

STANDARD TERMS AND CONDITIONS OF CONTRACT – Phat Rhino Tours and Transfers

(1) INTERPRETATION

1.1 In this agreement, except in a context indicating some other meaning is intended:

1.1.1.1 The official Rates brochure means: The official brochure or rental rates and other general information issued by Phat Rhino Tours and Transfers PTY Ltd (hereafter Phat Rhino) from time to time and which is current at the commencement of the rental period.

1.1.1.2 Means the period from the time the vehicle is delivered at the renter location until it is returned to Phat Rhino by the renter.

1.1.1.3 The “Renter” means; the person named as the renter in the rental form.

1.1.1.4 The “renting location” means; the location from which the renter rents the vehicle.

1.1.1.5 The “territory” means; Namibia.

1.1.1.6 The “vehicle” means; the vehicle described on the rental form (including all tyres).

1.1.1.7 Tools, equipment, accessories and documents in and on the vehicle at the renting location, and this includes any replacements for the vehicle which has been officially authorized by Phat Rhino.

1.1.1.8 Reference to the rental form shall be the first page of this agreement and shall form part hereof.

1.1.1.9 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.

1.2 The headings appear for reference only and shall not influence the proper interpretation of this agreement.

(2) RENTING

Phat Rhino Tours and Transfers PTY Ltd rents to the renter who hires from Phat Rhino Tours and Transfers PTY Ltd the vehicle on the terms and conditions of this agreement.

(3) TERMINATION

Notwithstanding anything to the contrary elsewhere in this agreement Phat Rhino may terminate the agreement at any time by notice to the renter whereupon the renter shall forthwith return the vehicle to Phat Rhino. The obligations of the renter and the rights of Phat Rhino under this agreement shall continue in effect until the vehicle has been returned to Phat Rhino and the renter has complied with all the obligations.

(4) DELIVERY AND RETURN

4.1 The renter shall take delivery of the vehicle at the renting location. The parties shall inspect the vehicle together and unless the renter 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 damage to the paintwork, upholstery and fittings unless the renter proves otherwise.

4.2 The renter shall at his own cost return the vehicle to Phat Rhino at the agreed return date/time specified on the rental form or if this agreement is terminated at any time (for any reason) before then, then immediately after such termination.

4.3 The vehicle shall be returned to Phat Rhino 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 Phat Rhino location in the same city or town as the renting location.

4.4 Without derogating from any other term contained herein, Phat Rhino shall be entitled at the expiry and /or termination of this agreement, for whatever reason, to retake possession of the vehicle wherever it may be located and from whomever is in possession thereof.

(5) RENTAL CHARGES

5.1 The rental charge payable by the renter for the use of the vehicle shall be calculated for the whole of the rental period at the rates and on the basis specified and agreed with the renter as well as other charges for the services or benefits opted for or utilized by the renter, including but not limited to the charges for one way fee, delivery fee, collection fee, additional medical insurance, EVAC and refuelling where the vehicle is returned with less fuel than when rent, each of which shall be subject to 5.3 and all taxes levies on any amounts payable by the renter.

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 Phat Rhino on any other fair and reasonable basis and the renter shall be obliged to furnish all such information and assistance as Phat Rhino may reasonably require for the purpose.

5.3 If the renter receives any service or benefit contemplated in this agreement but for which no basis for charging is specified, then the renter shall pay a charge determined on the basis (if any) specified in the official rates brochure or if no such basis is specified on Phat Rhino's usual basis then applied to it.

5.4 The renter shall also be liable for all fines, penalties and the like (including all legal costs incurred by Phat Rhino to its attorneys in accordance with their usual charges at the time for parking, traffic and other criminal offences arising out of or concerning the use of the vehicle during the rental period and the renter accordingly indemnifies Phat Rhino against all such liability.

5.5 All charges payable by the renter shall be payable on presentation of an account.

5.6 If Phat Rhino has agreed to accept payment from the renter by credit card the renter's signature of this agreement shall constitute authority for the issuer of the card to debit the renter with the amount due.

5.7 All rates include maintenance and oil, but does not include fuel and tyres.

5.8 If the vehicle is involved in an accident and a replacement vehicle is needed, the renter will have to rehire a different vehicle complete with new set of documents and agreement.

(6) USE OF THE VEHICLE

6.1 The vehicle may not be used for the conveyance whether of passengers or goods for reward to push or tow any other vehicle including any caravan or trailer, to transport goods in violation of the customs laws or in any illegal manner, in any motor sport, to **Sandwich Harbour, along the Kunene River, from Epupa Falls east on 3700 to 3701, Van Zyl's pass, below the high tide watermark at the coast or in any pools or wet/dry salt pans, through rivers (wet or dry) or along river beds (wet or dry), in sandstorms, off-road, beyond the borders of Namibia,** (unless authorized in writing by Phat Rhino) or in any area in 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 twilight, after sunset or sunrise (other than in an urban area), except with the express written consent of Phat Rhino.**

6.2 The renter shall make adequate provision for the safety of the vehicle in particular. The renter shall keep the vehicle properly locked and immobilized (activated/engaged) when the vehicle is not in use. The keys may not be left inside the vehicle.

6.3 The renter must keep tyre pressure according to the vehicle Owner's Manual during rental period. The renter or any other person is not allowed to step on the roof or bonnet, lean against metal parts of the vehicle.

6.4 The 4x4 capabilities of the vehicle must only be engaged if needed. The driver must make sure to disengage when four wheel drive circumstances have passed.

(7) THE DRIVER

7.1 The vehicle may not be driven by anyone other than the renter or any other person not indicated as a driver in the rental form.

7.2 The renter 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 influence of intoxicating liquor or of a narcotic drug and that every driver of the vehicle during the rental period will have a valid licence to drive the vehicle, will comply with all applicable laws and will comply in all respects with the provisions of this agreement.

7.3 If the vehicle is driven by anyone other than the renter, then without derogation from any rights or remedies which Phat Rhino may have, the renter shall remain liable for all the obligations in terms of this agreement and in particular the renter shall be liable to Phat Rhino as if the renter has been the driver and where the vehicle is not driven by a person referred to in 7.1 the renter shall not be entitled to exercise any of the rights to which they may otherwise have been entitled to exercise in the terms of this agreement.

(8) ACCIDENT INSURANCE

8.1 The vehicle shall be at the sole risk of the renter throughout the rental period, the renter shall be bound by these terms and conditions whether he was driving or not.

8.2 The renter 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 the renter's fault or negligence, provided that none of the situations or circumstances set out in 8.3 is applicable, the renter'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 renter's liability shall not be limited if:

8.3.1 The loss or damage or the event giving rise thereto was caused by the fault of negligence of the renter 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/object was involved, unless the renter 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 renter 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

8.3.3.1 The vehicle was being driven on a road which was not tarred or generally which condition was otherwise not suitable for vehicles, or;

8.3.3.2 The vehicle was being used for purpose prohibiting in terms of 6.1 or was being driven contrary to any other provision of 6.1, or;

8.3.3.3 The vehicle was being driven by a person not authorized to do so in terms of 7.1 or 7.2, or;

8.3.3.4 In the case of theft or loss of or from damage to the vehicle, the renter was in breach of 6.2, or;

8.3.3.5 Without derogating from any of the foregoing, the renter was in a material breach, or was committing a material breach, of this agreement, or;

8.3.3.6 After the occurrence of the loss or damage or the event giving rise thereto the renter breaches any of the provisions of 9.

8.4 According where 8.3 is applicable the renter shall pay to Phat Rhino the cost of the repairs to the vehicle of if the vehicle or any part of it has been stolen or damaged beyond economic repair the fair market value thereof before the damage occurred.

(9) RESPONSIBILITY AFTER LOSS OR DAMAGE TO THE 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 renter shall take every reasonable precaution to safeguard the interest of Phat Rhino, including but without being limited to the following, where appropriate:

9.1.1 The renter shall obtain the name and address of everyone involved and of possible witnesses;

9.1.2 The renter shall not admit any responsibility or liability nor release any part from any liability or potential liability nor settle any claim or potential claim against or by any third part;

9.1.3 The renter shall notify the police and Phat Rhino as soon as possible and in any event within twenty four hours of the occurrence in question;

9.1.4 Within forty-eight hours of the occurrence in question the renter shall complete and furnish to Phat Rhino the standard claim form which the renter shall be responsible of obtaining from Phat Rhino;

9.1.5 within forty-eight hours of any accident to nor theft or loss of or from the vehicle the renter shall submit a copy of his/her driver's license to Phat Rhino;

9.1.6 The renter shall make adequate provisions for the safety and security of the vehicle;

9.1.7 The renter shall co-operate with Phat Rhino in this investigation, the making and/or defence of any claim action relating to the incident (including the making of an affidavit if renter is requested to do so).

9.2 If the renter is not the driver then without in any way derogating from the renters obligations in terms of this clause 9, the renter shall procure that the driver complies with the provision 9.1 and the renter warrants that the driver will do so.

9.3 the renter shall furnish to Phat Rhino (and if the renter is not the driver the renter shall procure that the driver furnishes to Phat Rhino) any notice of any claim, demand, summons or the like which the renter or the driver will/may receive in connection with the vehicle.

9.4 The renter warrants that the information compiled in Phat Rhino's claim form as referred to in 9.1.4 will be completed, true and correct in every aspect.

9.5 The renter takes full responsibility for any 2nd or more drivers in terms of this whole contract.

(10) EXEMPTION

Phat Rhino shall not be liable for any damage to, or any damage arising out of any defect in, or mechanical failure of the vehicle, nor for any loss of, or damage to, any property transported or left in the vehicle, nor for any indirect damages, consequential loss of profits or special damages of any kind for any breach of this agreement, or arising out of any cause whatsoever, irrespective whether or not the loss resulted from the negligence of Phat Rhino, it's agents or employees. Phat Rhino 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 in all aspects by the law of Namibia.

11.2 No agreement in variance with the provisions of this agreement shall be binding unless recorded in writing and signed by on behalf of the renter and by or on behalf of Phat Rhino.

11.3 The renter agrees that Phat Rhino is entitled, but not obliged, in its discretion, to institute any action of proceedings for enforcing any of its rights under this agreement in the High Court/Magistrate's court, notwithstanding the amount in dispute, and the renter consents to the Jurisdiction of the High Court/Magistrate's court of Namibia.

11.4 The renter shall not be entitled to cede any of its rights under this agreement to sublet or part with possessions of the vehicle, its tools or equipment of any part of it.

11.5 If Phat Rhino institutes any legal proceedings against the renter to enforce any of its rights under this agreement, Phat Rhino shall be entitled to recover from the renter all the legal costs it incurs to its own attorneys in accordance with their then usual charges and assesses as between attorneys and own client.

11.6 If the renter enters into this agreement on behalf of any principal, including undisclosed principal, the renter shall be personally liable jointly and severally with his principal.

11.7 The renter chooses the address specified in the rental form as his domicile citadel et Executed and any notice posted/emailed/sent to the renter there deemed to be received three days after it is posted/emailed/sent unless the renter proves contrary.

11.8 Phat Rhino reserves the right to substitute vehicles reserved with a similar vehicle should the vehicle reserved not be available at the time of hire. The colour of the actual vehicle may differ from the vehicle as displayed on marketing material.

11.9 Phat Rhino takes no responsibility for any personal injuries and/or death of the driver and/or any passengers/3rd parties/bystanders or any other person, arising during the use of any vehicle of Phat Rhino Tours and Transfers PTY Ltd.

11.10 The vehicle is fitted with a tracking device which will warn the driver when set speed limits are exceeded.

Signature: Renter and/or Driver

By signing this document, I hereby verify that I have read, understand and accept the contents hereof.

