

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. "Additional driver/s" means such person/s who, in addition to the driver, is/are reflected on the rental agreement as being duly authorized by the company to drive the vehicle.
- 1.2. "Client" means all of the persons, natural or juristic, jointly and severally, whose names appear on the rental agreement, and which shall include any drivers so authorised.
- 1.3. "Company" means Namibia Car Rental Trust (T:74/18) trading as Namibia Car Rental.
- 1.4. "Damages" (in relation to the vehicle) means the actual expenditure in towing, transporting and storing the vehicle, repairing any damage (including tyre and rim damage), replacing parts or accessories (without allowing for depreciation), remunerating an expert to inspect collision damage and report thereon, and reimbursing such expert (an invoice, job card or quotation produced by the company to be prima facie proof of any such expenditure) or any other charges incurred related to an incident of whatsoever nature, and includes a total loss when applicable.
- 1.5. "Day" means a period of 24 hours (or any part thereof), calculated from the time out as reflected on the rental agreement.
- 1.6. "Rental Agreement" means the rental agreement issued by the company to the client and signed by the client and which will have the effect of an agreement between the parties, and which shall include these standard terms and conditions.
- 1.7. "Liability" includes the amounts reflected in the rental agreement pertaining to the non-waiverable amount chargeable in the event of damage, loss and/or theft.
- 1.8. "Driver" means such person who is reflected in the rental agreement as being duly authorized by the company to drive the vehicle.
- 1.9. "Extended period" means any extension of the rental period beyond the agreed return date agreed to and reflected on the agreement and authorised by the company.
- 1.10. "rental period" means the period between the date the vehicle is deemed to have been delivered to the client and the termination date and time as specified on the rental agreement or if such period is extended, the time and date entered on the company's records.
- 1.11. "renting location" means the Company's location from which the vehicle is rented by the client alternatively such location as may be agreed upon by the Company and the Client.
- 1.12. "vehicle" means the vehicle described in the rental agreement including all keys, tyres, tools, equipment, accessories and documents in and on the vehicle when the client takes delivery of the vehicle at the renting location and includes any replacement for the vehicle which has been officially authorised by the company, whether or not such replacement was authorised or approved by the client.
- 1.13. "Total loss" (in relation to a vehicle) means:
 - 1.13.1. damages (see clause 1.4) where the estimated costs of repairs is such that the vehicle is in the sole and absolute discretion of the company uneconomical to repair in relation to the value of and condition of the vehicle at the time of the damage, or
 - 1.13.2. when the vehicle is stolen and/or lost.
- 1.14. "Waiver" means a reduction of liability of the client in the event of damage/accident/theft and or loss of the vehicle and shall include Collision Damage Waiver and Theft Loss Waiver.
- 1.15. The singular shall include the plural and vice versa, pronouns of any gender shall include those of the other gender and natural person shall include legal and juristic persons and vice versa.

2. RENTAL OF THE VEHICLE

The company rents to the client, who hires the vehicle subject to the terms and conditions of this agreement. The client shall be bound by these terms and conditions, whether he was driving or not.

3. DELIVERY OF THE VEHICLE

- 3.1. Delivery of the vehicle shall take place at the time the client, driver or its representative takes possession of the keys and/or vehicle at the renting location.
- 3.2. The vehicle shall be deemed to have been delivered in good order and repair and without any damage to inter alia the paintwork, upholstery and accessories, unless such is noted on the rental contract.

4. USE OF VEHICLE

- 4.1. The vehicle may only be used during the rental period or for the extended period as agreed by the company.
- 4.2. The client agrees that any extension agreed upon and noted on the company's records correctly reflects such extended period.
- 4.3. The vehicle may only be driven by the authorised driver/s as reflected on the rental agreement.
- 4.4. During the rental period, the vehicle may not be used for the conveyance of passengers and/or goods for reward, to propel or tow any other vehicle, (including any caravan or trailer; to transport goods in violation of any customs laws or in any other illegal manner; in any motor sport or similar high risk activity; beyond the borders of Namibia, or in any area where there is or may be a risk for incidents of civil unrest, political disturbance or riot or any activity associated with any of the afore going unless authorised by the company in writing;
- 4.5. The client shall at all times provide for the safety and security of the vehicle and, in particular, but without limiting the generality of the foregoing, the client shall keep the vehicle properly locked and secured and immobilised, and the burglar alarm (if any) activated and any anti-theft device in the vehicle properly secured and in place whilst the vehicle is not in use.
- 4.6. The client shall at all times ensure that the keys of the vehicle are under the client's and/or driver's control.
- 4.7. The company shall at all times remain the owner of the vehicle.

5. RETURN OF THE VEHICLE

- 5.1. The client shall return and hand over the vehicle, at the client's expense on the agreed return date at the renting location to an authorised representative of the company.
 - 5.2. The client acknowledges that failure to return the vehicle in terms of this agreement shall constitute unlawful possession by him, and the company may repossess the vehicle wherever same may be found and from whomsoever is in possession thereof. The client shall be liable for all costs incurred in recovering the vehicle.
 - 5.3. Should the vehicle not be returned as agreed in 5.1 above, then:
 - 5.3.1. any waiver option cover shall become null and void for the whole of the contract period, and
 - 5.3.2. the vehicle may be reported as stolen to the relevant authorities.
 - 5.4. The vehicle shall be returned undamaged, in good order and repair and in roadworthy condition, fair wear and tear excepted.
 - 5.5. If the client returns the vehicle to any agreed renting location of the company, the client shall:
 - 5.5.1. ensure that the vehicle is properly locked and secure; and
 - 5.5.2. hand the keys to an authorised representative of the company.
 - 5.6. The sole risk of loss or damage in and to the vehicle shall remain vested in the client until such time as the company has accepted delivery of the vehicle or until the company has recorded the return of the vehicle.
6. TERMINATION / CANCELLATION OF RENTAL AGREEMENT
- 6.1. Notwithstanding anything to the contrary contained in this agreement, the company may terminate this agreement without any explanation at any time by notice (oral or in writing subject to the circumstances) to the client, whereupon the client shall immediately return the vehicle to the company.
 - 6.2. In the event of the client failing to return the vehicle to the company, the company shall be entitled at any time to take possession of the vehicle, wherever found and from whosoever has possession thereof.
 - 6.3. The obligations of the client and the rights of the company under this agreement shall continue in full force and effect until the vehicle has been returned to the company and the client has complied with all his obligations in terms of this agreement.
 - 6.4. The client shall be liable for and pay any costs incurred in recovering the vehicle in terms hereof.
7. THE CLIENT/DRIVER
- 7.1. The client warrants that at all times:
 - 7.1.1. the vehicle will not be driven by any person whose blood alcohol concentration exceeds the legal limit permitted by any applicable law or regulation or whilst under the influence of intoxicating liquor or a narcotic drug or similar substance, and
 - 7.1.2. that every driver of the vehicle will have a valid licence to drive the vehicle, that he will comply with all applicable laws and will comply in all respects with the provisions of this agreement.
 - 7.2. If the vehicle is driven by anyone other than the driver and/or additional driver/s, then, without derogating from rights or remedies which the company may have, the client shall remain liable for his obligations in terms of this agreement and in particular, he shall be liable to the company as if he had been driving the vehicle.
 - 7.3. The client warrants that he is entitled and duly authorised to enter into this agreement, that all particulars given to the company and/or recorded on the rental agreement are true and correct.
8. RENTAL RATES AND CHARGES
- 8.1. The client agrees to pay the rental rates plus all other charges and fees opted for or services utilised by the client and reflected on the rental agreement up to and including the time of return of the vehicle, including but not limited to miscellaneous charges, airport surcharges, tourism levy, Claims Administration Fee, Contract Fee, Traffic Fine Administration Fee, one way fee, over border charges, delivery fee, collection fee, Collision Damage Waiver Fee (CDW), Theft Loss Waiver (TLW), fuel and refuelling charges, any fuel levies, additional driver(s) fee and/or all taxes due and payable in the rental rates, other charges and fees.
 - 8.2. The client shall be liable for all fines, penalties and like expenses including but not limited to parking, speeding, traffic and other offences, arising out of or concerning the use of the vehicle during the rental period and the client indemnifies the company against any such liability.
9. PAYMENT
- 9.1. All charges payable by the client shall be paid by Electronic Fund Transfer or credit card prior to or on date of commencement of the rental period.
 - 9.2. Unless the client has a valid account with the company, the company requires all or any of the charges to be paid in advance.
 - 9.3. The client shall not set-off or withhold payment of any amounts due to the company in terms of this agreement for any reason whatsoever.
 - 9.4. The client remains liable for payment of all amounts due until the company has been paid in full.
 - 9.5. If the company has agreed to accept payment from the client by credit card or charge card specified on the rental agreement, the client's signature of this agreement will constitute authority for the company to obtain authorization and/or payment. The client's signature shall constitute authority for the issuer of the card to debit it with the total amount due to the company (including but not limited to any damage or loss suffered by the company).
 - 9.6. In the event that the client returns the vehicle to the company prior to the expiry of the rental period on the rental agreement, the client shall pay, at the sole discretion of the company, either the usual rates and charges applicable to the period and/or kilometres actually used, or the rates and charges as if the full rental period and/or kilometres occurred.
 - 9.7. In the event of an accident and/or if the vehicle is stolen and/or lost, the amount of the damages or the total loss as suffered by the company shall be payable on demand.
 - 9.8. If any amount is not paid on due date, the company may in its sole discretion and without prejudice to any rights it may have, charge interest on the overdue amount at the applicable prescribed legal rate (20%) or such lesser amount as it may deem appropriate.

10. CLIENT'S RISK AND LIABILITIES

- 10.1. The vehicle is rented/hired/used at the sole risk of the client (fair wear and tear excepted) from the moment the key and/or vehicle is delivered to the client and is in such client's possession and under his control until such time as the vehicle and key is returned in terms of Clause 5.
- 10.2. The client shall be liable for all and any damage and/or total loss caused to the vehicle, howsoever caused, whether or not it is attributable to his fault or negligence.
- 10.3. The client's liability may be reduced by the client opting for one or more of the company's non-compulsory Collision Damage Waiver (CDW) or Theft Loss Waiver (TLW) products which are subject to the terms stated below. The acceptance or decline of the options referred to are contracted for and indicated on the rental agreement. The liability amount applicable for each option shall be reflected on the rental agreement.
- 10.4. The client shall be liable for the amount indicated as the applicable excess (first liability) as stated in the rental agreement if contracted for and on condition that there was no breach of any of the other conditions of the rental agreement.
- 10.5. Should the vehicle be damaged, stolen or lost in a situation where there was a breach of any of the terms and conditions as contained herein, the client will be liable for the total loss and/or damage suffered by the company (notwithstanding the fact that waivers were opted for).
- 10.6. If Collision Damage Waiver (CDW) or Theft Loss Waiver (TLW) is not selected, the client will be liable for any damage or loss up to the value of the applicable standard waivers/excesses. Applicable excesses shall be authorised against the client's credit card.
- 10.7. Notwithstanding that Waivers (CDW/TLW) are selected the following exclusions shall apply:
 - 10.7.1. damage to tyres and rims, and/or undercarriage,
 - 10.7.2. water and/or mud damage caused by the submersion of the vehicle partially or wholly in water or muddy waters (on or off road) or flooded rivers,
 - 10.7.3. damage caused by sandstorms or sand blasting caused by windy conditions,
 - 10.7.4. damage to or loss of camping equipment
 - 10.7.5. Under-carriage, body or roof-damage caused by the incorrect use of the vehicle, negligence, driving and/or reversing over/into stationary objects or another vehicle and driving off any proclaimed roads, including incidents on parking areas at lodges, hotels, shopping centres, campsites or while negotiating an off-road track/obstacle.)
 - 10.7.6. The use of On-Road vehicles (compact sedans/hatches) on any gravel road voids ALL WAIVERS.
 - 10.7.7. The Clutch of the vehicle. Off road trips in sand (sand dunes) or otherwise are undertaken at the renter's sole risk. The renter shall be liable for any mechanical (clutch) and/or other damages caused to the vehicle including the costs of recovery of the vehicle should the vehicle be damaged in such circumstances.
 - 10.7.8. damage and/or total loss sustained whilst the client is in breach of any applicable traffic laws or ordinances, including whilst driving under the influence of alcohol and/or drugs.
 - 10.7.9. damage and/or total loss sustained where incidents were not reported as contemplated in clause 12.
 - 10.7.10. damage and/or total loss sustained where the incident took place outside the country in which the vehicle was rented unless prior written authority for the vehicle to be taken outside such country had been obtained.
 - 10.7.11. damage and/or total loss sustained if at any time the vehicle is driven by an unauthorized driver.
 - 10.7.12. damage and/or total loss sustained when in the opinion of the company the vehicle has been driven or used in such manner which prejudices the company's interests or rights therein and/or as prohibited in clause 4.
 - 10.7.13. damage and/or total loss sustained whilst the driver was not holding a valid unendorsed drivers license at the time the damage or loss was sustained.
 - 10.7.14. damage and/or total loss sustained where an extension of the rental agreement was not authorised by the company and the rental period had expired.
 - 10.7.15. exceeding speed limits, 120 km/h national roads (or as indicated), 80 km/h on gravel roads (or lower if sign posted), 60 km/h in national parks, 60 km/h in urban areas or such speed as indicated, enforced by law.
 - 10.7.16. Travel during the hours of darkness outside of any urban areas may negate elected Waivers.
- 10.8. Notwithstanding anything to the contrary in this agreement, the company shall not be obliged to institute or proceed with any claim which the company may otherwise have had against a third party for the recovery of any loss or damage to or in connection with the vehicle and the company shall be entitled, in its fair and reasonable discretion, to abandon such claim or to settle such claim on any terms it deems fit.

11. CONSEQUENTIAL DAMAGES (Waivers declined)

Should the client not opt for any of the waivers offered by the company, the client shall be liable, in addition to any other amount provided for in the rental agreement, for damages suffered by the company as a consequence of it being unable to rent the vehicle, which damages will be calculated on the basis of the contracted daily rate on the rental agreement or on the official rates brochure plus 100 kilometres per day for the period of the vehicle being inoperative, limited to a maximum of 60 (sixty) days.

12. PROCEDURE IN THE EVENT OF AN INCIDENT INVOLVING THE VEHICLE

- 12.1. If at any time the vehicle is damaged, stolen or lost, the client shall take every precaution to safeguard the interests of the company including but without being limited to, the following where appropriate:
 - 12.1.1. he shall notify the company immediately or within 3 hours of becoming aware of the occurrence and shall within twenty-four hours of the occurrence in question complete and furnish to the company, the company's standard claim form together with a copy of his driver's license.
 - 12.1.2. he shall obtain the name(s) and addresses of every person or entity involved and possible witnesses.
 - 12.1.3. he shall not admit any responsibility or liability nor release any party from any liability or potential liability nor settle any claim or potential claim against or by any party nor accept any disclaimer of liability.
 - 12.1.4. he shall notify the police within twenty-four hours of the occurrence in question and furnish the company with the relevant case number.
 - 12.1.5. he shall co-operate with the company and insurer in the investigation, the making or instituting of any claim or action and the defence of any prosecution, claim or action relating to the incident (including the making of an affidavit if he is requested to do so).

- 12.2. If the client is not the driver, then, without in any way derogating from the client's obligations in terms of this clause 13, the client shall procure that the driver complies with the provisions of 12.1 and the client undertakes to ensure that the driver will do so.
- 12.3. The client shall within 24 hours of receipt thereof furnish the company with (and if the client is not the driver, the client shall procure that the driver does so) any notice of claim, demand, summons or the like which the client or the driver may receive in connection with the vehicle.
- 12.4. The client warrants that the information completed in the company's claim form as referred to in 12.1.1 will be complete, true and correct in every respect.

13. INDEMNITY OF THE COMPANY BY CLIENT

- 13.1. The company and all of its directors, officers, employees, servants or agents shall NOT be liable for any loss or damage (including any loss or damage to property left or transported in the vehicle, any loss of life or any loss or damage arising from the installation or condition of a child seat or any other accessory in and/or on the vehicle), whether direct, indirect, consequential or otherwise arising from the rental by the client of the vehicle, including, without limitation, any defect in and/or mechanical failure of the vehicle (howsoever arising and of whatsoever nature) or the failure of the company to detect, defect in or mechanical problems with the vehicle and whether such loss or damage results from breach of contract or delict, whether negligent or otherwise, which may be suffered by the client and/or third party and/or passenger.
- 13.2. The company, its directors, officers, employees, servants or agents ("it") are accordingly indemnified by the client and/or his estate and/or successor in title against any claim of any nature whatsoever and howsoever arising for any damages or loss which might be instituted against it arising from or connected with or pursuant to the renting of the vehicle contemplated in this agreement.

14. JOINT AND SEVERAL LIABILITY OF SIGNATORIES, THE CLIENT AND/OR DRIVER

- 14.1. The client (as defined above) and every person whose signature appears on the car rental contract and any driver of the vehicle during the rental period shall be liable, jointly and severally, the one paying the other to be absolved for payment of all amounts due to the company in terms of or pursuant to this rental agreement.

15. GENERAL

- 15.1. This rental agreement is the entire agreement between the parties regarding the matters contained herein and neither party shall be bound by any cancellation, undertakings, representations, warranties, promises or the like (other than the company extending the agreed return date) not recorded in writing by the company except if provided for herein.
- 15.2. If any provision of the rental agreement is found by a court of law to be invalid or void, such provision will be severed from the remaining provisions, without affecting the remainder of the provisions hereof.
- 15.3. No extension, latitude or other indulgence that may be given or is allowed by any party in respect of performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this rental agreement, and no single or partial exercise of any right by any party under this rental agreement will in any circumstances be construed as implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any party's rights in terms of or arising from this rental agreement or stop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 15.4. The client authorises the company to insert any particulars in the agreement that are not known or are unavailable at the time of signature.
- 15.5. This agreement and all matters or disputes arising there from or incidental thereto shall be governed and constructed in accordance with the laws of the Republic of Namibia.
- 15.6. The client consents to the jurisdiction of the Magistrates Court, notwithstanding the fact that the amount involved exceeds the jurisdiction of the Magistrates Court. The client agrees, however, that the company in its sole and absolute discretion may institute any such action or proceedings in any division of the High Court that may have jurisdiction.
- 15.7. The client shall not be entitled to cede any of his rights or assign any of his obligations under this agreement or to rent or part with possession of the vehicle, its tools or equipment or any part of it.
- 15.8. If the company institutes any legal proceedings against the client to enforce any of its rights under this agreement it shall be entitled to recover from the client all the legal costs it incurs to its own attorneys in accordance with their then usual charges and assessed as between attorney and own client including but not limited to collection commission and tracing agent charges.
- 15.9. The client chooses the address specified on the rental agreement as his domicilium citandi et executandi (i.e. address for service of all legal process).
- 15.10. The company shall be entitled to conduct a credit check on the client with one or more credit agencies who may retain a record thereof and the company shall be entitled to record any default by the client with any credit agency. Such records may be made available by the credit agency to third parties, in which case to company shall not be held liable for any repercussions such disclosure may have on the client. The client agrees that the company may disclose any information obtained by it because of the conclusion and/or breach of the rental agreement, including personal and additional information, to any person including a credit bureau.
- 15.11. The client acknowledges that vehicles are fitted with a vehicle management system, which is used to inter alia, record speed and other information relating to the vehicle rented. The company shall be entitled to use such information (including in court proceedings) as it deems fit.