

# PRIXCAR

## SERVICES



## VEHICLE SERVICES TERMS & CONDITIONS

AUSTRALIA'S LEADING VEHICLE LOGISTICS SPECIALISTS

[WWW.PRIXCAR.COM.AU](http://WWW.PRIXCAR.COM.AU)

## 1 The Service Agreement

### 1.1 The Services

We will undertake the collection and delivery of Vehicle(s) to specified locations in accordance with Your customer booking and any Goods carried under the [Goods in Car Policy](#), subject to these Vehicle Services Terms and Conditions.

### 1.2 Vehicle Services Conditions

The vehicle Services Conditions:

- (a) Set out the terms on which Services will be provided to You; and
- (b) form part of the Services Agreement as a legally binding and enforceable agreement between You and Us.

### 1.3 Relationship between the parties

Nothing in the Services Agreement creates a relationship of employer and employee, principal and agent or partnership between the parties.

### 1.4 Not a common carrier

We are not a common carrier and do not accept any liability as a common carrier.

### 1.5 No insurance cover

- (a) You acknowledge that We do not provide insurance cover for the Vehicle and that You are responsible for obtaining any insurance cover You require relating to the Vehicle.
- (b) If You are not an individual seeking Our Services wholly or predominantly for personal, domestic or household use, You must at all times during the Service Period have in place third party property insurance and public risk liability insurance to a minimum value of \$20,000,000 and such other insurances as are required by law.

### 1.6 Electronic signatures

We may use electronic signatures as a means of entry into the Services Agreement. When You insert an electronic signature, You consent to the use of this means of acknowledgement and acceptance of these Terms and Conditions and Your obligations under the Services Agreement.

## 2 What You need to know about Us and Our Services

### 2.1 Reliance on the details and information You supply

- (a) We rely on the details and information You supply.
- (b) We do not admit the accuracy or completeness of the details or information You supply and We are not liable for any loss or damage caused by You incorrectly describing the Vehicle or Goods.

### 2.2 Reliance by Our employees, agents and subcontractors

You acknowledge and agree that Our employees, agents and subcontractors can rely on the provisions of the Services Agreement, including any exclusions or limitations of liability in these Vehicle Services Conditions.

### 2.3 Vehicle Condition Report

- (a) A report (**Vehicle Condition Report**) showing the condition and any pre-existing damage to the Vehicle will be prepared when We collect or accept the Vehicle from You and We have examined the Vehicle from a distance of one (1) metre.
- (b) A further Vehicle Condition Report showing the condition of the Vehicle and any damage caused in the transport of the Vehicle will be prepared upon delivery of the Vehicle and We have re-examined the Vehicle from a distance of one (1) metre.

- (c) In preparing the Vehicle Condition Reports We may take photographs of the Vehicle.
- (d) You acknowledge the condition of the Vehicle and the accuracy of a Vehicle Condition Report by:
  - (i) undertaking a joint survey with Our representative or driver at the point of uplift, drop off, delivery or collection;
  - (ii) noting any damage on the Vehicle Condition Report, and
  - (iii) signing the Vehicle Condition Report.

## 2.4 Unattended Delivery

- (a) Where a signature is not obtained at time of delivery, this will be classified as an Unattended Delivery.
- (b) If there is an Unattended Delivery:
  - (i) You will receive an electronic delivery receipt to confirm delivery of the Vehicle, its location and the date and time of delivery; and
  - (ii) You will have 24 hours from date/time stamp of electronic delivery receipt to provide any particulars of any variance between the Vehicle Condition Report and the Vehicle.

## 2.5 Commencement of the Services

Our provision of the Services to You commences when We, or Our agent, pick up or accept the Vehicle and You sign, or are deemed to have accepted, the Vehicle Condition Report.

## 3 Dangerous Goods

### 3.1 Removing Dangerous Goods from the Vehicle

- (a) Dangerous Goods must be removed from the Vehicle before pick up.
- (b) By entering into the Services Agreement You confirm and assure Us that the Vehicle does not contain any Dangerous Goods and We rely upon that confirmation and assurance.

### 3.2 Dangerous Goods may be disposed of or destroyed

If You leave any Dangerous Goods in the Vehicle at Your expense, We may dispose of, or destroy, them, or take such other action as We consider reasonably necessary to mitigate any risk and harm that may be caused by those Dangerous Goods.

## 4 Your promises, obligations and indemnity

### 4.1 Promises

- (a) You are either the owner or the authorised agent of the owner of the Vehicle and any Goods;
- (b) You have authority to enter into the Services Agreement;
- (c) You have fully and accurately described the Vehicle (and its value where required) including appropriate handling instructions;
- (d) all information You have provided to Us is accurate and true and that You will provide Us with any further information We reasonably require for the purpose of providing the Services to You; and
- (e) with the exception of any Goods permitted under our [Goods in Car Policy](#), any other Goods (including accessories (other than permanently factory fitted accessories), aerals, personal items and effects have ben removed from the Vehicle.

## 4.2 Obligations

- (a) You must ensure the Vehicle:
- (i) can be safely handled and transported;
  - (ii) can be moved under its own power and if it is an electric vehicle, it has a charge level that allows for it to move for the entire journey without requiring it to be charged;
  - (iii) has working brakes, the windows are intact/ operational and there are no loose panels; and
  - (iv) has a minimum ground clearance of 15 centimetres (unless otherwise agreed in writing);
- (b) You must comply with:
- (i) all applicable Chain of Responsibility Laws; and
  - (ii) any directions, procedures or policies We or Our associates have advised, or notified to, You or Your associates with respect to packing, loading or unloading of the Vehicle or entry into, use of, or egress from, a site.
- (c) You must also ensure that any Goods in the Vehicle comply with the terms of Our [Goods in Car Policy](#) and these Vehicle Service Conditions (including clause 3.1)

## 4.3 Indemnity

To the maximum extent permitted by law and except to the extent caused or contributed to by Our negligent acts or omissions, You are liable and indemnify Us and hold Us, Our officers, agents, employees and subcontractors harmless from and against all claims (including any legal costs on a full indemnity basis) resulting directly or indirectly from:

- (a) a material breach by You or Your associates of any term of the Services Agreement; and
- (b) damage to any real and personal property and any injury to or death of any person, caused by a negligent act or omission of You or Your Associates arising out of or in connection with the Services Agreement,

including any damages for indirect loss, delay, loss of profit or business opportunity, relating to any amount payable under the Services Agreement or arising out of or in any way connected with any actual or alleged breach of any promise, obligation or warranty under the Services Agreement or any breach of law.

## 5 Our Rights

### 5.1 We can refuse to supply the Services in some instances

- (a) We may at Your risk and expense refuse to provide some or all of the Services or provide them in a manner other than that previously agreed if We are required to do so by law or consider it necessary in the interest of safety.
- (b) If this is the case, We will promptly notify You and We will specify a reasonable period of time by which the Vehicle must be collected by You.

### 5.2 Failure to collect the Vehicle

If you fail to collect the Vehicle from Us:

- (a) within two (2) days of the agreed collection date or within two (2) days after We notify You the Vehicle is available for collection, whichever is the latter, We may:
  - (i) remove the Vehicle to a storage facility and if We do, We are entitled to charge for the storage of the vehicle; or
  - (ii) return the Vehicle to You or Your associate at Your cost; or
- (b) within a period of 28 days of the agreed collection date or within 28 days after We notify You the Vehicle is available for collection:
  - (i) We will treat the Vehicle and any Goods as Abandoned Goods at Your risk and expense; and
  - (ii) We may dispose of the Abandoned Goods in accordance with state or territory legislation or regulations.

### 5.3 Delivery of the Vehicle

- (a) We will deliver the Vehicle at the delivery address supplied by You or Your agent and We will be taken to have delivered the Vehicle (and any Goods) if at the delivery address We obtain an acknowledgement of delivery or delivery occurs under clause 5.3(b).
- (b) If the delivery address is unattended:
  - (i) during normal business hours; or
  - (ii) during the prearranged delivery period, if the delivery address is a private address,

at Your expense We can return the Vehicle to Our nearest depot and any further delivery or attempted delivery of the Vehicle will be at additional cost.

- (c) To deliver the Vehicle We may:
  - (i) deviate from any usual route or mode of transport to provide the Services; and
  - (ii) subcontract the Services.

### 5.4 Set-off

We may set-off or deduct from any payment due to You, any Charges You owe Us.

### 5.5 Other Rights

If We consider that the Vehicle or any Goods do not comply with the Services Agreement or Our [Goods in Car Policy](#) or are otherwise dangerous, acting reasonably We may:

- (a) conduct a physical search or inspection of the Vehicle or any Goods;
- (b) remove or reposition any Goods; or
- (c) refuse to accept Your Vehicle.

## 6 Our Charges

### 6.1 Our Charges must be paid

You must pay Our Charges in accordance with the Services Agreement or otherwise as agreed between the parties in writing.

### 6.2 Charges You must pay

You must pay:

- (a) any cleaning charge or cost, if cleaning of the Vehicle is required by a quarantine authority;
- (b) Our cost if We are unable to pick up a Vehicle during normal business hours or, for a private address pick up, during the pre-arranged pick-up period due to the Vehicle not being available as agreed;
- (c) Our cost of returning the Vehicle to Our nearest depot if We are unable to deliver a Vehicle during normal business hours or, for a private address for delivery, during the pre-arranged delivery period;
- (d) any additional Charges incurred:
  - (i) due to undeclared modifications that have been made to the Vehicle (including but not limited to the fitting of bull bars, roof racks, or special fittings whether or not included on the Vehicle at the time of purchase by You) (**Modifications**);
  - (ii) because the Vehicle is an oversized Vehicle;
  - (iii) because the Vehicle has not been accurately described at the time of the booking; or
  - (iv) because the Vehicle contained any Goods that were not approved by us and included in the quoted Charges;

- (e) additional fees incurred by Us as a result including but not limited to a flat battery, insufficient fuel, or additional towing fees; and
- (f) interest at the rate under the *Penalty Interest Rates Act 1983 (VIC)* if any charges are not paid on the due date.

### 6.3 GST

Unless otherwise expressly stated, all Charges payable under the Services Agreement are exclusive of GST. If GST is payable, on any supply made under the Services Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply. The recipient must pay this amount in addition to and at the same time that the consideration for the supply is to be provided under the Services Agreement.

### 6.4 Fuel Levy

Unless otherwise expressly stated, all prices are exclusive of a fuel levy. If a fuel levy is applicable and payable under the Services Agreement, You must pay the relevant fuel levy amount applied to the charge.

## 7 Limitations and Exclusions on Our Liability to You

### 7.1 Negligent acts

- (a) Subject to this clause 7, Vehicles and Goods are at Your risk at all times and We exclude all liability for any loss or damage arising from the performance or non-performance of the Services other than any physical loss or damage to the Vehicle caused by Our negligent acts or omissions, in which case Our liability will be limited to (at Our election):
  - (i) the repair of the Vehicle or the payment of the reasonable cost of having the Goods repaired; or
  - (ii) in the case of Services, the resupply of the Services or the cost of having the Services resupplied.
- (b) Before We assume or accept any liability under clause 7.1(a), We may appoint an independent loss adjuster to determine the quantum of any loss or liability.
- (c) If clause 7.1(a) applies and the market value or purchase price of the Vehicle is less than the cost of having the Vehicle repaired (as determined by an independent loss adjuster appointed by Us), We may elect to pay either the market value or the purchase price of the Vehicle, (whichever is the lesser amount minus any salvage applicable) in full satisfaction of Our liability under clause 7.1(a).

### 7.2 Damage to Goods

For the avoidance of doubt, Goods left in the Vehicle are carried at Your risk and We exclude all liability for:

- (a) any loss or damage to any Goods; and
- (b) any loss or damage to the Vehicle arising as a result of Goods being transported with the Vehicle, caused by Our negligent act or omission.

### 7.3 Excluded liability

We have no liability for:

- (a) loss or damage that occurs or can be referred to a period outside the Service Period;
- (b) Damage to the Vehicle unless the damage is noted and signed for on the delivery receipt copy of the Vehicle Condition Report;
- (c) pre-existing damage or defects in the Vehicle;
- (d) minor damage or markings which are not visible from one (1) metre;
- (e) hidden defects or faults that are not visible at the time of inspection for the purpose of issuing Our Vehicle Condition Report and which cause or contribute to any damage or deterioration to a Vehicle;

- (f) [fair wear and tear](#);
- (g) mechanical or electrical damage caused by the failure of a component in the Vehicle due to its age or inherent fault (including but not limited to batteries in electric or plug-in hybrid vehicles).
- (h) damage caused by the movement of objects within the Vehicle;
- (i) damage or loss to any nonstandard motor vehicle accessory which is not permanently affixed to the Vehicle;
- (j) insect/bug marks, bird/animal droppings, rail dust, stone chip(s), environmental damage, industrial fallout, rust spots, airborne objects, or hail damage;
- (k) damage to or loss of any Modifications that have not been correctly installed;
- (l) sabotage or vandalism;
- (m) loss or damage to personal property or effects from or within the Vehicle; after the date specified in clause 7.4(c) or within a reasonable time after that date if You prove that it was impossible to so notify; loss or damage arising from a breach by You of the Chain of Responsibility Laws;
- (n) any indirect, special or consequential loss or damage including the request or requirement for a hire vehicle;
- (o) loss of profits, business or anticipated savings or other economic loss, even if We know they are possible or otherwise foreseeable; or
- (p) loss or damage arising from or connected to a Force Majeure Event.

#### 7.4 Notice of claim

- (a) Any claim for loss or damage identified at the time of delivery must be communicated to Us in writing within 14 days after the date specified in clause 7.4(c) or within a reasonable time after that date if You prove that it was impossible to so notify; and
- (b) Any damage that falls within clause 7.3 is excluded from Your claim.
- (c) For the purposes of this clause 7.4, the applicable dates are:
  - (i) in the case of loss or damage, the date of delivery of the Vehicle(s);
  - (ii) in the case of delay or non-delivery, the date that the Vehicle(s) should have been delivered; or
  - (iii) in any other case, the event giving rise to the claim.

#### 7.5 Statutory provisions

- (a) To the maximum extent permitted by law, including the statutory exemption from the Australian Consumer Law that applies to the transportation or storage of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by You, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from the Services Agreement.
- (b) Notwithstanding clause 7.5(a), if the Australian Consumer Law applies to the Services Agreement any condition or warranty that would otherwise be excluded or modified by these Terms and Conditions shall be deemed to be included in the Services Agreement. However, Our liability for any breach of such condition or warranty shall, if permitted by that legislation, be limited in the manner set out in this clause 7.

## 8 Force Majeure and Acts of God

### 8.1 Obligations are waived

If We cannot carry out an obligation under the Services Agreement in whole or in part because of a Force Majeure Event, the requirement on Us to carry out that obligation under the Services Agreement will be suspended for the duration of the Force Majeure Event or waived to the extent applicable.

## 8.2 No claim for loss or damage

We are not liable for any loss or damage resulting from Our failure or inability to perform the Services as the result of a Force Majeure event.

## 8.3 Acts of God

We are not liable for any loss or damage caused by a severe, unanticipated, uncontrollable natural event not caused by human intervention and beyond Our reasonable control, including loss or damage arising from natural catastrophes such as cyclones, storms, hail, rain, flooding, lightning, wind, earthquake or fire.

## 9 Termination

Either party may immediately suspend or terminate the Services Agreement by written notice to the other party if the other party:

- (a) fails to pay any amount owing or otherwise breaches a material provision of the Services Agreement and fails to remedy such non-payment or breach within seven (7) days of receiving notice to do so; or
- (b) becomes insolvent or bankrupt or has an administrator, receiver, liquidator, manager, trustee in bankruptcy or other like officer or entity appointed to administer its affairs.

## 10 Other Matters Which Affect the Contract

### 10.1 Relevant law

The laws of Victoria apply to the Services Agreement and You must submit to the exclusive jurisdiction of the courts of Victoria.

### 10.2 The Services Agreement prevails

The provisions of the Services Agreement prevail over any other agreement, arrangement or understanding applicable to the Services.

### 10.3 Amendment

The Services Agreement can only be amended, supplemented, replaced by another document signed by both parties.

### 10.4 Counterparts

The Services Agreement may be executed in any number of counterparts.

### 10.5 Unenforceable provision may be severed

If a provision of the Services Agreement or part of such a provision is unenforceable, it must be severed from the Services Agreement, and does not make the rest of the Services Agreement unenforceable.

### 10.6 Waiver, discharge or release

We are not bound by any waiver, discharge or release of a provision of the Services Agreement unless it is in writing and signed by or for Us.

### 10.7 Personal Property Securities Act 2009 (Cth)

You consent to Us effecting a registration on the Personal Property Securities Register (as defined in the *Personal Property Securities Act 2009 (Cth)*) (in any manner We determine) of any security interest arising under or in connection with the Services Agreement and You agree to provide all assistance reasonably required by Us and to signed all documents necessary to facilitate this.



## 11 Definitions

**Abandoned Goods** means vehicles which have not been accepted for delivery and remain in Our possession for 28 days after the date of arrival at the delivery destination, or in the case of Vehicle storage Services, 28 days after the end of the storage term.

**Chain of Responsibility Laws** means the National Heavy Vehicle Law and regulations or any laws of Australia that:

- (a) relate to and regulate the management of risks and hazards arising from road transport, including but not limited to a law or regulation relating to the transport of Dangerous Goods, fatigue management, speeding, speed limiting, maintenance, load restraint, mass or dimension; and
- (b) apply to all parties who perform any of the functions prescribed by the National Heavy Vehicle Law.

**Charges** means Our quoted Charges for the Services calculated under Our rates schedule or other agreed rates, taxes, duties and government Charges levied on the Services and any other amounts under clauses 3.2, 5.1, 5.2, 5.3, 6.2, 6.3 and 6.4.

**Dangerous Goods** mean any articles or substances which are, or may become a risk to health, safety, property, or the environment as defined in the Australian Dangerous Goods Code current as at the date of the Services Agreement (but excluding substances located in the fuel tank of a Vehicle, including petrol, diesel and LP gas).

**Fair, Wear and Tear** means Our policy of this name, which is available [HERE](#). Or visit [prixcar.com.au](http://prixcar.com.au) and search 'Fair, Wear and Tear'.

**Force Majeure Event** means circumstances outside Our reasonable control causing delays or inability, wholly or in part, to perform any obligations under this Agreement, including without limitation, fire, storm (including hail), flood, earthquake, wildlife impact, explosion, accident, road or rail closures, road works, breakdown of equipment or infrastructure, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, labor dispute or shortage, act or omission of any third party, person or public authority.

**Goods** means any items packed in Your Vehicle.

**Goods in Car Policy** means Our policy of this name, which is available [HERE](#). Or visit [prixcar.com.au](http://prixcar.com.au) and search 'Goods in Car'.

**Hidden Defect** means a defect or fault in a Vehicle that is not visible at the time of inspection for the purpose of issuing Our Vehicle Condition Report, and which is the cause of or contributes to any damage, deterioration, or wastage to a Vehicle.

**Modifications** has the meaning given in clause 6.2(d)(i).

**Service Period** means the period commencing when You sign or are otherwise deemed to have accepted the Vehicle Condition Report/Service Agreement and ending on the delivery or handover of the Vehicle.

**Services** means the agreed operations and Services to be performed by Us.

**Services Agreement** means the Agreement (inclusive of any booking confirmation, pricing schedule or schedule of particulars) between Us and You in relation to the provision of the Services.

**We, Us, Our** means PrixCar Services Pty. Ltd. ACN 007 063 505 and its related bodies corporate, (as defined in the *Corporations Act 2001 (Cth)*).

**Unattended Delivery** means a signature was not obtained at the time of delivery.

**Vehicle, Vehicles** means the cars, motorcycles, trailers, machinery, equipment or items picked up or accepted from You or on Your behalf.

**Vehicle Condition Report** has the meaning set out in clause 2.3.

**Vehicle Services Conditions** means these terms and conditions.

**You, Your** means the customer (or their nominated representative or authorised agent) contracting with Us on the terms of the Service Agreement.