

# MIGHTY RENTAL AGREEMENT

## TERMS AND CONDITIONS – AUSTRALIA CAMPERVANS

Effective 01 April 2018 - 31 March 2019



**Thank you for choosing Mighty. We are very proud of our product and our reputation, and we have built our business on providing the best possible experience for our customers. Your safety and security are our greatest concerns, so to assist you in making your holiday a wonderful experience, it is important for you to carefully read these terms and conditions. Should you have any questions or complaints about these terms and conditions please contact us on freecall 1800 670 232. These terms and conditions do not exclude, restrict or modify the application of any provision, the exercise of any right, or the imposition of any liability under any statute (including the Competition and Consumer Act 2010 (Cth) or the Australian Consumer Law).**

### 1) RATES AND CONDITIONS

Rates and Conditions quoted in our documentation are subject to change without notice. However (subject to changes in legislation or errors) we will not alter rates or conditions applicable to your rental once your booking has been confirmed by Mighty. Any booking amendments will result in the rate booked being re-calculated at the rate applicable on the day of amendment. Please note all prices are quoted and payable in Australian dollars.

### 2) DEFINITIONS

'Agreement' means the Rental Agreement and these Terms and Conditions.

'Customer' means the person or persons nominated as the hirer and any person whose credit or debit card is presented for payment of the Customer's charges. Refer to clauses 19, 21 and 28 for information about the Liability Deposit requirements and credit and debit card payments.

'Mighty' means Tourism Holdings Australia Pty Ltd.

'Damage' means any and all damage as described in clause 19.8.

'Liability Reduction Option' means the liability reduction option described in clause 19.

'Rental Period' means the hire period or any agreed variation thereof and any additional period during which the Vehicle is in the Customer's possession or control.

'Vehicle' means the Vehicle hired by the Customer and includes tyres, tools, accessories, camping utensils, and all other equipment, documents, or additional hire items related to the Vehicle and any replacement or substitute Vehicle that may be provided.

'Liability' means the amount the Customer is liable for under this Agreement in respect of the Vehicle and the Customer's Use of the Vehicle.

'Liability Deposit' means the deposit paid by the Customer to Mighty on the day the Customer collects the Vehicle from Mighty which will be used to reimburse Mighty for the cost of any Damage caused by the Customer to the Vehicle under the terms of this Agreement.

'Restricted Road' means each of the roads and areas described in clause 13.3.

The 'Mighty Inclusive Pack' means the product offered by Mighty to its Customers that includes the Liability Reduction Option and cover for the cost of damage resulting from a single Vehicle rollover as described in clause 13.1(a).

'The Bundle' means the product offered by Mighty to its Customers that, when purchased in conjunction with the Liability Reduction Option, provides cover for the cost of damage resulting from a single Vehicle rollover as described in clause 13.1(a).

### 3) RENTAL DURATION

**3.1** Rental days are calculated on a calendar day basis. When calculating the number of days the Vehicle is rented, the day of pick-up is counted as day one of

the rental, regardless of pick-up time. The day of the Vehicle's return is counted as the final day of the rental regardless of drop-off time.

**3.2** Minimum rental periods are subject to change, and any such change will be notified to you prior to booking confirmation.

**3.3** Late pick up or early return of the Vehicle does not entitle the Customer to any refund of the unused portion of the rental.

### 4) DELIVERY AND RETURN OF THE VEHICLE

**4.1** The Customer acknowledges having received the Vehicle in a clean condition, with a full fuel tank and full bottles of gas (if applicable).

**4.2** The Customer will return the Vehicle in a clean condition with a full fuel tank and full bottles of gas (if applicable, and subject to any pre-purchase fuel and/or pre-purchase gas option being taken), having completed all items on the Mighty Vehicle Return Checklist, on the return date, time and location set out in the Rental Agreement. Failure to adhere to these requirements will result in additional charges plus an administration fee of AU\$50. Should the customer have the pre-purchase fuel and/or the pre-purchase gas option there is no refund for unused fuel and/or gas.

**4.3** Mighty reserves the right to charge the Customer a cleaning fee in the amount of AU\$250 if the Vehicle is not returned in a clean condition (at Mighty's sole discretion acting reasonably). This includes smoking related cleaning, as smoking is not permitted at any time in the Vehicle or animal related cleaning as animals are not permitted in the Vehicle (with the exception of registered guide dogs).

**4.4** The toilet and wastewater tank (if applicable) must be emptied prior to the return of the Vehicle, or an additional AU\$125 soiling fee will be charged to the Customer.

### 5) BRANCH HOURS OF OPERATION

**5.1** Mighty Branches are open 7 days per week with the following exceptions:

- (a) **Mighty branches are closed on Christmas Day (25th December) and Australia Day (26th January).** Mighty requests that clients collecting or returning their Vehicle attend the relevant Mighty branch by 3:30pm on the relevant day.
- (b) **Sydney, Melbourne, Adelaide and Perth**  
1 April to 30 April - 7.30am to 4pm  
1 May to 31 August - 10am to 4pm, closed Sundays  
1 September to 31 March - 7.30am to 4pm
- (c) **Brisbane**  
1 April to 30 September - 7.30am to 4pm  
1 October to 28 February - 10am to 4pm, closed Sundays  
1 March to 31 March - 7.30am to 4pm
- (d) **Alice Springs and Darwin**  
1 April to 30 April - 10am to 4pm, closed Sundays  
1 May to 31 October - 7.30am to 4pm  
1 November to 30 November - 10am to 4pm, closed Sundays  
1 December to 31 March - CLOSED
- (e) **Cairns**  
1 April to 30 April - 10am to 4pm, closed Sundays  
1 May to 31 October - 7.30am to 4pm  
1 November to 31 March - 10am to 4pm, closed Sundays

**5.2** A surcharge of AU\$100 will apply to all Vehicle rentals that are collected or dropped off on the following days:

- (a) 02 April 2018 - Easter Monday (applies to all Mighty branches);
- (b) 25 April 2018 - ANZAC Day (applies to all Mighty branches);
- (c) 07 May 2018 - Labour Day (applies to Brisbane and Cairns branches only) and May Day (applies to Alice Springs and Darwin branches only);
- (d) 04 June 2018 - Western Australia Day (applies to Perth branch only);
- (e) 11 June 2018 - Queen's Birthday (applies to Adelaide, Alice Springs, Darwin, Melbourne and Sydney branches only);
- (f) 06 July 2018 - Alice Springs Show Day (applies to Alice Springs branch only);
- (g) 27 July 2018 - Darwin Show Day (applies to Darwin

branch only);

- (h) 06 August 2018 - Picnic Day (applies to Alice Springs and Darwin branches only) and Bank Holiday (applies to Sydney branch only);
- (i) 15 August 2018 - Royal Queensland Show (applies to Brisbane branch only);
- (j) 24 September 2018 - Queen's Birthday (applies to Perth branches only);
- (k) 01 October 2018 - Queen's Birthday (applies to Brisbane and Cairns branches only) and Labour Day (applies to Adelaide and Sydney branches only);
- (l) 06 November 2018 - Melbourne Cup (applies to Melbourne branch only);
- (m) 26 December 2018 - Boxing Day (applies to all Mighty branches);
- (n) 01 January 2019 - New Year's Day (applies to all Mighty branches);
- (o) 04 March 2019 - Labour Day (applies to Perth branch only); and
- (p) 11 March 2019 - Adelaide Cup Day (applies to Adelaide branch only) and Labour Day (applies to Melbourne branch only)

**5.3** Customers must allow adequate time to complete the required paperwork when collecting or returning your Vehicle. All vehicles must be collected from and returned to a Mighty Campers branch. The Mighty Jackpot is only available to/from the Adelaide, Melbourne, Sydney, Brisbane and Cairns branches.

### 6) CHANGE OF DROP-OFF DESTINATION

If the Customer wishes to change the drop-off destination, they must first obtain authorisation from Mighty by calling 1800 670 232. Subject to the change being approved, an additional charge of up to AU\$750 may apply, which will be notified to you at time of approval and is required to be paid immediately via credit card. The fee may apply in all change of drop-off destination cases irrespective of the reason for the location change.

### 7) LATE DROP-OFFS

**7.1** If the Customer wishes to drop-off the Vehicle to a Mighty branch after business hours, they must first get approval from Mighty by calling 1800 670 232. The Customer will incur an additional fee of AU\$150 per day (in addition to the daily rate being charged) if the Customer fails to obtain such approval from Mighty prior to the late drop-off of the Vehicle. This late drop-off fee and the additional rental charges will be charged to the Customer's credit card.

**7.2** If the late drop-off is approved, a fee of AU\$150 is applicable and the Customer will be required to pay an extra day's Liability Reduction Option charge (if applicable) as they will be held responsible for the Vehicle up until the time that it is checked in by a Mighty staff member the following day. This late drop-off fee is required to be paid via the Customer's credit card on approval of the late drop-off.

### 8) RENTAL EXTENSION

**8.1** If the Customer wishes to extend the rental whilst on hire, they must first obtain authorisation from Mighty by calling 1800 670 232. This is subject to availability. The extra cost of an extended rental must be paid by the Customer by credit card on confirmation of the rental extension.

**8.2** Failure to obtain an authorisation for a rental extension will result in a late fee of AU\$150 per day in addition to the daily rental rate (plus Liability Reduction Option charges) for each day until the Vehicle is returned. The daily rental rate charged will be the rate applicable on the day of extension (which may differ from the original rate booked) per Vehicle for the extended rental period. These charges will be applied to the Customer's credit card on a daily basis until the Vehicle is returned.

### 9) ONE-WAY RENTALS

**9.1** One-way rentals are available between all branch locations with the exception of the Jackpot which is only available from and to Adelaide, Melbourne, Sydney, Brisbane, and Cairns.

**9.2 One-way Fees:** A one-way fee of AU\$165 applies where pick up originates from Cairns, Brisbane, Sydney, Melbourne or Adelaide, and returns to one of these locations. Should the hire originate or return to or from Darwin, Alice Springs or Perth, the one-way fee is AU\$250. One-way fees are additional to any other fees that may apply. The One-Way fee will be charged to the Customer's credit card at the time of booking except in the case of a change in drop-off destination in accordance with clause 6 in which case the One-Way fee will be charged at the time that change is made.

## 10) MULTIPLE RENTALS

Should a Customer have more than one consecutive rental, the bookings can be combined to qualify for longer-term hire discounts. Consecutive campervan hire in Australia and New Zealand for Mighty, Maui and Britz can be combined to qualify if the vehicle collection date/s is within a 3-month period.

## 11) LICENCE

**11.1** A full (non-probationary) resident country driver's licence must be presented at the time of rental for each nominated driver. If the licence is not in English format, an international driver's licence in English is also required.

**11.2** An extra driver fee applies for each additional driver's licence added to the rental agreement except where The Bundle or the Mighty Inclusive Pack has been purchased.

## 12) AGE RESTRICTIONS

Drivers must be 21 years of age or over with the exception of drivers hiring the Highball and Jackpot vehicles. These drivers may have a minimum age of 18 years.

## 13) USE OF THE VEHICLE

**13.1** The Customer agrees that, during the Rental Period, the Customer will not allow the Vehicle to be:

- (a) driven otherwise than in a prudent and cautious manner. A single Vehicle rollover is considered a breach of this condition. A single Vehicle rollover may include, but is not limited to, a vehicle that has rolled, tipped or fallen over and this has caused damage to the side and/or roof area of the Vehicle in circumstances within the control of the Customer. Customers who have purchased The Bundle (in conjunction with the Liability Reduction Option) or the Mighty Inclusive Pack will have the cost of damage resulting from an accidental single Vehicle rollover covered, providing that the Customer has not otherwise breached this Agreement in relation to the rollover;
- (b) driven at a speed in excess of a speed limit displayed in relation to the road that the Customer is driving on and as posted by the relevant state or territory authority;
- (c) driven at a speed in excess of 110 kilometres per hour at any time, including where the posted legal speed limit is in excess of 110 kilometres per hour;
- (d) driven by a person under the influence of alcohol or drugs or with a blood alcohol level in excess of that permitted by law;
- (e) left with the ignition key in the Vehicle while it is unoccupied;
- (f) submerged in water, brought into contact with salt water, used in a creek or river crossing, driven on a beach or through flooded areas;
- (g) used for any illegal purpose or in any race, rally or contest;
- (h) used to tow any vehicle or trailer;
- (i) used to carry passengers or property for hire or reward;
- (j) used to carry more persons than is permitted by any relevant authority or detailed in the Vehicle manual or on the Vehicle or specified in this Agreement;
- (k) used to carry volatile liquids, gases, explosives or other corrosive or inflammable material; and
- (l) used for transporting and haulage of goods other than what might be reasonably expected of a leisure rental.

**13.2** Use of Mighty products and services

The Customer is responsible for the activity and use of all goods and services purchased from Mighty. The Customer and any user that the Customer permits to use a Mighty product or service, is solely responsible for observing safe driving, operating, and other practices so as to avoid accidents or injury to persons or property. It is the Customer's responsibility to use all Mighty products and services (including the use and reliance of any data provided through an associated device ("Data")) in a careful, sensible, responsible and safety-conscious manner. You must

not use or knowingly permit others to use the products or services for any fraudulent, malicious, inappropriate or illegal purposes, or in a manner that may threaten or cause harm to any other person, Mighty, or otherwise disrupt the proper operation of the product, service, or network.

Use of Data or any feature provided through a Mighty product or service is at the Customer's own risk and is intended as a reference tool only. The use and interpretation of the Data is your responsibility and you acknowledge and agree that the Data may not be suitable or verified by anyone, and may contain inaccurate or incomplete information due to the passage of time, changing circumstances, sources used, and the nature of collecting geographic data, any of which may lead to incorrect or unreliable results.

**13.3** Road restrictions apply as follows:

- (a) Vehicles must not be used on any unsealed road (being a road not sealed with a hard material such as tar, bitumen or concrete). Off road conditions include, but are not limited to: fire trails, beaches, sand, tracks, fields or paddocks. The only exception to this is reasonable use of access roads limited to a maximum of twelve kilometres in length to recognised commercial campgrounds.
- (b) The Customer is responsible for all damage if travelling on unsealed roads as defined in clause 19.8.

**13.3A** Breach of Road Restriction Rules

- (a) The Customer acknowledges and agrees to pay to Mighty a fee of AU\$300 on each occasion that it is identified by Mighty that:
  - (i) a Customer has taken a 2WD Vehicle on an unsealed road or a Restricted Road; and
  - (ii) a Customer has taken a 4WD Vehicle on a Restricted Road,
- (b) The fee described in 13.3A(a) will be due and payable by immediate deduction from the Customer's credit card.

**13.4** We value your well-being, and for safety purposes, Mighty reserves the right, at its sole discretion, to restrict Vehicle movements in certain areas due to:

- (a) adverse road or weather conditions
- (b) the distance to nominated destinations in relation to the length of the hire period; and
- (c) any concerns Mighty, its employees or agents may have regarding driver experience or ability.

**13.5** Where Mighty mandates a change in drop off location, fees as per clause 6 will not apply.

**13.6** The Customer shall not make any alterations or additions to the Vehicle without the prior written consent of Mighty.

**13.7** The Customer will not allow any animals to be carried in the Vehicle, excluding registered guide dogs. Mighty reserves the right to charge the Customer's credit card a cleaning fee in the amount of AU\$250 for any animal related cleaning.

**13.8** The Customer shall take all reasonable steps to properly maintain the Vehicle and will contact Mighty immediately should any and all vehicle warning lights indicate any malfunction or potential malfunction.

**13.9** All Spirit of Tasmania ferry bookings must be made for a 7.7m long vehicle to allow for a change in vehicle type.

## 14) MAINTENANCE AND REPAIRS

**14.1** Mighty will reimburse customers for expenditure up to AU\$200 reasonably incurred in rectifying any mechanical failure to the Vehicle. For repairs costing over AU\$200, Mighty will need to be informed and confirm the repair in advance. Repairs will be approved and reimbursement for expenditure will be made (where applicable), provided the Customer was not responsible for the damage. In all cases, receipts must be submitted for any repair or the claim will not be paid.

**14.2** Unless the Customer has taken the Liability Reduction Option, the Customer will pay for the cost of repairing or replacing tyres damaged during the Rental Period except if the tyre is defective and is returned by the Customer to Mighty for inspection and is subject to a warranty claim on the manufacturer.

## 15) ON-ROAD ASSISTANCE

**15.1** Mighty provides 24 hour on-road assistance support. Please contact Mighty on free call: 1300 850 805 if you require assistance.

**15.2** Any problems associated with the Vehicle including equipment failure, must be reported to Mighty within 24 hours in order to give Mighty the opportunity to rectify the problem during the rental. Failure to do so may compromise any claims for compensation. Subject to clause 23, Mighty reserves

the right to not accept liability for any claims submitted after this period.

## 16) VEHICLE AVAILABILITY

**16.1** Vehicles cannot be requested by make or model, only by vehicle category.

**16.2** Mighty will endeavour to supply the vehicle category selected, however should the Vehicle booked be unavailable, Mighty reserve the right to substitute an alternative Vehicle without prior notification. The alternative vehicle shall be as close a substitute for the booked Vehicle as possible. Mighty will reasonably determine what, if any, refund may be warranted if a vehicle substitution is required.

**16.3** Should the customer decide to voluntarily downgrade their vehicle category from that booked, they will not be entitled to a refund.

## 17) TITLE TO VEHICLE

The Customer acknowledges that Mighty retains title to the Vehicle at all times. The Customer shall not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let on hire or otherwise part with or attempt to part with the personal possession of or otherwise deal with the Vehicle.

## 18) FOR YOUR PROTECTION

Personal Injury is covered in most cases through Registration Third Party Insurance. However, we strongly recommend that all people travelling in Australia take out Personal Travel Insurance. Mighty does not accept any liability for personal injuries sustained during rental.

## 19) VEHICLE DAMAGE – LIABILITY AND LIABILITY REDUCTION OPTIONS

**19.1** The Customer understands that:

- (a) the Vehicle is insured for third party Vehicle and property damage;
- (b) subject to clause 19.2, the Customer will have to pay the first AU\$3,500 for the Highball, Jackpot and Double Down or the first AU\$5,000 for all other campervans, of the cost of any Damage incurred whilst the Vehicle is in the Customer's possession (or the total cost of Damage, if clause 19.2 applies);
- (c) subject to clause 19.2, the Customer's liability for Damage may be reduced by taking out the Liability Reduction Option.

**19.2** The Customer will be responsible for the total cost of any Damage, and the Liability Reduction Option (if taken) will be void, if:

- (a) the Customer breaches any of the terms of this Agreement, and that breach is the cause of or contributes to the relevant Damage; or
- (b) the Damage is covered by any of the exclusions set out in clause 20.

**19.3** If the Liability Reduction Option is not taken, the Customer must pay the Liability Deposit to cover the first AU\$3,500 for the Highball, Jackpot and Double Down or AU\$5,000 for all other campervans of the cost of any Damage (subject to clause 19.2). The Customer must provide a valid credit card to pay the Liability Deposit and the amount will be debited to the Customer's credit card on the day of Vehicle collection. The Liability Deposit is fully refundable, including the 2% credit card administration fee, if the card used to provide the Liability Deposit is a Visa or MasterCard credit card, provided the Vehicle is returned without Damage. Mighty recommends that customers use a Visa or MasterCard credit card for the Liability Deposit, as the credit card administration fees that applies when using American Express is not refundable. **Refund of the Liability Deposit is not a waiver by Mighty of the Customer's liability under this Agreement, and Mighty retains the right to recover monies for Damage notwithstanding the return or refund of the Liability Deposit.**

**19.4** At the commencement of the Rental Period, the Customer has the option to take out the "Liability Reduction Option", which incurs an additional charge per day. Subject always to clause 19.2, if the Liability Reduction Option is taken the Customer will not have to pay a Liability Deposit and will not be responsible for the cost of any Damage. This cover includes unlimited tyre and windscreen cover for accidental Damage. However, the Liability Reduction Option does not provide cover for the costs of any Damage attributable to a single Vehicle rollover (as described in clause 13.1 (a)). Customers who have purchased The Bundle (in conjunction with the Liability Reduction Option) or the Mighty Inclusive Pack will have the cost of Damage attributable to a single Vehicle rollover (as described in clause 13.1 (a)) covered, provided that the Customer has not otherwise breached this Agreement in relation to the rollover.

**19.5** If the Customer does not take out the Liability Reduction Option then subject to clause 19.2, where the Customer is at fault but otherwise is not in breach of this Agreement, the Customer is responsible for the cost of the Damage (up to AU\$3,500 for the Highball, Jackpot and Double Down or AU\$5,000 for all other campervans) at the time the accident report is completed, not at the completion of the Rental Period. An amount equal to the cost of the Damage will be deducted from the Liability Deposit (which but for the Damage would otherwise be refundable). Upon written request, Mighty will provide the Customer with an itemised bill of any amounts deducted from the Liability Deposit.

**19.6** The Liability Deposit will:

- (a) be refunded to the Customer upon a determination by the relevant insurance company that the Customer was not at fault in relation to the damage;
- (b) be deducted by Mighty in the amount equal to the damage caused by the Customer upon a determination by Mighty's insurance company that the Customer was at fault in relation to the damage.

**19.7** The Customer's liability (the first AU\$3,500 for the Highball, Jackpot and Double Down or AU\$5,000 for all other campervans) of the cost of any Damage applies in respect of each claim, not each rental.

**19.8** Damage includes any and all damage to third party property, damage to the rented vehicle including windscreens, tyres, towing and recovery costs, theft, fire, break in or vandalism. The costs of any damage will include the costs of repairing the damage, and the costs of the daily rental rate for the period the vehicle is being repaired. In addition to the costs associated with the claim, a processing fee of AU\$60 and associated damage assessment fees will be applicable per claim.

**Important Note:** Mighty reserves the right to repair all damage incurred during an accident using a preferred Mighty repairer.

## **MIGHTY STRONGLY RECOMMENDS OUR CUSTOMERS TAKE THE BUNDLE (IN CONJUNCTION WITH THE LIABILITY REDUCTION OPTION) OR THE MIGHTY INCLUSIVE PACK FOR TRAVEL WITH COMPLETE PEACE OF MIND.**

### **20) EXCLUSIONS**

The Customer acknowledges that the Liability Reduction Option will not apply, and that they are responsible for all costs arising out of, or incurred in connection with:

- (a) any Damage due to vehicle use in contravention of clause 13 'Use of Vehicle';
- (b) any Damage caused by wilful misconduct (e.g. sitting or standing on the bonnet or roof of the Vehicle) and driving under the influence of alcohol or drugs and negligence resulting in Damage to the hired Vehicle or third party vehicle/ property;
- (c) for any loss or damage to personal belongings or property of the Customer (or any person or entity related to the Customer or any person as a passenger in the Vehicle);
- (d) and Damage where the Customer is charged by local authorities for being careless, showing gross negligence or wilfulness in failing to abide by the local road rules, resulting in Damage to the hired Vehicle or third party vehicle/property;
- (e) retrieving or recovering a Vehicle which may include, but is not limited to a Vehicle that has become bogged, submerged, caught, trapped, stuck or restricted in any way and/or has been abandoned;
- (f) replacing keys which have become lost, stolen, or retrieval of keys which have been locked in the Vehicle;
- (g) any overhead or underbody Damage to the Vehicle however caused - except where the Liability Reduction Option has been taken;
- (h) any single Vehicle rollover (as described in clause 13.1 (a)) except where The Bundle (in conjunction with the Liability Reduction Option) or the Mighty Inclusive Pack has been purchased;
- (i) Damage caused to the Vehicle because total load (kg) has exceeded recommended load as stated in vehicle manual;
- (j) Damage caused by drivers not identified on the rental agreement and/or drivers that have a licence that has been cancelled or suspended and/or drivers who have a licence that is classified as a learner or probationary licence;
- (k) any Damage caused to the Vehicle due to the use of snow chains;
- (l) for any cost associated with the incorrect use of fuel (fuel being diesel or petrol), this includes Bio-

- Diesel which should not be used, or water or other contamination of fuel;
- (m) any Damage caused to the Vehicle due to part or total submersion in water;
  - (n) the Customer fitting accessories (as provided by Mighty or otherwise) to the Vehicle incorrectly or otherwise in a manner which causes damage to the Vehicle, the accessories or any other vehicle or property; and
  - (o) using the Vehicle in contravention of any legislation or regulation controlling vehicular traffic.

### **21) CREDIT CARD AUTHORITY**

**21.1** Mighty shall be entitled to retain and the Customer hereby authorises Mighty to retain, the details of the credit card provided by the Customer in connection with a rental booking ("Credit Card") in accordance with the Mighty Privacy Policy and to take any action to recover from the Credit Card the amounts due by the Customer pursuant to this Agreement.

**21.2** The Customer expressly and irrevocably authorises Mighty to charge to the Credit Card all amounts payable under this Agreement. By way of summary, these charges include, but are not limited to any costs or fines arising under clause 4 (Delivery and return of the Vehicle), clause 7 (Pick-up and drop-offs), clause 8 (Rental extension), clause 13 (Use of the Vehicle), clause 15 (On-road assistance), clause 19 (Vehicle Damage), clause 24 (Toll and Traffic Offences), and clause 31 (Terminating the Agreement and repossessing the Vehicle). Mighty will provide the Customer with an itemised bill of the monies to be deducted by Mighty from the Credit Card prior to making such deductions.

**21.3** The Customer agrees that in the event of a dispute arising as to whether a fee has been appropriately charged to the Credit Card, the Customer will not, in the first instance, seek to have the charge on the Credit Card reversed, but will rather contact Mighty directly to discuss whether the charge has been applied in error.

**21.4** If the Customer has a complaint in relation to any monies deducted by Mighty to their Credit Card under clause 21, the Customer is invited to contact Mighty by calling 1800 670 232 or by sending an email to customercare@thlonline.com. Mighty takes customer complaints seriously and is committed to dealing with all complaints in a fair, objective, unbiased and timely manner.

**21.5** Mighty will provide the Customer with an itemised bill of the monies to be deducted by Mighty from the Liability Deposit under clause 23.3 prior to making such deductions.

**21.6** Mighty will not charge the Customer's credit card without giving the Customer written notice or an opportunity to dispute the charges.

### **22) PROCEDURES IN CASE OF ACCIDENT**

If the Customer is involved in a motor vehicle accident whilst on hire, the following procedures should be followed:

#### **(a) At the accident scene the customer must:**

1. Obtain the names and addresses of any third parties and any witnesses.
2. Report the accident to police, regardless of estimated damage costs.
3. Not accept blame or insist the other party is at fault.
4. If possible, photograph damage to all vehicle(s) and registration number(s).
5. Phone Mighty (call 1800 670 232) with the accident's details within 24 hours.

#### **(b) At the branch**

1. The Customer must produce their Driver's Licence and hand over the police report (if applicable) and any supporting photographs.
2. The Customer is required to pay the cost of any Damage to the Vehicle (if applicable, in accordance with clause 19) and any other amount due by them in respect of any Damage arising from an accident, loss, or damage. This amount is payable at the time of reporting 'the event' and not at completion of the Rental Period.
3. The Customer will pay Mighty the daily rental rate for the period the vehicle is off fleet for accident repairs.
4. The Mighty Local Host will ensure the Motor Vehicle Accident Report is completed clearly and accurately, and signed by the Customer.

#### **(c) Exchange vehicle**

1. The availability of an Exchange Vehicle is not guaranteed; provision is subject to availability, Customer location, accident liability and remaining hire duration. Additional charges

may be incurred (see below).

2. If an Exchange Vehicle is required as a result of an accident, the Customer is responsible for making their own way to the nearest Mighty branch or pick up location at their own cost.
3. Mighty may offer the Customer the option of paying an "Exchange Vehicle Relocation Fee" to send a driver to deliver the exchange vehicle to the Customer's location.
4. The Customer will pay for any costs relating to delivery of an exchange Vehicle as a result of any single Vehicle accident. This charge applies irrespective of any Liability Reduction Option being taken.
5. If an exchange vehicle is provided, any Liability Reduction Option purchased at the commencement of the Rental Period may, at Mighty's discretion (including where it considers the exchange vehicle is at risk of damage) be terminated with effect from the date of provision of the exchange vehicle (and the Customer will not be charged the additional per day charge in respect of the Liability Reduction Option from that date). If Mighty exercises its right to terminate the Liability Reduction Option, a Liability Deposit will be required to be paid by the Customer at the time of provision of the exchange Vehicle. If the Customer did not purchase the Liability Reduction Option at the commencement of the Rental Period and paid a Liability Deposit, the Customer acknowledges that a new Liability Deposit will be required to be paid for the exchange Vehicle.

#### **(d) Time frame for settlement of customer liability claims**

1. Mighty shall use best endeavours to ensure that any money due back to the Customer is forwarded as quickly as possible, however Third Party claims can take months or even years to resolve. Mighty cannot force the destiny of these claims, and the Customer acknowledges that handling of these claims is up to Mighty's Insurer and the Third Party, whether they be insured or not.
2. Mighty agrees to refund any Liability Deposit refunds applicable within 60 days of receiving final resolution and payment relating to third party claims.
3. For information regarding outstanding claims or Liability Deposit refunds please contact the Claims Department on 0061 3 8398 8800 during office hours.
4. The Customer agrees to provide all reasonable assistance to Mighty in handling any claim including providing all relevant information and attending Court to give evidence.

**Important Note:** Under no circumstances should the Customer attempt to start or drive a vehicle that has been involved in an accident, damaged by rollover, water submersion or any other means without permission from Mighty.

### **23) RELEASE AND INDEMNITY OF MIGHTY**

**23.1** The Customer releases Mighty, its employees and agents, from any liability to the Customer, for any loss or damage incurred by the Customer by reason of rental, possession or use of the Vehicle where such a loss or damage is caused by the Customer.

**23.2** The Customer hereby indemnifies and shall keep indemnified Mighty, its employees and agents, against any claims, demands and expenses (including legal costs) incurred or sustained by them or any of them by reason of the Customers use and/or possession of the Vehicle.

**23.3** Any indemnity required of the Customer shall not operate to indemnify Mighty in respect of any negligence or wilful act or omission of Mighty, its employees or agents.

**23.4** Nothing contained in these terms and conditions shall exclude any express or implied conditions, warranties or requirements that cannot be so excluded under the Competition and Consumer Act, the Australian Consumer Laws or any other corresponding state legislation that may be applicable.

**23.5** The Customer acknowledges that Data or other features may be provided by third parties and neither Mighty nor any third party provider makes any warranties with regard to the Data or other features and expressly disclaims any implied warranties of merchantability, completeness, accuracy and fitness for a particular purpose. Neither Mighty nor any third party provider will have any liability to you, whether in contract, tort (including negligence) or otherwise, in connection with the Data and the use of the Data (including any loss, damage or misadventure arising

from any act or omission of any person in reliance on the Data).

The Customer acknowledges that it is an essential condition of these terms that you accept and use the products, services and Data subject to all limitations of liability contained in these terms.

The Customer acknowledges that Mighty does not investigate or endorse any third party websites or operators that may be accessible through use of our devices, or other products or services. We make no representation or warranty that any information you receive through a third party website is true, accurate, reliable, or authentic. We are not responsible to you for any use, access or reliance on any such third party websites.

## 24) TOLL AND TRAFFIC OFFENCES

**24.1** Mighty reserves the right to submit a statutory declaration to the issuing authority and/or charge the Customer for any speeding, toll way, parking or other traffic offence. In addition, Mighty reserves the right to charge an administration fee of up to AU\$60 for associated administration costs to the Customer's credit card upon receipt of a charge for any speeding, toll way, parking or other traffic offence incurred by the Customer. This fee will be applicable per offence.

**24.2** If the Customer continues to exceed a speed of 110km or continues to exceed the posted speed limit, as determined by the telematics system fitted into the Vehicle, Mighty may impose a fee on the Customer in the amount of AU\$300.

## 25) RENTAL CHARGES

Total charges as set out in your rental agreement are not final. The Customer will pay any shortfall in charges to Mighty and the Customer will receive a refund for any overcharges made by Mighty. Wherever possible, any amendment to charges will be notified to the customer at conclusion of rental, and the customer agrees to payment of any such charges at that time.

## 26) ADMINISTRATION FEES

A surcharge of 3% of the total cost will be levied to cover state government taxes, duties, vehicle registration recovery and administration costs. This fee is included in the daily vehicle rental rate.

## 27) PAYMENT OF CHARGES – JOINT AND SEVERAL LIABILITY

All charges and expenses payable by the Customer under this Agreement are due on demand by Mighty including any collection costs and reasonable legal fees incurred by Mighty. When the Customer comprises more than one person, each person is liable jointly and severally, for all obligations of the Customer pursuant to this Agreement.

## 28) CREDIT AND DEBIT CARD PAYMENT

**28.1** Where a credit or debit card is presented as payment, the credit or debit card holder will be jointly and severally liable as a Customer.

**28.2** The following credit or debit cards will be accepted: Visa Card and MasterCard and American Express. A non-refundable 2% administration fee will apply to all Visa and MasterCard transactions. A

non-refundable 2.8% administration fee will apply to American Express cards. Credit card administration fees also apply to **debited** Liability Deposits. Only the Customer's credit card is acceptable to use for providing the required Liability Deposit. The credit card administration fees are subject to change.

**28.3** Mighty may process credit or debit card charges pertaining to the rental after the Rental Period in accordance with this Agreement.

**28.4** The Customer acknowledges that all transactions under this Agreement are conducted in Australian dollars. Due to exchange rate fluctuations and bank fees, there could be some variance between the amount initially debited against the Customer's credit or debit card and the amount refunded. Mighty accepts no liability for any such variation or any interest incurred on such amounts.

**28.5** If the Customer has a complaint in relation to any monies deducted by Mighty from the Customer's credit card under clause 28.3, the Customer is invited to contact Mighty on 1800 670 232 or send an email to [customer@thlonline.com](mailto:customer@thlonline.com). Mighty takes customer complaints seriously and is committed to dealing with all complaints in a fair, objective, unbiased and timely manner.

## 29) PERSONAL CHEQUES, COMPANY CHEQUES AND BANK TRANSFERS

Personal cheques, company cheques and bank transfers will not be accepted as payment for rental charges at the time of pick up. These must be received by Mighty 28 days prior to commencement of Rental. Personal cheques, company cheques or bank transfers are not acceptable as the Liability Deposit and a valid credit card will need to be provided for the purposes of clauses 19.3 and 21.

## 30) CONDITIONAL UPON PAYMENT

The Customer agrees that provision of any rental Vehicle is conditional upon Mighty being paid by the travel agent or travel wholesaler who arranged the Vehicle rental on the Customer's behalf. Mighty reserves the right to collect payment from the Customer in the event of a failure by the travel agent or travel wholesaler to pay for the rental.

## 31) TERMINATING THE AGREEMENT AND REPOSSESSING THE VEHICLE

**31.1** The Customer acknowledges that Mighty may refuse any rental, terminate this Agreement and/or repossess the Vehicle (and for that purpose enter upon any premises and remove the Vehicle) at any time, without notification to the customer, and that the Customer will pay the reasonable costs of repossessing the Vehicle, including towing charges if:

- the Customer is in breach of any material term of this Agreement, particularly clauses 13 and 34;
- the Customer has obtained the Vehicle through fraud or misrepresentation;
- the Vehicle appears to be abandoned;
- the Vehicle is not returned on the agreed return date or Mighty reasonably believe that the Vehicle will not be returned on the agreed return date; or
- Mighty considers, on reasonable grounds, that the safety of the passengers or the condition of the Vehicle is endangered.

**31.2** Subject to clause 31.3, the Customer understands that in the event of such termination or repossession, the Customer has no right to a refund of any part of the rental charges.

**31.3** If the Customer has a complaint in relation to the termination of this Agreement and/or the repossession of the Vehicle by Mighty under clause 31, the Customer is invited to contact Mighty on 1800 670 232 or send an email to [customer@thlonline.com](mailto:customer@thlonline.com). Mighty takes complaints seriously and is committed to dealing with all complaints in a fair, objective, unbiased and timely manner.

## 32) CANCELLATIONS

If a bookings travel dates are amended within the cancellation fee period to be outside of the cancellation fee period and is subsequently cancelled, the cancellation fee for the original booking will apply. The cancellation fees are:

- If cancelled up to 91 days prior to pick-up:
  - No Fee
- If cancelled from 90 to 22 days prior to pick-up:
  - 10% of Gross Rental
- If cancelled from 21-7 days prior to pick up:
  - 20% of Gross Rental
- If cancelled 6-1 days prior to pick up:
  - 50% of Gross Rental
- On day of pick up or no show:
  - 100% of Gross Rental
- If Vehicle is returned early:
  - No refund available

## 33) PROPER LAW

This Agreement is governed by the laws of the state of Victoria.

## 34) CUSTOMER WARRANTIES

The Customer warrants that all information supplied by them to Mighty in connection with this Agreement is true.

## 35) PRIVACY

**35.1** Mighty will collect personal information as part of its rental process. Any information collected by Mighty will be handled in accordance with the Mighty Privacy Policy which you can view on our website.

**35.2** The Customer agrees that Mighty may collect, use and disclose the Customer's personal information (including but not limited to the location, usage and servicing of your vehicle, your speed, fuel consumption, distances travelled and current and previous locations visited) through global positioning system vehicle tracking and diagnostics (telematics) and other electronic tools in accordance with the Mighty Privacy Policy. The Customer further acknowledges that Mighty is entitled to retain Customer Credit Card details pursuant to clause 21 of this Agreement and in accordance with the Mighty Privacy Policy. The Mighty Privacy Policy contains information about how to access and correct your personal information, how to make a privacy complaint, how Mighty will handle a Customer complaint, how to opt out of direct marketing and whether a Customer's personal information may be disclosed to third parties located overseas. Customer credit card details will not be disclosed to third parties.

MT213-12/17

FRECALL

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