

HOWARD RENTALS

ABN 54 680 301 188

RENTAL TERMS AND CONDITIONS

1 Introduction

1.1 Rental Contract

Your contract to hire a Vehicle from Us (**Rental Contract**) comprises:

- (a) the agreement (**Rental Agreement**) You have signed to hire the Vehicle from Us;
- (b) the Handover Inspection Report; and
- (c) these rental Terms and Conditions (**Terms and Conditions**);

and together they create binding and enforceable legal obligations.

1.2 Relevant law

The Rental Contract is governed by the laws of the Commonwealth of Australia and the state of New South Wales and You agree that courts in that state have non-exclusive jurisdiction to determine any dispute that arises between You and Us.

1.3 The Australian Consumer Law

You have consumer rights conferred by The Australian Consumer Law and neither this clause nor any other provision of the Rental Contract excludes, restricts or modifies any implied terms, guarantees or rights You may have under those laws or any other Federal, State or Territory legislation.

1.4 Electronic signatures

We may use electronic signatures as a means of entry into the Rental Contract. When You insert an electronic signature You consent to the use of this means of acknowledgment and acceptance of these Terms and Conditions and Your obligations under the Rental Contract.

1.5 Amending these Terms and Conditions

We may amend these Terms and Conditions by providing You with 30 days' notice in writing. If You do not accept the amendments or replacement, You **must** return the Vehicle prior to the end of the 30 day period.

1.6 Time is of the essence

Time is of the essence in respect of all of Your obligations under the Rental Contract.

2 Who may drive the Vehicle?



IMPORTANT NOTICE

A breach of any part of this clause 2 is a Major Breach of the Rental Contract that excludes Your entitlement to Damage Cover. See clause 12 for further details

2.1 Authorised Drivers

- (a) Only You or an Authorised Driver, who each meet all of the requirements of this clause 2, can drive the Vehicle.
- (b) Allowing anyone who is not an Authorised Driver to drive constitutes a Major Breach of the Rental Contract that excludes You and any Authorised Driver from all entitlement to Damage Cover indemnity under clause 7 of these Terms and Conditions.

2.2 Age limits

- (a) There is a minimum and maximum age limit for those renting Our Vehicles.
- (b) You and any Authorised Driver **must** be at least 21 and not over 75 years of age and have no less than 12 months driving experience, unless We have agreed to a variation of that restriction before the Start of the Rental and it is shown in the Rental Agreement.

2.3 Licence requirements

- (a) You and any Authorised Driver **must** also have a current valid licence to drive the Vehicle:
 - (i) issued in an Australian state or territory or an international licence written in English, or if not in English is accompanied by either:
 - (A) a valid International Driving Permit; or
 - (B) an accurate translation of Your licence into English, issued by the National Accreditation Authority for Translators and Interpreters (NAATI) that includes a full explanation written in English of any condition to which Your licence is subject and the category of vehicle for which Your licence was issued;
 - (ii) valid for the state or territory in which the Vehicle is driven if the licence was issued in a different state or territory or an overseas country;
 - (iii) appropriate for the class of the Vehicle; and
 - (iv) not subject to any restriction or condition.
- (b) Learner drivers and provisional and probationary licence holders are not acceptable and **must not** drive the Vehicle.

2.4 Cancelled and suspended licences

The Vehicle **must not** be driven by You or an Authorised Driver if Your licence or that of the Authorised Driver:

- (a) is cancelled or suspended, including as a result of an accumulation of demerit points; or
- (b) has been cancelled or suspended, within three (3) years of the date of the Rental Agreement.

2.5 Prior insurance history

The Vehicle **must not** be driven by You or an Authorised Driver if either You or the Authorised Driver has been refused motor vehicle insurance or had a policy of motor insurance cancelled or declined by an insurer at any time prior to entering into the Rental Contract.

3 Prohibited driving, use and actions



IMPORTANT NOTICE

A breach of any part of this clause 3 is a Major Breach of the Rental Contract that excludes Your entitlement to Damage Cover. See clause 12 for further details.

3.1 Prohibited driving

The Vehicle **must not** be driven by You or any Authorised Driver:

- (a) whilst intoxicated or under the influence of drugs or alcohol or with a blood alcohol content or level of drugs present in blood, urine or oral fluid that exceeds the limit set by law;
- (b) recklessly or dangerously; or
- (c) whilst there is Damage to the Vehicle that makes it unroadworthy or unsafe.

3.2 Prohibited use

You and any Authorised Driver **must not**:

- (a) fail or refuse to undergo any breath, blood, urine or oral fluid test or drug impairment assessment;
- (b) use the Vehicle:
 - (i) for any illegal purpose;
 - (ii) to move or carry dangerous, hazardous, biohazardous, infectious, or inflammable, goods or substances that pollute or contaminate, in quantities above that used for domestic purposes;
 - (iii) to propel or tow another vehicle, trailer or boat;
 - (iv) to carry or transport illegal drugs or substances;
 - (v) in connection with the motor trade for experiments, tests, trials or demonstration purposes;
 - (vi) in racing, rallies, reliability trials, speed or hill climbing tests, or for testing in preparation thereof; or
 - (vii) in an unsafe or unroadworthy condition; or
- (c) use a mobile phone:
 - (i) to make or receive a phone call, perform any audio function or as a navigational device, **unless** the Vehicle is stationary and the body of the phone is secured in a mounting affixed to the Vehicle and its use does not require manual operation of the phone; or
 - (ii) to send a text message, video message, email or similar communication **unless** the Vehicle is parked.

3.3 Prohibited actions

(a) You and any Authorised Driver **must not**:

- (i) damage the Vehicle deliberately, intentionally, maliciously or recklessly or allow anyone else to do so;
- (ii) modify the Vehicle in any way or make any alteration or addition to it and no decals, branding or logos may be applied or removed from the Vehicle;
- (iii) sell, rent, lease or dispose of the Vehicle; or
- (iv) register or claim to be entitled to register any interest in the Vehicle under the Personal Property Securities Act 2009.

(b) You and any Authorised Driver **must not** use the Vehicle to carry:

- (i) passengers for hire, fare or reward except:
 - (A) under a private pooling arrangement; or
- (ii) more than the number of passengers for which the Vehicle is licenced; or
- (iii) any load that exceeds the limits for which the Vehicle was designed, constructed, registered or licenced.

4 Prohibited areas of use



IMPORTANT NOTICE

A breach of any part of this clause 4 is a Major Breach of the Rental Contract that excludes Your entitlement to Damage Cover. See clause 12 for further details.

4.1 Prohibited roads

The Vehicle **must never** be driven:

- (a) on an Unsealed Road;
- (b) Off Road; or
- (c) on any road where snow has fallen or is likely to fall.

4.2 Prohibited areas

The Vehicle **must not** be used in any area that is prohibited by Us. Prohibited areas include:

- (a) roads that are prone to flooding or are flooded;
- (b) beaches, sand dunes, streams, rivers, creeks, salt lakes, dams and floodwaters or any area exposed to saltwater;
- (c) any road where the police or an authority has issued a warning;
- (d) any road that is closed; and
- (e) any road where it would be unsafe to drive the Vehicle.

4.3 Prohibited areas without prior approval

The Vehicle **must never** be driven, used or taken:

- (a) interstate; or
- (b) onto any island that is off mainland Australia,

unless We have given Our written permission prior to the Start of the Rental and it is noted on the Rental Agreement.

5 Your obligations



IMPORTANT NOTICE

A breach of any of clauses 5.1, 5.6, 5.9, 5.10, 5.11, 5.12, or 5.13 is a Major Breach of the Rental Contract that excludes Your entitlement to Damage Cover. See clause 12 for further details.

5.1 No false and misleading information

- (a) You and any Authorised Driver **must** take all reasonable steps to ensure that the information supplied to Us at the Start of the Rental is accurate, complete and up-to-date and is not false or misleading.
- (b) In entering into the Rental Contract with You We have relied upon the information You and any Authorised Driver have provided to Us and:
 - (i) the wilful supply of false or misleading information, including false name, age, address, occupation or driver's licence details; or
 - (ii) acting in collusion with any other person to supply such false or misleading information,is a Major Breach of the Rental Contract.

5.2 Start of the Rental

At the Start of the Rental and before collecting the Vehicle You **must**:

- (a) present Your driver's licence and that of any Authorised Driver and permit copies of the drivers' licences to be made and kept by Us;
- (b) present Your passport if You are not an Australian citizen;
- (c) fully inspect the Vehicle to ensure that the condition of the Vehicle and any pre-existing damage is either:
 - (i) accurately noted and shown in the Handover Inspection Report; or
 - (ii) shown in photographs You have taken of the Vehicle's front, rear, sides, bonnet, boot, roof and interior) and You **must**:
 - (A) retain those photos for no less than one (1) month after the End of the Rental; and
 - (B) supply those photos to Us in the event of a dispute about Damage caused during the Rental Period;
- (d) pay the first week's Rental Charges in advance for weekly rentals and the first month's Rental Charges in advance for monthly rentals, and
- (e) pay the Security Deposit.

5.3 Payment of the Rental Charges for weekly and monthly rentals

- (a) The Rental Charges **must** be paid:
 - (i) weekly in advance if the rental is a weekly rental; and
 - (ii) monthly in advance if the rental is a monthly rental.
- (b) The Rental Charges are payable by such means as We shall agree with You, being:
 - (iii) by direct credit to Our account;
 - (iv) by credit or debit card; or
 - (v) pursuant to a direct debit authority.
- (c) The Rental Charges continue on a weekly or monthly basis until the Rental Contract is terminated pursuant to clauses 5.4(a) or 5.4(b) and the Vehicle is returned to Us.

5.4 Termination by either party

- (a) For weekly rentals, either party may terminate the Rental Contract by giving **not less** than three (3) days' prior written notice to the other party. If You give that notice to Us or We give that notice to You, You **must** return the Vehicle to Us within the three (3) day notice period.
- (b) For monthly rentals, after the expiration of the one (1) month minimum Rental Period that applies for monthly rentals, either party may terminate the Rental Contract by giving **not less** than seven 14 days' prior written notice to the other party. If You give that notice to Us or We give that notice to You, You **must** return the Vehicle to Us within the 14 day notice period and if You fail to do so:

- (c) If the Vehicle is not returned by the last day of the notice period:
 - (i) a late fee of \$30 will be charged;
 - (ii) depending on whether Your rental is weekly or monthly, a new rental week or month will automatically commence and You **must** continue to pay the ongoing Rental Charges on a weekly or monthly basis until the Vehicle is returned to Us; and
 - (i) We may notify the police and recover the Vehicle (see clause 11.8 for further details).
- (d) There is no refund of any pre-paid Rental Charges if the Vehicle is returned before the expiration of the notice period.

5.5 Security Deposit

- (a) The Security Deposit will be retained by Us as a security for the performance of any of Your obligations and liabilities under the Rental Contract and is fully refundable to You ten (10) Business Days after the End of the Rental provided that:
 - (i) all amounts due to Us under the Rental Contract have been paid, including toll road charges and refuelling costs;
 - (ii) the Vehicle has been returned to the Rental Station at the date and time set in the Rental Agreement;
 - (iii) there is no Damage (except for reasonable wear and tear) or Third Party Loss or if there is Damage or Third Party Loss, the Damage Excess has been paid;
 - (iv) the exterior and interior of the Vehicle are clean;
 - (v) the Vehicle has a full tank of fuel; and
 - (vi) there has not been a Major Breach of the Rental Contract.
- (b) If at the End of the Rental You fail to pay any of the amounts in clause 5.5(a) for which You are liable, We will apply the Security Deposit against those outstanding amounts.

5.6 Prompt payment of the Rental Charges

During the Rental Period You **must** promptly pay the Rental Charges on or before the date they are due and any payment not made within 14 days of it becoming due is a Major Breach of the Rental Contract allowing Us to terminate the Rental Contract **unless** within that period You have sought relief and We have agreed with You on a payment plan to rectify the default within a reasonable period.

5.7 During Your rental

During the Rental Period:

- (a) You **must**:
 - (i) inspect the Vehicle regularly, and no less than weekly, for oil, water and fuel leaks and Damage and also check the tyre pressures; and
 - (ii) adhere to any mileage instructions displayed in the Vehicle or set by the Rental Station.
 - (b) You **must not**:
 - (i) use the Vehicle for transporting any pets or animals, with the exception of accredited or trained assistance animals, **unless** specifically approved by Us;
 - (ii) smoke in the Vehicle (including the use of e-cigarettes) and You **must** take reasonable steps to prevent passengers from doing so. It is an offence in some Australian states to smoke in a vehicle where there are passengers of less than 18 years of age; or
 - (iii) use the Vehicle to move infectious, biohazardous or biomedical waste.
- Additional cleaning, disinfection and deodorising charges will apply.

5.8 Seat belts and restraints

You **must** comply with all mandatory:

- (a) seat belt laws and fines may be imposed by the police on any driver or passenger who does not have a seat belt properly adjusted and fastened; and
- (b) child restraint laws and ensure that for all children under the age of seven years the restraint has been fitted correctly according to the weight and age of the child and that the restraint is properly adjusted and fastened.

5.9 Vehicle to be locked and keys kept in Your possession

- (a) You and any Authorised Driver **must** make sure that the Vehicle is locked when not in use or unattended and the keys, keyless start or remote door control device **must** be kept in Your possession, or that of any Authorised Driver, at all times and never left in the ignition or in the Vehicle when it is unattended.
- (b) In the event of a theft of the Vehicle, You **must** be able to produce the keys, keyless start or remote door control device to Us.

5.10 Reasonable care

You and any Authorised Driver **must** take reasonable care of the Vehicle by:

- (a) preventing it from being damaged or stolen;
- (b) making sure it is protected from inclement weather or floods;
- (c) using any security device fitted to, or supplied with, the Vehicle;
- (d) properly securing any goods, property or equipment carried in the Vehicle;
- (e) maintaining the engine and brake oils and coolant level and tyre pressures;
- (f) using the correct fuel type; and

- (g) making sure it is not overloaded by the number of persons or by the weight of goods carried.

5.11 Maintenance and inspection for longer term rentals

- (a) If the Rental Period is longer than 30 days You **must** return the Vehicle to the Rental Station for it to be serviced or exchanged when:
 - (i) the next scheduled service is due, as noted on the sticker on the inside of the windscreen;
 - (ii) a service indicator is illuminated on the dashboard; or
 - (iii) the Vehicle has travelled 10,000 kilometres since the Start of the Rental or since it was last serviced, whichever comes first.
- (b) We will pay for the service, parts, tyres and any other issues with the Vehicle providing that these issues were not caused by You or any Authorised Driver.
- (c) If You fail to have the Vehicle serviced You will be liable for any Damage caused to the Vehicle.
- (d) We also reserve the right to request that the Vehicle be returned to the Rental Station monthly for its condition to be inspected or alternatively, to require You to supply the Vehicle's current odometer reading and provide details of the Vehicle's condition, including the provision of photos of the Vehicle's condition and of any Damage.

5.12 Notification of Vehicle fault

- (a) You **must** inform Us immediately if:
 - (i) a warning light or fault message appears;
 - (ii) You see or become aware of low engine or brake oils, or engine coolant levels; or
 - (iii) the Vehicle develops any fault during the Rental Period.
- (b) If You fail to notify Us and continue to use the Vehicle You will be responsible for any Damage or Third Party Loss.

5.13 Repair without authority prohibited

You **must not** let anyone else repair or work on the Vehicle or tow or salvage it without Our prior written authority to do so.

5.14 Repair with authority

- (a) Where We have given You Our prior authority to repair the Vehicle as the result of a breakdown or Vehicle fault, You **must** keep and produce to Us the original tax invoices and receipts for any repairs, towing or salvage and You will be reimbursed only if these expenses have been authorised by Us.
- (b) There is no entitlement to reimbursement if the breakdown or fault was caused by an Accident or is the result of a Major Breach of the Rental Contract.

5.15 Staying with the Vehicle after an Accident

You **must not** leave the Vehicle unattended following an Accident and before the arrival of a tow or salvage operator unless You or a passenger has been injured and require medical attention or You are directed to do so by the police or emergency services.

6 Rental Period, costs and charges

6.1 Your Rental

Your rental of the Vehicle from Us is for the Rental Period and at the rate shown in the Rental Agreement.

6.2 Extending the Rental Period

- (a) We understand that circumstances change and that You may require the Vehicle for longer than the Rental Period. If so, You **must** notify Us **no less** than 24 hours prior to the expiration of the Rental Period.
- (b) If You request an extension, the Rental Charges for the extended Rental Period **must** be paid on that day. By requesting the extension You agree these Terms and Conditions continue to apply to the extended Rental Period.
- (c) If You fail to notify Us at least 24 hours before the expiration of the Rental Period that You require an extension, and fail to return the Vehicle on the scheduled date and at the time shown in the Rental Agreement, We may:
 - (i) terminate the Rental Contract; and
 - (ii) recover the Vehicle (see clause 11.8).

6.3 Cancellation and 'No Show'

- (a) You will be charged the Rental Charges for the Rental Period as booked if:
 - (i) Your booking is cancelled within 24 hours prior to the Start of the Rental; or
 - (ii) You fail to notify Us of Your intended cancellation prior to the Start of the Rental and fail to pick up the Vehicle;

unless We are able to rent the Vehicle to another renter for an equivalent term and rate.
- (b) A cancellation is not effective until acknowledged and confirmed by Us.

6.4 Fines and infringements

- (a) You and any Authorised Driver **must** pay:
 - (i) fines or charges imposed for parking;
 - (ii) infringements and fines imposed for speeding and other driving offences; and
 - (iii) fines or charges imposed for release of the Vehicle if it has been seized by a regulatory authority.
- (b) An administrative fee applies if We are required to nominate You as the responsible driver if any fine or infringement is unpaid.

6.5 Tolls

- (a) You and any Authorised Driver **must** pay all tolls.
- (b) If an electronic tag (**e-tag**) is fitted for use of the Vehicle on toll roads:
 - (i) the e-tag **must not** be removed from the Vehicle; and
 - (ii) all toll charges will be debited from Your nominated credit card within a reasonable time after We receive an invoice from the toll road operator and prior to refund of the Security Deposit.
- (c) If an e-tag is not fitted to the Vehicle:
 - (i) it is Your responsibility to fit an e-tag to the Vehicle or purchase a day pass for payment of tolls when using the Vehicle on toll roads; and
 - (ii) If You fail to do so and We are required to nominate You as the responsible party We will charge You an administrative fee for each nomination.

6.6 Daily 200 kilometre limit

- (a) A daily limit of 200 kilometres applies unless You have Our prior written approval to have this limit waived and it is noted on the Rental Agreement.
- (b) For each day You exceed that limit (calculated over the Rental Period) You will incur an additional fee of thirty cents (30c) per excess kilometre.

7 Damage Cover

7.1 Damage Excess

- (a) Standard Damage Cover is included in the Rental Charges.
- (b) Subject to these Terms and Conditions, We will indemnify You and any Authorised Driver for any Damage to the Vehicle, its theft and Third Party Loss but You **must** pay up to the Damage Excess shown on the Rental Agreement for each Accident or theft claim.

7.2 When is the Damage Excess payable?

- (a) Unless You have expressly authorised a charge to Your credit card at an earlier time an amount up to, but not exceeding, the Damage Excess will be charged to Your credit card as follows:
 - (i) for single vehicle Accidents:
 - (A) if the Vehicle has substantial Damage and We reasonably believe the cost of repairs or replacement cost will exceed the Damage Excess amount, the full Damage Excess; or
 - (B) if the Damage is not substantial, the amount We have reasonably estimated to be the cost of repair, but not more than, the Damage Excess;
 - (ii) if the Vehicle has been stolen, after We have made reasonable enquiries and in Our opinion it is unlikely the Vehicle will be recovered, the full Damage Excess; and
 - (iii) for Accidents in which there is also Third Party Loss, after We have made an estimate of Your total liability but not more than the full Damage Excess.
- (b) Supporting documents and particulars of a claim for Damage and Third Party Loss will be forwarded to You as soon as practicable.

7.3 Younger and older age additional Damage Excess

A Damage Excess of \$5,000 applies if You or any Authorised Driver is 21 to 24 years of age, or 70 to 75 years of age.

7.4 Exemption from paying the Damage Excess

You will not have to pay the Damage Excess shown in the Rental Agreement for a claim for Damage or Third Party Loss if all of the following apply:

- (a) You have fully completed an Incident Report Form with:
 - (i) the name, residential address, contact phone, email address and licence number of any person involved (**Third Party**);
 - (ii) the registration number of all vehicles involved;
 - (iii) an accurate written and diagrammatic description of the Accident and location; and
 - (iv) the names and addresses of all attending police officers and the stations at which they are based;
- (b) You have taken all necessary steps to assist Us in Our investigation of the Accident or theft claim;
- (c) We believe You were not at fault for an Accident involving a Third Party; and
- (d) You have supplied or We have established the name of the insurer of any Third Party You believe was at fault and the insurer will agree to pay Us for the Damage.

7.5 Refund of Damage Excess paid

- (a) We will refund any amount You have paid for the Damage Excess as soon as practicable:
 - (i) in full, if We recover the Damage from a responsible third party or their insurer or successfully reject or defend a claim for Third Party Loss;
 - (ii) in part, if the repair cost to the Vehicle is less than the amount You have paid;
 - (iii) in part, if a claim for Third Party Loss is rejected or defended for an amount less than the Damage Excess; or
 - (iv) on a pro rata basis if We recover only a proportion of any amount We have claimed against a Third Party for Damage.

- (b) In making a refund We may take into account all reasonable administrative, collection agency and legal costs incurred in connection with the recovery of the Damage cost or rejection or defence of a claim for Third Party Loss.

7.6 Claims Administration fee

All Accident, attempted theft and theft claims will incur a claims administration fee of \$100 in addition to the Damage Excess liability. This fee is to compensate Us for the labour and associated costs with processing Your claim.

8 Damage Cover Exclusions

8.1 General exclusions

Even if You have paid the Damage Excess, there is no Damage Cover, and You and any Authorised Driver are liable for:

- (a) Damage or Third Party Loss arising from:
 - (i) a Major Breach of the Rental Contract;
 - (ii) any deliberate, intentional, malicious or criminal act by You, an Authorised Driver or any person who is acting with Your express or implied consent; or
 - (iii) the use of the Vehicle by any driver who is not an Authorised Driver or who is less than 21 or more than 75 years of age;
- (b) Overhead Damage;
- (c) Underbody Damage;
- (d) Damage caused by:
 - (i) immersion of the Vehicle in water, including salt water; or
 - (ii) use of the incorrect fuel type;
- (e) damage to the tyres or rims of the Vehicle, other than by normal wear and tear; and
- (f) the full cost of replacing or repairing any accessories supplied by Us including, but not limited to GPS units, lost keys, keyless start and remote door control devices tool kits, spare tyres and first aid kits;
- (g) Damage caused by use of the incorrect fuel type; and
- (h) Damage or Third Party Loss caused or contributed to by You where You leave the scene of the Accident prior to the attendance of the police or reporting the Accident to the police;
- (i) any loss, damage or deterioration of any goods or property carried in a Commercial Vehicle and You agree to fully indemnify Us for any loss, damage or deterioration of those goods or property unless it arises as a result of Our negligence.

8.2 Lack of co-operation exclusion

Your entitlement to Damage Cover will be reduced to the extent We are prejudiced as a result of any delay or failure by You or any Authorised Driver to comply with Your obligations under clause 10 of these Terms and Conditions.

8.3 Exclusion for personal items

There is also no Damage Cover for personal property in the custody of or owned by:

- (a) You;
- (b) Your relative, friend or associate who ordinarily resides with You or with whom You ordinarily reside;
- (c) any relative, friend or associate of an Authorised Driver; or
- (d) Your employees,

that is stolen from the Vehicle, lost or damaged during the Rental Period or left in the Vehicle after the Vehicle is returned to the Rental Station.

9 Breakdowns

9.1 Roadside assistance

- (a) We will provide You with a Vehicle that is of acceptable quality and in good working condition taking into account the age of the Vehicle but breakdowns do occur.
- (b) Twenty-four-hour roadside assistance is provided free of charge for breakdowns (but not for Accidents) and if the Vehicle breaks down during the Rental Period You **must** contact Us to arrange assistance. If the fault cannot be repaired on site We will recover and repair the Vehicle as soon as possible but if it cannot be repaired, We will use Our best endeavours to provide a replacement Vehicle where one is available.

9.2 Assistance not covered

- (a) We are not responsible for:
 - (i) a flat battery;
 - (ii) wheel changing for a flat tyre;
 - (iii) lost keys, keyless start or remote door control device; or
 - (iv) keys, keyless start or remote door control device locked in the Vehicle.Extra charges will apply if any of these services are provided at Your request.
- (b) Roadside assistance does not apply if:
 - (i) the incorrect fuel type is used; or
 - (ii) the breakdown is caused by a Major Breach,

and You are liable for any Damage caused.

9.3 Consequential and other loss

Subject to the Australian Consumer Law, We are not responsible for:

- (a) flights You have missed;
- (b) holiday plans that are disrupted;
- (c) loss or inconvenience caused by natural disasters such as floods, cyclones, hailstorms, earthquakes, bushfires, or pandemics;
- (d) loss of enjoyment; or
- (e) consequential or economic loss.

10 Accident and theft reporting



IMPORTANT NOTICE

A breach of any part of this clause 10 is a Major Breach of the Rental Contract that excludes Your entitlement to Damage Cover. See clause 12 for further details.

10.1 Reporting an Accident or theft to Us

- (a) If You or an Authorised Driver has an Accident or if the Vehicle is stolen You **must**:
 - (i) contact Us to report the Accident or theft as soon as practicable, but in no case more than 24 hours of it occurring; and
 - (ii) subsequently fully complete an Incident Report Form.
- (b) The Incident Report Form should include as much information as is reasonably practical, including:
 - (i) the information listed in clause 10.3 regarding the contact details for the other driver and witnesses and an accurate written and diagrammatic description of the Accident and its location; and
 - (ii) the circumstances under which the Accident or theft occurred.
- (c) The Incident Report Form **must** be submitted to Us:
 - (i) within seven (7) days of the Accident or theft, or upon the return of the Vehicle if it is returned to Us within that seven (7) day period; or
 - (ii) if the Vehicle is stolen, immediately the theft of the Vehicle is reported to the police.

10.2 Reporting an Accident or theft to the police

If the Vehicle is stolen or if You or an Authorised Driver of the Vehicle has an Accident where:

- (a) any person is injured;
 - (b) the other party has failed to stop or leaves the scene of the Accident without exchanging names and addresses; or
 - (c) the other party appears to be under the influence of drugs or alcohol,
- You or the Authorised Driver **must** also report the theft or Accident to the police as soon as:
- (i) the theft is discovered; or
 - (ii) it is practical to do so after an Accident.

10.3 Steps You must take following an Accident

If You or an Authorised Driver have an Accident You and the Authorised Driver **must**:

- (a) make the Vehicle secure;
- (b) exchange names and addresses, phone numbers and email addresses with the other driver;
- (c) obtain the name of the other driver's insurance company;
- (d) take a photo of the other driver's licence;
- (e) take the registration numbers of all vehicles involved;
- (f) take as many photos as is reasonable showing:
 - (i) the position of the Vehicles before they are moved for towing or salvage;
 - (ii) the Damage to the Vehicle;
 - (iii) the damage to any third party vehicle or property; and
 - (iv) the general area where the Accident occurred, including any road or traffic signs; and
- (g) obtain the names, addresses, phone numbers and email addresses of all witnesses.

10.4 Subsequent assistance

Subsequent to the Accident of theft You and any Authorised Driver **must**:

- (a) forward all third party correspondence or court documents to Us within seven (7) days of receipt;
- (b) co-operate with Us in the investigation of any Accident or theft claim and supply such further information as We or Our investigator may reasonably request within seven (7) days of receipt of such a request; and
- (c) co-operate with Us in the prosecution of any legal proceedings that We may institute or the defence of any legal proceedings which may be instituted against You or Us as a result of an Accident, including attending:
 - (i) Our lawyer's office; and
 - (ii) any Court hearing.

10.5 What You must not do

You and any Authorised Driver **must not**:

- (a) make any admission of fault;
- (b) make any offer or promise to pay or settle any claim for Third Party Loss; or
- (c) agree to indemnify, waive, or release any other party from liability to pay for Damage as a result of an Accident, theft or attempted theft.

10.6 Consequences of lack of co-operation

Your entitlement to Damage Cover will be reduced, including to nil, according to the extent We are prejudiced as a direct result of any delay in complying with:

- (a) the reporting obligations in clauses 10.1 and 10.2; and
- (b) the obligations in clause 10.4 to forward third party correspondence and court documents to Us within seven (7) days and to co-operate with Us in the investigation of any Accident of theft claim and the prosecution or defence of any legal proceedings.

11 End of the Rental

11.1 Return of the Vehicle

- (a) You **must** return the Vehicle:
 - (i) to the Rental Station;
 - (ii) by the last day of the notice period (clause 5.4(a) for weekly rentals or clause 5.4(b) for monthly rentals);
 - (iii) in a reasonable state of cleanliness;
 - (iv) in the same mechanical condition, it was in at the Start of the Rental, fair wear and tear excepted; and
 - (v) with a full tank of fuel.
- (b) If You return the Vehicle:
 - (i) with less than a full tank of fuel a refuelling charge of \$55 (including GST) plus the cost of the fuel, will apply;
 - (ii) earlier than the date shown in the Rental Agreement there is no entitlement to a refund;
 - (iii) more than one hour after the date and time set for its return in the Rental Agreement, We will charge You \$25 per hour up to one full day's rental and a further full day's rental at the standard rate for each 24 hour period or part thereof until the Vehicle is returned to Us; or
 - (iv) at any time outside Our normal business hours, You **must** pay for the daily Rental Charges and all Damage until the Rental Station next opens for business **unless** We have agreed to an after business hours drop off and it is shown on the Rental Agreement.

11.2 End of the Rental payments

At the End of the Rental, You **must** pay:

- (a) the balance of the Rental Charges, including any charges for excess kilometres (if any);
- (b) the Damage Excess if there is Damage or Third Party Loss as a result of an Accident or the Vehicle is stolen;
- (c) any costs We incur, including:
 - (i) refuelling costs; and
 - (ii) extra cleaning costs;
- (d) for all Damage and Third Party Loss arising from a Major Breach of the Rental Contract; and
- (e) for all Damage and Third Party Loss for which Damage Cover is excluded pursuant to clause 8.1 or reduced pursuant to clause 8.2.

11.3 Credit card authority

By signing the Rental Agreement You authorise Us to debit Your credit card within a reasonable time after the End of the Rental for any amount that is due to Us or remains unpaid, including:

- (a) the Rental Charges;
- (b) tolls;
- (c) speeding and traffic fines and infringements;
- (d) fines or charges imposed for parking;
- (e) administrative charges for unpaid tolls, fines or infringements;
- (f) extra cleaning costs;
- (g) refuelling costs;
- (h) the Damage Excess; or
- (i) any amount due to Us as a result of a Major Breach.

11.4 Default in payment

- (a) By entering into the Rental Contract You have agreed to pay all of the amounts owed to Us under the Rental Contract.
- (b) Acting reasonably, We may decline all future hires if there is any default in payment of amounts due under the Rental Contract that exceeds a period of 14 days.
- (c) If You default in the payment of any moneys owed to Us under the Rental Contract:

- (i) You **must** pay Us interest on that overdue amount calculated at the rate of 10% per annum and starting seven (7) days after the date that overdue amount became payable to Us and ending on the date of payment of all amounts due;
- (ii) We may engage a mercantile agent or debt collector and You **must** pay the reasonable costs and charges We incur in recovering or attempting to recover that overdue amount, including mercantile or debt collection fees, commission and any legal costs; and
- (iii) You authorise Us to provide information of that default to a credit reporting body and to obtain an up-to-date consumer credit report on You. Personal information may be used and disclosed by the credit reporting body in accordance with the Privacy Act to create or maintain a credit information file containing information about You, including defaults in excess of 60 days and the debt owed to Us.

11.5 Deleting Personal Information and data

- (a) Before returning the Vehicle it is Your responsibility to delete any Personal Information or data, such as mobile phone numbers, stored addresses, or navigation history, that may have been used during the Rental Period.
- (b) If You have added the Vehicle to the Vehicle manufacturer's app on Your mobile phone or other device so that You can remotely lock and unlock the Vehicle, check its location and access other functions, at the end of the Rental Period You **must** remove or delete the Vehicle from that app.
- (c) Where You have failed to sign out of an application or remove or delete any Personal Information, data or mobile phone numbers from the Vehicle, We are not responsible for:
 - (i) removing that Personal Information, data or those mobile phone numbers;
 - (ii) any future use of Your account by third parties subsequently renting the Vehicle; or
 - (iii) access by a third party to, or disclosure of, any Personal Information collected by the Vehicle.

11.6 Personal items left in the Vehicle

If personal items are left in the Vehicle at the End of the Rental they will be kept safely for a period of 14 days during which time they may be reclaimed, but if not reclaimed they will be dealt with according to state or territory legislation or donated to a suitable charity.

11.7 Post rental inspection procedure

- (a) We will take reasonable steps to conduct a post rental inspection in Your presence; and
- (b) If You do not wish to wait for the full inspection, We will use reasonable endeavours to conduct the inspection within three (3) Business Days and if Damage is detected, We will notify You as soon as it is reasonably practical to do so.

11.8 Failure to return the Vehicle on time or to the Rental Station

- (a) If You fail to return the Vehicle on the scheduled date and at the time shown in the Rental Agreement:
 - (i) We may terminate the Rental Contract;
 - (ii) if the location of the Vehicle is known, We may recover it by lawful means or if it is unknown, after making reasonable attempts to contact You, We will report the Vehicle to the police as having been stolen; and
 - (iii) You **must** pay any towing or recovery fees incurred in the Vehicle's recovery.
- (b) If the Vehicle is left at any other place than the Rental Station from which it was hired:
 - (i) the termination of the Rental Contract will take effect only after the Vehicle has been collected by Us and an inspection for Damage has occurred; and
 - (ii) You are responsible for Damage to the Vehicle up until this time of the collection and inspection.

12 Major Breach

12.1 Major Breach

You and any Authorised Driver commit a Major Breach of the Rental Contract if:

- (a) there is a breach of any of the following:
 - (i) clause 2 (who may drive the Vehicle);
 - (ii) clause 3 (prohibited driving, use and actions);
 - (iii) clause 4 (prohibited areas of use);
 - (iv) clause 5.1 (false and misleading information);
 - (v) clause 5.6 (prompt payment of the Rental Charges);
 - (vi) clause 5.9 (Vehicle to be locked and keys kept in Your possession);
 - (vii) clause 5.10 (reasonable care);
 - (viii) clause 5.11 (maintenance for long term rentals);
 - (ix) clause 5.12 (notification of Vehicle fault); or
 - (x) clause 5.13 (repair without authority);
 that causes Damage, theft of the Vehicle or Third Party Loss;
- (b) there is a breach of:
 - (i) clause 5.6 (prompt payment of the Rental Charges);
 - (ii) clause 10 (Accident reporting) that prevents Us from properly investigating a claim arising from an Accident or theft or from prosecuting or defending any Accident or theft claim; or
 - (iii) clause 15.2(c) (tampering with, or removal of, the Tracking Device); or

- (c) the Vehicle is stolen by You or an Authorised Driver or by any person acting for You, at Your direction or on Your behalf.

12.2 No Damage Cover

If You or any Authorised Driver:

- (a) commit a Major Breach of the Rental Contract; or
- (b) drive the Vehicle in a reckless manner so that a substantial breach of road safety legislation has occurred,

You and any Authorised Driver:

- (i) have no Damage Cover;
- (ii) are liable for all Damage, theft of the Vehicle and Third Party Loss; and
- (iii) are liable for and **must** pay any additional costs or expenses We incur in recovering the Vehicle.

13 Termination of the Rental Contract

13.1 Termination

Acting reasonably, We may terminate the Rental Contract and take immediate possession of the Vehicle if:

- (a) there has been a Major Breach;
- (b) there has been a breach of clause 12.2(b);
- (c) the Vehicle has been illegally parked for longer than 24 hours; or
- (d) the Vehicle is apparently abandoned.

13.2 Our rights on termination

If the Rental Contract is terminated:

- (a) it will not affect Our right to receive any money We are owed under the Rental Contract; and
- (b) You give Us permission to access and enter Your premises to repossess the Vehicle without using unreasonable force or causing damage.

13.3 Termination of the Rental Contract through bankruptcy or insolvency

We may terminate the Rental Contract if:

- (a) You become bankrupt, insolvent, convene a meeting with Your creditors or propose or enter into an arrangement with creditors, or make an assignment for the benefit of Your creditors; or
- (b) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of You or any of Your assets.

14 Personal Property Securities Act 2009 (Cth)(PPSA)

14.1 Interest is as bailee only

You have no right to, or interest in, the Vehicle other than as a bailee and You **must not** endeavour to obtain any other right or interest by Yourself or Your nominee.

14.2 Security Interest

You acknowledge that:

- (a) the Rental Contract may create a security interest (**Security Interest**) (as that term is defined in the PPSA) in the Vehicle;
- (b) We have a Security Interest in the Vehicle and the Vehicle will at all times remain subject to that Security Interest; and
- (c) We may register the Security Interest on the Personal Property Securities Register.

15 Privacy



IMPORTANT NOTICE

A breach of any part of this clause 15.2(c) is a Major Breach of the Rental Contract that excludes Your entitlement to Damage Cover. See clause 12 for further details.

15.1 Personal Information

- (a) We are committed to respecting Your privacy and will not collect, use or disclose Your Personal Information where doing so would be contrary to law.
- (b) When We collect Your Personal Information, We will do so only for the purpose of providing rental services to You. If You choose not to provide this information to Us We may not be able to provide those rental services to You.
- (c) We take reasonable steps to make sure Your Personal Information is accurate, up to date and complete and that it is protected from misuse, loss or unauthorised access, modification or disclosure.

15.2 Tracking Device

- (a) To maintain and protect the Vehicle We may fit a Tracking Device to the Vehicle to enable Us to monitor the condition, performance and operation of the Vehicle and to track the Vehicle's movements.
- (b) Information from the Tracking Device may be used during and after the Rental Period. When You sign the Rental Agreement, You expressly consent to Us:
 - (i) using the Tracking Device on the Vehicle during the Rental Period; and

- (ii) collecting, using and retaining information from the Tracking Device for the purposes referred to in clause 15.2(a).
- (c) You **must not** tamper with the Tracking Device or remove it from the Vehicle.

16 Definitions and interpretation

16.1 Definitions

In these Terms and Conditions:

Accident means an unintended, unexpected and unforeseen incident, including:

- (a) a collision between the Vehicle and another vehicle or object, including animals and roadside infrastructure;
 - (b) rollovers; and
 - (c) weather events, including hail Damage,
- that results in Damage or Third Party Loss.

Authorised Driver means any driver of the Vehicle who is approved by Us and who is recorded on the Rental Agreement prior to the Start of the Rental.

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales.

Damage means:

- (a) any loss or damage to the Vehicle including its engine, parts, components and accessories, including the GPS unit, however caused that is not fair wear and tear;
- (b) towing, recovery and salvage costs;
- (c) assessing fees; and
- (d) Loss of Use,

and for the removal of doubt, any Damage to the windscreen, headlights, lights or tyres that makes the Vehicle unroadworthy is **not** fair wear and tear.

Damage Cover means the cover You and an Authorised Driver have for Damage, theft, attempted theft and Third Party Loss under clause 7, subject to the Damage Cover Exclusions in clause 8.

Damage Excess means the amount, including GST, up to which You **must** pay Us in the event of an Accident or attempted theft that causes Damage or Third Party Loss or the Vehicle has been stolen and not recovered and includes the additional amount for younger drivers that is payable pursuant to clause 7.3.

End of the Rental means the last day of the notice period (clause 5.4(a) for weekly rentals or clause 5.4(b) for monthly rentals) by which date the Vehicle **must** be returned to Us.

Handover Inspection Report means the document that shows the condition of the Vehicle and lists any Damage at the time of the inspection.

Incident Report Form means the document You **must** complete and submit to Us if there is Damage to the Vehicle or it has been stolen.

Loss of Use means Our loss calculated on a daily basis at the daily rate shown in the Rental Agreement because the Vehicle is being repaired or replaced if it is written off as a result of an Accident or it has been stolen.

Major Breach means a breach of any of the clauses listed in clause 12.1.

Off Road means an area, surface or terrain that is not a sealed or Unsealed Road and includes but is not limited to unformed roads, fire trails, tracks, river and tidal crossings, creek beds, beaches, streams, dams, rivers, flood waters, sand, deserts, rocks, fields and paddocks.

Overhead Damage means Damage to the Vehicle or Third Party Loss caused by:

- (a) contact between the part of the Vehicle that is at or above the level of the top of the front windscreen with objects overhanging or obstructing its path;
- (b) objects being placed on the roof of the Vehicle; or
- (c) You or any person standing or sitting on the roof of the Vehicle.

Personal Information has the same meaning as in the *Privacy Act 1988* (Cth).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Rental Charges means the charges payable for renting the Vehicle from Us together with GST and any other taxes or levies which are all fully set out in the Rental Agreement.

Rental Period means the period commencing at the time shown in the Rental Agreement and concluding at the End of the Rental.

Rental Station means the location from which the Vehicle is rented, as shown on the Rental Agreement.

Security Deposit means the amount shown on the Rental Agreement We collect from You at the Start of the Rental as security for the Rental Charges and other fees and charges incurred during Your rental and the amount is fully refundable subject to clause 5.5(a).

Start of the Rental means the date and time that the rental commences as shown in the Rental Agreement.

The Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Third Party Loss means loss or damage to third party property, including other motor vehicles and any claim for third party loss of income.

Tracking Device means a GPS or other device that is fitted to the Vehicle that has electronic tracking capabilities to determine its location and other data including speed, braking and fuel levels.

Underbody Damage means any damage to the Vehicle caused by or resulting from contact between the underside of the Vehicle and any part of the roadway or any object or obstruction, including kerbs, gutters, speed or road humps, barriers or wheel stops and does not arise as a result of an impact with another vehicle.

Unsealed Road means a road, other than a road that is undergoing temporary roadworks, that has been formed and constructed but is not sealed with a hard material such as tar, bitumen or concrete.

Vehicle means the Vehicle described in the Rental Agreement and includes its parts, tools, components, accessories, keys, keyless start or remote door control device, audio equipment, GPS Tracking Device, child restraints, spare tyre and first aid kit (if fitted), fire extinguisher (if fitted) and break glass hammer (if fitted) and includes any replacement Vehicle.

We, Us, Our, means Howard Rentals Pty. LIMITED trading as HOWARD CAR & TRUCK RENTAL ABN 54 680 301 188.

You, Your means the person, whether it is an individual, a firm or company or government agency that rents the Vehicle from Us and whose name is shown in the Rental Agreement.

16.2 Interpretation

In these Terms and Conditions, **unless** the context otherwise requires:

- (a) headings are for convenience only and do not form part of the Terms and Conditions or affect their interpretation; and
- (b) where You comprises two or more persons each is bound jointly and severally.