

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement unless the context indicates otherwise:
- 1.1.1 **“Additional Driver”** means the person who, in addition to the Driver, is reflected on the Rental Agreement as being permitted by Tempest to drive the Vehicle;
- 1.1.2 **“Additional Equipment”** means equipment that is not factory fitted in the Vehicle, including but not limited to navigation equipment (GPS), baby seat, bicycle rack etcetera;
- 1.1.3 **“AFC Schedule”** means the comprehensive schedule of Tempest’s additional fees and charges. The AFC Schedule is available on the Website and at all Tempest branches, upon request.
- 1.1.4 **“Auto Dealers Guide”** means the prevailing Auto Dealers Guide publication containing, amongst other information, the recommended selling prices of motor vehicles;
- 1.1.5 **“Claims Administration Fee”** means an administration fee charged by Tempest in all instances where a claim needs to be processed in respect of any damages whatsoever, loss of or theft of the Vehicle;
- 1.1.6 **“Client”** means all of the persons whose names appear on the Rental Agreement as Client (including a corporate Client when applicable), Driver or Additional Driver;
- 1.1.7 **“Damage(s)”** (in relation to the Vehicle and/or Third-Party Damage) means the actual costs, including but not limited to towing, transporting and storing the Vehicle, repairing any damage, replacing parts or accessories (without allowing for depreciation), paying an expert to inspect collision damage and report thereon (assessor’s costs), or any other charges incurred related to an incident of whatsoever nature, and includes a Total Loss when applicable;
- 1.1.8 **“Day”** means a period of 24 hours (or any part thereof), calculated from the time out as reflected on the Rental Agreement;
- 1.1.9 **“Delivery”** means the instance when the Client or his representative takes possession of the keys and/or Vehicle (including Additional Equipment if applicable) at the Renting Location, alternatively any other place stipulated in the Rental Agreement or the terms and conditions;
- 1.1.10 **“Document Administration Fee”** means a charge which is used to cover various expenses (including but not limited to issuing and storage fees of Rental Agreements, invoices, and other original documents reflected in the Rental Agreement);
- 1.1.11 **“Driver”** means such person who is reflected on the Rental Agreement as being permitted by Tempest to drive the Vehicle;
- 1.1.12 **“Extended Period”** means any extension of the Rental Period beyond the agreed return date or time reflected on the Rental Agreement and authorised by Tempest;
- 1.1.13 **“Excess Distance Charge”** means the charge levied against a Client’s account in the event that the Client exceeds the limited daily allowed travel distance, as specified in the Rental Agreement.
- 1.1.14 **“Fuel Costs”** means the costs incurred to refuel the Vehicle to a full tank when the Vehicle is returned by the Client (Tempest depot to depot);
- 1.1.15 **“Liability”** means and includes the amount(s) reflected in the Rental Agreement which is due and payable in respect of the renting of the Vehicle, as well as all amounts in respect of Damage, loss and/or theft (not covered by Waivers) of the Vehicle and any third-party loss or damage (not covered by Waivers);
- 1.1.16 **“Limited Liability Amount”** means the reduced amount payable by the Client in the event of loss or damage to a Vehicle to which a Waiver(s) apply, which reduced amount excludes towing charges, storage costs, assessor’s costs and claim administration fees (if applicable) for which the Client will remain liable;
- 1.1.17 **“Rental Agreement”** means the entire Rental Agreement issued by Tempest to the Client, including these standard terms and conditions and all other annexures that may be attached thereto (if applicable). Once the Client has signed the Rental Agreement (physically or electronically, whichever may be applicable) it will have the effect of a legal binding agreement between the parties;
- 1.1.18 **“Rental Overdue Administration Fee”** means the applicable amount charged to the Client in the event that the Vehicle is not returned by the Client to Tempest at the agreed date and time at the expiry of the Rental Period;
- 1.1.19 The **“Rental Period”** means the period between the date when the Vehicle is delivered to the Client and the Termination date and time as specified on the Rental Agreement or if such period is extended, the time and date entered on Tempest’s records;
- 1.1.20 The **“Renting Location”** means Tempest’s premises from which the Vehicle is rented by the Client;
- 1.1.21 **“Tempest”** means Tempest Car Hire, a division of Motus Group Limited (Registration Number: 1983/009088/06);
- 1.1.22 **“Termination date”** means the date reflected in the Rental Agreement upon which the Vehicle must be returned to Tempest, alternatively any extended date when the Vehicle needs to be returned to Tempest as subsequently agreed upon by and between the parties and so reflected on Tempest’s records;
- 1.1.23 **“Third Party Damage”** means any claims made by a third party in respect of Damages or loss that the Client has actually or is alleged to have caused to the property and / or vehicle of a third party;
- 1.1.24 **“Total loss”** (in relation to a Vehicle) means:
- 1.1.24.1 Damages (see Clause 1.1.7) where the estimated costs of repairs less any salvage (if applicable) are such that the Vehicle is, in the sole and absolute discretion of Tempest, uneconomical to repair; or
- 1.1.24.2 in the case of a stolen and/or lost Vehicle, the retail value as reflected in the Auto Dealers Guide (Clause 1.1.4) or if not reflected therein, the price of a new vehicle, as supplied by the manufacturer as at the date of loss, less any salvage (if applicable);
- 1.1.25 **“Traffic Fine Administration Fee”** means an amount levied by Tempest as determined by it to administer any traffic fine(s) incurred by the Client whilst Renting the Vehicle as set out in the AFC Schedule;
- 1.1.26 The **“Vehicle”** means the motor vehicle, truck, van, trailer or caravan (whichever is applicable) described in the Rental Agreement including all keys, tyres, tools, equipment, accessories (including e-tag if applicable), Additional Equipment and documents in and on the Vehicle when the Client takes delivery of the Vehicle at the Renting Location, alternatively any other place stipulated in the Rental Agreement, and includes any replacement for the Vehicle which has been officially authorised by Tempest, whether or not such replacement was authorised or approved by the Client;
- 1.1.27 **“Waiver”** is an agreement between Tempest and the Client in terms of which Tempest agrees to abandon its right to claim the total amount of Damages from the Client in exchange for an upfront fee. In the event of an accident/theft and/or loss of a Vehicle to which a Waiver applies, the Client’s liability is reduced to the Limited Liability Amount (or to the total amount of Damages if that is less than the Limited Liability Amount);

- 1.1.28 **“Website”** means Tempest’s official website which can be accessed at [www.tempest.co.za](http://www.tempest.co.za);
- 1.2 The singular shall include the plural and vice versa, pronouns of any gender shall include those of the other gender and natural persons shall include legal and juristic persons and vice versa.
- 1.3 If a provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that that it is only stated in the definition clause, effect shall be given to it as if it was a substantive provision in the body of the terms and conditions.

## 2. RENTAL OF THE VEHICLE

- 2.1 The parties agree that Tempest rents the Vehicle to the Client, who hires the Vehicle subject to the terms and conditions as set out herein. The Client will be bound by these terms and conditions, whether he was driving the Vehicle or not.

## 3. DELIVERY OF THE VEHICLE / ADDITIONAL EQUIPMENT

- 3.1 Delivery of the Vehicle takes place at the time the Client or his representative takes possession of the keys and/or Vehicle (including Additional Equipment if applicable) at the Renting Location, alternatively any other place stipulated in the Rental Agreement. In the event the Client pays for the Vehicle by debit card, delivery of the Vehicle can only take place at the Renting Location.
- 3.2 **The Vehicle shall be deemed to have been delivered in good order and repair (fair wear and tear excluded) and without any damage (including but not limited to the paintwork, upholstery, tyres, windshield, side glass, lights and accessories) unless any damage to the Vehicle / Additional Equipment is recorded in writing and signed by both parties. In the event that no damage is recorded in writing at the time of delivery of the Vehicle (fair wear and tear excluded), it will be accepted that the Vehicle was delivered to the Client without any damages and any damage recorded at the time of the return of the Vehicle (fair wear and tear excluded) will be for the account of the Client.**
- 3.3 The Client will have no claim against Tempest in the event that the Vehicle or Additional Equipment (if applicable) are not available for delivery other than compensation provided in terms of consumer protection legislation.

## 4. USE OF VEHICLE

- 4.1 The Vehicle may only be utilised for the Rental Period, as stated in the Rental Agreement, or any Extended Period agreed upon between the parties.
- 4.2 The Client agrees that any Extended Period noted on Tempest’s records would correctly reflect such Extended Period.
- 4.3 The Vehicle may only be driven by the Client, Driver or Additional Driver. The Driver or Additional Driver must have his valid unendorsed Driver’s license with him at all time when driving the Vehicle.
- 4.4 During the Rental Period or any Extended Period thereof, the Vehicle may not be used:
- 4.4.1 to propel or tow any other vehicle (including any caravan or trailer unless prior written authorisation is provided by Tempest); and / or
- 4.4.2 for the conveyance of passengers and/or goods for payment in violation of any laws or in any other illegal manner; and / or
- 4.4.3 in any motor sport or similar high-risk activity; and / or
- 4.4.4 beyond the borders of the country in which the Vehicle is rented (unless prior written authorisation is provided by Tempest); and / or
- 4.4.5 in any area where the Client should reasonably be aware that there is or may be a risk or incidents of civil unrest, political disturbance or riot or any activity associated with any of the mentioned.
- 4.5 The Client shall make adequate provision for the safety and security of the Vehicle when the Vehicle is not in use, in that the Vehicle shall (including but not limited to the following) be kept properly locked, secured and immobilized and have the alarm (if any) activated.
- 4.6 The Client will make sure that the keys of the Vehicle are under his control at all times.
- 4.7 Tempest will at all times remain the owner of the Vehicle.
- 4.8 **The Client may not use the Vehicle in contravention of any applicable laws, ordinances, traffic rules and regulations at any time during the Rental Period. In the event the Client uses the Vehicle in contravention of any applicable laws, ordinances, traffic rules and regulations at any time during the Rental Period, any Waiver option the Client may have taken out shall become null and void.**
- 4.9 The Client shall take all reasonable steps to ensure that the Vehicle remains in good and safe working order, including regularly checking the oil, water and tyre pressure, immediately ceasing use of the Vehicle in the event the Vehicle is damaged or the electronic diagnostics of the vehicle indicate the presence of a fault or problem or service needed in relation to the Vehicle.
- 4.10 The Client acknowledges that the failure to service the Vehicle at the required service intervals (if applicable) may result in the cancellation of the Vehicle’s warranty and / or premature mechanical failure on the Vehicle. In instances where a Vehicle has skipped a service and it can be reasonably established that the skipped service was due to the Client’s negligence to have the Vehicle serviced within the specified service intervals, the Client shall be liable for a late service fee as specified in the AFC Schedule. The Client will also be liable for any costs required to re-instate the warranty and for any subsequent mechanical damage not covered under warranty.

## 5. RETURN OF THE VEHICLE / ADDITIONAL EQUIPMENT

- 5.1 The Client shall return the Vehicle and Additional Equipment (if applicable) at the Client’s expense to an authorised representative of Tempest on the agreed return date, time and at the agreed Renting Location reflected on the Rental Agreement. In the event that the Vehicle is not returned as set out in this paragraph, **any Waiver option the Client may have taken out shall become null and void** in respect of the entire Rental Period.
- 5.2 The Client acknowledges that failure to return the Vehicle in terms of the agreement shall constitute unlawful possession by him, and Tempest may repossess the Vehicle wherever it may be found and from whomsoever is in possession thereof. Any costs incurred in recovering the Vehicle (including legal costs on the scale of attorney and client), as well as the cost of any additional rental days, will be for the account of the Client.
- 5.3 Should the Vehicle not be returned as indicated in 5.1 above, the Vehicle may be reported as stolen with the relevant authorities without any notice.
- 5.4 The Vehicle and Additional Equipment (if applicable) shall be returned undamaged, in good order and in roadworthy condition, fair wear and tear excepted.
- 5.5 When the Client returns the Vehicle to a Renting Location of Tempest, the Client shall:

- 5.5.1 Park the Vehicle in Tempest's reserved parking or allocated parking area; and
  - 5.5.2 Ensure that the Vehicle is properly locked and secure; and
  - 5.5.3 Hand the keys to an authorised representative of Tempest or, in the event that the offices are not open for business, leave the keys in a drop safe provided at the offices of Tempest; and
  - 5.5.4 Additional Equipment must be handed in at the Tempest reception desk. Any Additional Equipment that is left in the Vehicle will be at the Client's risk.
- 5.6 The Vehicle and all risk relating to the Vehicle will remain the responsibility of the Client until Tempest has recorded the return of the Vehicle.
- 5.7 Fuel for the Vehicle is not included in Tempest's rates. Vehicles are delivered to the Client fully fueled and the Client is required to return the Vehicle fully fueled. Fuel consumption is gauged from Tempest depot to depot. In the event that the Client returns the Vehicle not fully fueled, Tempest will either refuel the Vehicle on behalf of the Client and recover the Fuel Costs from the Client or supply the fuel to the Client and charge the Client for the fuel.

## 6. TERMINATION/CANCELLATION/EXTENSION OF RENTAL AGREEMENT

- 6.1 Irrespective of anything to the contrary stated in this Rental Agreement, should there be any breach of the terms and conditions in this rental agreement then Tempest shall be entitled to end this agreement without any explanation at any time by notice (verbally or in writing depending on the situation) to the Client, and when this happens the Client shall return the Vehicle to Tempest immediately.
- 6.2 If the Client fails to return the Vehicle to Tempest, Tempest shall be entitled at any time to retake possession of the Vehicle, wherever found and from whosoever has possession thereof and any Waiver option the Client may have taken out shall become null and void. The obligations of the Client and the rights of Tempest under this Rental Agreement shall remain in force until the Vehicle has been returned to Tempest in terms of this Rental Agreement and the Client has complied with all his obligations. Any costs incurred in recovering the Vehicle will be for the account of the Client.
- 6.3 If the Client wishes to extend the Rental Period beyond the return date reflected in the Rental Agreement, notice must be given to Tempest and authorisation first be obtained from Tempest in respect of the extension. Tempest reserves the right to have the Vehicle inspected before authorising the extension of the Rental Period.
- 6.4 In the event that a debit card was used to pay for the Vehicle, the Client must visit a Tempest branch in order to arrange an extension before the due date of return as set out in the Rental Agreement. Failing to act in accordance with this clause will result in a breach of the Rental Agreement and Tempest will immediately negate all Waivers taken out by the Client for the entire Rental Period and shall be entitled to take any lawful measures, after notice or reasonable attempt to give notice to the Client, to recover the Vehicle from the Client. The Client shall be responsible for all recovery costs.
- 6.5 Additional rental days will be charged directly to the Client's account or debit / credit card at the prevailing rate.

## 7. THE CLIENT/DRIVER /ADDITIONAL DRIVER

- 7.1 Irrespective of what is stated elsewhere in this Rental Agreement, the Vehicle may not be driven during the Rental Period or any extension thereof by any person who has not been in possession of a valid unendorsed Driver's licence (in respect of the specific vehicle / code of vehicle rented) for at least 3 years.
- 7.2 The Client warrants that the Vehicle will never be driven by any person whose blood alcohol concentration exceeds the limit permitted by any law or regulation or whilst under the influence of intoxicating liquor or of a narcotic drug or similar substance. The Client further warrants that every driver of the Vehicle will have a valid unendorsed driver's licence for at least 3 years to drive the specific vehicle code / type and will comply with all applicable laws and will comply with all of the provisions of this Rental Agreement.
- 7.3 If the Vehicle is driven by anyone other than the Driver and/or Additional Driver (irrespective of which other rights or remedies Tempest may have), the Client shall remain liable for all of his liabilities and obligations in terms of this Rental Agreement as if he has been driving the Vehicle. In the event the Vehicle is driven by anyone other than the Driver and/or Additional Driver at any time during the Rental Period, any Waiver option the Client may have taken out shall become null and void.
- 7.4 The Client also warrants that he is entitled and authorised to enter into this Rental Agreement and that all particulars given to Tempest and/or recorded on the Rental Agreement are true and correct.

## 8. RENTAL RATES AND CHARGES

- 8.1 The Client agrees to pay Tempest the rental rates plus all other charges and fees opted for or utilised by the Client, as set out in the Rental Agreement, up and until the Vehicle is returned, including but not limited to miscellaneous charges, airport surcharges, tourism levy, Claims Administration Fee, Document Administration Fee, Traffic Fine Administration Fee, Rental Overdue Administration Fee, one way fee, over the border charges, delivery fee (including delivery fuel charges), collection fee, Super or Standard Waiver option charges, Personal Accident Insurance (if applicable), Windscreen and Tyre Waiver, Minor Damage Waiver, Excess Distance Charge, fuel, toll fees (including Gauteng E-toll fees), toll administration fee, Additional Driver(s) fee, all taxes due and payable on rental rates (which ever of these fees and / or costs may be applicable). A comprehensive list of Tempest's additional fees and charges is contained in the AFC Schedule.
- 8.2 In determining the charges, the distance traveled by the Vehicle (where required) shall be determined from the Vehicle's odometer, or if this is not possible for any reason, by Tempest in its sole discretion, on any other fair and reasonable basis and the Client shall be obliged to provide all such information and assistance as Tempest may require for that purpose. If the odometer has been tampered with, the kilometers traveled will be deemed to be 1000 kilometers per day.
- 8.3 The Client shall be liable for all fines (excluding fines issued for expired vehicle licenses), penalties and similar expenses including but not limited to parking, traffic and other offences (whichever may be applicable), as a result of the use of the Vehicle during the Rental Period and the Client accordingly indemnifies Tempest against all such liability. Tempest will re-direct all fines, penalties and / or similar charges directly to the Client for payment and in cases where this is not possible, will add all fines, penalties and / or similar charges that accumulated on the Vehicle during the Rental Period onto the Client's account. The Client will further be liable for a Traffic Fine Administration Fee for each traffic fine issued during the Rental Period.
- 8.4 In the event that any Additional Equipment (if applicable) is lost or damaged, the Client will be liable for the replacement value thereof. The replacement value will be charged to the Client

- 's account or debit / credit card.
- 8.5 The Client authorises Tempest to insert any Vehicle and/or Rental rate particulars that are not known or are unavailable at the time of signature of the Rental Agreement into the Rental Agreement as soon as such Vehicle and/or rental rate particulars become available.

## 9. DEPOSITS

- 9.1 A deposit, as required by Tempest and set out in the Rental Agreement (depending on the method of payment), is payable on signature of the Agreement.
- 9.2 Tempest may charge the Client's account, credit/debit card at a later time, should there be extra charges which Tempest were not aware of at the issuing of the invoice or if at the initial debit of the Client's account there were insufficient funds to cover the full amount of the invoice. This amount may also be deducted from the deposit. The Client may not withhold payment of any amount outstanding or demand that it be deducted from the deposit paid.
- 9.3 The deposit, or the remaining balance thereof (after deducting all applicable additional charges), will be refunded to the Client as soon as possible after the Client has complied with all of his obligations in terms of the Rental Agreement, alternatively no later than 21 days after return of the Vehicle. In the event of an erroneous refund(s) / payment(s) made by Tempest to the Client, the Client herewith consents and authorises a further debit(s) on the cardholder's account to refund the erroneous refund(s) / payment(s) to Tempest without further approval being required from the Client or the card being presented again

## 10. RENTAL REQUIREMENTS AND PAYMENT

- 10.1 At the time of signing the Rental Agreement, the following must be provided by the Client:
- 10.1.1 Tempest approved method of payment or South African bank issued credit card/ debit card (it however remains within Tempest's sole discretion to accept or decline any method of payment at any time); and
  - 10.1.2 Full names, residential, postal and physical addresses, banking details, telephone number and e-mail address. A local contact address and telephone number must also be provided if the Client is not a citizen in the country in which the Vehicle is rented; and
  - 10.1.3 A valid, original unendorsed driver's licence (held by the holder for at least 3 years) and an original identity document or / an original passport if not in possession of an identity document in the country in which the Vehicle is rented.
- 10.2 All payments are due on demand, but at the latest on expiry of the Rental Period (unless otherwise agreed in writing). All charges payable by the Client shall be paid by credit / debit card on the termination of the Rental Period, unless the Client has a valid account with Tempest or Tempest requires all or any charges to be prepaid in advance.
- 10.3 The Client will not be allowed to deduct or withhold payment of any amounts due in terms of this agreement for any reason whatsoever.
- 10.4 The Client remains liable for payment of any and all amounts due which are not paid or settled in full by the issuer of the card.
- 10.5 If Tempest has agreed to accept payment of any amount specified on the Rental Agreement from the Client by credit card or debit card, the Client's signature on the Rental Agreement will constitute authority for Tempest to obtain authorisation and/or payment. The signature will also constitute authority for the issuer of the card to debit the cardholder's account with the total amount due to Tempest (including but not limited to damages or loss suffered by Tempest to the value of the Vehicle value as reflected on the Rental Agreement). In the event that the first authorisation by the Client was not sufficient to settle the Liability, the Client herewith consents and authorises a further debit on the cardholder's account without further approval being required from the Client or the card being presented again.
- 10.6 In the event that the Client returns the Vehicle to Tempest before the date due on the Rental Agreement, the Client shall pay either the usual rates and charges applicable to the period and/or kilometers actually used, or the rates and charges as if the full Rental Period and/or kilometers occurred, at the sole but reasonable discretion of Tempest.
- 10.7 In the event of an accident and/or if the Vehicle is stolen and/or lost, the amount of the damages shall be the total loss suffered by Tempest and / or the amount reflected on the Rental Agreement and will be payable by the Client on such terms as imposed by Tempest at its sole discretion.
- 10.8 In the event of an accident and/or if the Vehicle is stolen and/or lost, Tempest will be entitled to charge a Claims Administration Fee and assessor's fee (if applicable) on the Client's account, or charge it to the Client's debit / credit card.
- 10.9 Daily rates are calculated strictly per Day, from time of delivery of the Vehicle to time of return of the Vehicle.
- 10.10 Should a Vehicle, in Tempest's sole discretion, require valet cleaning, the valet charges will be billed directly to the Client's account or credit / debit card.
- 10.11 An Additional fee will be charged for any Additional Driver.
- 10.12 If any amount is not paid on due date, Tempest may without prejudice to any rights it may have charge mora interest on the overdue amount at the applicable prescribed legal rate. The parties agree that this Rental Agreement does not constitute a credit agreement as defined by the National Credit Act, Act 34 of 2005 (herein after referred to as "the Act") and therefore falls outside the ambit of the Act.
- 10.13 A certificate of any Director, Manager or Accountant of Tempest, whose capacity need not be proved, as to any amount owed by the Client to Tempest shall constitute prima facie proof of the amount due.

## 11. PROCEDURE IN THE EVENT OF AN INCIDENT (DAMAGE / THEFT / LOSS) INVOLVING THE VEHICLE

- 11.1 If at any time the Vehicle is damaged, stolen, or lost, the Client and/or Driver shall take every reasonable precaution to safeguard the interest of Tempest including but not limited to, the following where appropriate:
- 11.1.1 In the event of theft, hijacking or in the case of a lost Vehicle the incident needs to be reported by the Client to Tempest immediately and to the nearest police station within 6 hours of the incident.
  - 11.1.2 In the event of any Damage to the Vehicle, the Client shall notify Tempest immediately and report the incident to the nearest Police station within 24 hours.
  - 11.1.3 The Client shall furnish Tempest with a completed Tempest Damage/Incident Report form together with a copy of his Driver's licence within 24 hours from the incident or theft / hijacking / loss of the Vehicle. The Damage / incident report form can be obtained from any Tempest branch or from the Website.
  - 11.1.4 The Client shall furnish Tempest with a Police accident case / reference number within

- 11.1.5 24 hours of the incident, alternatively from receipt thereof from the Police; the Client shall obtain the name(s) and addresses of everyone involved in the incident and of possible witnesses;
- 11.1.6 the Client shall not admit any responsibility or liability nor release any party from any liability or potential liability nor settle any claim or potential claim against or by any party nor accept any disclaimer of liability;
- 11.1.7 the Client shall make reasonable provision for the safety and security of the Vehicle and will not abandon the Vehicle, unless extraordinary circumstances warrant it;
- 11.1.8 the client shall co-operate with Tempest and its insurer (if applicable) in the investigation, the making or instituting of any claim or action and the defense of any prosecution, claim or action relating to the incident (including the making of an affidavit if he is requested to do so).
- 11.1.9 in the event that the Client is not the driver, then, without in any way reducing the Client's obligation or Tempest's rights in terms of this Rental Agreement, the Client shall ensure that the person who drove the Vehicle at the time of the incident complies with the provision hereof.
- 11.1.10 The Client shall within 24 hours of receipt thereof furnish to Tempest (and if the Client is not the Driver, the Client shall also ensure that the Driver /Additional Driver or person who drove the Vehicle at the time of the incident does) any notice of claim, demand, summons or the like which the Client or the Driver / Additional Driver or person who drove the Vehicle at the time of the incident may receive in connection with the Vehicle.
- 11.1.11 The Client and/or Driver and / or Additional Driver warrants that the information completed in Tempest's Damage/Incident Report form as referred herein above will be complete, true and correct in every respect;

- 11.1.12 Tempest, at its absolute and sole discretion, reserves the right to provide a replacement Vehicle in the event of damage or loss of the Vehicle. In the event of accident damage to a Vehicle, the Client is liable to settle the applicable Limited Liability (if applicable), alternatively all other amounts due and payable to Tempest (damages, liability etcetera) prior to an alternative Vehicle being provided.
- 11.1.13 Tempest will not take any responsibility whatsoever for the loss of or damage to a Client's personal belongings.
- 11.1.14 The Client may not affect any repairs on the Vehicle.
- 11.1.15 Where the Vehicle is not drivable, the Client must phone Tempest Call Centre (086 1131000) immediately and an authorised towing company will be appointed to uplift the Vehicle. The Client irrevocably and unconditionally indemnifies Tempest against any charges incurred by unauthorised towing companies and authorities. The Client will be held liable for any charges resulting from unauthorised towing of the Vehicle.

## 12. CLIENT'S RISKS AND LIABILITIES / WAIVERS

- 12.1 The Vehicle is rented by the Client at his sole risk, from Delivery of the Vehicle until such time as Tempest has recorded the return of the Vehicle in terms of clause 5.
- 12.2 The Client shall be liable for all Damages and/or total loss sustained to the Vehicle, whether the damage and/or loss are caused and / or whether or not it is attributable to his fault or negligence (including but not limited to hail damage and other acts of God). The above liability may be reduced by the Client by electing one or more of Tempest's Waiver options. The Waiver options available to the Client are set out in the table below. Any reference to amounts excludes VAT.

	Tyre & Windscreen Waiver	Minor Damage Waiver	Super & Standard Waiver for Theft/Loss	Super & Standard Waiver for Accident Damage
<b>General purpose</b>	To limit the Client's liability in respect of damage to tyres and windscreen.	To reduce the Client's costs related to, and time spent on, minor damage below R2 500 and to cover the Client's liability in respect of the first R2 500 of damage.	To limit the Client's liability in instances of theft or loss of a Vehicle.	To limit the Client's liability in respect of damage that is not related to theft or loss of a Vehicle.
<b>Items specifically included</b>	Tyres Windscreen	All items, except those listed as specifically excluded, up to a maximum of R2 500.	Lost or stolen Vehicles	All items, except those listed as specifically excluded.
<b>Items specifically excluded</b>	Any damage caused by water. Any damage to areas other than tyres or windscreen.	Any damage caused by water. Damage to tyres and windscreen. Lost or stolen vehicles	Any damage caused by water. Any damage not related to lost or stolen Vehicles.	Any damage caused by water. Damage to tyres and windscreen. Lost or stolen vehicles
<b>Client contribution required in case of damage</b>	No contribution payable.	Only in cases where damage exceeds R2 500 in total.	Yes. Client contribution in the event that a Vehicle is lost/stolen will be lower if Super Waiver option is selected than if Standard Waiver option is selected.	Yes. Client contribution in the event of damage will be lower if Super Waiver option is selected than if Standard Waiver option is selected.
<b>Claim administration fee and assessor's costs (if applicable)</b>	No claim administration fee and assessor's costs.	Only in cases where damage exceeds R2 500 in total.	Yes, claim administration fee and assessor's costs payable (if applicable)	Yes, claim administration fee and assessor's costs payable (if applicable)
<b>Third party damage covered</b>	No third-party damage covered	No third-party damage covered	No third-party damage covered	Yes. Client will be liable for the first R15 000 of third-Party damage.
<b>Clarifying notes</b>	Windscreen cover does not cover side and back glass, sunroof or any other glass. Tyre cover does not cover rims or hubcaps.	In cases where damage exceeds R2 500, the Client will be liable for the amount exceeding R2 500, where the Client has also opted for the Super or Standard Waiver for Accident Damage, the client contribution required under such Waiver will be reduced by R2 500.		Client will, in addition to the Limited Liability Amount, be responsible for all towing costs, storage fees and assessment fees (if applicable).
<b>Actions which could result in a breach of the Waiver conditions and the Client being responsible for the total cost of damage</b>	Refer to clause 12.5			

- 12.3 The Client's personal belongings in the Vehicle are not covered by any Waivers.
- 12.4 Should a Client qualify to decline any of Tempest's Waivers and elect to decline it and/or is in breach of the terms and conditions of this Rental Agreement or the terms and conditions of the selected Waiver, the Client will be liable for the cost of Tempest's loss or damage as well as all Third Party Damages.
- 12.5 **Tempest's Waivers do not cover any damage to the Vehicle in the event of:**
  - 12.5.1 Damage and/or total loss due to Client Driver negligence or deliberate actions;
  - 12.5.2 Damage and/or total loss sustained whilst the Client is in breach of any applicable laws, ordinances, traffic rules and regulations (including speeding and driving whilst under the influence of intoxicating liquor, narcotic drugs or similar substances);
  - 12.5.3 Damage and/or total loss sustained where incidents are not reported in accordance with the procedure specified in this Rental Agreement;
  - 12.5.4 Damage and/or total loss sustained where the incident takes place outside the country in which the Vehicle was rented, unless prior written approval for the Vehicle to be taken outside the country has been obtained from Tempest;
  - 12.5.5 Damage and/or total loss sustained if at any time the Vehicle is driven by an unauthorised driver;
  - 12.5.6 Damage and/or total loss sustained where the Vehicle is driven whilst damaged and the Client should reasonably have been aware of the unsafe or damaged condition of the Vehicle, or used in a manner which prejudices Tempest's interests or rights therein and/or as prohibited in clause 4, in the sole discretion of Tempest;
  - 12.5.7 Damage and/or total loss sustained where the Client was not holding a valid unendorsed Driver's license (in respect of the Vehicle / class of Vehicle rented) for more than 3 years at the time the damage or loss was sustained;
  - 12.5.8 Damage and/or total loss sustained where an extension of the Rental Agreement is not authorised by Tempest and where the Rental Period has expired;
  - 12.5.9 Damage and/or total loss caused as a result of the Vehicle being driven on a road that was not suitable for that Vehicle, as determined in the sole but reasonable discretion of Tempest;

- 12.5.10 Failure to produce the Vehicle keys in the case of theft of the Vehicle, unless exceptional circumstances apply;
- 12.5.11 Failure to report the last known Location of the Vehicle prior to the theft;
- 12.5.12 **The Client breaching any term and / or condition set out in the Rental Agreement;**
- 12.5.13 **The Client being untruthful in respect or any aspect pertaining to the Rental Agreement, use of the Vehicle and / or damage causing / loss causing incident.**
- 12.6 The client will be liable for double the Limited Liability amount applicable in the following circumstances:
  - 12.6.1 The damage to the Vehicle is uneconomical to repair; or
  - 12.6.2 Stolen or hijacked Vehicles.

## 13. PERSONAL ACCIDENT INSURANCE (PAI)

- 13.1 All claims and liability relating to this cover should be directed to Hollard. The responsibility rests upon the Client to read and understand the insurance cover offered in the brochure (if applicable). Tempest will not give advice on the product as it is not an insurer.

## 14. THIRD PARTY PROTECTION

- 14.1 Should the Client be involved in an accident with a third party, the following will apply:

Party responsible for accident	Super or Standard Waiver for Accident Damage <u>not taken</u>	Super or Standard Waiver for Accident Damage <u>taken</u>
Client (not third party)	Client is liable for full cost of damage, including assessment, towing and claim handling fees. Third Party Damage is claimed from Client directly in his/her own capacity.	Client is liable for the Limited Liability amount applicable to the Waiver and also for the first R15 000.00 of the Third-Party Damage, where after Tempest will settle the difference.
Third party (not Client)	Client is liable for full cost of Damage, including assessment, towing and claim handling fees. Client can claim back damage suffered from third party in his/her own capacity.	Client is still liable for the Limited Liability amount applicable to the Waiver. Tempest will attempt to recover the money from the third party and once a successful recovery has been made, will then reimburse the Client for the Limited Liability amount (proportionally to the recovery), less a claim administration fee.

- 14.2 The damage referred to in the table above is limited to the third party's direct damage and excludes any consequential damages or losses.
- 14.3 Notwithstanding anything in this Rental Agreement, Tempest shall not be obliged to make, institute or proceed with any claim which Tempest may otherwise have had against a third party for the recovery of any loss or damage to or in connection with the Vehicle and accordingly, Tempest shall be entitled, in its sole discretion, to abandon such claim or to settle such claim on any terms.

## 15. CONSEQUENTIAL DAMAGES

- 15.1 Should the Client decline any of Tempest's Waivers and/or is in breach of the terms and conditions of this Rental Agreement and/or the terms and conditions of the selected Waiver, the Client acknowledges and agrees that the Client may be held liable by Tempest for its consequential damages suffered as a result of Tempest being unable to rent the Vehicle due to Damages caused by the Client. The loss for which the Client may be liable shall be calculated on the basis of the daily rental rates in respect of the Vehicle indicated on the Rental Agreement for the period that the Vehicle was unavailable for hire (subject to a maximum of 30 days).

## 16. CROSS BORDER TRAVELLING

- 16.1 A letter of authorisation must be requested from Tempest at the time of reservation for all cross-border travelling. The Client acknowledges that a cross border charge will be levied on all cross-border Rentals.
- 16.2 Tempest will not be held liable if a Client is refused entry into another country.
- 16.3 All foreign registered Vehicles will have to pay a cross border charge at the Border and the Client is responsible for the payment of such cross-border charge or any other charges that may be applicable.
- 16.4 Vehicles are only permitted into Botswana, Lesotho, Swaziland, Namibia, Zimbabwe, Zambia and Mozambique.
- 16.4.1 A one-way cross border service charge will be levied against the Client for one-way Vehicle rentals. No one-way cross border service, roadside assistance or replacement Vehicles are available for Zimbabwe, Zambia and Mozambique.
- 16.4.2 An additional administration fee and / or a full repatriation fee (whichever is applicable) will be levied against the Client should an accident/theft occur outside the borders of the country in which the Vehicle is rented.

## 17. INDEMNITY OF TEMPEST BY CLIENT

- 17.1 Neither Tempest nor any of its shareholders, directors, officers or employees shall be liable for any loss or damage whether direct, indirect, as a result of or otherwise arising from the renting of the Vehicle and or Additional Equipment by the Client, provided such loss or damage was not caused as a result of the gross negligence of Tempest, its shareholders, directors, officers or employees. The loss or damage includes, but are not limited to, any loss or damage to property left or transported in the Vehicle and any loss of life or injury.
- 17.2 Tempest, its shareholders, directors, officers and employees are accordingly indemnified by the Client, the Driver / Additional Driver or his estate(s) against any claim(s) of any nature whatsoever and howsoever arising for any damage or loss which might be instituted against it arising from, or connected with, or as a result of, the renting of the Vehicle and Additional Equipment (if applicable) contemplated in these terms and conditions.

## 18. JOINT AND SEVERAL LIABILITY OF SIGNATORIES, CLIENT AND/OR DRIVER

- 18.1 The Client and every person (Driver / Additional Driver) whose signature appears on the Rental Agreement shall be liable **jointly and severally** for payment of all amounts due to Tempest in terms of or pursuant to the Rental Agreement.

## 19. GENERAL

- 19.1 The Rental Agreement is the entire agreement between the parties regarding the matters contained herein and neither party shall be bound by any undertakings, representations, warranties, promises or the like not recorded by Tempest except as provided for herein.
- 19.2 In the event that the Rental Agreement is produced in more than one language, the English version will prevail in the event of an interpretational dispute.
- 19.3 A provision of this Agreement which is invalid or unenforceable for any reason shall be severable from the rest of this Agreement and shall not affect the validity thereof. If any part or portion of this Rental Agreement has been deemed to have been unenforceable in terms of the Competition Act, the Consumer Protection Act, the National Credit Act or other applicable legislation, the effect of which is to adversely affect the rights of Tempest to receive payment of any nature or enforce its rights, the parties will favour an interpretation placing them substantially in the same position as they were before or as similar to that as possible.
- 19.4 No extension, latitude or other indulgence will in any circumstance be taken to be understood as implied consent or an election by the party or will operate as a relinquishment or otherwise

affect any party's rights in terms of this Rental Agreement. It shall further not stop or prevent any party from enforcing, strict and punctual compliance with each and every provision or term hereof at any time and without notice.

- 19.5 This Rental Agreement and all matters or disputes arising therefrom or incidental thereto shall be governed and construed in accordance with the laws of the Republic of South Africa. The Client specifically consents to the jurisdiction of a competent South African Court (see Clause 19.6) to adjudicate any legal proceeding(s) emanating from the Rental Agreement.
- 19.6 The parties consent to the jurisdiction of the Magistrates Court, should Tempest, at its election, bring legal proceedings in the Magistrate Court, irrespective of whether the amount involved exceeds the jurisdiction of the Magistrates Court. The parties further agree that Tempest may institute any such action or proceedings in any division of the High Court that may have jurisdiction in its sole discretion.
- 19.7 The Client shall not be entitled to cede any of his rights or assign any of his obligations under this Rental Agreement or to rent or give up possession of the Vehicle, its tools or Additional Equipment or any part of it.
- 19.8 If Tempest institutes any legal proceedings against the Client, it shall be entitled to recover from the Client all the legal costs it incurred with its own attorneys in accordance with their then usual charges on the scale of attorney and client, including but not limited to collection commission, tracing agent, correspondent fees and counsel fees (as per bar parameters)
- 19.9 The Client chooses the address (including a nominated postal address and / or e-mail) specified on the Rental Agreement as his **domicilium citandi et exectandi** (i.e. address for service of all legal processes and notices). All notices and legal processes in terms hereof shall be deemed to be received 7 days after posting, and on the same day if delivered by hand or dispatched by e-mail.
- 19.10 Tempest chooses as its **domicilium citandi et exectandi** 16 Ernest Oppenheimer Avenue, Bruma, Johannesburg, South Africa.
- 19.11 Tempest shall be entitled to carry out a credit check on a Client with one or more credit agencies who may retain a record thereof and Tempest shall be entitled to record any default by the Client with any credit agency. Such records may be made available by the credit agency to third parties, in which case Tempest shall not be held liable/responsible for any repercussions such disclosure may have on the Client. The Client agrees that Tempest may disclose any information obtained by it as a result of the conclusion and/or breach of the Rental Agreement, including personal and additional information, to any person, including a credit bureau.
- 19.12 The Client acknowledges that the Vehicle may be fitted with a vehicle management system, which is used inter alia, to record speed and other information relating to the Vehicle rented. Tempest shall be entitled to use such information (including but not limited to claims adjudication and legal proceedings) as it deems fit.
- 19.13 The Client acknowledges that the personal information provided may be used by Tempest to: i. record his details on the Tempest system to facilitate and manage bookings and reservations; ii. facilitate the conclusion of a Rental Agreement; iii. facilitate invoicing and payment of the Client's Liability in terms of the Rental Agreement; iv. use in surveys to improve Tempest services; v. provide online assistance; vi. provide Tempest marketing activities; vii. facilitate tracing and recovering (which includes triangulation of cellular phones, in accordance with RICA Act, Act 70 of 2002) any Vehicle from the Client that is not returned to Tempest at the agreed time and date reflected on the Rental Agreement; viii. institute legal proceedings against the Client ( "Authorised Usage" ). Notwithstanding anything to the contrary, the Client explicitly authorises Tempest to make use of any and all personal information provided to Tempest for the aforementioned Authorised Usage.
- 19.14 By the Client's signature hereto he accepts all the charges charged by Tempest in terms of this Agreement, including any charges relating to loss and damage to the Vehicle.
- 19.15 **Tempest reserves the right, at its sole and absolute discretion and without obligation to provide reasons, to reject any Client's application to rent a Vehicle or accept any method of payment and the Client shall have no recourse against Tempest as a result thereof.**
- 19.16 Tempest confirms that it is compliant with all the provisions of the National Credit Act, Consumer Protection Act, Financial Intelligence Centre Act and Financial Advisory and Intermediary Services Act, Protection of Personal Information Act, European General Data Protection Regulation and will report all incidents required by these Acts when applicable to the relevant authorities.

By signing the Rental Agreement, the Client acknowledges that he has read the terms and conditions set out herein above, understands the legal implications thereof and consider himself legally bound thereto. In the event that the Client does not understand any term or condition set out herein above, he is requested to ask for an explanation thereof from a Tempest authorised representative before signing the Rental Agreement. The Client acknowledges that these terms and conditions are fair and reasonable and without which Tempest would not have entered into the Rental Agreement.