against any liability to any third party who suffers death, injury, loss or damage where such death, injury, loss or damage is caused wholly or partly as a consequence of any negligent act or omission or other failure on the part of the Hirer to ensure that the Site is safe.

13.3. The Hirer agrees to the fullest extent permitted by law to indemnify and hold harmless the Company, its officers, directors, employees and subcontractors (collectively the Company) against all claims, damages, liabilities, losses, costs or expenses on a full indemnity basis, including reasonable attorney's fees and defence costs, in respect of personal injury, death or damage to property, arising out of or in any way connected with the Vehicle or the performance by any of the parties in this agreement, excepting proportionately only those claims, damages, liabilities, losses, costs or expenses attributable to the negligent acts or negligent failure to act by the Company.

13.4. The parties agree that Part 1F of the Civil Liability Act 2002 (WA) is expressly excluded from application to this Rental Agreement pursuant to Section 4A of that Act.

13.5. Each indemnity in this Rental Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, expiration or completion of the Rental Agreement.

13.6. Time shall not be of the essence in relation to the provision of the Vehicle and Service by the Company to the Hirer.

14. CANCELLATION AND CANCELLATION FEE

14.1. The Hirer has the right to and may at its absolute sole discretion terminate this Rental Agreement by giving 5 (five) days prior notice, provided that it sends a Cancellation notification by post, email or facsimile to the Company. Upon receipt of such Cancellation, the Company has no further obligation to hire the Vehicle to the Hirer.

14.2. The Company may charge a booking fee of \$150.00 if a booking has been confirmed and is then cancelled.

14.3. A Cancellation fee is payable for the amount of 1 day or 25%, whichever is the higher, of the total Hire Charges if the hire is cancelled within 24 hours of commencing.

14.4. The Hirer agrees and acknowledges that it must pay the Cancellation Fee in full as invoiced by the Company.

15. NO SALE AND ACKNOWLEDGEMENT OF OWNERSHIP

15.1. This Rental Agreement is a hiring agreement only and does not constitute or give rise to any sale of the Vehicle to the Hirer, any hire purchase agreement or arrangement with the Hirer or any leasing agreement. Nothing in this Rental Agreement confers any option on the Hirer to purchase the Vehicle or any part thereof unless expressly stated within the Quotation or Proposal.

15.2. The Hirer has no legal or equitable interest in the Vehicle or any part thereof. The Company retains its full interest in, title to, and ownership of the Vehicle at all times, including during a Default Event as set out in Clause 11.

15.3. The Hirer acknowledges that the Company is the sole exclusive owner of the Vehicle. The relationship between the Company and the Hirer is limited (upon delivery or collection of the Vehicle) to a relationship of owner and bailee in respect of the Vehicle.

15.4. Except as detailed in Clause 16, the Hirer is not entitled to offer, sell, sub-let, assign, hire to, pledge, mortgage, create any form of security interest over (or allow a third party to), or otherwise deal with (in any way whatsoever) the Vehicle.

15.5 The Hirer irrevocably indemnifies the Company for any loss whatsoever suffered by the Company resulting from the Hirer breaching this Clause 15.

16. PPSA

16.1. The Hirer consents to the Company (in its absolute discretion) affecting and maintaining a registration on the Personal Property Securities Register (in any reasonable manner the Company deems appropriate) in relation to any security interest (including a purchase money security interest "PMSI") contemplated or

constituted by the Rental Agreement in the Vehicle and the proceeds arising in respect of any dealing in the Vehicle.

16.2. The Hirer agrees to do all things (including without limitation, sign any documents and provide all assistance and information to the Company) as the Company reasonably requires to facilitate the registration and maintenance of any security interest the subject of the Rental Agreement:

- (a) so that the Company can acquire and maintain one or more enforceable, perfected (including where possible by control) security interests under the PPSA in respect of the Vehicle and its proceeds;
- (b) to enable the Company to gain first priority for its security interest (or any other priority agreed to in writing by the Company);
- (c) to register a financing statement or financing change statement;
- (d) to ensure that the Company's security position and rights to the Vehicle are not adversely affected by the PPSA.

16.3. The Company may at any time register a financing statement or financing charge statement in respect of its security interest in the Vehicle. The Hirer waives its right under section 157 of the PPSA to receive a notice in relation to any registration events which relate to the Vehicle (including a notice of a Verification Statement).

16.4. For the purpose of section 20(2) of the PPSA, the "collateral" covered by the Rental Agreement is the Vehicle. The Rental Agreement is a Security Agreement for the purposes of the PPSA. For the avoidance of doubt, the Company's security interest is a PMSI in the collateral.

16.5. Notwithstanding any other provision of the Rental Agreement, the Hirer is not entitled to obtain possession of the Vehicle until after the Company's security interest in the Vehicle (as contemplated by the Rental Agreement) is perfected by registration on the PPS register. The Company may refuse to transfer to the Hirer possession of any Vehicle unless the Hirer provides the Company with all details and time that the Company reasonably requires to register a financing statement under the PPSA with respect to any security interest the subject of the Rental Agreement.

16.6. If the Hirer makes any payment to the Company, the Company may apply the payment to satisfy any obligation of the Hirer to the Company (whether the obligation is unsecured, secured by security interest, or secured by purchase money security interest). The Company may:

- (a) apply the payment in any order or manner that it (in its absolute discretion) thinks fit; and
- (b) amend or re-apply any application made.

16.7. The Hirer must not without the prior written consent of the company:

- (a) create any security interest over the Vehicle which has priority over security interests granted in favour of the Company;
- (b) grant a security interest to any third party in respect of the Vehicle;
- (c) register (or permit to be registered in favour of the Hirer or a third party) a financing statement or a financing change statement in respect of the Vehicle or any security interest the subject of this Rental Agreement.

16.8. The Hirer must not lease, sub/cross-hire, bail or otherwise give possession ("**Rehire**") of the Vehicle to any third party without the prior written consent of the Company (which may be withheld at the Company's absolute discretion). Any Rehire agreement must be subject to any terms and conditions that the Company (in its absolute discretion) thinks fit. Any Rehire agreement must also be:

- (a) in writing;
- (b) expressly subject to the rights of the Company under this Rental Agreement;
- (c) expressly incapable of variation or alteration in any way without the prior written consent of the Company;

(d) for a definite or specified period of less than two years that is not automatically renewable if the total of any Hire Period might exceed two years;

(d) The Hirer must keep the Company fully informed about the Rehire including the identity of the Hirer, the terms and conditions of the Rehire and the location and condition of the Vehicle.

(e) In addition to the requirements of Clause 16.8, where a Rehire is in effect, the Hirer agrees to do anything reasonably required by the Company:

(i) to enable the Hirer to gain (subject to the rights of the Company) first priority for the security interest (or any other priority agreed to in writing by the Company);

(ii) to enable the Company and the Hirer to exercise their respective rights in connection with their respective security interests;

(iii) to enforce the Terms against the hiring third party.

16.9. Unless otherwise agreed and to the extent permitted by the PPSA, The Company and the Hirer agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Hirer waives any right the Hirer may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

16.10. The Company and the Hirer agree that the following provisions of the PPSA are excluded to the extent that they apply to the Vehicle and to the extent that they may be excluded by law for the purposes of section 115(1) of the PPSA:

(a) section 95 (notice of removal of accession);

(b) section 96 (person with an interest retaining accession)

(b) section 121(4) (enforcement of liquid assets – notice to grantor);

(c) section 125 (obligation to dispose of or retain collateral);

(d) section 130 (notice of disposal of collateral);

(e) section 132(3)(d) (contents of statement of account after disposal);

(f) section 132(4) (statement of account if no disposal);

(g) section 135 (notice of retention).

16.11 The Company and the Hirer agree that the following provisions of the PPSA will not apply and the Hirer will have no rights under them:

(a) section 127 (seizure by higher priority parties—notice);

(b) section 129(2), (3) (disposal by purchase)

(c) section 130(1) (notice of disposal of collateral);

(d) section 132 (secured party to give statement of account);

(e) section 134(2) (proposal of secured party to retail collateral);

(f) section 136(3), (4), (5) (retaining collateral free of interests);

(g) section 137 (persons entitled to notice may object to proposal).

16.12. To the extent that the PPSA does not apply or the Company is unable by any means to register a security interest in the Vehicle, no title or interest in the Vehicle or any part thereof will pass to the Hirer unless and until the Company has received full payment of the purchase price for the Vehicle in accordance with terms and conditions of sale agreed in writing by the Hirer and the Company.

16.13. The Hirer agrees to notify the Company in writing of any changes to its details set out in the Account Application within 5 (five) days from the date of such change.

17. SECURITY

17.1 Except where excluded from individual consumer and small business contracts:

- (a) as security for the Hirer's obligations and liabilities under this Rental Agreement, the Hirer hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of the Hirer's legal and equitable interest (both present and after acquired) of whatsoever nature held in any and all real property;
- (b) without limiting the generality of the charge in this clause, the Hirer agrees, on the Company's request, to execute any documents and do all things necessary required by the Company to register a mortgage security or other instrument of security over any real property and against the event that the Hirer fails to do so within a reasonable time of being so requested, the Hirer irrevocably and by way of security, appoints any credit manager or solicitor engaged by the Company to be the Hirer's true and lawful attorney to execute and register such instruments; and
- (c) The Hirer will indemnify the Company on an indemnity basis against all costs and expenses incurred by the Company in connection with the preparation and registration of any such charge and mortgage document.

18. PRIVACY

18.1. In all dealings with the Hirer, the Company will comply with the National Privacy Principles established in the Privacy Act 1988 (Cth).

18.2. The Hirer consents to the Company using the Hirer's personal information to assess its credit worthiness or as required in accordance with Clause 16.

18.3. The Hirer consents to the Company providing the Hirer's personal information to any credit provider or credit reporting agency for the purpose of obtaining information conducive to assessing the credit worthiness of the Hirer.

18.4. The Hirer consents to the Company providing the Hirer's ongoing Credit Account performance to any credit provider or credit reporting agency as required.

19. MISCELLANEOUS

19.1. The Company and the Hirer agree to act in good faith in all matters relating to this Rental Agreement.

19.2. This Rental Agreement shall be governed by and shall be construed and interpreted in accordance with the laws of Western Australia. The parties submit all their disputes arising out of or in connection with this Rental Agreement to the exclusive jurisdiction of the Courts of Western Australia.

19.3. The Hirer will not without the prior written consent of the Company engage in any publicity related to this Rental Agreement or use the Company's name, logo, trademark, trade name, insignia or any other designation in any manner whatsoever.

19.4. The Company reserves the right to update these Terms and Conditions of Hire from time to time and they will apply immediately upon notice to the Hirer. Notice is deemed given (whether or not actually received) when the Company sends updated Terms and Conditions of Hire to the Hirer at any address supplied by the Hirer (including an email address) or publishes them on its website www.ezyfleet.com.au.

19.5. No failure to exercise or any delay in exercising any right, power or remedy by the Company operates as a waiver of such right, power or remedy. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made and agreed to in writing.

19.6. Neither the Company nor Hirer will be responsible for any delays in performing their obligations under the Rental Agreement as a result of causes beyond their control including but not limited to acts of God, war,

terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

19.7. Where relevant, the total distance driven shall be measured by the odometer installed in the Vehicle. The Hirer must not interfere with or tamper with the odometer.

19.8. Termination of the Rental Agreement during or following the Hire Period shall not affect any of the Terms that are expressed or implied to operate or have effect after termination.

19.9. These Terms & Conditions of Hire replace and supersede all previous editions of the Terms & Conditions of Hire issued by the Company.

20. LOCAL ROADS

20.1. Some local Western Australian roads require permits to travel. Many of the roads in the northwest are unsealed and/or are private roads requiring a permit to travel. You should check with the Police Station, Tourist Information Centre or Local Government in respect of permits. If you travel on a road without a valid permit you may invalidate your insurance cover and in most cases the Company will hold you liable.

20.2. Local roads can be dangerous, and many are unsealed or alternate between being sealed and unsealed, increasing the risk of rollovers or other accidents. The Hirer must be careful to proceed at a safe driving speed.

21. DISPUTE RESOLUTION

21.1. If a dispute arises out of this contract, a party to the contract must not commence court or arbitration proceedings relating to the dispute unless that party has participated in a mediation in accordance with paragraphs 21.2 and 21.3 of this clause. This paragraph does not apply to an application for urgent interlocutory relief.

21.2. A party to this contract claiming that a dispute has arisen from the contract ("the Dispute") must give written notice specifying the nature of the Dispute ("the Notice") to the other party or parties to the contract. The parties must then participate in mediation in accordance with this clause.

21.3. If the parties do not agree, within seven days of receipt of the Notice (or within a longer period agreed to in writing by them) on:

- (a) the procedures to be adopted in a mediation of the Dispute; and
- (b) the timetable for all the steps in those procedures; and
- (c) the identity and fees of the mediator; then:
- (d) the President of The Law Society of Western Australia will appoint the mediator and determine the mediator's fees and determine the proportion of those fees to be paid by each party (to be in equal shares unless otherwise agreed by the parties);
- (e) the timetable for all the steps in those procedures; and
- (i) with the mediator appointed under paragraph 21.3(d);
- (ii) with a genuine commitment to participate; and
- (iii) in accordance with the Mediation Guidelines of The Law Society of Western Australia.

21.4. If a party commences proceedings relating to the Dispute other than for urgent interlocutory relief, that party must consent to orders under the Magistrates Court (Civil Proceedings) Act 2004 that the proceedings relating to the Dispute be referred to mediation by a mediator.

21.5. If the parties do not agree on a mediator within seven days of the order referred to in paragraph 4, the mediator appointed by the President of the Law Society of Western Australia will be deemed to have been appointed by the Court.

21.6. If a party:

(a) refuses to participate in a mediation of the Dispute to which it earlier agreed;

or

(b) refuses to comply with paragraph 21.3(e) of this clause, a notice having been served in accordance with paragraph 21.2; then

(c) that party is not entitled to recover its costs in any court proceedings or arbitration relating to the Dispute, even if that party is successful; and

(d) that party is deemed to have consented to a decree of the Supreme Court of Western Australia that it will specifically perform and carry into execution paragraph 21.3(e) of this clause.

By agreeing to these Terms & Conditions, and/or submitting a Purchase Order and/or providing written acceptance of quote or estimate from the Company via email or other electronic means, the Hirer further agrees and warrants that they will be bound by these Terms & Conditions, and that these Terms & Conditions will take precedence over any other Terms & Conditions and cannot be superseded without the express written consent of the Company.