

TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1. In this Agreement, except in a context indicating some other meaning is intended:
- 1.2. The **Official Rates Brochure** means the official brochure or rental rates and other general information issued by Swakopmund Car Hire "SCH" from time to time, which is current at the commencement of the rental period.
- 1.3. **SCH** means Swakopmund Car Hire.
- 1.4. The **"Company"** means Swakopmund Car Hire "SCH".
- 1.5. The **"rental period"** means the period from the time the vehicle is delivered at the rental location until its return to the Company by the Hirer.
- 1.6. The **"Hirer"** means the person's named as the renter in the rental form.
- 1.7. The **"renting location"** means the location from which the renter rents the vehicle.
- 1.8. The **"territory"** means Republic of Namibia.
- 1.9. The **"vehicle"** means the vehicle described on the rental form (including all tyres, tools, equipment, accessories and documents in and on the vehicle at the renting location. And includes any replacements for the vehicle which has been officially authorized by the Company.
- 1.10. Reference to the rental form shall be the rental form forming the first page of this Agreement and shall form part thereof.
- 1.11. The singular shall include the plural and vice versa, the masculine gender shall include the feminine and vice versa and natural persons shall include legal and juristic persons and vice versa.
- 1.12. The headings appear for reference only and shall not influence the proper interpretation of this Agreement.

2. RENTING

- 2.1. The Company rents to the Hirer who hires from the Company the vehicle on the terms and conditions of this Agreement. The Hirer will be bound by these terms and conditions, whether he/she was driving/responsible or not.
- 2.2. The Company rents to the Hirer the vehicle with all accessories. The equipment check list may specify only some of the accessories, equipment, spares and tools, and the onus is placed upon the Hirer to ensure that the equipment check list is completed prior to the taking delivery of the vehicle.

3. TERMINATION

Notwithstanding anything to the contrary elsewhere in this Agreement the Company may terminate the Agreement at any time or place by written notice to the Hirer whereupon the Hirer shall forthwith return the vehicle to the Company. The obligations of the Hirer and the rights of the Company under this Agreement shall continue in effect until the vehicle has been returned to the Company and the Hirer has complied with all those obligations.

4. DELIVERY AND RETURN

- 4.1. The Hirer shall take delivery of the vehicle at the renting location. The parties shall inspect the vehicle together and unless the Hirer has made any indication in writing on the rental form of any patent shortcoming, the vehicle shall be deemed to have been delivered in good order and repair and without any damage to the paintwork, upholstery and fittings unless the Hirer proves otherwise.
- 4.2. The Hirer shall at his/her own cost return the vehicle to the Company at the agreed return date/time specified on the rental form, or if this Agreement is terminated at any time or place, (for any reasons) before then, then immediately after such termination.
- 4.3. The vehicle shall be returned to the Company in the same condition as received, fair wear and tear excepted, and at the agreed return location specified, or if no such location is specified, at either the renting location or another location in the same city/town as the renting location.
- 4.4. Without derogating from any other term contained herein, the Company shall be entitled, at the expiry and/or termination of this Agreement, for whatever reason, to retake possession of the vehicle, from where ever it may be located and from whoever is in possession thereof.

5. RENTAL CHARGES

- 5.1. The rental charge payable by the Hirer for the use of the vehicle shall be the rental calculated for the whole of the rental period at the rates and on the basis specified and agreed with the Hirer, as well as, all other charges for the services or benefits opted for or utilized by the Hirer, including but not limited to, the charges for one way fee, delivery fee, collection fee, additional medical insurance and refuelling, where the vehicle is returned with less fuel than when rented, each of which shall be subject to all taxes levied on any amounts payable by the Hirer.
- 5.2. In determining the rental charges, the distance travelled by the vehicle (where required) shall be determined from the vehicle's odometer or if this is not possible for any reason by the Company on any other fair and reasonable basis and the Hirer shall be obliged to furnish all such information and assistance as the Company may reasonably require for that purpose.
- 5.3. If the Hirer received any services or benefit contemplated in its Agreement, but for which no basis for charging is specified, then the Hirer shall pay a charge determined on the basis (if any) specified in the Official Rates Brochure or if no such basis is specified on the Company's usual basis, then applied to it.
- 5.4. The Hirer shall also be liable for all fines, penalties and the like for parking, traffic and other criminal offences arising out of or concerning the use of the vehicle during the rental period and the Hirer accordingly indemnifies the Company against all such liability.
- 5.5. The Hirer hereby authorises the Company to disclose any information and/or documentation required by a relevant authority to process any such traffic fine and/or penalty which is incurred during the rental period.
- 5.6. All charges payable by the Hirer shall be payable in cash on presentation of an account.
- 5.7. If the Hirer has agreed to accept payment from the Hirer by credit card the Hirer's signature of this Agreement shall constitute authority for the issuer of the card to debit him/her with the amount due.
- 5.8. All rates include maintenance and oil, but do not include fuel and tyres.
- 5.9. The Hirer shall not be entitled to set-off or withhold payment of any amounts due in terms of this Agreement for any reason whatsoever.

6. USE OF THE VEHICLE

- 6.1. The vehicle may not be used for the transportation of passengers and/or goods for reward, to tow any other vehicle, including any caravan or trailer, to transport goods in violation of the customs laws or in any other illegal manner, in any motor sport, below the high tide watermark at the coast or in any pools or wet salt pans, through rivers or along riverbeds, in sandstorms, beyond the borders of the Republic of Namibia (unless authorized in writing by the Company) or any area in the Republic of Namibia where there is or may be a risk of civil unrest, political disturbance or riot, or any activity associated with any of the foregoing, in flight, after sunset or before sunrise, except with the express written consent of the Company.
- 6.2. The Hirer shall make adequate provision for the safety of the vehicle and in particular he/she shall keep the vehicle properly locked and secured and immobilized and the burglar alarm (if any) and gear lock activated when the vehicle is not in use.
- 6.3. The Hirer is responsible for the care of the vehicle while in his/her possession and shall ensure that sufficient engine coolant, oil and fuel are maintained and that the tyre pressures and wheel alignment remain in the same state as in the date of delivery and/or collection of the vehicle to the Hirer. The onus rests on the Hirer to ensure that the correct fuel type for the vehicle is used when refuelling during the hire period.
- 6.4. The Hirer is not permitted to use the vehicle outside of the borders of the Republic of Namibia unless the Company has consented thereto in writing.
- 6.5. In the event that the Hirer has hired the vehicle for an extended rental period, the Hirer shall return the vehicle to the Company at the Company's premises for its mechanical services, at the intervals of 15,000 km (Petrol vehicle) or 7,500 km (Diesel vehicle) or every 6 (six) months, whichever event occurs first.

7. THE DRIVER

- 7.1. The Hirer warrants that he/she is entitled and has the capacity to enter into this Agreement that all particulars given to the Company and/or recorded on the Agreement are true and correct.
- 7.2. The vehicle may not be driven by anyone other than the Hirer himself/herself or any other person indicated as a driver on the rental form.
- 7.3. The Hirer warrants that in any event the vehicle will not be driven by any other person whose blood alcohol concentration exceeds the limit permitted by any applicable law or regulation or whilst under the influencing of intoxicating liquor or of a narcotic drug and that every driver of the vehicle during the rental period will have a valid license to drive the vehicle, will comply with all applicable laws and will comply in all respects with the provisions of this Agreement.
- 7.4. If the vehicle is driven by anyone other than the Hirer, then without derogation from any rights or remedies which the Company may have, the Hirer shall remain liable for all his/her obligations in terms of this Agreement and in particular he/she shall be liable to the Company as if he/she had been the driver and where the vehicle is not driven by a person referred to, the Hirer shall not be entitled to exercise any of the rights to which the driver may otherwise have been entitled to exercise in terms of this Agreement.

8. ACCIDENT, INSURANCE & PERSONAL ACCIDENT BENEFIT

- 8.1. The vehicle shall be at the sole risk of the Hirer throughout the rental period.
- 8.2. The Hirer shall be liable for any loss of, or damage to, the vehicle and any other expenses incurred in recovering the vehicle during the rental period howsoever the loss or damage is caused and whether or not it is attributed to his/her fault or negligence, provided that none of the situations or circumstances set out in clause 8.3 are applicable, the Hirer's liability in respect of each incident giving rise to such loss or damage as the case may be - shall be limited to the excess mentioned in the rental form.
- 8.3. The Hirer's liability shall not be limited if:
 - 8.3.1. the loss or damage of the event giving rise thereto was caused by the fault or negligence of the Hirer or the driver (whether authorized or not) of the vehicle; or
 - 8.3.2. the loss or damage or the event giving rise thereto occurred in a situation where no other vehicle or animal or object was involved, unless the Hirer is able to prove that the loss or damage or the event giving rise thereto was not caused by the fault or negligence of the Hirer or the driver (whether authorized or not) of the vehicle; or
 - 8.3.3. at the time of the occurrence of the loss or damage or the event giving rise thereto the vehicle was being driven on a road which was not tarred or generally whose condition was otherwise not suitable for the vehicle; or the vehicle was being used for a purpose prohibited in terms of clause 6 or was being driven contrary to any other provision of clause 6; or
 - 8.3.5. the vehicle was being driven by a person not authorized to do so in terms of clause 7; or
 - 8.3.6. in the case of theft or loss or damage to the vehicle, the Hirer was in breach of clause 6; or
 - 8.3.7. without derogating from any of the foregoing, the Hirer was in a breach, or was committing a material breach, of this Agreement after the occurrence of the loss or damage for the event giving rise thereto, the Hirer breaches any of the provision of clause 9.
- 8.4. Accordingly, where clause 8 is applicable the Hirer shall pay to the Company the cost of the repairs to the vehicle or any part of it that has been stolen or damaged beyond economic repair at the fair market value thereof before the damage occurred.
- 8.5. Upon acceptance of this Agreement, whether for collision, damage and theft, the Hirer agrees to pay the excess fee applicable in respect of any damage and/or loss suffered from any cause whatsoever.
- 8.6. For the purposes of this Agreement, it is recorded that the Company does not act as an agent in procuring insurance product/s for and on behalf of the Hirer and that neither the driver, nor the additional driver are the clients of the Company in relation to the procuring of any insurance product. The Company gives no advice and makes no recommendations regarding the appropriateness or otherwise of the insurance product to the driver, hirer or the additional driver, and the driver, hirer and additional driver has received his/her own professional advice regarding the insurance product.
- 8.7. If the Hirer elects to purchase the insurance product as indicated on the front page of the Agreement, his/her acceptance shall constitute an acceptance by him/her of the benefit of such insurance product and/or accompanying arrangements, if any, but subject to the terms and conditions of that insurance product.
- 8.8. Furthermore, the Hirer acknowledges that the Company shall not under any circumstances have any liability to him/her under or for any of the benefits under the insurance product.
- 8.9. Clutch and under body damages are not covered by any insurance and will be for the Hirer's account. In the event of clutch damage, the following shall apply:
 - 8.9.1. A deposit fee of N\$15,000.00 shall immediately be deducted from the Credit Card, before any replacement vehicle is sent out, and
 - 8.9.2. The replacement vehicle shall not be handed over to the renter if all the documents are not signed.
- 8.10. The insurance provided by the Company does not cover any damage to or loss on rims and trims, tyres, undercarriage, windscreens, animals, or sandstorm damage, and it is expressly agreed that the Hirer shall be solely responsible for all such damages. Single vehicle accidents are not covered by any insurance and the Hirer shall be liable for the damage, plus all recovery costs.

9. RESPONSIBILITY AFTER LOSS OF AND/OR DAMAGE TO VEHICLE

- 9.1. If during the rental period the vehicle is involved in any accident or collision or is lost or the vehicle or any part of it is stolen, the Hirer shall take every reasonable precaution to safeguard the interest of the Company, including but without being limited to, the following where appropriate, (as failure to adhere hereto shall result in the Hirer being liable for the full and/or total loss):
 - 9.1.1. He/she shall obtain the names and addresses of everyone involved and of possible witnesses;
 - 9.1.2. He/she shall not admit any responsibility or liability nor release any parties from any liability or potential liability nor settle any claim or potential claim against or by any third party;
 - 9.1.3. He/she shall notify the police and the Company as soon as possible and in any event within 24 (twenty-four) hours of the occurrence in question;
 - 9.1.4. Within 48 (forty-eight) hours of any accident or theft or loss of or from the vehicle he/she shall submit a copy of his/her driver's license to the Company.
 - 9.1.5. He/she shall make adequate provision for the safety and security of the vehicle;
 - 9.1.6. He/she shall co-operate with the Company in the investigation, the making and/or defending of any claim and/or action relating to the incident (including, *inter alia*, depositing to an affidavit and/or giving evidence in court, if he/she is requested to do so).
- 9.2. If the Hirer is not the driver, then without in any way derogating from the Hirer's obligations in terms of this clause 9, the Hirer shall procure that the driver complies with the provision of clause 9.1 and the Hirer warrants that the driver will do so.
- 9.3. The Hirer shall furnish to the Company (and if the Hirer is not the driver the Hirer shall procure that the driver furnishes to the Company any notice of any claim, demand, summons or the like which the Hirer or the driver may receive in connection with the vehicle).
- 9.4. The Hirer warrants that the information compiled in the Company's claim form as referred to in clause 9.1 will be complete, true and correct in every respect.
- 9.5. Vehicle keys and locks which are lost and/or damaged shall be reported to the Company as soon as possible. The new key and lock set shall be purchased from the manufacturer (appointed) by the Company and cost of replacement and cost of fitment shall be for the Hirer's account.
- 9.6. Should the vehicle be confiscated by the police or any such authorities due to fault on the part of the Hirer, the Hirer shall be held liable for the full new price of the vehicle as stipulated in the Auto Dealers Guide.
- 9.7. In the event that a vehicle is deemed to be beyond economic repair and is written off as determined by a qualified motor assessor, the vehicle will remain the property of the Company and will be sold as salvage. Any return on the sale of such salvage shall be deducted from the retail value of such vehicle as contained in the Auto Dealers Guide at the time of loss, the balance of which will be deemed payable to the Company by the Hirer within 30 (thirty) days. In the event that salvage remains unsold, the Company will calculate the value of the salvage at the retail value of such vehicle at the time of loss.
- 9.8. In the event of the vehicle being stolen, the replacement value will be the retail value as contained in the Auto Dealers Guide as at the time of such loss. In the event of such vehicle being less than 1 (one) year old, the cost thereof shall be the retail value of a new vehicle. All accessories, spares and tools will be replaced as new.
- 9.9. In the event that a vehicle is stolen and the Hirer's insurer only consider such vehicle stolen after 30 (thirty) days, the Hirer will be liable for all rental charges during this period, irrespective of the initial rental period.

10. RISK AND EXEMPTION

- 10.1. The Hirer indemnifies the Company against any claim by any person/s for any damage of any nature whatsoever arising, as a result of any incident involving the vehicle, whether as a result of the Company's negligence or otherwise.
- 10.2. The Hirer confirms no representation or warranty has been made by the Company with regard to defects in delivery time, condition quality, and state of repair, performance capability, fitness or suitability for any purposes of the vehicle.
- 10.3. The Hirer's sole risk of loss or damage to the vehicle shall remain vested in him/her, until such time as the vehicle and all accessories, equipment, spares and tools of the vehicle are returned to the Company undamaged, in good order and roadworthy condition, fair wear and tear excepted.
- 10.4. Neither the Company nor any of its directors, officers, employees, servants or agents shall be liable for any loss or damage (including, without limitation, any loss or damage to property left or transported in the vehicle, any loss of life or any loss or damage arising from the installation, or condition of a child seat or any other accessory in and/or on the vehicle), whether direct, indirect, consequential or otherwise arising from the rental by the Hirer of the vehicle, including, without limitation, any defect in and/or mechanical failure of the vehicle (howsoever arising and of whatever nature) or the failure of the company to detect defects in or mechanical problems with the vehicle and whether such loss or damage results from breach of contract or delict, including negligence or gross negligence or otherwise which may be suffered by the Hirer and/or any third party and/or passenger. The Company accepts no responsibility and shall not be liable for delays occasioned by a breakdown or any other circumstance.

11. GENERAL

- 11.1. This Agreement shall be governed and interpreted, in all aspects, according to the laws of the Republic of Namibia.
- 11.2. No agreement in variance with the provisions of this Agreement shall be binding unless recorded in writing and signed by or on behalf of the Hirer and by or on behalf of the Company.
- 11.3. Any clause which is declared unenforceable or invalid, for any reason whatsoever, by a competent court, shall be severable from the remaining provisions of the Agreement and shall not affect the validity of the remaining provisions.
- 11.4. The Hirer agrees that the Company is entitled, but not obliged, in its discretion, to institute any action or proceedings for enforcing any of its rights under this Agreement in the Magistrate's Court, notwithstanding the amount in dispute, and the Hirer hereby consents to the jurisdiction of the Magistrate's Court.
- 11.5. Notwithstanding anything to the contrary herein contained, the Hirer shall be liable to pay interest on any outstanding amounts due and payable hereunder at the rate of 20% per annum, calculated from the due date to the date of full payment.
- 11.6. The Hirer shall not be entitled to code any of his/her rights under this Agreement to sublet or part with possession of the vehicle, its tools or equipment or a part of it.
- 11.7. If the Company institutes any legal proceedings against the Hirer to enforce any of its rights under this Agreement, he/she shall be entitled to recover from the Hirer all the legal costs it incurs to its own attorneys in accordance with their than usual charges and assessed as between attorney and own client.
- 11.8. If the Hirer enters into this Agreement on behalf of any principal, including any undisclosed principal, he/she shall be personally liable jointly and severally, *in solidum* for all and any amount owing under or in terms of this Agreement, including but not limited to damages, which can arise from time to time, with his/her principal.
- 11.9. The Hirer chooses the address specified in the rental form as his/her *domicilium citandi et executandi* and any notice posted to him/her there be deemed to be received 3 (three) days after it is posted unless he/she proves the contrary.
- 11.10. The Hirer hereby consents and authorizes the Company or its nominated representative/s to undertake any enquiry the Company deems fit about the Hirer's credit and/or criminal record with any credit bureau, credit agency and/or other third party to confirm details of the Hirer as and when the need arises.
- 11.11. The Hirer acknowledges that certain vehicles may be fitted with a vehicle management system, which is used to, *inter alia*, record speed and other information relating to the vehicle rented. The Company shall be entitled to use such information (including in court proceedings) as it deems fit.
- 11.12. The Company reserves the right to substitute vehicles reserved with a similar vehicle should the vehicles reserved not be available at the time of hire.

NOT REPORTED DAMAGES

- All costs arising plus N\$1,000.00 penalty.
- Although the Hirer has got insurance cover from the Company with a certain amount of excess, as pointed out above in the contract, the Hirer is still liable for full damage to the Company's vehicle if caused by negligence or road conditions not suitable for the vehicle, i.e., driving in riverbeds, in dunes, through water, or driving on any terrain or roads, which have no official registered road numbers, and/or over speeding.

The rental of the Vehicle may be refused when done in the best interest of the Company and/or Hirer. Rates do not include fuel, oil and/or alike. The Company reserves its sole right to collect a deposit covering estimated rental charges. The rental only includes and covers a daily travelling distance of 200km per day (1-7 Day Rentals), whereafter additional kilometres shall be levied to the Hirer's account, depending on the type of vehicle rented. The Vehicle will be inspected upon its return to the Company.

The Hirer and/or additional driver herewith confirm that he/she is cognizant of the fact, that the Vehicle, according to our laws, has only to be insured against liability towards third parties. The deposit amount when renting is 10% of the value of the Vehicle. The third-party liability insurance does not cover any damages sustained by the Hirer and/or any occupants of the Vehicle. The Hirer and/or additional driver shall jointly and severally be fully liable for all and/or any damages of any nature, whatsoever, if this Vehicle is operated in violation of any of the provisions of the Rental Agreement and its terms and conditions. I, the undersigned, (herein described as "the Hirer"), agree to rent from Swakopmund Car Hire "SCH" (herein described "the Company"), the motor vehicle described herein (herein described "the Vehicle") in which expression shall include tyres and all other items with which it is equipped for the period set out herein. I, acknowledge that I am personally, jointly, and severally liable as the Hirer under this agreement. I, have read, fully understood, and accepted the terms and conditions listed on the front and back of the forms of this Agreement, which shall constitute a binding Agreement between myself and the Company. I accept, that the insurance is subject to the stipulated terms, conditions, and particulars, as set out in the insurance policy itself.

- FULL PAYMENT BEFORE VEHICLE LEAVES PREMISE
- GROUP A, A+, B, B+, N+, SHALL NOT DRIVE ON ANY GRAVEL ROADS
- ALL VEHICLES ARE EQUIPPED WITH A SATELLITE TRACKING DEVICE
- STANDARD INSURANCE: BASIC FIRST AMOUNT PAYABLE: 10% OF CLAIM, WITH A MINIMUM AMOUNT N\$5,000.00
- PREMIUM COVER: EXCESS N\$ 2000.00
- ADDITIONAL VOLUNTARY EXCESS: NONE