



## SUBSCRIBER TERMS AND CONDITIONS

### 1 Governing Terms and Conditions

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- 1.1 The subscription service known as Carly is provided by Carly Car Subscription Pty Ltd (**Carly**). These Subscriber Terms and Conditions (**Terms and Conditions**), the Subscription Agreement, the Carly Privacy Policy, the Website Terms & Conditions and all Handover Inspection Reports constitute the contract with the Subscriber (**Subscriber Contract**) which creates binding and enforceable legal obligations between Carly and the Subscriber.
- 1.2 The Australian Consumer Law confers rights that are not affected by these Terms and Conditions and no clause in these Terms and Conditions excludes, restricts or modifies any implied terms, guarantees or rights under that law or any other similar Federal, State or Territory legislation.

### 2 Subscriber and Additional Driver Obligations

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- 2.1 The Vehicle is provided by the Owner to the Subscriber subject to the Subscriber's acceptance and compliance with these Terms and Conditions.
- 2.2 The Vehicle must only be driven by the Subscriber named on the front page of the Subscription Agreement.
- 2.3 An Additional Driver may only drive the Vehicle if that person is approved in writing by Carly and that person is registered in the Carly database as an Additional Driver. An Additional Driver is bound by these Terms and Conditions as if they were the Subscriber.
- 2.4 The Subscriber and any Additional Driver must:
- (a) be licensed to drive the Vehicle in the State or Territory in which they will be using the Vehicle;
  - (b) hold a current full Australian driver licence or P2 Provisional licence (Probationary and Learners licences or permits are not accepted) or have a valid licence from their country of residence written in English and if not in English a valid International Driving Permit or an approved translation of the licence into English; and
  - (c) be twenty-one (21) years of age or older and less than seventy-five (75) years of age during the Subscription Period.
- 2.5 The Subscriber and any Additional Driver must not:
- (a) have incurred more than two (2) or more infringements in the last twelve (12) months;
  - (b) have been in more than one (1) At-Fault Accident in the last twelve (12) months;
  - (c) have had their licence cancelled or suspended in the last twelve (12) months;
  - (d) have been the subject of bankruptcy proceedings in the last 7 years.
- 2.6 During the Subscription Period, the Subscriber must not:
- (a) incur two (2) or more infringements;
  - (b) have one (1) or more At-Fault Accidents;
  - (c) have their Driver Licence cancelled or suspended;

- (d) be convicted of a criminal offence;
  - (e) be the subject of bankruptcy proceedings;
  - (f) modify or repair the Vehicle in any way, irrespective of whether the modifications or repairs are reversible or permanent; or
  - (g) drive out of the State or Territory in which the Subscriber collected the Vehicle without the written consent of Carly.
- 2.7 The Vehicle must not be driven by anyone who has provided a false name, age, address or driver licence;
- 2.8 The Subscriber and any Additional Driver must not:
- (a) use the Vehicle for hire or reward, rideshare purposes;
  - (b) use the Vehicle for any illegal purpose;
  - (c) use the Vehicle off-road, or for racing, pace making, testing the Vehicle's reliability and speed, or teaching someone to drive;
  - (d) use the Vehicle when under the influence of alcohol or drugs or refuse a preliminary breath test or drug impairment assessment;
  - (e) carry a number of passengers which exceeds the designed seating capacity of the Vehicle;
  - (f) carry anything that would cause the Vehicle to be overloaded;
  - (g) carry any hazardous, biohazardous, infectious, toxic or flammable materials in the Vehicle;
  - (h) use the Vehicle in a manner such that a substantial breach of road safety legislation or the criminal legislation has occurred;
  - (i) sell, rent or dispose of the Vehicle or any of its parts, or purport to give anyone any legal rights over the Vehicle or register or attempt to register any interest in the Vehicle under the Personal Property Securities Act 2009;
  - (j) use the Vehicle in a dangerous or reckless manner; or
  - (k) use the Vehicle in any alpine resort during the gazetted snow season.
- 2.9 The Subscriber and any Additional Driver must not:
- (a) smoke or allow others to smoke in the Vehicle and an additional cleaning fee, as listed in the Fee Table applies if this condition is breached;
  - (b) allow any animals into the Vehicle without written permission by Carly and an additional cleaning fee applies if this condition is breached, as listed in the Fee Table.
  - (c) use or permit the Vehicle to be used to jump start any other vehicle; or
  - (d) use or permit others to use the Vehicle to tow any other vehicle, trailer, boat or other object without written permission by Carly.
- 2.10 The Subscriber and any Additional Driver must:
- (a) ensure that the Vehicle is locked when not in use;
  - (b) use the correct fuel type when refuelling the Vehicle;
  - (c) make the Vehicle available for periodic servicing as and when the service intervals fall due as required by Clause 8.11; and
  - (d) inform Carly immediately if:

- (i) a warning light or fault message appears;
- (ii) they become aware of low engine oil or brake fluid, engine coolant levels; or
- (iii) the Vehicle develops any fault during the Subscription Period,

and the Vehicle must not be used unless Carly has given authority to do so. If Carly is not notified and the Vehicle continues to be used, the Subscriber and any Additional Driver will be responsible for any resulting Damage or third party loss.

2.11 The Subscriber must:

- (a) immediately report any loss or damage to the Vehicle (or loss involving the Vehicle) to Carly; and
- (b) immediately deliver to Carly every summons, complaint, document or paper in relation to the Vehicle.

2.12 In the case of a Subscription Period with a defined end date, if the Subscriber wishes to extend the Subscription Period a request must be made to Carly no less than 72 hours prior to the completion of the Subscription Period. The Subscription Period will not be extended unless Carly provides written confirmation to the Subscriber in accordance with clause 14.

### **3 Vehicle Handover Procedure - Subscriber**

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3.1 When collecting or returning the Vehicle, the Subscriber must be available at the agreed date and time and at the Designated Handover Location. If the Subscriber does not arrive at the Designated Handover Location within 30 minutes of the agreed time an administration fee will be applicable, as listed in the Fee Table. The Subscription Period will not be altered if collection takes place after the agreed start date.

3.2 The Subscriber must make suitable arrangements for the payment of tolls that may be incurred during the Subscription Period. Failure to do so will incur an administration charge, as listed in the Fee Table.

3.3 At the handover of the Vehicle the Subscriber must:

- (a) in the presence of a Carly representative:
  - (i) inspect the digital photographs of the Vehicle taken by the Carly representative to confirm that they accurately show the internal and external condition of the Vehicle and/or take their own photographs; and
  - (ii) produce the Subscriber's Driver Licence and credit card used for the subscription for inspection by the Carly representative.
- (b) complete the Handover Inspection Report with the Carly representative; and
- (c) ensure that all information and imagery is a fair and accurate representation.

3.4 If at the time of handover by the Carly representative the Subscriber fails to sign the Handover Inspection Report the Subscriber forfeits the right to dispute any claim for Damage allegedly caused during the Subscription Period.

3.5 A Subscription may only commence on a Business Day unless otherwise agreed in writing.

### **4 Switch**

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A Subscriber is eligible to Switch the Vehicle that is the subject of a current Subscription Agreement with another vehicle subject to the following conditions:

- (a) these Terms and Conditions continue to apply to the Switched Vehicle;
- (b) the number of Switches available to a Subscriber is that specified in the Subscription Agreement;

- (c) a Switch must be requested in advance by contacting Carly;
- (d) a Switch may only be made to a vehicle that is identified as being available on the date required;
- (e) no guarantee is provided that a certain type of vehicle will be available on a specific day;
- (f) the Subscriber must ensure that at the time of a switch to the Carly representative each of the requirements for the return of the Vehicle in clause 8.4 have been fully complied with;
- (g) a Switch is one way only such that the Subscriber will be subscribing to the Switched Vehicle until such time as the Subscriber elects to undertake another Switch pursuant to these Terms and Conditions and the Subscription Agreement;
- (h) a Subscriber may request an additional Switch in excess of their entitlement under the Subscription Agreement upon the payment of a fee, as listed in the Fee Table;
- (i) The switched Vehicle will be subject to a new Subscription Agreement and the Subscription Fee applicable to the switched Vehicle will apply from the date of the Switch. The subscription end date or recurring subscription date from the original Subscription Agreement will transfer to the new Subscription Agreement;
- (j) Switches are valid for a period of 30 days commencing from the start of the Subscription Agreement. During the first 30 days of a subscription a Switch may only occur 16 days or later from the start of the Subscription Period; and
- (k) unused Switches expire at the end of each 30 day Subscription Period and may not be exchanged for cash.

## **5 Financial Obligations - Subscriber**

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- 5.1 The Subscriber must pay Carly the Subscription Fee shown on the Subscription Agreement. A surcharge is applicable if the Subscriber or any Additional Driver holds a P2 Provisional licence, as listed in the Fee Table.
- 5.2 At the commencement of the Subscription, the Subscriber may be required to pay a Security Deposit to cover any additional charges, which includes, but is not limited to, fuel, excess kilometres, fines or Damage which may be payable by the Subscriber under these Terms and Conditions.
- 5.3 The Security Deposit, less any additional charges, will be refunded to the Subscriber 7 days after the Vehicle has been returned in accordance with the Subscription Agreement and these Terms and Conditions and subject to there being no Major Breach.
- 5.4 If a claim has been made against the Security Deposit Carly may hold the Security Deposit until actual costs for rectification of Damage have been determined.
- 5.5 If the Subscriber exceeds the kilometre allowance specified in the Subscription Agreement per thirty (30) days or part thereof, the Subscriber must pay Carly the rate per excess kilometre, as listed in the Fee Table.
- 5.6 If the Subscriber is required to pay Carly any amount under these Terms and Conditions:
  - (a) that amount must be paid to Carly on or before the due date;
  - (b) Carly may offset any monies owed to the Subscriber by Carly against any monies owed by the Subscriber to Carly; and
  - (c) interest on any overdue amounts accrues daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Carly's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

- 5.7 In performing any action or function on behalf of the Subscriber under clause 5.6, Carly does so as agent of the Subscriber and has no liability to the Subscriber or third parties for any of the actions or functions it performs on the Subscriber's behalf.
- 5.8 At the time of Subscribing a Subscriber will be required to choose an option defining the free kilometre allowance, excess kilometre cost and Damage Liability Charge that will apply to the Subscription. The cost for the chosen option will be included in the Subscription Fee.
- 5.9 A Subscriber may request to change the plan that is applicable to their subscription. For the change to take effect, the Subscriber must present the Vehicle for visual inspection by a Carly representative at a location specified by Carly.
- 5.10 A Subscriber or any Additional Driver who commences a Subscription Agreement whilst holding a P2 Provisional licence and transitions to a full Australian Driver Licence during the Subscription Period may advise Carly in writing. Subject to the Subscriber providing satisfactory evidence of the licence change, Carly will remove the P2 Provisional licence surcharge accordingly to reflect the licence change and this will not be backdated.
- 5.11 From time to time Carly may contact the Subscriber and request that the Subscriber provide date stamped photographic evidence of the internal and external condition of the Vehicle and the odometer reading at the time of the request. Failure to provide such evidence within 48 hours of the request may result in Termination of the Subscription Agreement.
- 5.12 It is the responsibility of the Subscriber to contact Carly in the event of any payment issues and a failure to meet financial commitments detailed in these Terms and Conditions and the Subscriber Agreement has these consequences:
- (a) a negative credit report or credit default being recorded against a Subscriber and appointment of a recovery agent;
  - (b) legal proceedings against a Subscriber being commenced by Carly; and
  - (c) immediate termination of the Subscription Agreement and the repossession of the Vehicle if any payment that is due under these Terms and Conditions remains unpaid after a period of five (5) Business Days from its due date.

## **6 Cancellation**

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- 6.1 Subscription Agreements may only be cancelled in accordance with this clause 6.
- 6.2 Carly may cancel a Subscription Agreement without penalty to it or the Subscriber if the Vehicle is unavailable as a result of unforeseen circumstance, such as it having been involved in a prior accident.
- 6.3 Unless an end date has been specified at the commencement of the Subscription Period, the Subscription will renew every 30 days until cancelled by the Subscriber by providing no less than 30 days' notice in writing.
- 6.4 A Subscriber may cancel a Subscription Agreement by providing no less than 30 days' notice in writing. If the Vehicle is returned before the 30 day period ends, the full 30 day Subscription Fee is payable. No refunds are payable if the Vehicle is returned prior to the end of the 30 day period.
- 6.5 A Subscription may be cancelled upon 30 days' notice in writing to the Subscriber if the Owner or Carly require the Vehicle to be returned for whatever reason. Carly shall take reasonable steps to find a suitable replacement Vehicle, but cannot be held liable for loss or inconvenience, loss of enjoyment, or consequential or economic loss in the event a replacement vehicle cannot be provided.

## **7 Traffic Offences, Fines and Fees**

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- 7.1 The Subscriber must pay all fines, penalties, traffic infringements, tolls, costs and processing fees incurred during the Subscription Period or any period outside the Subscription Period in relation to which the Subscriber remains in possession of, or is responsible for, the Vehicle.

- 7.2 As listed in the Fee Table, a processing fee is payable to Carly:
- (a) for each unpaid toll incurred, in addition to the toll amount and all other charges levied by the toll provider; and
  - (b) for each fine, penalty or traffic infringement notice, in addition to any charges levied by the issuer of the fine, penalty or traffic infringement.
- 7.3 The Subscriber must notify Carly in writing in accordance with clause 14 as soon as the Subscriber becomes aware that a fine, penalty, traffic infringement or toll has been incurred.
- 7.4 Upon receipt of a fine, penalty, traffic infringement or toll notice the Owner will complete the required documentation to absolve themselves from liability and nominate the Subscriber as the responsible party and return the documentation and any statutory declaration to the responsible authority that issued the notice within 7 days of receipt of the notice.
- 7.5 In the event that the Subscriber challenges any fine, penalty, infringement or toll notice, the Subscriber does so at their own expense.

## **8 Vehicle Condition and Return**

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- 8.1 The Subscriber must return the Vehicle to the Carly representative at the Designated Handover Location and sign the Handover Inspection Report at the time and date agreed in advance with the Subscriber.
- 8.2 The Subscriber remains responsible for the Vehicle until it is returned to the Carly representative in accordance with clause 8.1 and these Terms and Conditions continue to apply, regardless of whether it is returned during, at the end of, or after the expiry of, the relevant Subscription Period.
- 8.3 Subject to clause 6, if the Subscriber returns the Vehicle before the end of the Subscription Period the Subscriber must pay Carly the amounts in clause 5 for the duration of the Subscription Period unless otherwise agreed in writing by Carly.
- 8.4 At the time of hand over at the Designated Handover Location the Subscriber must:
- (a) return the Vehicle to the Carly representative with its keys or keyless start device and all items and/or parts contained within the Vehicle at start of Subscription Period including but not limited to all parts and accessories, manuals, service log book, audio equipment, GPS unit, telematics device, spare wheel, jack, floor mats, wheel nuts, parcel shelf and tools in the same condition as it was at the beginning of the Subscription Period, save for any reasonable wear and tear; otherwise the Subscriber is liable for the cost of genuine manufacturer replacement items;
  - (b) ensure that the Vehicle:
    - (i) interior and exterior has been cleaned prior to handover otherwise a cleaning fee is payable to Carly, as listed in the Fee Table; and
    - (ii) is returned with the same level of fuel as recorded in the Handover Inspection report at collection; and
  - (c) sign the Handover Inspection Report.
- 8.5 If at the time of handover to the Carly representative the Vehicle is in an unclean condition that does not allow for an accurate inspection of the Vehicle, Carly reserves the right to have the Vehicle cleaned at the Subscriber's expense, as listed in the Fee Table; and make an assessment of the Vehicle condition within 24 hours or next Business Day without the Subscriber being in attendance.
- 8.6 If at the time of handover to the Carly representative the Subscriber fails to sign the Handover Inspection Report the Subscriber forfeits the right to dispute any claim for Damage allegedly caused during the Subscription Period.

- 8.7 If the Vehicle is not returned at the time and date specified by Carly the Vehicle may immediately be reported as stolen and may be repossessed or de-registered.
- 8.8 If Carly is required to replace any shortfall in fuel, the Subscriber agrees to pay Carly for fuel, as listed in the Fee Table.
- 8.9 If the Vehicle is returned to the Carly representative without accessories supplied to the Subscriber as referenced in 8.4(a), at the commencement of the Subscription, the Subscriber shall be charged replacement cost, for each item unreturned.
- 8.10 All Vehicles must be returned at the time and date agreed by Carly. Failure to do so will result in a daily Subscription Fee being applied for each 24 hour period or part thereof until the Vehicle is returned to Carly.
- 8.11 Carly may request the Vehicle be serviced during the Subscription Period and the Subscriber must deliver the Vehicle to the nominated service location. Failure to comply with the service request is a Major Breach of these Terms and Conditions, entitling Carly to terminate the Subscription Agreement immediately and, in addition, will result in the Subscriber being liable for mechanical damage caused to the Vehicle due to a missed scheduled service or a fee payable to Carly for each missed service, as listed in the Fee Table; whichever is greater.
- 8.12 A Subscription Agreement may only end on a Business Day unless otherwise agreed in writing.

## **9 Damage Cover**

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- 9.1 The Subscriber must return the Vehicle in the same condition as at the start of the Subscription Period, save for reasonable wear and tear and the Subscriber is responsible for all Damage and any third party loss that occurs during the Subscription Period or that which results from the Subscriber's use of the Vehicle.
- 9.2 If Damage, theft of the Vehicle or third party loss occurs during the Subscription Period or results from the Subscriber's use of the Vehicle, the Subscriber must pay the Damage Liability Charge, which will be charged by Carly in the event of Damage, accident or theft, as listed in the Fee Table.
- 9.3 Subject to this clause 9 and the Damage Cover exclusions in clause 10, the Subscriber's liability is limited to the Damage Liability Charge, as listed in the Fee Table.
- 9.4 Notwithstanding clause 9.3, the Subscriber must also pay the Subscription Fee at the rate shown in the Subscription Agreement from the date of the accident or theft until the payment of the Damage Liability Charge.
- 9.5 If the Vehicle is damaged or stolen and provided that the Subscriber has not committed a Major Breach, Carly may at its option:
- (a) cancel the Subscription Agreement and, subject to the availability of a similar vehicle at a similar Subscription fee, grant the Subscriber the option of entering into a new Subscription Agreement for a term no less than the term of the original Subscription Agreement; or
  - (b) cancel the Subscription Agreement if no similar vehicle is available at a similar Subscription fee.
- 9.6 If the Subscription Agreement is cancelled under clause 9.5 and notwithstanding clause 6, the Agreement is deemed to have been terminated by mutual consent and no action for damages or penalties will accrue to either Carly or the Owner as the result of that cancellation.
- 9.7 If there is Damage to the Vehicle from hail, flood, fire, storm, cyclone or other natural disasters, the Subscriber must pay the Damage Liability Charge.
- 9.8 The Subscriber agrees that Damage Cover is subject to:
- (a) a valid Subscription Agreement;

- (b) payment (per incident) of the applicable Damage Liability Charge;
  - (c) compliance with these Terms and Conditions;
  - (d) the Subscriber not being covered under any other policy of insurance such as their own insurance cover; and
  - (e) the Subscriber providing all reasonable information and assistance as may be requested and, if necessary, authorising Carly to bring, defend or settle legal proceedings, and the Subscriber agrees that Carly shall at all times have sole conduct of any legal proceedings.
- 9.9 The Damage Liability Charge is refundable in either part or full to the Subscriber if it transpires that the Subscriber was not at fault and if there is no third party loss and the cost of the repairs is less than the Damage Liability Charge the Subscriber will be reimbursed the difference. Refund is subject to all costs being recovered from third parties.
- 9.10 The Subscriber must report all Damage, theft of the Vehicle and any third party loss to Carly within 24 hours.
- 9.11 The Subscriber must also report all accidents to the police if:
- (a) any person is injured;
  - (b) the other driver leaves the scene of the accident without exchanging names and addresses; or
  - (c) the other driver appears to be affected by drugs or alcohol.
- 9.12 In the event of an accident, the Subscriber acknowledges that Carly or an authorised partner of Carly will take possession of the Vehicle to assess Damage.

## **10 Exclusions to Damage Cover and Liability**

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- 10.1 The Subscriber and any Additional Driver have no cover for any Damage, theft of the Vehicle or any third party loss resulting from:
- (a) a Major Breach of any of these Terms and Conditions;
  - (b) use or operation of the Vehicle by any person who is not authorised to drive the Vehicle; or
  - (c) failing to pay the Damage Liability Charge immediately as required under these Terms and Conditions.
- 10.2 If there has been a Major Breach or the Vehicle has been used or operated by any person who is not authorised to drive the Vehicle, payment of the Damage Liability Charge does not constitute a waiver of the exclusions to Damage Cover referred to in this clause 10.
- 10.3 The Subscriber is fully responsible and liable for Loss and Damage and third party loss where the Vehicle is operated or used:
- (a) whilst the Subscriber is under the influence of alcohol or drugs to both to the extent that the Subscriber is incapable of having proper control of the Vehicle or whilst the Subscriber's blood alcohol content or the level of drugs present in the Subscriber's blood exceeds the limit specified by the law of the State or Territory in which the Vehicle is driven;
  - (b) on any road or other surface which is not sealed other than a road under repair, or a road notified to the Subscriber by Carly;
  - (c) in any area or under any circumstances (including crossing a waterway or transporting a Vehicle across a waterway) where the Vehicle may or does become partially or totally immersed in water;
  - (d) in a manner that causes:



- (i) underbody damage, being any damage to the Vehicle that is caused by or directly results from contact between the underside of the Vehicle and any part of the road way or any object or obstruction including kerbs, gutters, speed or road humps, barriers or wheel stops; or
  - (ii) overhead damage, being damage to the Vehicle caused by or resulting from an impact between the Vehicle at a point that is level with or above the top of the windscreen;
- (e) under any circumstances where the Vehicle is replenished with fuel or fluids other than which is recommended by the Vehicle manufacturer;
  - (f) under any circumstances where the Vehicle and its keys or keyless start device are unsecured;
  - (g) in any area or region specified to the Subscriber by Carly as an area or region in which the Vehicle must not be used;
  - (h) in any alpine resort during the gazetted snow season or in any other area under conditions where a reasonable person would use snow chains;
  - (i) on dedicated off road track or designated racing track;
  - (j) on any beach or in any other area exposed to saltwater; or
  - (k) out of the State or Territory in which the Subscriber collected it without the written consent of Carly.
- 10.4 The Subscriber has no cover for:
- (a) damage to property belonging to, or in the custody of, the Subscriber, or any relative or friend of the Subscriber who ordinarily resides with the Subscriber; and
  - (b) the Subscriber's liability under any contract or if they have agreed to or accepted liability without Carly's prior agreement unless the Subscriber would have been liable irrespective of the terms of that contract.
- 10.5 Neither Carly nor the Owner is liable to the Subscriber or any third party for any loss of use or enjoyment of the Vehicle or any indirect, special or consequential damages arising in any way out of any matter covered by the Subscriber Contract.
- 10.6 The Subscriber has no cover and is liable for Loss and Damage and any third party loss caused or incurred as a result of the Subscriber fitting anything to the Vehicle incorrectly or not in accordance with the Vehicle manufacturer's recommendations.
- 10.7 There is no Damage Cover for the theft or loss of personal belongings from the Vehicle.
- 10.8 The Subscriber uses the Vehicle at the Subscriber's own risk. Carly and the Owner accept no responsibility or liability to the Subscriber, any passenger or third party for any loss, (including consequential loss) damage, costs, expenses, damages or any other liabilities resulting from:
- (a) any accident, breakdown or any other failure of a Vehicle; or
  - (b) any fault in or malfunction of the booking system.
- 10.9 No personal accident cover is provided by the Subscriber Contract. The Subscriber's liability for causing personal injuries resulting from use of the Vehicle is covered by the statutory schemes for transport accident compensation in each State and Territory of Australia (subject to the conditions and limitations of those schemes).

## **11 Roadside Assistance**

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- 11.1 Subject to clause 11.2, standard Roadside Assistance is included in the Subscription Fees.

- 11.2 Roadside Assistance does not cover and the Subscriber is liable for the payment of all roadside assistance costs, including the call out fee as listed in the Fee Table, towing fees and replacement items and/or parts as supplied and charged by the service provider, if:
- (a) they lose and/or misplace car keys or the keyless start device, or lock the car keys inside the Vehicle;
  - (b) they leave any lights or accessories switched on while the car engine is not running, resulting in a flat battery or other damage;
  - (c) the tyres suffer a puncture or are shredded; or
  - (d) Subscriber action or negligence contributes to the circumstances leading to use of Roadside Assistance callout.

## **12 Termination of the Subscription Agreement and Repossession**

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- 12.1 Carly may terminate the Subscription Agreement at any time if the Subscriber commits a Major Breach of these Terms and Conditions and Carly must notify the Subscriber and Owner, in accordance with clause 14 immediately of the termination of the Subscription Agreement.
- 12.2 The Owner may terminate the Subscription Agreement at any time if the Subscriber commits a Major Breach of these Terms and Conditions and the Owner must notify Carly and the Subscriber in accordance with clause 14, immediately of the termination of the Subscription Agreement.
- 12.3 A Major Breach occurs if:
- (a) there is a failure to comply with clauses 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.10, 2.11, 7.1, 7.3, 8.11, 9.2, 9.10, or 9.11;
  - (b) any payment due under these Terms and Conditions is overdue for the period referred to in clause 5.12(c); or
  - (c) the Vehicle is used or operated in a manner that results in the exclusion of Damage Cover pursuant to clause 10.3.
- 12.4 If the Subscription Agreement is terminated pursuant to clauses 12.1 or 12.2:
- (a) Carly or the Owner may repossess the Vehicle from the Subscriber; and
  - (b) the Subscriber must pay the daily Subscription Fee until the Vehicle is returned.
- 12.5 Notwithstanding clauses 12.1 or 12.2, the Owner or Carly may immediately repossess the Vehicle without notice to the Subscriber if:
- (a) the Subscriber has illegally parked the Vehicle for longer than 24 hours;
  - (b) the Subscriber has committed a reckless breach of road or traffic legislation;
  - (c) the Vehicle is apparently abandoned; or
  - (d) the Vehicle has not been returned to the Owner at the time and date agreed with Carly.
- 12.6 If the Owner repossesses the Vehicle directly the Subscriber agrees to indemnify the Owner for the costs incurred by the Owner. This indemnity may be enforced by Carly as agent for the Owner.
- 12.7 The Subscriber authorises Carly and the Owner to enter any premises owned or occupied by the Subscriber in order to recover or repossess the Vehicle, and the Subscriber agrees to make all reasonable efforts to obtain the right for Carly and the Owner to enter any premises to recover and repossess the Vehicle.
- 12.8 Upon repossession of the Vehicle, any personal property or items contained in the Vehicle will be held by Carly or the Owner. Collection of property and items by the Subscriber is at the

discretion of Carly and the Owner and any costs incurred in the retrieval process are payable by the Subscriber. If Carly agrees to post property or items contained in the vehicle to the Subscriber, the Subscriber agrees to pay Carly for postage costs.

- 12.9 The Subscriber will be responsible for any costs associated with repossession of a Vehicle which may include but not be limited to recovery agency costs and replacement of unreturned genuine manufacturer vehicle keys or a keyless start device.
- 12.10 If the Subscription Agreement is terminated and the Vehicle is not returned, Carly or the Owner may deem the Vehicle stolen and report it as stolen. The Owner may then de-register the Vehicle and the Subscriber will be responsible for any and all loss, including third party personal and property damage associated with the Vehicle.
- 12.11 Where a Subscription Agreement has been terminated, the Subscriber and any Additional Drivers named on the terminated Subscription Agreement will be ineligible to enter into any further Subscription Agreements with Carly and refused any offer of Services by Carly.

### **13 Carly Responsibility and Liability**

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- 13.1 Carly enters into the Subscription Agreement with the Subscriber as agent of the Owner with respect to payments and receipts only.
- 13.2 Notwithstanding clause 13.1, Carly, as agent of the Owner, has the right to enforce these Terms and Conditions against the Subscriber in the event of any failure by the Subscriber to comply with these Terms and Conditions.
- 13.3 Carly makes no warranty to the Subscriber that the Vehicle is in a roadworthy condition.
- 13.4 Except as expressly set out in these Terms and Conditions, Carly expressly disclaims any further warranties, conditions, or other terms, either express or implied by statute or otherwise.
- 13.5 Carly accepts no liability in respect of and shall not be responsible to the Subscriber for:
- (a) the condition of the Vehicle;
  - (b) any information or content provided by the Owner;
  - (c) death or personal injury;
  - (d) any damage to any property, or damage to or loss of any Vehicle;
  - (e) any damage or loss of any belongings left in any Vehicle;
  - (f) any fuel costs;
  - (g) any incidental expenses;
  - (h) any charges or fines mentioned in clause 7; or
  - (i) any theft or breakdown of any Vehicle.
- 13.6 Carly is not liable to the Subscriber under or in connection with these Terms and Conditions whether for negligence, breach of contract, misrepresentation or otherwise, for:
- (a) loss or damage incurred by the Subscriber in connection with any Claims made by a third party;
  - (b) loss of profit, goodwill, business opportunity or anticipated saving suffered by the Subscriber; or
  - (c) any indirect or consequential loss or damage suffered by the Subscriber.

## 14 Notices

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Any notice to be given to the Subscriber or Carly shall be deemed to be given upon it being posted to the address or sent by email to the email address of the Subscriber, or Carly (as the case may be) set out in the Subscription Agreement.

## 15 Proper law and jurisdiction

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The Subscriber Contract is governed by and construed in accordance with the laws of the State or Territory in which the Vehicle is registered. The Owner and Subscriber agree to submit to the non-exclusive jurisdiction of the Courts of that State or Territory and Courts of Appeal there from for all purposes of or in connection with the Subscriber Contract.

## 16 Privacy Act 1988 and GPS Units

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- 16.1 The Subscriber authorises Carly to collect, use and disclose information in respect to any credit or bank statement related information Carly received in relation to a Subscription application, including to a credit reporting body. This includes personal information required to enable the credit reporting body to provide Carly with a consumer credit report and/or bank statement report to assist Carly in assessing the Subscriber's credit worthiness, payment or default information, information about fraud or any other serious credit infringement, information about adverse court judgments or insolvency.
- 16.2 If the Subscriber defaults in the payment of any monies owed to Carly, the Subscriber authorises Carly to provide that information to a credit reporting body and to obtain an up to date consumer credit report on the Subscriber.
- 16.3 Full details of the Carly Privacy Policy can be viewed at [www.carly.co](http://www.carly.co)
- 16.4 Carly may fit and operate GPS or other telematics capabilities to the Vehicle to enable it to manage the Vehicle during the Subscription Period. By signing the Subscription Agreement or taking possession of the Vehicle the Subscriber authorises Carly to use the device to manage the Vehicle and collect other information about the use and operation of the Vehicle until it is returned to the Owner. For the avoidance of doubt, the Subscriber does not have any interest in, or ownership rights in the Vehicle Data.

## 17 Definitions

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In these Subscriber Terms and Conditions, unless the context otherwise requires:

**Additional Driver** has the meaning in clause 2.3.

**At-Fault Accident** means an accident in relation to which the Subscriber is held legally responsible for the damages or injury.

**Business Day means:**

- (a) for the purposes of receiving a notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the notice is to be received; and
- (b) for any other purposes, a day on which the banks are open for business in Sydney, New South Wales, other than a Saturday, Sunday or public holiday in Sydney, New South Wales.

**Carly** means Carly Car Subscription Pty Ltd ACN 075 505 494.

**Carly Insurer** means an APRA approved licensed insurer.

**Carly Policy** means The Carly Motor Vehicle Fleet insurance policy with a Carly Insurer.

**Claim** means any claim, demand, action or proceeding.

**Damage** means:

- (a) any damage to the Vehicle including its parts, components and accessories;
- (b) towing and salvage fees and assessing fees;
- (c) Loss of Use as a result of that damage or theft,

and for the removal of doubt, any Damage to the windscreen, headlights, lights or tyres that makes the Vehicle unroadworthy is not fair wear and tear.

**Damage Cover** means the cover the Subscriber and any Additional Driver have for Damage, theft of the Vehicle and Third Party Loss under clause 9, subject to the Damage Cover exclusions in clause 10.

**Damage Liability Charge** means the amount shown in the Subscription Agreement payable by the Subscriber if there is damage to or theft of the Vehicle or third party loss.

**Designated Handover Location** means the location specified in the Subscription Agreement for handover of the Vehicle, or any other location as agreed with the Subscriber.

**Fees** means the amount payable by the Subscriber to Carly. Fees are listed in the Fee Table.

**Handover Inspection Report** means the document entitled Handover Inspection Report or the report on the Handover Inspection app which forms part of the Subscription Agreement.

**Loss of Use** means the loss suffered because the Vehicle identified in the Subscription Agreement is being repaired or replaced as a result of an accident or because it has been stolen and is being replaced. The amount is calculated on a daily basis at the rate shown in the Subscription Agreement.

**Major Breach** means a breach of any of the clauses defined in clause 12.3 of these Terms and Conditions.

**Owner** means an entity which has agreed for their Vehicle to be used by a Subscriber subject to the terms of the Subscriber Contract.

**Person** includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.

**Subscriber** means an individual, firm or company who has entered or may enter into a Subscription Contract for the use of a Vehicle and includes any or any Additional Driver as defined in clause 2.3.

**Subscriber Contract** has the meaning given to it in clause 1.1 of these Terms and Conditions.

**Subscription Agreement** means the document entitled 'Carly Subscription Agreement for use of the Vehicle'.

**Subscription Fee** means the amount payable by the Subscriber to Carly as identified on the Subscription Agreement.

**Subscription Period** means the period of time that the Owner and Subscriber have agreed for use of the Vehicle as identified on the front page of the Subscription Agreement.

**Switch** means the ability to conduct a single exchange of the Vehicle that is the subject of the current Subscription Agreement with another vehicle provided by Carly subject to these Terms and Conditions, up to the number of permitted Switches specified in the Subscription Agreement and upon providing Carly with sufficient notice. Switches and Switched have a corresponding meaning.

**Termination** means ending the Subscription Agreement in accordance with these Terms and Conditions.

**Terms and Conditions** means these terms and conditions which form part of the Subscriber Contract.

**Vehicle** means one or more cars, utes, sport utility vehicles and other automotive vehicles made available for use by an Owner in accordance with the Subscriber Contract and includes the Vehicle's parts, components and accessories and any Switched or replacement Vehicle.

**Website** means the www.carly.co website and the content, features and services offered through it.

## 18 Fee Table

Fee Description	Fee (incl. GST)
Additional cleaning fee (e.g. due to pet, spillage or smoking)	\$300
If a vehicle is collected or returned more than 30 mins after agreed date and time (during business hours)	\$50
Toll Fees	Toll cost and any additional charges relating to a toll (including government charges) + \$10 Carly administration fee per toll
Additional switch in excess to Subscription Plan entitlement	\$100
P2 Provisional licence Surcharge	10% of the Subscriber Carly Fee
Excess kilometres	Entry Plan = 30 cents per km Medium Plan = 20 cents per km Large Plan = 10 cents per km
Fine, penalty or traffic infringement notice	Cost and any additional charges relating to a fine, penalty or traffic infringement notice (including government charges) + \$20 administration fee per event
Standard vehicle cleaning	\$75
Fuel	\$3 per litre regardless of fuel type
Missed vehicle servicing	Cost of any mechanical damage caused to vehicle due to missed scheduled service as a result of Subscriber not complying with a scheduled service or \$150, whichever is greater
Damage Liability	Entry Plan = \$3,000 Medium Plan = \$2,000 Large Plan = \$1,000
Roadside Assistance	If called out and no fault found \$70 If at fault, \$70 call out fee and repair or rectification costs.

	<p>For example:</p> <ul style="list-style-type: none"><li>• damaged tyre;</li><li>• flat battery due to lights being left on; and</li><li>• lost keys or keyless start devices (for which the manufacturer's replacement cost will be incurred)</li></ul>
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