

Disclosures

Our complete terms and conditions are contained below, but some important points for you to know before you become a customer are set out below:

- our liability under these Terms is limited to either your Statutory Rights under Australia Consumer Law (ACL) or to us resupplying the Vehicle to you or, in our sole discretion, to use repaying you the amount of the rental charges paid by you to us in respect of the hiring out of the Vehicle to which the Liability relates, and we will not be liable for any loss of profit, loss of revenue, loss of benefit, or loss of savings; and

Nothing in these terms limit your rights under the ACL.

Additional Rates and Fees

In addition to the rates specified in your agreement, you agree to pay the following additional rates and fees should they be applicable. A full list of applicable fees and charges can be viewed at <https://www.motopool.com.au>

Toll Infringement - A Toll Processing Fee applies where Motopool has incurred a toll fee for your subscribed vehicle during your Subscription period. The Toll Processing Fee includes an administration of infringement nomination. Fee schedule is based on infringement value:

Toll Infringement value	Administration fee
\$0-\$25	\$5.00
\$25.01-\$35	\$10.00
\$35.01-\$45	\$15.00
\$45.01+	\$20.00

Lawful misconduct Infringement - A \$75 administration fee applies to a subscription when a government or council illegal nomination is handled, this can include but not exclusive to speeding, parking or camera.

Service Fee - A \$40.00 fee applies to a subscription when a vehicle is returned not to condition; this can include but not exclusive to refueling or detailing, this can be at swap over or cancellation of subscription.

Damage administration Fee - A damage administration fee applies to all damage handling of Motopool. The fee is based on damage repair value:

Damage repair value	Administration fee
\$0-\$500	\$55.00
\$501-\$2000	\$82.50
\$2001+	\$110.00
Wreck	\$220.00

Additional damage excess - A \$500 additional damage excess fee is applicable to driver's aged between 21 - 24 yr old who are involved in a vehicle incident

Additional Kilometre Usage - \$0.33 per additional kilometre, calculated in arrears based on the weekly kilometre limit of the chosen subscription plan and itemised on the next invoice. Usage is calculated using GPS data and may not reflect the vehicle odometer. Kilometre limit applies as per the chosen billing cycle. Kilometre limit is smoothed for the duration of the billing cycle. Any unused kilometres within a Billing Cycle period are forfeited.

Late Payment Fee - A late fee of \$25.00 is applied when an invoice becomes more than 7 days overdue.

Credit or Debit Card Transaction Fee - A 2.00% transaction fee will appear itemised on each invoice when the default payment method is a credit or debit card. No transaction fees apply for bank direct debit.

Payment Dispute Fee - If you initiate a chargeback which is subsequently shown to be unfounded a \$50.00 administration fee is applicable to cover our administrative costs of processing the chargeback and additionally any processing or other fee which has been imposed upon us by a third party payment processor in connection with the unfounded chargeback.

GPS Administrative fee - \$500 applies where a GPS unit has been tampered with or removed from vehicle.

Terms and Conditions

1. INTRODUCTION

- 1.1 This is a legally binding motor vehicle agreement between MOTOPOOL HOLDINGS PTY LTD trading as Motopool ABN 57 652 579 416 (**Motopool, we, us, our**) and the individual renting our vehicle (**Renter, you, your**).
- 1.2 Your rental agreement (**Agreement**) with Motopool consists of:
- these Terms and Conditions (**Terms and Conditions**);
 - the vehicle condition report reviewed and accepted by you prior to your Vehicle collection (**Vehicle Condition Report**).
- 1.3 The Agreement is governed by the laws of the state or territory in which Motopool provides the vehicle to you and you agree that courts in that state have exclusive jurisdiction to determine any dispute that arises between you and Motopool.
- 1.4 The Australian Consumer Law applies to the Agreement and it provides you with rights that are not excluded, restricted or modified by the Agreement and any provision in this contract is subject to the specific protections and guarantees in that and any corresponding federal, state or territory legislation.
- 1.5 Motopool use electronic signatures as a means of entry into the Agreement. When you insert an electronic signature, you consent to the use of this means of acknowledgment and acceptance of these Terms and Conditions and your obligations under the Agreement.
- 1.6 For the purposes of clarity, your Agreement is with Motopool. Wheelsys is a platform that provides the electronic online software which enables and manages certain limited aspects of your rental including, (without limitation), billing and invoicing, implementing direct debits with your authority.

2. RENTAL AGREEMENT REGISTRATION

- 2.1 You must provide us with basic information, confirm your eligibility by answering questions about your driver's license and driving history, including the mandatory information required by clause 3 of these Terms and Conditions and accept this Agreement before you can access the rental. The information supplied by you will be provided to the following third party service providers (each a "**Third Party Service**"):
- Wheelsys (www.wheelsys.io) for the purpose of managing ongoing rental payments and account related information.
- 2.2 You acknowledge and agree that
- Third Party Services may provide us with your personal information or sensitive information, and you consent to us receiving and using this information.
- 2.3 Your rental is considered active only when you collect the Vehicle from us and your Booking commences. It is your responsibility to collect the Vehicle
- We reserve the right to;
- decline to activate your rental; and/or
 - deal with the Vehicle in any manner and in our absolute discretion.
- 2.4 You warrant and agree that:
- any information you provide as part of your Account, including your name, address and other identifying information is accurate, current and complete; and
 - you will keep confidential and not provide to any person your login details, including any username, password, and/or password hint(s) chosen by you or assigned to you, and any other mechanism for accessing or logging on to our website.

3. REGISTRATION REQUIREMENT S

- 3.1 To qualify for a rental you must meet all of the following requirements:
- be at least 21 and not over 80 years of age;
 - have no less than 12 months driving experience;
 - hold a valid license to drive the Vehicle which is:
 - issued in an Australian state or territory or an international license (with a valid International Driving Permit or an approved translation into English if Your license is not issued in English);
 - appropriate for the class of the Vehicle; and
 - not subject to any restriction or condition.
 - your license must not have been cancelled or suspended within the previous 3 years;
 - you have not been convicted of any criminal, drink or drug driving charges in the last 5 years;
 - you have not made two or more motor insurance claims in the last 3 years;
 - you must not be bankrupt or have been bankrupt at any point within the last 7 years;
 - you must provide Motopool with any documents Motopool reasonably request, including but not limited to photo identification, proof of address and photocopies of your driver's license or credit or debit cards; and
- 3.2 You must immediately notify Motopool of any:
- changes to your contact details including your phone number, address or email address;

- (b) changes to your nominated credit card;
- (c) suspensions or cancellations of your driver's license; or
- (d) changes to your nominated bank account for the direct debit authority.

3.3 You consent to Motopool communicating with you electronically via your nominated email address as your address for receiving notices relating to your facility.

- (a) You understand the risks associated with sending or receiving personal information via email.
- (b) You should check your nominated email address regularly. Any notice or document we send to you by electronic communications will be deemed to have been received by you.
- (c) You may not receive further paper documents. You are responsible for viewing, printing or saving documents or information you receive from us electronically.

3.4 You must promptly respond and comply if we communicate with you via your email address or phone and make any reasonable request for you to do any act or provide information or documentation arising from or relevant to this Agreement.

4. RENTAL

4.1 There are conditions of your rental that you:

- (a) pay all fees, by credit or debit card, when they become due;
- (b) prevent any person who is not an Authorized Driver from accessing the rental services;
- (c) not allow any other person, except an Authorised Driver, to drive the Vehicle;
- (d) maintain a current driver's license; and
- (e) comply with this Agreement and any conditions that are part of or attached to your Booking.

4.2 This Agreement will operate until the date you have returned the Vehicle in accordance with clause 13.

4.3 We may also terminate this Agreement. Where we terminate this Agreement for convenience, we will provide you with a pro rata refund for any amounts paid in advanced the remainder of your current agreement.

4.4 This Agreement and the then current agreement plan will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement and that breach has not been remedied within 10 business days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party is unable to pay its debts as they fall due.

5. BOOKINGS

5.1 You must always comply with the conditions that are part of your Booking including strictly observing the times and dates and duration of your Booking period.

5.2 A confirmed Booking does not constitute a lease or give any proprietary right to or interest in the Vehicle and does not give you any rights under the *Personal Property Securities Act 2009* (Cth).

5.3 You agree to not create an encumbrance, lien, charge or other interest on or over the Vehicle.

6. VEHICLE COLLECTION

6.1 Prior to the start of the Booking period, we will provide you with the Vehicle Condition Report. We will use our best endeavor's to ensure that any pre-existing Damage to the Vehicle is clearly and accurately shown on the Vehicle Condition Report.

6.2 You will be given the opportunity to inspect the interior and exterior of the Vehicle, and you are responsible for visually inspecting the Vehicle at collection to ensure that you understand and accept the Vehicle and its Original Condition and for determining whether the Vehicle is suitable and fit for your particular purposes. During this inspection you will be permitted to take photos and notify us of any damage to, or issues with, the Vehicle, which we will record in the Vehicle Condition Report.

6.3 You agree that, as between us and you, the Vehicle is hired in an "as is, where is" condition as at the collection date and throughout the Booking period.

6.4 You agree that by collecting the Vehicle, you agree that the Vehicle has been delivered in good condition, free from damage or defect, fit for purpose and in accordance with this Agreement (Original Condition), unless expressly set out in the Vehicle Condition Report, in which case the condition set out in the Vehicle Condition Report will be deemed to be the Original Condition.

6.5 Risk in the Vehicle will pass to you when you have collected the Vehicle from us or when we have delivered the Vehicle to you. You agree that from this time, you will be solely responsible for the Vehicle until it is returned to us and it is in our full custody and control.

6.6 Title in the Vehicle will at all times remain with us.

7. CONDITIONS OF USE OF THE VEHICLE

7.1 Only you or an Authorised Driver may drive the Vehicle. Allowing anyone who is not an Authorised Driver to drive constitutes a Major breach of the Agreement that not only excludes you and the Authorised Driver from any entitlement to Damage Cover indemnity but also allows Motopool to take immediate possession of the Vehicle and to terminate this Agreement.

7.2 The Vehicle must not be driven by you or an Authorised Driver :

- (a) whilst intoxicated or under the influence of drugs or alcohol or with a blood alcohol content or level of drugs present in blood, urine or oral fluid that exceeds the limit set by law;
- (b) recklessly or dangerously; or
- (c) whilst the Vehicle is damaged or unsafe.

7.3 You and any Authorised Driver must not:

- (a) fail or refuse to undergo any breath, blood, urine or oral fluid test or drug impairment assessment;
- (b) allow the vehicle to be driven by a provisional or probationary license holder or learner driver
- (c) use the Vehicle:
 - (i) for any illegal purpose;
 - (ii) to move dangerous, hazardous, inflammable goods or substances that pollute or contaminate, in quantities above that used for domestic purposes;
 - (iii) to propel or tow another vehicle or a trailer, unless you have prior written authorisation to do so from Motopool. In this case your caravan or trailer must be correctly loaded and secured and not in excess of that for which the Vehicle was manufactured; for towing, the Vehicle is fitted with a tow bar; and the conveyance or towing is undertaken in accordance with the manufacturer's specifications and any of our recommendations.
 - (iv) to carry illegal drugs or substances;
 - (v) in connection with the motor trade for experiments, tests, trials or demonstration purposes; or
 - (vi) in an unsafe or un-roadworthy condition.

7.4 You and any Authorised Driver must not:

- (a) damage the Vehicle deliberately or recklessly or allow anyone else to do so;
- (b) modify the Vehicle in any way;
- (c) sell, rent, lease or dispose of the Vehicle; or
- (d) create an encumbrance, lien, charge, register or claim to be entitled to register any interest in the Vehicle under the *Personal Property Securities Act 2009* (Cth).

7.5 You and any Authorised Driver must not use the Vehicle to carry:

- (a) passengers for hire, fare or reward or for rideshare purposes;
- (b) more than the number of passengers for which the Vehicle is licensed; or
- (c) any load that exceeds the limits for which the Vehicle was designed, constructed, registered or licensed.

7.6 You or an Authorised Driver must not:

- (a) use the Vehicle to transport any pets or animals except assistance animals; or
- (b) smoke in the Vehicle and you must prevent any passenger from doing so.

Additional cleaning and deodorizing costs must be paid if there is a breach of this clause.

7.7 The Vehicle must never be driven on:

- (a) an Unsealed Road;
- (b) Off Road; or
- (c) above the snow line between 1 May and 31 October,

unless Motopool has given prior written permission.

7.8 The Vehicle must not be used in any area that is prohibited by Motopool. Prohibited areas include:

- (a) roads that are prone to flooding or are flooded;
- (b) beaches, streams, rivers, creeks, dams and floodwaters;
- (c) any road where the police or an authority has issued a warning;
- (d) any road that is closed; and
- (e) any road where it would be unsafe to drive the Vehicle.

7.9 You must pay all tolls, speeding and traffic fines and infringements as well as any fines or charges imposed for parking or using the Vehicle or release of the Vehicle if it has been seized by a regulatory authority.

7.10 You and any Authorised Driver must make sure that the Vehicle is locked when not in use or unattended and the keys or remote control device must be kept in your possession at all times and are never left in the ignition when the Vehicle is unattended.

7.11 You and any Authorised Driver must take reasonable care of the Vehicle by:

- (a) preventing it from being damaged;
- (b) making sure that it is protected from the weather;
- (c) maintaining the engine and brake oils and coolant level and tyre pressures;
- (d) using the correct fuel type; and (e) making sure it is not overloaded.

7.12 You and any Authorised Driver must inform Motopool immediately if:

- (a) a warning light or fault message appears, other than for low petrol;
- (b) you see or become aware of low engine or brake oils, or engine coolant levels;
- (c) the Vehicle develops any fault during the rental period; or
- (d) if the GPS tracking device is removed or otherwise ceases to function; or

- (e) damage to vehicle occurs

If you fail to notify Motopool and continue to use the Vehicle you will be responsible for any Damage or Third Party Loss.

- 7.13 You must not let anyone else repair or work on the Vehicle or tow or salvage it without our prior written authority to do so.
- 7.14 You must notify Motopool when your Vehicle is due for a service and as directed by Motopool you must arrange to take the Vehicle to an approved service provider for the purpose of repairs or maintenance, including for the purpose of servicing the GPS tracking device.
- 7.15 Where Motopool has determined the Vehicle cannot be driven or used by you or any Authorised Driver due to repair or work on the Vehicle, a courtesy or replacement Vehicle may be provided
- 7.16 Where Motopool has given you prior authority to repair the Vehicle you must keep and produce to Motopool the original tax invoices and receipts for any repairs, modifications, towing or salvage and you will be reimbursed only if these expenses have been authorised by Motopool.
- 7.17 Any entitlement to reimbursement is subject to there being no Major Breach of the Agreement and that you have paid all fees, including your Subscription Charges. Motopool reserves the right to refuse any entitlement to reimbursement until such time that your Subscription is in good order with no overdue fees.
- 7.18 You and any Authorised Driver must not leave the Vehicle unattended following an Accident and before the arrival of a tow or salvage operator.
- 7.19 You must pay for the fuel costs incurred for the use of the Vehicle, including any required additive such as AdBlue.

10 TOLL CHARGES

- 10.1 You must pay the toll road operator for the use of the Vehicle on toll roads and it is your responsibility to fit an electronic tag (e-tag) to the Vehicle and promptly pay all toll road fees and charges.
- 10.2 If you fail to pay tolls directly, Motopool will charge you the toll fee, a number plate recognition fee and a Toll Processing Fee per toll charge incurred.
- 10.3 Tag-less toll accounts are supported.

11 DAMAGE COVER (INSURANCE)

- 11.1 Standard Damage Cover Insurance is included in your rental agreement. Subject to these Terms and Conditions, Motopool will indemnify you for the theft of the Vehicle, any Damage or Third-Party Loss but you must pay up to the Damage Excess shown on the Agreement for each Accident or theft unless:
 - (a) Motopool agree you or any Authorised Driver were not at fault; and
 - (b) the other party was insured and their insurance company accepts full liability.
 - 11.2 An additional Damage Excess applies if you are 21 to 24 years of age.
 - 11.3 Subject to these Terms and Conditions, liability protection entitles you to reduce the Damage Excess payable for each Accident or theft claim to \$1,000 (Liability Protection) if:
 - (a) You pay an additional Liability Protection fee as part of your agreement; and
 - (b) Your agreement payments are not in arrears or overdue on the date of the Accident to theft.
 - 11.4 The Damage Excess payable under clauses 11.1, 11.2 and 11.3 will be charged to your provided payment method, subject to clause 14.3 :
 - (a) if the Vehicle has been stolen, after Motopool has made reasonable enquiries and it is the opinion of Motopool it is unlikely the Vehicle will be recovered; and
 - (b) for Accidents in which there is also Third Party Loss, after:
 - (i) a reasonable estimate of the Third Party Loss has been made;
 - (ii) a repairer's estimate or tax invoice verifying the amount charged for Damage has been obtained; and
 - (iii) all documents verifying the Third Party Loss and Damage have been sent to you,
- unless you have expressly authorised the charge to your credit card at an earlier time.
- 11.5 Subject to these Terms and Conditions, Liability Protection entitles you:
 - (a) To reduce the Damage Excess payable for agreement for each Accident or theft to \$1,000, if:
 - (i) you are paying a weekly Liability Protection fee as part of your agreement at the time of the Accident or theft
 - (ii) your agreement payments are not in arrears or overdue

12. DAMAGE COVER EXCLUSIONS

- 12.1 There is no Damage Cover and you and any Authorised Driver are liable for:
 - (a) Damage or Third Party Loss arising from:
 - (i) a Major Breach of the Agreement; or
 - (ii) the use of the Vehicle by any driver who is not an Authorised Driver; or
 - (iii) not reporting damage to Motopool at time of incident
 - (iv) Vehicle not returned to Motopool location by Authorised Driver
 - (b) Overhead Damage;

- (c) Underbody Damage; and
- (d) Damage caused by immersion of the Vehicle in water.

12.2 There is also no Damage Cover for:

- (a) the full cost of replacing or repairing any accessories supplied by Motopool including, but not limited to GPS units, lost keys, keyless start and remote control devices; or
- (b) personal items that are left in or stolen from the Vehicle.

13. VEHICLE RETURN

13.1 If you fail to return the Vehicle at the agreed time:

- (a) Motopool may terminate the Agreement and remotely disable the Vehicle using a telematics device and:
 - (i) if the Vehicle's location is known Motopool may repossess the Vehicle from its current location without using unreasonable force and if the Vehicle is located on your premises you give Motopool permission to access and enter your premises to do so; and
 - (ii) if its location is unknown, after making reasonable attempts to contact you, Motopool will report the Vehicle as stolen to the police.

13.2 You must pay all costs and charges associated with its recovery and repossession under clause 13.2, even if all arrears are fully paid after repossession. These include:

- (a) towing, recovery and storage charges;
- (b) release fees claimed by third parties, including from compounds where the Vehicle has been lawfully seized by a regulatory authority; and
- (c) repossession agent's fees.

13.3 If you return the Vehicle with less than a full tank of fuel, a Refueling Fee will apply as per the rates on Motopool's website.

13.4 You must:

- (a) return the Vehicle:
 - (i) to the location provided by Motopool; and
 - (ii) in the same condition it was in at the beginning of the Booking period including ensuring the Vehicle is cleaned; and
 - (iii) with a full tank of fuel;
- (b) pay:
 - (i) any outstanding charges;
 - (ii) the Damage Excess if there is Damage or Third Party Loss as a result of an Accident or the Vehicle has been stolen;
 - (iii) any costs Motopool incur, including extra cleaning costs under clause 9.6, in reinstating the Vehicle to the same condition it was in at the Start of the Subscription Period, fair wear and tear excluded;
 - (iv) the replacement cost or incurred loss for the replacement of the service logbook or other accessories supplied to you at the commencement of the Subscription, if the Vehicle is returned to Motopool without these items;
 - (v) for all Damage arising from a Major Breach of the Agreement;
 - (vi) for all Overhead Damage;
 - (vii) for all Underbody Damage; and
 - (viii) for any Damage caused by the immersion of the Vehicle in water.
- (c) sign the vehicle return inspection report provided to you on return of the Vehicle (**Vehicle Return Inspection Report**).

13.5 You must ensure you have removed all of your personal property from the Vehicle at the end of the Booking period and you acknowledge that Motopool are not responsible for any personal property remaining in the Vehicle thereafter. If the Vehicle has been repossessed pursuant to clause 13.2(a) it is your responsibility to contact Motopool and to arrange collection of any personal property left in the Vehicle.

14. FINANCIAL OBLIGATIONS

14.1 For amounts owing to Motopool pursuant to this Agreement, you authorise us to charge any provided payment method.

14.2 A valid payment method must be provided to us at all times.

- (a) You are not permitted to revoke authorisation to charge any provided payment method unless a valid alternative payment method is provided.
- (b) You must provide at least seven (7) days written notice via email to Motopool to remove any provided payment method from your agreement, subject to clause 14.3(a).

14.3 A weekly kilometre limit applies to your use of the Vehicle according to the agreement you have selected.

- (a) For each week you exceed the limit shown in the Subscription Plan you will incur an additional Kilometre Usage Fee per kilometre in excess of the limit travelled.
- (b) The weekly kilometre usage is calculated on a fixed weekly cycle and may be different to the weekly billing cycle of your Subscription Plan.
- (c) The weekly kilometre usage is typically calculated based on GPS location data and may not reflect the kilometre usage as shown by the Vehicle or the odometer shown in your Agreement, subject to clause 14.4 (e).
- (d) Kilometres allocations do not roll over. Any unused kilometres are forfeited.
- (e) An administrative fee of \$500 applies where the GPS unit has been tampered with or removed. Where a GPS unit has been tampered with or removed, excess Kilometre Usage Fees apply to the greater of:
 - (i) equivalent to the maximum weekly kilometre limit of your Subscription Plan for the duration that the GPS unit has been tampered with or removed; or
 - (ii) based on the calculated kilometres traveled based on the last known location of the Vehicle;

- 14.4 Amounts owing to Motopool pursuant to this Agreement accrue interest at the rate of 10% per annum commencing 28 days after the amount became due.
- 14.5 Late payments
- (a) An administrative fee of \$25 applies to all late payments, which compensates Motopool for the extra labour and associated costs of contacting you when payments are overdue.
- 14.6 Default in payment
- (a) If you default in payment of any monies owed to Motopool under the Agreement for a period of 28 days or more:
- (i) after providing you with reasonable notice, we may remotely disable the Vehicle using the telematics device that enables it to be remotely disabled to prevent the Vehicle being started;
- (ii) Motopool may repossess the Vehicle without using unreasonable force and you give Motopool permission to access and enter Your premises to do so; and
- (iii) You authorise Motopool and as necessary, our Third Party Services to obtain an up to date consumer credit report on you. Personal information may be used and disclosed by the credit reporting body in accordance with the Privacy Act to create or maintain a credit information file containing information about you, including defaults in excess of 60 days and the debt owed to Motopool.
- 14.7 Consequences of Default
- (a) Motopool reserves the right to refer the collection of any outstanding accounts to a debt collection agency without notice to you.
- (b) You agree to be liable for any recovery costs and expenses Motopool incurs because of the referral of the debt to a debt collection agency and furthermore you agree that section 27 (1) of the *Debt Collectors (Field Agents and Collection Agents) Act 2014* (QLD) does not apply to this agreement.
- (c) If the collection of the debt is referred to Motopool's lawyers, you accept liability for and indemnify Motopool for all of our legal costs on a solicitor-client basis.

15. ACCIDENTS OR BREAKDOWNS

- 15.1 Twenty-four-hour roadside assistance is provided free of charge for breakdowns (but not for Accidents) and you must contact Motopool to arrange that assistance. Provided there has not been a Major Breach the roadside assistance provider will supply all practical assistance as soon as practicable.
- 15.2 Motopool are also not responsible for and there is no roadside assistance for:
- (a) damage as a result of your use of the incorrect fuel type;
- (b) a flat battery because the lights, accessories or entertainment system have been left on without the engine running;
- (c) a flat battery where the Vehicle has not been used for more than 3 consecutive days;
- (d) tyre changing or replacement as a result of a puncture or damage to the wheel; (e) lost keys or remote control device; or
- (f) keys or remote control device locked in the Vehicle.
- 15.3 Extra charges will apply if any of these services are provided at your request.

16. ACCIDENT REPORTING

- 16.1 If you or any Authorised Driver have an Accident or if the Vehicle is stolen you must report the Accident or theft in writing via email to Motopool within 24 hours of it occurring and complete an Accident/Theft report form. Failure to report an Accident or theft is a Major Breach of this Agreement.
- 16.2 If the Vehicle is stolen or if you have an Accident where:
- (a) any person is injured;
- (b) the other party has failed to stop or leaves the scene of the Accident without exchanging names and addresses; or
- (c) the other party appears to be under the influence of drugs or alcohol,

You and any Authorised Driver must also report the theft or Accident to the police.

- 16.3 If you have an Accident you must:
- (a) exchange names and addresses, insurance provider details and policy number, driver's license number and issue telephone numbers and email addresses with the other driver;
- (b) take the registration numbers of all vehicles involved;
- (c) take as many photos as is reasonable showing:
- (i) the position of the Vehicles before they are moved for towing or salvage;
- (ii) the Damage to the Vehicle;
- (iii) the damage to any third party vehicle or property; and
- (iv) the general area where the Accident occurred, including any road or traffic signs;
- (d) obtain the names, addresses and phone numbers of all witnesses; (e) not:
- (i) make any admission of fault;
- (ii) promise to pay the other party's claim; or
- (iii) release the other party from any liability;
- (f) forward all third party correspondence or court documents to Motopool within 7 days of receipt; and
- (g) co-operate with Motopool in the prosecution of any legal proceedings that Motopool may institute or defense of any legal proceedings which may be instituted against you or Motopool as a result of an Accident, including attending:
- (i) our lawyers' office; or

- (ii) any Court hearing.

17. CONSEQUENCES OF A MAJOR BREACH & LIABILITY

- 17.1 If you or any Authorised Driver commit a Major breach of these Terms and Conditions:
- (a) you will be liable for all Damage, theft of the Vehicle and Third Party Loss;
 - (b) acting reasonably, Motopool may terminate the Agreement and take immediate possession of the Vehicle; and
 - (c) you incur any costs or expenses or any other liabilities due to breach of this Agreement by you.
- 17.2 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:
- (a) your negligent, fraudulent, willful acts or omissions;
 - (b) any breach of these Terms and Conditions by you;
 - (c) any personal injury or death to any person, except to the extent caused by us or our personnel in providing the Vehicle to you; and
 - (d) any loss or damage to any property caused or contributed to by you or any third party (including but not limited to Accident);
 - (e) any Third Party ID Services; and
 - (f) any event outside of our reasonable control.
- 17.3 Despite anything to the contrary, to the maximum extent permitted by law, you are liable for, and agree to indemnify us and hold us harmless in respect of, any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with any personal injury or death to any person or any property loss or damage (including to the Vehicle, your property or any third party's property) caused or contributed to by a Major Breach.
- 17.4 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for any loss of profit, loss of revenue, loss of benefit, or loss of savings due to the car being unavailable to you.
- 17.5 Despite anything to the contrary, to the maximum extent permitted by law:
- (a) If you are a consumer (as defined under the Australian Consumer Law), we limit our liability to any rights or remedies that you may be entitled to under the Australian Consumer Law and these statutory rights will be your sole and exclusive remedy against us arising from, in connection with, these Terms and Conditions; or
 - (b) Where you are not a consumer under the Australian Consumer Law, our aggregate liability for any Liability arising from or in connection with these Terms and Conditions will be limited to us resupplying the Vehicle to you or, in our sole discretion, to us repaying you the amount of the Subscription Charge paid by you to us in respect of the hiring out of the Vehicle to which the Liability relates.
- 17.6 This clause 17 will survive the termination or expiry of these Terms and Conditions.

18. PRIVACY

- 18.1 The Vehicle is fitted with a telematics device that enables Motopool to track the Vehicle when it is out of our possession, including the Vehicle's location, speed and other features relevant to driver behaviour. When you sign the Application you are authorising Motopool to use the GPS Tracking Device to track the Vehicle until it is returned to Motopool.
- 18.2 Motopool are committed to complying with the Australian Privacy Principles. You may access the Motopool Privacy Policy at <https://www.motopool.com.au/privacy-policy/>.
- 18.3 When Motopool collect your personal information we will do so only for the purpose of providing Subscription services to you. This includes, but is not limited to, for the purpose of insurance, roadside assistance, employment references and debt collection. If you choose not to provide this information to Motopool, we may not be able to provide those Subscription services to you.
- 18.4 Motopool take reasonable steps to make sure your personal information is accurate, up to date and complete and that it is protected from misuse, loss or unauthorised access, modification or disclosure.

19. GENERAL

- 19.1 A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Queensland Law Society to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 19.2 As between the Parties, all Intellectual Property Rights developed, adapted, modified or created by or on behalf of us or our Personnel (including in connection with these Terms and Conditions or the provision of the Vehicle), whether before or after the date of acceptance of these Terms and Conditions, will at all times vest, or remain vested, in us.

20. AUSTRALIAN CONSUMER LAW

- 20.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Vehicle by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 20.2 If the ACL applies to you as a consumer, nothing in these Terms and Conditions excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Vehicle hire provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms and Conditions.
- 20.3 This clause 20 will survive the termination or expiry of these Terms and Conditions.

21. DEFINITIONS

- 21.1 **Accident** means an unintended and unforeseen incident, including:
- (a) a collision between the Vehicle and another vehicle or object, including animals and roadside infrastructure;
 - (b) rollovers; or
 - (c) a weather event, including hail Damage,
 - (d) that results in Damage or Third Party Loss.
- 21.2 **ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.
- 21.3 **Authorized Driver** means any driver who meets the requirements of clause 3.1, is approved by Motopool prior to the commencement of the agreement.
- 21.4 **Consequential Loss** includes any special loss, consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- 21.5 **Damage** means:
- (a) any loss or damage to the Vehicle including its parts, components and accessories, including the GPS unit, that is not fair wear and tear;
 - (b) towing and salvage costs;
 - (c) assessing fees;
 - (d) claims administration fee; and (e) Loss of Use,
 - (f) and for the removal of doubt, any damage
- 21.6 **Damage Excess** means the amount, including GST, up to which you must pay Motopool in the event of an Accident or attempted theft that causes Damage or Third Party Loss or the Vehicle has been stolen and not recovered.
- 21.7 **Early Return Fee** means the charges payable by you as specified in this Agreement to return your Vehicle before the minimum term that applies to your Subscription Plan or Booking.
- 21.8 **Fair Wear and Tear** means fair wear and tear to the vehicle as per the complete definition on the Motopool Member Manual Section of our website: www.motorama.com.au/motopool/member-manual/
- 21.9 **GPS Tracking Device** means a GPS or other device that is fitted to the Vehicle that has electronic tracking capabilities to determine its location and other data including speed and fuel levels.
- 21.10 **Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of any copyright, registered or unregistered designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes.
- 21.11 **Kilometre Usage Fee** means the charge payable by you as per the current rates on Motopool's website.
- 21.12 **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to this Agreement or otherwise.
- 21.13 **Loss of Use** means the loss we incur because the Vehicle is being repaired or replaced if it is written off as a result of an Accident or it has been stolen.
- 19.8 **Major Breach** means a breach of any of clauses, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19, 9.20, 16.1 that causes Damage, theft of the Vehicle or Third Party Loss.
- 19.9 **Off Road** means any area that is neither a sealed or an Unsealed Road and includes but is not limited to unformed roads, fire trails, tracks, river and tidal crossings, creek beds, beaches, streams, dams, rivers, flood waters, sand, deserts, rocks, fields and paddocks.
- 19.10 **Overhead Damage** means:
- (a) Damage at or above the level of the top of the front windscreen of the Vehicle; or
 - (b) Third Party Loss,
 - (c) caused by:
 - (i) contact between the part of the Vehicle that is at or above the level of the top of the front windscreen with objects overhanging or obstructing its path;

- (ii) objects being placed on the roof of the Vehicle; or
- (iii) You or any person standing or sitting on the roof of the Vehicle.

19.11 **Rental agreement Charges** means the charges payable for renting the Vehicle from Motopool together with GST and any other applicable charges.

19.12 **Third Party Loss** means loss or damage to third party property, including other motor vehicles and any claim for third party loss of income.

19.13 **Underbody Damage** means any damage to the Vehicle caused by or resulting from contact between the underside of the Vehicle and any part of the roadway or any object or obstruction, including kerbs, gutters, speed or road humps, barriers or wheel stops and does not arise as a result of an impact with another vehicle.

19.14 **Unsealed Road** means a road that has been formed and constructed but is not sealed with a hard material such as tar, bitumen or concrete.

19.15 **Vehicle** means the vehicle described in the Vehicle Condition Report and includes its parts, components, and accessories, including the GPS unit.

19.16 **Refueling Fee** means the charges payable by you as specified in this Agreement if you return the Vehicle with less than a full tank of fuel.

19.17 **Toll Processing Fee** means the charge payable by you as per the current rates on Motopool's website.