

RENTAL TERMS AND CONDITIONS

1. Interpretation

In this Agreement:

"Claims" means any claim by any third person for loss or damage to any property, injury to or death of any person or economic loss arising out of or relating to any or all the Vehicle and the Refrigeration Equipment, any delay or other failure in supplying any services of this agreement, including without limitation, any defect in or malfunction of the Vehicle and the Refrigeration Equipment

"Excess Amount" means the amount payable by Scully Hire to its insurer in the event Scully Hire makes a claim under a policy of insurance in respect to the Vehicle and the Refrigeration Equipment, being at least \$2,500.00 per claim.

"Extraordinary Use" in respect to the Vehicle means a total of 2000 kilometres that the Vehicle has or may travel in a continuous seven-day period and in respect to the Refrigeration Equipment means a total 100 hours that the Refrigeration Equipment has or may operate in a continuous seven-day period.

"Hirer" means the party described at Item 1 of the Rental Schedule and if more than one, then each of them jointly and severally.

"Hire Term" means the period referred to at Item 4 of the Rental Schedule and any additional period agreed upon by the Hirer and Scully Hire on the same terms and conditions as this agreement.

"Outgoing Condition Report" means the notes of damage and items supplied with the Vehicle and the Refrigeration Equipment recorded at Item 5 of the Rental Schedule.

"Refrigeration Equipment" means the refrigeration equipment attached to the vehicle but excluding any air-conditioning equipment used solely for cooling the driver's compartment of the Vehicle.

"Refuelling Fee" means the cost of fuel required to fill the Vehicle's fuel tanks upon its return by the Hirer calculated at the current rate set by Scully Hire Pty Ltd.

"Rental" means the amount payable to Scully Hire calculated pursuant to this agreement in accordance with and at the rates specified at Item 4 of the Rental Schedule.

"Rental Schedule" means the schedule of information on the reverse side of this document and forming part of this agreement.

"Scully Hire" means Scully Hire Pty Ltd ACN 114 638 498

"Vehicle" means the motor vehicle or trailer or both described at Item 3 of the Rental Schedule but does not include the Refrigeration Equipment.

"Vehicle and Refrigeration Equipment" means the Vehicle and the Refrigeration Equipment either together or separately.

2. Rental of Goods

2.1 Scully Hire agrees to rent the Vehicle and Refrigeration Equipment to the Hirer for the Hire Term and the Hirer agrees to take the Vehicle and the Refrigeration Equipment on hire for that period. The Hirer agrees to return the Vehicle and the Refrigeration Equipment at the end of the Hire Term.

3. Payment of Rental

The Hirer agrees to pay to Scully Hire:

- the Rental;
- any other amounts payable pursuant to this agreement;
- GST;
- Stamp duty, financial institutions duty, fees, outgoings, penalties, fines, demands, charges or costs imposed by any authority on or in connection with this agreement or the Hirer's hiring of the Vehicle and the Refrigeration Equipment.

3.2 The Hirer authorises Scully Hire to:

- complete any document or transaction necessary or desirable to enable the Hirer to make payments through any credit card system;
- obtain credit information about the Hirer to the extent permitted by any privacy legislation for the purposes of assessing the Hirer's capability to meet obligations under this agreement and to assist Scully Hire in the collection of any overdue payment;
- use its name and to act on its behalf in exercising any rights or instituting or carrying on or enforcing any legal proceedings which Scully Hire thinks desirable to protect its rights in the Vehicle and the Refrigeration Equipment.

4. Hirer's Warranties

4.1 The Hirer warrants that:

- the details on the Rental Schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
- the person who executes this agreement is authorised by the Hirer to do so;
- the Hirer and any person authorized by the Hirer to drive the Vehicle is a minimum 25 years of age and holds a current driver's licence valid for the Vehicle with a minimum of 4 years practical experience in that licence field;
- in selecting the Vehicle and the Refrigeration Equipment the Hirer has not relied on Scully Hire's skill and judgement or on any representation made by or on behalf of Scully Hire and agrees that the Vehicle and the Refrigeration Equipment comply with their description, are in merchantable condition and are fit for the Hirer's purpose.

5. Hirer's Obligations

The Hirer will:

- keep the Vehicle and the Refrigeration Equipment in first class condition and only use them as they would be used by a careful and prudent owner;
- strictly comply with servicing and reporting obligations contained in clauses 6 and 7;
- not use the Vehicle and the Refrigeration Equipment for any illegal purpose or in any unlawful way;
- not allow the Vehicle and the Refrigeration Equipment to be driven or used by a person impaired by, or under the influence of any drug or alcohol, or by any person with a percentage of drug or alcohol in their breath or blood in excess of that permitted by law or regulation in the place where the Vehicle and the Refrigeration Equipment are located;
- not allow the Vehicle and the Refrigeration Equipment to carry or tow a load in excess of that for which they were constructed or permitted by law or regulation or in accordance with any applicable permit;
- not use the Vehicle and the Refrigeration Equipment for or in connection with dangerous goods;
- not seek or purport to transfer any of its rights or obligations under this agreement;
- report any damage to, or any loss of, the Vehicle and the Refrigeration Equipment to Scully Hire immediately such damage or loss occurs;
- not travel to or within the Northern Territory without first giving Scully Hire prior written details of the proposed travel and having received Scully Hire's consent in writing and subject to such conditions as Scully Hire may impose.
- comply with the Safe Food Queensland's "TranSafe" programme when a particular product must be transported under a Food Safety Programme. (Scully Hire vehicles are accredited & operating procedures are supplied with each applicable hire vehicle.)

6. Reporting

6.1 Once every week and in any event, within 24 hours of Scully Hire's request, the Hirer will report to Scully Hire the number of kilometres travelled by the Vehicle and the number of operating hours of the Refrigeration Equipment.

6.2 If the Vehicle or Refrigeration Equipment has performed Extraordinary Use or the Hirer believes that the Vehicle or Refrigeration Equipment may do so, the Hirer will advise Scully Hire as soon as possible of such Extraordinary Use including the number of kilometres that the Vehicle has travelled or that it anticipates the Vehicle will travel and the number of operating hours the Refrigeration Equipment has been operating or that it anticipates the Refrigeration Equipment will operate.

7. Servicing

7.1 Scully Hire or such other party as Scully Hire directs will service the Vehicle and the Refrigeration Equipment at the expense of Scully Hire. The Hirer agrees to deliver the Vehicle and the Refrigeration Equipment at its expense to Scully Hire or to such other party as directed by Scully Hire for servicing as and when Scully Hire directs. The Hirer remains liable to pay the Rental for such period that the Vehicle and the Refrigeration Equipment are being serviced during the Hire Term.

8. Liability, Insurance and Indemnities

8.1 The Vehicle and the Refrigeration Equipment are at the Hirer's risk while they are in its possession or control.

8.2 The Hirer:

- accepts liability for any loss or damage in relation to the Vehicle and the Refrigeration Equipment or any services arising out of any breach of this agreement by the Hirer, its contractors, servants or agents and any Claim;
 - indemnifies Scully Hire for any loss (including but not limited to legal costs) incurred by Scully Hire in relation to any breach of this agreement and for any liability arising out of any such breach;
- 8.3 Scully Hire is not liable for and the Hirer indemnifies Scully Hire in respect of consequential or indirect damages (including but not limited to marine or other load loss) in relation to the Vehicle and the Refrigeration Equipment, or delay or other failure in supplying the Vehicle and the Refrigeration Equipment including but not limited to load insurance or any services, or this agreement.
- 8.4 Scully Hire's liability for breach of any implied warranty that cannot be excluded at law is limited to supplying, replacing or repairing the Vehicle and the Refrigeration Equipment or supplying the relevant services again.
- 8.5 Subject to clause 8.6, Scully Hire will maintain registration of the Vehicle and insure it and the Refrigeration Equipment in respect to public liability and loss or damage. Notwithstanding such insurance, the Hirer indemnifies Scully Hire in respect to public liability and loss or damage the subject of Scully Hire's insurance or otherwise.
- 8.6 If the subject of this agreement is a Vehicle consisting only of a non-motorised trailer with or without Refrigeration Equipment, the Hirer must obtain its own policy of prime mover insurance that includes trailer in control liability.
- 8.7 Scully Hire is entitled to receive all insurance proceeds as a result of any loss or damage to the Vehicle and the Refrigeration Equipment and the Hirer appoints Scully Hire as its attorney to recover or compromise any claim for loss or damage to the Vehicle and the Refrigeration Equipment under any applicable insurance policy and to give effectual releases and receipts under any applicable policy.

9. Termination of this Agreement

9.1 This agreement will end on expiration of the Hire Term or earlier termination by Scully Hire.

9.2 Scully Hire may terminate this agreement immediately and without notice if:

- the Hirer breaches any provision of this agreement;
- any step is taken to enter into any arrangement between the Hirer and its creditors, the Hirer ceases to be able to pay its debts as they become due, the Hirer ceases to carry on business or any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Hirer's business;
- any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, provisional liquidator, an administrator or other like person of the whole or any part of the Hirer's assets or business.

10. Return of Vehicle and Refrigeration Equipment

10.1 Immediately upon termination of this agreement the Hirer must return the Vehicle and the Refrigeration Equipment to Scully Hire and will be liable for ongoing Rental until it does so.

10.2 If in the reasonable opinion of Scully Hire the Vehicle and the Refrigeration Equipment are not in good order and condition on return to Scully Hire, the Hirer must pay to Scully Hire on demand the Excess Amount and/or the cost of the actual repairs or other work necessary to restore them to good order and condition (including but not limited to cleaning) together with loss of profits for the period the Vehicle and the Refrigeration Equipment were not available for hire. Notwithstanding the reasonable opinion of Scully Hire, the Vehicle and the Refrigeration Equipment will be deemed not to be in good order and condition if they bear any damage not recorded in the Outgoing Condition Report.

10.3 The Hirer must return the Vehicle fully fuelled. If the Hirer fails to do so, the Hirer must pay to Scully Hire on demand the Refuelling Fee.

10.4 If the Hirer has not returned the Vehicle and the Refrigeration Equipment to Scully Hire within 7 days of the termination of the Agreement, Scully Hire may enter premises at which it believes the Vehicle and the Refrigeration Equipment to be and retake possession of it.

10.5 The Hirer must reimburse Scully Hire on demand for all expenses and costs on a full indemnity basis (including legal costs) incurred by Scully Hire in re-taking possession of the Vehicle and the Refrigeration Equipment or incidental to that action.

11. Title to the Vehicle and the Refrigeration Equipment

11.1 The Hirer acknowledges that Scully Hire retains title to the Vehicle and the Refrigeration Equipment and that the Hirer has rights to possess the Vehicle and the Refrigeration Equipment as a mere bailee only. The Hirer does not have any right to pledge Scully Hire's credit in connection with the Vehicle and the Refrigeration Equipment and agrees not to do so. The Hirer also agrees not to 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 and the Refrigeration Equipment and not to conceal or alter the Vehicle and the Refrigeration Equipment and make any addition or alteration to, or repair of, the Vehicle and the Refrigeration Equipment.

12. No Waiver

12.1 Time is of the essence of this agreement, except that no delay by Scully Hire in exercising any right or power will operate as a waiver of that right or power nor will any singular or partial exercise of any right or power preclude any other or further exercise of a right or power.

13. Governing Law

13.1 The law of Queensland will govern this agreement.

V2.0

DECLARATION

I/we declare that the goods to be hired by me/us from Scully Hire Pty Ltd A.C.N. 114 638 498 are to be hired wholly or predominantly for business purposes.

.....X
SIGNATURE

...../...../.....
Full Name

...../.....
Date

IMPORTANT

You should **not** sign this declaration unless the goods are hired wholly or predominantly for business purposes. By signing this declaration you may **lose** your protection under the Consumer Credit Code.