

Annexure A: STANDARD TERMS AND CONDITIONS OF AGREEMENT

1. INTERPRETATION

- 1.1. In this agreement except in a context indicating some other meaning is intended:
- 1.1.1. The official Rates brochure means: the official brochure or rental rates and other General information issued by the LESSOR (hereafter Melbic Car Rentals, Tours and Transfers cc) from time to time and which is current at the commencement of the rental period.
- 1.1.2. Means the period from the time the vehicle is delivered at the RENTER location until its return to the LESSOR by the RENTER.
- 1.1.3. The "RENTER" means: the person named as the RENTER in the rental agreement.
- 1.1.4. The "renting location" means: the location from which the RENTER rents the vehicle.
- 1.1.5. The "territory" means Namibia.
- 1.1.6. The "vehicle" means: the vehicle described on the rental agreement. (Including all tyres, tools, equipment, accessories and documents in and on the vehicle at the renting location) and includes any replacements for the vehicle which has been officially authorised by the LESSOR.
- 1.1.7. Reference to the rental agreement shall be the first page of this agreement and shall form part thereof.
- 1.1.8. The singular shall include plural and vice versa, the masculine gender shall include the feminine and vice a versa and natural persons shall include legal and juristic persons and vice versa.
- 1.2 The headings appear for reference only and shall not influence the proper interpretation of this agreement.

2. RENTING

The LESSOR rents to the RENTER who hires from the LESSOR the vehicle on the terms and conditions of this agreement.

3. TERMINATION

Notwithstanding anything to the contrary elsewhere in this agreement the LESSOR may terminate the agreement at any time by notice to the RENTER whereupon the RENTER shall forthwith return the vehicle to the LESSOR. The obligation of the RENTER and the rights of the LESSOR under this agreement shall continue in effect until the vehicle has been returned to the LESSOR and the RENTER has complied with the obligation.

4. DELIVERY AND RETURN

- 4.1 The RENTER shall take delivery of the vehicle at the renting location. The parties shall inspect the vehicle together and unless the RENTER has made any indication in writing on the rental agreement of any patent shortcoming, the vehicle shall be deemed to have been delivered in good and road worthy condition and without any damage to the paintwork, upholstery and fittings unless the RENTER proves otherwise.
- 4.2 The RENTER shall at his own cost return the vehicle to the LESSOR at the agreed return date/ time specified on the rental agreement or if this agreement is terminated at any time (for any reasons) before then, then immediately after such termination.
- 4.3 The vehicle shall be returned to the LESSOR in the same condition as received, fair wear and tear expected, and at the agreed return location specified or if such location is specified, at either the renting location or another the LESSOR location in the same city or town as the renting location.
- 4.4 Without derogating from any other term contained herein, the LESSOR shall be entitled at the expiry and or termination of this agreement, for whatever reason, to retake possession of the vehicle wherever it may be located and from whomever is in possession thereof.

5. RENTAL CHARGES

- 5.1 The rental charge payable by the RENTER for the use of the vehicle shall be calculated for the whole of the rental period at the rates and on the basis specified and agreed with the RENTER as well as all other charges for the service or benefits opted for or utilized by the RENTER including but not limited to the charges for one way fee, collection fee, medical insurance and refuelling where the vehicle is returned with less fuel when rented, each of which shall be subject to 5.3 and all taxes levied on any amounts payable by the RENTER.
- 5.2 In determining the rental charges the distance travelled by the vehicle (where required) shall be determined from the vehicle's odometer or if this is not possible for any reason by the LESSOR on any other fair and reasonable basis and the RENTER shall be obliged to furnish all such information and assistance as the LESSOR may reasonably require for the purpose.
- 5.3 The RENTER shall also be liable for all fines, penalties and the like (including all legal cost incurred by the LESSOR to its attorneys in accordance with their charges at the time for parking, traffic and other criminal offences arising out of or concerning the use of the vehicle during the rental period and the RENTER accordingly indemnifies the LESSOR against all such liability.
- 5.4 All charges payable by the RENTER shall be payable in cash on presentation of an account.
- 5.5 If the LESSOR has agreed to accept payment from the RENTER by credit card the RENTER's signature of this agreement shall constitute authority for the issuer of the card to debit him with the amount due.

6. USE OF THE VEHICLE

- 6.1 The vehicle may not be used for the conveyance of passengers or goods for reward, to push or tow any other vehicle including any caravan or trailer, to transport goods in violation of the customs laws or in any other illegal manner, in any motor sport, below the high tide watermark at the coast or in any pools or wet salt pans, through rivers or along riverbeds, in sandstorms, beyond the border of Namibia (unless authorised in writing by the LESSOR) or in any area in Namibia where there is or may be a risk of civil unrest, political disturbance or riot, or any activity associated with any of the foregoing, in twilight, after sunset or sunrise, except with the express written consent of the LESSOR.
- 6.2 The RENTER shall make adequate provision for the safety of the vehicle in particular. He shall keep the vehicle properly locked and immobilized activated/ engage when the vehicle is not in use.
- 6.3 The RENTER must keep tyre pressure according to the vehicle's Owner Manual during the rental period.

7. THE RENTER

- 7.1 The vehicle may not be driven by anyone than the RENTER himself or any other person indicated as the RENTER on the rental form.
- 7.2 The RENTER warrants that in any event the vehicle will not be driven by any other person whose blood alcohol concentration exceeds the limit permitted by any applicable law or regulation or whilst under the influence of intoxicating liquor or of a narcotic drug and that every RENTER of the vehicle during the rental period will have a valid license to drive the vehicle, will comply with all applicable laws and will comply in all respects with the provisions of this agreement.
- 7.3 If the vehicle is driven by anyone other than the RENTER, then without derogation from any rights or remedies which THE LESSOR may have, the RENTER shall remain liable for all his obligations in terms of this agreement and in particular he shall be liable to the LESSOR as if he has been the RENTER and where the vehicle is not driven by any person referred to in 7.1 the RENTER shall not be entitled to exercise any of the rights of which may otherwise have been entitled to exercise in terms of this agreement.

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8 ACCIDENT INSURANCE

- 8.1 The vehicle shall be at the sole risk of the RENTER throughout the rental period, the RENTER shall be bound by these terms and conditions whether he was driving or not.
- 8.2 The RENTER shall be liable for any loss of, or damage to the vehicle and any other expenses incurred in recovering the vehicle during the rental period howsoever the loss or damage is caused and whether or not it is attributed to the RENTER's fault or negligence, provided that none of the situations or circumstances set out in 8.3 is applicable, the RENTER's liability in respect of each incident giving rise to such loss or damage as the case may be, shall be limited to the excess mentioned in the rental agreement.
- 8.3 The RENTER's liability shall not be limited if:
- 8.3.1 the loss or damage or event giving rise thereto was caused by the fault or negligence of the driver or the RENTER (whether authorised or not) of the vehicle; or
- 8.3.2 Irrespective which waiver was opted for, the LESSOR may, in its sole discretion, charge the RENTER either the actual or any reasonable amount for the loss or damage caused to the vehicle, should the loss or damage or the event giving rise thereto occurred in a situation where no other vehicle or person or animal or object was involved.
- 8.3.3 at the time of the occurrence of the loss or damage or event giving rise thereto
- 8.3.3.1 the vehicle was being driven on a road whose condition was not suitable for the vehicle or
- 8.3.3.2 the vehicle was being used for a purpose prohibited in terms of 6.1 or was being driven contrary to any other provision of 6.1 or
- 8.3.3.3 the vehicle was being driven by a person not authorized to do so in terms of 7.1 or 7.2 or
- 8.3.3.4 in case of theft or loss of or from damage to the vehicle, the RENTER was in breach of 6.2 or
- 8.3.3.5 without derogating from any of the foregoing, the RENTER was in material breach, or was committing a material breach, of this agreement
- 8.3.3.6 after the occurrence of the loss or damage or event giving rise thereto the RENTER breaches any of the provisions of clause 9.
- 8.4 According where clause 8.3 is applicable the RENTER shall pay to the LESSOR the cost of repairs to the vehicle or if the vehicle or any part of it has been stolen or damaged beyond economic repair the fair market value thereof before the damage occurred.

9. RESPONSIBILITY AFTER LOSS OF OR DAMAGE TO THE VEHICLE

- 9.1 If during the rental period the vehicle is involved in any accident or collision or is lost or the vehicle or any part of it is stolen, the RENTER shall take every reasonable precaution to safeguard the interest on the LESSOR, including but without being limited to the following, where appropriate:
- 9.1.1 He shall obtain the name and address of everyone involved or any possible witnesses.
- 9.1.2 He shall not admit any responsibility or liability nor release any party from any liability or potential liability nor settle any claim or potential claim against or by any third party.
- 9.1.3 He shall notify the police and the LESSOR as soon as possible and in any event within twenty four hours of occurrence in question;
- 9.1.4 within forty eight hours of the occurrence in question he shall complete and furnish to the LESSOR the standard claim form which he shall be responsible of obtaining from the LESSOR;
- 9.1.5 within forty-eight hours of any accident to or theft of or from the vehicle he shall submit a copy of his RENTER's license to THE LESSOR;
- 9.1.6 he shall make adequate provision for the safety and security of the vehicle;
- 9.1.7 he shall co-operate with the LESSOR in this investigation, making and/ or defence of any claim action relating to the incident (including the making of an affidavit if he is requested to do so.
- 9.2 If the DRIVER is not the RENTER then without derogating from the RENTER's obligations in terms of this clause 9, the RENTER shall see to it that the DRIVER complies with the provision of 9.1 and the RENTER warrants that the DRIVER will do so.
- 9.3 The RENTER shall furnish to THE LESSOR (and if the RENTER is not the RENTER the RENTER shall see to it that the RENTER furnishes to the LESSOR any notice of any claim, demand, summons or the like which the RENTER or the RENTER may have received in connection with the vehicle.
- 9.4 The RENTER warrants that the information compiled in The LESSOR's claim form as referred to in 9.1.5 will be complete, true and correct in every respect.
The RENTER takes full responsibility for any second or more RENTERS in terms of this whole agreement.

10. EXEMPTION

The LESSOR shall not be liable for any damage to, or any damage arising out of any defect in, or mechanical failure of the vehicle, nor any loss of, or damage to, any property transported or left in the vehicle, nor for any indirect damages, consequential loss of profits or special damages of any kind for any breach of this agreement, or arising out of any cause whatsoever, irrespective whether or not the loss resulted from the negligence of the LESSOR, it's agents or employees. The LESSOR accepts no responsibility and shall not be liable for delays occasioned by a breakdown or any other circumstance.

11. GENERAL

- 11.1. This agreement shall be governed in all aspects by the laws of Namibia.
- 11.2. No agreement in variance with the provisions of this agreement shall be binding unless recorded in writing signed by on behalf of the RENTER and by or on behalf of the LESSOR.
- 11.3. The RENTER agrees that the LESSOR is entitled, but not obliged, in its discretion, to institute any action of proceedings for enforcing any of its rights under this agreement in the Magistrate's Court, notwithstanding the amount in dispute, and the RENTER consents to the jurisdiction of the Magistrates Court.
- 11.4. The RENTER shall not be entitled to cede any of his rights under this agreement.
- 11.5. If the LESSOR institutes any legal proceedings against the RENTER to enforce any of its rights under this agreement, the LESSOR shall be entitled to recover from the RENTER all the legal cost.
- 11.6. If the RENTER enters into this agreement on behalf of any principal, including any undisclosed principal, he shall be personally liable jointly and severally with his principal.
- 11.7. The RENTER chooses the address specified in the rental agreement document as his domicile *citandi et Exectandi* and any notice posted to him there be deemed to be received three days after it was posted unless he proves the contrary.
- 11.8. The LESSOR reserves the right to substitute vehicles reserved with a similar vehicle should the vehicle reserved not be available at the time of hire.
- 11.9. The LESSOR takes no responsibility for any personal injuries or death of the RENTER or any passengers arising during the use of this vehicle or any other vehicle of the LESSOR.