

## Terms and Conditions

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### 1 Introduction

- 1.1 All contracts have some legal terms and We ask that You take Your time to read these Terms and Conditions before commencing Your hire as We want You to fully understand Your rights and obligations.
- 1.2 When You hire a Vehicle from Us the legal contract (**Orana Car & Truck Rental Contract**) You have with Us consists of two separate documents. They are:
- (a) the Orana Car & Truck Rental Agreement (**Rental Agreement**) You have signed to rent the Vehicle from Us; and
  - (b) these terms and conditions (**Terms and Conditions**).
- 1.3 The date of the Orana Car & Truck Rental Contract is the date shown in the Rental Agreement.

### 2 Cooling Off Period

If you are unhappy with the Vehicle We have supplied or You do not accept these Terms and Conditions, We will fully refund the Rental Charges (less a fuel charge per kilometre travelled) provided that You return the Vehicle within 30 minutes of the Start of the Rental.

### 3 Who may drive the Vehicle?

- 3.1 Only You or an Authorised Driver may drive Our Vehicle. If You let anyone who is unauthorised drive the Vehicle it is a Major Breach of the Orana Car & Truck Rental Contract with the consequence that:
- (a) neither You nor the unauthorised driver has cover for any Damage, theft of the Vehicle or for any Third Party Loss; and
  - (b) both You and the unauthorised driver are liable to pay for that Damage, theft and for any Third Party Loss.
- 3.2 You and any Authorised Driver **must** also have a valid licence issued in an Australian state or territory or an international licence (with a translation into English if it is not issued in English) that is appropriate for the class of Vehicle and that is not subject to any restriction or condition and learner drivers and provisional and probationary licence holders are not acceptable and **must not** drive the Vehicle.
- 3.3 We set age limits for those hiring and driving Our Vehicle, so that You and any Authorised Driver **must** be at least 21 years of age and not more than 79 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.
- 3.4 The Vehicle **must not** be driven if Your licence or the licence of any Authorised Driver has been cancelled within 2 years of the date of the Rental Agreement.

### 4 Prohibited use

- 4.1 The Vehicle **must not** be driven by You or any Authorised Driver:
- (a) if You or any Authorised Driver is intoxicated or under the influence of drugs or alcohol or has a blood alcohol content or any urine or oral fluid sample that exceeds the limit set by law and You and any Authorised Driver **must not** fail or refuse to undergo any breath, blood, urine or oral fluid test or drug impairment assessment;
  - (b) recklessly or dangerously; or
  - (c) whilst the Vehicle is damaged or unsafe.
- 4.2 You and any Authorised Driver **must not** use the Vehicle:
- (a) for any form of contest or reliability trial or for driving instruction or for any motor sport or time trial or while being tested in preparation for any motor sport;
  - (b) for any illegal purpose;
  - (c) to carry any dangerous, hazardous, explosive, corrosive or inflammable goods or substances in quantities above that used for domestic purposes;
  - (d) for any activity associated with film making, including film shoots or stunt sequences;
  - (e) in connection with the motor trade for experiments, tests, trials or demonstration purposes; or
  - (f) in an unsafe or un-roadworthy condition.
- 4.3 You and any Authorised Driver **must not**:
- (a) damage the Vehicle deliberately or recklessly or allow anyone else to do so;
  - (b) modify the Vehicle in any way;
  - (c) sell, rent, lease or dispose of the Vehicle; or
  - (d) register or claim to be entitled to register any interest in the Vehicle under the Personal Property Securities Act 2009 (Cth);

4.4 You and any Authorised Driver **must not** use the Vehicle:

- (a) to tow another vehicle or trailer;
- (b) to transport any animals except assistance animals;
- (c) to carry passengers for hire, fare or reward; or
- (d) to carry:
  - (i) any load; or
  - (ii) number of passengers
 more than that for which the Vehicle was designed or constructed.

4.5 You and any Authorised Driver must not smoke in the Vehicle and You must prevent any passenger from doing so. You must pay for additional cleaning and deodorising costs if there is a breach of this clause.

## 5 Where the Vehicle can and cannot be used

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5.1 The Vehicle **must** be driven on a Sealed Road at all times (unless roadworks are being conducted by a statutory road authority).

5.2 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, streams, rivers, creeks, dams and floodwaters;
- (c) any road where the police or an authority has issued a warning;
- (d) any road that is closed;
- (e) any road where it would be unsafe to drive the Vehicle; and
- (f) any area that is off-road.

5.3 The Vehicle **must not** be driven above the Snow Line unless appropriate snow chains are fitted by You and a snow fee of \$9.90 per day is paid.

5.4 Subject to these Terms and Conditions, unless the Vehicle is a Commercial Vehicle, it may be driven within New South Wales but it **must never** be driven outside of New South Wales unless We have given You prior permission to do so, it is noted on the Rental Agreement and You have paid the fee of \$99.00.

5.5 Even if prior permission to drive the Vehicle, that is not a Commercial Vehicle, outside of New South Wales is granted under clause 5.4, the Vehicle **must never** be driven:

- (a) beyond the following borders:
  - (i) Queensland: north of Rockhampton and west of Longreach; and
  - (ii) South Australia: beyond Adelaide; and
- (b) in the Northern Territory, Western Australia or Tasmania.

## 6 Your obligations

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6.1 At the Start of the Rental and before collecting the Vehicle We will debit Your credit card for the anticipated Rental Charges, including estimated excess kilometre charges and the Bond.

6.2 The Bond is fully refundable to You at the End of the Rental provided that:

- (a) all amounts due to Us under the Orana Car & Truck Rental Contract have been paid;
  - (b) the Vehicle has been returned to the Rental Location at the date and time set in the Rental Agreement;
  - (c) there is no Damage or Third Party Loss;
  - (d) the interior and exterior of the Vehicle are clean;
  - (e) the Vehicle has a full tank of fuel; and
  - (f) there has not been a Major Breach of the Orana Car & Truck Rental Contract,
- and We reserve the right to retain all or part of the Bond if there is a breach of any of these conditions.

6.3 At the Start of the Rental You **must** also take high definition photographs of the Vehicle, using flash if required, showing the Vehicle's external condition, including but not limited to:

- (a) the front and rear of the Vehicle, including the bonnet, roof and boot; and
- (b) the sides of the Vehicle,

and a failure to do so may result in You forfeiting the right to dispute that Damage to the Vehicle occurred during the Rental Period.

6.4 At the End of the Rental You **must**:

- (a) pay Us the balance of the Rental Charges including, but not limited to:
  - (i) any adjustments;
  - (ii) extra kilometre charges pursuant to clause 9.5; and
  - (iii) overtime charges pursuant to clause 9.7(a) and 9.7(b);
- (b) pay up to the LDE if there is Damage or Third Party Loss or if the Vehicle has been stolen;
- (c) pay for the refuelling of the Vehicle plus a refuelling charge if the Vehicle is returned without a full tank of fuel;

- (d) pay for cleaning costs We incur in reinstating the Vehicle to the same condition it was in at the Start of the Rental, fair wear and tear excepted; and
- (e) pay for all:
  - (i) Overhead Damage;
  - (ii) Underbody Damage;
  - (iii) Damage to the Utility Tray (if fitted); and
  - (iv) Damage caused by the immersion of the Vehicle in water.

- 6.5 You and any Authorised Driver **must** pay all speeding and traffic fines and infringements as well as any fines or charges imposed for parking or towing the Vehicle or release of the Vehicle if it has been seized by a regulatory authority.
- 6.6 You **must** pay for all toll charges incurred during the Rental Period.
- 6.7 If You make a Damage Cover claim or We process or pay for any fines, infringements or tolls incurred by You during the Rental Period We will charge You an Administrative Fee for all such processing as well as charging You for the LDE relating to the claim, the fine, toll or infringement.
- 6.8 For extended rentals of 30 days or longer You **must** contact Us on day 30 and each 30 days thereafter at the phone number shown in the Rental Agreement to notify Us of the Vehicle's current odometer reading.
- 6.9 You and any Authorised Driver **must** lock the Vehicle when it is not in use or unattended and You and any Authorised Driver **must** keep the keys or remote control device in Your possession at all times;
- 6.10 You and any Authorised Driver **must** take reasonable care of the Vehicle by:
- (a) preventing it from being damaged;
  - (b) making sure that it is protected from the weather;
  - (c) maintaining the engine and brake oils and coolant level and tyre pressures;
  - (d) using the correct fuel type; and
  - (e) making sure that it is not overloaded.
- 6.11 You **must not** tamper with or interfere with the operation of the GPS Device.
- 6.12 If during the Rental Period:
- (a) the Vehicle develops a fault;
  - (b) a warning light or electronic warning system message appears;
  - (c) there are low coolant, brake or engine oil levels; or
  - (d) low tyre pressure,
- You **must** inform Us immediately and not drive the Vehicle unless We have authorised You to do so and You **must not** let anyone else repair or work on the Vehicle without Our prior written authority to do so.

## 7 Our obligations

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- 7.1 We will provide You with a Vehicle that is mechanically sound and in good working order and of acceptable quality.
- 7.2 If the Vehicle breaks down during the Rental Period because of Our negligence We will recover and repair the Vehicle as soon as possible. If the Vehicle cannot be repaired We will use Our best endeavours to provide a replacement Vehicle where one is available.
- 7.3 We are not responsible for any consequential loss You may suffer if the Vehicle breaks down unless this is because of Our negligence.

## 8 Damage Cover

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- 8.1 Damage Cover is included in the Rental Charges.
- 8.2 Subject to these Terms and Conditions if You or any Authorised Driver has an Accident We will indemnify You for any Damage or Third Party Loss or if the Vehicle is stolen but You must pay up to the LDE unless We agree that You were not at fault and the other party's insurance company accepts liability and agrees to pay Our Damage.
- 8.3 There is no Damage Cover for any driver who is less than 21 years of age or more than 79 years of age and allowing anyone who is less than 21 or more than 79 to drive the Vehicle is a Major Breach of the Orana Car & Truck Rental Contract.
- 8.4 Unless We agree otherwise, an amount up to the LDE is payable at the End of the Rental or when for each Accident or theft.
- 8.5 There is no Damage Cover for:
- (a) Overhead Damage;
  - (b) Underbody Damage;
  - (c) Damage to the Utility Tray (if fitted); or
  - (d) Damage caused by immersion of the Vehicle in water; or
  - (e) if there is a Major Breach of the Orana Car & Truck Rental Contract,
- and You and any Authorised Driver are each liable for all Damage, theft of the Vehicle and Third Party Loss arising therefrom.
- 8.6 There is no Damage Cover for personal items that are left in or stolen from the Vehicle.
- 8.7 There is no Damage Cover to property belonging to, or in the custody of, you or any relative or friend ordinarily residing with you or with who you ordinarily reside, your employees, the hirer or authorised driver including any relative, friend or associate of the hirer or authorised drive.

## 9 Rental Period, costs & charges

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- 9.1 The Rental Agreement shows:
- the Rental Period for which You have hired the Vehicle; and
  - the Rental Charges.
- 9.2 At the Start of the Rental You **must** inspect the Vehicle to make sure that:
- the Vehicle is in a clean and tidy condition; and
  - any pre-existing damage is recorded and shown in the Condition Diagram.
- 9.3 At the End of the Rental You **must** return the Vehicle on the date and by the time shown in the Rental Agreement.
- 9.4 If You require the Vehicle for longer than the Rental Period, You **must** notify Us at least 24 hours prior to the expiration of the Rental Period. If You fail to do so, We may terminate the Orana Car & Truck Rental Contract and recover the Vehicle by lawful means, including reporting to the police that the Vehicle has been stolen.
- 9.5 Except for Commercial Vehicles, there is no daily kilometres limit provided that the Vehicle is used for private or domestic purposes but if the Vehicle is used for commercial purposes, including the operation of a courier business, We reserve the right to limit the daily kilometre allowance and to charge a fee for use of the Vehicle in excess of 200 kilometres per day.
- 9.6 For Commercial Vehicles a daily limit of 100 kilometres applies unless You have Our prior written approval to have this fee waived and it is noted on the Rental Agreement. For each day You exceed that limit You will incur an additional fee of between twenty eight and thirty cents per kilometre.
- 9.7 If You return the Vehicle:
- more than one hour after the time set for its return in the Rental Agreement We will charge You one full day's hire and a further full day's hire for each 24 hour period or part thereof until the Vehicle is returned to Us;
  - at any time other than during Our normal business hours, including use of the after hours return/key box, You must pay for the daily Rental Charges and are liable for all Damage until the Vehicle has been inspected by Us after the Rental Location next opens for business; or
  - without a full tank of fuel a refuelling charge will apply in addition to the cost of the fuel.
- 9.8 All Rental Charges payable under this Agreement are payable daily.
- 9.9 At the End of the Rental You **must** also pay for all amounts owing pursuant to clause 6.4.
- 9.10 You irrevocably and unconditionally authorise Us to charge Your Account (as set out in the Authority) all charges payable by You or an Authorised Driver, including the Rental Charges and all other charges payable under this Agreement.
- 9.11 If We charge Your Account for any amounts in addition to the Rental Charges, We will promptly notify You of the amount charged and provide details of the reason for which You have been charged. If You dispute the amount or the reason for which You have been charged, You should contact Us to discuss the dispute.
- 9.12 You warrant that the Account belongs to You and that You and any Authorised Driver (whether alone or with another person or other people) are responsible for all amounts credited, charged or debited to that Account. Where the Account is not in the Authorised Driver's name, the Authorised Driver warrants they are authorised to permit and authorise Us to charge the Account with all amounts incurred under the Rental Contract.
- 9.13 The balance of all moneys payable under the Orana Car & Truck Rental Contract are payable to Us in full at the End of the Rental and any moneys owed to Us thereafter accrue interest at the rate of 10% per annum commencing 14 days after the End of the Rental.
- 9.14 All amounts payable under the Orana Car & Truck Rental Contract are subject to subsequent verification and adjustment and details of any adjustments will be provided to You as soon as practicable. If any amount is due to Us or remains unpaid You authorise Us to debit Your Account with that amount, including an amount up to the LDE and any amounts payable under clauses 6.4 to 6.7 (inclusive). These charges may be made at any time during the Rental Period or within a reasonable time after the End of the Rental.

## 10 Accidents or breakdowns

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- 10.1 Twenty four hour roadside assistance is provided free of charge and You must contact the service provider according to the type of Vehicle as follows:

- for cars, utilities and vans (Toyota Fleet Management Roadside Assistance) on **1800 817 683**;
- for trucks (Hino Roadside Assistance) on **1800 044 466**.

Provided there has not been a Substantial Breach Our roadside assistance provider will supply all practical assistance as soon as practicable.

- 10.2 We are not responsible for and there is no roadside assistance for:
- (a) Damage as a result of use of the incorrect fuel type;
  - (b) lost keys or keyless start or remote control device;
  - (c) keys or keyless start or remote control device locked in the Vehicle; or
  - (d) a flat battery in the Vehicle because you have left the lights or audio equipment on,
- and extra charges will apply if any of these services are provided at Your request.
- 10.3 If You or an Authorised Driver has an Accident or if the Vehicle is stolen You **must** report the Accident or theft to Us within 24 hours of it occurring and fully complete an Accident/Theft report form.
- 10.4 If the Vehicle is stolen or if You or an Authorised Driver 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.
- 10.5 If You or an Authorised Driver has an Accident You and the Authorised Driver **must**:
- (a) exchange names and addresses and telephone numbers with the other driver;
  - (b) take the registration numbers of all vehicles involved;
  - (c) 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;
  - (d) obtain the names and addresses and telephone numbers of all witnesses;
  - (e) not make any admission of fault or promise to pay the other party's claim or release the other party from any liability;
  - (f) forward all third party correspondence or court documents You receive to Us within 7 days of receipt; and
  - (g) 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 Our lawyer's office and any Court hearing.

## **11 Consequences of a Major Breach of the Orana Car & Truck Rental Contract**

- 11.1 If You or any Authorised Driver:
- (a) commit a Major Breach of the Orana Car & Truck Rental Contract in a way that causes Damage, theft of the Vehicle or Third Party Loss; or
  - (b) drive the Vehicle in a reckless manner so that a substantial breach of road safety legislation, including Division 6 of the Crimes Act 1900 (NSW), or equivalent legislation in other states (where You have Our prior permission to take the Vehicle interstate), has occurred:
- You and any Authorised Driver:
- (i) have no Damage Cover; and
  - (ii) are liable for all Damage, theft of the Vehicle and Third Party Loss.
- 11.2 Acting reasonably We may terminate the Orana Car & Truck Rental Contract and take immediate possession of the Vehicle if a breach of any part of clause 11.1 has occurred.

## **12 Other general provisions**

- 12.1 The Orana Car & Truck Rental Contract is governed by the laws of 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.
- 12.2 The Australian Consumer Law provides You with rights that are not affected by the Orana Car & Truck Rental Contract and any provision in this contract is subject to the implied terms and conditions of that and any corresponding Federal or State legislation.
- 12.3 A GPS tracking device (**GPS Device**) is fitted to the Vehicle to enable Us to track the geographical location of the Vehicle whilst it is out of Our possession. When you sign these Terms and Conditions You authorise Us to use the GPS Device to track the Vehicle until it is returned to Us.
- 12.4 Your privacy is important to Us and We take all reasonable steps to ensure that Your personal information is securely held and protected from misuse of unauthorised access.
- 12.5 We welcome every opportunity to resolve any concerns You may have with Our service. In the first instance contact Us to discuss Your concern. If You are not satisfied with the response received and Your concern is still not resolved to Your satisfaction please write to:

Internal Dispute Resolutions Officer  
 Orana Car & Truck Rental  
 PO Box 32  
 KINGSFORD NSW 2032

Your concern will be investigated by an officer with full authority to deal with the complaint and We will inform You of the outcome within fifteen working days of receiving Your letter.

### 13 Definitions

When You read these Terms and Conditions You will see that there are a number of terms that occur regularly throughout this document. These words or phrases have a specific meaning each time they appear.

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

- (a) a collision between the Vehicle and another Vehicle or object; or
- (b) a weather event,

that results in Damage or Third Party Loss.

**Account** means the debit card or credit card account listed in the Authority (as set out in the Schedule) to which Rental Charges are to be debited.

**Administrative Fee** means a fee of \$110 including GST for the administrative costs associated with Your rental.

**Authorised Driver** means any driver approved by Us in writing on the Rental Agreement prior to the Start of the Rental.

**Bond** means the amount of \$500 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.

**Commercial Vehicle** means a Vehicle that is a van, utility or truck that is constructed and used for the carriage of goods or property.

**Damage** means:

- (c) any damage to the Vehicle including its parts, components and accessories that is not fair wear and tear;
- (d) towing and salvage costs;
- (e) assessing fees; and
- (f) 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.

**End of the Rental** means the date and time shown in the Rental Agreement or the date and time the Vehicle is returned to Us, whichever is the later.

**GPS Device** means a GPS or other device that is fitted to the Vehicle that has electronic tracking capabilities.

**Loss and Damage Excess (LDE)** means the amount including GST up to which You **must** pay Us in the event of an Accident that causes Damage or Third Party Loss or there has been a theft of the Vehicle.

**Loss of Use** means Our loss calculated on a daily basis at the daily rate shown in the Hire 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 clauses 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.3, 5.1, 5.2, 5.3, 5.4, 5.5, 6.9, 6.10, 6.12(a), 6.12(b), or 6.12(c) that causes Damage, theft of the Vehicle or Third Party Loss.

**Overhead Damage** means any damage to the Vehicle caused by an impact to the Vehicle that is level with or above the top of the windscreen of the Vehicle including any Damage to the pantechicon or box section of a Commercial Vehicle as a result of such an impact.

**Overhead Damage** means:

- (a) Damage at or above the level of the top of the front windscreen of the Vehicle;
- (b) Damage to the pantechicon or box section of a Commercial Vehicle; or
- (c) Third Party Loss,

caused by:

- (i) 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;
- (ii) objects being placed on the roof of the Vehicle; or
- (iii) You or any person standing or sitting on the roof of the Vehicle.

**Rental Charges** means the charges payable for renting the Vehicle from Us together with GST and any other extras, taxes or levies that are shown 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.

**Sealed Road** means a road sealed with a hard material such as tar, bitumen or concrete.

**Snow Line** means:

- (a) any area:
  - (i) in which snow has fallen; or
  - (ii) where a regulatory authority requires snow chains to be fitted; or
- (b) beyond the entrance to any alpine national park between the months of May and October (inclusive).

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

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

**Underbody Damage** means any damage to the Vehicle caused by an impact to the underside of the Vehicle by an impact with the road or any obstruction that does not arise as result of an impact with another vehicle.

**Vehicle** means the vehicle described in the Rental Agreement and includes its parts, components and accessories, including the GPS unit and e-tag for toll payments.

**We, Us, Our**, means KKS Australia Trust ABN 15 365 305 669 ATF Avenue Ventures Pty Limited ACN 136 388 693 trading as Orana Car & Truck Hire.

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