

Terms and Conditions

This Agreement is entered into between skootify Australia Pty Ltd ABN 59 858 587 762 (**we, us or our**) and you, the person, organisation or entity described in the Booking Form (**you or your**), together the “**Parties**” and each a “**Party**”.

1. Acceptance

1.1 You accept this Agreement by the earlier of:

- (a) signing and returning this Agreement to us (including by email); or
- (b) making an Online Booking through our Website.

1.2 We may, at our absolute discretion, accept or reject any Online Booking for whatever reason.

1.3 Subject to clause 1.2, this Agreement will commence on the date this Agreement is accepted and will continue for the Term.

2. Our obligations

- (a) In consideration of you paying the Hire Fee and you complying with this Agreement, we agree to lease the Scooter to you for the Hire Period, and in accordance with this Agreement.
- (b) We will have no obligation to lease the Scooter to you until we have received the payment of the Bond in full (if applicable).
- (c) You agree that, if you hire the Scooter on a Casual basis, we may amend the Hire Fee, by providing written notice to you. If you do not agree to any amendment made to the Hire Fee, you may terminate this Agreement in accordance with clause 7.1.

3. Your obligations

3.1 General

You agree to:

- (a) comply with this Agreement, the Manual, our reasonable requests or requirements (including safety procedures and policies), and all applicable laws; and
- (b) provide all assistance, information, and all things reasonably necessary to enable us to comply with our obligations under this Agreement or at law.

3.2 Payment

- (a) You agree to pay us:
 - (1) the Hire Fee;
 - (2) all petrol/fuel charges, toll fees, traffic infringement fees and parking infringement fees or other charges

that are incurred by you (or the Scooter) during the Hire Period;

- (3) the Bond (if applicable);
- (4) the Cancellation Fee (if applicable); and
- (5) any other amount payable to us under this Agreement,

in accordance with the Payment Terms.

- (b) The Cancellation Fee is due and payable by you, if you hire the Scooter on a Long-Term basis and you terminate this Agreement prior to the expiry of the Hire Period. You agree that the Cancellation Fee is a genuine pre-estimate of loss, suffered or incurred by us, as a result of your termination of this Agreement prior to the expiry of the Hire Period.

- (c) If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):

- (1) immediately cease leasing the Scooter and enter any premises where the Scooter is located, and recover or repossess the Scooter (and you agree to provide any access, items and consents required to enable us to do so), and recover, as a debt due and immediately payable from you, our additional costs of doing so; and/or
- (2) charge interest at a rate equal to the Reserve Bank of Australia’s cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date.

3.3 Bond

- (a) If applicable, we will hold the Bond throughout the Hire Period.
- (b) You acknowledge and agree that the Bond will be used as a security by us for the performance of any of your obligations, and satisfaction of any of your liabilities, under this Agreement, and we may call upon the Bond to satisfy any obligations or liabilities owed by you to us under this Agreement (including payment of any amounts due and payable to us by you under this Agreement).
- (c) Subject to your compliance with this Agreement, we will refund you the balance (if any) of the Bond within a reasonable time after the expiry of the Hire Period.

3.4 Collection and Return of Scooter

- (a) You agree to collect the Scooter from us from the Collection Location and by the Collection Time. You agree that despite any delay in the collection of the Scooter by you, your obligation to pay the Hire Fee will remain.
- (b) You agree to return the Scooter to us in the Original Condition, at the Return Location and by the Return Time, or sooner, if requested by us on reasonable grounds (or as otherwise provided under this Agreement).
- (c) You agree to comply with any requirements, policies or procedures which apply at the Collection Location and Return Location.
- (d) We will allow a grace period of 1 day for the return of the Scooter, after which, we will charge you the Late Fee until you have returned the Scooter to us. You agree that the Late Fee is a genuine pre-estimate of loss, suffered or incurred by us, as a result of your delay in returning the Scooter by the Return Time.

3.5 Condition of Scooter

- (a) You agree that you are solely responsible for determining whether the Scooter will be suitable, fit for purpose, and in compliance with its description.
- (b) Unless you notify us in writing within [24 hours] of the Commencement Date, demonstrating that the Scooter does not comply with this Agreement, you agree that the Scooter has been delivered in good condition, clean, free from damage or defect, fit for purpose and in accordance with this Agreement (**Original Condition**).
- (c) If you provide us with a notice under clause 3.5(a):
 - (1) we may, at our sole discretion, replace the Scooter; or
 - (2) you may agree to accept the Scooter in the condition provided, which will then be deemed to be the Original Condition.

3.6 Warranties

You warrant and agree that:

- (a) there are no legal restrictions preventing you from entering into this Agreement;
- (b) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;

- (c) you have not relied on any representations or warranties made by us in relation to the Scooter (including as to whether the Scooter is or will be fit or suitable for your particular purposes), unless expressly stipulated in this Agreement;
- (d) you possess a full and valid Australian or International driver's licence, you will carry your driver's licence with you when driving the Scooter, and you will present your driver's licence to us upon our request;
- (e) you have not been disqualified from driving in the state of Victoria or elsewhere in Australia and you have not had your driver's licence suspended or cancelled;
- (f) the Scooter may only be driven by you;
- (g) you will report any Accident, traffic infringement or parking infringement which occurs during the Hire Period to us as soon as possible after it occurs;
- (h) you will keep the Scooter under your custody and control at all times, and you will not sublease, rent, sell, or otherwise transfer the Scooter to any other person;
- (i) if applicable, you have a valid ABN, which has been advised to us; and
- (j) if applicable, you are registered for GST purposes.

3.7 Maintenance

During the Hire Period, in addition to and without limiting any other obligation under this Agreement, you agree to:

- (a) maintain the Scooter in accordance with the Manual
- (b) protect and keep the Scooter in the Original Condition (including being in good working order and condition), subject to any fair wear or tear;
- (c) only allow our Personnel to service or repair the Scooter, unless otherwise instructed or permitted by us;
- (d) prevent the Scooter from being subject to any loss, theft, damage, vandalism or destruction and notify us immediately if the Scooter is stolen, lost, destroyed or damaged;
- (e) contact us immediately if there are any technical or mechanical issues with the Scooter; and
- (f) you must not use the Scooter, or allow the Scooter to be used, in breach of any laws or of the Manual.

3.8 Servicing and Repairs

- (a) You agree that you are responsible for the costs of any repairs or replacement of the Scooter that are necessary as result of loss, theft, damage, vandalism, misuse or neglect. Where we undertake the repairs or replacement on your behalf, you agree to pay us the costs of the repairs or replacement, as a debt due and immediately payable.
- (b) We agree to:
- (1) undertake a general service check of the Scooter, at the times and dates set out in the Manual, and you agree to do all thing necessary to allow us to fulfil our obligations in this clause 3.8(b)(1) in order for us to fulfil our obligations (including providing and collecting the Scooter to a mechanic nominated by us). We may, in our absolute discretion, provide you with a replacement Scooter during any general service check; and
 - (2) attend to any defects, damages or faults of the Scooter that are not caused or contributed to by you, within a reasonable time from receiving notification from you.

4. Title, Risk and Option to Purchase

4.1 Title and Risk

- (a) Risk in the Scooter will pass to you when you have collected the Scooter from the Collection Location. You agree that once you have collected the Scooter from the Collection Location, you will be solely responsible for the Scooter until they are returned to us and are in our full custody and control.
- (b) Subject to clause **Error! Reference source not found.**, title in the Scooter will at all times remain with us, and you take the Scooter as a bare bailee.

4.2 Option to Purchase

- (a) We may, in our absolute discretion, notify you of your option to purchase the Scooter if:
- (1) you have leased the Scooter on a Long Term basis (as set out in the Booking Form or otherwise in this Agreement);
 - (2) you have leased the Scooter for the duration of the Hire Period;
 - (3) you have paid us the total Hire Fee due and payable for the Hire Period; and

- (4) you have paid us any other amounts due and payable under this Agreement.
- (b) If we notify you of your option to purchase the Scooter and you notify us in writing of your acceptance of the option to purchase the Scooter:
- (1) you agree to pay us the Purchase Fee in accordance with the Payment Terms; and
 - (2) we agree to pay for the costs of transferring the title of the Scooter to you within a reasonable time from receiving your written notice.
- (c) You agree that if you purchase the Scooter under this clause 4.2,:
- (1) title in the Scooter will pass to you on our issue of any relevant title or registration documentation to you;
 - (2) the transfer of title in the Scooter will be subject to your full payment of any amounts due and payable under this Agreement (including any amounts set out in clause 4.2(a);
 - (3) you purchase and accept the Scooter “as is”, and we will not be liable for any damage, defect or any other Liability in the Scooter after title in the Scooter transfers from us to you; and
 - (4) risk in the Scooter will remain with you, being from the date the Scooter was collected from the Collection Location.

5. Security Interest and Repossession

5.1 Repossession

- (a) We may, at any time throughout the Hire Period, request that the Scooter be returned to us, or the Scooter may otherwise be recovered or repossessed by us in accordance with this clause 5.1.
- (b) If you do not return the Scooter to us upon our request, then following a written demand to you to return the Scooter, we may report the Scooter as stolen and take steps to recover and repossess the Scooter.
- (c) You authorise us to enter any premises where the Scooter is located, or where necessary, you agree to obtain the right for us to enter any premises where the Scooter is located, in order for us to recover and repossess the Scooter in accordance with this clause 5.1.
- (d) You agree to indemnify us for all cost, loss, damage, expense or liability suffered or incurred by us in

repossessing or recovering the Scooter under this clause 5.1.

5.2 Security Interest

- (a) You agree not to create an encumbrance, lien, charge or other interest on or over the Scooter.
- (b) You agree that this Agreement and your obligations under this Agreement creates a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with this Agreement) being registered on any relevant securities register (and you must do all things to enable us to do so).

6. Liabilities

6.1 Australian Consumer Law

- (a) Certain legislation, including the ACL, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the lease of the Scooter by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- (b) If the ACL applies to you as a consumer, nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the lease of the Scooter provided to an entity defined as a consumer under the ACL is governed solely by the ACL and this Agreement.
- (c) Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services is provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.

6.2 Exclusions

Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:

- (a) your or your Personnel's acts or omissions;
- (b) any use or application of the Scooter by a person or entity other than you, or other than as reasonably contemplated by this Agreement;
- (c) any works, services, goods, materials or items which do not form part of the lease of the Scooter to you (as expressed in this

Agreement), or which have not been provided by us;

- (d) the Scooter being unavailable, or any delay in us providing the Scooter to you, for whatever reason; and
- (e) any event outside of our reasonable control.

6.3 Limitations

Despite anything to the contrary, to the maximum extent permitted by law:

- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel); and
- (c) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to us resupplying the Scooter to you or, in our sole discretion, to us repaying you the amount of the Hire Fee paid by you to us in respect of the lease of the Scooter to which the Liability relates.

6.4 Indemnity

You are liable for and agree to indemnify, hold harmless, release and discharge, us in respect of any Liability which we may suffer, incur or are otherwise liable for as a result of, or in connection with:

- (a) any loss (including theft) of, or damage to, the Scooter during the Hire Period;
- (b) any failure or delay to collect or return the Scooter in accordance with this Agreement;
- (c) any failure to return the Scooter in its Original Condition;
- (d) your or your Personnel's acts or omissions; or
- (e) your or your Personnel's breach of this Agreement or any laws.

6.5 Survival

The obligations under this clause will survive termination or expiry of this Agreement.

6.6 Insurance

In case of an accident where it is established that you are at fault, the excess amount of \$500 must be paid by you.

7. Termination

7.1 If you hire the Scooter on a Casual basis, after the expiry of 4 weeks from the Commencement Date,

you may terminate this Agreement by giving 2 weeks' notice in writing to us.

7.2 This Agreement will terminate immediately upon written notice by:

- (a) us, if:
 - (1) you (or any of your Personnel) breach any provision of this Agreement and that breach has not been remedied within 10 Business Days of being notified by us; or
 - (2) you are unable to pay your debts as they fall due; and
- (b) you, if we are in breach of a material term of this Agreement, and that breach has not been remedied within 10 Business Days of being notified by you.

7.3 Upon expiry or termination of this Agreement:

- (a) we will cease leasing the Scooter to you;
- (b) you are to pay for any Hire Fee due and payable prior to termination, and all other amounts due and payable under this Agreement, including the Cancellation Fee (if applicable);
- (c) pursuant to clause 7.2(a), you also agree to pay our additional costs arising from, or in connection with such termination;
- (d) you agree to grant us such rights of access to any premises where the Scooter is located to allow us (or our Personnel) to immediately recover or repossess the Scooter; and
- (e) you agree not to disparage or otherwise make any unfavourable statements or comments regarding us, our Personnel, our clients, either directly or by implication, verbally or in writing.

This clause 7.3 will survive the termination or expiry of this Agreement

7.4 We will retain your documents (including copies) as required by law or regulatory requirements. Your acceptance of this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.

7.5 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

8. GST

- (a) If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST

payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

- (b) If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.
- (c) If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.
- (d) The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)..

9. General

- (a) **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.
- (b) **Assignment:** A Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- (c) **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.
- (d) **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve

the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Institute of Victoria to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction..

- (e) **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- (f) **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and your obligations under it.
- (g) **Governing law:** This Agreement is governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- (h) **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- (i) **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- (j) **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will

be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

10. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Booking Form, this Agreement and:

ACL means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*, as amended, from time to time.

Accident means any collision or contact between the Scooter and any other object, including but not limited to another vehicle, animal or person, or any incident or occurrence that results in the Scooter being damaged, lost or destroyed or any other vehicle, property, thing, animal or person being injured, killed, damaged, lost or destroyed (as applicable).

Agreement means these terms and conditions and any documents, attached to, or referred to, in it.

Bond is as set out in the Booking Form or as otherwise set out on our Website.

Booking Form means the booking form attached to this Agreement or on our Website.

Business Days means a day on which banks are open for general banking business in Victoria, excluding Saturdays, Sundays and public holidays.

Cancellation Fee is as set out in the Booking Form, or as otherwise set out on our Website.

Collection Location means the location, agreed between the Parties, for the collection of the Scooter.

Collection Time means the date and time, agreed between the Parties, for the collection of the Scooter.

Consequential Loss includes any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

Hire Fee is as set out in the Booking Form, or as otherwise set out on our Website.

Hire Period has the meaning given in the Booking Form.

Late Fee is as set out in the Booking Form, or as otherwise set out on our Website.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation,

demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Manual means any manual, provided by us to you, as to the operation, use, restrictions, guidelines or safety instructions for the Scooter.

Online Booking is an online booking to hire a Scooter by filling out the Booking Form on our Website.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

Purchase Fee means the amount of \$1.00 or any other amount agreed between the Parties, which may be due and payable by you under clause 4.2(b)(1) for the exercise of your option to purchase the Scooter.

Return Location means the location, agreed between the Parties, for the return of the Scooter.

Return Time means the date and time, agreed between the Parties, for the return of the Scooter.

Scooter means the motor vehicle and any accessories the subject of this Agreement, the particulars of which are set out in the Booking Form, or as otherwise provided by us to you, in writing.

Term means the term of this Agreement, commencing on the date this Agreement is accepted in accordance with its terms and ending on the date being the earlier of the expiry of the Hire Period or the date this Agreement is terminated in accordance with its terms.

Website means our website, accessible at [www.skootify.com.au].

11. Interpretation

In this Agreement, unless the context otherwise requires:

- (d) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
 - (e) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
 - (f) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
 - (g) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
 - (h) a reference to time is to local time in Victoria; and
 - (i) a reference to \$ or dollars refers to the currency of Australia from time to time.
- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
 - (b) a reference to "Goods and Services" or "Goods or Services" includes "Goods and/or Services";
 - (c) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations,