

### THIRD PARTY PARKING AND STORAGE AGREEMENT

1. This Agreement is between the Manager and the Customer and applies where the Customer parks and stores the Customer's Vehicle on the Premises. By making a Booking, the Customer agrees to the Agreement on behalf of all persons included in the Booking.

2. The following definitions apply:

*"Booking"* means the act of reserving the Premises for the parking and storage of the Vehicle.

*"Customer"* *"You"* or *"Your"* means the person or persons making the Booking.

*"Force Majeure Event"* means any act of God, war, terrorism, fire, flood, cyclone or any other extreme weather conditions, loss of power, epidemics or pandemics (including COVID-19), industrial disputes, slow-downs or other strike activities, riots or civil unrest, acts of government, semi government or other authorities, state and or federal government restrictions, including but not limited to restrictions on travel, inability to obtain any necessary licence or consent and delays caused by sub-contractors, suppliers or other third parties (including telecommunications carriers), material shortages or other disruption to the Manager's services beyond its control.

*"Manager"* *"We"* *"Us"* or *"Our"* means Mackerel Islands Pty Ltd (ACN 008 728 087), its Representatives and assigns.

*"MBT"* means Hoylake Nominees Pty Ltd as trustee for Guagliardo Family Trust trading as McMahon Burnett Transport (ABN 30 964 648 346), its Representatives and assigns.

*"Premises"* means the premises of MBT whereby the Vehicle will be parked.

*"Representatives"* means the agents, directors, officers, contractors, volunteers or employees of the Manager or MBT as applicable.

*"Parking Period"* means the period described in this Agreement.

*"Vehicle"* means the vehicle described in this Agreement and includes all fixtures and fittings and anything towed behind it.

3. All Bookings are subject to availability. The Manager reserves the right to decline any Bookings or requests.

4. Unless otherwise determined by the Manager, full payment of the Booking is required at the time of Booking. Failure by the Customer to make payment as required, or as otherwise requested by the Manager, may result in the Booking being cancelled.

5. Any items or services not included in the Booking are the sole responsibility of the Customer and must be paid by the Customer. Any outstanding accounts will need to be paid prior to collecting the Vehicle from the Premises.

6. All cancellations by the Customer must be received in writing. It is the Customer's responsibility to verify that the cancellation request has been received. All monies paid by the Customer will be forfeited to the Manager.

7. Subject to the Agreement, if the Manager is required to cancel the Booking for any reason the Manager may, in its absolute discretion, offer the Customer a refund of a portion of or all monies paid to the Manager.

8. Prices are subject to change. The Manager reserves the right to change this information without notice. Existing Bookings that have been paid in full will retain the price as per the Booking.

9. The Manager makes no representations or warranties in relation to the Premises, the storage or the suitability of the storage for the Customer's needs. Storage is at the risk of the Customer.

10. The Customer must provide the Manager and or MBT with the keys and any access codes or security devices required and or immobilisation processes to be followed to start the Vehicle at the time of delivery and prior to the commencement of the Parking Period.

11. MBT and its Representatives may in its discretion relocate or drive the Vehicle within the Premises without notice to the Customer. The Customer authorises MBT and its Representatives to drive the Vehicle where necessary.

12. The Manager and its Representatives may in its discretion relocate or drive the Vehicle to and from and within the Premises without notice to the Customer. The Customer authorises the Manager and its Representatives to drive the Vehicle where necessary.

13. The Customer acknowledges that:

(a) the Premises is not owned or operated by the Manager, it is operated by MBT;

(b) the Customer will comply with all requests, policies and procedures as advised by MBT, including as to opening and closing times, delivery and collection procedures and access requirements;

(c) the Customer has insured and will maintain insurance for the Vehicle for the Parking Period;

(d) the Customer will undertake its own relevant checks prior to delivering the Vehicle to the Premises.

14. The Customer warrants that:

(a) there are no legal restrictions preventing the Customer from agreeing to the Agreement;

(b) the Customer has legal title to the Vehicle, or alternatively has authorisation from the person with legal title to the Vehicle;

(c) the Customer has and will comply with all lawful directions of the Manager and MBT;

(d) the Customer has not relied on any representations or warranties that may have been made by the Manager or its Representatives in relation to the Premises or the storage and or parking of the Vehicle

at the Premises;

(e) the information provided by the Customer is true, correct and complete.

15. The Manager may terminate the Booking if there has been a material breach of the Agreement. Any termination of the Booking in accordance with this clause will result in all monies paid by the Customer to the Manager being forfeited. The accrued rights, obligations and remedies of the Manager is not affected by any termination of the Agreement.
16. To the fullest extent permitted by law, the Customer releases, waives, discharges and indemnifies the Manager and its Representatives from any and all claims and actions, which may be made by the Customer or any third party, or on the Customer's behalf and or any third party's behalf, for loss, in any way arising out of or related to the Booking or the Agreement, including but not limited to property loss or damage, bodily injury or death.
17. The Manager and its Representatives shall not in any event be liable for contingent, consequential, indirect, special, and punitive or any other similar damages, howsoever caused, for any damage, injury or loss, arising out of or in connection with the Booking or the Agreement, whether arising under breach of contract, negligence (commission, omission or advice), statute or otherwise.
18. To the fullest extent permitted by law, the total liability of the Manager and its Representatives arising out of, or in connection with, the Booking or the Agreement is limited to the total value of the Booking.
19. Clauses 16, 17 and 18:
  - (a) apply notwithstanding that any such claim, action or loss may come about, either wholly or in part, due to the negligence of or breach of a contractual term by the Manager;
  - (b) are intended to be as broad and inclusive as is permitted by law;
  - (c) does not exclude, restrict or modify the application of the *Competition and Consumer Act 2010* (Cth), as amended from time to time.
20. Any expenses, costs or disbursements incurred by the Manager in recovering any monies payable by the Customer, including dishonoured cheques, debt collection agency fees, solicitor's costs and interest thereon shall be paid by the Customer on a full indemnity basis.
21. If any Force Majeure Event results in the Manager being prevented from, or delayed in, performing any of its obligations to the Customer:
  - (a) then such a delay or prevention of performance shall not be deemed to be a breach of contract or any other obligation placed upon the Manager under these Agreement;
  - (b) no loss or damage shall be claimed by the Customer from the Manager by reason thereof;
  - (c) the Manager shall use its best endeavours to minimise and reduce any period of suspension

occasioned by any Force Majeure Event.

In the event of a Force Majeure Event, the Manager, in its absolute discretion, may cancel the whole or part of a Booking and ask the Customer to arrange for the immediate collection of the Vehicle from the Premises.

22. The Customer's personal information may be used by the Manager and may be disclosed to MBT, the Manager's Representatives, agents, service providers, suppliers or other third parties for any purpose associated with the Booking. Any use or disclosure of the Customer's personal information by the Manager will be in accordance with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles as amended from time to time.
23. The covenants, agreements and obligations contained herein will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
24. If any part of the Agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, the Agreement must be construed as if that provision or part of a provision had been severed from the Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.
25. The Agreement is governed by and shall be construed in accordance with the laws of the State of Western Australia.
26. The parties irrevocably:
  - (a) submit to the exclusive jurisdiction of the Courts of Western Australia and the Courts competent to determine appeals from those Courts:
    - (i) for determination of any dispute claim or demand; or
    - (ii) with respect to any proceedings which may be brought at any time relating to this Agreement,
  - (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.

Customer: \_\_\_\_\_

Vehicle (make, model, registration and anything towed behind): \_\_\_\_\_

\_\_\_\_\_

Parking Period: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_