All GC Hire - Rental Agreement

The term of this Rental Form, Rental Terms, an Equipment Inspection Report and attached schedules (together, this ‘**Agreement**’) will commence on the Start Date and continue until the Equipment has been returned in accordance with this Agreement and the Fees have been paid, plus any additional period agreed by the Customer and All GC Hire in writing.

RENTAL FORM

Customer and Driver Details

|  |  |  |
| --- | --- | --- |
| Customer / Driver | **Name**: [insert]  **Drivers Licence #**: [insert]  **Address**: [insert] | **ABN:** [insert if relevant]  **Email**: [insert]  **Phone**: [insert] |
| Additional Drivers | **Name**: [insert]  **Drivers Licence #**: [insert]  **Address**: [insert]  **Email**: [insert]  **Phone**: [insert] | **Name**: [insert]  **Drivers Licence #**: [insert]  **Address**: [insert]  **Email**: [insert]  **Phone**: [insert] |

Equipment Details

|  |  |  |  |
| --- | --- | --- | --- |
| Equipment | **Type:** [Car, Vessel or Other Vehicle]  **Serial Number:** [insert] | **Make**: [insert]  **Model**: [insert] | |
| Inclusions | [insert e.g. GPS, fishing rods, wakeboard, trailer, etc] | | |
| Pickup Date | [insert] | **Pickup Time** | [insert] |
| Return Date | [insert the last day of the Rental Term] | **Return Time** | [insert] |
| Pickup and Return Address | [insert the address where the Customer should pick up the Equipment from and return it to] | | |
| Kilometre Limit | [insert e.g. 100km/day] | | |
| Permitted Area | [insert e.g Queensland] | | |
| Permitted Terrain | Sealed roads only  Access roads made of gravel in accordance with Schedule 1  All terrain | | |
| Special Conditions | [N/A] or [insert any additional terms for this specific rental] | | |

Payment Details

|  |  |
| --- | --- |
| Hire Fee | [insert] |
| Security Deposit | $[insert] |
| Additional Fees | **Excess Cleaning Fee:** $[insert]  **Administration Fee:** $[insert]  (This fee is only charged if the Customer incurs a toll/infringement/fine when the Customer is using the Equipment (for example, a parking ticket or a speeding fine)). This fee is charged on top of the amount of the toll/infringement/fine).  **Petrol Fee:** $[insert]  (This fee is only charged if the Customer doesn’t return the Equipment with a full tank of petrol)  **Additional Kilometre Fee:** $[insert]  (This fee is only charged if the Equipment exceed the Kilometre Limit) |
| Late Charge | $[insert] |
| Fee Payment Method | [insert] |

By signing below, the parties agrees to the terms and conditions of this Rental Form and the Rental Terms attached.

**Executed** as an agreement on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date)

|  |  |  |
| --- | --- | --- |
| **Executed** by an authorised representative of All GC  Hire in accordance with s 126 of the *Corporations*  *Act 2001* (Cth): | | |
|  |  |  |
| Full name |  | Signature |

|  |  |  |
| --- | --- | --- |
| **Signed** by the Customer: | | |
|  |  |  |
| Full name |  | Signature |
|  |  |  |
| Company name (if applicable) |  |  |

RENTAL TERMS

These Rental Terms and the attached schedules form part of the Agreement under which the Customer or the company which the Customer represents (the **Customer**, **you, your**) will rent the Equipment from All GC Hire Pty Ltd ABN 56 660 395 906 (**All GC Hire, us, our**).

1. RENTAL FORM, THIS AGREEMENT
   * + 1. These Rental Terms and the attached schedules will apply to all the Customer’s dealings with All GC Hire, including being incorporated in all agreements, quotations or orders under which All GC Hire is to rent an Equipment to the Customer (each a ‘**Rental Form’**) together with any additional terms included in a such Rental Form (provided such additional terms are recorded in writing).
       2. The Customer will be taken to have accepted this Agreement if:
          1. the Customer signs a Rental Form; or
          2. if the Customer orders, accepts or pays for any equipment provided by All GC Hire after receiving or becoming aware of this Agreement.
       3. By accepting this Agreement, the Customer acknowledges and warrants that:
          1. the Customer has read, understood and agree to these Rental Terms and the attached schedules; and
          2. the Customer:

and any Additional Drivers, have valid licence(s) of a licence class that permits the Customer and Additional Drivers to operate the Equipment;

will provide copies of the Customer’s (and any Additional Driver’s where applicable) valid licence/s to All GC Hire before renting any Equipment; and

has the legal capacity to enter into this Agreement.

* + - 1. In the event of any inconsistency between these Rental Terms, the attached schedules and any Rental Form, the clauses of these Rental Terms and attached schedules will prevail to the extent of such inconsistency, except for any terms in the ‘Special Conditions’ within a Rental Form, which will prevail over the Rental Terms to the extent of any inconsistency.

1. RENTAL
   * + 1. All GC Hire rents to the Customer and the Customer accepts from All GC Hire the rental of the Equipment upon and subject to the provisions of this Agreement.
       2. All GC Hire rents the Equipment to the Customer on the terms of this Agreement in consideration for the Customer’s acceptance of the terms of this Agreement, including the Customer’s agreement to pay any fees that become payable under this Agreement.
       3. The term of the Customer’s hire commences on the Start Date and continues indefinitely until the Equipment is returned to the Return Address and is in All GC Hire’s possession and control (**Rental Term**).
2. PAYMENT
   1. FEES
      * 1. The Customer must pay the Fees to All GC Hire, using the fee payment method and in the amounts and at the times set out in the Rental Form, this agreement or as otherwise agreed in writing.
        2. The Customer acknowledges and agrees that the Additional Fees specified in the Rental Form are a genuine pre-estimate by All GC Hire for the costs associated with handling their respective scenarios and do not constitute a penalty.
   2. TIME FOR PAYMENT
      1. Unless otherwise agreed in writing, if All GC Hire issues an invoice to the Customer for any Fee, payment must be made by the time(s) specified in such invoice.
   3. ONLINE PAYMENT PARTNER
      1. All GC Hire may process payments using an online payment partner (**Online Payment Partner**). In addition to this Agreement, the Customer’s hire of the Equipment will be subject to the terms and the privacy policy of the Online Payment Partner, including any ‘no refunds’ or ‘disputes’ policies, available on the Online Payment Partner’s website.
   4. GST
      1. Unless otherwise indicated, amounts stated in a Rental Form do not include GST. In relation to any GST payable for a taxable supply by All GC Hire, the Customer must pay the GST subject to All GC Hire providing a tax invoice.
   5. CARD SURCHARGES
      1. All GC Hire reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).
   6. LATE PAYMENT
      1. If the Customer does not pay the Fees on or before the date the relevant Fee is due:
         1. All GC Hire may immediately terminate this Agreement;
         2. without limiting any of All GC Hire’s other rights under these terms, interest will begin to accrue at a rate of 5% per annum, on each amount outstanding, accruing daily and compounding monthly, from the due date for payment to the date on which payment is received by All GC Hire which the Customer must pay All GC Hire;
         3. All GC Hire may seek to recover the amount due by referring the matter to a collection agency; and
         4. the Customer must reimburse All GC Hire for any costs it incurs, including any legal costs, in recovering the amount due or enforcing any of its rights under Agreement.
   7. DEPOSIT
      * 1. Where prior to the Start Date, the Customer has reserved the Equipment by paying to All GC Hire a fee (**Initial** **Deposit**), the Customer acknowledges and agrees:
           1. to the maximum extent permitted by law, the Initial Deposit is non-refundable; and
           2. the Initial Deposit will set-off the Hire Fees payable by the Customer on the Start Date.
3. VEHICLE USE
   1. PICK-UP AND RETURN
      * 1. The Customer may collect the Equipment at the Pickup Address on the Start Date.
        2. Subject to clause 16, the Customer must, before the Return Time on the Return Date, return the Equipment to All GC Hire at the Return Address in the same condition as it was in on the Start Date.
        3. For the purposes of this clause, ‘same condition’ means the same state (excluding ordinary wear and tear) and complete with all the tools, tyres, accessories and Inclusions and in the same state of cleanliness as the Equipment was on Start Date and in accordance with the Equipment Condition Report.
        4. If the Customer does not return the Equipment to the Return Address before the Return Time on the Return Date, the Customer must promptly pay the Late Charge for each 24-hour period after the Return Time on the Return Date during which the Equipment has not been returned to All GC Hire.
   2. VEHICLE INSPECTION REPORT
      * 1. On pick up of the Equipment, All GC Hire will inspect the Equipment and note any existing damage to the Equipment on the Equipment Inspection Report. The Customer will then have an opportunity to inspect the Equipment and will be provided with the Equipment Inspection Report to review. The Customer may note any other existing damage to the Equipment before signing the Equipment Inspection Report.
        2. By signing the Equipment Inspection Report, the Customer acknowledges and agrees that:
           1. the Customer has inspected the Equipment prior to first using the Equipment;
           2. all scratches, scuffs and any other marks or damage to the Equipment recorded on the images on the Equipment Inspection Report are correct and complete;
           3. the images on the Equipment Inspection Report are a guide only and may not be a true representation of the Equipment but the marks or damage to the Equipment recorded on the images do nevertheless, correctly and completely reflect the marks or damage to the Equipment; and
           4. the Equipment is rented out to the Customer in the condition as set out in the Equipment Inspection Report.
        3. All GC Hire will inspect the Equipment as soon as it has been returned. If, the Equipment has any scratches, scuffs or any other marks or damage not recorded on the Equipment Inspection Report (fair wear and tear excepted) (**New Damage**), All GC Hire will provide:
           1. notice of the New Damage to the Customer;
           2. a photo of the New Damage to the Customer; and
           3. an itemised estimate of the cost of repairing the New Damage.
        4. The Customer is liable for and agrees to pay for the cost to repair the New Damage.
   3. USE
      * 1. Where a Rental Form specifies a Permitted Area and/or Permitted Terrain, the Customer must only operate the Equipment in accordance with such restrictions.
        2. Where the Rental Form includes Inclusions, the Customer must handle such Inclusions in accordance with their obligations relating to the Equipment set out in this Agreement.
        3. If we include a Kilometre Limit in the Rental Form, you must not exceed this limit without our prior written approval. If you do exceed the limit, we may charge an Additional Kilometre Fee.
        4. The Customer must ensure that the Equipment is only used:
           1. for the Customer’s own personal use and is not on-hired to a third party;
           2. in a proper and skilful manner by any operator of the Equipment;
           3. in accordance with the Equipment manufacturer’s requirements, recommendations and instruction manuals; and
           4. in accordance with all Laws, rules and regulations applicable to the Equipment and its use.
        5. The Customer must not, and must not allow any third party to:
           1. use the Equipment where they are not validly licensed to do so;
           2. use the Equipment recklessly or for any dangerous or illegal purpose;
           3. use the Equipment for any contest, trial, driving instruction, motor sport or time trial;
           4. use the Equipment without consulting All GC Hire first if any warning lights are illuminated on the dashboard;
           5. carry more than the number of passengers for which the Equipment has legal capacity for;
           6. remove, dismantle, or break the Equipment’s GPS tracker, dashboard camera, or any other event data recorder that may be included in the Equipment;
           7. use, or allow the Equipment to be used, while the operator is under the influence of alcohol or drugs;
           8. modify the Equipment in any way;
           9. use the Equipment in any way prohibited by Police, the Department of Transport and Main Roads, Maritime Safety Queensland or any other relevant body, including but not limited to, non-adherence to road closure notifications and camping restrictions;
           10. use the Equipment to carry or transport any inflammable, corrosive or explosive substances (excluding the fuel contained in the Equipment’s gas tank, and any other gas containers supplied by All GC Hire for use with the Equipment);
           11. use the Equipment, or allow the Equipment to be used, when it is damaged or unsafe;
           12. use the Equipment to jumpstart or recover another vehicle or vessel;
           13. use the Equipment, or allow it to be used, to carry passengers for payment of any kind;
           14. make any alterations to the Equipment;
           15. affix or install any accessories, equipment or device on or to the Equipment without All GC Hire’s prior written consent; or
           16. use the Equipment for the conveyance, towing, propelling or pushing of any load unless permitted in a Rental Form or the Customer receives All GC Hire’s prior written consent and the load is correctly loaded and secured and not in excess of that for which the Equipment was manufactured.
        6. The Customer must:
           1. keep any records in relation to the use of the Equipment reasonably required by All GC Hire, as notified to the Customer from time to time; and
           2. when the Equipment is unattended, keep it locked and keep the keys under the Customer’s, or if applicable, the Additional Driver’s control at all times.
           3. must take reasonable care of the Equipment including by:

preventing it from being damaged;

ensuring it is protected from the weather;

maintaining the engine and brake oils and coolant level and tyre pressures and checking these no less than on a weekly basis; and

ensuring the Equipment is not overloaded.

* 1. CLEANLINESS
     + 1. The Customer acknowledges that the Equipment is rented out to the Customer in a clean condition.
       2. The Customer must return the Equipment in the same state of cleanliness (inside and out) as it was in on the Start Date (**Clean**).
       3. If the Equipment is not Clean upon return, a cleaning fee may apply as set out in the Rental Form (**Cleaning Fee**).
       4. Without limiting any other clause in this Agreement, if the Equipment is not Clean upon return, and the Equipment requires:
          1. a standard clean (for example, there is a reasonable amount of dirt in the Equipment from regular usage), no Cleaning Fee will be charged; or
          2. an extensive clean or detail (for example, there is excessive rubbish or bodily fluids or other liquids have been spilt in the Equipment), then the Minimum Excessive Cleaning Fee (or greater in accordance with clause (e)4.4(e)) will be charged.
       5. The Cleaning Fee charged to the Customer will be All GC Hire’s reasonable costs of ensuring the returned Equipment is Clean, as reasonably determined by All GC Hire and which may exceed the Minimum Excessive Cleaning Fee.
       6. The Customer is responsible for removing all personal items and/or food from the Equipment prior to returning it. All GC Hire has no responsibility for any personal items that are in the Equipment upon return.
       7. The determination of whether the Equipment requires extensive cleaning or detailing will be at All GC Hire’s absolute discretion.
  2. USERS
     1. The Customer agrees:
        1. to ensure that any user of the Equipment will at all times be qualified and appropriately trained and licenced to use the Equipment; and
        2. that they are responsible for the acts and omissions of any other person they allow to use the Equipment, whether they are an Authorised Driver or not.

1. BREAKDOWNS
   * + 1. If the Equipment breaks down during the Rental Term, then:
          1. the Customer must immediately notify All GC Hire of the breakdown;
          2. the Customer must not attempt to use the Equipment; and
          3. after All GC Hire receives the Customer’s notification, it may arrange for the Equipment to be towed to the closest repair centre or contact roadside assistance.
       2. If the Equipment breakdown was not caused or contributed to by a breach of Agreement, or otherwise caused or contributed to by the Customer, an Additional Driver or any third party that the Customer knowingly or unknowingly gave access to the Equipment, then:
          1. if repairs cannot be completed within a reasonable time, we will endeavour to replace the Equipment with a similar model and, if such a replacement is not possible, we will provide the Customer with a refund of the Hire Fees on a pro-rata basis based on the remaining number of 24hr periods till the Return Date; and
          2. any refund under this clause is not an admittance of fault by All GC Hire.
       3. All GC Hire is not responsible for:
          1. damage as a result of using the incorrect fuel type for the Equipment;
          2. a flat battery because the lights or entertainment systems have been left on;
          3. tyre changing as a result of a pierced tyre;
          4. lost keys or remote control devices; or
          5. keys or remote control devices locked in the Equipment,

and extra charges will apply if services are required to fix any of the above.

1. ACCIDENTS
   * + 1. If the Equipment is involved in an accident or claim during the Rental Term, or if damage or loss is sustained to the Equipment or the property of any third party in connection with the Equipment, during the Rental Term (**Accident**), the Customer must:
          1. immediately report the Accident to the local police (if required by Law);
          2. immediately report the Accident in writing to All GC Hire;
          3. not, without All GC Hire’s prior written consent, make or give any offer, promise of payment, settlement, waiver, release or admission of liability in relation to the Accident, except as required by Law;
          4. permit All GC Hire or an insurer to bring, defend, enforce or settle any legal proceedings in the Customer’s name in relation to the incident; and
          5. provide to All GC Hire, within a reasonable time, any statement, information or assistance which All GC Hire or an insurer requests, including by attending a lawyer’s office or a court to give evidence.
       2. Where an Accident involves a third party, you must promptly exchange all relevant details with the other party, including their name, address, licence number and the same of any witnesses.
       3. If the Equipment is stolen, or involved in an accident where any person is injured, the other party leaves the scene without providing their details, or the other party appears to be under the influence of alcohol or drugs, you or the Authorised Driver must report the theft or accident to the police.
2. LOSS, DAMAGE AND PERSONAL INJURY
   * 1. The Customer will be fully responsible to All GC Hire for:
        1. any loss or damage to the Equipment during the Rental Term, notwithstanding whether the loss or damage was the Customer’s/Additional Driver’s fault, and must give reasonable notice to All GC Hire in writing of any such loss or damage; and
        2. all personal injury or damage to the property of any person or any other vehicle, vessel or equipment which is caused or contributed to by the Equipment during the Rental Term, or otherwise when the Equipment is in the Customer’s or an Additional Driver’s possession.
3. INSURANCE AND EXCESS REDUCTION
   * + 1. The Customer acknowledges that All GC Hire has no obligations or requirements to insure the Customer’s, or any Additional Driver or third party’s, use of the Equipment under this Agreement.
       2. All GC Hire reserves the right to apply any insurance policy it does hold in respect of the Equipment during the Rental Term, to damage or loss to or involving the Equipment during the Rental Term, however All GC Hire is under no obligation to. If All GC Hire chooses to make a claim under an applicable insurance policy in accordance with this clause in respect of any damage or loss during the Rental Term, the Customer will be required to pay any excess payable by All GC Hire in respect of such a claim.
       3. Subject to any insurance policy of All GC Hire that covers the Customer, which All GC Hire has indicated it will claim against to cover the Customer, if the Equipment is damaged, destroyed or stolen during the Rental Term, or otherwise while the Equipment is in the Customer’s or an Additional Driver’s possession, the Customer must compensate All GC Hire for any costs of repair or replacement.
4. SECURITY DEPOSIT AND CREDIT CARD AUTHORISATION
   1. SECURITY DEPOSIT
      * 1. To rent the Customer the Equipment we require the payment of a Security Deposit as set out in the Rental Form or as otherwise specified by us, to cover any fees, damage or issues with the Equipment (**Security Deposit**).
        2. We may waive our right to charge the Customer a Security Deposit and instead charge additional fees in addition to any rates or daily rates applicable if the Customer does not pay a Security Deposit.
        3. Upon return of the Equipment, we may claim the Security Deposit against any amount owed by the Customer to us under this Agreement.
        4. We will hold the Security Deposit for approximately [two (2) weeks] after the return of the Equipment, until we are reasonably satisfied that there have not been any infringements, tolls or other costs incurred by the Customer in relation to the Equipment (**Holding Period**). If, after the Holding Period, the Customer does not owe any amounts to All GC Hire, or if the owing amounts have been claimed from the Security Deposit and there is a remaining amount, then the relevant remaining amount will be paid back to the Customer’s original payment method.
        5. For the purposes of this clause 9, any reference to the Customer includes an Additional Driver and any person the Customer or the Additional Driver allow to drive the Equipment.
   2. CREDIT CARD AUTHORISATION
      * 1. The Customer authorises All GC Hire:
           1. to keep the credit card details they provide as part of paying the Security Deposit (**Credit Card**) on file; and
           2. to use the Credit Card to recoup any amounts owed to All GC Hire within a reasonable time after the return of the Equipment, to the extent those amounts exceed the Security Deposit.
        2. The Customer authorises and requests that All GC Hire debits payments from the Credit Card for any Fees payable under Agreement in accordance with this clause ‎9.
        3. The Customer must ensure that the Credit Card has at all times available capacity to be charged any amount potentially payable under this Agreement.
5. FUEL
   * 1. The Customer must:
        1. ensure that the Equipment has a full tank of petrol when it is returned to All GC Hire;
        2. on return of the Equipment to us, if the Equipment does not have a full tank of petrol, pay to All GC Hire the costs of refuelling the Equipment, charged at the rate set out in the Rental Form for each litre of petrol required to fill the Equipment’s tank, unless otherwise agreed in writing or notified in writing to the Customer; and
        3. only fill the Equipment with fuel of a type that meets the Equipment’s specifications.
6. MAINTENANCE
   * + 1. The Customer is responsible for the performance and cost of daily maintenance and care of the Equipment, including daily checking of all fluids (fuel, oil, water, battery levels).
       2. The Customer is required to regularly check the Equipment for any defects in its operations or safety.
7. ADDITIONAL CHARGES – FINES AND TOLLS
   * 1. The Customer acknowledges and agrees that:
        1. they will be responsible for the costs of all tolls, infringement notices and fines (e.g. tolls, parking tickets, towing fines) and any other additional charges incurred in relation to the Equipment during the Rental Term, or otherwise from the Start Date till the Equipment is returned to the Return Address (**Third Party Charges**); and
        2. if any Third Party Charge is incurred by All GC Hire, then All GC Hire will charge the Customer:
           1. an amount equal to that Third Party Charge; and
           2. the Administration Fee as set out in the Rental Form, or as otherwise notified to the Customer, for the administration cost of receiving, verifying and handling the Third Party Charge.
8. PERSONAL PROPERTY
   * 1. All GC Hire is not liable to any person for any loss of, or damage to, personal property that is left in the Equipment after its return to All GC Hire or stolen from the Equipment or otherwise lost or damaged during the Rental Term.
9. OWNERSHIP, POSSESSION AND TITLE
   1. OWNERSHIP
      * 1. The Equipment is, and will at all times be and remain, the property of All GC Hire, notwithstanding delivery of the Equipment to the Customer/ Additional Driver(s) or the possession and use of the Equipment by the Customer/Additional Driver(s).
        2. The Customer and any Additional Driver(s) will not have any right, title or interest in or to the Equipment except as expressly set out in this Agreement.
        3. All GC Hire reserves the right to fit the Equipment with a GPS or other similar tracking device in order to locate the Equipment at all times.
   2. POSSESSION
      1. The Customer must not (and must ensure any other user of the Equipment does not), without All GC Hire’s prior written consent, part with possession of the Equipment during the Rental Term.
   3. ENCUMBRANCES
      1. The Customer must not allow any Security Interest, encumbrance, charge or lien of any kind to arise or remain in relation to the Equipment, including a repairer’s lien, except if:
         1. a repairer’s lien arises, the Customer must take all necessary steps to have it removed or satisfied, or, at All GC Hire’s option, All GC Hire may remove or satisfy the lien at the Customer’s cost; and
         2. a Security Interest, lien or charge that arises by Law in respect of unpaid rates, taxes, fees or duties of any kind, in which event the Customer must pay any money due so that the Equipment will be free of the lien or charge.
10. PERSONAL PROPERTY SECURITIES
    * + 1. The Customer grants a Security Interest in all of its present and after acquired property and in all of its present and future rights, title, estate and interest, whether legal and equitable, in relation to any personal property, including any debts owed to the Customer, in favour of All GC Hire to secure the performance of its liabilities and obligations under this Agreement.
        2. If requested by All GC Hire, the Customer must immediately sign any documents, provide all necessary information and do anything else required by All GC Hire to ensure that the Security Interest created in All GC Hire’s favour is a perfected Security Interest.
        3. The Customer must not grant any other Security Interest in favour of any party until All GC Hire has perfected its Security Interest created under this clause ‎15.
        4. The Customer must not do or permit anything to be done that may result in the Security Interest granted to All GC Hire ranking in priority behind any other Security Interest.
        5. The Customer acknowledges that this Agreement constitute a security agreement for purposes of the PPSA and the Customer will do all things necessary to enable a Security Interest to be registered under the PPSA and will comply with all requirements of the PPSA.
        6. To the fullest extent permitted by the PPSA, the Customer agrees to contract out of the application of the provisions listed in sections 115(1) and 115(7) and the sections listed therein will not apply.
        7. The Customer hereby waives any rights they may otherwise have to:
           1. receive any notices or statements the Customer would otherwise be entitled to receive under sections of the PPSA including the sections referred to in sections 115(1) and 115(7) of the PPSA;
           2. apply to a Court for an order concerning the removal of an accession under section 97 of the PPSA;
           3. object to a proposal of the Customer to purchase or retain any collateral under sections 130 and 135 of the PPSA; and
           4. receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any Security Interest created under this document.
        8. For the purpose of this clause and other relevant clauses in this Agreement, the expressions “accession”, “collateral”, “financing statement”, “financing change statement”, “security agreement”, “Security Interest”, “perfected Security Interest” and “verification statement” have the meanings given to them under, or in the context of the PPSA.
11. EARLY RETURN
    * + 1. Notwithstanding any other clause in this Agreement, All GC Hire may demand the early return of the Equipment to the Return Address, or retake possession of the Equipment, if All GC Hire is aware or reasonably suspects that:
           1. damage to the Equipment or injury to any person in connection with the Equipment is reasonably likely; or
           2. the Equipment may be used for an unlawful purpose; or
           3. otherwise a breach of this Agreement has occurred.
        2. If the Customer elects to return the Equipment to the Return Address, or otherwise All GC Hire, before the Return Date, the Customer will not be entitled to any compensation or refund.
12. RISK, LIABILITY AND INDEMNITIES
    1. RISK
       * 1. The Customer will bear all risk of loss or destruction of, or damage to, the Equipment during the Rental Term.
         2. The Customer assumes all risks and liability for the Equipment and for its use, operation, maintenance, repair and storage (including but not limited to loss of profits, loss of revenue, consequential damage, inconvenience or loss of use for any period of time) and for injuries to or deaths of persons and damage to property arising in connection with such use, operation, maintenance, repair or storage.
    2. LIABILITY
       1. To the maximum extent permitted by applicable law, All GC Hire limits all liability in aggregate of all claims to the Customer (and any Additional Drivers) for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to Agreement or any goods or services provided by All GC Hire to the total Fees paid to All GC Hire by the Customer as at the date of the first event giving rise to the relevant liability.
    3. INDEMNITY
       1. The Customer indemnifies All GC Hire from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:
          1. the casual maintenance, use, storage or operation of the Equipment during the Rental Term;
          2. injuries to or deaths of persons and damage to property in connection with the Equipment during the Rental Term or otherwise when the Equipment is in the Customer’s, or any Additional Driver’s, possession;
          3. any breach of this Agreement by the Customer or any Additional Driver; or
          4. any negligent, fraudulent or criminal act or omission of the Customer, Additional Driver or any other person who the Customer allows to use the Equipment.
    4. CONSEQUENTIAL LOSS
       1. To the maximum extent permitted by law, under no circumstances will All GC Hire be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with Agreement or any goods or services provided by All GC Hire (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)).
13. WARRANTIES
    * + 1. To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in Agreement are excluded.
        2. Nothing in Agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services we provide.
14. TERMINATION
    1. TERMINATION BY ALL GC HIRE
       * 1. All GC Hire may terminate this Agreement in whole or in part immediately by written notice to the Customer if the Customer is in breach of any term of this Agreement.
         2. In the event All GC Hire directs the Customer to return the Equipment prior to the Return Date in accordance with clause 16, and:
            1. it is found the Customer was in breach of this Agreement, the Customer will not be entitled to any refund of any Hire Fees; or
            2. it is found the Customer was not in breach of this Agreement, All GC Hire will refund to the Customer any remaining portion of the Hire Fees for the period till the Return Date which the Customer did not have the Equipment.
    2. TERMINATION BY THE CUSTOMER
       * 1. The Customer may terminate this Agreement by written notice to All GC Hire if All GC Hire breaches a term of this Agreement and has not remedied such breach within two calendar days of receiving notice of the breach from the Customer.
         2. In the event the Customer terminates under this clause 19.2, All GC Hire will refund to the Customer any remaining portion of the Hire Fees for the period till the Return Date which the Customer did not have the Equipment.
    3. EFFECT OF TERMINATION
       1. Upon expiry or termination of this Agreement, the Customer must promptly:
          1. pay any remaining Fees payable to by All GC Hire under this Agreement; and
          2. subject to any contrary direction in writing given by All GC Hire, deliver the Equipment and any other goods included in a Rental Form (such as Inclusions) to the Return Address.
    4. SURVIVAL
       1. Any provision of this Agreement which, by its nature, would reasonably be expected to be performed after the termination, will survive and be enforceable after such termination.
15. IF THE PARTIES HAVE A DISPUTE
    * + 1. If an issue between the parties arises under Agreement that cannot be resolved day-to-day, the parties will make genuine efforts in good faith to participate cooperatively in mediation, at equal shared expense of the parties.
        2. The parties will conduct mediation through the Australian Disputes Centre (**ADC**) and in accordance with the ADC’s Guidelines for Commercial Mediation (as current at the time of the dispute).
        3. The parties will follow the mediator’s recommendations on the extent of mediation required, and when to stop mediation if the issue cannot be resolved.
        4. If mediation does not resolve the issue, the parties must:
           1. if they haven’t already done so, engage independent legal representation at their own expense to understand the strength of their arguments; and
           2. based on that advice, if settlement is not achieved, participate in arbitration (or other dispute resolution mechanism agreed in mediation) through the ADC at equal shared expense.
        5. The parties will follow the binding outcome of arbitration (or other agreed mechanism).
        6. Either party may at any time during this process make an offer for settlement. The parties acknowledge and agree it is in their best interests to properly consider all genuine settlement offers. The parties will use best endeavours to avoid litigation and reach a prompt settlement.
        7. The process in this clause does not apply where a party requires an urgent injunction.
16. GENERAL
    1. GOVERNING LAW AND JURISDICTION
       1. This agreement is governed by the law applying in Queensland. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts of appeal from them in respect of any proceedings arising out of or in connection with Agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
    2. BUSINESS DAYS
       1. If the day on which any act is to be done under Agreement is a day other than a Business Day, that act must be done on or by the immediately following Business Day except where Agreement expressly specifies otherwise.
    3. AMENDMENTS
       1. This agreement may only be amended in accordance with a written agreement between the parties.
    4. WAIVER
       1. No party to Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
    5. SEVERANCE
       1. Any term of Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of Agreement is not limited or otherwise affected.
    6. JOINT AND SEVERAL LIABILITY
       1. An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.
    7. ASSIGNMENT
       1. A party cannot assign, novate or otherwise transfer any of its rights or obligations under Agreement without the prior written consent of the other party.
    8. COUNTERPARTS
       1. This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of Agreement and all together constitute one agreement.
    9. COSTS
       1. Except as otherwise provided in Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing Agreement.
    10. ENTIRE AGREEMENT
        1. This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of Agreement.
17. DEFINITIONS
    * 1. In addition to capitalised terms defined in the Rental Form, capitalised terms used in this Agreement will have the following meanings:

|  |  |
| --- | --- |
| 1. Term | **Meaning** |
| 1. Additional Driver | means a person described as such in a Rental Form, who must be the holder of a valid driver’s licence of a licence class that permits the person to drive the Equipment. |
| 1. Business Day | means a day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Gold Coast. |
| 1. Car | means as defined in section 4 of the *Transport Operations (Road Use Management) Act 1995* (Qld). |
| 1. Customer, you, your | means a person described as such in a Rental Form. |
| 1. Equipment | means the equipment specified in a Rental Form. |
| 1. Equipment Inspection Report | means the equipment inspection report provided to the Customer upon pick up of the Equipment. |
| 1. Fees | means any fees payable by the Customer to All GC Hire under this Agreement, including such fees set out in a Rental Form or the attached schedules to these Rental Terms. |
| 1. Inclusions | means any equipment in the Equipment set out in the Rental Form, including (as applicable) any global positioning system receiver or similar device or any child restraint, booster or similar equipment. |
| 1. Late Charge | means the amount set out in the Rental Form, or $110 including GST if no amount is set. |
| 1. Laws | means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Equipment is used and includes any industry codes of conduct. |
| 1. Off-Road | means any unsealed, dirt, or gravel roads, paths or areas, including but not limited to, beaches, sand dunes, rocky terrain, uneven terrain, corrugated tracks, or any place which would reasonably be considered not a road. |
| 1. Other Vehicles | means a Vehicle which is not a Car and includes motorbikes, quad bikes and dirt bikes. |
| 1. PPSA | means the *Personal Property Securities Act 2009* (Cth) and **PPS Register** means the register established and maintained under that Act. |
| 1. Rental Form | has the meaning set out in clause 1(a) of these Rental Terms. |
| 1. Rental Term | means the period of Equipment rental, from the Start Date, set out in the Rental Form. |
| 1. Return Address | means the return address set out in the Rental Form. |
| 1. Return Date | has the meaning set out in the Rental Form. |
| 1. Security Deposit | means the security deposit described in clause 9. |
| 1. Security Interest | has the meaning given to it in the PPSA. |
| 1. Start Date | has the meaning set out in the Rental Form. |
| 1. Vehicle | means as defined in section 4 of the *Transport Operations (Road Use Management) Act 1995* (Qld). |
| 1. Vessel | means as defined in section 4 of the *Transport Operations (Road Use Management) Act 1995* (Qld) and includes boats and jet skis. |

1. INTERPRETATION
   * 1. In this Agreement, the following rules of interpretation apply:
        1. (**singular and plural**) words in the singular includes the plural (and vice versa);
        2. (**gender**) words indicating a gender includes the corresponding words of any other gender;
        3. (**defined terms**) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
        4. (**person**) a reference to “**person**” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
        5. (**party**) a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
        6. (**Agreement**) a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
        7. (**document**) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
        8. (**headings**) headings and words in bold type are for convenience only and do not affect interpretation;
        9. (**includes**) the word “**includes**” and similar words in any form is not a word of limitation;
        10. (**adverse interpretation**) no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision; and
        11. (**currency**) a reference to $, or “dollar”, is to Australian currency, unless otherwise agreed in writing.
2. Car Terms

In the event the Equipment is a Car, this Schedule 1 applies and the other schedules to this Agreement do not apply.

* + 1. WHO MAY DRIVE THE EQUIPMENT?

Only the Customer or an Authorised Driver may drive the Equipment provided they meet the requirements of this clause 1 and the Customer must not allow any third parties other than themselves and any Authorised Drivers to operate the Equipment.

The Customer and any Authorised Driver who drives the Equipment must:

be at least [insert] years old and less than [insert] years old;

hold a currently valid, full (not provisional or probationary) driver’s licence that permits them to drive the Equipment in Australia with no restrictions or conditions on their licence;

where they hold an international driver’s licence, the licence must be converted to English;

have no less than 12 months’ driving experience;

not had an insurer decline, cancel a policy, impose special conditions on a policy, or refuse a claim;

not committed any criminal act in relation to fraud, theft, burglary, drugs, arson, criminal or wilful damage;

not been declared bankrupt or defaulted on a loan or credit card; and

not have had your driver`s license ever suspended, cancelled or restricted

* + 1. WHERE THE EQUIPMENT CAN AND CANNOT BE DRIVEN

Subject to clause 2(b) of this Schedule 1, the Equipment must only be driven within the Permitted Area and on Permitted Terrain (unless roadworks are being conducted by a statutory authority).

The Equipment must not be driven on or in any of the following roads or areas:

any roads that are prone to flooding or are flooded;

beaches, streams, rivers, creeks, dams and floodwaters;

any road where the police or any authorities have issued a warning about that road;

any road that is closed;

any road where it would be unsafe to drive the Vehicle;

any area where snow has fallen or is likely to fall;

any unformed track;

any island that is off mainland Australia; or

on the Gunbarrel Highway, Canning Stock Route, Old Telegraph section of Cape York, across Yardie Creek, the Simpson Desert, Talawana Track, Munji Track, Carson River Track, Mundal Track, Mundaring Powerlines Track, Harvey Dam, Callcup Hill or Bornholm Beach; or

an unsealed road, with the exception of access roads made of gravel, if they are no longer than 50 metres in length and if the speed of the Equipment on such roads does not exceed 10 kilometres per hour.

1. Other Vehicle Terms

In the event the Equipment is an Other Vehicle, this Schedule 2 applies and the other schedules to this Agreement do not apply.

* + 1. DRIVING OFF-ROAD

Where the Rental Form allows for the Equipment to be driven Off-Road, the Customer acknowledges and agrees:

to avoid, or make every reasonable attempt to avoid, divots, holes and rocks while operating the Equipment Off-Road;

driving the Equipment Off-Road can pose risks and cause damage to the Equipment; and

regardless of All GC Hire permitting the Customer to use the Equipment Off-Road, the Customer’s liability for any loss or damage to the Equipment remains the same.