

# Raw Hire Terms and Conditions



These are the Terms and Conditions that form part of the Vehicle Hire Contract made between Raw Hire Pty Ltd ABN 72 102 326 983 (referred to as "Raw Hire") and the party whose name and signature appear as Hirer on the Hire Contract (referred to as the "Hirer"). The parties agree as follows

## 1) AGREEMENT TO HIRE

Raw Hire hires to the Hirer and the Hirer hires from Raw Hire the vehicle for the rental period and at the rent specified in the Hire Contract subject to these Terms and Conditions. Collection or acceptance of delivery of the Vehicle shall be deemed to be acceptance of these Terms and Conditions and the Hire Contract.

## 2) WARRANTY OF AUTHORITY

Any person who signs the Hire Contract and/or these Terms and Conditions on behalf of the Hirer warrants that s/he is the duly authorized agent of the Hirer. If such person is not the duly authorized agent of the Hirer, then in consideration of Raw Hire permitting him/her to collect the Vehicle s/he shall be deemed to be the Hirer and agrees to be bound by these Terms and Conditions and the Hire Contract. Further, where the Hirer is not a natural person, drivers nominated by the Hirer shall be deemed to be authorized agents of the Hirer.

## 3) WARRANTY BY HIRER

The Hirer warrants that all particulars provided on the Hirer's application relating to the driver and the Hirer are true and correct. The Hirer acknowledges that Raw Hire has relied upon the truth and correctness of the Hirer's application and enters into the Hire Contract on that basis.

## 4) THE HIRER'S PRIMARY OBLIGATIONS ARE:

- a) To pay the rent specified in the Hire Contract;
- b) To take proper care of the Vehicle;
- c) To comply with the limitations placed on the use of the Vehicle;
- d) To return the Vehicle to Raw Hire at the end of the Rental Period in the same condition as noted in the Vehicle Condition Report at the commencement of the Rental Period, subject only to fair wear and tear, failing which the Hirer will be responsible for all damage, costs, loss and other liability; and,
- e) The Hirer indemnifies Raw Hire for all losses, expenses and costs incurred in respect of any damage to the Vehicle that occurs during the Rental Period whether caused by the Hirer or any other person or thing. While Raw Hire provides options for the Hirer to minimize or reduce its liability for damages via a Collision Protection Fee, the Hirer agrees and acknowledges that it remains fully liable to maintain its own insurances with respect to the Vehicle.

## 5) RENT, FEES & CHARGES

- a) Unless expressly amended by written agreement, the Hirer must pay:
  - i) the charge for the hire of the Vehicle as set out on the Hire Contract (whether a time and kilometre rate charge, a flat rate charge or any other rate of charge) as calculated by Raw Hire or if agreed by the parties at a rate set out in Raw Hire's schedule of rates as at the commencement of the Rental Period or as otherwise agreed in writing;
  - ii) fuel and fuel service charges where the Vehicle's tank is returned with less than a full tank (charged at a per litre rate including a labour component);
  - iii) AdBlue and Adblue service charges where the Vehicle's Adblue tank is returned with less than as is referenced on the Vehicle Condition Report (charged at a per litre rate including a labour component);
  - iv) a break fee to compensate Raw Hire for the loss of rent if the Vehicle is returned earlier than the agreed end date of the Rental Period;
  - v) Collision Protection Fee;
  - vi) any Late Return charges;
  - vii) all stamp duties, GST and any other applicable taxes/fees/levies;
  - viii) any additional charges if the Vehicle is to be used at a Premium Location as defined in clause 17 Definitions;
  - ix) the cost of hiring any equipment (e.g., an In Vehicle Monitoring System ("IVMS") or communications equipment etc);
  - x) a Mobilisation Fee if the Vehicle is to be mobilised and demobilised at the request of the Hirer to site locations;
  - xi) a One-Way Fee if the Vehicle is returned to a Raw Hire office or a site that is different to the originating location of the hire. Raw Hire may at its discretion waive the One-Way Fee;
  - xii) a Credit Card fee and Raw Hire reserves the right to pass on in full all merchant fees and similar charges imposed by payment service provider such as a credit card or debit card operator;

- xiii) an excess kilometre charge (excess over agreed allowances);
- xiv) a Cancellation fee of:
  - A. One day's rent, fees and charges where the cancellation occurs within 48 hours of the commencement of the Rental Period; or
  - B. The greater of one day's rent, fees and charges or 25% of the value of the rent, fees and charges for the pre-committed agreed Rental Period in the event the Hirer fails to collect or accept the Vehicle as agreed; and
- xv) any other charges specified in the Hire Contract including an insurance excess or damage excess.

## b) Additional charges

The Hirer must pay the following additional charges (where applicable) that arise from the hire of the Vehicle by the Hirer:

- i) the cost of the replacement of any tyres, tools, accessories, navigation systems or other equipment lost, stolen or damaged during the Rental Period;
- ii) the cost of repair to or replacement of the Vehicle or any items installed in or supplied with the Vehicle including keys (which is unlimited under clause 4e)), reduced if any by the excess amount purchased through the Collision Protection Fee annexed to the Hire Contract and these Terms and Conditions;
- iii) any fines for traffic or parking Offences and/or penalties arising from the use of the Vehicle imposed on any person or company during the Rental Period;
- iv) any expenses incurred by Raw Hire in repossessing the Vehicle including where the Vehicle has been impounded or confiscated by a Relevant Authority pursuant to the laws of Western Australia;
- v) any expenses incurred for cleaning;
- vi) any rust treatments due to exposure to salt and salt damage;
- vii) any registration, search and discharge fees incurred by Raw Hire where the Hire Contract is in Raw Hire's opinion required to be registered on the PPSR to protect Raw Hire's position as owner and supplier of the Vehicle;
- viii) a Handling Fee where Raw Hire is required to:
  - A. process fines (\$35 per fine);
  - B. recover a Vehicle (reasonable and direct cost of Vehicle retrieval, subject to regional variations);
  - C. liaise with Relevant Authorities (reasonable and direct time cost subject to regional variations if any); or
  - D. arrange service/repair charges and associated costs that are attributable to the Hirer and are charged by Raw Hire do attract a service/handling fee. The service/handling fee is calculated as an additional 20% of the cost of repair charges.
- ix) a Compensation Fee for loss of income if Raw Hire cannot rent the Vehicle because:
  - A. it needs to be repaired;
  - B. it is a "write off" (i.e., it cannot be repaired economically);
  - C. it has been lost or stolen; or
  - D. a Relevant Authority has seized and impounded the Vehicle. Subject to clause 8, Raw Hire reserves the right to charge the Hirer (where the Vehicle is damaged or lost) a Compensation Fee which Raw Hire considers to be reasonable to compensate Raw Hire for the lost rental income of not having the Vehicle available for hire.
- x) any additional costs, expenses, loss or damage incurred by Raw Hire resulting from the Hirer's failure to comply with its obligations under these Terms and Conditions; and
- xi) interest on any amounts owing under the Hire Contract and/or these Terms and Conditions that are not paid by the invoice due date. Interest is payable on demand and charged at 10% per annum from the due date until payment. Interest is calculated daily on the basis of a 365 day year and compounded monthly. Interest shall become payable without need for notice.
- c) **Rental Period.** The Rental Period means the period from the time and date the Vehicle is booked for collection or delivery as stated on the Hire Contract until the earlier of the following:
  - i) the Vehicle is returned to the Raw Hire depot from which the Vehicle was hired, during business hours;
  - ii) Raw Hire repossesses the Vehicle; and
  - iii) where the Vehicle is lost, stolen or otherwise misappropriated, the time recorded on the Police Report of the incident.
- d) The minimum Rental Period is 1 Rental Day.
- e) **Rental Day.** A Rental Day is a 24-hour period commencing from the time the Vehicle is booked for collection or delivery being the commencement of the Rental Period.

- f) Where the Vehicle is returned at a time when Raw Hire is closed for business the Rental Period will continue until the next business day on which Raw Hire is open for business. The Hirer continues to remain on risk and liable for any indemnification, compensation and/or damages payable to Raw Hire until the completion of the Rental Period on that next business day notwithstanding that keys may have been returned via an after hours key return facility.
- g) For specific vehicles (such as Water Carts), an Hourly Rate may also apply to the hire of the Vehicle in addition to the Rental Day or other applicable rate, in which case, this Vehicle will incur an additional Hourly Rate charge for all hours that the Vehicle is used above the number of hours specified in the Hire Contract.
- h) Payment terms are:
  - i) For approved account holders, by electronic transfer into Raw Hire's nominated bank account within 30 days from the date of invoice.
  - ii) For non-account holders, payment of a deposit before the Rental Period commences by credit card of an amount equal to the full estimated rental fees and charges for the Rental Period plus a bond for any loss, damage and/or additional charges in accordance with these Terms and Conditions and as specified on the Hire Contract. At the end of the Rental Period, Raw Hire will apply the deposit to the actual total rental fees and charges for the Rental Period and the bond to the cost of any loss, damage or additional charges in accordance with these Terms and Conditions and refund any balance to the Hirer or issue an invoice for any balance outstanding.
  - iii) Raw Hire may bank any part payment of invoices without prejudice to its rights to recover the outstanding balance of any invoice, irrespective of the Hirer's intention when making that payment.
  - iv) The Hirer acknowledges that it has no right to credit or a credit facility and any credit may be cancelled or varied by Raw Hire.

## 6) GENERAL RESTRICTIONS ON DRIVER

The Hirer undertakes that:

- a) No person shall drive the Vehicle unless s/he:
  - i) holds a current motor drivers 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) has not been convicted of any Offence relating to driving a motor vehicle under the influence of alcohol or drugs; and,
  - iv) is between 25 and 75 years of age unless otherwise agreed by Raw Hire and in which case, an increased hire charge may apply and the circumstances must be specified on the Hire Contract.
- b) The Vehicle must not be driven by any person other than the Hirer or the Hirer's properly authorised employee, agent, contractor or other representative.

## 7) HIRER'S UNDERTAKINGS & RESTRICTIONS ON CARE FOR AND USE OF THE VEHICLE

- a) *To take reasonable care.* The Hirer must take reasonable care of the Vehicle at all times and must not drive it when it is in a damaged or in an unsafe condition or if further damage is likely to occur to the Vehicle.
- b) *To maintain fluids and tyre pressure.* The Hirer must take care to maintain sufficient fluid levels (including radiator, engine sump, etc.) and keep the tyres correctly inflated.
- c) *To maintain a serviced vehicle.* The Hirer must make the Vehicle available for its due services and not allow the Vehicle to travel over service due kilometres. The Hirer is responsible for notifying Raw Hire when the Vehicle approaches the due date for its next service. If Raw Hire consents in writing, the Hirer may undertake its own servicing of the Vehicle in accordance with Raw Hire's service schedules and the manufacturer's specifications. Raw Hire may at its discretion carry out any necessary maintenance (at the Hirer's cost) if it deems the maintenance carried out by the Hirer is incomplete, inappropriate or outstanding.

The Hirer agrees to provide the following information to Raw Hire:

- i) if Raw Hire consents to the Hirer undertaking the servicing of the Vehicle, complete service records by the 5th business day following the end of each calendar quarter (or at any other time, within 3 business days if Raw Hire requests such information); and
- ii) kilometres travelled on each monthly anniversary of the commencement of the Rental Period (or at any other time, within 3 business days if Raw Hire requests such information). The Hirer will on reasonable notice from Raw Hire make the Vehicle

available for an odometer reading audit on the Vehicle.

- d) The Vehicle must not be taken or used:
  - i) Off Road pursuant to the definition in clause 17;
  - ii) on private roads, whether sealed or not, if the Hirer has not first obtained a relevant permit;
  - iii) on beaches, boat ramps, rivers, lakes or other places including flooded areas where the Vehicle enters the water and is immersed or partially or totally submerged in water;
  - iv) outside of the state of Western Australia; or,
  - v) in Excluded Areas, as defined in clause 17.
- e) *No towing.* The Vehicle must not be used to propel or tow any vehicle or trailer in excess of that for which the Vehicle was constructed.
- f) *No illegal purpose including in the course of committing a criminal act.* The Vehicle must not be used in any illegal manner, for any illegal purpose or in any speed test or contest (or in preparation therefore).
- g) *No alcohol and drugs.* The Vehicle must not be driven by a person under the influence of alcohol or intoxicating drugs (whether prescribed or illicit). The Hirer must ensure that any driver will not refuse or fail to undergo a breath, blood or similar test or analysis in compliance with the directions of any Relevant Authority. A refusal will entitle Raw Hire to terminate the Hire Contract immediately without notice.
- h) *Restrictions on the transportation of goods, property or passengers.* The Vehicle must not be used:
  - i) for the carriage of Dangerous Substances unless the Hirer obtains Raw Hire's written consent and at its cost all necessary approvals, permits or licences from all Relevant Authorities;
  - ii) for the transportation of property unless the Hirer (at its cost) first obtains all necessary approvals, permits or licences from all Relevant Authorities;
  - iii) to convey, tow or propel any load which is in excess of that for which the Vehicle was constructed or which is incorrectly or improperly loaded or secured; or,
  - iv) for the conveyance of passengers for fares or reward.
- i) *Compliance with Laws.* The Hirer covenants with Raw Hire 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 arising out of the use or possession of the Vehicle by the Hirer and indemnifies Raw Hire in respect of any liability incurred by Raw Hire in respect thereof. Further the Hirer will make the Vehicle available for all safety and Department of Transport inspection (Raw Hire will provide prior notification of the timing and location of the inspection).
- j) *Security and keys.* The Vehicle and the keys must be kept secure at all times. The driver must not leave the Vehicle unattended with the motor running or leave the keys unattended (e.g., in the ignition or on a tyre). If theft, unauthorised driving and/or damage occur as a result of the Vehicle and/or the keys not being kept secure, the Hirer will be liable for any indemnification, compensation and/or damages payable to Raw Hire. If site safety regulations or documented procedures require the keys to be kept with the Vehicle, the Hirer acknowledges that it bears full responsibility for the care and security of the Vehicle and agrees to indemnify and keep Raw Hire indemnified for any loss and/or damage.
- k) The Hirer must not interfere with or tamper with the Vehicle's odometer, or any monitoring devices installed in the Vehicle.
- l) Consent may be requested. If the Hirer requires the Vehicle to be used for a purpose contrary to this clause 7, the Hirer must first obtain Raw Hire's written consent. Additional charges may be levied and/or special conditions may be imposed by Raw Hire in such instances if consent is provided.
- m) Raw Hire may use GPS or tracking devices within Vehicles for monitoring and workplace safety purposes within the limitations of the Surveillance Devices Act 1999. By hiring a Vehicle from Raw Hire, the Hirer agrees and consents to the use of a tracking device on the Vehicle for the term of the hire. The Hirer also agrees to the collection, retention and use of this information by Raw Hire from this device.

## 8) LIABILITY FOR ACCIDENTS, LOSS &/OR DAMAGE GENERALLY

The Hirer agrees that:

- a) The Hirer shall be liable to Raw Hire for any damage to the Vehicle and the full amount of all costs and losses incurred by Raw Hire in connection with or arising from the hire of the Vehicle by the Hirer howsoever caused including but not limited to the events and circumstances listed under clause 8d), any breach by the Hirer of any term, condition, warranty or undertaking contained in these Terms and Conditions including clause 6 (Restrictions on Driver) or clause 7 (Hirer's undertakings) or the negligence or misconduct of the Hirer and/or its employees, subcontractors and agents.

- b) The Hirer is also liable for the Service Handling Fee or Compensation Fee under subclauses 5b)viii) and ix).
  - c) Unless expressly and separately agreed in writing, Raw Hire is not liable for any damage or injury to any persons or property (including the Vehicle) in the events or circumstances listed in subclause 8d) below.
  - d) Events or circumstances in which the Hirer is deemed to be at fault and liable for all resulting loss, damage, costs and expenses:
    - i) A breach of clauses 6 and/or 7;
    - ii) All damage caused by incidents involving animals including live-stock, pets and wild animals;
    - iii) Single Vehicle Accident (refer clause 17 definition);
    - iv) Any water damage from any source;
    - v) Any damage caused by cyclones, storms, floods, inclement weather, tides or other Force Majeure or Acts of God;
    - vi) Any damage caused while travelling in unsafe conditions; or
    - vii) Accidents or damage occurring during use of the Vehicle on mine sites or access roads to mine sites.
  - e) If one or more of the events in subclause 8d) has occurred, the Hirer must pay Raw Hire for all of Raw Hire's loss, cost and damage including lost income for not being able to hire out the Vehicle.
  - f) In the event of a Vehicle "write off" (or the write off of accessories supplied with the Vehicle), the Hirer must pay Raw Hire the full amount of its loss, cost and damage, including the market value of a replacement vehicle including (or if applicable) any aftermarket equipment or accessories installed in the Vehicle plus a Compensation Fee. Where there is financing owed by Raw Hire on the Vehicle, the Hirer agrees to pay Raw Hire the greater of the lease/finance payout on the Vehicle or the market value of the Vehicle including accessories and aftermarket equipment. The Compensation Fee will be charged until the Vehicle is deemed a "write off" by Raw Hire and payment for the loss, cost and damage made accordingly.
  - g) Raw Hire is not responsible for:
    - i) any loss or damage to the Hirer's (including driver's and passenger's) personal effects at the time of an Accident or any first aid costs;
    - ii) emergency services costs;
    - iii) tow costs;
    - iv) pollution clean up and or removal of debris;
    - v) replacement Vehicle costs;
    - vi) costs to complete any journey; and,
    - vii) any other cost incurred as a result of an Accident, loss or damage.
  - h) If the Hirer returns a Vehicle to Raw Hire for Raw Hire to arrange repairs, Raw Hire will provide a quote or cost estimate to the Hirer for approval (together with an estimate of the Service Handling Fee or Compensation Fee for the estimated repair period) before commencing the repair works. Raw Hire reserves the right to continue to charge the Hirer for the loss of rental income until the Vehicle has been repaired and is available for hire.
  - i) Raw Hire may at its discretion permit the Hirer to organise repair works on the Vehicle directly with a repairer approved by Raw Hire, subject to repair works being carried out to the manufacturer's specifications and Raw Hire's approval of the repairer. The Compensation Fee will be charged until the Vehicle has been repaired and is available for hire.
  - j) If the damages sought by Raw Hire pursuant to the Hire Contract and these Terms and Conditions are deemed unlawful or a penalty, then the damages payable to Raw Hire shall be such amount as required to put Raw Hire in the position it would have been in had the damage not occurred.
- 9) ACCIDENTS, DAMAGE AND CLAIMS**
- a) *Hirer must report incidents.* The Hirer must promptly report any breakdown, Accident or incident which may give rise to a Collision Protection claim which occurs during the Rental Period. Failure to report within 24 hours after Accident, damage or loss will void any purchased Collision Protection.
  - b) *Hirer must provide information.* The Hirer will immediately complete and furnish to Raw Hire (or Raw Hire's solicitors) such statements, police report, information and assistance as Raw Hire 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.
  - c) *Hirer must not make offers or admissions.* The Hirer must not, without the prior written consent of Raw Hire, 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.
  - d) Assessment of damage.
    - i) The Hirer acknowledges and agrees that the amount of any damage to the Vehicle shall whenever reasonably possible be assessed by an independent expert (who must hold a current Motor Vehicle Repairer's Certificate registration with the Department of Commerce – Consumer Protection for the relevant vehicle class(es)) engaged for the purpose by Raw Hire.
    - ii) Where the services of such an expert are not available, such assessment shall be made by any authorised representative of Raw Hire who shall certify the amount of such assessment.
    - iii) The assessment of damage so made shall be final and binding on Raw Hire and on the Hirer in the absence of manifest error.
  - e) Loss, Cost and Damage for which the Hirer is liable includes without limitation the cost of:
    - i) rectifying all tyre damage not attributable to normal wear and tear;
    - ii) rectification of all damage to the under carriage or to the over carriage;
    - iii) repairing all body or roof damage;
    - iv) returning the Vehicle to Raw Hire should the Vehicle for any cause break down or be damaged or need towing;
    - v) 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;
    - vi) replacing spare wheels equipment, tools and jack;
    - vii) repair or replacing window glass;
    - viii) salt damage;
    - ix) exposure to corrosive or caustic substances and resulting damage to the vehicle including by not limited to salt, salt water, acids, fertilizer or damage generally caused by the Vehicle being subject to a corrosive environment; and,
    - x) repair or replacement of water contaminated wheel bearings, CV joints or brake linings or of any repairs required due to driving at excessive speed for the conditions or other forms of abuse or neglect of the Vehicle.
  - f) Replacement tyres. Where the Hirer replaces a tyre at its own cost, the replacement tyre must be the same brand and tread pattern as the other tyres on the Vehicle. If the Hirer does not do this, then Raw Hire may charge the Hirer for an entire replacement set of tyres (of no lesser standard than the replaced set).
  - g) Repairs for damage resulting from neglect, improper servicing, incorrect fuel type, abuse or driver indifference are the responsibility of the Hirer.
- 10) ACCIDENT AND COLLISION PROTECTION COVER FOR THE HIRER**
- a) Collision Protection Cover
    - i) The Hirer may purchase Collision Protection Cover to reduce the Hirer's liability for any damage which occurs during the Rental Period or which results from the rental or use of the Vehicle. Cover enables the Hirer to cap its potential liability to Raw Hire in the amount of an applicable Excess where the incident or circumstances of the damage is of a type covered under the selected protection.
    - ii) Risk management protections are not an insurance policy. The fees charged are scaled according to the Excess Cover selected by the Hirer.
    - iii) Potential liability for personal injury to or death of a third party is not covered by purchasing Collision Protection or another form of loss damage protection or other risk management option as may be offered or made available by Raw Hire from time to time. Third Party injury or death may be covered by Compulsory Third Party Insurance.
    - iv) Collision Protection and risk management options may be updated from time to time. Where updated, Raw Hire will notify the Hirer at the commencement of the Hire Contract.
    - v) Risk management options should be selected by the Hirer at the time of opening an account and marked on the Hire Contract. The purchase shall be at or before the commencement of the Hire Contract.
  - b) The purchase of Collision Protection or other risk management option does not prejudice Raw Hire's right to pursue the party causing the loss, cost or damage for that loss, cost or damage where that party is the unidentified driver of the other vehicle involved in the Accident with the Hirer.
  - c) Notwithstanding the Hirer purchasing Collision Protection Cover (or an alternate risk management option) and the liability cap under that Protection, the Hirer still bears full responsibility for the cost of each separate Accident, incident, damage or loss of the Vehicle or any

equipment or accessory or other property if there is:

- i) with clauses 6 and/or 7;
- ii) At A breach of clauses 9a) to 9c) including failure to assist Raw Hire or providing incorrect or incomplete information;
- iii) Non payment of the Excess Amount;
- iv) Non compliance the time of the Accident, loss or damage:
  - A. the driver was not nominated by the Hirer to be an authorised agent of the Hirer;
  - B. the Accident, loss or damage is covered by an insurance policy of the Hirer's which provides cover to the Hirer; or
  - C. the Vehicle has been used for any Prohibited Use, in any prohibited area or by any Prohibited Person.
- d) If the Hirer is self insured (and does not select Collision Protection Cover or an alternate risk management option), the Hirer shall be responsible for all damage under the Hirer's own insurance policy. The Hirer will provide a Certificate of Currency to Raw Hire at the commencement of the Hire Contract. Where the Vehicle is damaged, the Hirer remains responsible for the all rental, fees and charges until the Vehicle is repaired. In the event of a total loss of the Vehicle (i.e., the Vehicle is deemed a "write off" by Raw Hire), the Hirer agrees to indemnify Raw Hire for the greater of either:
  - i) the market value of the Vehicle and of aftermarket equipment and or accessories installed in the Vehicle if the Vehicle is more than 1 year old, if less than 1 year old a replacement new vehicle or cash equivalent; or,
  - ii) the lease/finance payout value provided by Raw Hire's financiers.

## 11) TERMINATION

- a) If the Hirer breaches any term, condition or warranty herein, becomes a bankrupt, an insolvent under administration or an externally-administered body corporate or has made any misrepresentation to Raw Hire or if Raw Hire considers on reasonable grounds that the conduct of the Hirer is likely to affect prejudicially the interest of Raw Hire or the condition of the Vehicle then Raw Hire may terminate the Hire Contract and without notice repossess the Vehicle without prejudice to any claims or rights of Raw Hire in respect of any arrears of rent or any moneys due to Raw Hire.
- b) The Hirer may terminate the Hire Contract at any time however, the Hirer will be required to pay a break fee which if any will be specified in the Hire Contract.
- c) Raw Hire may terminate the hire with immediate effect if the Hirer or controller of a site where the Vehicle is located ("Site Controller") becomes insolvent or if Raw Hire acting reasonably believes the Hirer or Site Controller will become insolvent.

## 12) NO WARRANTIES BY RAW HIRE

- a) All conditions and warranties (statutory or otherwise) including those of fitness for purpose, quality or description are negated and excluded to the extent permissible by law. Raw Hire will supply a copy of the manufacturer's specifications for a Vehicle upon request
- b) The Hirer will not at any time make any claims against Raw Hire 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 Rental Period or left in the Vehicle after the return of the Vehicle to Raw Hire. The Hirer indemnifies Raw Hire in respect of all claims, damages and actions brought against Raw Hire in respect thereof.
- c) Raw Hire is not responsible for any loss or damage incurred by the Hirer for Acts of God, civil unrest, terrorism or any other cause beyond Raw Hire's reasonable control.
- d) Raw Hire makes no warranty or representation as to the accuracy of any specifications, statements or publications made by a manufacturer.

## 13) INDEMNITY FOR COSTS

The Hirer agrees to pay Raw Hire on demand and indemnify and keep indemnified Raw Hire from and against any and all legal and other costs, including costs and charges by professional debt collectors, in seeking to enforce the Hire Contract and remedy any breach by the Hirer. This indemnity is to cover any loss, cost or damage incurred by Raw Hire due to the Hire of the Vehicle including caused by Accidents, incidents, damage and theft.

## 14) CREDIT, CHARGE OR DEBIT CARDS

- a) Raw Hire will require a credit or other form of similar charge card ("Card") as security for the hire of the Vehicle. Raw Hire may draw a

- b) security deposit at the commencement of Hire or require the Hirer to reserve a sum in the account which may be drawn upon. The deposit drawn or the sum to be withheld will be specified at the time of hire. Before the rental, if the Hirer presents a Card, it authorises Raw Hire to reserve credit with, or obtain an authorisation from the Card Issuer (or draw upon the Card) up to an amount equal to the expected cost of the rental plus an additional sum to be advised at the time of hire as security for the hire.
- c) During or after the rental, the Hirer hereby irrevocably authorises Raw Hire to charge or draw upon the Card (or any cash deposit) to recover or secure any loss, cost or damage pursuant to these Terms and Conditions and the Hire Contract. If Raw Hire charges the Card to recover an indemnity or loss, cost or damage Raw Hire shall notify the Hirer of the amount charged and provide details of Raw Hire's claim. If the Hirer disputes any amount drawn it must respond in writing within 21 days of receiving notice from Raw Hire.
- d) The Card may be charged up to 60 days after the Vehicle has been returned, notwithstanding that any particular charge or amount of damages could have been but was not charged when the Vehicle was returned.

## 15) MISCELLANEOUS

- a) *Privacy.* When the Hirer makes an application to use Raw Hire's service, it consents to Raw Hire using and disclosing the Hirer's personal information consistent with Raw Hire's Privacy Policy and undertaking credit checks and assessments.
- b) *Amendment.* These Terms and Conditions may be amended by Raw Hire from time to time by 30 days' written notice to the Hirer. The Hire Contract may only be amended by the express written agreement of an authorised officer of Raw Hire (a manager) and the Hirer. These Terms and Conditions shall prevail to the extent of any inconsistency with any other document or agreement between the Hirer and Raw Hire and in particular any terms and conditions the Hirer may seek to impose on an order notwithstanding that the Hirer purports to place an order attaching its own additional or substitute conditions.
- c) *Read Down.* If any provision of or part of a provision of these Terms and Conditions or the Hire Contract is or becomes legally ineffective, under the general law or by force of legislation, 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.
- d) *Severance.* If notwithstanding the foregoing a provision or part of a provision of these Terms and Conditions or the Hire Contract still is or becomes legally ineffective, if the provision would not have such an effect if a word or words were omitted, that word or those words are hereby severed and, in any other case, the whole provision is hereby severed and the remainder of these Terms and Conditions and the Hire Contract shall be of full force and effect. Where the provision is severed the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.
- e) *PPSA.* Raw Hire is entitled to register on the PPSR its interest under any Hire Contract or any transaction contemplated by a Hire Contract as a security interest and purchase money security interest granted by the Hirer in favour of Raw Hire at Raw Hire's discretion. The Hirer shall provide all reasonable and timely assistance and information to Raw Hire, obtain any necessary consents and execute and deliver to Raw Hire any notice or document required to protect, perfect, record, register or better secure, or obtain or preserve the priority of any PPSR security interest in or including this Hire Contract, to ensure that it (or any related document) or any security interest arising under it, is enforceable against the Hirer or any third party or to enable Raw Hire to exercise any rights in relation to such security interest. To the extent that it is lawful to do so, the Hirer waives its right to receive any notice required to be given by Raw Hire under the PPSA whether the obligation to give that notice arises on or after the date of the Hire Contract. Terms used in this clause have the same meaning as in the PPSA.
- f) *Special Orders.* In the event the Hirer requests a Vehicle to be specifically provided, special conditions relating to the rental will apply. These conditions will be (where applicable) set out in the Hire Contract.
- g) *No assignment, sublease, lien or cross hire.* The Hirer must not assign, sub lease, cross hire or otherwise deal with the Hire Contract or allow any lien to be created over the Vehicle except with the prior written consent of Raw Hire. Consent will be at Raw Hire's discretion and may be provided on such terms as are required by Raw Hire



including registering to secure Raw Hire's interest under the PPSA. Raw Hire is not required to justify the withholding of consent.

- h) *Waiver.* Raw Hire's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right by Raw Hire does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and the waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- i) *Previous Editions.* This edition of the Terms and Conditions replaces and supersedes all previous editions of the Terms of Conditions Raw Hire have issued.
- j) *No consequential loss.* Raw Hire shall not be liable for consequential losses of the Hirer or any third party represented by the Hirer.

## 16) SPECIAL CONDITIONS

Refer Annexure if applicable for any Special Conditions.

## 17) DEFINITIONS AND INTERPRETATION

- a) In these Terms and Conditions:

**"Accident"** means any Collision between the Vehicle and any other object, including another vehicle, or any other incident or occurrence that results in the Vehicle being damaged, lost or destroyed, or any incident that results in damage or injury to a person or property. Special rules apply to SVAs

**"Act of God" or "Force Majeure"** means an accident, act or occurrence of a nature beyond reasonable human control including without limitation, flood, lightning, epidemic, pandemic or cyclone.

**"Approved Unsealed Road"** means an Unsealed Road for which Raw Hire 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 upon the Road. Further, the approval is subject to the Hirer first obtaining any requisite permission from a Relevant Authority.

**"Collision"** means two navigable things coming into contact.

**"Collision Protection Agreement"** refers to the agreed maximum limits to the Hirer's liability to Raw Hire in the event of the happening of an Accident or event which is not caused or contributed to by the Hirer's act.

**"Collision Protection Fee"** means an optional charge which may be offered by Raw Hire in which Raw Hire will allow the Excess to apply in the event of damage, loss, expense or theft during the Rental Period. The level of cover, fees and conditions are as set out in the Collision Damage Protection Agreement.

**"Dangerous Substances"** has its ordinary meaning and 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.

**"Excess"** means the amount the Hirer is responsible for in the event the Vehicle is damaged, regardless of fault. Note that if the Hirer is in breach of their duties as Hirer or bailee or negligent, the insurer or Raw Hire may call upon the Hirer to indemnify or reimburse Raw Hire (or insurer as the case may be) to the extent the loss or damage was caused by the act of the Hirer.

**"Excluded Area/s"** means areas/roads defined in these Terms and Conditions and/or the Hire Contract where the Vehicle must not be taken including the Gibb River Rd; Cape Leveque Rd (and Cape Leveque); Tanami Track; Windjana Gorge; Canning Stock Route; Gun Barrel Hwy.

**"Fault"** means caused by or materially contributed to by:

- i) the Hirer's misconduct, negligence, negligent act; and/or
- ii) the Hirer's reversing into a stationary vehicle or other object (whether or not that object was also moving) and incidents involving parking and parking lots generally; or,
- iii) breach of a provision these Terms and Conditions particularly including a breach of clause 6 (Restrictions on Driver) and/or clause 7 (Hirer's undertakings).

For the avoidance of doubt, even if the Hirer is not negligent but breaches a restriction on the use and operation of the Vehicle the Hirer shall be deemed at Fault.

**"Gazetted"** refers to a notice or message published in the Western Australian Government Gazette.

**"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.

**"Hire Contract"** includes these Terms and Conditions, the Collision Protection Agreement and any related forms including the Hire Application, Fair Wear & Tear Guide, an account application, credit application and/or an accepted quotation.

**"Hirer"** means and includes the following (unless an express contrary intention is agreed in writing):

- i) any person who signs the Hire Contract and/or these Terms and Conditions whether on their own behalf or on behalf of any other person, company, corporation or government department;
- ii) the person, company, corporation or government department shown on the Hire Contract, Hire Application or the relevant addressee; and
- iii) 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 of the Vehicle where it is established that the hiring was made by the driver as agent for and on behalf of such person, company, corporation or government department.

Joint ventures are not covered and require a separate Hire Contract in respect of a joint venturer.

**"Offence"** includes infringement.

**"Off Road"** means and includes:

- i) any road which is not a Sealed Road or a Gazetted Road or an Approved Unsealed Road,
- ii) driving surfaces which are not traditionally paved or sealed/bituminised such as beaches, sand, gravel, riverbeds, mud, snow, rocks and other natural terrain.
- iii) roads for which an access permit is required from a Relevant Authority (unless the Hirer first obtains the access permit).

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

**"PPSA"** means the Personal Property Securities Act 2009 (Cth) and "PPS Law" is law and regulation under the PPSA and applicable law such as the Corporations Law.

**"PPSR"** is a reference to the register established and maintained pursuant to the PPSA.

**"Premium Location"** means any location specified by Raw Hire where additional charges for use of the Vehicle at that location will apply, e.g., airport locations and locations advised by Raw Hire to the Hirer from time to time depending on the circumstances of the hire.

**"Prohibited Use"** means Excluded Areas; any exclusions stated in the Hire Contract or these Terms and Conditions; areas outside Western Australia; where Vehicle is used recklessly or with deliberate intent to cause injury, loss or damage; where Vehicle is used in committing an illegal or unlawful act; for any other purposes or in any other area that is contrary to that stated in the Hire Contract.

**"Prohibited Person"** means any person intoxicated, not the authorised driver.

**"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.

**"Rental Period"** has the meaning specified in clause 5c).

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

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

**"Single Vehicle Accident"** or SVA means without limitation:

- i) any Accident in which no other vehicle is involved including but not limited to rollovers, contacting with animals, an Accident materially

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contributed to by avoiding contact with animals, and/or crashing into trees or similar.

- ii) For the purposes of additional cover pursuant to the Collision Protection Agreement, the definition of SVA expressly excludes Accidents involving parking or car parks and does not include reversing into stationary objects.

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

**“Vehicle”** means the licensed vehicle the subject of the hire (usually described on the Hire Contract), or any alternate licensed vehicle that Raw Hire supplies to the Hirer, whether as a replacement or otherwise, and includes all Vehicle parts, tyres, tools, accessories, fittings and equipment in or fitted to the Vehicle.

b) Interpretation

- i) Each rate noted or referred to in these Terms and Conditions is the rate as determined from time to time unless otherwise agreed by written quotation or price agreement.
- ii) In the case of joint hiring, the Hirers shall be jointly and severally liable in respect of these Terms and Conditions and the Hire Contract.
- iii) “Act” includes an omission to act.
- iv) Fair wear and tear shall be interpreted in accordance with Raw Hire’s Fair Wear & Tear Guide Summary.
- v) References to legislation or regulations are references to that legislation as may be amended or replaced from time to time.
- vi) Words denoting the singular include plural and vice versa.

### IMPORTANT NOTICES TO DRIVERS

#### Compulsory Third Party Insurance (“CTP”)

You may not be covered in circumstances where you think you should be. CTP Insurance may not apply on roads which are not maintained by a government authority or on tracks or away from tracks, trails or roads and Raw Hire will not cover the Hirer.

You must make your own inquiries of the Insurance Commission of WA (<http://www.icwa.wa.gov.au>), and seek your own legal advice.