

Rental Agreement Terms and Conditions

This agreement together with the Cover Sheet constitute the agreement between Penske Commercial Leasing Australia Pty Ltd ACN 168 915 964 trading as Penske Truck Rental, registered office 72 Formation Street, Wacol QLD 4076 ("**Penske**") and the party named in Cover Sheet and any party signing this agreement ("**Customer**") (collectively the parties).

"**Cover Sheet**" means the cover sheet attached to this agreement which sets out details of the rental including the identity of the Customer, description of Vehicle and other information.

1. Background

- 1.1 **Vehicle(s).** Subject to the terms of this agreement, Penske rents the trucks or trailers identified in this agreement and all tyres, tools, accessories and equipment attached thereto or contained therein ("**Vehicle(s)**") to Customer.
- 1.2 The obligations of Customer under this agreement also apply to any driver, agent or employee of Customer who operates or rides in any Vehicle or who is otherwise involved in the rental and subject to the exclusive direction and control of Customer. The party signing this agreement remains responsible for all acts and omissions of the parties listed in this clause 1.2.

2. Term

- 2.1 **Term and Rental.** This agreement commences at the pick up time indicated on the Cover Sheet and continues until the Vehicle is returned to Penske's possession or the possession of an authorised agent of Penske. The period beginning when Customer picks up the Vehicle until the Vehicle is returned to Penske's possession or the possession of an authorised agent of Penske is hereinafter referred to as the "**Rental**".

3. Ownership and Intellectual Property

- 3.1 **No Title or Authority.** This agreement is solely for use of the rented Vehicle. Customer has no express, implied or apparent authority to create or assume, in Penske's name or on its behalf, any obligation, or to act or purport to act as Penske's agent. Nothing contained in this agreement will be construed to create a relationship of partnership or joint venture between the parties. Customer acquires no rights under this agreement other than the right to use Vehicle in accordance with this agreement.
- 3.2 **Intellectual Property.** Customer has no claim or right to ownership or use of Penske's Intellectual Property and this agreement does not grant Customer a licence to use Penske's Intellectual Property.

"**Intellectual Property**" means Penske's technology and intellectual property assets, including, any trade secrets, trade marks, trade names, service marks, service names, patents, copyrights, computer programs, hardware and software (including any applications or registrations for intellectual property protection for any of the above), as well as any inventions, designs, configurations, processes, know how, proprietary information and formulae, and any and all components of the above, regardless of form.

4. Rental and other charges

- 4.1 **Rental Charges.** Customer must pay Penske, on demand (even if such demand is made following the period of Rental) and in a manner acceptable to Penske, the sum of:

- (a) all charges specified on the Cover Sheet, which are subject to periodic review by Penske;
- (b) all other sums due under this agreement;
- (c) any amount charged by Penske as reimbursement for Taxes arising in connection with the Customer's use of the Vehicle;

"Tax" means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other government impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges;

- (d) Penske's costs, including reasonable legal fees, incurred in collecting payments due from Customer, dealing with an Event of Default (as defined in clause 9.1 below), cleaning the Vehicle and/or gaining custody of the Vehicle;
- (e) all fines, tolls, penalties, forfeitures, court costs, and other expenses assessed against Penske, arising out of the violation of any Law, rule or regulation with respect to Customer's possession, operation or use of Vehicle;

"Law" means any law (including subordinate or delegated legislation or statutory instruments of any kind) of Australia and also any judgment, order, policy, guideline, official directive or request (even if it does not have the force of law) of any government agency or regulatory body, including a stock exchange within Australia. Customer and any operator of a Vehicle will be jointly and severally liable for any and all charges and obligations in this clause 4.1;

- (f) any administration fee associated with an expense as set out in clause 4.1(e); and
- (g) if Customer fails to pay Penske in accordance with this agreement, Customer agrees to pay Penske interest on the outstanding amounts, until paid in full, in accordance with clause 9.6. The parties agree that the interest charges do not exceed a genuine pre estimate of loss to be suffered by Penske if the charge is not paid and will not be a penalty.

4.2 Minimum Charge and Audit. The minimum charge to rent a Vehicle under this agreement will be the rental rate (as specified on the Cover Sheet) plus distance charges, if applicable (as specified on the Cover Sheet). All charges are subject to Penske's final audit. If, on final audit, an error is found in an earlier calculation, Customer, on notice from Penske, must pay the corrected charges. Customer authorises Penske to correct any credit card vouchers (if applicable) signed by Customer or to debit further amounts against the Customer's credit card to reflect the correct charges.

4.3 Distance Charges. Distance for the Rental is to be determined by reading the Vehicle's factory installed odometer and is to be charged at the kilometre rate (if applicable) or formula identified on the Cover Sheet.

4.4 Mechanical Damage. Customer agrees to pay for any mechanical or other damage to the Vehicle caused by Customer's failure to maintain adequate engine oil level and pressure and adequate fluid levels (including water and antifreeze), misuse, unlawful use or by reason of any other neglect of necessary servicing or maintenance of Vehicle while being rented to Customer or under Customer's care, custody or control. Customer must promptly return the Vehicle to Penske, at the location and time specified by Penske, for any inspection and maintenance that may be required by Penske. Customer also agrees to pay for all towing expenses if the Vehicle becomes stuck (in sand, mud, snow or otherwise) and all expenses incurred to start up the Vehicle if Customer fails to use an engine heating device, if installed. Customer must not make any alterations or modifications to the Vehicle.

- 4.5 **Breakdown.** Customer assumes full responsibility for any additional expenses or losses incurred by reason of a breakdown of Vehicle, whether or not causing a delay en route, including storage, towing and other expenses. Where the Vehicle is replaced for any reason, Penske may, at its option, terminate this agreement and any replacement Vehicle will be rented under the terms of a new Rental Agreement.
- 4.6 **On Board Technology.** The Vehicle may be equipped with certain on board technology such as GPS systems, antennas, transceiver boxes or other related equipment ("**On Board Technology**"). Customer agrees not to tamper with On Board Technology and agrees to be responsible for any and all damage or theft to the On Board Technology which occurs during the Rental, regardless of cause.
- 4.7 **Service and Repairs.** Penske must pre approve in writing any service to, repairs of, or replacement of, the Vehicle or a part or accessory to the Vehicle.
- 4.8 **Fines and Penalties.** Customer agrees to pay fines and penalties incurred in connection with all parking, traffic, operating and moving violations relating to the Vehicle during the Rental.
- 4.9 **Tolls.** Customer will be responsible for the payment of any and all tolls associated with the use and operation of the Vehicle during the Rental, and for the payment of any and all fines, fees, costs or expenses related to toll evasion or any other traffic violations. Where tolls are paid electronically the Vehicle must be fitted with a transponder. Customer may provide a transponder or use a transponder provided by Penske. Where Customer uses a transponder provided by Penske, Customer:
- (a) agrees to reimburse Penske for the amount of any toll charges including the cost of any administration fee;
 - (b) authorises Penske to deduct the amount in clause 4.9(a) from the Customer's credit card; and
 - (c) warrants, where the credit card is not in Customer's name, that Customer is authorised to permit Penske to deduct the amount in clause 4.9(a) for payment.
- 4.10 **Special Fees and Taxes.** Customer agrees to pay for all special fees or taxes required by any Law or regulation, including trip permits or licences.

5. Security

- 5.1 **Security Deposit.** If Customer is required to pay a security deposit as a condition of a Rental ("**Security Deposit**"), Penske will hold the Security Deposit as security for Customer's performance of all of its obligations under this agreement. Customer will not be entitled to any interest on the Security Deposit, and Penske may hold the Security Deposit with its other funds. If Customer defaults in the performance of any of its obligations under this agreement, Penske may (but will not be obliged to) apply all or any portion of the Security Deposit to pay any money owing to Penske or any damages sustained by Penske as a result of or to cure the default. Penske's application of the Security Deposit will not be construed as an agreement to limit the amount of Penske's claim or as a waiver of any damage resulting from Customer's default. If Penske applies any amount of the Security Deposit as a result of a Customer breach, Customer agrees to reimburse Penske the applied amount within ten (10) days after a request by Penske. If Customer fully performs and complies with all of the terms and conditions of this agreement, Penske will then return the remaining Security Deposit within a reasonable period after Customer returns all Vehicles to Penske.

- 5.2 **Failure to supply Security Deposit.** Failure to provide a timely Security Deposit may require Customer to pick up the Vehicle at a different location or result in Penske cancelling the reservation.

6. Cancellation fee

- 6.1 **Cancellation Fee.** If a Customer cancels any Rental less than two days before the intended commencement of the Rental, Customer agrees to pay a \$100.00 cancellation fee on request by Penske. This fee will not be construed as a penalty but as a charge that is designed to offset Penske's expense in securing the Vehicle for rental.

7. Condition and use of Vehicle

- 7.1 **Condition of Vehicle.** Customer acknowledges that Customer has examined the Vehicle and confirms that it is clean and in good condition, except as otherwise noted in this agreement.
- 7.2 **Permitted Use.** Customer must use the Vehicle only for its intended purpose of transporting goods and in compliance with all applicable Laws, rules and regulations. Customer agrees to remain in possession of the Vehicle and not abandon the Vehicle at any time during the Rental.
- 7.3 **Heavy Vehicle National Law.** Customer must ensure the Vehicle is operated in accordance with the Heavy Vehicle National Law including as *operator* as defined in Heavy Vehicle National Law. "**Heavy Vehicle National Law**" means the Heavy Vehicle National Law Act 2012 as enacted by each state and territory under the following legislation Heavy Vehicle National Law Act 2013 (ACT); Heavy Vehicle (Adoption of National Law) Act 2013 (NSW); Heavy Vehicle National Law Act 2012 (Qld); Heavy Vehicle National Law (South Australia) Act 2013 (SA); Heavy Vehicle National Law (Tasmania) Act 2013 (Tas); Heavy Vehicle National Law Application Act 2013 (Vic) and includes Road Traffic Act 1974 (WA); Road Traffic (Vehicle Standards) Rules 2002 (WA) and the Motor Vehicles Act 1949 (NT).
- 7.4 **Authorised Operators.** During the Rental, the Vehicle must only be operated by:
- (a) Customer and its officers or employees; or
 - (b) additional authorised operators as approved by Penske in writing.
- 7.5 **Security Interests.** Customer must not sell, transfer, part with or share possession of or control over the Vehicle or allow to exist or create or attempt to create any Security Interest (as that term is defined in the PPSA) over the Vehicle unless:
- (a) Penske consents in writing after the Customer provides all relevant details of the arrangement and any verification requested by Penske; or
 - (b) the arrangement is otherwise permitted under this agreement.
- 7.6 **Licensing.** All authorised operators of the Vehicle must be properly licensed.
- 7.7 **Exclusive Possession.** During the Rental and unless otherwise determined by Penske in writing, Customer must have exclusive possession, control and use of the Vehicle.
- 7.8 **Limitations on Use.** Customer must not use or permit the Vehicle to be used in any of the following circumstances:
- (a) in violation of this agreement;

- (b) to carry persons other than drivers or helpers employed by Customer (unless authorised by Penske in writing), and with the persons only riding within the cab of the Vehicle;
- (c) in circumstances where there are more passengers than seatbelts within the cab;
- (d) to tow boats, campers, trailers or other similar equipment or to tow any other vehicle unless
 - (i) a coupling device is rented and installed by Penske; and
 - (ii) Penske approves of the tow in writing;
- (e) in a reckless or abusive manner;
- (f) on an underinflated tyre;
- (g) for the carrying or hauling of hazardous, toxic or explosive materials including dangerous goods, petrol or propane;
- (h) for the transportation of any illegal substances;
- (i) while Customer or other authorised operator is under the influence of alcohol, drugs or has a blood alcohol content that exceeds the legal limit in the state or territory in which the Vehicle is driven;
- (j) in any race, test or contest or film;
- (k) in any way defamatory to Penske or in a way that puts Penske in a negative light; or
- (l) in an unlawful manner;
- (m) where the Vehicle is damaged or unsafe; or
- (n) to transport goods except in compliance with all necessary approvals, licences and legal requirements, which are to be obtained at Customer's cost.

7.9 **Storage.** While not in use, Customer agrees to store the Vehicle in a safe location and undertake reasonable precautions to guard against any theft of, or vandalism or damage to, the Vehicle during the Rental.

7.10 **Fuel/DEF.** Customer must only fill the Vehicle with the fuel type specified in the manufacturer's specifications. Notwithstanding the purchase of any insurance or limited damage waiver, if Customer puts the wrong type of fuel into the Vehicle, Customer will be liable to Penske for the costs of any damage and repair. To the extent any Vehicle requires Diesel Exhaust Fluid ("**DEF**") during the Rental, Customer agrees to pay for DEF, as needed, at Penske's rates then in effect, including any applicable taxes and fees. Charges for DEF will appear on the Cover Sheet.

8. Return of Vehicle at end of Rental

8.1 **Obligations of Return.** Customer must return the Vehicle to Penske in the same condition as received, except for ordinary wear, to the location where rented or to Penske's location listed on the Cover Sheet before or on the due date specified, unless the term of the Rental is extended by Penske and, then, no later than the extended due date. Customer will be responsible for all physical

damage to the Vehicle during the Rental, regardless of cause and also for any downtime or loss of use in connection with any repairs.

- 8.2 **Required Fuel upon Return.** Customer must return the Vehicle with no less than the amount of fuel as when rented ("**Threshold Amount**"). Customer will bear the sole risk of loss and expense for overfilling the Vehicle with more fuel than the Threshold Amount. If Customer does not return the Vehicle with at least the Threshold Amount of fuel, Penske will charge Customer (in its sole discretion): (a) an amount equal to the number of litres necessary to fill the Vehicle to the Threshold Amount, multiplied by the price per litre noted on the Cover Sheet; or (b) if the Penske location is not equipped to fuel the Vehicle, then the price per litre Penske paid to refuel the Vehicle to the Threshold Amount; or (c) another amount as set out on the Cover Sheet.

9. Default and termination

- 9.1 **Event of Default.** An "**Event of Default**" will occur if Customer:

- (a) fails to pay any Rental Charges or fails to pay or discharge the whole or any part of any money payable under this agreement when due;
- (b) fails to maintain any insurance coverage as required under this agreement or is informed by its insurer that the insurer will not accept liability under the insurance policy (whether due to an error, omission, non disclosure, misstatement in any insurance document, or for any other reason);
- (c) fails to perform or observe an obligation on its part contained in or implied by any other term of this agreement;
- (d) fails to return the Vehicle when due;
- (e) abandons or purports to abandon a Vehicle;
- (f) fails to comply with all applicable laws, rules and regulations;
- (g) fails to provide a Security Deposit;
- (h) suffers an Insolvency Event;
- (i) makes any false representation or statement either in this agreement or in connection with renting a Vehicle;
- (j) any part of the Vehicle that Penske reasonably considers to be a substantial part of the Vehicle is destroyed or substantially damaged;
- (k) the Vehicle has been stolen or lost (and not recovered within 14 days); or
- (l) otherwise breaches this agreement and, if the breach is capable of remedy, has not remedied the breach within 5 days of receiving a notice of the breach from Penske.

"Insolvency Event" means: (i) the appointment of a receiver, manager, administrator, liquidator trustee, or similar appointment (collectively "**Receiver**") to manage or wind up the affairs of, or liquidate, Customer; (ii) an application for the appointment of a Receiver is made to the Court without it being dismissed within 21 days of its filing; (iii) an event or conduct that would enable a court to grant a petition for the winding up of Customer, or an order is made for the winding up of the

Customer; (v) Customer becomes bankrupt; or (vi) Customer becomes, or admits in writing that it is, declared to be, or is deemed under any applicable Law to be insolvent or unable to pay its debts;

- 9.2 **No Remedy for Payment Default.** Despite clause 9.1(l), there shall be no remedy for Customer's failure to pay Rental Charges.
- 9.3 **Remedies for Default.** On the occurrence of an Event of Default, Penske will not be required to perform its obligations under this agreement and may immediately terminate this agreement and (in its sole discretion) exercise one or more of the following remedies:
- (a) cancel a reservation;
 - (b) enforce the terms of this agreement and recover any direct, incidental, consequential, punitive, statutory or other damages from Customer including, but not limited to, downtime and loss of use;
 - (c) immediately take possession of and repossess the Vehicle in accordance with clause 10.1 below;
 - (d) report the Vehicle stolen to law enforcement authorities if the Vehicle is not returned to Penske within seven days. Penske may take any steps which it considers reasonable to recover the Vehicle; and
 - (e) charge Customer's credit card for any amounts Penske reasonably determines are owed under this agreement (including any unpaid rental charges or any other money payable under this agreement and all costs to: (i) remove any signage and livery on the Vehicle; (ii) remove any Security Interest affecting the Vehicle; and (iii) restore the Vehicle to the same condition and appearance as when received, ordinary wear and tear excepted ("**Good Condition**"). Customer's renting of the Vehicle will be sufficient consent for this charge. Customer further consents to Penske charging any of Customer's credit cards that it has on file in connection with securing payment under this agreement.
- 9.4 **No Liability for Contents.** To the extent permitted by Law, Penske will not be liable for loss of or damage to any property or cargo left, stored, loaded or transported by Customer or any other person in relation to the Rental, regardless of cause. Customer assumes all risk of that loss or damage and waives all claims against Penske.
- 9.5 **Disposal of Property.** If the Vehicle contains any property ("**Customer Property**") at the time the Vehicle is back in Penske's possession (either by virtue of Customer returning the Vehicle or because the Vehicle was recovered by law enforcement or through Penske repossession) Penske is authorised to hold Customer Property for Customer or place it in storage for Customer, at Customer's sole cost and risk of loss or damage. Customer's failure to retrieve Customer Property within thirty (30) days of being notified by Penske, will constitute Customer's abandonment of Customer Property, and Customer waives any and all right or claim or ownership to the Customer Property. Customer acknowledges that Penske may sell or otherwise dispose of any Customer Property deemed abandoned and accepts this advance disclosure as adequate notice under any applicable Law.
- 9.6 **Interest.** Should Customer fail to pay any rental charges or other money due under this agreement when due, Customer will be liable for interest on the outstanding amounts at the interest rate which is the greater of:
- (a) one and one half percent (1.5%) per month; or

- (b) the rate set as the rate which accrues on all outstanding civil judgments of the Supreme Court (or its equivalent) in the jurisdiction in which the Vehicle was rented, calculated from the date on which payment was due until paid.

9.7 **Lawyers' Fees and Costs.** If Penske initiates legal action or engages legal advisers in relation to any actual, threatened or potential Event of Default, Penske will be entitled to reimbursement from Customer of all associated expenses, including reimbursement of reasonable legal fees (on an indemnity basis as set out in any retainer), costs, charges or expenses occurred (including in relation to any actual, threatened or potential relief against forfeiture claim brought by the Customer).

10. Return of Vehicle following termination

10.1 **Return of Vehicle.** If Penske terminates this agreement under clause 9 following an Event of Default by the Customer, the Customer must, on demand by Penske, immediately on the date of termination:

- (a) deliver the Vehicle to Penske (or to a person nominated by Penske);
- (b) inform Penske of the location of the Vehicle; and
- (c) allow Penske to take possession of the Vehicle for this purpose, Penske and Penske's agents may (but only if the Law allows it) enter on any land or premises where the Vehicle is or where either Penske or its agents reasonably suspect that it is. The Customer consents to Penske entering on its land or premises for this purpose, without being liable for trespass.

10.2 **Customer Liability.** The Customer is liable for any reasonable expenses incurred by Penske in obtaining possession of any Vehicle under this clause.

10.3 **Return Conditions.** All Vehicles returned to Penske (whether due to an Event of Default or otherwise) must be:

- (a) in Good Condition, except for fair wear and tear;
- (b) accompanied by all manuals, log books, maintenance records, vehicle inspection records, registration certificates including any duly executed registration transfer certificates, and duly executed transfer documentation;
- (c) accompanied by all keys, tools, jacks and equipment supplied by Penske to the Customer;
- (d) free from Security Interests;
- (e) accompanied with all equipment, accessories, replacements, instruments and other goods supplied with the Vehicle or attached to a Vehicle by Penske (these items must be in tact in its entirety and not exhibit defects); and
- (f) returned during business hours to the location set out on the Cover Sheet or to where Penske otherwise reasonably directs.

11. Confidentiality

11.1 **Disclosure of Personal Information.** Penske may disclose personal information about, or collected from, or otherwise referring to Customer:

- (a) to any related entity of Penske, including, but not limited to, for purposes of collection or judgment execution; and
 - (b) to any government body or law enforcement authority, whether confidential or otherwise, in its possession, if reasonably requested by a government body or
 - (c) in order to exercise any remedy for Event of Default,
- including in circumstances where the recipient is located outside of Australia.

11.2 **Customer Consent.** By signing this agreement the Customer consents to the disclosures referred to in clause 11.1, understanding that:

- (a) Penske will not be required to take reasonable steps to ensure that the recipients comply with the Schedule 1 of the Privacy Act 1988 (Cth) ("**Australian Privacy Principles**");
- (b) Penske will not be liable for breaches of the Australian Privacy Principles by the recipients; and
- (c) Penske does not represent or warrant the accuracy or completeness of the information disclosed.

12. Liability protection and insurance

- 12.1 **Risk of Loss.** Customer assumes the risk of loss of, or damage to, all Vehicles from any and every cause whatsoever, including casualty, collision, upset, fire, flood, theft, malicious mischief, vandalism, graffiti and glass breakage.
- 12.2 **Liability Insurance for Third Party Property Damage.** Customer at its sole cost, will provide liability insurance for Customer and Penske, their respective agents, servants, contractors, and employees, in accordance with the standard provisions of a comprehensive motor vehicle with limits of at least \$30,000,000 per occurrence for third party property damage. Such coverage shall be endorsed to include Penske as a named insured and be in a form acceptable to Penske.
- 12.3 **Liability Insurance for Own Damage to Vehicle.** Customer at its sole cost, will provide coverage for own damage protecting Penske, their respective agents, servants, contractors, and employees, in accordance with the standard provisions of a comprehensive motor vehicle policy up to the fair market value of the Vehicle or, if the Vehicle is less than two years old, for the full replacement value. Such insurance shall cover all risk of, or damage to vehicle including, but not limited to casualty, collision, upset, fire, theft, malicious mischief, vandalism, graffiti and glass breakage. Such insurance shall be in a form acceptable to Penske and shall be endorsed to include Penske as a named insured and a loss payee.
- 12.4 **Damage Waiver Option.** Penske makes available to Customer an option by which the Customer can reduce its potential liability to Penske in the event of loss or damage of the Vehicle ("**Damage Waiver**"). Acceptance of the Damage Waiver must be noted on the Cover Sheet for the Damage Waiver to apply. By accepting the Damage Waiver and making payment for such fee, and subject always to the exclusions in clause 12.5, the Customer shall be exempted from the insurance requirements in clause 12.3 and the Customer's maximum liability to Penske for loss or damage of the Vehicle shall be \$5,000 per occurrence of loss or damage.

- 12.5 **Limitations to Damage Waiver.** Even where fees for Damage Waiver have been paid or where another part of this agreement says otherwise, the Customer will always be liable for the loss or damage of the Vehicle accessories, and loss or damage of the Vehicle resulting from:
- (a) the Customer's breach of this agreement;
 - (b) use of the Vehicle off a paved road;
 - (c) failure of the Customer or operator to remove Vehicle keys from the ignition while the Vehicle is unattended;
 - (d) a failure by the Customer to take all reasonable precautions against such loss or damage of the Vehicle;
 - (e) abandonment of the Vehicle;
 - (f) improper use of the Vehicle, including but not limited to:
 - (i) driving the Vehicle while the Vehicle exceeds the applicable limits of design, weight or dimension, including excess height;
 - (ii) racing, pacemaking, reliability trial, speed attempt, hill climbing and the like;
 - (g) unauthorised repairs or alteration to the Vehicle;
 - (h) the Vehicle becoming unsafe or roadworthy while under the control of the Customer, where the Customer should reasonably have been aware of that fact;
 - (i) where a driver or operator of the Vehicle does not hold the applicable licence for the operation of the Vehicle or any licence at all, is not otherwise authorised to operate the Vehicle or is not experienced in the use of the Vehicle;
 - (j) fraud;
 - (k) fines and penalties issued in respect of the Vehicle or the Customer's use of the Vehicle during the Term;
 - (l) radioactive, chemical or biological contamination; or
 - (m) underground, aviation, airport or airside activities.
- 12.6 **No Coverage for Equipment Furnished by Customer.** Despite any provisions prohibiting non Penske trailers, if a trailer, cargo handling equipment or any other equipment is furnished by Customer, Penske will not provide any protection or coverage to the Customer for liability resulting from the Customer furnished equipment.
- 12.7 **No Coverage for Cargo or Property in Vehicle.** Penske will not provide any coverage to the Customer for any cargo or other contents in the Vehicle nor is Penske responsible for any cargo or other contents in the Vehicle.
- 12.8 **Certificates of Currency.** Prior to the rental, Customer shall delivery to Penske a Certificate of Currency showing the coverages required pursuant this clause 12. Each insurer shall agree, by endorsement upon the policy issued or by an independent document provided to Penske, that it shall

give Penske thirty (30) days prior written notice of the effective date of any cancelation or material alteration of such policy and that notice shall be sent to Penske at the address noted on the Cover Sheet.

- 12.9 **Notification of Accidents.** Customer shall notify Penske as well as Customer's insurance carrier of any loss of, damage to, or accident/ incident involving any vehicle. This notice shall be effected immediately by telephone, and in writing as soon as practicable thereafter. Customer shall cooperate fully in the investigation, prosecution, and/ or defence of any incident, claim, or suit arising out of any such occurrence as shall do nothing to impair or invalidate any coverages herein. Customer shall also report any incidents or accidents to the local police as required by law.
- 12.10 **Primary Coverage.** Customer's insurance obligations shall be primary with respect to any covered claim or occurrence.

13. Indemnity and limitation of liability

- 13.1 **Indemnity.** To the extent permitted by Law, Customer must protect, defend, indemnify and hold harmless Penske and its partners and their respective officers, directors, shareholders, agents, representatives and employees from any and all Liabilities (even if Penske is claimed to have been or is proven to be negligent) to the extent that the Liability arises from:
- (a) Customer's failure to comply with its obligations to the Law and government bodies having jurisdiction over Customer and the Vehicle;
 - (b) Customer's failure to comply with the terms of this agreement;
 - (c) any liability or dispute arising from property left in a Vehicle or abandoned by Customer;
 - (d) any liability imposed on or assumed by Customer under any worker's compensation act, plan or contract and any and all injuries (including death) or property damage sustained by Customer or any agent, officer, employee or contractor of Customer;
 - (e) loss or damage incurred by Penske from Customer's use of a Vehicle, trailer or attachment not owned or insured by Penske;
 - (f) claims arising out of Customer's negligence or breach of this agreement; or
 - (g) claims which arise out of Customer's maintenance, use or operation of the Vehicle.

"Liability" means any claim, proceeding, cost, loss, damage, expense (including reasonable legal expenses) whether of a direct, consequential, punitive nature or exemplary nature.

- 13.2 **Survival.** Customer's obligations under the indemnity in this clause 13 will survive the termination or expiration of this agreement.
- 13.3 **No Limitation.** The parties agree that the indemnity provisions must not be modified, abridged or otherwise reduced by any Law (including any provisions related to immunity) and will be fully enforced without regard to any liability limits, if applicable. To the extent there is any Law that would provide immunity to Customer for any damages arising from its use of the Vehicle, those protections are waived and Customer represents that it has the full authority to indemnify Penske. Customer and its carrier specifically waive any right, claim or issue challenging the enforcement. This indemnity will be interpreted and enforced under general principles of contract law.

- 13.4 **Non excludable Obligations.** Despite any other clause in this agreement, Penske does not limit, restrict, modify or exclude the application of any provision, condition or warranty, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ("**Australian Consumer Law**") or any other statute where to do so would contravene that statute or cause any part of this clause to be void ("**Non excludable Obligation**"). In relation to Non excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which Penske's liability is not so limited under this agreement), Penske's liability to Customer for a failure to comply with any Non excludable Obligation is limited to:
- (a) in the case of services, supplying the services again or payment of the cost of having the services supplied again; and
 - (b) in the case of goods, replacing the goods, supplying equivalent goods or repairing the goods, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.
- 13.5 **No Warranties.** Except in relation to Non excludable Obligations and to the extent permitted by Law, Penske expressly excludes all conditions, warranties, guarantees, rights remedies, liabilities or other terms implied or conferred by statute, custom, or the general law that impose any liability or obligation on Penske.
- 13.6 **Disclaimer and Release.** Except in relation to Non excludable Obligations and to the extent permitted by Law, Penske makes no warranty of any kind, express or implied, as to the acceptability, fitness for any particular purpose or absence of any manufacturing defects of any Vehicle, regardless of the cause (including any negligence by Penske). Penske, its officers, directors, shareholders, agents, representatives and employees will not be liable for, and Customer releases Penske and its officers, directors, shareholders, agents, representatives and employees from, all consequential, incidental, special, punitive or statutory damages, including, but not limited to:
- (a) Customer's profits or business;
 - (b) loss or damage to cargo, driver's time, costs related to any breakdown, or failed reservation; and
 - (c) for any property left, stored, loaded or transported on the Vehicle.

14. PPSA

- 14.1 **Acknowledgement.** You acknowledge and agree that:
- (a) by entering into this agreement you may be granting security interests to Penske and this agreement may constitute a security agreement;
 - (b) Penske may perfect any security interest by registering one or more financing statements on the PPSA register; and
 - (c) Penske may protect its interest (including any security interest that may accrue) in the Vehicle by registering a financing statement on the PPSA register and you will not request Penske to discharge or amend any financing statement on the PPSA register.

- 14.2 **Notice.** Penske does not need to give you any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- 14.3 **Registration assurance.** You must do anything reasonably required by Penske to enable Penske to register any security interest, with the priority it requires, and to maintain the registration.

15. General provisions

- 15.1 **Assignment.** Customer is not permitted to assign, transfer, convey or sublet any rights, duties and/or obligations set out in this agreement.
- 15.2 **No Disparagement.** Customer agrees not to, directly or indirectly, participate in, establish, or create individually or in concert with others, any communication which makes, represents, or advertises, by way of fact or opinion, any slanderous, libelous, injurious, disparaging or adverse statements about Penske, its officers, directors, shareholders, agents, representatives and employees. Customer recognises that engaging in that conduct is harmful to Penske's business to such an extent that monetary damages may not be an adequate remedy and, as a result, Customer agrees to Penske seeking an injunction against Customer to prevent the dissemination or communication of any defamatory or injurious material or statements.
- 15.3 **Authority.** Customer acknowledges and agrees that this agreement is binding, and the signatory on behalf of Customer is authorised to contract in Customer's name, incur obligations on its behalf and bind Customer to the terms of this agreement and any subsequent modifications to it.
- 15.4 **Substitute Vehicle.** If a Vehicle is provided to Customer as an additional vehicle under a Master Operating Lease Agreement or other Penske agreement with Customer ("**Underlying Agreement**"), the terms of that Underlying Agreement will control the extra Vehicle, unless otherwise noted in the Underlying Agreement.
- 15.5 **No Representations.** The parties represent and warrant that there have been no representations or promises made by the other or their representatives on which they relied in connection with this agreement other than what is set out in this agreement.
- 15.6 **Governing law.** This agreement will be governed by the laws of the state of Queensland and the parties submit to the non exclusive jurisdiction of the courts of that state.
- 15.7 **Entire Agreement.** This agreement constitutes the entire agreement and understanding between the parties relating to the rental of a Vehicle and must not be modified or altered except by written instrument duly executed by the parties. This agreement supersedes any prior agreement between the parties concerning the Vehicles.
- 15.8 **Severability.** Should any clause, sentence, paragraph or other part of this agreement be found by any court of competent jurisdiction to be invalid or in any way unenforceable, the finding will not affect, impair, invalidate or nullify this agreement in its entirety, but will affect only the clause, sentence, paragraph or other parts found to be invalid or unenforceable.

- 15.9 **Cooperation.** Customer agrees to cooperate with Penske in connection with the defence or prosecution of any legal proceedings or in dealing with any government authority. Penske cooperates with all Federal, State, and local law enforcement officials to provide the identity of Customers who operate rental Vehicles.
- 15.10 **GST.** Any consideration payable or to be provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as GST inclusive, does not include any amount on account of GST. If GST is payable on any supply made under or in connection with this agreement (not being a supply the consideration for which is specifically described in this agreement as GST inclusive), Customer must pay to Penske, an additional amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided.

16. Interpretation

16.1 Inclusive expressions

Except as otherwise stated in this agreement, *including, includes or for example* or similar expressions do not limit what else is included.

16.2 Agreement components

A reference to this agreement includes the Cover Sheet and any schedule or attachment.

17. PPSA Terms Incorporated

17.1 In this agreement, unless the context requires otherwise, the following words and expressions have the same meanings given to them in the PPSA: **Financing Statement, Register, Registration, Security Agreement, Security Interest** and **Verification Statement**.

Signing Page

Executed as an agreement

Signed for **Penske**, by an authorised representative in the presence of:

<hr/>	<hr/>
Signature of witness	Signature of representative

<hr/>	<hr/>
Name of witness	Name of representative

<hr/>
Position held

Signed for the **Customer**, by an authorised representative in the presence of:

<hr/>	<hr/>
Signature of witness	Signature of representative

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Name of witness	Name of representative

<hr/>
Position held