

CAR HIRE TERMS AND CONDITIONS

These Terms and Conditions form our agreement with you ("**Agreement**")

Boyd's Bay Garage ACN: 668233145, 1/48 Ourimbah Road, Tweed Heads, NSW 2485 ("**Owner**") and

of the person set out in Schedule 1 ("**Hirer**").

BACKGROUND

- (A) The Owner is the proprietor of the Vehicle listed in the Schedule to this Agreement ("**Vehicle**").
- (B) The Hirer will hire the Vehicle specified in the Schedule from the Owner upon the terms and conditions in this Agreement.

OPERATIVE PROVISIONS

1. Hire of Vehicle

- (a) The hiring of the Vehicle will commence from the commencement date specified in the Schedule and continue for the term specified in the Schedule.
- (b) The Hirer is entitled to use the Vehicle for the hire period as outlined in the Schedule ("**Hire Period**") and for any agreed extension of the period.
- (c) The Hirer agrees to return the Vehicle to the address of the Owner on or before the end of the Hire Period as outlined in the Schedule.
- (d) The Owner will not refund any hire fee monies if the Hirer elects to return the Vehicle prior to the end of the Hire Period, regardless of reason.
- (e) The Hirer must have a valid driver's licence and must be at least 21 years old. Drivers under the age of 25 may be subject to additional fees or restrictions.

2. Payment for rental

- (a) The Hirer agrees to pay the Owner the hire fee specified in the Schedule ("**Hire Fee**") for the Vehicle for the Hire Period, which includes any applicable GST.
- (b) The Hire Fee must be paid to the Owner prior to or on the commencement date of the Hire Period.
- (c) The Hirer also agrees to pay the other amounts, set out in schedule 2, calculated in accordance with the price list and any duties, fees, outgoings, penalties, fines, demands, charges or costs imposed by any authority on or in connection with this agreement or the Hirer's hiring of the Vehicle.

- (d) The Hirer authorises the Owner to complete any documents necessary or desirable to enable the Hirer to make any payments through any credit card system.
- (e) The Hirer acknowledges that a copy of their nominated bank card is kept on file during their hire period.
- (f) The Hirer acknowledges that any costs incurred during the hire period will be deducted from their nominated bank card. This includes but is not limited to insurances excesses, vehicles damages, infringements, fines, tolls, refuelling charges and administration fees.
- (g) The Hire Period may be extended but only with the prior approval of the Owner. Additional rental fees may apply.
- (h) All payments are processed in Australian dollars. The Owner does not accept cash for payment of the Hire Fee or any other fee, deposit or bond.
- (i) International credit cards may attract a international transaction fee from your financial institution.
- (j) The Hirer agrees to pay additional credit card fees as disclosed by the Owner.
- (k) A security bond is required to be held by the Owner to a credit card or debit card held in their own name. A pre-authorisation will be made on your chosen debit or credit card with the funds being held by your financial institution. Depending on the level of cover you choose, this amount can range from \$1 up to \$1000. Upon safe return of the Vehicle, the Owner will cancel the pre-authorisation. Please note that the release of these funds is the responsibility of your financial institution and times may vary.

3. Child seats

It is the responsibility of the Hirer to ensure the appropriate child seat(s) are selected and fitted for children travelling in the Vehicle. The Owner takes no responsibility for fines, injury or death, or any other loss associated with failure to have a child seat fitted in the Vehicle or failure to safely restrain children in the Vehicle. The Owner takes no responsibility for the proper installation and/or adjustment of child seat(s) restraints.

It is the responsibility of the Hirer to comply with all mandated seatbelt and child restraint laws applicable in the relevant State or Territory. Police infringements may be issued to the driver of the Vehicle for any unrestrained or inappropriately restrained occupant(s), including incorrectly fitted and adjusted child restraint(s).

A child seat(s) may be a standard baby seat for children up to 18 kilograms and a child booster seat is designed for children to be raised so that the lap-shoulder belt is correctly and safely position and may be suitable for children from four to seven years.

4. Roadside Assistance

The Owner provides a Premium Roadside Assistance Package that protects the Hirer in the event something unexpected happens. The Hirer may elect to pay for this package.

The Owner's standard breakdown service covers for mechanical failure, the Premium Roadside Assistance Package will provide additional coverage for items such as:

- Tyre changing
- Lockout service
- Emergency fuel
- Flat battery

If you decided not to purchase roadside assistance, you can still have access to roadside assistance however there is a \$140 charge.

Please advise the Owner at the time of Vehicle collection if you wish to obtain Premium Roadside Assistance.

5. Use, operation and maintenance

- (a) The Hirer agrees that the use of the Vehicle may carry with it dangers and risks of injury and the Hirer agrees to accept all dangers and risks.
- (b) The Hirer will use the Vehicle for the purpose for which it was designed and not for any other purpose.
- (c) The Hirer must ensure the Vehicle are returned to the Owner in the same state of cleanliness as on the commencement date specified in the Schedule. In the event that the Vehicle are not in that state of cleanliness when returned to the Owner, the Hirer will pay the Owner the reasonable costs for cleaning the Vehicle.
- (d) Unless the Hirer obtains the prior written consent of the Owner, the Hirer must not alter, modify or attach anything to the Vehicle unless the alteration, modification or attachment is easily removable without damaging the functional capabilities or economic value of the Vehicle.
- (e) The Hirer must not use the Vehicle for illegal purposes, racing or off-road driving. The Hirer must also not use the Vehicle for commercial purposes, such as delivery or transportation of goods for profit.
- (f) The Hirer must return the Vehicle with a full tank of petrol. If the Vehicle is returned without a full tank of petrol, the Hirer will be charged for fuel as set out in the Schedule plus a refuelling fee of \$30.
- (g) The Hirer must have an unrestricted driver's licence and not be on a learner permit, provisional licence or probationary licence. The Hirer must ensure that no person who does not hold an unrestricted driver's licence operates the Vehicle.
- (h) The Hirer agrees to the Owner retaining a copy of any driver's licence provided as part of this Agreement.

- (i) The Hirer may nominate any additional drivers subject to those additional drivers providing their driver's licence to the Owner and subject to the Owner's approval of that person as an additional driver.
- (j) If the Vehicle is subject to a daily kilometre cap, additional charges may apply for each kilometre in excess of that cap.
- (k) The Vehicle must not be driven in the following areas:
 - (i) on any unsealed road;
 - (ii) above the snow line in Australia's alpine region;
 - (iii) off-road;
 - (iv) between mainland Australia and Tasmania in either direction;
 - (v) in any state or territory but for New South Wales and Queensland;
 - (vi) Stradbroke Island;
 - (vii) Moreton Island; and
 - (viii) Bribie Island,additional towing, damage and recovery costs incurred by the Owner in relation to use in any of the above areas will be at the Hirer's expense and the Hirer is unable to guarantee a replacement vehicle in the event the Vehicle is inoperable as a result of driving in the above areas.

6. Hirer's warranties

The Hirer warrants that:

- (a) the Vehicle will be used in accordance with the conditions outlined in the Schedule;
- (b) the particulars in the Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
- (c) the Hirer holds an operating licence or permit valid for the type of Vehicle hired;
- (d) the Vehicle will not be used for any illegal purpose;
- (e) the Hirer will not, without prior written consent of the Owner, modify, or permit any modification of, the Vehicle in any way;
- (f) the Hirer agrees that the Vehicle comply with their description, are in merchantable condition and are fit for the Hirer's purpose; and
- (g) the Hirer will not encumber the Vehicle or allow the Vehicle to be encumbered or pledge the Vehicle as security in any manner.

7. Learner and Provisional Drivers

- a. A learner driver is not permitted to drive the Vehicle, even if that driving is under the supervision of a qualified driver or instructor.
- b. A holder of a provisional licence may use the Vehicle under the following conditions:
 - 1. The provisional driver has held their licence for a minimum of 12 months.
 - 2. An approved 'P plate' must be displayed on the Vehicle at all times and in keeping with the rules and regulations of the state in which the Hirer is driving.
 - 3. The Hirer must purchase an additional insurance option as directed by the Owner at the time of collection of the Vehicle.
 - 4. The Owner may charge a surcharge for any driver aged between 21-25, that surcharge will be advised to you at collection.
 - 5. Any driver holding a provisional licence must comply with the restrictions imposed by that licence at all times.
 - a.

8. Tolls

When booking with the Owner you agree to any charges associated with the use of toll roads and the terms and conditions of the Roads and Maritime Services, New South Wales (**RMS**). The Owner's Vehicle is fitted with an 'e-tag' device which registers your journey on all Australian toll roads with RMS. RMS will automatically charge a toll fee to Owners account and then Hirer will be required to reimburse the Owner along with a service fee of \$10.

9. Taxes

- a. The Hirer will report and pay all taxes, fees and charges associated with the Vehicle, with the use of the Vehicle, and with revenues and profits arising out of the use of the Vehicle, including, but not limited to, sales taxes, property taxes, and licence and registration fees.
 - b. The Hirer will pay any and all penalties, fines and infringement notices and interest for failure to pay any tax, fee or charge on or before the date on which the payment is due.
 - c. Any penalty, fine, infringement notice or parking fine that is forwarded to the Owner will be deducted from the Hirer's nominated credit card along with a \$99 administration fee.
- (c) Notwithstanding any other provision of this Agreement, the Hirer will not be required to pay any tax, fee or charge if the Hirer is contesting the validity of same in the manner prescribed by the legislation governing the imposition of same, or in the absence of a prescribed form, in a reasonable manner. However, the Hirer will indemnify and reimburse the Owner for damages and expenses incurred by the Owner arising from or related to the Hirer's failure to pay any tax, fee or charge, regardless of whether the Hirer is contesting the validity of the same or not.

- (d) If the Hirer fails to pay any and all taxes, fees, and charges mentioned in this Agreement and the Owner, on behalf of the Hirer, pays the same, the Hirer will reimburse the Owner for the cost upon notification from the Owner of the amount.

10. Indemnity

The Hirer will indemnify and hold harmless the Owner against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees and costs, arising out of or related to the Hirer's use of the Vehicle.

11. Loss, damage or breakdown of Vehicle

- (a) The Hirer will be responsible for any loss or damage to the Vehicle irrespective of how the loss or damage occurred (normal wear and tear excepted) during the Hire Period.
- (b) If there is a breakdown or failure of the Vehicle, then the Hirer must return the Vehicle to the Owner at the Hirer's expense and the Hirer must not attempt to repair the Vehicle.

12. Insurance

- (a) The Owner will maintain current insurance policies in respect of the Vehicle to its full insurable value.
- (b) The Hirer acknowledges a Damage Liability (Depending on the type of cover the hirer has selected) for any damage to the vehicle where two or more vehicles are involved, and the full details of the other vehicle/s have been obtained and provided or loss arising from a single vehicle accident, being an accident where only the Vehicle is involved.
- (c) Damage as a result of flooding, overhead and underbody accidents is the full liability of the Hirer.
- (d) The Hirer may take up available options to limit the applicable excess. Insurance options are provided to the Hirer at the time of their booking.
- (e) The Hirer acknowledges that only the nominated drivers in the contract prior to the hire period commencing are insured to drive the hire car during the hire period.
- (f) The Hirer acknowledges any drivers who are driving the hire vehicle during the hire period who are not a nominated driver in the contract will not be covered under Boyds Bay Car Rentals insurance policies. This will result in the contract being null and void and any damages incurred during the hire period will be at the nominated driver's expense.

(g) The Hirer is required to pay the excess they have selected for any damage that occurs to the Vehicle during the hire period. This includes but is not limited to, at fault accidents, not at fault accidents where the details of the other vehicle(s) were not obtained, flood, fire, theft, hail, single vehicle accidents etc.

(h) The applicable excess selected by the Hirer will be deducted from the Hirer's nominated credit card. If the Hirer is found to be not at fault by the relevant insurer and the Owner receives payment for any repairs, then the deposit will be refunded back to the Hirer's nominated credit card.

(i) If the cost of repairs is lower than the hirers selected excess than the difference between the hirers excess and the cost of repairs will be refunded to the Hirers nominated bank card.

13. Liability

The Hirer will assume all risks and liabilities for and in respect of the Vehicle and for all injuries to or deaths of persons and any damage to property howsoever arising from the Hirer's possession, use, maintenance, repair or storage of the Vehicle.

14. Disclaimer

To the extent permitted by law the Owner disclaims all liability for and does not give any warranties to the Hirer as to the condition of the Vehicle.

15. Title

(a) The Hirer acknowledges that the Owner retains title to the Vehicle and that the Hirer has rights to use the Vehicle as a mere bailee only. The Hirer does not have any right to pledge the Owner's credit in connection with the Vehicle and agrees not to do so.

(b) The Hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the Vehicle and not to conceal or alter the Vehicle or make any addition or alteration to, or repair of, the Vehicle.

16. Repossession

- (c) The Owner may retake possession of the Vehicle if the Hirer breaches any provision of this Agreement, notwithstanding anything else contained in this Agreement.
- (d) If repossession occurs, the Hirer will be liable for the full Hire Fee regardless of when the repossession occurs.

17. Completion of the Hire Period

The Hire Period is completed when the Vehicle have been returned to the Owner:

- (e) in the same condition as when it was hired; and
- (f) on or by the date and time outlined in the Schedule.

18. Default

- (g) The occurrence of any one or more of the following events will constitute an event of default ("**Event of Default**") under this Agreement:
 - (i) The Hirer fails to pay any amount provided for in this Agreement when such amount is due or otherwise breaches the Hirer's obligations under this Agreement.
 - (ii) The Hirer becomes insolvent or makes an assignment of rights or property for the benefit of creditors or files for or has bankruptcy proceedings instituted against it under the bankruptcy law of Australia or another competent jurisdiction.
 - (iii) A writ of attachment or execution is levied on the Vehicle and is not released or satisfied within 10 days.

19. Remedies

On the occurrence of an Event of Default, the Owner will be entitled to pursue any one or more of the following remedies ("Remedies"):

- (a) Declare the entire amount of the Rent for the Term immediately due and payable without notice or demand to the Hirer.
- (b) Commence legal proceedings to recover the Rent and other obligations accrued before and after the Event of Default.
- (c) Take possession of the Vehicle, without demand or notice, wherever same may be located, without any court order or other process of law. The Hirer waives any and all damage occasioned by such taking of possession.
- (d) Terminate this Agreement immediately upon written notice to the Hirer.

- (e) Pursue any other remedy available in law or equity.

20. Non-merger

The covenants, agreements and obligations contained in this Agreement will not merge or terminate upon the termination of this Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

21. Severance

If any provision of this Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this Agreement must be construed as if that provision or part of a provision had been severed from this Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

22. Governing law

This Agreement will be construed in accordance with and governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of there in connection with matters concerning this Agreement.

23. Interpretation

- (f) In this Agreement, unless the context otherwise requires:
 - (i) A reference to the singular includes the plural and vice versa;
 - (ii) A reference to any party to this Agreement includes the party's executors, administrators, successors or permitted assigns, and where applicable, its servants and agents;
 - (iii) A reference to an individual will include corporations and vice versa; and
 - (iv) If a word or expression is defined, its other grammatical forms have a corresponding meaning.
 - (v) Headings are for convenience only and do not affect interpretation.