

These Vehicle Services Conditions set out the terms on which Services will be provided by Us to You and form part of the Services Agreement. We will provide the Services in accordance with the Services Agreement for the term specified in the Services Agreement.

**1 Definitions**

**"Abandoned Goods"** means vehicles which have not been accepted for delivery and remain in Our possession for 28 days after the date of arrival at the delivery destination, or in the case of Vehicle storage Services, 28 days after the end of the storage term.

**"Chain of Responsibility Laws"** means the National Heavy Vehicle Law and regulations or any laws of Australia that relate to road transport, including but not limited to a law or regulation relating to transport of Dangerous Goods, fatigue management, speeding, speed limiting, maintenance, load restraint, mass or dimension.

**"Charges"** means Our quoted Charges for the Services calculated under Our rates schedule or other agreed rates, taxes, duties and government Charges levied on the Services and any other amounts under clauses 3.2, 5, 6.3, 6.4 and 6.5.

**"Dangerous Goods"** mean any articles or substances which are, or may become a risk to health, safety, property or the environment as defined in the Australian Dangerous Goods Code current as at the date of the Services Agreement (but not substances located in the fuel tank of a Vehicle, including petrol, diesel and LP gas).

**"Force Majeure Event"** means circumstances outside Our reasonable control causing delays or inability, wholly or in part, to perform any obligations under this Agreement; including without limitation, fire, storm (including hail), flood, earthquake, wildlife impact, explosion, accident, road or rail closures, road works, breakdown of equipment or infrastructure, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, labour dispute or shortage, act or omission of any third party, person or public authority.

**"Hidden Defect"** means a defect or fault in a Vehicle that is not visible at the time of inspection for the purpose of issuing Our Vehicle Condition Report, and which is the cause of or contributes to any damage, deterioration or wastage to a Vehicle.

**"Modifications"** has the meaning given in clause 6.3(e)(i).

**"Service Period"** means the period commencing when You sign or are otherwise deemed to have accepted the Vehicle Condition Report/Service Agreement and ending on the delivery or handover of the Vehicle.

**"Services"** means the agreed operations and Services to be performed by Us.

**"Services Agreement"** means the Agreement (inclusive of any booking confirmation, pricing schedule or schedule of particulars) between Us and You in relation to the provision of the Services.

**"Us", "We", "Our"** means Prixcar Services Pty. Ltd. ACN 007 063 505 and its related bodies corporate, (as defined in the *Corporations Act 2001* (Cth)).

**"Vehicle(s)"** means the car(s), motorcycle(s), trailer(s), machinery, equipment or item(s) picked up or accepted from You or on Your behalf.

**"Vehicle Condition Report"** has the meaning set out in clause 2.4.

**"Vehicle Services Conditions"** means these terms and conditions.

**"You", "Your"** means the customer (or their nominated representative or authorised agent) contracting with Us on the terms of the Services Agreement.

**2 What You Need to Know About Us and Our Services**

2.1 We rely on the details and information supplied by You and We do not admit the accuracy or completeness of those details or information and will not be liable if the Vehicle is not correctly described.

2.2 Our provision of the Services, commence when We, or Our agent, pick up or accept the Vehicle, and You sign or are deemed to have accepted the Vehicle Condition Report.

2.3 You acknowledge and agree that Our employees, agents and subcontractors can rely on the provisions of the Services Agreement (including any exclusions or limitations of liability We have) to the same extent as Us and We hold such benefit on trust for Our employees, agents and subcontractors.

2.4 When We collect or accept the Vehicle from You, We will examine the Vehicle and may take photographs to prepare a vehicle condition report ("**Vehicle Condition Report**").

2.5 You acknowledge the condition of the Vehicle by undertaking a joint survey with our representative/driver at point of uplift/drop off or delivery/collection noting any damage on the Vehicle Condition Report and accept the Vehicle Condition Report by:

- (a) signing the Vehicle Condition Report; or
- (b) if You do not sign the Vehicle Condition Report, then it is deemed accurate in all material respects.

**3 Dangerous Goods**

3.1 You must not tender for Services of, and You warrant that the Vehicle does not contain any Dangerous Goods.

3.2 If You leave any Dangerous Goods in the Vehicle We may, at Your expense, dispose of or destroy them as We see fit in Our absolute discretion or take such other action as We consider necessary to mitigate any risk that may be caused by the Dangerous Goods.

**4 Your Promises**

4.1 You promise Us that:

- (a) You are either the owner or the authorised agent of the owner of the Vehicle and have authority to enter into the Services Agreement;
- (b) You have fully and accurately described the Vehicle (and its value where required) including appropriate handling instructions;
- (c) all information You have provided to Us is accurate and true and that You will provide Us with any further information We reasonably require for the purpose of providing the Services to You;
- (d) any accessories (other than permanently factory fitted accessories), including but not limited to aerials, personal items and effects, have been removed from the Vehicle. Such accessories are at Your risk at all times and We exclude all liability for any loss or damage caused to them;
- (e) the Vehicle:
  - (i) can be safely handled and transported;
  - (ii) can be moved under its own power;
  - (iii) has working brakes, windows are intact and there are no loose panels; and
  - (iv) has a minimum ground clearance of 15 centimetres (unless otherwise agreed in writing);
- (f) You will comply with all applicable Chain of Responsibility Laws; and
- (g) You will comply with any directions, procedures or policies advised or notified by Us or Our associates to You or Your associates with respect to packing, loading or unloading of the Vehicle or entry into, use of or egress from a site.

4.2 To the maximum extent permitted by law and except to the extent caused or contributed to by Our negligent act or omission, You are liable and indemnify Us and hold Us, Our officers, agents, employees and subcontractors harmless from and against all claims (including any legal costs on a full indemnity basis) resulting directly or indirectly from:

- (a) a breach by You or Your associates of any term of the Services Agreement;
- (b) damage to any real and personal property and any injury to or death of any person, caused by a negligent act or omission of You or Your Associates arising out of or in connection with the Services Agreement; or
- (c) any other liability suffered or incurred by Us arising out of or in connection with Our provision of the Services under the Services Agreement.

Including any damages for indirect loss, delay, loss of profit or business opportunity, relating to any amount payable under the Services Agreement or arising out of or in any way connected with any actual or alleged breach of any promise, obligation or warranty under the Services Agreement or any breach of Law.

**5 What We Can Do**

5.1 We may at Your risk and expense refuse to provide some or all of the Services or provide them in a manner other than that previously agreed if We are required to do so by law or consider it necessary in the interest of safety. If this is the case, We will promptly notify You and We will specify a reasonable period of time by which the Vehicle must be collected by You.

5.2 If You fail to collect the Vehicle from Us within 2 days of the agreed collection date or within 2 days after We notify You the Vehicle is available for collection, whichever is the later, We are entitled to charge for the storage of the Vehicle and We may remove the Vehicle to a storage facility, return the Vehicle to You or Your associate or treat the Vehicle as Abandoned Goods at Your risk and expense.

5.3 We may set-off or deduct from any payment due to You, any Charges You owe Us.

5.4 We can:

- (a) deliver the Vehicle at the delivery address supplied by You or Your agent and We will be taken to have delivered the Vehicle if at the delivery address We obtain an acknowledgement of delivery or delivery occurs under clause 5.4(c);
- (b) deviate from any usual route or mode of transport to provide the Services; and
- (c) subcontract the Services. If the delivery address is unattended during normal business hours or, if the delivery address is a private address, during the prearranged delivery period, We

## SERVICES

can, at Your expense, return the Vehicle to Our nearest depot which will constitute delivery.

**6 Our Charges**

- 6.1 You must pay Our Charges in accordance with the Services Agreement or otherwise as agreed between the parties in writing.
- 6.2 The Charges are confidential and You agree not to disclose them to any third party.
- 6.3 You must pay:
- (a) any cleaning charge or cost, if cleaning of the Vehicle is required by a quarantine authority;
  - (b) Our cost if We are unable to pick up a Vehicle during normal business hours or, for a private address for pick up, during the pre-arranged pick up period;
  - (c) Our cost of returning the Vehicle to Our nearest depot;
  - (d) interest at the rate under the *Penalty Interest Rates Act 1983* (Vic) if any Charges are not paid on the due date; and
  - (e) any additional Charges incurred:
    - (i) due to undeclared modifications that have been made to the Vehicle (including but not limited to the fitting of bull bars, roof racks, or special fittings whether or not included on the Vehicle at the time of purchase by You) ("**Modifications**");
    - (ii) because the Vehicle is an oversized Vehicle; or
    - (iii) because the Vehicle has not been accurately described at the time of the booking.
- 6.4 Unless otherwise expressly stated, all Charges payable under the Services Agreement are exclusive of GST. If GST is payable, on any supply made under the Services Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply. The recipient must pay this amount in addition to and at the same time that the consideration for the supply is to be provided under the Services Agreement.
- 6.5 Unless otherwise expressly stated, all prices are exclusive of a fuel levy. If a fuel levy is applicable and payable under the Services Agreement, You must pay the relevant fuel levy amount applied to the charge.

**7 Limitations and Exclusions on Our Liability to You**

- 7.1 Subject to this clause 7, Vehicles are at Your risk at all times and We exclude all liability for any loss or damage arising from the performance or non-performance of the Services other than any physical loss or damage to the Vehicle caused by Our negligent act or omission, in which case Our liability will be limited to (at Our election):
- (a) in the case of goods, the repair of the goods or the payment of the cost of having the goods repaired; or
  - (b) in the case of Services, the resupply of the Services or the cost of having the Services resupplied.
- 7.2 Before We assume or accept any liability under clause 7.1, We may appoint an independent loss adjuster to determine the quantum of any loss or liability and You agree to accept any such determination or finding.
- 7.3 If clause 7.1 (a) applies and the market value or purchase price of the Vehicle is less than the cost of having the Vehicle repaired (as determined by an independent loss adjuster appointed by us), We may elect to pay either the market value or the purchase price of the Vehicle, (whichever is the lesser amount minus any salvage applicable) in full satisfaction of Our liability under clause 7.1.
- 7.4 We have no liability for:
- (a) loss or damage that occurs or can be referred to a period outside the Service Period;
  - (b) damage to the Vehicle unless the damage is noted and signed for on the delivery receipt copy of the Vehicle Condition Report;
  - (c) minor damage or markings which are not visible from one metre;
  - (d) inherit vice, wear and tear, mechanical or electrical damage, loss or damage to personal property or effects from or within the Vehicle, damage due to movement of objects within the Vehicle, damage or loss to any non-standard motor vehicle accessory which is not permanently affixed to the Vehicle, insect/bug marks, pre-existing damage, bird/animal droppings, rail dust, stone chip(s), Hidden Defect, environmental damage, industrial fallout, rust spots, airborne objects, hail damage, damage to or loss to any Modifications that have not been correctly installed, sabotage or vandalism;
  - (e) loss or damage arising from a breach by You of the Chain of Responsibility Laws;
  - (f) any indirect, special or consequential loss or damage including the request or requirement for a hire vehicle, loss of profits,

business or anticipated savings or other economic loss, even if We know they are possible or otherwise foreseeable; or

- (g) loss or damage arising from or connected to a Force Majeure Event.
- 7.5 Your right to compensation for any claim for loss or damage will be extinguished and We shall be discharged of all liability unless:
- (a) notice of any claim is received by Us in writing within 14 days after the date specified in clause 7.6, or within a reasonable time after that date if You prove that it was impossible to so notify; and
  - (b) suit is brought in the proper forum and written notice thereof received by Us within 9 months after the date specified in clause 7.6.
- 7.6 For the purposes of clause 7.5, the applicable dates are:
- (a) In the case of loss or damage, the date of delivery of the Vehicle(s);
  - (b) In the case of delay or non-delivery, the date that the Vehicle(s) should have been delivered; and
  - (c) In any other case, the event giving rise to the claim.
- 7.7 To the maximum extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from the Services Agreement. Where any legislation implies in the Services Agreement any condition or warranty and that legislation prohibits provisions in a contract excluding or modifying the application of the condition or warranty, such condition or warranty shall be deemed to be included in the Services Agreement. However, Our liability for any breach of such condition or warranty shall if permitted by that legislation be limited in the manner set out in clause 7.1.

**8 Insurance**

- 8.1 You acknowledge that We do not provide insurance in respect of the Vehicle and that You are responsible for obtaining any insurance You require relating to the Vehicle.
- 8.2 If You are not an individual seeking Our Services wholly or predominantly for personal, domestic or household use, You must at all times during the Service Period have in place third party property insurance and public risk liability insurance to a minimum value of \$20,000,000 and such other insurances as are required by law.

**9 Force Majeure**

If We cannot carry out an obligation under the Services Agreement in whole or in part because of a Force Majeure Event, the requirement on Us to carry out that obligation under the Services Agreement will be suspended for the duration of the Force Majeure Event or waived to the extent applicable.

**10 Other Matters Which Affect the Contract**

- 10.1 The laws of Victoria apply to the Services Agreement and You must submit to the exclusive jurisdiction of the courts of Victoria.
- 10.2 The provisions of the Services Agreement prevail over any other agreement, arrangement or understanding applicable to the Services.
- 10.3 The Services Agreement can only be amended, supplemented, replaced by another document signed by both parties.
- 10.4 Nothing in the Services Agreement creates a relationship of employer and employee, principal and agent or partnership between the parties.
- 10.5 The Services Agreement may be executed in any number of counterparts.
- 10.6 If a provision of the Services Agreement or part of such a provision is unenforceable, it must be severed from the Services Agreement, and does not make the rest of the Services Agreement unenforceable.
- 10.7 We are not bound by any waiver, discharge or release of a provision of the Services Agreement unless it is in writing and signed by or for Us.
- 10.8 You consent to Us effecting a registration on the Personal Property Securities Register (as defined in the *Personal Property Securities Act 2009* (Cth)) (in any manner We determine) of any security interest arising under or in connection with the Services Agreement and You agree to provide all assistance reasonably required by Us and to sign all documents necessary to facilitate this.

**11 Termination**

Either party may immediately suspend or terminate the Services Agreement by written notice to the other party if the other party:

- (a) fails to pay any amount owing or otherwise breaches a material provision of the Services Agreement and fails to remedy such non-payment or breach within 7 days of receiving notice to do so; or
- (b) becomes insolvent or bankrupt or has an administrator, receiver, liquidator, manager, trustee in bankruptcy or other like officer or entity appointed to administer its affairs.