

Rental Agreement

The Rental Agreement (“Rental Agreement”) between Bayscoot and Wheels and You is conducted on the date shown on the Rental Document You have signed in respect of the Vehicle (“Rental Document”), and is made up of that Rental Document and these Terms and Conditions.

In these Terms and Conditions:

“Australian Consumer Law” means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (cth) as amended or replaced from time to time.

“Authorised Driver or Rider/ Joint Renter” means:

an additional driver who is noted on the Rental Agreement as an Authorised Driver or Joint Renter.

“Bayscoot and Wheels” means Empark Pty Ltd ABN 36 061 679 445

“Driver” means the person who controls the rental vehicle, including two, three or four wheel vehicles.

“Rental Period” means the period commencing on the date shown on the Rental Document and ending on the date that You return the Vehicle to Bayscoot and Wheels;

“Substitute Vehicle Insurance” means a policy of motor vehicle insurance held by You or an Authorised Driver which covers You or the Authorised Driver while You or the Authorised Driver use the Vehicle as a substitute for the vehicle insured under that policy;

“Vehicle” means the vehicle described on the Rental Document(or any substitute vehicle), including two wheel, three wheel and four wheel powered NSW road registered types, and its parts, components, accessories and contents supplied by Bayscoot and Wheels;

“You” or “Your” refers to the person(s) with whom the Rental Agreement is made.

“Your Consumer Rights” means Your rights as a consumer under applicable consumer protection legislation, including the Australian Consumer Law, which cannot be excluded, restricted or modified by this Rental Agreement.

1. DRIVER

1.1 You agree, acknowledge and warrant that:

(a) only You or an Authorised Driver will drive the Vehicle; and

(b) You and any Authorised Driver are currently licensed to drive the Vehicle and have been so licenced to drive for a period of 12 months or longer (excluding any time under a learner's permit or a provisional licence); and

(c) You and the Authorised Driver are not under 21 years of age

(d) You and the Authorised Driver have been qualified and given Bayscoot and Wheels true and un-fraudulent drivers license

2. WHERE YOU CAN AND CANNOT DRIVE THE VEHICLE

2.1 You and any Authorised Driver must only use the Vehicle on a road, which is properly formed and constructed as a sealed, metalled or graded gravel road.

2.2 You and any Authorised Driver must not, unless authorised in writing by Bayscoot and Wheels, drive or take the Vehicle:

(a) on beaches or through streams, rivers, creeks, dams or floodwaters.

(b) on an unsealed or gravel roads

3. USE OF THE VEHICLE

3.1 You and any Authorised Driver must:

(a) not allow the Vehicle to be used for any illegal purpose, race, contest or performance test of any kind;

(b) not allow the Vehicle to be used to tow or push anything without prior consent of Bayscoot and Wheels

(c) not carry more passengers than may be properly accommodated by the seats or the seat belt restraints provided in the Vehicle, or carry a greater load than that for which it was built;

(d) not be under the influence of alcohol, drugs or have a blood alcohol content that exceeds the legal limit in the State or Territory in which the Vehicle is driven;

(e) not allow the Vehicle to be used to carry passengers for payment or reward of any kind;

(f) not use the Vehicle when it has been damaged and unsafe;

(g) not use the Vehicle to transport goods, except in compliance with

all necessary approvals, permits, licences and government requirements (to be obtained at Your cost) and in accordance with the Vehicle manufacturer's and Bayscot and Wheels recommendations;

(h) not use the Vehicle for the conveyance or towing of any load which is incorrectly loaded or secured or is in excess of that for which the Vehicle was constructed;

(i) not, without Bayscot and Wheels prior written consent, use the Vehicle to carry any inflammable substance which has a flash point under 22.8°C or any other explosive or corrosive substances; and

(j) not use the Vehicle in contravention of any law.

3.2 You must pay for any unauthorised repairs to the Vehicle and for all

parking and traffic infringements in respect of the Vehicle during the

Rental Period.

3.3 You and any Authorised Driver must not carry any animal or pet in the Vehicle.

3.4 You and any Authorised Driver must not drive the Vehicle if Bayscot and wheels has so directed You and any Authorised Driver.

3.5 You and any Authorised Driver or any passenger must not smoke in or on the Vehicle.

4. MAINTENANCE, SECURITY AND SAFETY

4.1 You and any Authorised Driver must:

(a) maintain all of the Vehicle's engine oils and engine coolant levels to the manufacturer's specifications, as set out in the Vehicle's operations manual located in the glove box or under the seat or otherwise as required to maintain the Vehicle's efficient performance;

(b) keep the Vehicle locked or steering locked and the keys under Your or the Authorised

Driver's personal control at all times; and

(c) comply with any applicable seat belt and child restraint laws.

4.2 You must not service the Vehicle or have repairs to the Vehicle carried out unless Bayscoot and Wheels authorises You to do so. Bayscoot and Wheels requires verification of the cost of repairs for audit and GST purposes. You should obtain an original tax invoice/receipt to assist Bayscoot and Wheels. Bayscoot and Wheels will reimburse You for any repairs to the vehicle authorised by it, provided that the cost of those repairs is verified to the extent that cannot verify the cost of repairs, Bayscoot and Wheels will not reimburse You.

4.3 You and Bayscoot and Wheels acknowledge that the Vehicle is generally in an undamaged condition except as otherwise stated on the Rental Document

5. LOSS DAMAGE WAIVER, DAMAGE AND LOSS OF PROPERTY

5.1 Subject to this clause 5, and to the fullest extent permitted by applicable law, You are liable:

(a) for the loss of, and all damage to, the Vehicle; and

(b) for all damage to the property of any person:

(i) which is caused or contributed to by You or an Authorised Driver; or

(ii) which arises from the use of the Vehicle by You or an Authorised Driver.

This clause 5 does not apply to any damage or loss for which Bayscoot and Wheels is liable to You under this Rental Agreement.

Remember that references to the "Vehicle" include all of its parts, components, accessories and contents (see the definition of "Vehicle" in clause 1).

5.2 Subject to clause 5.3, if:

(a) You accept the Loss Damage Waiver option on the Rental Document at the commencement of the Rental Period; and

(b) where applicable, You pay the excess shown on the Rental Document for each separate event involving damage to or loss of, the Vehicle or for each separate event involving damage to the property of any third party which is caused by or arises from the use of the Vehicle by You or an Authorised Driver, Bayscoot and Wheels;

(c) waives Your liability under clause 5.1 for damage to the Vehicle or loss of the Vehicle;

(d) provided that You and any Authorised Driver are entitled to be indemnified under a policy of motor vehicle insurance provided by a registered insurer for Your and an Authorised Driver's legal liability to a third party for damage to the property of that third party which is caused by the use of the Vehicle by You or an Authorised Driver.

5.3 You must always pay, and clause 5.2 does not cover:

(a) the excess shown on the Rental Document if there is damage to or loss of the Vehicle or if there is damage to the property of any third party;

(b) the cost of rectifying any tyre damage not attributable to normal wear and tear;

(c) the cost of repairing any damage caused deliberately or recklessly by:

(i) You;

(ii) any other driver of the Vehicle; or

(iii) any passenger carried during the Rental Period;

(d) the cost of repairing any damage to the Vehicle or to third party property caused by You or an Authorised Driver using, or permitting the Vehicle to be used,

in any area prohibited by the Rental Agreement;

(e) the cost of repairing overhead or roof damage caused by, but not limited to, contact between the Vehicle and objects overhanging or obstructing the path of the Vehicle; or

(f) the cost of repairing any water damage to the Vehicle or any underbody damage, and any resulting damage from that underbody damage, to the Vehicle.

(g) under any circumstances where the Vehicle has been refuelled with fuel other than that recommended by the Vehicle manufacturer.

(h) under any circumstances where the Vehicle and its keys are unsecured.

5.4 For the purposes of this clause 5, You must pay for any damage or repair that may be reasonably determined by Bayscoot and Wheels the amount which includes:

(a) the cost of repairs to the Vehicle or the market value of the Vehicle

at the time of the loss or damage, whichever is the lesser;

(b) appraisal fees;

(c) towing, storage and recovery costs;

(d) a reasonable administrative fee reflecting the cost of making arrangements for repairs and towing and other administrative activities; and

(e) a per day loss of use fee based on the estimated downtime of the Vehicle.

If the amount determined by Bayscoot and Wheels and paid by You under this clause 5.4 exceeds the final cost of the damage or repair, Bayscoot and Wheels will refund the difference to You.

6. RETURN OF VEHICLE

6.1 You must return the Vehicle or have it ready to be picked up by Bayscoot and Wheels

(a) to the place, on the date and by the time shown on the Rental Document (or sooner if required under clause 6.4);

(b) in the same condition as it was at the commencement of the Rental Period, fair wear and tear excepted;

(c) with a full tank of fuel (or otherwise pay to Bayscoot and Wheels the cost to refuel the Vehicle).

6.2 You must return the Vehicle to the agreed Bayscoot and Wheels location during our normal business hours. If You return the vehicle later than the time shown on the rental document, You must pay all additional rental charges.

6.3 If:

(a) You return the Vehicle on a date, or at a time, or to a place other than that shown on the Rental Document; or

(b) any special conditions set out in the "Rates" section on the Rental Document are breached, the rates shown on the Rental Document will not apply and You must pay Bayscoot and Wheels the standard rate for the Vehicle for the Rental Period.

6.4 Bayscoot and Wheels may request the immediate return of the Vehicle, or Bayscoot and Wheels may re-take the Vehicle without notice, if Bayscoot and Wheels reasonably suspects that:

- (a) You have breached a term or condition of the Rental Agreement;
- (b) damage to the Vehicle, or injury to persons or property is likely to occur; or
- (c) the Vehicle will be involved in an industrial dispute; or
- (d) the Vehicle may be used for an unlawful purpose;

You must also pay Bayscoot and Wheels any cost it incurs as well as all costs and charges under the Rental Agreement for the period up to return/repossession of the Vehicle.

6.5 Bayscoot and Wheels reserves the right to refuse hire of another vehicle to You following any incident or accident or where You have breached a condition of this Rental Agreement.

7. CLAIMS AND PROCEEDINGS

7.1 Where the use of the Vehicle by You, an Authorised Driver, or any other person results in an accident or claim, or where damage or loss is sustained to the Vehicle or any third party property, You and/or any Authorised Driver must:

- (a) promptly report such incident to the local police;
- (b) promptly report such incident in writing to Bayscoot and Wheels
- (c) not without Bayscoot and Wheels written consent, make or give any offer, promise of payment, settlement, waiver, release, indemnity or admission of liability;
- (d) permit Bayscoot and Wheels or its insurer at its own cost to bring, defend, enforce or settle any legal proceedings against a third party in Your name;
- (e) permit or ensure that Bayscoot and Wheels may claim in Your name or that of the Authorised Driver under any applicable substitute Vehicle Insurance, and assist, and cause the Authorised Driver to assist, Rental Car Company Name in making such a claim, including assigning any right to claim under any Substitute Vehicle Insurance to Rental Car Company Name;
- (f) complete and furnish to Bayscoot and wheels within a reasonable time any statement, information or assistance which Bayscoot and Wheels or its insurer may reasonably require, including attending at a lawyer's office and at Court to give evidence.

8. PAYMENT

8.1 At the end of the Rental Period, You must pay Bayscoot and Wheels on demand:

(a) all charges specified on the Rental Document and all charges payable under the Rental Agreement;

(b) any amount paid or payable by Bayscoot and Wheels or You to any person arising out of Your use of the Vehicle or imposed on You or Bayscoot and Wheels by any governmental or other competent authority (such as speeding, parking and traffic fines, fuel and toll charges);

(c) any amount for which You are liable to Bayscoot and Wheels under the Rental Agreement, in respect of a breach of the Rental Agreement or otherwise.

8.2 The minimum charge You must pay for the rental of the Vehicle is an amount equivalent to:

(a) one day's rental at the "daily rate" shown on the Rental Document (subject to clause 6.4); plus

(b) the amount payable for the number of kilometres driven during the Rental Period.

8.3 Distance charges are measured from the Vehicle's odometer.

8.4 You authorise Bayscoot and Wheels to charge all moneys payable to Bayscoot and Wheels under the Rental Agreement to Your credit card account or deduct from the Bond.

8.5 Bayscoot and Wheels will pay any refund due to You by such method as Bayscoot and Wheels may reasonably choose.

9. LIABILITY OF Bayscoot and Wheels

9.1 Unless it is negligent, Bayscoot and Wheels is not liable to any person, and You indemnify Bayscoot and Wheels, for any loss of, or damage to, any property:

(a) stolen from the Vehicle or otherwise lost during the rental; or

(b) left in the Vehicle after its return to Bayscoot and Wheels.

9.2 Neither clause 9.1 nor any other provision of the Rental Agreement is intended to exclude, restrict or modify any non-excludable terms implied by or rights which You may have under the Trade Practices Act 1974 (Cth) ("the TPA") or any other State or Territory legislation to the same effect.

9.3 If Your Rental Agreement is a contract for the supply of “recreational services” as defined by section 68B of the TPA or any comparable legislation, Bayscoot and Wheels has no liability to You or an Authorised Driver for death or personal injury arising in connection with any breach by Bayscoot and Wheels of any term implied by section 74 of the TPA or any comparable legislation.

10. TERMINATION

10.1 Either party may terminate the Rental Agreement at any time if the other party commits a material breach of the Rental Agreement.

10.2 You may terminate the Rental Agreement at any time for any other reason.

10.3 If the Rental Agreement is terminated early for any reason other than a breach by Bayscoot and Wheels, You agree to pay rental charges that reflect the actual duration of the rental. Such charges may be higher than those that apply for a longer rental period.

11. MISCELLANEOUS

11.1 The Rental Agreement contains the whole agreement between the parties.

11.2 Any waiver by a party of any one breach or default by the other party will not constitute a waiver of any other breach or default.

11.3 The agreement is governed by the law of the State or Territory of the Rental location. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement. The parties will not object to the exercise of jurisdiction by those courts on any basis.

12. PRESUMPTIONS AND INTERPRETATION

12.1 Unless the context otherwise requires:

- (a) A word which denotes the singular denotes the plural and vice versa;
- (b) Any gender denotes the other genders; and
- (c) A person includes an individual, a body corporate and a government body.

12.2 Unless the context otherwise requires, a reference to:

- (a) Any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replaced legislation;

(b) Any other agreement or instrument, where amended or replaced, means that agreement or instrument as amended or replaced.