

The J & M Simpson Family Trust T/A Paradise Camper Hire – Terms and Conditions of Hire

- 1. Definitions**
 - 1.1 "PCH" shall mean The J & M Simpson Family Trust T/A Paradise Camper Hire, its successors and assigns or any person acting on behalf of and with the authority of The J & M Simpson Family Trust T/A Paradise Camper Hire.
 - 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
 - 1.3 "Trailer" shall mean any trailer / vehicle / equipment supplied by PCH to the Client (and where the context so permits shall include any supply of services). The Trailer shall be described on the Rental Agreement, invoices, quotation, authority to hire, or any other authorisation forms as provided by PCH to the Client.
 - 1.4 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by PCH to the Client.
 - 1.5 "Price" shall mean the cost of the hire of a Trailer as agreed between PCH and the Client subject to clause 4 of this contract.
- 2. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
 - 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 3. Acceptance**
 - 3.1 Any instructions received by PCH from the Client for the supply of Trailer and/or the Client's acceptance of Trailer supplied by PCH shall constitute acceptance of the terms and conditions contained herein.
 - 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
 - 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of PCH.
 - 3.4 The Client shall give PCH not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by PCH as a result of the Client's failure to comply with this clause.
 - 3.5 The Client warrants that, at the date of this agreement, the nominated driver(s):
 - (a) is/are twenty-five (25) years of age or older; and
 - (b) has/have a valid Australian driver's license, or a valid international driver's license, and such license must remain valid throughout the term of the hire period as specified in this agreement. Under no circumstances is the nominated driver(s) to be the holder(s) of a restricted, learner's or provisional driver's license.
 - 3.6 The Client must provide PCH with two (2) forms of identification for each driver, with at least one form showing a photograph, and current residential address (including, but not limited to, driver's license or passport).
- 4. Price and Payment**
 - 4.1 At PCH's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by PCH to the Client in respect of Trailer supplied; or
 - (b) PCH's quoted Price (subject to clause 3.2) which shall be binding upon PCH provided that the Client shall accept in writing PCH's quotation within thirty (30) days.
 - 4.2 At PCH's sole discretion:
 - (a) a non-refundable deposit shall be required, which amount or percentage of the Price will be stipulated prior to hire commencement; and/or
 - (b) a security bond shall be required, which is fully refundable within seven (7) working days at completion of the hire of the Trailer, provided that the Trailer is returned in the same condition, on time, undamaged, and with LPG bottles and/or fuel returned full. PCH reserves the right to deduct from the security bond the cost of having to lift LPG bottles and/or fuel. Should further repair or cleaning of the Trailer be required, then an additional cost shall apply and the bond shall be retained by PCH until the repair or cleaning of the Trailer has been completed, with any outstanding bond refunded within seven (7) days of the completion of such repair or cleaning. In the event of an accident requiring a claim against PCH's insurance, the bond shall be forfeited in total.
 - 4.3 Time for payment for the Trailer shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
 - 4.4 At PCH's sole discretion payment for approved Client's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
 - 4.5 Payment will be made by cash, or by credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and PCH.
 - 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5. Delivery of the Trailer**
 - 5.1 The failure of PCH to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.2 PCH shall not be liable for any loss or damage whatever due to failure by PCH to deliver the Trailer promptly or at all.
- 6. Hire Period**
 - 6.1 Hire Charges shall commence from the time:
 - (a) as stipulated on PCH's quotation (or any other authorisation); or
 - (b) the Trailer is collected by the Client from PCH's premises; or
 - (c) the Trailer leaves PCH's premises; and shall continue until:
 - (d) the date / time as stipulated on PCH's quotation (or any other authorisation form); or
 - (e) until the return of the Trailer to PCH's premises; or
 - (f) the expiry of the Minimum Hire Period; whichever last occurs.
 - 6.2 When the Trailer is left at any other place than the premises of PCH, then termination shall be when the Trailer is inspected on collection by PCH. The Client will be responsible for the Trailer up until this time of inspection and collection.
 - 6.3 No allowance whatever can be made for time during which the Trailer is not in use for any reason, unless PCH confirms special prior arrangements in writing. In the event of Trailer breakdown, and provided the Client notifies PCH immediately, hire charges will not be payable during the time the Trailer is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
 - 6.4 Should the Client terminate the hire before the specified expiry date and/or time, the quoted / stated rate and term will be amended at the sole discretion of PCH.
- 7. Title**
 - 7.1 The Trailer is and will at all times remain the absolute property of PCH.
 - 7.2 If the Client fails to return the Trailer to PCH then PCH or PCH's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Trailer is situated as the invitee of the Client and take possession of the Trailer, without being responsible for any damage thereby caused.
 - 7.3 The Client is not authorised to pledge PCH's credit for repairs to the Trailer, or to create a lien over the Trailer in respect of any repairs.
- 8. Client's Obligations**
 - 8.1 The Client shall:
 - (a) satisfy itself at commencement that the Trailer is suitable for its purposes;
 - (b) operate the Trailer safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by PCH or posted on the Trailer, including, but not limited to, adhering to PCH's conditions below:
 - (i) no pets are permitted or smoking allowed in the Trailer; and
 - (ii) no electronic or gas heaters, or aerosol cans are to be used inside the Trailer; and
 - (iii) no detergents are to be used to clean canvas items. Marks are to be wiped off with a cloth and water only (no cleaning chemicals are to be used on the canvas as this may damage the waterproofing properties of the canvas); and
 - (iv) no severe scrubbing or high pressure hose is to be used on the Trailer; and
 - (v) no abrasive cleaners or clothes / sponges are to be used on any of the finishes of the Trailer.
 - (c) ensure that the correct identification and license details of all persons operating the Trailer are disclosed to PCH, and that those people are suitably instructed in its safe and proper use;
 - (d) comply with all occupational health and safety laws relating to the Trailer and its operation;
 - (e) that, where applicable, the tyres are maintained at their proper pressure;
 - (f) notify PCH immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Trailer by giving such notification;
 - (g) keep the Trailer in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Trailer;
 - (h) not alter or make any additions to the Trailer including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Trailer or in any other manner interfere with the Trailer;
 - (i) employ the Trailer solely in its own work and shall not permit the Trailer, or any part thereof, to be used by any other party for any other work;
 - (j) not fix any of the Trailer in such a manner as to make it legally a fixture forming part of any freehold;
 - (k) on termination of the hire, deliver the Trailer, complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to PCH.
 - 8.2 The Client acknowledges that:
 - (a) the Jayco 'On Road' Camper Trailer is to be driven, at all times, on sealed / bitumen roads; and
 - (b) no article whatsoever is to be tied or carried on the roof of the Trailer at any time during the hire period.Failure to adhere to this clause shall forfeit the total amount of the bond paid by the Client to PCH.
 - 8.3 Immediately on request by PCH the Client will pay:
 - (a) the new list price of any Trailer that is for whatever reason destroyed, written off or not returned to PCH;
 - (b) all costs incurred in cleaning the Trailer;
 - (c) all costs of repairing any damage caused by the ordinary use of the Trailer up to an amount equal to ten percent (10%) of the new list price of the Trailer;
 - (d) the cost of repairing any damage to the Trailer, caused by the negligence of the Client or the Client's agent;
 - (e) the cost of repairing any damage to the Trailer, caused by vandalism, or (in PCH's reasonable opinion) in any way whatsoever other than by the ordinary use of the Trailer by the Client;
 - (f) the cost of fuels and consumables provided by PCH and used by the Client.
 - 8.4 The Client shall be liable for any parking or traffic infringement and will supply relevant details as required by the Police and/or PCH relating to any such parking or traffic infringement and offences, impoundment, towage and storage.
- 9. Risk**
 - 9.1 PCH retains property in the Trailer nonetheless all risk for the Trailer passes to the Client on delivery.
 - 9.2 The Client accepts full responsibility for the safekeeping of the Trailer and indemnifies PCH for all loss, theft, or damage to the Trailer howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
 - 9.3 In the event of an accident, the Client shall be charged the insurance excess for the repair and/or replacement of the Trailer (and/or any other items supplied with the Trailer). Recovery of the insurance excess in a "no fault" accident shall be the responsibility of the Client.
 - 9.4 The Client accepts full responsibility for and shall keep PCH indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Trailer during the hire period however arising (including, but not limited to, where the damage, injury or loss is caused by the operator of the Trailer being under the influence of alcohol or any drug that affects their ability to operate the Trailer, or the Trailer is in an unsafe or un-roadworthy condition that arose during the course of the Hire and that caused or contributed to the damage or loss, and the Client or driver was aware of or ought to have been aware of the unsafe or un-roadworthy condition of the Trailer, or the Trailer is operated in any race, speed test, rally, or contest, or on any closed road or non-public roadway) and whether or not arising from any negligence, failure or omission of the Client or any other persons.
 - 9.5 The Client acknowledges and agrees that PCH shall not be liable for any damage or costs incurred to the Client as a result of damage to any towing vehicle.
- 10. PCH's Obligations**
 - 10.1 PCH shall supply the Trailer in a safe and roadworthy condition.
 - 10.2 PCH shall be responsible for all ordinary and extraordinary costs of running the Trailer during the term of the hire except to the extent that by the terms of this agreement those costs are payable by the Client.
- 11. Return of the Trailer**
 - 11.1 Where the Trailer is not returned by 5:00pm on the last calendar day in the hire period, PCH shall be entitled to charge the Client an additional daily rate, and deduct this amount from the bond paid by the Client to PCH.
 - 11.2 The Client acknowledges that there shall be no refund (partial or otherwise) and no future credit accrued where the Trailer is returned early.
 - 11.3 Under no circumstances is the substitution of any item of (or included in) the Trailer to be made. The Client shall be liable for any missing, broken, lost or substituted items and the replacement amount of any such missing, broken, lost or substituted items shall be deducted from the bond paid by the Client to PCH.
 - 11.4 At PCH's sole discretion a relocation fee will be applicable to any Trailer being left at any other agent or business address or any other place other than the address from which the Trailer was hired and all charges to reposition the Trailer to its original business address shall be chargeable, and, or any hire shorter than the specified return date may have its daily rate adjusted according to the length of Hire Period.
- 12. Default and Consequences of Default**
 - 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
 - 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify PCH from and against all costs and disbursements incurred by PCH in pursuing the debt including legal costs on a solicitor and own client basis and PCH's collection agency costs.
 - 12.3 Without prejudice to any other remedies PCH may have, if at any time the Client is in breach of any obligation (including those relating to payment), PCH may suspend or terminate the supply of Trailer to the Client and any of its other obligations under the terms and conditions. PCH will not be liable to the Client for any loss or damage the Client suffers because PCH has exercised its rights under this clause.
 - 12.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
 - 12.5 In the event PCH is required to commence recovery proceedings in order to make a claim against the bond paid by the Client to PCH, the Client acknowledges that these charges shall be in addition to the outstanding bond claim and shall be at the cost of the Client.
 - 12.6 Without prejudice to PCH's other remedies at law PCH shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies PCH may have and all amounts owing to PCH shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to PCH becomes overdue, or in PCH's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client
- 13. Cancellation**
 - 13.1 PCH may cancel these terms and conditions or cancel the hire of the Trailer at any time before the hire of the Trailer has commenced by giving written notice. PCH shall not be liable for any loss or damage whatever arising from such cancellation.
 - 13.2 In the event that the Client cancels the hire of the Trailer, then the Client shall be liable for any loss incurred by PCH (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14. Privacy Act 1988**
 - 14.1 The Client agrees for PCH to obtain from a credit-reporting agency a credit report containing personal credit information about the Client in relation to credit provided by PCH.
 - 14.2 The Client agrees that PCH may exchange information about Client with those credit providers named in the Hire Agreement or named in a consumer credit report issued by a reporting agency for the following purposes:
 - (a) To assess an application by Client;
 - (b) To notify other credit providers of a default by the Client;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
 - (d) To assess the credit worthiness of Client.
 - 14.3 The Client consents to PCH being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
 - 14.4 The Client agrees that Personal Data provided may be used and retained by PCH for the following purposes and for other purposes as shall be agreed between the Client and PCH or required by law from time to time:
 - (a) provision of Hire;
 - (b) marketing of Hire by PCH, its PCH's or distributors in relation to the Hire;
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of the Hire;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Hire.
 - 14.5 PCH may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 15. Security and Charge**
 - 15.1 Despite anything to the contrary contained herein or any other rights which PCH may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to PCH or PCH's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that PCH (or PCH's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) should PCH elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify PCH from and against all PCH's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint PCH or PCH's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.
- 16. General**
 - 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Perth.
 - 16.3 PCH shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by PCH of these terms and conditions.
 - 16.4 In the event of any breach of this contract by PCH the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of PCH exceed the Price.
 - 16.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by PCH.
 - 16.6 PCH may license or sub-contract all or any part of its rights and obligations without the Client's consent.
 - 16.7 PCH reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which PCH notifies the Client of such change.
 - 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
 - 16.9 The failure by PCH to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect PCH's right to subsequently enforce that provision.