

TERMS AND CONDITIONS

The Owner agrees to hire the Vehicle to the Customer on terms set out in the Hire Schedule and in this document. The Hire Schedule is not a separate contract but forms a part of this hire agreement between the Owner and the Customer.

1. Definitions of Words in this Contract:

Authority means any Governmental or semi-Governmental or Local Government Authority, public agency, statutory corporation or other utility of legal entity having statutory right in respect of approvals.

Claim means in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

Commencement means the date upon which the Vehicle is hired as specified in the Hire Schedule.

Customer means the person or entity specified in the Hire Schedule and includes the Customer's employees, executors, administrators and representatives.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Hire Charge means the amount specified in the Hire Schedule payable by the Customer to hire the Vehicle.

Hire Period means the period from the Commencement until the conclusion of the hire as specified in the Hire Schedule. The Owner may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.

Hire Schedule means the document that specifies the Vehicle to be hired, the Hire Period, the Hire Charge and other details relating to the hire of the Vehicle.

Owner means Iceman Trailer Hire Pty Ltd ACN 157 950 813.

Personnel in relation to a party means the party's officers, office-holders, employees, agents and contractors.

PPS Act means the *Personal Property Securities Act 2009 (Cth)*.

Tax Invoice has the same meaning as in the GST Act.

Vehicle means any refrigerated trailer unit hired by the Customer from the Owner, including the Vehicle specified in the Hire Schedule.

2. The Owner's Obligations

The Owner will:

- 2.1 allow the Customer to take and use the Vehicle for the Hire Period;
- 2.2 provide the Vehicle to the Customer in a clean condition and in good repair; and
- 2.3 arrange for a major service of the Vehicle to be undertaken from time to time at its expense..

3. Obligations of the Customer

The Customer must:

- 3.1 collect the Vehicle from the Owner at its expense;
- 3.2 ensure that any person collecting or taking delivery of the Vehicle on behalf of the Customer is authorised by the Customer to do so;
- 3.3 maintain the Vehicle in good repair, condition and working order, fair wear and tear excepted, including ensuring the Vehicle undergoes full maintenance scheduling;
- 3.4 supply the necessary oil, lubricants, coolant, water and fuel to enable the safe operation of the Vehicle;
- 3.5 conduct a thorough hazard and risk assessment before using the Vehicle and comply with all laws relating to the Vehicle and its operation;
- 3.6 ensure the Vehicle is operated by a suitably trained, licensed, experienced and (if necessary) certified operator and is operated only for its intended use and in accordance with any manufacturer's instructions;
- 3.7 provide the Owner with the Vehicle's hub-meter hours and fridge hours by email on the first Monday of each month throughout the Hire Period;
- 3.8 ensure the Vehicle is made available to the Owner for the purposes of a major service within ten (10) business days of the Owner notifying the Customer that it intends to carry out the service;
- 3.9 ensure the Vehicle is at all times stored safely and protected from theft, loss or damage;
- 3.10 immediately notify the Owner of any loss, theft, breakdown or damage to the Vehicle and must not repair the Vehicle without the Owner's prior written consent;
- 3.11 return the Vehicle to the Owner at the end of the Hire Period clean, in a FoodSafe condition, in good repair (fair wear and tear excepted) and with a full tank of fuel.

4. Payments by the Customer to the Owner

- 4.1 Subject to any other agreement between the parties and unless specified by the Owner in writing, the Hire Charge must be paid by the Customer and is due for payment within 30 days of the date that the Owner delivers a Tax Invoice to the Customer for the hire of the Vehicle.
- 4.2 If the Customer does not pay the Hire Charge by the due date for payment under this Agreement, the Owner may charge the Customer interest on the outstanding amount calculated daily at 10% per month on all amounts owing by the Customer until the outstanding amount is paid in full.
- 4.3 The Owner may vary the interest rate under clause 4.2 from time to time by notifying the Customer.
- 4.4 The Customer agrees to pay all amounts specified on the Tax Invoice, including:
 - (a) the new list price of the Vehicle which is for whatever reason not returned to the Owner, whether by theft or loss or some other reason;
 - (b) all costs incurred in cleaning the Vehicle, if the Vehicle is not returned to the Owner in a clean state;
 - (c) the cost of repairing any damage to the Vehicle, including compliance with FoodSafe requirements unless expressly agreed otherwise in this Agreement;
 - (d) stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Agreement or arising from the Owner supply or the Customer's use of the Vehicle;
 - (e) all costs incurred by the Owner in recovering possession of the Vehicle;
 - (f) a late payment fee calculated daily at 10% per month on all amounts owing by the Customer not paid on time;
 - (g) any additional Hire Charges, including surcharges for night work, weekends or public holidays;
 - (h) the cost of replacement fuel if the Vehicle is returned to the Owner with less fuel in the tank than it had upon the Commencement of the Hire Period;
 - (i) any costs and expenses incurred by the Owner in enforcing this Agreement; and
 - (j) all costs of repairing or replacing tyres to the Owner's standard at the end of the Hire Period .
- 4.5 If the collection of the Vehicle is delayed at the Customer's request or if the Customer fails to collect the Vehicle on the scheduled Commencement Date for whatever reasons, the Hire Charge will be due and payable from the date specified in the Hire Period as the Commencement Date.
- 4.6 If the Customer terminates this Agreement before the end of the Hire Period, the Customer will pay the Hire Charge to the Owner, plus all other associated amounts, in respect of the balance of the Hire Period as if this Agreement had not been terminated.

5. Personal Property Securities Act

- 5.1 All terms capitalised in this clause that are not defined in this Agreement take their meaning as defined in the PPS Act.
- 5.2 This Agreement:
 - (a) constitutes a Security Agreement for the purposes of the PPS Act; and
 - (b) creates a Security Interest in:
 - (i) the Vehicle previously supplied by the Owner to the Customer; and
 - (ii) all future Vehicles supplied by the Owner to the Customer.
- 5.3 The Customer must do all things necessary to assist the Owner to continuously perfect any Security Interest arising under this agreement, including signing any documents or providing any information the Owner reasonably requests for the purposes of protecting its interest under the PPS Act.
- 5.4 Any Vehicles supplied by the Owner to the Customer will constitute a Purchase Money Security Interest (PMSI).
- 5.5 The PMSI will continue for any goods coming into existence or for the Proceeds from the sale of the Vehicles.
- 5.6 Until title passes from the Owner to the Customer under this Agreement, the Customer will not permit any Security Interest to be created in the Vehicle without the Owner's written consent.

- 5.7 If the Vehicle supplied by the Owner to the Customer is Commingled with any other property, the Owner will have a Security Interest in those Commingled goods including the Vehicle supplied under this Agreement.
- 5.8 The Customer must not lodge or permit the lodgement of a Financing Change Statement or an Amendment Demand in respect of the Vehicle without the Owner's consent.
- 5.9 The Customer must immediately notify the Owner in writing of any change in the Customer's name or other identifying characteristics of the Customer or the Vehicle in which the Owner holds any Security Interest.
- 5.10 To the maximum extent permitted by the PPS Act:
 - (a) the Owner does not have to give a notice to the Customer of any action the Owner takes in accordance with sections 95 or 121(4) of the PPS Act;
 - (b) the Owner does not have to give a notice under section 130 of the PPS Act;
 - (c) the Owner does not have to give the details required under section 132(3)(d) of the PPS Act;
 - (d) the Owner does not have to give a written statement of account under section 132(4) of the PPS Act;
 - (e) the Owner does not have to give a notice required under section 135 of the PPS Act;
 - (f) no person can redeem the Security Interest in the Vehicle under section 142 of the PPS Act without the Owner's consent; and
 - (g) no person may reinstate the Security Agreement under section 143 of the PPS Act without the Owner's consent.
- 5.11 For the purposes of section 275(6) of the PPS Act, the Customer must keep confidential any information relating to this Agreement which is in the nature of information which an interested person could access under section 275(1) of the PPS Act.

6. Defects in the Vehicle

The Vehicle will be deemed received by the Customer in good condition unless written notice of shortages and/or defects are received by the Owner within two (2) days of the Vehicle being collected from the Owner at the Commencement of the Hire Period.

7. Breach of Hire Contract by Customer

- 7.1 If the Customer becomes bankrupt, insolvent, ceases business or breaches any term of the Agreement then the Owner will be entitled to:
 - (a) terminate this agreement; and/or
 - (b) sue for recovery of all monies owing by the Customer, and/or
 - (c) repossess the Vehicle (and is authorised to enter any premises where the Vehicle is located to do so); and/or
 - (d) exercise any or all of its other rights in accordance with the law.
- 7.2 The Owner may terminate this Agreement without penalty if, for any reason, it considers that it cannot supply the Vehicle to the Customer.
- 7.3 Upon termination of this Agreement:
 - (a) all amounts owing by the Customer, whether actually or contingently, become payable; and
 - (b) the Customer must return the Vehicle in its possession or control to the Owner within seven (7) days.
- 7.4 The Owner may terminate this Agreement at its sole discretion prior to collection of the Vehicle by the Customer if it receives a credit assessment of the Customer that is considers to be unsatisfactory.

8. Limitation of Liability

- 8.1 The Owner gives no warranties and makes no representations whatsoever relating to the Vehicle's condition, quality, suitability or fitness for any ordinary or special use of the Vehicle.
- 8.2 Nothing in this Agreement excludes, restricts or modifies any rights the Customer may have under the Australian Consumer Law or any other law which operates to protect the hirers of goods in various circumstances.
- 8.3 The Owner's liability for breach of any condition or warranty is limited to the supplying of the Vehicle again to the Customer or to the repair of the Vehicle at the Owner's expense.

9. Disputes

The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to the Owner in writing within 30 days of the date of the Tax Invoice. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer and the Customer is estopped from raising any issue in relation to the Tax Invoice.

10. Governing Law

The Owner and the Customer agree that this Agreement will be construed in accordance with the laws in force in Queensland and the parties submit to this jurisdiction.

11. Risk

- 11.1 The Customer holds the Vehicle as a bailee only and title to and in the Vehicle remains with the Owner at all times.
- 11.2 The Vehicle will be entirely at the risk of the Customer from the date that it leaves the Owner's premises or control and until it is returned to the Owner's address or an address nominated by the Owner.
- 11.3 The Customer agrees to indemnify and keep indemnified the Owner and its Personnel against any Claim incurred or suffered as a result of:
 - (a) the collection, hire, servicing, storage, possession, use or return of the Vehicle;
 - (b) a breach of this Agreement by the Customer;
 - (c) any act with respect to repossessing the Vehicle;
 - (d) a willful or negligent act or omission by the Customer or its Personnel;
 - (e) a breach or non-compliance with any legislation, statute, ordinance, regulation, by-law or order made thereunder or other lawful requirement of any Authority; and/or
 - (f) any loss or damage to the Vehicle.

12. Insurance

- 12.1 The Customer must take out and maintain, in the names of both the Owner and the Customer and having reference to the Vehicle's VIN/chassis number:
 - (a) insurance against loss or damage to the Vehicle by fire, theft or accident during the Hire Period (the limit of which insurance must be for an amount not less than the replacement value of the Vehicle);
 - (b) a comprehensive public liability policy to cover all sums that the Customer may become legally liable to pay as compensation consequent upon:
 - (i) death of, or bodily injury (including disease or illness) to any person; and
 - (ii) loss of, or damage to, property, happening anywhere arising out of or in connection with the operation of the Vehicle by the Customer or the Customer's Personnel.
- 12.2 During the Hire Period, the Customer must not do any act or thing which might invalidate or prejudice any such insurance or the Owner's interest in the Vehicle.
- 12.3 The Customer must produce a current certificate of insurance to the Owner twenty-four (24) hours prior to the Commencement of the Hire Period.

13. Miscellaneous

- 13.1 The Customer must not assign or sub contract all or any of its rights under the agreement or part with possession of the Vehicle or sell, transfer, charge or encumber the Vehicle.
- 13.2 These Terms and Conditions may be changed from time to time by the Owner giving notice of the amendment to the Customer.

Effective October 2013