



1 APPLICATION

- 1.1 These Terms and Conditions ("**Terms**") form part of the Vehicle Hire Agreement which together set out the rights and obligations of the Company and the Hirer to each other in relation to the hire of the Vehicle and no other terms or conditions shall be implied save to the extent that such terms and conditions are implied by law.
- 1.2 No amendment, alteration, waiver or cancellation of any of these Terms or the Vehicle Hire Agreement is binding on the Company unless confirmed by the Company in writing.
- 1.3 The Hirer acknowledges and agrees that no employee or agent of the Company has any right to make any representation, warranty or promise in relation to the hire of the Vehicle other than as contained in the Vehicle Hire Agreement.
- 1.4 If the Hirer is more than one person, any obligation, covenant, representation or warranty on the part of those persons joint and each of them severally.
- 1.5 In these Terms, unless the context otherwise requires:
 - "**Agreed Return Location**" means the return location specified in the Vehicle Hire Agreement or such other location as is agreed between the Company and the Hirer in writing
 - "**Authorised Area**" means the area specified in the Vehicle Hire Agreement as being the area in which the Vehicle is authorised by the Company to be used during the Hire Period;
 - "**Authority**" means any state or federal government, and any governmental or other public or statutory body, local authority, instrumentality or other authority of any kind having jurisdiction over motor vehicles or anything in relation to motor vehicles;
 - "**Company**" means Elephant Blue Group Australia Pty Ltd (ABN 73 141 463 710) trading as "Elephant Blue Rentals";
 - "**Driver's Licence**" means an unexpired driver's licence issued in Australia for the particular class relevant to the Vehicle;
 - "**4WD**" means any vehicle whose class is indicated as 4WD (four wheel drive) in the Vehicle Hire Agreement;
 - "**Fuel Service Fee**" means such fee as is reasonably charged by the Company in consideration of its costs to restore the Vehicle with a fuel reading at least equal to the level it was at the commencement of the Hire Period as specified in the Vehicle Hire Agreement;
 - "**GST**" means any tax imposed by or under the GST Act without regard to any input tax credit;
 - "**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - "**Hire Period**" means the hire period commencing at the date and time set out in the Vehicle Hire Agreement and ending at the date and time that the Vehicle is returned to the Company;
 - "**Hirer**" means the person or persons specified as such in the Vehicle Hire Agreement;
 - "**Hirer Liability Amount**" means the amount specified as such in the Vehicle Hire Agreement;
 - "**International Driver's Licence**" means an unexpired and unrestricted driver's licence issued by an Authority of any country for the particular class relevant to the Vehicle and which authorises the holder to drive in Australia (provided such authority is written in English);
 - "**Off-road**" means any unsealed road, being a road or track not sealed with a hard material such as tar, bitumen or concrete;
 - "**Repairs**" means any mechanical or panel beating repairs to the Vehicle and includes any towing, recovering and storing of the Vehicle;
 - "**Taxable Supply**" has the meaning given by section 195-1 of the GST Act;
 - "**Vehicle**" means the motor vehicle described in the Vehicle Hire Agreement or any substitute or replacement motor vehicle as agreed in writing between the Company and the Hirer from time to time;
 - "**Vehicle Condition Report**" means the report in respect of the Vehicle provided to, and accepted by, the Hirer detailing the condition of the Vehicle at the commencement of the Hire Period;
 - "**Vehicle Hire Agreement**" means the vehicle hire agreement between the Company and the Hirer in respect of the hire of the Vehicle and includes these Terms; and
 - "**Vehicle Transport Fee**" means such fee as is reasonably charged by the Company in consideration of its costs to transport the Vehicle to the Agreed Return Location and any loss of hire income incurred as a result of the Hirer's failure to return the Vehicle to the Agreed Return Location.

2 HIRE OF VEHICLE

The Hirer agrees to hire the Vehicle from the Company upon and subject to the term, covenants and conditions contained in the Vehicle Hire Agreement.

3 CONDITION OF VEHICLE

- 3.1 The Hirer acknowledges receiving the Vehicle from the Company:
 - 3.1.1 in a good and clean condition except as specified in the Vehicle Condition Report;
 - 3.1.2 with all items specified in the Vehicle Condition Report;
 - 3.1.3 with the odometer and fuel reading at the commencement of the Hire Period as set out in the Vehicle Hire Agreement; and
 - 3.1.4 in a condition suitable for the purpose for which it is hired.
- 3.2 The Hirer shall immediately notify the Company of any defect in or to the Vehicle, including with respect to any matter set out in clause 3.1.
- 3.3 If the Vehicle breaks down due to a mechanical fault and the Hirer is not in default of its obligations under the Vehicle Hire Agreement, the Company will supply the Hirer with a replacement Vehicle of the same or similar make and model.

4 USE OF VEHICLE

- 4.1 Without limiting clause 4.2, the Hirer agrees that the use of the Vehicle is subject to any limitations set out in the Vehicle Hire Agreement.
- 4.2 Without the prior written consent of the Company, the Hirer shall not use, or permit the Vehicle to be used:
 - 4.2.1 for any illegal purpose;
 - 4.2.2 for racing or performance testing of any kind;
 - 4.2.3 for towing, pushing or propelling anything;
 - 4.2.4 to carry a greater load than that for which it was built;
 - 4.2.5 to carry more passengers than may be properly accommodated by the seat belt restraints provided in the Vehicle;
 - 4.2.6 to carry passengers for payment or reward;
 - 4.2.7 to transport goods without first obtaining all necessary approvals, permits and/or licences;
 - 4.2.8 to carry any inflammable, explosive or corrosive substances;
 - 4.2.9 to transport animals; or
 - 4.2.10 to be jump-started or to jump-start another vehicle.
- 4.3 Without the prior written consent of the Company, the Hirer shall not drive, or permit the Vehicle to be driven:
 - 4.3.1 outside the Authorised Area;
 - 4.3.2 Off-road unless the Vehicle is a 4WD;
 - 4.3.3 when it is damaged or unsafe;
 - 4.3.4 in areas in which snow chains are required to be fitted by any relevant Authority;
 - 4.3.5 in breach of any legislation, regulations, rules or by-laws relating to road traffic and/or use including, without limitation, where the Vehicle is driven by a person whose blood alcohol concentration exceeds the maximum lawful concentration, or who is under the influence of any drug or illegal substance;
 - 4.3.6 by any person who is under the age of 21 years or is not listed as an authorised driver in the Vehicle Hire Agreement; or
 - 4.3.7 by any person who does not hold a current Driver's Licence or International Driver's Licence.
- 4.4 The Hirer shall not sub-let or on-hire the Vehicle to any third party.

5 SECURITY, SAFETY AND CARE OF VEHICLE

The Hirer shall, at all times:

- 5.1 maintain all of the Vehicle's engine and brake oils and engine coolant levels to the manufacturer's specifications;
- 5.2 maintain the Vehicle's tyre pressure at the level recommended by the manufacturer as specified in the manual for the Vehicle;
- 5.3 keep the Vehicle locked and secure and the keys under the Hirer's personal control and be able to produce the keys if the Vehicle is stolen;
- 5.4 comply with any relevant seat belt and child restraint laws; and
- 5.5 generally do all things necessary to keep and maintain the Vehicle in the state and condition which it was in at the commencement of the Hire Period.

6 RETURN OF VEHICLE

- 6.1 The Hirer shall return the Vehicle:
 - 6.1.1 to the Agreed Return Location on the return date and at the return time specified in the Vehicle Hire Agreement or such other date and time as is agreed between the Company and the Hirer in writing;
 - 6.1.2 in the same condition as it was in at the commencement of the Hire Period as specified in the Vehicle Condition Report; and
 - 6.1.3 with a fuel reading at least equal to the level it was at the commencement of the Hire Period as specified in the Vehicle Hire Agreement.
- 6.2 The Hirer acknowledges and agrees that:
 - 6.2.1 if the Vehicle is not returned in accordance with clause 6.1.1, the Vehicle may be reported to the police as stolen;
 - 6.2.2 if the Vehicle is not returned to the Agreed Return Location, the Vehicle Transport Fee may apply;
 - 6.2.3 the Hirer shall be responsible for the Vehicle, and the hire of the Vehicle shall continue, until the Company performs a final inspection of the Vehicle including, without limitation, where the inspection is delayed due to the Vehicle not being returned to the Agreed Return Location or being returned to the Agreed Return Location after normal business hours or at a time when the Agreed Return Location is unattended; and
 - 6.2.4 if the Vehicle is returned with a fuel reading equal to less than the level it was at the commencement of the Hire Period as specified in the Vehicle Hire Agreement, the Fuel Service Fee may apply.

7 CHARGES

- 7.1 The Hirer agrees to pay or reimburse the Company on demand in respect of each of the following charges:
 - 7.1.1 all hire charges (including late charges) in respect of the Vehicle at the rate or rates specified in the Vehicle Hire Agreement until such time as the Vehicle is returned to, or is recovered by, the Company PROVIDED THAT daily rates shall apply to each consecutive 24 hour period from the commencement of the Hire Period;
 - 7.1.2 any GST payable by the Company in respect of any Taxable Supply made by the Company under the Vehicle Hire Agreement, and any other applicable duties or taxes;
 - 7.1.3 all fees and charges specified in the "Additional Fees and Charges" section of the Vehicle Hire Agreement;
 - 7.1.4 any amount payable under clause 8.3;

- 7.1.5 the Company's costs, charges and expenses incurred in connection with any default by the Hirer of its obligations under the Vehicle Hire Agreement including, without limitation, any mercantile agent's fees and legal costs (on a full indemnity basis) incurred by the Company in connection with the contemplated, attempted or actual enforcement, preservation or exercise of any of the Company's rights, powers or remedies under the Vehicle Hire Agreement; and
- 7.1.6 any interest payable on any of the above charges in accordance with clause 7.4.
- 7.2 Final charges will be determined by the Company after a final inspection of the Vehicle is carried out by the Company after the Vehicle is returned to the Company in accordance with clause 6.1.1.
- 7.3 The Hirer irrevocably and unconditionally authorises the Company to charge the Hirer's credit card and/or bank account nominated in the Vehicle Hire Agreement for payment of the charges referred to in clause 7.1.
- 7.4 The Company reserves the right to charge interest at the rate of 12% per annum on all outstanding amounts which are due but have not been paid by the Hirer in accordance with the Vehicle Hire Agreement. In such cases, interest shall be calculated on a daily basis from the due date for payment until payment is received by the Company in full, and all payments received from the Hirer will be credited firstly against any accrued but unpaid interest.
- 8 **HIRER'S LIABILITIES**
- 8.1 Except to the extent that the Company is negligent or otherwise liable at law, the Hirer is liable for any loss or damage to the Vehicle during the Hire Period ("**Vehicle Damage**") and to any third party or third party property which arises from the use of the Vehicle by the Hirer or any person authorised by the Hirer during the Hire Period ("**Third Party Damage**").
- 8.2 The Hirer's liability under clause 8.1 shall, at all times, be limited to the Hirer Liability Amount except where the loss or damage:
- 8.2.1 arises, directly or indirectly, from a breach by the Hirer of any of its obligations under the Vehicle Hire Agreement;
- 8.2.2 results from the Vehicle being totally or partially immersed in water regardless of cause;
- 8.2.3 is to the interior of the Vehicle requiring professional cleaning, deodorising or repair;
- 8.2.4 is caused by the Hirer failing to secure properly any load or equipment;
- 8.2.5 is to the tyres or windscreen of the Vehicle;
- 8.2.6 is to the underbody of the Vehicle or is overhead damage including to the roof, bonnet or boot not resulting from a collision;
- 8.2.7 is to any personal property of the Hirer or any relative, associate, passenger or any person known to the Hirer, or any personal property in the Hirer's possession or control;
- 8.2.8 cannot be attributed to a specific incident; or
- 8.2.9 is caused by the Vehicle being driven in a reckless or dangerous manner, and, for the avoidance of doubt, the Hirer's liability shall be unlimited for any loss or damage that occurs in any such circumstances.
- 8.3 Subject to clause 8.1, in the event of any Vehicle Damage or Third Party Damage, the Hirer agrees to pay to the Company on demand:
- 8.3.1 the Hirer Liability Amount, or all reasonable costs to return the Vehicle to its condition at the commencement of the Hire Period (fair wear and tear excepted), whichever is the lesser; or
- 8.3.2 if the amount of the Vehicle Damage or the Third Party Damage (as the case may be) is not limited to the Hirer Liability Amount, all costs, charges and expenses incurred in connection with the repair or reinstatement of such loss or damage.
- 8.4 The Hirer agrees not to carry out any Repairs without the prior written consent of the Company except to the extent that the Repairs are necessary to prevent further damage to the Vehicle in which case the Hirer shall first use its best endeavours to obtain the prior written consent of the Company before proceeding to carry out the Repairs.
- 8.5 The Company shall reimburse the Hirer for the costs of any Repairs carried out in accordance with clause 8.4 upon production of the original receipts in respect of the Repairs.
- 8.6 Subject to clause 8.1, the Hirer shall indemnify, and keep indemnified, the Company from and against all claims, actions, proceedings, damages, losses, costs, expenses or liabilities arising from, or in connection with, any Third Party Damage.
- 9 **LEGAL PROCEEDINGS AND CLAIMS**
- 9.1 If loss or damage occurs in respect of the Vehicle or in respect of any third party or third party property during the Hire Period, the Hirer shall:
- 9.1.1 promptly report such loss or damage to the Company;
- 9.1.2 promptly report such loss or damage to the police if required by any applicable law;
- 9.1.3 not make or give any offer, admission of liability, promise of payment, waiver, release, indemnity or settlement without the Company's prior written consent;
- 9.1.4 allow the Company or its insurers at their own cost to conduct or settle any legal proceedings against a third party;
- 9.1.5 allow the Company to claim in the Hirer's name under any applicable vehicle insurance, and the Hirer agrees to do everything that may reasonably be required to assist the Company in making such a claim including, without limitation, assigning the benefit of any applicable insurance to the Company;
- 9.1.6 complete and furnish to the Company within a reasonable time any statement, information or assistance which the Company or its insurers may reasonably require including, without limitation, attending at a lawyer's office and at Court to give evidence for which the Hirer will be paid reasonable costs (including associated travel costs and any necessary accommodation costs); and
- 9.1.7 forward to the Company any claims or correspondence from third parties within 7 days of receipt.
- 9.2 Failure to do what is required under clause 9.1 shall result in the Hirer being responsible for any resulting costs incurred by the Company.
- 10 **HIRER'S WARRANTIES**
- 10.1 The Hirer warrants and represents to the Company that, as at the date of signing the Vehicle Hire Agreement (and for the duration of the Hire Period), all information supplied by the Hirer in connection with the hire of the Vehicle is true, complete and accurate in all respects.
- 10.2 The Hirer shall indemnify, and keep indemnified, the Company from and against all claims, actions, proceedings, damages, losses, costs, expenses or liabilities arising from, or in connection with, a breach of the warranty and representation given by the Hirer in clause 10.1.
- 11 **TERMINATION**
- Without prejudice to any of its other rights, powers and remedies under the Vehicle Hire Agreement or at law, the Company may, at any time, terminate the Vehicle Hire Agreement and take immediate possession of the Vehicle following any material breach by the Hirer of its obligations under the Vehicle Hire Agreement.
- 12 **NO LIABILITY**
- 12.1 The Company is not liable for any loss or damage to personal property left in the Vehicle, or any property received, handled or stored by the Company at any time before, during or after the Hire Period.
- 12.2 The Company is not liable for any indirect, special, incidental or consequential loss or damage suffered by the Hirer or any other person due to any breach of the Vehicle Hire Agreement by the Company, and the Hirer releases and indemnifies the Company from and against all claims, actions, proceedings, damages, losses, costs, expenses or liabilities arising from, or in connection with, any such breach.
- 13 **NO AGENCY**
- No Hirer, driver or passenger of the Vehicle shall be deemed to be an agent, servant or employee of the Company, and any express or implied provision in the Vehicle Hire Agreement which creates, or may create, any such relationship is expressly excluded and negated so far as such exclusion and negation is lawful.
- 14 **GOVERNING LAW**
- The Vehicle Hire Agreement and all other contracts between the Company and the Hirer are governed by, and shall be construed in accordance with, the laws of the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.
- 15 **WAIVER OF BREACH**
- No failure by the Company to insist on strict performances of any term of the Vehicle Hire Agreement constitutes a waiver of any right or remedy which the Company may have, and is not a waiver of any subsequent breach or default by the Hirer.
- 16 **NO ASSIGNMENT**
- No contract between the Company and the Hirer, nor any rights arising under any such contract, may be assigned by the Hirer without the prior written consent of the Company which is at the Company's absolute discretion.
- 17 **SEVERABILITY**
- If any provision of the Vehicle Hire Agreement is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.