

## STANDARD TERMS AND CONDITIONS

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### **IMPORTANT NOTICE**

This document does not contain all of the terms of the Agreement. The rest of the Agreement terms are set out in the Schedule signed by the Lessee.

By signing the Schedule the Lessee offers to enter into an Agreement.

An Agreement comes into effect when the Lessor accepts the offer to enter into this Agreement. The Schedule sets out how the Lessor can accept the offer.

The Lessee should read these Standard Terms and Conditions and the Schedule carefully and should keep these documents for its records.

A number of important terms used in this document are defined in clause 33. These terms commence with a capital letter. Some other key words are also explained. Please refer to clause 33 in reviewing these Standard Terms and Conditions.

## STANDARD TERMS AND CONDITIONS

### Terms and Conditions

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#### 1 HIRING OF VEHICLE

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- 1.1 These Standard Terms and Conditions and the Schedule set out the Terms upon which the Lessor hires the Vehicle to the Lessee.
- 1.2 The Agreement incorporates:
- (a) these Standard Terms and Conditions; and
  - (b) the Schedule signed by the Lessee.

#### 2 TERM OF THIS AGREEMENT

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- 2.1 This Agreement is for the whole of the Term.
- 2.2 This Agreement commences on the Commencement Date.

#### 3 RENT AND OTHER PAYMENTS

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- 3.1 The Lessee must pay the entire Rent by the Rental Instalments specified in the Schedule on each Rent Payment Date.
- 3.2 Rental Instalments must, unless the Lessor otherwise agrees in writing, be paid by direct debit or other electronic means.
- 3.3 The Lessee must also pay all Fees payable in connection with this Agreement, including, without limitation, the Fees set out in the Schedule.

#### 4 POSSESSION OF VEHICLE

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- 4.1 The Lessee confirms that it already has possession of the Vehicle and that the Vehicle is in good working order and without damage, except for general wear and tear.

#### 5 LOCATION AND USE OF VEHICLE

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- 5.1 The Vehicle must be kept in the Lessee's possession and control at all times.
- 5.2 Subject to clause 5.3 the Vehicle must be kept at the Premises or such other place as the Lessor may approve. If the Lessee wishes to change the place at which the Vehicle is located or ordinarily garaged or kept, it must obtain the prior written consent of the Lessor, which will not be unreasonably withheld.
- 5.3 The Vehicle may be used by the Lessee within Australia, on the terms of this Agreement.
- 5.4 The Vehicle must not be taken outside of Australia. Without limiting this clause if the Vehicle is taken outside of Australia the Lessee must immediately notify the Lessor in writing.
- 5.5 The Lessee must whenever reasonably requested by the Lessor:
- (a) notify the Lessor of the location of the Vehicle;
  - (b) produce the Vehicle to the Lessor or allow the Lessor to enter the place where the Vehicle is kept to:
    - (i) inspect the Vehicle;
    - (ii) confirm the terms of this Agreement are being complied with; or
    - (iii) exercise any rights under this Agreement.

## STANDARD TERMS AND CONDITIONS

- 5.6 The Lessee must only use the Vehicle in accordance with:
- (a) all applicable laws;
  - (b) the supplier's and the manufacturer's specifications, instructions; and recommendations;
  - (c) any requirements of the insurers of the Vehicle; and
  - (d) the purpose for which the Lessee told the Lessor that the Lessee intends to use the Vehicle.
- 5.7 The Lessee must:
- (a) keep the Vehicle registered; and
  - (b) ensure only licensed drivers use the Vehicle.
- 5.8 The Lessee assumes all reasonable risks and liabilities arising from the use and possession of the Vehicle.
- 5.9 The Lessee agrees that:
- (a) it will comply with all OHS Laws in relation to the Vehicle;
  - (b) the Vehicle is and will during the Term of this Agreement be and remain under the Lessee's control and is not and, unless the Lessor exercises its rights and powers under this Agreement or the law, will not be under the Lessor's control;
  - (c) it will indemnify and keep the Lessor indemnified against any liability the Lessor may incur or any claim that may be made against the Lessor in respect of any breach or alleged breach of any OHS Law except to the extent the claim is a result of the gross negligence or wrongful act or omission of the Lessor; and
  - (d) the obligations under this clause are in addition to the Lessee's other obligations under this Agreement.

### 6 OWNERSHIP OF THE VEHICLE

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- 6.1 The Vehicle remains the Lessor's property. The Lessee is a bailee and has no title or interest in the Vehicle.
- 6.2 The Lessee must not create any Security Interest over the Vehicle or allow any other person to acquire an interest in the Vehicle.
- 6.3 The Lessee must not do anything which could prejudice or jeopardise the Lessor's rights in respect of the Vehicle.
- 6.4 The Lessee must not conceal the Vehicle, alter it or any identifying number or mark (including any serial number) on it.
- 6.5 The Lessee must not grant a lease or licence of the Vehicle.
- 6.6 The Lessee must not waive any rights or release any person from any obligation in connection with the Vehicle.
- 6.7 The Lessee must not cause or permit any other personal property in which another person has a Security Interest or other interest or right to become an accession to the Vehicle.
- 6.8 The Lessee must not sell, transfer or otherwise dispose of the Lessee's rights in respect of the Vehicle or attempt to do so without the Lessor's prior written consent, not to be unreasonably withheld.
- 6.9 Any replacement or repair or addition to the Vehicle forms part of the Vehicle and becomes the Lessor's property.

### 7 SECURITY INTEREST IN VEHICLE

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- 7.1 The Lessee acknowledges that the Lessor's interest in the Vehicle provided for by the transaction contemplated by this Agreement:
- (a) secures the payment of all moneys and the performance of all obligations owing or assumed by the Lessee under this Agreement; and
  - (b) is a Security Interest.
- 7.2 The Lessor's Security Interest in the Vehicle is effective and attaches to the Vehicle:
- (a) when the Lessee signs this Agreement; or
  - (b) immediately after the Lessee acquires any right or interest in the Vehicle, if the Lessee has not acquired the Vehicle when the Lessee signs this Agreement.

## STANDARD TERMS AND CONDITIONS

- 7.3 The Lessor may take all steps as the Lessor reasonably considers advisable to register, amend or remove the registration of, protect, perfect or record the Lessor's Security Interest in the Vehicle, or to better secure the Lessor's position in respect of this Agreement under the PPS Law. The Lessor may recover the costs of taking such steps from the Lessee where it is reasonable to do so.
- 7.4 If the Lessor asks, the Lessee must deposit with the Lessor any documents of title (including chattel papers) relating to the Vehicle or other documents which evidence rights in the Vehicle.
- 7.5 The Lessee must procure the removal of any registration in relation to any Security Interest that affects the priority of the Lessor's interest in the Vehicle.
- 7.6 The Lessee must immediately notify the Lessor if the Lessee becomes aware of any person taking steps to register, or registering, a financing statement in relation to the Vehicle.

### **8 REPAIR AND MAINTENANCE OF VEHICLE**

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- 8.1 The Lessee must at all times keep the Vehicle properly serviced, in proper working order and condition and in good and substantial repair.
- 8.2 The Lessee must maintain and service the Vehicle in accordance with the supplier's and the manufacturer's specifications and any requirements of any insurers.
- 8.3 The Lessee must not without the Lessor's consent make any replacement, alteration or addition of any nature to the Vehicle which may lead to a reduction in the Value of the Vehicle.
- 8.4 The Lessee must provide the Lessor with a written statement disclosing all defects in the Vehicle whenever requested and whether or not this Agreement has expired or terminated.
- 8.5 All repairs to and maintenance of the Vehicle must be carried out by suitably qualified personnel at the Lessee's expense.

### **9 LOSS OR DAMAGE TO THE VEHICLE**

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- 9.1 The Lessee bears the entire risk of Loss of the Vehicle or damage to the Vehicle.
- 9.2 The Lessee must notify the Lessor immediately when the Vehicle is substantially lost, damaged, destroyed, impounded, immobilised or forfeited or seized.
- 9.3 If the Vehicle is totally lost or damaged, destroyed, impounded, immobilised or forfeited or seized, then the Lessor may at its option terminate this Agreement. If that occurs, then:
- (a) the Lessee must pay an amount equal to the Termination Amount and any other amounts payable on termination of this Agreement; and
  - (b) the Lessor will give the Lessee credit, if and when received, for any insurance or other moneys received by the Lessor in relation to the Loss, damage or seizure.
- 9.4 If the Vehicle is damaged but the Lessor does not terminate this Agreement, then:
- (a) the Lessee must ensure that the Vehicle is restored at the Lessee's expense to good working order and condition;
  - (b) replacement parts and goods form part of the Vehicle under this Agreement;
  - (c) any proceeds of insurance must be applied towards repair or replacement of the Vehicle; and
  - (d) until applied under clause 9.4(c) the Lessor may hold any proceeds of insurance.

## STANDARD TERMS AND CONDITIONS

### 10 INSURANCE

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- 10.1 The Lessee must effect and maintain at all times during the Term or any holding over:
- (a) insurance of the Vehicle for its full replacement value; and
  - (b) such other insurance that the Lessor reasonably requires and which is prudent to hold in the circumstances.
- 10.2 The insurance of the Vehicle must:
- (a) be on terms approved by the Lessor acting reasonably;
  - (b) be with an insurer approved by the Lessor acting reasonably;
  - (c) note the Lessor's interest as owner of the Vehicle; and
  - (d) if the Lessor acting reasonably specifies particular risks that the insurance is to cover, cover those risks.
- 10.3 The Lessee must pay all insurance premiums and other charges in relation to the insurance.
- 10.4 When requested by the Lessor, the Lessee must provide:
- (a) satisfactory evidence to the Lessor that the insurances referred to in this clause have been effected;
  - (b) satisfactory evidence to the Lessor that all premiums in respect of such insurance are paid up and current; and
  - (c) such other information in relation to the insurance as the Lessor may reasonably require.
- 10.5 The Lessee must not:
- (a) vary any insurances without the Lessor's consent, which will not be unreasonably withheld;
  - (b) do or permit to occur anything which may prejudice any insurance or any claim under that insurance; or
  - (c) enforce, conduct, settle or compromise any claim under any insurance without the Lessor's consent.
- 10.6 The Lessee must immediately notify the Lessor of any event which may lead to a claim under any insurance. The Lessee must comply with all the Lessor's reasonable directions in respect of any such claim.
- 10.7 The Lessor is entitled to receive all moneys payable to the Lessee or to the Lessor under any insurance in respect of damage to or Loss of the Vehicle.

### 11 REPRESENTATIONS AND WARRANTIES

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- 11.1 The Lessee represents and warrants to the Lessor that:
- (a) the Lessee has full power and authority and has done all things necessary to permit the Lessee to enter into this Agreement;
  - (b) the signing or performing of the Lessee's obligations under this Agreement will not cause the Lessee to be in breach of any other arrangements that the Lessee may have and do not require any consent or approval from any other person;
  - (c) all documentation provided by the Lessee to the Lessor, including any copy or facsimile of invoices issued to the Lessor by the supplier, seller or repairer of the Vehicle, is true and correct copies;
  - (d) no Breach of an Essential Term or event which with the giving of notice or lapse of time or both would be a Breach of an Essential Term has occurred or having occurred subsists;
  - (e) all information (including the VIN number in respect of the Vehicle) provided by the Lessee or on the Lessee's behalf to the Lessor is true and correct and all of the financial information provided by the Lessee to the Lessor provides a true and fair view of the Lessee's financial position and no material adverse change has occurred since the time of preparation of that financial information.
- 11.2 The Lessee warrants to the Lessor that the representations in this clause are true and correct at the Commencement Date and, to the best of the Lessee's knowledge, will remain so during the Term.

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### 12 CONSUMER GUARANTEES

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12.1 The Lessee acknowledges that:

- (a) the Lessor agreed to acquire the Vehicle for the sole purpose of supplying the Vehicle to the Lessee under this Agreement;
- (b) if relevant, all negotiations in relation to the supply of the Vehicle have been conducted between the Lessee (or persons acting on the Lessee's behalf) and the supplier; and
- (c) the Lessee's obligations under this Agreement continue notwithstanding any Loss, damage, break down or defect in the Vehicle.

12.2 Subject to clause 12.3;

- (a) all Consumer Guarantees in relation to the Vehicle and this Agreement;
- (b) any liability for loss or damage caused directly or indirectly by the Vehicle (except to the extent such loss or damage is caused by the gross negligence or wrongful act or omission of the Lessor); or
- (c) any liability for any statement regarding the Lessee's rights under or in respect of this Agreement including in relation to any law relating to taxation, (except to the extent the Lessor makes such a statement with gross negligence or wilful misconduct), are excluded.

The Lessee must obtain its own independent legal, financial and taxation advice in relation to this Agreement.

12.3 Nothing in clause 12.2 limits any liability the Lessor may have to the Lessee under the Australian Consumer Law or under the provisions of any other legislation where the Lessor is not permitted to exclude the Lessor's liability.

### 13 RETURN OF VEHICLE

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13.1 The Lessee must return the Vehicle on the Termination or Expiration of this Agreement to the place specified by the Lessor, at the Lessee's own cost (unless the Agreement was terminated as a result of a breach by the Lessor).

13.2 The Vehicle when returned must be in good working order and repair (fair wear and tear excepted) and in accordance with the terms of this Agreement.

13.3 The Lessee must sign any documents and do anything the Lessor reasonably requires to properly return the Vehicle to the Lessor including:

- (a) returning all operating manuals and documents;
- (b) transferring to the Lessor all licences, approvals, consents, authorisations and certificates of registration relating to the Vehicle; and
- (c) completing and handing over a statement specifying any defects in the Vehicle in accordance with clause 8.4.

### 14 TERMINATION AND REPOSSESSION

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14.1 If the Lessee commits a Breach of an Essential Term the Lessor may without prejudice to the Lessor's other rights:

- (a) treat this Agreement as repudiated;
- (b) accept such repudiation; and
- (c) subject to clause 14.4, by notice terminate this Agreement and the Lessee's right to possession of the Vehicle.

This right may be exercised notwithstanding any delay or previous waiver by the Lessor.

14.2 If a Breach of an Essential Term occurs the Lessor may suspend further performance of the Lessor's obligations under this Agreement.

14.3 If the Lessor Terminates this Agreement under this clause, then:

- (a) the Lessor is entitled to immediately repossess the Vehicle;
- (b) the Lessor and its agents are authorised to and may enter upon any land or Premises (including private property) where the Vehicle is or where the Lessor suspects the Vehicle is for the purpose of such repossession; and
- (c) the Lessor is relieved from any further liability to perform any of the Lessor's obligations under this Agreement.

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- 14.4 If the Lessor, acting reasonably, determines that circumstances are such that giving notice of Termination is impractical or would adversely affect the Lessor's rights (including the Lessor's right to possess the Vehicle) the Lessor may Terminate this Agreement and the Lessee's right to possession of the Vehicle without the need for any notice.
- 14.5 Nothing in this clause affects the Lessor's obligation to give any notice that the Lessor is required at law to give.

### 15 RESIDUAL VALUE

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- 15.1 If upon Termination or Expiration of this Agreement the Lessee returns the Vehicle to the Lessor then the Lessee must pay to the Lessor on demand the amount of money by which the Residual Value exceeds the Value of the Vehicle. If the Value of the Vehicle exceeds the Residual Value, the Lessee will only have a claim or interest in such surplus if the Termination is a result of the gross negligence, a wrongful act or omission or a breach of this Agreement by the Lessor.
- 15.2 If upon Expiration or Termination of this Agreement the Lessee fails to return the Vehicle to the Lessor then the Lessee must pay to the Lessor on demand by way of liquidated damages the Residual Value of the Vehicle and perform all obligations owing or assumed by the Lessee under this Agreement. If the Lessor subsequently obtains possession of the Vehicle then the Lessor will apply the sum representing the Value of the Vehicle in reduction or satisfaction of the Lessee's indebtedness under this Agreement (or in repayment of any payment made by the Lessee under this Agreement) but the Lessee has no interest or claim in any surplus.
- 15.3 If this Agreement is Terminated prior to the expiry of the Term then the Residual Value for the purpose of this clause is the Present Value using the Discount Rate at the date of Termination of the amount specified in the Schedule as the Residual Value.
- 15.4 Any payment by the Lessee under this clause is in addition to other amounts payable under this Agreement and the Lessee is to indemnify the Lessor against loss the Lessor may suffer as a result of the Termination of this Agreement unless the Termination is a result of the gross negligence, a wrongful act or omission or a breach of this Agreement by the Lessor.

### 16 TERMINATION PRIOR TO EXPIRY OF THE TERM

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- 16.1 If this Agreement is Terminated by the Lessor in accordance with this Agreement prior to expiry of the Term, the Lessee must in addition to other amounts payable under this Agreement pay on demand as liquidated damage the Termination Amount.
- 16.2 Amounts payable under clause 16.1 are in addition to any and all other amounts payable under this Agreement, including, without limitation, clause 15.
- 16.3 Payments under clause 16.1 are to indemnify the Lessor for losses (including, without limitation, any reasonable Costs or expenses the Lessor incurs and does not recoup) sustained in respect of Rental Instalments not being paid as scheduled under the Agreement and the Agreement not remaining in force until Expiration of the Term.

### 17 OVERDUE INTEREST AND COSTS

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- 17.1 The Lessee must pay the Lessor on demand any reasonable Costs incurred by the Lessor arising out of any default by the Lessee under this Agreement or arising out of the Lessor enforcing the Lessor's rights under this Agreement including the Lessor's rights upon Expiration or Termination of this Agreement.
- 17.2 If the Lessee fails to pay any money payable under this Agreement when due (or on any judgment in respect of which those moneys become merged) then the Lessee must pay interest at the Default Rate on that amount.
- 17.3 Interest at the Default Rate is calculated from the date such moneys become payable until the date of actual payment and is payable on demand.

## STANDARD TERMS AND CONDITIONS

### 18 REMEDY OF BREACHES BY THE LESSEE

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- 18.1 If the Lessee breaches any of the Lessee's obligations under this Agreement the Lessor may at the Lessor's discretion (but without having any obligation to do so) take such steps as the Lessor considers necessary to remedy such breach.
- 18.2 The Lessee acknowledges that the Lessor may do anything the Lessee should have done under this Agreement which the Lessee has not done or which the Lessor reasonably considers the Lessee has not done properly.
- 18.3 Any Costs reasonably incurred by the Lessor in exercising the Lessor's rights under clause 18.1 or 18.2 must be reimbursed by the Lessee to the Lessor and such amounts shall incur interest at the Default Rate from the date of payment by the Lessor until the date of payment by the Lessee. Such money is payable on demand.

### 19 DUTIES AND TAXES

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- 19.1 The Lessee must pay all duties, taxes and Fees which in any way relate to this Agreement, any supply made under this Agreement or any transaction contemplated by this Agreement.
- 19.2 Unless GST is expressly included a payment under this Agreement for any supply made under or in connection with this Agreement does not include GST. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST excluded consideration otherwise payable or provided for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of such supply and subject to receipt of any tax invoice if required, is payable at the same time.
- 19.3 If payment to a party under this Agreement is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of such loss, cost or expense incurred by that party, then payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 19.2.
- 19.4 Payments under this clause must be made at the time that the act or supply giving rise to such liability occurs.

### 20 TAX INDEMNITY

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- 20.1 The Lessee acknowledges that the Rent and other moneys payable in connection with this Agreement have been calculated on the basis:
- (a) that the Lessor will be entitled to claim a deduction for depreciation in respect of the Vehicle under any laws relating to income tax; and
  - (b) of the rates of duty and tax applicable at the date of this Agreement.
- 20.2 If the Lessor's liability for income tax is increased or is payable earlier because deductions at the depreciation rates which the Lessor has relied upon for calculation of the Rent are not for any reason allowed in full at the times when they would normally have been allowed (or the Residual Value is not approved by the relevant authorities) or if the rate of any duty or tax in connection with this Agreement (other than income tax on the Lessor's net taxable income) is increased then the Lessee must pay to the Lessor on demand an amount which will result in the after tax yield to the Lessor being the same as it would have been but for such increase or acceleration in liability.
- 20.3 Indemnities in this clause continue in full force and effect notwithstanding any Termination or Expiration of this Agreement.

### 21 APPLICATION OF MONEYS

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- 21.1 To the extent permitted by law and subject to any order of application of payments prescribed by the PPS Act, the Lessor will apply all moneys received by the Lessor in respect of this Agreement in the following order:
- (a) first, in payment of the Lessor's Costs;
  - (b) secondly, in payment of any other expenses in relation to the Vehicle that the Lessor is empowered under this Agreement to appropriate and think fit to pay; and
  - (c) thirdly, towards payment of the amounts due to the Lessor under this Agreement.



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### 22 POWER OF ATTORNEY

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In consideration of the Lessor entering into this Agreement the Lessee irrevocably appoints the Lessor and each Authorised Officer severally as the Lessee's attorney for the purpose of doing all things which the Lessee is obliged to do or which the Lessor is empowered or authorised to do under this Agreement. The Lessor must act reasonably in exercising its power of attorney.

### 23 COMMISSION

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- 23.1 The Lessee acknowledges that where the Lessee has been introduced to the Lessor by a Broker:
- (a) the Broker has not acted as the Lessor's agent to negotiate and enter into this Agreement;
  - (b) the Broker is not authorised to make any representations or warranties to the Lessee on the Lessor's behalf regarding this Agreement or impose any obligations on the Lessor;
  - (c) the Lessor may pay commissions or Fees or remuneration to that Broker; and
  - (d) in calculating the Rental Instalments payable by the Lessee under this Agreement and/or the Residual Value, payments to the Broker may be taken into consideration.

### 24 GENERAL

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- 24.1 Acceptance of any payment by the Lessor after the Lessor has become aware of any default under this Agreement or any Breach of an Essential Term is without prejudice to the exercise by the Lessor of the Lessor's powers under this Agreement. Acceptance does not operate as an election by the Lessor either to exercise or not exercise any of the Lessor's rights or powers under this Agreement.
- 24.2 The Lessee must promptly give the Lessor information or documents the Lessor reasonably asks for about:
- (a) the Lessee's financial positions; and
  - (b) the Vehicle.
- 24.3 The Lessor may at any time:
- (a) assign this Agreement to a related body corporate (as that term is used in the Corporations Act) of the Lessor;
  - (b) assign, novate, grant participation rights in, or otherwise create any trust or rights in respect of this Agreement or the Vehicle or the Lessor's rights under this Agreement pursuant to any securitisation or similar arrangements; or
  - (c) otherwise assign, charge or deal with the Vehicle or the Lessor's rights under this Agreement.
- The Lessor will give the Lessee notice of any such assignment and obtain the Lessee's prior consent if any such assignment may be materially detrimental to the Lessee. Should the Lessee's consent be required on that basis but not provided, the Lessor must not proceed with the assignment, but may Terminate this Agreement.
- 24.4 The Lessee must not assign or charge the Vehicle or the Lessee's rights under this Agreement without the Lessor's prior written consent.
- 24.5 If any provision of this Agreement is or at any time becomes void or unenforceable the remaining provisions will remain in full force and effect. Any void or unenforceable provision will be varied to a lawful and enforceable provision which so far as possible achieves the same economic benefit or burden for the Lessor and the Lessee as the unlawful or unenforceable provision was intended to achieve or if not so varied then replaced. Both parties' obligations under this Agreement survive the Expiration or Termination of the Agreement to the extent required for their full observance and performance.
- 24.6 To the extent permitted by the PPS Law, the Lessor's rights, powers and remedies under this Agreement prevail to the extent they are inconsistent with the provisions of the PPS Law.
- 24.7 If any law requires the Lessee to make any deduction or withholding from any payment in respect of this Agreement then:

## STANDARD TERMS AND CONDITIONS

- (a) the Lessee must pay to the Lessor such additional payments as are necessary to ensure that after the withholding or deduction the Lessor receive the sum equal to the sum the Lessor would have recovered if no deduction or withholding had been made; and
- (b) the Lessee indemnifies the Lessor against any failure by the Lessee to make such deduction or withholding, except to the extent the failure is a result of the gross negligence or wrongful act or omission of the Lessor.

- 24.8 Time is of the essence in respect of the obligations under this Agreement.
- 24.9 No failure or delay on the Lessor's part to exercise any rights or powers under this Agreement will operate as a waiver of that right or power. The Lessor may only waive its rights under this Agreement in writing signed by an Authorised Officer.
- 24.10 This Agreement cannot be varied except in writing with the consent of the Lessee and the Lessor. Any variation by the Lessor must be signed by an Authorised Officer.
- 24.11 The Lessee must at the Lessee's expense do any further act and execute any further documents which the Lessor may reasonably request to protect the Lessor's title to the Vehicle and the Lessor's rights and remedies under this Agreement.
- 24.12 The Lessee authorises the Lessor to:
- (a) fill in any blanks in this Agreement and any document signed in connection with this Agreement; and
  - (b) make any amendments to any of the documents in clause 24.12(a)
- to accurately reflect or give effect to the terms of this Agreement which have been agreed with the Lessor.
- 24.13 The Lessor may, in granting any consent or approval under this Agreement, impose such conditions as it reasonably determines. The Lessee must comply with any such terms or conditions.
- 24.14 The Lessee must give the Lessor at least 7 days' prior written notice if the Lessee changes name or address.

### 25 PROPER LAW

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- 25.1 This Agreement is governed by the laws of the state of Victoria.
- 25.2 The Lessee irrevocably submits to the non-exclusive jurisdiction of the courts of the Commonwealth of Australia and the state of Victoria.

### 26 SECURITY

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- 26.1 Where it is agreed that the Lessee's obligations under this Agreement are to be secured by any Security then moneys secured by that Security include all moneys owing under this Agreement or in consequence of the Termination of this Agreement.

### 27 SET-OFF AND COMBINATION OF ACCOUNTS

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- 27.1 The Lessor may, if reasonable in all the circumstances, apply and set-off any amounts owing by the Lessor to the Lessee for any reason against any amounts owing or which may become owing by the Lessee to the Lessor on any account including but not limited to this Agreement.
- 27.2 The Lessor will promptly inform the Lessee if the Lessor intends to exercise its rights of set-off contained in this clause or if the Lessor combines any accounts.
- 27.3 Any payment by the Lessee must be made free of any abatement, reduction or set off or any deduction or withholding.

### 28 EVIDENCE

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A certificate signed by an Authorised Officer of the Lessor is sufficient evidence of the matters set out in that certificate, unless it is shown to be incorrect.

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### 29 NOTICES

29.1 A notice required to be given to the other party under this Agreement may be given by the party or its solicitor in any of the following ways:

- (a) in person;
- (b) by delivery; or
- (c) electronically.

29.2 A notice may be given:

- (a) in person by handing a written notice to the party; or
- (b) by delivery, by delivering it or posting it addressed to the party at his or her address specified in the Schedule; or
- (c) electronically by sending it by facsimile or email to the party at its Electronic Address.

29.3 Subject to any laws that may provide otherwise, a notice will be taken to have been given:

- (a) if the notice is given in person, at the time it is given;
- (b) if the notice given by delivery (other than by posting), upon delivery;
- (c) if the notice is given by delivery by posting, 2 Business Days after posting; or
- (d) if the notice is given electronically, on the day it is sent.

However, a notice given electronically will not be taken to have been given if the party giving the notice receives notification from the recipient's electronic service provider that transmission or delivery was not successful.

29.4 A notice may be given on behalf of the Lessor by an Authorised Officer.

### 30 FURTHER ASSURANCES

30.1 The Lessee must at its own cost and immediately upon reasonable request from the Lessor:

- (a) do anything (including providing information, obtaining consents or waivers, or executing new documents, amendments to this Agreement or consents) which the Lessor considers necessary or desirable to:
  - (i) provide more effective or better Security to the Lessor over the Vehicle or any part of the Vehicle or proceeds of the Vehicle in any relevant jurisdiction and in a manner not inconsistent with this Agreement;
  - (ii) enable the Lessor to register this Agreement or the Lessor's interest in the Vehicle (including enabling the Lessor to prepare and register a financing statement or financing change statement), with the agreed priority (and if required, to renew the registration);
  - (iii) ensure that any Security Interest created under, or provided for, by this Agreement attaches to the Vehicle and is enforceable, perfected and otherwise effective;
  - (iv) stamp, protect, perfect, record or better secure the Lessor's positions under this Agreement in any relevant jurisdiction;
  - (v) if the Lessee is in default, enable the Lessor to evidence that the Lessor is in control and possession of the Vehicle for the purposes of the PPS Act;
  - (vi) overcome any defect or adverse effect arising from the PPS Law;
  - (vii) enable the Lessor to exercise the Lessors rights or powers in respect of the Vehicle, proceeds of the Vehicle or any Security Interest in the Vehicle or those proceeds or perform any of the Lessor's obligations under the PPS Law and the Lessee must ensure that any person interested in the Vehicle does likewise; and/or
- (b) take or defend such legal proceedings as the Lessor may consider advisable for the protection or recovery of the Vehicle.

### 31 CONFIDENTIALITY

31.1 Subject to clause 31.2, a party to this Agreement may not disclose:

- (a) any information of a kind referred to in section 275(1) of the PPS Act; or
- (b) the existence or content of this Agreement.

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- 31.2 A party to this Agreement may disclose information or documents referred to in clause 31.1 as follows:
- (a) in the case of the Lessor, in assigning or enforcing or seeking to assign or enforce this Agreement or in a proceeding arising out of or in connection with this Agreement or to the extent that disclosure is regarded by the Lessor as necessary to protect the Lessor's interests;
  - (b) if required under a binding order of a Government Agency or any procedure for discovery in any proceedings;
  - (c) if required under any law or any administrative guideline, directive, request or policy whether or not having the force of law (except to the extent the requirement can be excluded or limited by contract or by a confidentiality obligation) and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated;
  - (d) as required or permitted by this Agreement;
  - (e) to the party's advisers and consultants;
  - (f) in the case of the Lessor, to a ratings agency or to a potential assignee, transferee or sub-participant or to any person with whom the Lessor may enter into a transaction, including a securitisation; or
  - (g) with the prior consent of the other party, which must not be unreasonably withheld.
- 31.3 Clause 31.2 does not require the Lessor to disclose any information of the kind referred to in section 275(1) of the PPS Act.
- 31.4 Subject to clause 31.2, the Lessee agrees that it will not authorise the disclosure of any information as contemplated by section 275(7)(c) of the PPS Act.
- 31.5 This confidentiality clause survives the Termination of this Agreement.

### 32 CONTRACTING OUT OF CERTAIN PROVISIONS OF THE PPS ACT

- 32.1 The Lessee has no rights under, or by reference to, sections 125, 142 and 143 of the PPS Act and waives the Lessee's rights to:
- (a) receive any notice under sections 95, 121(4), 130 and 135 of the PPS Act;
  - (b) receive a statement of account under section 132(4) of the PPS Act;
  - (c) receive details of the amounts paid to other secured parties in a statement of account under section 132(1) of the PPS Act; and
  - (d) receive any other notice or copies of any documents under the PPS Act (including a copy of, or notice of, any verification statement confirming registration of a financing statement or a financing change statement relating to any Security Interest created under, or provided for by, this Agreement) unless the notice is required by the PPS Act and cannot be excluded.

### 33 DEFINITIONS

- 33.1 In this Agreement unless the contrary intention otherwise appears:

**Agreement** means this contract incorporating these Standard Terms and Conditions and the Schedule;

**Australian Consumer Law** means the Australian Consumer Law under the Competition and Consumer Act 2010 (Cth);

**Authorised Officer** means any:

- (i) director or secretary of the Lessor; or
- (ii) any other person from time to time authorised by the Lessor as an Authorised Officer;

**Breach of an Essential Term** means the occurrence of any of the following:

- (i) the Lessee fails to pay any Rental Instalment or other monies due under this Agreement where such failure continues for 14 days after notice from the Lessor;
- (ii) the Lessee by its conduct or in writing informs the Lessor that the Lessee is not or does not intend to be bound by this Agreement;
- (iii) the Lessee fails to comply with the Lessee's obligations under clauses 5.1, 5.3, 6.2, 6.4, 9.2, 10.1 or 30;

## STANDARD TERMS AND CONDITIONS

- (iv) if the Lessee fails to comply with any other provision of this Agreement and such failure continues for a period of 14 days after notice from the Lessor stipulating such failure;
- (v) the Lessor reasonably believes that the Vehicle will be removed or concealed by the Lessee, and provides the Lessee with details of the same, contrary to the provisions of this Agreement;
- (vi) the Lessee makes any false, inaccurate or misleading statement in relation to the entering into of this Agreement or any Security and the Lessor acting reasonably is of the opinion that the Lessor would not have entered into this Agreement if the Lessee had not made that false, inaccurate or misleading statement;
- (vii) the Lessee ceases or threatens to cease to carry on its business or without the Lessor's prior written consent transfer or dispose of all or a substantial part of the Lessee's assets whether voluntary or due to compulsory acquisition;
- (viii) the Lessee being a company becomes an Externally Administered Body Corporate or any steps are taken to make the Lessee an Externally Administered Body Corporate;
- (ix) the Lessee being a natural person becomes Insolvent Under Administration or a bankruptcy notice is filed or any other step is taken to make the Lessee an Insolvent Under Administration;
- (x) there is a material adverse change in the Lessee's financial condition;
- (xi) the Vehicle is abandoned or condemned or seized or appropriated by any lawful authority;
- (xii) the Lessee is in default under, in breach of an essential term of, or repudiates any other agreement the Lessee has with the Lessor for the hiring of the Vehicle;
- (xiii) default occurs under any Security given by the Lessee to the Lessor;
- (xiv) there is any material breach of any other agreement the Lessee has with the Lessor and such breach is not rectified after 14 days' notice from the Lessor; and
- (xv) the Lessee does or omits to do anything or permit anything to be done or omitted which may prejudice the Lessor's Security Interest or the priority of the Lessor's Security Interest in the Vehicle;

**Broker** means any broker, dealer or other person who may act, as the Lessee's agent or otherwise, to negotiate and arrange this Agreement or is otherwise an intermediary or referrer to the Lessor in relation to this Agreement;

**Business Day** means a week day (except a national public holiday or a public holiday in the Victoria) when the Lessor is open for business in Melbourne;

**Commencement Date** means the date determined as set out in the Schedule;

**Consumer Guarantee** means any Consumer Guarantee under the Australian Consumer Law or any other warranty or representation whether express or implied and includes any direct or consequential liability in respect of any of the foregoing;

**Corporations Act** means the Corporations Act 2001 (Cth);

**Costs** includes charges and expenses and costs including all costs of:

- (i) perfecting, protecting or preserving the Lessor's Security Interest under this Agreement and the Lessor's intended priority;
- (ii) compliance with the Lessor's obligations under the PPS Law;
- (iii) legal advisers on a full indemnity basis;
- (iv) repossession, repair, storage and inspection of the Vehicle;
- (v) obtaining a valuation of the Vehicle;
- (vi) disposal of the Vehicle;
- (vii) obtaining any other advice in relation to the repossession, storage, repair or disposal of the Vehicle; and
- (viii) taking any other actions to enforce any rights under this Agreement or the PPS Law.

**Default Rate** has the meaning given in Item 10 of the Schedule;

**Discount Rate** has the meaning given in Item 10 of the Schedule;

## STANDARD TERMS AND CONDITIONS

**Electronic Address** means:

- (i) any facsimile number;
- (ii) any mobile phone number or other telephone that can receive short message service (SMS) messages; and
- (iii) any email address

as specified in the Schedule or otherwise notified to the other party in any other document provided to the Lessor in connection with this Agreement, or such amended electronic address as may be notified to the other party from time to time in writing.

**Expiration** in relation to this Agreement means the expiry of the Term;

**Externally Administered Body Corporate** has the meaning given to it in the Corporations Act.

**Fees** means those fees listed in Item 11 of the Schedule and any other fees imposed from time to time by the Lessor in relation to agreements of a type similar to this Agreement and without limitation it includes fees relating to the entering into, administration, collection, enforcement or Termination of this Agreement;

**Government Agency** means any government or governmental, semi governmental or judicial entity or authority in any state, country or other jurisdiction, including any self-regulatory organisation established under a statute or stock exchange;

**Government Agency** means any government or governmental, semi governmental or judicial entity or authority in any state, country or other jurisdiction, including any self-regulatory organisation established under a statute or stock exchange;

**GST** and **GST Law** has the same meaning they are given in "A New Tax System (Vehicle and Services Tax) Act 1999 (Cth) except that GST Law also includes any applicable rulings issued by the Commissioner of Taxation;

**Insolvent Under Administration** has the same meaning as in the Corporations Act;

**Lessee** means the person described in the Schedule as the Lessee, its successors and permitted assigns.

**Lessor** means the person described in the Schedule as the Lessor, its successors and permitted assigns.

**Loss** in relation to the Vehicle includes any circumstances where the Vehicle is destroyed, or damaged so that it is not economic to repair the Vehicle and also any circumstance where the Lessee is not able to obtain and maintain possession of the Vehicle including where the Vehicle is stolen or seized;

**Net Proceeds of Sale** means the net proceeds of sale received by the Lessor less all Costs in connection with that Sale;

**OHS Laws** means any laws, regulations or standards relating to occupational health and safety;

**Overdue Interest** means interest calculated and payable as provided for in clause 17;

**PPS Act** means the Personal Property Securities Act 2009 (Cth), as amended from time to time;

**PPS Law** means:

- (i) the PPS Act;
- (ii) regulations made from time to time under the PPS Act; and
- (iii) any amendment made to any other legislation as a consequence of the PPS Act, including, without limitation, amendments to the Corporations Act;

**Premises** means the place where the Vehicle is used or ordinarily located as set out in the Schedule;

**Present Value** of an amount is calculated by discounting that amount on a monthly basis at the rate specified for the period of whole months by which that amount is brought forward. Calculations are made on a compounding monthly rate of return basis regardless of the actual payment period;

## STANDARD TERMS AND CONDITIONS

**Rent** means the total of the Rental Instalments specified in the Schedule.

**Rent Payment Date** means the dates for payment of Rental Instalments as set out in the Schedule;

**Rental Instalment** means the instalments as set out in the Schedule;

**Residual Value** means subject to clause 15.3 the residual value specified in the Schedule;

**Sale** means any sale by the Lessor of the Vehicle. Such sale may be by auction, tender, consignment, public sale, private sale or such other method as the Lessor determines;

**Schedule** means the schedule which incorporates these Standards Terms and Conditions;

**Security** means any Security Interest given by the Lessee or any other person to secure the Lessee's obligations under this Agreement. It includes the Security Interest granted by the Lessee under this Agreement;

**Security Interest** means:

- (i) a mortgage, charge, pledge, lien or other security interest securing the payment of money or performance of any obligation of any person or any other agreement, notice or arrangement having a similar effect;
- (i) a right, interest or an arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (ii) third party right or interest or any right arising as a consequence of the enforcement of a judgment; or
- (iii) anything that is defined to be a 'Security Interest' under the PPS Law;

**Standard Terms and Conditions** means these standard terms and conditions;

**Term** means the term of this Agreement as set out in the Schedule;

**Termination** means a termination of this Agreement prior to the expiry of the Term and Terminate has a similar meaning;

**Termination Amount** means at a relevant time the amount which is the total of:

- (i) all Rental Instalments and other amounts which have accrued due at that time but which are then unpaid;
- (ii) Overdue Interest calculated as provided for in clause 17; and
- (iii) the sum of the Present Value calculated at that date using the Discount Rate, of each Rental Instalment which has not then accrued due but would have accrued due if this Agreement had continued for the remainder of the Term;

**Value of the Vehicle** means an amount determined at the Lessor's option as either:

- (i) the Net Proceeds of Sale of the Vehicle; or
- (ii) the amount certified to be the bona fide market value of the Vehicle at a date no later than 4 months after repossession of the Vehicle by the Lessor by a dealer of vehicles of a similar description or a licensed or other competent valuer selected by the Lessor;

**Vehicle** means all or any part of the vehicle described in the Schedule and includes any accessories attached to the vehicle and all manuals, log books, maintenance records and licenses held in conjunction with the vehicle and any alterations, additions or modifications of the vehicle or any vehicle acquired in the substitution for the vehicle.

33.2 Each term referred to in the Schedule has, subject to succeeding paragraphs, the meaning given to it in the Schedule.

33.3 If there is more than one Lessee named in the Schedule then the liability of each Lessee is joint and several.

33.4 Words importing the singular number include the plural and vice versa. Any gender includes any other gender.

33.5 References to legislation include all regulations orders proclamations, notices and other requirements under that legislation and include the legislation as consolidated amended, modified or re-enacted.

## STANDARD TERMS AND CONDITIONS

- 33.6 Clause headings are for reference purposes only.
- 33.7 "Include", "includes" and "including" are not words or limitations.
- 33.8 A reference to a thing includes all or any part of that thing.
- 33.9 A reference to a person includes a reference to an individual, person, a trust, partnership, joint venture or other incorporated association and corporation or an authority as the case may be and includes that person's executive administrators, successors and permitted assigns.
- 33.10 Where any matter or thing is required to be done by the Lessee on a day which is not a Business Day then it must be done on the preceding day which is a Business Day. Where the day on which any act, matter or thing to be done is the 29th, 30th, or 31st day of any month and such a day does not occur in that month, then, such act matter or thing must be done on the last Business Day of that month.
- 33.11 References to clauses are references to clauses of these Standard Terms and Conditions.
- 33.12 Unless the contrary intention appears, a reference in this Agreement to "chattel paper", "financing statement", "financing change statement", "proceeds", "verification statement" and "VIN number" have the respective meanings given to them under the PPS Act.
- 33.13 Nothing in this Agreement is to be construed as:
- (i) an Agreement that a Security Interest provided for by this Agreement attaches at a later time than the time specified in section 19(2) of the PPS Act; or
  - (i) an Agreement to subordinate a Security Interest provided for by this Agreement in favour of any person.