

# COOKTOWN CAR RENTALS PTY LTD

ABN 54 655 720 513

This Hire Agreement between **Cooktown Car Rentals** and You is made on the date shown on the associated document You signed for the hire and is made up of that document and these Terms and Conditions.

## INTERPRETING YOUR HIRE AGREEMENT

1. In this Hire Agreement:

**Additional Driver** means any additional driver who is noted in this Hire Agreement as an Additional Driver;

**Cooktown Car Rentals** means Cooktown Car Rentals Pty Ltd ACN 655 720 513 ABN 54 655 720 513 and its successors and assigns;

**Hire Period** means the period commencing on the Commencement Date at the Time (or earlier time that you collect the Vehicle) and ending on the date and at the time that You return the Vehicle to the Return Place;

**Return Place** means the business address of **Cooktown Car Rentals** in the Return Town;

**Substitute Vehicle Insurance** means a policy of motor vehicle insurance held by You or an Additional Driver which covers You or the Additional Driver while You or the Additional Driver use the Vehicle as a substitute for the vehicle insured under that policy;

**Vehicle** means the Vehicle (or any substitute vehicle), and includes its parts, components, accessories and contents supplied by **Cooktown Car Rentals**;

**You or Your** refers to the person(s) with whom this Hire Agreement is made and includes where the context permits your successors;

**Your Consumer Rights** means your rights as a consumer under applicable consumer protection legislation (including the Australian Consumer Law) that cannot be excluded, restricted or modified by this Rental Agreement;

an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;

an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;

words and phrases that are defined or given particulars on the associated document you signed for the hire have the meaning or particulars given in that document;

references to dollar or \$ are to Australian legal tender.

## DRIVER

2.1 Only You or an Additional Driver may drive the Vehicle.

2.2 You warrant that:

- (a) You and any Additional Driver currently hold an open drivers license that permits you to drive the Vehicle and have been so licenced to drive for a period of 12 months or longer; and
- (b) You and the Additional Driver are not under 25 years age; and
- (c) You and the Additional Driver have not had Your driver's licence cancelled, endorsed or suspended within the last three years.

## WHERE YOU CAN AND CANNOT DRIVE THE VEHICLE

3.1 You and any Additional Driver must only use the Vehicle on a road which is properly formed and constructed as a sealed, metalled or graded gravel road.

3.2 You and any Additional Driver must not, unless authorised in writing by **Cooktown Car Rentals**, drive or take the Vehicle:

- (a) beyond Chillagoe, Georgetown or Conjuboy in a westerly direction;
- (b) beyond Townsville or Charters Towers in a southerly direction.
- (c) beyond Cooktown or Laura in a northerly direction;
- (d) on off road tracks or off road conditions including without limitation the CREB track;
- (e) on beaches or through streams, rivers, creeks, dams or floodwaters.

3.3 Notwithstanding clauses 3.1 and 3.2 you may drive the Vehicle on the Bloomfield Track during the months May to November (inclusive) subject to the following conditions:

- (a) only if the driver of the Vehicle has 4 wheel drive off road experience;

# COOKTOWN CAR RENTALS PTY LTD

ABN 54 655 720 513

- (b) only if the Bloomfield Track is dry and rain is not predicted for the period that you will travel on the Bloomfield Track;
- (c) You check road conditions before commencing travel on the Bloomfield Track and ascertain that road conditions are favourable to traversing the Bloomfield Track;
- (d) only if creek or stream levels are 50 centimetres or less at each crossing;
- (e) only if the driver of the Vehicle selects low gear on the descents at Donovan's Range and Cowie Range;
- (f) the driver of the Vehicle drives to the conditions including driving with headlights on, at speed appropriate for the conditions and leaving space between vehicles appropriate for the conditions.

## USE OF THE VEHICLE

### 4.1 You and any Additional Driver must:

- (a) comply with all laws relating to the use of the Vehicle;
- (b) not allow the Vehicle to be used for any illegal purpose, race, contest or performance test of any kind;
- (c) not allow the Vehicle to be used to tow or push anything;
- (d) not carry more passengers than may be properly accommodated by the seat belt restraints provided in the Vehicle, or carry a greater load than that for which the Vehicle is manufactured to carry;
- (e) not be under the influence of alcohol, drugs or have a blood alcohol content that exceeds the legal limit in Queensland;
- (f) not allow the Vehicle to be used for a commercial purpose, including to carry passengers or goods for payment or reward of any kind;
- (g) not use the Vehicle when it is damaged or otherwise unsafe to do so;
- (h) not part with possession, dispose of, encumber or assign or grant any rights or interest in the Vehicle;
- (i) not place any inflammable substance which has a flash point under 22.8°C or any other explosive or corrosive substances in the Vehicle;
- (j) use the Vehicle according to manufacturer's specifications and not ignore any warning lights;
- (k) not modify the Vehicle in any way;
- (l) only use the fuel type recommended by the Vehicle's manufacturer;
- (m) must not carry nor permit any other person to carry any animal or pet in the Vehicle;
- (n) not smoke nor permit any other person to smoke in the Vehicle;
- (o) comply immediately with any direction by Cooktown Car Rentals not to drive the Vehicle.

### 4.2 You must pay for all parking and traffic infringements in respect of the Vehicle during the Hire Period (including if issued to **Cooktown Car Rentals**). You must pay to **Cooktown Car Rentals** an administration fee (as determined by **Cooktown Car Rentals** from time to time) for dealing with any parking or traffic infringement notice or correspondence that is received by **Cooktown Car Rentals**.

### 4.3 During the Hire Period the Vehicle may travel for no more than the Daily Kilometre Allowance (as measured by the Vehicle's odometer) for each 24 hour period or part thereof during the Hire Period (**Total Kilometre Allowance**). If the Vehicle travels more than the Total Kilometre Allowance then you must pay an additional amount (**the Additional Kilometre Amount**) calculated by multiplying the Excess Kilometre Rate to each kilometre or part thereof that exceeds the Total Kilometre Allowance.

## MAINTENANCE, SECURITY AND SAFETY

### 5.1 You must:

- (a) maintain all of the Vehicle's engine oils and engine coolant levels to the manufacturer's specifications, as set out in the Vehicle's operations manual located in the glove box;
- (b) keep the Vehicle safe and protected from harm including by keeping the Vehicle locked when not in use and the keys under Your personal control at all times.

### 5.2 You must not undertake nor permit works including repairs to the Vehicle unless **Cooktown Car Rentals** authorises You to do so in writing and subject to You obtaining an original tax invoice/receipt. You must pay for any unauthorised repairs to the Vehicle.

**LOSS DAMAGE WAIVER, DAMAGE AND LOSS OF PROPERTY**

6.1 Subject to this clause 6, You are liable:

- (a) for the loss of, and all damage to, the Vehicle; and
- (b) for all injury to any person and all damage to the property of any person:
  - (i) which is caused or contributed to by You or an Additional Driver; or
  - (ii) which arises from the use of the Vehicle by You or an Additional Driver.

This clause does not apply to any damage or loss for which **Cooktown Car Rentals** is liable to You under this Rental Agreement.

6.2 Subject to clause 6.3, if:

- (a) You pay the excess required by the insurer of the Vehicle for each separate insured event;
- (b) You and any Additional Driver are entitled to be indemnified under a policy of motor vehicle insurance provided by a registered insurer for legal liability;

Cooktown Car Rentals waives Your liability under clause 5.1 to the extent covered by that insurance policy.

6.3 You must always pay, and clause 6.2 does not cover:

- (a) the excess required by the insurer of the Vehicle;;
- (b) the cost of rectifying any tyre damage (other than attributable to normal wear and tear);
- (c) the cost of repairing any damage caused deliberately or recklessly by:
  - (i) You;
  - (ii) any other driver of the Vehicle; or
  - (iii) any passenger carried during the Hire Period;
- (d) the cost of repairing any damage to the Vehicle or to third party property caused by You using, or permitting the Vehicle to be used, in any area prohibited by this Hire Agreement or otherwise in breach of this Hire Agreement
- (e) the cost of repairing overhead or roof damage caused by, but not limited to, contact between the Vehicle and objects overhanging or obstructing the path of the Vehicle;
- (f) the cost of repairing any water damage to the Vehicle or any underbody damage, and any resulting damage from that underbody damage, to the Vehicle;
- (g) loss or damage attributed to:
  - (i) the Vehicle being unlocked or keys left in the Vehicle;
  - (ii) loss of keys to the Vehicle;
  - (iii) windscreen damage;
  - (iv) failure to maintain fuel levels;
  - (v) failure to properly secure any load.

6.4 For the purposes of this clause 6, the amount You must pay for any damage or repair to the Vehicle is the amount reasonably determined by **Cooktown Car Rentals** and includes:

- (a) the cost of repairs to the Vehicle or the market value of the Vehicle at the time of the loss or damage, whichever is the lesser;
- (b) appraisal fees;
- (c) towing, storage and recovery costs;
- (d) a reasonable administrative fee reflecting the cost of making arrangements for repairs and towing and other administrative activities; and
- (e) an amount for per day loss of use of the Vehicle based on the estimated downtime of the Vehicle at the Daily Rate.

You must pay that amount as a liquidated debt payable on demand.

**COOKTOWN CAR RENTALS PTY LTD**

ABN 54 655 720 513

**RETURN OF VEHICLE**

7.1 You must return the Vehicle to **Cooktown Car Rentals**:

- (a) at the Return Place;
- (b) on or before the Time on the Return Date;
- (c) in the same condition as it was at the commencement of the Hire Period, fair wear and tear excepted;
- (d) with a full fuel tank, otherwise **Cooktown Car Rentals** will charge you for the fuel required to fill the fuel tank at the rate per litre set by **Cooktown Car Rentals** in its discretion from time to time;
- (e) in clean and tidy condition, otherwise **Cooktown Car Rentals** may charge you a cleaning fee (as determined by **Cooktown Car Rentals** from time to time).

7.2 If You return the vehicle later than the Time on the Return Date, You must pay all additional rental charges at the Daily Rate for each twenty-four hour period or part thereof until the Vehicle is returned as required by this Hire Agreement.

7.3 **Cooktown Car Rentals** may request the immediate return of the Vehicle, or **Cooktown Car Rentals** may re-take the Vehicle without notice, if in the reasonable opinion of **Cooktown Car Rentals**:

- (a) You have breached a provision of the Hire Agreement;
- (b) damage to the Vehicle, or injury to persons or property is likely to occur;
- (c) the Vehicle will be involved in an industrial dispute; or
- (d) the Vehicle is abandoned.

You must also pay **Cooktown Car Rentals** any cost it incurs as well as all costs and charges under the Hire Agreement for the period up to return/repossession of the Vehicle.

7.4 **Cooktown Car Rentals** reserves the right to refuse hire of another vehicle to You following any incident or accident or where You have breached or may breach a condition of this Hire Agreement.

7.5 You acknowledge that at the Commencement Date the Vehicle is in working order and condition, and is safe and roadworthy, fully filled with fuel and without any existing damage (except to the extent recorded as any Existing Damage).

**CLAIMS AND PROCEEDINGS**

8. Where the use of the Vehicle by You, an Additional Driver, or any other person results in an accident or claim, or where damage or loss is sustained to the Vehicle or any third party property, You and/or any Additional Driver must:

- (a) promptly report such incident to the police and comply with all directions and requirements of the police, including to participate in any test;
- (b) promptly report such incident in writing to **Cooktown Car Rentals**;
- (c) not, without **Cooktown Car Rentals's** written consent, make or give any offer, promise of payment, settlement, waiver, release, indemnity or admission of liability;
- (d) permit **Cooktown Car Rentals** or its insurer at its own cost to bring, defend, enforce or settle any legal proceedings against a third party in Your name;
- (e) permit or ensure that **Cooktown Car Rentals** may claim in Your name or that of the Additional Driver under any applicable Substitute Vehicle Insurance, and assist, and cause the Additional Driver to assist, **Cooktown Car Rentals** in making such a claim, including assigning any right to claim under any Substitute Vehicle Insurance to **Cooktown Car Rentals**;
- (f) complete and furnish to **Cooktown Car Rentals** within a reasonable time any statement, information or assistance which **Cooktown Car Rentals** or its insurer may reasonably require, including attending at a lawyer's office and at Court to give evidence.

**PAYMENT**

9.1 You must pay:

- (a) the Daily Rate for each 24 hour period during the Hire Period;
- (b) the Additional Kilometre Amount;
- (c) all other amounts that this Hire Agreement requires you to pay including the costs of performing your

**COOKTOWN CAR RENTALS PTY LTD**

ABN 54 655 720 513

obligations pursuant to this Hire Agreement.

- 9.2 Prior to the commencement of the Hire Period you must pay to **Cooktown Car Rentals**:
- (a) the Anticipated Hire Amount; and
- 9.3 At the end of the Hire Period, You must pay **Cooktown Car Rentals** the balance of all amounts payable under this Hire Agreement that are known and quantified at that time.
- 9.4 You must pay **Cooktown Car Rentals** any other amounts owing under this Hire Agreement on demand.
- 9.5 The minimum charge You must pay for the hire of the Vehicle is an amount equivalent to one day's hire at the Daily Rate.
- 9.6 You authorise **Cooktown Car Rentals** to charge all amounts owing by you to **Cooktown Car Rentals** under this Hire Agreement to Your credit card or charge account.
- 9.7 **Cooktown Car Rentals** will pay any refund due to You by such method as **Cooktown Car Rentals** may reasonably choose.
- 9.8 You must pay the Daily Rate for each day during the Hire Period. To calculate the Hire Period each day is calculated as each twenty-four hour period (or part thereof) commencing on the Time (or earlier time that you collect the Vehicle) on the Commencement Date and ending at the time that the Vehicle is returned in accordance with this Hire Agreement.
- 9.9 **Cooktown Car Rentals** may charge interest at the Default Rate on any amount due but unpaid from the due date for payment until the actual date of payment and compounded monthly based on a year of 365 days. The Default Rate is the aggregate of 2% per annum plus the interest rate per annum charged by **Cooktown Car Rentals's** principal bankers on unsecured overdrafts of \$100,000.00 or less.
- 9.10 You must pay **Cooktown Car Rentals** legal costs (on a full indemnity basis) of enforcing (or attempting to enforce) any of **Cooktown Car Rentals'** right under this Hire Agreement or which arise from a breach of this Agreement by You.
- 9.11 The Daily Rate and the Anticipated Hire Amount are inclusive of GST. Otherwise, unless an amount is expressed to include GST, if any payment made by one party to any other party under or relating to this Hire Agreement constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document. **GST** means any tax, levy, charge or impost implemented under the A New Tax System (Goods and Services Tax) Act (GST Act) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.
- 9.12 **Cooktown Car Rentals** is entitled to deduct from any Bond paid by You, an amount equal to any monies due but unpaid by You under this Hire Agreement or otherwise to **Cooktown Car Rentals** and will return any unused Bond to You within a reasonable time after the end of the Hire Period.

**LIABILITY OF COOKTOWN CAR RENTALS**

- 10.1 You use the Vehicle entirely at Your own risk and indemnify and agree to keep indemnified **Cooktown Car Rentals** for any claim arising out of Your use of the Vehicle or breach of this Hire Agreement.
- 10.2 Unless it is negligent, **Cooktown Car Rentals** is not liable to any person, and You indemnify **Cooktown Car Rentals**, for any loss of, or damage to, any property:
- (a) stolen from the Vehicle or otherwise lost during the Hire Period; or
- (b) left in the Vehicle after its return to **Cooktown Car Rentals**.
- 10.3 Subject to clause 10.4, **Cooktown Car Rentals** makes no warranties, express or implied as to the suitability, fitness for purpose or otherwise of the Vehicle and all conditions, warranties, terms, undertakings, duties and obligations expressed or implied by law are hereby excluded and **Cooktown Car Rentals** shall not be liable in contract, for and (including negligence) breach of statutory duty or otherwise in respect of any loss or damage (including consequential loss) arising directly or indirectly out of the use of the Vehicle or the availability of the Vehicle.
- 10.4 Neither Clauses 10.2, 10.3 and any other provision of this Hire Agreement are not intended to exclude, restrict or modify any non-excludable terms implied by or rights which You may have under your Consumer Rights, however where those terms are capable of limitation they are hereby limited at the option of **Cooktown Car Rentals**, to the resupply of the Vehicle or payment of the cost of resupplying the Vehicle.

**COOKTOWN CAR RENTALS PTY LTD**

ABN 54 655 720 513

**TERMINATION**

- 11.1 Either party may terminate this Hire Agreement at any time if the other party commits a material breach of this Hire Agreement.
- 11.2 You may terminate the Rental Agreement at any time for any other reason.
- 11.3 If this Hire Agreement is terminated by you pursuant to clause 11.1 then You must pay the Daily Rate only to the time that the Vehicle is returned as required by clause 7.1 (a), (c), (d) and (e). Otherwise you must pay the Daily Rate until the Time on the Return Date even if the Vehicle is returned prior to that time.

**MISCELLANEOUS**

- 12.1 This Hire Agreement constitutes the entire agreement between You and **Cooktown Car Rentals** about its subject matter and all previous negotiations, warranties, undertakings and understandings are hereby superseded.
- 12.2 This Hire Agreement is governed by the laws of Queensland, Australia. Any legal action in relation to this Hire Agreement may be commenced in Cairns, Queensland, Australia.
- 12.3 If any term or condition is or becomes illegal or unenforceable it will be severed and non of the remaining terms or conditions will be affected.
- 12.4 This Hire Agreement is personal to You and cannot be assigned by You.
- 12.5 **Cooktown Car Rentals** may assign its interest in this Hire Agreement and transfer ownership of the Vehicle during the Hire Period without Your consent, although You will be given notice of the assignment as soon as practicable after it occurs.
- 12.6 You warrant to **Cooktown Car Rentals** that all of the information that you provide is true, complete and accurate and not misleading in any respect.
- 12.7 If this Hire Agreement is signed using an electronic signature then the parties record that they agree to enter into this Hire Agreement in electronic form and consent to either or both parties signing this Hire Agreement using an electronic signature. For the purposes of this clause, electronic signature is an electronic method of signing that identifies the person and indicates their intention to sign this Hire Agreement.