

## FORM 2

Client's Own Insurance

Effective Date: 01 April 2017

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### TERMS AND CONDITIONS

These terms and conditions and the Fair Wear and Tear Guide Summary (Form 3) form part of the Rental Order (the 'RO') between Sime Darby Fleet Services Pty Ltd (the 'Company') trading as Corefleet and the Hirer (the person(s) or company named in the RO).

#### 1 VEHICLE CONDITION

- 1.1 The Hirer acknowledges receiving the vehicle from the Company:
- in the condition as specified in the Vehicle Condition Report reasonable wear and tear excepted;
  - with manufacturer supplied tools, tyres, accessories and equipment, keys and any other items specified on the Vehicle Condition Report or in the RO;
  - with the seal of the odometer unbroken; and
  - with the odometer and fuel reading at the commencement of the hire specified in the RO.

#### 2 USE OF VEHICLE

- 2.1 The Hirer acknowledges that, unless authorised by the Company in writing where appropriate, the vehicle must not be driven by a person:
- who is not identified as an authorised driver in the RO except where the Hirer is registered as a company under the Corporations Act 2001 then the company may determine who is an authorised driver; or
  - who does not hold a current unrestricted motor vehicle driver's licence for the particular class of vehicle hired. Learner's permits and provisional licences are not acceptable; or
  - whose breath or blood alcohol concentration exceeds the maximum lawful concentration or who is intoxicated or who is under the influence of any drug, toxic, or illegal substance; or
  - who has a false name, age, address or driver's licence details recorded in the RO; or
  - whose driver's licence is provisional or has been cancelled or suspended within three years prior to the date of the RO; or
  - who is under the age of twenty-one (21) years.
- 2.2 The Hirer agrees not to:
- use, take or drive the vehicle without written permission of the Company:
    - off-shore or over a waterway;
    - airside;
    - underground;
    - across a state or territory border; or
    - into a location that is likely to cause the Company to incur a significant financial loss in a vehicle recovery situation.
  - carry any inflammable, explosive or corrosive materials in the vehicle unless authorised by the Company in writing;
  - carry persons for hire or reward;
  - propel or tow any vehicle, not being a trailer, or to propel or tow any trailer with a load in excess of the capacity of the trailer and or the towing mechanism of the vehicle;
  - carry any greater load, number of persons or use in a manner or for a purpose for which the vehicle was not designed and constructed or to carry any greater number of persons than the vehicle has seat belts;
  - race, pace, enter reliability trials, rally events or hill climb with the vehicle, or test in preparation for those purposes;
  - commit an illegal or unlawful act other than a traffic offence which doesn't automatically result in the suspension or loss of a driver's licence;
  - drive the vehicle if the Company has directed not to do so;
  - sub-hire or otherwise part possession of the vehicle without the written consent of the Company;
  - misuse the vehicle or drive or use it when it is damaged or unsafe or has sustained radiator fluid loss, transmission, engine oil or any other fluid loss or loss of tyre pressure;
  - fill or partially fill the fuel tank with fuel not specified by the vehicle's manufacturer or the Company;
  - unnecessarily expose the cabin to excessive dust, smoke and other airborne materials;
  - smoke tobacco or other substances or allow others to smoke tobacco or other substances in the vehicle; and
  - carry any animal or pet.

- 2.3 The Hirer agrees to ensure:
- a. the vehicle is made available for servicing at intervals advised by the Company or in the absence of such advice, in accordance with the manufacturer's service manual;
  - b. tyre pressure, fluid and fuel are maintained at the proper operating levels in accordance with the manufacturer's specifications and to immediately report any defect to the Company;
  - c. the vehicle is subjected to daily vehicle checks when operated under 'harsh conditions' in accordance with the following definitions:
    - (i) harsh conditions include constant use in dusty, rough, corrosive or muddy conditions, use in low range drive mode, use in heavy towing, short trips (less than 15kms) in sub zero temperatures, and water immersion to any depth; and
    - (ii) daily vehicle checks include visual inspection of mechanical components, inspection and cleaning (or replacement if applicable) of the air cleaner element, checking and topping up of fluid levels including engine oil, transmission, power steering, radiator, brake and windscreen washer fluids and clearing corrosive materials from the body and undercarriage with suitable clean water.
- 2.4 If during the hire term the vehicle is damaged whether mechanically or otherwise or requires repairs, the Hirer shall as soon as practicable advise the Company by telephone or other available means of the full circumstances and have the vehicle inspected by or towed to the nearest authorised dealer as directed by the Company. The Hirer will comply with the Company's directions. Any repairs to the vehicle not authorised by the Company shall be at the Hirer's expense.
- 2.5 If during the hire term the vehicle is involved in an accident, the Hirer shall:
- a. report promptly to the Company and the police or other relevant authority, any incident involving loss or damage to the vehicle or any other property or injury to any person;
  - b. give to the Company immediately every summons, complaint, demand or notice in relation to any loss or damage;
  - c. submit to any tests required by the police to determine the concentration of alcohol or other drugs in the Hirer's blood; and
  - d. obtain full particulars of all relevant persons and authorities before leaving the scene of an accident.
- 2.6 When the Hirer is, with the agreement of the Company, responsible for all service and maintenance of the vehicle, the Hirer agrees to:
- a. complete the services within the prescribed intervals;
  - b. ensure a qualified technician performs the service;
  - c. ensure the manufacturer's service manual records the service; and
  - d. advise the Company in writing of the details as soon as practicable after the event.
- 2.7 If the Hirer replaces a part or accessory on the vehicle and the part or accessory is not specified by the manufacturer then the part or accessory replaced shall be of the same make and specification as was in the vehicle when it was hired.

### 3 RETURN OF VEHICLE

- 3.1 The Hirer agrees to return the vehicle to the Company:
- a. in the same condition in which it was received reasonable wear and tear excepted subject to Clause 6;
  - b. to the return location by the return date and time set out in the RO;
  - c. with all of the items referred to in Clause 1.1b in good condition; and
  - d. with a fuel reading at least equal to the level at the commencement of the hire and recorded in the RO.
- 3.2 The Company must be notified and agree to any extension of the period of hire in advance of the return date. If the Hirer fails to return the vehicle to the Company by the return date and time, the vehicle will be considered on rent and rental charges together with the vehicle will remain the responsibility of the Hirer.
- 3.3 The Company may take possession of the vehicle without prior demand if it is illegally parked or if, in the Company's opinion the vehicle:
- a. is being used, or has been used, in contravention of any law or the RO or any of these terms and conditions; or
  - b. has apparently been abandoned.
- 3.4 The Company may demand the return of the vehicle on reasonable grounds including where the Hirer has breached or is likely to breach the RO or any of these terms and conditions and the Hirer agrees to cooperate with the Company in the vehicle's recovery.
- 3.5 Where the vehicle's overdue service interval exceeds 10,000kms and the Hirer has not taken reasonable steps to remedy the situation, the Hirer agrees that the Company, having given 14 days' notice, has the right to demand the return of the vehicle. If the vehicle is not returned by the due date, then the Hirer agrees that the Company has the right to take all reasonable steps to collect the vehicle from the Hirer.
- 3.6 The Hirer will be responsible for the vehicle and the hire will continue until the Company acknowledges receipt of the vehicle during normal business hours at the Company location set out in the RO.
- 3.7 If the Hirer wishes to return the vehicle to a location other than stated in the RO then the Hirer shall notify the Company before the vehicle is returned. The Company will then advise the Hirer of any relocation fee for the vehicle. Relocation fees must be paid at the completion of the rental period.
- 3.8 If the vehicle is returned outside normal business hours, the vehicle will be considered on rent and rental charges together with the vehicle will remain the responsibility of the Hirer until the Company acknowledges receipt of the vehicle.

#### 4 CHARGES

- 4.1 The Hirer agrees to pay on demand all of the following charges up until return to or recovery by the Company of the vehicle, whether or not charges are detailed in the RO:
- a. all rental charges at the rates set out in the RO. Daily rates apply to each consecutive 24-hour period from the commencement of the hire. If the vehicle is returned on the date set out in the RO but after the time specified in the RO then a further fee equivalent to the daily rate shall apply;
  - b. an excess kilometre charge at the rate set out in the RO when the free kilometre allowance is exceeded;
  - c. goods and services tax (GST);
  - d. Premium Location Surcharges (PLS) when the vehicle is hired at an airport location at a rate set out in the RO;
  - e. Fuel card charges, airport collection fees and parking and any government taxes or duties incurred at cost plus a processing fee as set out in the RO per event;
  - f. all road tolls at cost plus a transaction fee, fines, infringements, penalties, court fees, impoundment charges levied by the Police and other similar charges incurred at cost plus an processing fee as set out in the RO per event;
  - g. any fuel service charge at a rate set out in the RO for adding fuel to the vehicle up to the fuel reading recorded at the commencement of the hire;
  - h. any relocation fees that apply under Clause 3.7;
  - i. the cost to the Company of recovering the vehicle in the circumstances described in Clauses 3.3 and 2.2a(v) plus a mark-up at a rate set out in the RO per event;
  - j. replacement of items referred to in Clause 1.1b at cost plus a trade margin to compensate the Company for reasonable labour and warehousing overhead where the Hirer fails to return any item in good condition;
  - k. a Late Service Fee at a rate set out in the RO if:
    - (i) the vehicle is not returned to the Company or an authorised third party service agent for a manufacturer's recommended service and the estimated or actual odometer reading is more than 2,500kms overdue; or
    - (ii) Clause 2.6 applies and there is no evidence of a service being performed; and
  - l. any amounts payable under Clause 6 Loss or Damage Liability.

#### 5 PAYMENT OF CHARGES

- 5.1 After the Company has given the Hirer reasonable notice of its charges and damages under the RO or these terms and conditions, the Company is authorised by the Hirer to charge the Hirer's account or credit card to pay such charges and damages.
- 5.2 If the Hirer fails to make full payment of any charge due to the Company the Hirer agrees to pay the Company:
- a. interest on all outstanding charges at a rate equivalent to the prevailing ANZ Bank Reference Rate as damages. Payments received will be credited firstly against any accrued but unpaid interest; and
  - b. the Company's costs of recovering or attempting to recover outstanding charges, including any mercantile agent's costs, and legal costs on a full indemnity basis.
- 5.3 The Hirer accepts that the Company shall be entitled to list payment defaults with the Credit Reference Association of Australia or any other relevant credit reference organisation.

#### 6 LOSS OR DAMAGE LIABILITY

- 6.1 The Hirer is liable for loss or damage arising from the use of the vehicle, except to the extent the Company caused the loss or damage.
- 6.2 The Hirer shall throughout the hire period at the Hirer's own cost:
- a. insure and keep insured the vehicle with a reputable insurer for an amount equal to the full market value of the vehicle including after-market equipment and accessories; or
  - b. if so agreed to by the Company, self-insure and indemnify the Company for any loss or damage to the vehicle; and in either case
  - c. keep and maintain a third party insurance policy with a monetary value of not less than twenty million Australian dollars (\$20,000,000).
- 6.3 The Hirer shall provide certificates of currency for the insurance policies or the indemnity as the case maybe if so requested by the Company.
- 6.4 The Hirer may remedy any damage to the vehicle or missing items prior to the return of the vehicle provided the work or replacement item is authorised by the Company.
- 6.5 Loss or damage means:
- a. the vehicle is stolen and not recovered;
  - b. damage reasonable wear and tear excepted to the vehicle requiring repair or replacement;
  - c. loss or damage to third party property;
  - d. recovery fees; and
  - e. loss of use, which is the revenue compensation to the Company for the period the vehicle is under repair or replacement and cannot be rented.
- 6.6 The loss or damage charge shall be calculated as follows:
- a. where the vehicle has been stolen and not recovered the Hirer's liability shall be the fair market value of the vehicle including after-market equipment and accessories at the time of the loss;
  - b. where the damage requires work to be assigned to third party providers the Hirer's liability shall be the quoted cost to the Company plus a mark-up at the rate set out in the RO;

- c. where the repair or replacement work is to be assigned to the Company the Hirer shall be charged for components and technician time at the Company's normal trade prices;
  - d. the Company reserves the right to decide if and when it will proceed with any repair work;
  - e. where the amount of damage determined exceeds the fair market value of the vehicle including after-market equipment and accessories the Hirer's liability shall be the fair market value of the vehicle including after-market equipment and accessories.
- 6.7 If the vehicle is stolen, the vehicle will remain on hire until the Company has been given a reasonable opportunity to investigate and make a determination on the matter.
- 6.8 When applicable, the Company shall provide the Hirer with a notice itemising the loss or damage and an estimate of the charge if available, then:
- a. the Hirer shall have three (3) business days to request an inspection (the 'Inspection Notice');
  - b. if no Inspection Notice is received by the Company, the itemised schedule of charges provided to the Hirer shall be deemed to have been accepted;
  - c. if an Inspection Notice is received by the Company, the Hirer shall have up to five (5) business days or any other time agreed to by the Company in writing from the date of the request to inspect the vehicle and sight evidence of the damage;
  - d. if repair work cannot proceed because the inspection has not occurred within the allocated time, then the Company may in its absolute discretion place the vehicle back on hire at the daily rate immediately preceding the return of the vehicle until the inspection has concluded.
- 6.9 The Hirer acknowledges that the Company is not liable for any:
- a. indirect economic or consequential loss or damage incurred by the Hirer; and
  - b. loss of property of the Hirer left in the vehicle after it is returned to the Company.
- 6.10 The Hirer indemnifies the Company, which includes officer employee agent contractor or invitees of the Company, for any liability loss claim suit action expense demand or proceedings of whatsoever nature the Company may suffer due to or attributable to the Hirer's negligence.
- 6.11 The Hirer must settle any shortfall in the loss or damage charge invoiced by the Company and the amount paid or reimbursed by the insurance company.

## 7 PERSONAL PROPERTY SECURITIES ACT

- 7.1 The Hirer agrees that the Company's interest in the vehicle (including any accessories and spare parts) arising under these Terms and Conditions and the RO may, where the hire is for a term (including renewals) of one (1) year or more, be registered under the *Personal Property Securities Act 2009* (Cth) (**PPSA**) as a Security Interest (as that expression is defined under the PPSA) and the Hirer will not object to such registration.
- 7.2 The Hirer will, at the reasonable request of the Company, do all things necessary to assist the Company in the Company's registration, perfection and enforcement of its Security Interest in the vehicle (and any accessories and spare parts) as a first priority Security Interest, and waives its right to receive notice of any verification statement in respect of any registration on the register created pursuant to the PPSA to record Security Interests.
- 7.3 The Hirer agrees to take all steps necessary to ensure that the vehicle (including any accessories and spare parts) does not become subject to any other Security Interest by any other third party, including without limitation the Hirer, by virtue of the Hirer's possession of the vehicle (including any accessories and spare parts).
- 7.4 Subject to the Hirer complying with all of its obligations under these Terms and Conditions and the RO, including the return of the vehicle (including any accessories and spare parts), the Company shall, within 30 days of expiry of the Company's Security Interest, discharge its Security Interest.
- 7.5 The Company and the Hirer agree not to disclose any information of the kind described in section 275(1) of the PPSA, including:
- a. a copy of these Terms and Conditions and the RO; or
  - b. the amount or the obligation secured by any Security Interest created by these Terms and Conditions and the RO, and the terms of such payment or performance; or
  - c. any list of personal property in relation to which any Security Interest created by these Terms and Conditions and the RO is granted,
- except that it is not a breach of this Clause 7.5 for either party to disclose such information:
- d. to its officers, employees, legal and other advisers and auditors; or
  - e. with the consent of the non-disclosing party; or
  - f. if the disclosure is necessary to comply with any applicable law (other than section 275(1) of the PPSA), or an order of a court or tribunal and the other party is given prior notice of the disclosure.

## 8 GENERAL PROVISIONS

- 8.1 The Company reserves the right to refuse to hire another vehicle to the Hirer following any incident or accident or where the Hirer has breached a term of the RO or these terms and conditions.
- 8.2 No Hirer, driver or passengers in the vehicle shall be deemed to be the Company's agent, servant or employee, in any manner or for any purpose whatsoever.
- 8.3 Whenever the Company is permitted to limit its liability under State and/or Federal statute for breach of an implied condition or warranty, then this liability is limited to the replacement, repair or re-supply of the vehicle.
- 8.4 The Company is not liable for any indirect, special, incidental or consequential damage suffered by the Hirer or any other person due to any breach of the RO by the Company and the Hirer releases and indemnifies the Company, including for legal costs, from any such claim.
- 8.5 The Company's rights under the RO and these terms and conditions may only be waived in writing by one of the Company's officers.

- 8.6 Words used in the RO and/or noted on the RO and these terms and conditions include all genders and singular words include the plural.
- 8.7 The Hirer warrants that all information supplied in connection with the RO and these terms and conditions, whether before or after the date of execution, is or shall be true and correct in all respects, and that the Hirer will immediately notify the Company of any such changes.
- 8.8 All references to the Hirer shall include all authorised drivers in the RO and in respect to Clause 2.5c, the driver required to submit to any test by the police.
- 8.9 Where the Hirer is more than one person the Hirer's obligations under the RO are joint and several. "Person" includes a company.
- 8.10 The Hirer is responsible for notifying the Company when the vehicle is due for a service in accordance with the service sticker located in the top right corner of the vehicle's windscreen or the manufacturer's service manual.