

**TERMS & CONDITIONS OF THE VEHICLE AND EQUIPMENT RENTAL AGREEMENT**

**1. Definitions**

- 1.1. In this Agreement, unless the context indicates otherwise, the following terms shall bear the meanings ascribed to them hereunder, namely:
  - 1.1.1. "ACH" means Africar CC (Registration Number CC/2005/3494), a close corporation duly registered and incorporated in terms of the laws of Namibia
  - 1.1.2. "Agreement" means this agreement for the Rental of the Vehicle, together with all annexures thereto, as entered into by and between the Parties;
  - 1.1.3. "Driver" means the Renter and any additional driver described on Annexure A;
  - 1.1.4. "Excess" means the security deposit paid by the Renter as specified on Annexure A;
  - 1.1.5. "Parties" means the ACH and the Renter and "Party" means either one of them, as the case may be;
  - 1.1.6. Annexure A means Annexure A hereto;
  - 1.1.7. "Renter" means the Renter detailed as Renter on Annexure A;
  - 1.1.8. "Rental Period" means the period from time and date between collection to time and date of return of the Vehicle as specified on Annexure A; provided that if such period is extended in terms of clause 7, the time and date entered by ACH on instruction from the Renter on ACH's copy of the Agreement;
  - 1.1.9. "Vehicle" means the Vehicle described on Annexure A or any other replacement Vehicle provided by ACH to the Renter, and shall include the Vehicle documents, keys, tyres, tools, equipment and accessories delivered with the Vehicle as indicated on Annexure C hereto.
- 1.2. Unless the context requires the contrary, words importing the masculine gender shall include the feminine and neuter, words indicating the singular shall include the plural and vice versa and any reference to a natural person shall apply to legal persons where appropriate.
- 1.3. The expiry or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiry or termination, or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the relevant clauses themselves do not provide for this.

**2. Rental**

- 2.1. ACH hereby lets to the Renter the Vehicle for the Rental period, subject to the terms and conditions of this Agreement, and the Renter so rents the Vehicle from ACH
- 2.2. The Renter has inspected the Vehicle and hereby acknowledges that the Vehicle is in a good condition and state of repair, subject to the damages indicated in the chart specified on Annexure D, none of which are major or influence the working condition or the safety of the Vehicle.
- 2.3. The Renter shall return the Vehicle to ACH at his/her own expense at the end of the Rental Period.

**3. Termination**

- 3.1. Notwithstanding anything to the contrary in this Agreement, ACH may terminate this agreement at any time due to any breach of the Renter by notice (verbally or in writing, depending on the given circumstances) to the Renter, whereupon ACH shall retake possession of the Vehicle.
- 3.2. Upon Termination of the Agreement the Renter shall immediately at his/her own cost return the Vehicle to ACH. ACH shall not be liable for any costs or damages incurred or suffered by the Renter as a result of the early termination of this Agreement.
- 3.3. The obligations of the Renter and the rights of ACH under this Agreement shall continue to be in effect until the Vehicle has been returned to ACH and the Renter has complied with all its obligations in terms of this Agreement.
- 3.4. In the event of termination of this Agreement or early return of the Vehicle by the Renter to ACH, ACH shall not be obliged to pay any refund to the Renter.

**4. Risk, Delivery and Return**

- 4.1. The Renter shall take delivery of the Vehicle at the business address of ACH. The Vehicle shall be deemed to have been delivered in good order and repair and without any damage to the paintwork, upholstery and fittings. Any damage not reflected on Annexure D and initiated by both Parties shall be deemed to be new damage. The Renter shall be liable for any damages sustained by the Vehicle during the Rental Period.
- 4.2. The Renter hereby assumes the sole risk and responsibility for the Vehicle for the Rental Period, provided that where the Renter has failed to return the Vehicle to ACH timeously in terms of this Agreement, the Renter assumes the sole risk and responsibility until the Vehicle has been properly returned to ACH.
- 4.3. The Renter shall, at the Renter's own cost, return the Vehicle to ACH at the time and date specified on Annexure A; provided that if this Agreement is terminated in terms of clause 3.1, as soon as possible after such termination.
- 4.4. The Vehicle shall be returned to the business address of ACH, in the same condition as received.
- 4.5. Without derogating from anything contained in this Agreement, on the expiry or termination of this Agreement for any reason, ACH shall be entitled to take possession of the Vehicle wherever it may be located and from whomsoever may be in possession and the Renter shall be liable for any costs incurred by ACH in respect of such retrieval and/or repossession.

**5. Warranties by the Renter**

- The Renter warrants that:
- 5.1. All particulars and representations given/made by the Renter to ACH are true and correct.
  - 5.2. The signatory to this agreement (if not the Renter) is authorised to do so by the Renter.
  - 5.3. The Driver is older than 23 (twenty-three) years of age, holds a valid driver's license for the Vehicle, is not infirm in any way whatsoever, has not been convicted of any driving offence which resulted in the endorsement or cancellation of his driving license, will not drive the Vehicle under the influence of drugs or alcohol, and has held his driver's license for a minimum period of 5 (five) years.
  - 5.4. The Driver, to his/her knowledge, has no defective vision or hearing, ever had a fit, has no physical infirmity, has never been convicted of any offence connected with the driving of any motor vehicle or had any driver's license endorsed or cancelled.
  - 5.5. No person other than the Driver shall drive the Vehicle without the written consent of ACH.

Renter.....

Driver.....

- 5.6. The Driver will drive, maintain and care for the Vehicle in a cautious and prudent manner and will lock the Vehicle and activate any burglar alarm or protection system installed in the Vehicle when the Vehicle is not in use.
- 5.7. The Vehicle shall not be used for the conveyance of persons or property for reward, in contravention or breach of law, in speed test or speed contest or to propel or tow any Vehicle or trailer nor shall the Vehicle be used for off-road driving; to transport goods in violation of any customs laws or in any other illegal manner; in any motor sport or similar high risk activity; beyond the borders of the territory of Namibia unless authorised by ACH in writing; or in any area in Namibia where there is or may be a risk of incidents or civil unrest, political disturbance or riot or any activity with any of the foregoing;
- 5.8. The Renter will make sure that the keys of the Vehicle are under the Renter's or the Driver's possession and control at all times.

**6. Leasing Charges**

- 6.1. The Renter agrees to pay to ACH for the use of the Vehicle, the aggregate amount of:
  - 6.1.1. The rental charge due for the Vehicle during the Rental Period in accordance with Annexure A or any other rate agreed (in writing) between the Renter and ACH, provided that where Annexure A fails to disclose the charges ACH's Standard Price List as displayed at their office shall apply;
  - 6.1.2. Any other fees accepted by the Renter on Annexure A and / or in accordance with the displayed price list;
  - 6.1.3. If during the Rental Period the Renter received any service or benefit, but for which no basis for charging is specified, then the Renter shall pay a charge determined on the basis specified in Annexure A or, if no such basis is specified, on ACH's standard rates applicable at that time in respect of the particular service or benefit;
  - 6.1.4. Any damages or loss suffered by ACH due to the failure of the Renter to return the Vehicle on expiry of the Rental Period, including without limiting the generality of the afore going, all amounts which would have been paid by the Renter in terms of this agreement if the Rental Period had been extended to the actual return date of the Vehicle to ACH;
  - 6.1.5. All costs incurred by ACH in repairing any damage of any nature to the Vehicle caused for whatsoever reason or any loss suffered by ACH as a result of theft, fire or any other cause whatsoever during the Rental Period; provided that such damages are not covered under the Insurance selected in terms of clause 10;
  - 6.1.6. All fines, penalties and like expenses (including legal costs on an attorney and own client basis incurred by ACH in respect of such fines and penalties) including but not limited to parking, traffic and other offences, arising out of or concerning the use of the Vehicle during the Rental Period and the Renter accordingly indemnifies ACH against all such liability;
- 6.2. All charges payable by the Renter shall be payable in cash or by means of credit or debit card on the termination of the Rental Period unless ACH requires all or any of the charges to be paid in advance.
- 6.3. In the event that ACH has agreed to accept payment from the Renter by credit card or charge card specified on Annexure A, the Renter's signature of this Agreement together with Annexure B and Annexure C hereto shall constitute authority for the issuer of the card to debit the Renter with the total amount due (including but not limited to any damage/s amount/s due).
- 6.4. If any amount is not paid on the due date, ACH may without prejudice to any rights it may have, charge interest on the overdue amount at a rate of 2% monthly, to be calculated and compounded monthly in arrears.

**7. Extension of Rental agreement:**

- 7.1. By mutual agreement between the Renter and ACH, the Renter shall be entitled at any time during the initial Rental Period to extend such Rental Period.
- 7.2. The Renter agrees that any extension so noted by a representative of ACH on the original Agreement will correctly reflect such extension.
- 7.3. Notwithstanding anything contained herein to the contrary, the original Agreement will be regarded as so amended..

**8. Indemnity**

- 8.1. The Renter hereby indemnifies and holds ACH, its members, employees, servants or agents harmless against claims and/or damages (including any loss or damage to property left or transported in the Vehicle), by the Renter or any person of whatsoever nature resulting out of this Agreement, whether caused by ACH's negligence, misconduct or otherwise, which shall include but not be limited to:
  - 8.1.1. any incidents or accidents involving the Vehicle;
  - 8.1.2. any injury, death, damage, loss or accident resulting from any defect of the Vehicle or mechanical failure of the Vehicle (howsoever arising and of whatever nature) or the failure of ACH to detect defects in or mechanical problems with the Vehicle;
  - 8.1.3. any theft, loss or damage of property transported or left in the Vehicle, including property left in the Vehicle upon its return to ACH;
  - 8.1.4. any other direct or indirect damages, consequential loss, loss of profit or special damages of any kind resulting from the breach of this Agreement;
  - 8.1.5. ACH's failure to deliver the Vehicle on time;
  - 8.1.6. any defect in the Vehicle including that caused by the negligence, misconduct or default of ACH;
- 8.2. ACH, its members, officers, employees, servants or agents are accordingly indemnified by the Renter or his estate representatives or executors against any claim or any nature whatsoever and howsoever arising for any damages or loss which might be instituted against it arising from or connected with or pursuant to the Rental of the Vehicle contemplated in these terms and conditions.

Driver.....

ACH.....

**9. Responsibility after loss or damage to Vehicle:**

- 9.1. If, during the Rental Period, the Vehicle or any part thereof is lost, stolen, involved in any accident, collision or fire, the Renter shall take every reasonable safeguard to protect the interests of ACH including but not limited to, the following where appropriate. The Renter:
  - 9.1.1. shall notify ACH immediately or within 3 (three) hours of the occurrence;
  - 9.1.2. shall obtain the name and addresses of everyone involved in the incident and possible witnesses;
  - 9.1.3. 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 party nor accept any disclaimer or liability;
  - 9.1.4. shall notify the police in any event within 24 hours of the occurrence in question and provide ACH with a copy of such police report;
  - 9.1.5. shall make adequate provision for the safety and security of the Vehicle;
  - 9.1.6. shall retain the keys of the Vehicle and return them to ACH;
  - 9.1.7. shall co-operate with ACH and its insurer in the investigation, the making or instituting of any claim or action and the defense of any prosecution, claim or action relating to the occurrence (including the making of an affidavit if s/he is requested to do so).
- 9.2. If the Renter is not the Driver at the time of the occurrence, the Renter shall automatically become liable for all damages incurred by ACH, including but not limited to third party claims;.
- 9.3. shall furnish to ACH any notice of claim, demand, summons or the like, which the Renter or the Driver may receive in connection with the Vehicle.

**10. Insurance**

- 10.1. Upon signing this Agreement, the Renter shall be obliged to take either the Standard Vehicle Damage Cover or the Exclusive Vehicle Damage Cover, both of which cover third party insurance in addition to the coverage detailed in the following clauses.
- 10.2. Under the **Standard** Vehicle Damage Cover (Standard 1 or Standard 2) the Renter shall be responsible for all damages to the Vehicle regardless of the cause of the damage, provided that subject to clause 10.4, 10.5 and 10.6 the Renter's liability shall be limited to the Excess amount only in the event of collisions with moving objects, theft or fire;
- 10.3. Under the **Exclusive** Vehicle Damage Cover the Renter shall be responsible for all damages to the Vehicle regardless of the cause of the damage, provided that subject to clause 10.4 and 10.5 and 10.6 the Renter's liability shall be limited to the Excess amount only in the events listed in clause 10.2 and collisions with static objects and single vehicle accidents (i.e. overturning).
- 10.4. The Renter shall be responsible for the recovery and Tow-in costs of the Vehicle.
- 10.5. Notwithstanding any other provisions in this agreement, neither the Standard, the Exclusive Vehicle Damage Cover nor the Glass and Tyre Damage Cover shall be applicable under the following or following circumstances:
  - 10.5.1. Driving after sunset;
  - 10.5.2. Damages caused due to driving under the influence of intoxicating substances;
  - 10.5.3. Collisions of two vehicles of ACH;
  - 10.5.4. Any water damage to the Vehicle;
  - 10.5.5. Driving off public roads or on 4x4 trails;
  - 10.5.6. Entering of specified no-go-areas as indicated by ACH or any other relevant authority
  - 10.5.7. Driving below the high tide water mark;
  - 10.5.8. Damages or theft to the equipment and accessories including the camping equipment as listed in Annexure C.
- 10.6. Damages incurred due to the following are deemed to be caused by Renter's negligence and the Renter hereby accepts liability and responsibility for any damages and costs associated therewith, which shall be payable on demand:
  - 10.6.1. water damage;
  - 10.6.2. sandblast damage;
  - 10.6.3. any undercarriage damages;
  - 10.6.4. damages deliberately caused to the vehicle;
  - 10.6.5. damages to the clutch; and
  - 10.6.6. damages due to incorrect fuels or lubricants used.
- 10.7. Tyres, headlamps, windscreens and any glass breakages are not covered by the Standard or Exclusive Vehicle Damage Cover and would need to be insured separately by the optional Glass and Tyre Damage Cover.
- 10.8. Under the **Glass and Tyre** Damage Cover and subject to Clause 10.4, tyre repairs with patches, two tyre replacements and one windscreen are covered. Neither rim damage nor loss of the tyre and/or rim through theft or negligence is included under this insurance.
  - 10.8.1. Tyres repaired with plugs rather than patches shall be deemed to be damaged beyond repair and the Renter shall pay ACH the cost of a new tyre.
- 10.9. In the event of an accident or incident which renders the Vehicle unfit for use by the Renter, the Renter shall not be entitled to a refund of the Rental amount or any replacement vehicles, provided that ACH may agree to supply the Renter with a replacement Vehicle at the Renter's expense subject to the same terms and conditions as contained in this Agreement

**11. Breach**

Breach of this Agreement occurs, but is not limited to, when:

- 11.1. the Vehicle is not returned by the Renter on the agreed time and date as specified on Annexure A; or
- 11.2. the Vehicle was being driven on a road which is not a public tarred or graded road, the condition whereof was not suitable for the intended use of the Vehicle, provided that where such road is a private access road to accommodation such road is exempted from above provision; or
- 11.3. the Vehicle was being used for purposes prohibited as specified in clause 10.5 hereof; or;
- 11.4. the Vehicle (at the time of collision) was driven by any person whose blood alcohol concentration exceeded the limit permitted by any applicable law or regulation or whilst under the influence of intoxicating liquor or narcotic drugs; or
- 11.5. the Vehicle was being used for a purpose prohibited as specified in clause 5.7 hereof;
- 11.6. the Vehicle is being driven by any person without a valid driver's licence;
- 11.7. the Vehicle is being driven by any person not authorised thereto in terms of this Agreement;
- 11.8. the Renter breaches any material term or condition of this Agreement.

**12. General**

- 12.1. This agreement constitutes the whole of the agreement between the parties hereto relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation shall be of any force or effect unless reduced to writing and signed by the parties hereto. The Renter authorizes ACH to insert any particulars in the Agreement which are not known or are unavailable at the time of signature in order to rectify any *bona fide* errors in any fact, figure or calculation.
- 12.2. The Renter shall not be entitled to cede any of the Renter's rights under this Agreement or to sub-let or part with possession of the Vehicle, its tools or equipment or any part thereof.
- 12.3. If ACH institutes legal proceedings against the Renter to enforce any rights under this Agreement it shall be entitled to recover from the Renter all the legal costs on a scale as between attorney and own client.

- 12.4. If the Renter enters into this Agreement on behalf of any principal, including any disclosed and/or any undisclosed principal, s/he shall be personally liable jointly and severally with his/her principal.
- 12.5. The Renter chooses the address specified on Annexure A as his/her *domicilium citandi et executandi* and any notice and court process posted to him there shall be deemed to be received 7 (seven) days after the date of dispatch.
- 12.6. ACH shall be entitled to carry out a credit check on the Renter with one or more credit agencies who may retain a record thereof and ACH shall be entitled to record any default by a Renter with any credit agency. Such records may be made available by the credit agency to third parties.
- 12.7. The Renter acknowledges that certain vehicles may be fitted with a vehicle management system, which is used to *inter alia*, record speed, illegal entry, record location and other data relating to the Vehicle Rental and such data recorded shall constitute admissible evidence in any proceedings arising out of or connected to this Agreement. ACH shall be entitled to use such data as it deems fit, provided that it shall not provide third parties with such data unless necessary in connection with any dispute or proceeding arising from or connected to this Agreement and further provided that it shall not make such data public.

**13. Governing Law**

This Agreement and all matters or disputes arising therefrom or incidental thereto shall be governed and construed in accordance with the laws of the Republic of Namibia.

I, the undersigned Renter and/or Driver of the Vehicle, hereby confirm that I have thoroughly read and understand the terms and conditions of this Rental agreement and fully understand the contents and implications of these said conditions.

RENTER'S SIGNATURE.....Date.....

DRIVER'S SIGNATURE.....Date.....

DRIVER'S SIGNATURE.....Date.....

ON BEHALF OF ACH.....Date.....