

## Abacus Vehicle Rental Agreement - Terms and Conditions

### 1 General

- A. Please read this agreement carefully before signing. This agreement, which incorporates the detail shown overleaf, constitutes a complete statement of the terms & conditions, and replaces all previous written or verbal terms and conditions. No amendment or variation to this agreement shall be valid unless signed by a Director of Horton Commercials Ltd T/A Abacus Car, Van, Truck & Trailer Hire ("Abacus") for the time being. Any failure or delay by Abacus in exercising its right under this agreement will not constitute a waiver or forfeiture of such rights.
- B. If there is any conflict between Abacus' sales literature and this agreement then the terms of the agreement shall prevail.

### 2 The Hirer's Responsibilities

- A. The hirer ("The Hirer") of the vehicle ("The Vehicle") identified overleaf (or any vehicle substituted in its place) must ensure that correct tyre pressures, engine oil level, coolant levels and automatic transmission oil level (where fitted) are maintained throughout the period of rental. The Hirer is also responsible for replacing worn/damaged tyres and for using the correct fuel type.
- B. The Hirer must ensure that the Vehicle is always locked when unattended, and take all reasonable steps to prevent loss of or damage to the Vehicle, its tyres, tools, accessories, equipment and contents. The Hirer must always lock the Vehicle and ensure that all security devices supplied with or fitted to the Vehicle are used when the Vehicle is left unattended. For the avoidance of doubt, Abacus shall not be liable for the loss of any property left in or damaged as a result of being in the Vehicle (unless caused by Abacus' negligence). The Hirer agrees to indemnify Abacus in full against any claims relating to any such property.
- C. If the Vehicle is stolen or unlawfully taken or involved in any accident or incident howsoever caused the Hirer must:
- Inform the police and obtain an incident/crime number
  - Inform Abacus' depot from which the vehicle was hired within 24 hours, quoting the Rental Agreement Number, which can be found overleaf
  - Where reasonably practicable to do so, obtain names and addresses of any third parties and witnesses and supply them to Abacus in writing.
  - Send to Abacus immediately, a copy of any letter from any third party or any writ, summons or other document relating to court proceedings
  - Help Abacus and its insurers in dealing with any Court proceedings including allowing Court actions to be taken in the Hirer's name and defending any proceedings, attending Court if required by Abacus or its insurers
  - At the time of any incident/accident make no admission of liability to any persons.
- D. The Hirer must inform Abacus immediately if the vehicle suffers any damage or loss, develops any fault or requires any servicing, and the Hirer shall permit Abacus to carry out any essential repairs or servicing to the vehicle.
- E. The Hirer must return the Vehicle in accordance with Clause 5 of the Rental Agreement.
- F. The Hirer is not authorised to effect repairs to the Vehicle of more than £25 in total value without Abacus' prior permission. Subject to Clause 4 (Insurance), Abacus agrees to refund the cost of any necessary repair up to the value of £25 (or more if by prior consent) on production of a valid VAT receipt and any parts replaced.
- G. Save as set out in paragraph 2f above, the Hirer must not do or allow to be done, any work on or to the vehicle including (but not limited to) altering, removing or hanging any component or changing the Vehicle's specification or appearance without prior permission of Abacus.
- H. If the vehicle breaks down or is not roadworthy, the Hirer is responsible for arranging suitable recovery of the Vehicle back to Abacus' premises using a method or agent, which Abacus has approved.
- I. The Hirer must not sell, lease, part with possession or dispose of the Vehicle or any of its parts or contents. The Hirer is responsible for keeping the Vehicle and its accessories in the Hirer's (or any named driver's) possession and free from legal process or lien.
- J. The Hirer is responsible for ensuring that the Vehicle will not be used
- Outside the mainland of England, Wales and Scotland unless permitted by Abacus, and appropriate documents issued.
  - For hire or reward
  - For racing, pace-making, rallying, speed testing, driving tuition or any other hazardous or unusual use
  - For propelling, pushing or towing any vehicle, caravan, trailer or other object unless permitted by Abacus in writing
  - On un-surfaced roads or other unpaved surfaces
  - For any illegal or in contravention of any legislation affecting the Vehicle, its use or construction
  - If the vehicle suffers any damage, develops any fault or requires any servicing
  - By any person who

- Is not licensed to drive the vehicle
- Is under 21 years of age or over 75 subject to the approval of Abacus' insurers
- Has provided Abacus with a fictitious name, age or address
- Is not a named driver
- Has been convicted of a motoring offence, details of which have not been disclosed to Abacus in writing prior to the Rental Period

K. The Hirer must not represent that he/she/it is the owner of the Vehicle or a servant or agent of Abacus.

### 3 Abacus' Obligations

- A. Abacus agrees to make a vehicle available to the Hirer for the rental period specified overleaf ('the Rental Period') at the agreed collection time specified overleaf. The vehicle will be in good working order and fit for its normal purpose (please note the restrictions in Clause 6).
- B. If the Hirer informs Abacus that the vehicle is unserviceable as a result of the Vehicle breaking down, Abacus will arrange, where reasonably practicable, for necessary repair to be promptly carried out to the Vehicle.
- C. In the event that the Hirer is left without a vehicle as a result of the Vehicle breaking down, Abacus agrees, subject to Clause 3a above, to take all reasonable steps to provide the Hirer with an alternative vehicle, failing which Abacus shall refund that portion of the sums paid by the Hirer to Abacus in respect of rental charges and insurance in accordance with this Agreement relating to the unexpired term of the Rental Period.
- D. Subject to Clause 11, Abacus shall have no liability to the Hirer for loss or damage arising out of or in connection with the Hirer's use of the Vehicle during the Rental Period unless and to the extent that such loss or damage arises directly from Abacus' negligence, breach of this Agreement by Abacus or breach of any Abacus' statutory obligations under this Agreement.

### 4 Insurance & Damage Protection

**ALL VEHICLES OVER 7.5 TONNES GROSS VEHICLE WEIGHT MUST BE INSURED BY HIRER'S INSURERS AND 4(B) WILL APPLY.**

- A. If it is indicated overleaf that the Hirer wishes Abacus to arrange insurance cover, then the conditions of Abacus' insurance policy (Abacus' Insurance') and damage waiver agreement will apply. Summaries of these are provided at each of Abacus' depots.
- The Hirer can get details of Abacus' Insurance, damage waiver, the Credit Hire Agreement and Credit Repair Agreement from the office the Hirer rents the vehicle from.
  - The Hirer shall not use or permit the Vehicle to be used in contravention of the terms and conditions of Abacus' Insurance, Credit Hire or Credit Repair agreements.
  - Any Vehicle hired under this Agreement may only be driven by authorised drivers, who have had a completed Insurance Proposal Form, accepted by Abacus.
  - Save as otherwise indicated overleaf, the Hirer agrees to pay the insurance charges on Abacus' current tariff, plus the waiver charge for reducing or removing the insurance excess, and the insurance excess (if any) as shown overleaf, in respect of each incident resulting in damage or loss to the Vehicle, third party vehicle, or any other property.
  - Any payment paid under Clause 2f above is subject to any insurance excess.
  - The Hirer shall be liable to pay the full cost of repair of any damage that the Vehicle may suffer as a result of any wilful or negligent action by the Hirer, the Hirer's agent or servant and, or any named driver.
  - **IMPORTANT: THE DAMAGE WAIVER CONTAINED IN THE INSURANCE POLICY DOES NOT COVER: DAMAGE CAUSED TO VEHICLES 3.5 TONNES PLATED WEIGHT OR, IF UNPLATED, WEIGHING 1.525KG ('COMMERCIAL VEHICLE') ABOVE WINDSCREEN HEIGHT; UNDER CARRIAGE DAMAGE; TYRE AND GLASS DAMAGE (OTHER THAN WINDSCREEN); DAMAGE CAUSED TO THE VEHICLE WHEN NOT ON A PUBLIC HIGHWAY; THEFT OF THE VEHICLE; ANY MALICIOUS DAMAGE; ANY ACT OF VANDALISM; ANY NEGLIGENCE ON THE HIRER'S BEHALF; AND ANY BREACH OF THIS AGREEMENT AND/OR ABACUS' INSURANCE.**
- B. The Hirer may arrange his/her/its own insurance for the full duration of the Rental Period. Abacus must be satisfied with the Hirer's cover and insurance, which must not be changed during the Rental Period. The Hirer agrees:
- That Abacus may ask the Hirer's insurers to record it as the owner of the Vehicle.
  - To insure the Vehicle for its full value (as notified by Abacus) for the full duration of the Rental Period and until such time as it is returned to Abacus, against loss or damage (including windscreen damage) by accident, fire or theft under a comprehensive policy of insurance with an office to repute to be approved by Abacus. At Abacus' request, the Hirer will supply full details of the insurance policy.
  - Not use or permit the Vehicle to be used in contravention of the terms and conditions of the Hirer's insurance policy.
  - To procure that any compensation paid to the Hirer under the Hirer's insurance policy shall be paid without delay to Abacus, and the hirer shall be liable to compensate Abacus for any loss or damage suffered by Abacus in excess of the monies (if any) paid to Abacus by the Hirer's insurers.

- In the event that the Vehicle is damaged during the Rental Period, to let Abacus negotiate with the Hirer's to repairing the Vehicle and/or compensation due to Abacus. The Hirer also agrees to pay the rental charges as detailed in Abacus current account tariff until such time as the Vehicle is returned to Abacus and repaired to Abacus' specification.
- If the policy the Hirer has arranged fails for any reason and the Vehicle is lost, damaged or stolen, to be responsible for settling the full claim and for the payment of all costs in respect of such claim.

## **5 Returning the Vehicle**

- A. The Hirer must return the Vehicle, together with its accessories, tyres, tools and equipment to the return location as indicated overleaf, at the end of the Rental Period or, if earlier, immediately on termination of the Agreement, in the condition prevailing at the commencement of the Rental Period (fair wear and tear accepted) clean and tidy (reasonable traffic grime accepted).
- B. If the Hirer fails to return the Vehicle to Abacus at the agreed time the Hirer will be charged late return charges payable in accordance with Clause 7c below until such time as the vehicle is recovered. Abacus reserves the right to repossess the Vehicle if it has not been returned by the end of the Rental Period and the Hirer may be held liable for all costs incurred by Abacus, its servants or agents as a result of the late return of the Vehicle and of repossessing the Vehicle. In any event, the maximum duration of the Rental Period shall not exceed 3 months.
- C. For the avoidance of doubt, the Hirer is responsible for any loss or damage sustained to the Vehicle whilst it is in the Hirer's possession or if it is returned to Abacus outside of Abacus' office hours, and such responsibility shall continue until the Vehicle has been inspected upon its return to Abacus.

## **6 Conditions of Use**

- A. The Hirer will inspect the Vehicle before the commencement of the Rental Period and the Hirer will inform Abacus at the time if the Vehicle is not complete, in good order and condition or fit for its normal purpose. The Hirer will inform Abacus at the time if:
- There is any damage to the Vehicle of which the Hirer has not been informed.
  - The Vehicle does not have a full tank; and/or
  - The mileage is not as stated in the Vehicle report.
- B. If the person signing this Agreement is not the Hirer of the Vehicle, then by signing this Agreement the signatory warrants that he/she is authorised to sign this Agreement on behalf of the Hirer, and agrees that he/she is jointly and separately liable with the Hirer for all the obligations of the Hirer.
- C. If the Hirer commits any breach of this Agreement, Abacus may treat the Agreement as terminated and may take possession of the Vehicle.
- D. Save as set out in this Agreement or required by law, all conditions and warranties, expressed or implied, statutory or otherwise are hereby expressly excluded.
- E. Where required the Hirer shall ensure that it has in place prior to the commencement of the Rental Period a valid operator's licence in accordance with the Goods Vehicles (Licensing Operators) Act 1995 when using the Vehicle, being a Commercial Vehicle, for hire and reward or in connection with a trade or business. The Hirer agrees to indemnify and keep indemnified Abacus in respect of any use of the Vehicle by the Hirer without an Operators Licence.
- F. Maximum payload and individual axle plated weights of the Vehicle must not be exceeded. The Hirer is responsible for the unloading and loading of the Vehicle.
- G. No warranties are made concerning the fuel tank capacity or fuel consumption.
- H. The Hirer will not be refunded for any unused fuel, early returns, late pick-ups or unused mileage/kms.
- I. During the Rental Period the Hirer shall be responsible for the payment of any:
- Fixed penalty offences committed in respect of the Vehicle under part 111 of the Road Traffic Offenders Act 1988, as amended, replaced or extended by any subsequent legislation or orders, and any such offence committed under the equivalent legislation applicable to Scotland.
  - Excess charge which may be incurred in respect of the Vehicle in pursuance of an Order under section 15 and 16 of the Road Traffic Regulations Act 1984, as amended replaced or extended by any subsequent legislation or orders, and under the equivalent legislation applicable to Scotland.
  - Penalty or charge which may be demanded by any person, corporation or authority as a result of the Vehicle having been parked or left upon any public or private land or road.

## **7 Charges**

The Hirer agrees to pay:

- A. The Rental Charges as detailed overleaf.
- B. Any charge for loss or damage resulting from the Hirer not complying with Clause 2 of this Agreement.
- C. Interest which Abacus will add to any late payment by the Hirer on a daily basis at the rate of 4% above the base rate of Barclays Bank Plc from time to time.
- D. The cost of repairing any damage howsoever caused to a Commercial Vehicle (as defined in Clause 4a) over windscreen height whilst the Vehicle is in the Hirer's possession and which is not covered by Abacus' insurance or the Hirer's insurance policy (for the avoidance of doubt, for the purpose of this Agreement the Vehicle is deemed to be in the Hirer's possession until such time as it has been inspected upon its return to Abacus.)
- E. The cost of repair to or replacement of damaged or faulty tyres, wheels, glass or undercarriage caused to the Vehicle whilst in the Hirer's possession.
- F. An excess hourly charge at 20% of the daily rental rate for each hour during which the Vehicle is not returned to Abacus in excess of the agreed Rental Period, plus damage waiver and insurance at daily rate.
- G. Abacus' current tariff charges for the time and materials used for cleaning the interior and exterior of the Vehicle if it is returned in an unfit state for re-hire (reasonable traffic grime accepted.)
- H. Abacus' current tariff for rental and fuel; for any accessories, keys, tyres, tools or equipment lost, stolen or damaged and any costs or losses suffered by Abacus as a result; for any penalties, fines and/or court costs incurred in the use of the Vehicle whilst it is the Hirer's possession and which Abacus is obliged to pay; and VAT where appropriate at the current rate.
- I. Any charges arising from HM Customs & Excise or any local authority seizing or impounding the Vehicle, together with a loss of income charge while Abacus cannot rent out the Vehicle, if and when Abacus demands such payment.
- J. If the Hirer has negligently used the Vehicle causing it to stop working properly, any resulting charges levied by any breakdown recovery service provided by Abacus.
- K. Any costs (including legal costs) incurred by Abacus in recovering any sums overdue from the Hirer.

## **8 Early Termination**

- A. Clause 8(B) applies if:
  - The Hirer makes any voluntary arrangement with his/her/its creditors or should become subject to an administration order or (being an individual or firm) become bankrupt or (being a company) go into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
  - An encumbrance takes possession, or a receiver or administrative receiver is appointed, of any of the Hirer's property or assets or undertaking;
  - The Hirer ceases, or threatens to cease, to carry on business or a substantial part of its business;
  - Abacus reasonably apprehends that any of these events mentioned above is about to occur in relation to the Hirer and notifies the Hirer accordingly; or
  - The Hirer is in breach of his Agreement.
- B. If this clause applies then, without prejudice to any other right or remedy available to Abacus, Abacus shall be entitled to cancel/terminate this Agreement and repossess the Vehicle without any liability to the Hirer, and any money Abacus is owed under this Agreement will become immediately payable. Abacus may also claim reasonable costs from the Hirer if the Hirer does not meet the requirements of this Agreement. Termination of the Agreement does not affect the liability of the Hirer to make any payments under this Agreement.

## **9 Data Protection**

The Hirer (which for the purpose of this Clause 9 only also includes the person signing this Agreement and any named driver) agrees that Abacus may:

- Use the Hirer's personal information for administrative purposes, and market research; and
- Disclose this information to its service providers and agents including (but not limited to) its insurers, credit reference agencies and the driver and Vehicle Licensing Authority; for any purpose authorised under the Data Protection Act 1998.

**10 Contracts (Rights to Third parties)**

A person who is not a party to this Agreement has no right under the Contracts (Rights to Third parties) Act 1999 or otherwise to enforce any provision of this Agreement.

**11 IMPORTANT – LIMITATION OF LIABILITY**

**ABACUS IS ONLY RESPONSIBLE FOR REASONABLY FORESEEABLE LOSSES SUFFERED BY THE HIRER AS A DIRECT RESULT OF ABACUS' NEGLIGENCE OR BREACH OF THIS AGREEMENT. ANY SUCH LIABILITY IS SUBJECT TO A MAXIMUM EQUAL TO THE TOTAL CHARGES PAYABLE BY THE HIRER (EXCEPT IN RELATION TO DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENT ACT OR OMISSION, WHERE OUR LIABILITY IS UNLIMITED). IF YOU WISH TO INCREASE SUCH MAXIMUM SUM PLEASE ASK WHAT ADDITIONAL COST IS PAYABLE. ABACUS IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE WHATSOEVER WHICH IS NOT REASONABLY FORESEEABLE BY ABACUS OR THE HIRER AT THE TIME OF SIGNATURE OF THIS AGREEMENT.**

**12 Governing Law**

The construction validity and performance of this Agreement shall be governed by the Laws of England, and the English Courts shall have exclusive jurisdiction.