



CONDITIONS

1. Interpretation

1.1 **Definitions:**

Annual Mileage: the agreed annual mileage for the Vehicle(s) set out in the Contract Details.

Business Day: a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

Company: Frosty Hire & Sales Limited a company incorporated under the laws of England and Wales with company number 07999606 whose registered office is at Solar House, 282 Chase Road, London, N14 6NZ.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 15.3.

Contract: the contract between the Company and the Customer for the hire of the Vehicle(s) in accordance with The Contract Details, these Conditions and any Schedules.

Customer: the person or firm who agrees to hire a Vehicle as specified in the Contract Details.

Delivery: the transfer of physical possession of the Vehicle(s) to the Customer at the Delivery Location.

Delivery Location: the Company's premises at Unit 6 Leaside Industrial Park, Sedge Green, Road, Nazeing EN9 2BF or such other location as may be advised by the Company prior to Delivery.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Full Replacement Value: means, in relation to a Vehicle, the greater of: (i) the fair depreciated value of the Vehicle(s) determined by reference to the Company's accounting policies as approved by its appointed external auditors; or (ii) a sum equal to the Company's liability in respect of any finance agreement it has entered into in respect of the Vehicle, as at the date of it being lost, stolen, destroyed or damaged beyond repair.

Initial Payment: the initial payment amount set out in the Contract Details.

Rental Payments: the payments made by or on behalf of Customer for hire of the Vehicle(s).

VAT: value added tax chargeable in the UK.

1.2 **Interpretation:**

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

2. Basis of contract

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. Delivery

- 3.1 Delivery shall be made within 5 Business Days of the Company notifying the Customer that the Vehicle(s) are ready when the Customer, or a duly appointed representative, collects the Vehicle(s) from the Delivery Location at which point Risk shall transfer to the Customer.
- 3.2 Acceptance of the Vehicle(s) by a representative of the Customer at the Delivery Location shall constitute conclusive evidence that the Customer has examined the Vehicle(s) and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended.
- 3.3 If 5 Business Days after the day on which the Company notified the Customer that the Vehicle(s) were ready for Delivery the Customer has not taken Delivery, the Company may in its sole discretion elect to enter into an alternative rental arrangement with another person and, after deducting 12 months rental from the
- 3.4 customer.

4. Title, risk and insurance

- 4.1 The Customer shall have no right, title or interest in or to the Vehicle(s) (save the right to possession and use of the Vehicle(s) subject to the terms and conditions of this Contract).
- 4.2 The risk of loss, theft, damage or destruction of the Vehicle(s) shall pass to the Customer on Delivery. The Vehicle(s) shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Vehicle(s) is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Vehicle(s) is redelivered to the Company. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Vehicle(s) to a value not less than its Full Replacement Value under a comprehensive motor insurance policy with a reputable insurer approved by the Company against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing; and
 - (b) insurance against such other or further risks relating to the Vehicle(s) as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to the Customer.
- 4.3 The Customer shall give immediate written notice to the Company in the event of any loss, accident or damage to the Vehicle(s) arising out of or in connection with the Customer's possession or use of the Vehicle(s).
- 4.4 If the Customer fails to effect or maintain any of the insurances required under this agreement, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 4.5 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.
- 4.6 The Customer shall procure that the Company is fully authorised to deal with any claim under the Customer's insurance for the Vehicle(s) as if it were the Customer.
- 4.7 All monies payable under any insurance policy maintained by the Customer in connection with the Contract shall be immediately paid to the Company or, if they are not paid directly to the Company by the insurers be applied in making good or recouping expenditure in respect of the loss or damage for which those monies are received.

5. Rental Payments and Initial Payment

- 5.1 The Customer shall pay the Rental Payments to the Company in accordance with the Payment Schedule. The Rental Payments shall be paid in pound sterling and shall be made by standing order.
- 5.2 The Initial Deposit and Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 5.3 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.4 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
- 5.5 Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

5.6 The Initial Payment is an initial sum to cover the Company's reasonable expenses to arrange for Delivery of the Vehicle(s) and against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Vehicle(s). If the Customer fails to make any Rental Payments in accordance with the Payment Schedule, or causes any loss or damage to the Vehicle(s) (in whole or in part), the Company shall be entitled to apply for the whole Payment against such default, loss or damage.

6. Company Responsibilities

- 6.1 During the Rental Period, the Company shall use reasonable endeavours to:
- (a) carry out servicing, maintenance, testing and any mechanical repairs to the Vehicle(s) at such times as the Company, in its sole discretion, reasonably considers necessary;
 - (b) provide and replace tyres when necessary as a result of fair wear and tear, to keep the Vehicle(s) in running order; and
 - (c) obtain and renew the necessary vehicle excise duty licences and take all reasonable steps to ensure that the specified vehicle complies with the provisions of the Road Traffic Acts and any applicable legislation or regulations.
- 6.2 The Customer shall be responsible for any costs, above fair wear and tear, incurred by the Company in connection with carrying out its obligations under clause 6.1.
- 6.3 If at any time during the Rental Period the Company considers it necessary to withdraw the Vehicle(s) from service due to a mechanical defect, breakdown, repair or other fault it shall notify the Customer that the Vehicle(s) is to be recalled and use reasonable endeavours to provide the Customer with a replacement vehicle, not necessarily of the same type or carrying capacity (**Replacement Vehicle**).
- 6.4 In the event a mechanical defect, breakdown or other fault is reported by the Customer to the Company in accordance with clause 7.1(d), the Company shall, as soon as reasonably practicable following confirmation that repair will not be possible within the same Business Day, provide a Replacement Vehicle.
- 6.5 Where the Company is unable to procure a Replacement Vehicle within 5 Business Days of the Company serving notice under clause 6.2 or receiving notice under clause 6.4 the Rental Payments shall be suspended for the period from the date of withdrawal of the Vehicle(s) until the date when a Replacement Vehicle has been provided. This shall be the extent of the Company's liability in this regard.

7. Customer Responsibilities

- 7.1 The Customer shall at all times during the Rental Period:
- (a) provide secure accommodation for and wash and clean the Vehicle(s) and keep it locked and safe when not in use;

- (b) deliver, at the Customer's cost, the Vehicle(s) to and collect it from the premises nominated by the Company for servicing, maintenance and mechanical repairs at such intervals and for such time as may be required by the Company during its normal business hours;
- (c) ensure that none of its employees or agents carry out do any repairs or make adjustments to the Vehicle(s) without the prior written permission of the Company;
- (d) report any mechanical defect arising to the Vehicle(s) to the Company immediately and make the Vehicle(s) available as required by the Company to enable it to carry out its obligations under clause 6;
- (e) ensure that the Vehicle(s) is driven in a skilful, careful, lawful and proper manner only by properly licensed and qualified drivers employed by the Customer, shall not permit any passengers to be carried except those properly authorised by the Hirer and shall not use the Vehicle(s) for any unlawful purpose;
- (f) obtain, pay for and keep up to date the appropriate licence necessary to operate the Vehicle(s) (except vehicle excise duty) prescribed by the Road Traffic Act 1991 and any applicable legislation or regulations for the time being in force;
- (g) pay promptly all bridge toll and ferry costs and any fines or penalties in respect of parking, driving or similar offences including but not limited to:
 - (i) any fixed penalty offence or contravention committed in respect of Schedule 2 of the Road Traffic Offenders Act 1988; or
 - (ii) any fixed penalty offence or contravention in respect of the Vehicle(s) under Part III or Section 66 of the Road Traffic Act 1988 including congestion charging;
 - (iii) any excess parking charge which may be incurred in respect of the Vehicle(s) in pursuance of an order under Section 45 and/or 46 of the Road traffic Regulation Act 1984; or
 - (iv) any penalty charge incurred under the Road Traffic Act 1991 and the Traffic Management Act 2004; or
 - (v) any charge or penalty charge incurred under a charging scheme;

in connection with the use by the Customer of the Vehicle(s) during the Rental Period and all rent, rates, taxes and other outgoings in respect of any premises of the Customer in or on which the Vehicle(s) may for the time being be parked. If the fines are received and dealt with by the Company the Company will complete the transfer of liability to the Customer which will incur a charge for this service at a rate of 25.00 pound sterling plus VAT. It then becomes the Customers responsibility to pay the fine incurred by the customer. Unless the transfer of liability cannot be made, then all costs and fees will be charged to the Customer.

ensure that weekly checks are carried out on the Vehicle(s) and that any necessary replenishments are made to lubricants, water, adblue, antifreeze levels and tyre pressures and that the Vehicle(s) is not operated in off-road conditions or with incorrect tyre pressures;

- (h) ensure that the Vehicle(s) is not loaded in excess of its permitted gross vehicle or individual axle weights or with goods which by their nature or condition of loading are liable to cause corrosion or damage to any part of the specified vehicle or with any goods liable to self-ignition or explosion or of an inflammable nature without the prior written consent of the Company;
- (i) keep the Company fully informed of all material matters relating to the Vehicle(s);
- (j) permit the Company or its duly authorised representative to inspect the Vehicle(s) at all reasonable times and for such purpose to enter any premises at which the Vehicle(s) may be located, and shall grant reasonable access and facilities for such inspection;
- (k) maintain operating and maintenance records of the Vehicle(s) to include weekly checks specified in clause 0 and make copies of such records readily available to the Company, together with such additional information as the Company may reasonably require;
- (l) not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Vehicle(s) or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (m) not do or permit to be done anything which could invalidate the insurances referred to in clause 4 and this clause 7;
- (n) not suffer or permit the Vehicle(s) to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Vehicle(s) is so confiscated, seized or taken, the Customer shall notify the Company and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Vehicle and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (o) operate the Vehicle(s) only in England, Scotland and Wales (**Permitted Countries**) and shall obtain Company's prior written consent (which shall be at the Company's absolute discretion) if it wishes to operate the Vehicle(s) outside any Permitted Country. If such consent is given, then in consideration of such consent the Customer shall indemnify the Company on demand against all costs of maintenance, repair and recovery incurred in excess of those which would have been incurred in the Permitted Countries and shall in any event be entirely responsible for the full costs of returning the Vehicle(s) to the Permitted Countries;

- (p) be responsible for the costs of all repairs and replacements to radios, aerials, night heaters, telephones and any other additional accessories where such equipment is provided on or fitted to the Vehicle(s); and
 - (q) not interfere or allow interference with any name, nameplate, identification number or other identification mark on the Vehicle(s).
 - (r) loss of goods
- 7.2 The Customer acknowledges that the Company shall not be responsible for any loss of or damage to the Vehicle(s) arising out of or in connection with any negligence, misuse, mishandling of the Vehicle(s) or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify the Company in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of, or in connection with any failure by the Customer to comply with the terms of this Contract.
- 7.3 The Customer shall immediately report any accident, loss or damage to the Vehicle(s) or knowledge or any pending Inquest or Fatal Accident Inquiry, claim or the like involving the Vehicle(s) to the Company, the insurers and (if so required by law) the police or any other relevant government authority, and shall supply any information, drawing and assistance in connection with any such incident which may be required by the Company, the insurers, Police any other relevant government authority;
- 7.4 The Customer shall bear the risk of and be responsible for any loss, delay or damage, however caused, to the goods carried, deposited on or left in or on the Vehicle(s) and the Customer shall irrevocably release and fully indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such claim.
- 7.5 The Company reserves the right to nominate the repairer in the event of any damage to the Vehicle(s) where the Customer's insurer has not given permission to proceed with the necessary repairs within 10 Business Days of the date of supplying a repair estimate and the Customer shall be responsible for such repair costs.
- 7.6 The Company, having exercised its right of assignment, shall have the power to submit insurance claim forms to the Customer's insurers if the Customer has failed to complete such a claim form.

8. Vehicle Livery

- 8.1 The Customer may, at its own expense, arrange for the any signage, writing, special design, artwork (**Vehicle Livery**) to be affixed to the Vehicle(s) during the Rental Period. Any such Vehicle Livery must be removed at the Customers own expense immediately prior to the expiry of the Rental Period and the redelivery of the Vehicle(s).

8.2 The Customer shall indemnify the Company in full against any costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of, or in connection with the removal such Vehicle Livery.

9. Distance travelled

9.1 The Customer shall, on the first Business Day of each calendar month during the Rental Period, provide the Company with the odometer reading for the Vehicle(s) (including readings for any Replacement Vehicle) recording the distance travelled in the immediately preceding month together with an estimated distance to be made for that calendar month.

9.2 If such readings and/or estimates are not provided to the Company, it shall have the right to make its own estimate base on previous data.

9.3 If at the end of the Rental Period the Customer has exceed the agreed Annual Mileage, the Company shall notify the Customer of the additional mileage and associated charge as set out in the Contract Details (**Additional Mileage Fees**) which shall be added to final Rental Payment and paid in accordance with clause 5.

10. Limitation of liability

10.1 The restrictions on liability in this clause 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973.

10.3 Subject to clause 10.2, the Company's total liability to the Customer shall not exceed £1000.00 (one thousand pounds sterling).

10.4 Subject to clause 10.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.
- (h) loss of goods.

10.5 This clause 10 shall survive termination of the Contract.

11. Automatic Renewal of the Rental Period

11.1 Upon expiration of the Rental Period the Contract shall renew for a further period of 3 years, (the term) unless the Customer, not less than 90 days before the end of the Rental Period, serves written notice on the Company of its intention for the Contract to end.

11.2 The terms of the Contract shall continue in full force and apply to the Renewed Rental Period unless varied by the Company in writing.

12. Termination

Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Customer if:

12.1 the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 28 Business Days after being notified in writing to make such payment;

12.2 the Customer commits a material breach of any other term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 Business Days of that party being notified in writing to do so;

12.3 the Customer breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

12.4 the Vehicle is lost, stolen or damaged beyond repair;

12.5 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.6 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

12.7 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13. Consequences of termination or expiry

13.1 On termination or expiry of this agreement, however caused:

- (a) the Company's consent to the Customer's possession of the Vehicle(s) shall terminate;
- (b) the Company may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Vehicle(s) and for this purpose may enter any premises at which the Vehicle(s) is located; and

- (c) without prejudice to any other rights or remedies of the Company, the Customer shall pay to the Company on demand:
 - (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.4;
 - (ii) any costs and expenses incurred by the Company in recovering the Vehicle(s) (including any Replacement Vehicle) or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs); and
 - (iii) in the event the Vehicle is lost, stolen or damaged beyond repair, the Full Replacement Value.
- 13.2 On termination of this agreement pursuant to clause 12 or any other repudiation of this agreement by the Customer which is accepted by the Company, without prejudice to any other rights or remedies of the Company, the Customer shall pay to the Company on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period, less a discount for accelerated payment at the percentage rate set out in the Payment Schedule.
- 13.3 The sums payable pursuant to clause 13.2 shall be agreed compensation for the Company's loss and shall be payable in addition to the sums payable pursuant to clause 13.1(c). Such sums may be partly or wholly recovered from any Initial Payment.
- 13.4 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 13.5 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

14. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall, subject to the Company's written approval of any payment holiday terms, be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 10 days' written notice to the affected party.

15. General

15.1 Assignment and other dealings.

- (a) The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

15.2 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

15.3 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 15.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.6 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address specified in the Contract Details.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt;

- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 15.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.



Payment Schedule 1.