



## AUSTRALIAN AUTOMOTIVE RESEARCH CENTRE PTY LTD

A.B.N. 24 005 325 100  
445 Gum Flats Road,  
WENSLEYDALE, VICTORIA, 3241

### TERMS AND CONDITIONS OF USE INCLUDING RELEASE AND INDEMNITY

Warning: these terms and conditions affect your legal rights. Please read them carefully.

I, the person whose details are set out below, agree with Australian Automotive Research Centre Pty Ltd ACN 005 325 100 (**Manager**) to use the Australian Automotive Research Centre at 445 Gum Flats Road, Wensleydale, Victoria (being the proving ground, surrounding land and all associated facilities) (**AARC**), whether as a driver, passenger, spectator or otherwise, on the terms and conditions **SET OUT IN THIS FORM** in consideration of the Manager allowing me to enter and use AARC.

#### RISK WARNING AND ACKNOWLEDGEMENT

##### I AGREE AND ACKNOWLEDGE THAT:

- The activities in which I will be involved at AARC may be dangerous.
- When using AARC I am likely to encounter road conditions which are diverse, unusual and challenging.
- AARC is located within natural, unfenced bushland and there may be trees, rocks, animals and other hazards close to or on tracks and other facilities.
- Weather and driving conditions at AARC may change suddenly.
- Other people will be using AARC at the same time as me.
- My presence at AARC and participation in activities at AARC may expose me to danger of injury or death or of damage to property either from incidents caused by me or by another person or by the nature of the activities
- I undertake all risks associated with my participation at AARC voluntarily.
- I am aware of and accept all the risks involved in my presence at AARC and participation in the activities and the risk associated with any health conditions I may have.
- I acknowledge that this warning constitutes a warning in accordance with any relevant legislation including the Wrongs Act 1958 (Vic).

##### I WARRANT THAT:

- I hold any drivers licence required for the activities in which I intend to participate (which shall be an Australian licence unless the Manager, in the Manager's sole discretion, elects to accept an overseas equivalent).
- I am aged 18 years or over.
- I have a blood alcohol content of 0.0, am not affected by drugs and will not be affected by drugs or alcohol while present at AARC.
- I do not have any health conditions which may affect my participation in the activities.
- I have read and understood the **AARC Regulations and Safety Instructions**.
- I have read and understand the terms and conditions set out in this document and accept and agree to them and sign this document voluntarily.

#### SCHEDULE

NAME OF USER: .....

ADDRESS: .....SUBURB: .....

POSTCODE: ..... EMAIL: .....

TELEPHONE: .....MOBILE: .....

DRIVERS LICENCE NO: .....EXPIRES: .....

State or Country: .....

#### EXECUTED AS A DEED POLL:

**Signed sealed and delivered by:**

**Signature:** ..... **Date:** .....

**Print Name:** .....

#### Terms and Conditions of Use

##### USE OF AARC

1. The User shall comply with **AARC Regulations and Safety Instructions** and with any lawful direction given by the Manager.
2. The User shall stay within the areas at AARC directed by the Manager from time to time (and, without limiting the foregoing, must not enter any areas other than those approved by the Manager for the event in which the User is participating).
3. The User shall not film, photograph or otherwise take images of any vehicles or activities other than vehicles taking part in the same event as the User. The User acknowledges that this obligation is essential in order to protect the confidential nature of other activities which may be taking place at AARC. If the Manager, acting reasonably, believes that the User has breached this condition, the User shall immediately on request by the Manager:
  - (a) produce the User's camera, phone or other device for inspection;
  - (b) assist the Manager to check images recorded on the camera, phone or other device; and
  - (c) erase any images which have been taken in breach of this condition.
4. The User shall not litter or cause any damage to AARC (including any buildings or other facilities and equipment on AARC) during the User's use of AARC.
5. Without limiting any other rights of the Manager, if the Manager, acting reasonably, considers the behaviour or activities of the User at AARC to be unacceptable, the Manager may direct the User to leave AARC immediately. If the User fails to leave immediately, the Manager may eject the User. The User shall not be entitled to make any claim against the Manager if the User is required to leave AARC in accordance with this condition 5.

## RISK WARNING

6. The User acknowledges that:
- the Activities which the User will undertake at AARC may be dangerous and accidents can happen;
  - other persons may be using AARC (including facilities which the User is using) at the same time as the User;
  - the User's presence at AARC may expose the User to danger of death or injury from incidents or situations caused by, created or contributed to by the User or by other persons or by the nature of the Activities;
  - the Manager makes no representation or warranty that the Activities can be conducted safely and the User is responsible for making the User's own assessment of the suitability of AARC for the Activities and the User's participation in the Activities and shall take all necessary precautions for the User's own safety and the safety of other participants in the Activities and other persons present at AARC;
  - subject to any other express term set out in this document, no representation, condition or warranty (express or implied) other than any imposed at law and not capable of being excluded by these terms and conditions has been made or given by the Manager to the User in respect of AARC or in respect of any goods or services supplied in connection with the Activities; and
  - the User shall enter upon and use AARC entirely at the User's own risk.

## LIMITATION OF LIABILITY - GENERAL

7. The User agrees that:
- To the fullest extent permitted by law, the User hereby releases and discharges the Manager and its Personnel in respect of any Loss whatsoever and howsoever suffered, incurred or made at any time by the User arising in any way whatsoever from or in connection with the Activities or the User's presence at AARC.
  - Condition 7(a) does not exclude or modify any term, condition, warranty or statutory right which may be implied or which may otherwise apply by operation of custom, law or statute (including by the Competition and Consumer Act 2010 (Cth), the Australian Consumer Law (Victoria) or the Australian Consumer Law and Fair Trading Act 2012 (Vic)) if to do so would contravene that law or make any part of condition 7(a) void.
  - In addition to the above, to the extent permitted by law, the User hereby excludes, releases and forever discharges the Manager and its Personnel from any liability for Loss arising in any way whatsoever from or connected with the negligence of the Manager or its Personnel.

## LIMITATION OF LIABILITY - RECREATIONAL SERVICES

8. Where the User is being supplied with Recreational Services, then in addition to and without limiting the limitation of liability in condition 7, to the extent permitted by the law the User hereby releases and discharges the Manager and its Personnel in respect of any Loss whatsoever and howsoever suffered, incurred or made at any time by the User where that Loss arises from:
- death;
  - physical or mental injury of an individual (including the aggravation, acceleration or recurrence of such an injury of the individual);
  - contraction, aggravation or acceleration of a disease of an individual; or
  - coming into existence, aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual that is or may be harmful or disadvantageous to the individual or community or that may result in harm or disadvantage to the individual or community,
- however it may be caused and even if caused by negligence or lack of due care and skill (other than reckless conduct) of the Manager or its Personnel, arising in any way whatsoever in connection with the supply of Recreational Services to the User. In this provision, "reckless conduct" means conduct of the person being released where that person is aware, or should reasonably have been aware, of a significant risk that the conduct could result in personal injury to another person and which that person engages in despite the risk and without adequate justification. The release in this condition 8 is intended to exclude Users' rights under Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law and all other rights which may legally be excluded.

## WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you:

- Are rendered with due care and skill; and
- Are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- Might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the Australian Consumer Law and Fair Trading Act 2012, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if you are killed or injured because the services supplied were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. Gross Negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the Australian Consumer Law and Fair Trading Act 2012.

For the purposes of these terms and conditions, "the supplier" shall mean and include the Manager and its Personnel. The User acknowledges that the supply of the right of use of AARC and to participate in Activities constitutes Recreational Services.

## INDEMNITY

9. To the fullest extent permitted by law, the User indemnifies and holds harmless the Manager and its Personnel in respect of all and any Loss whatsoever or howsoever suffered or incurred by the Manager or its Personnel to the extent arising in any way whatsoever from or in connection with the User's involvement in the Activities or the User's presence at AARC except to the extent that such Loss is caused by the negligence or wilful misconduct of the Manager or its Personnel.

## CONSUMER GUARANTEES

10. Other than under clause 8, if a consumer guarantee applies to the User as a "consumer" under the Australian Consumer Law (**ACL**) or equivalent applicable legislation which cannot be excluded or limited, the limitation of liability set out in this document will be subject to, and will not apply to the extent that it limits or excludes, such protections and consumer guarantees applicable to consumers. However where the ACL (or equivalent applicable legislation) permits the Manager to limit the remedies available to a consumer for a breach of a consumer guarantee, the User acknowledges and agrees that the Manager is entitled to limit the remedies available to the User, at the Manager's option, in the case of goods, to the repair or replacement of the goods, the supply of equivalent goods or the payment of the cost of having the goods repaired or replaced or having equivalent goods supplied and, in the case of services, to supplying the services again or paying the cost of having the services supplied again.

## PERSONAL INFORMATION

11. The Manager (we, our, us) collects personal information from Users completing this form and during the course of Activities engaged in by the Users. The information collected includes the details provided on this form. The information you provide is collected by us for the purpose of ensuring that we have a record that you have accepted these terms and conditions (which acceptance may be used in any future legal proceedings) as well as providing you with products and services, conducting research, marketing and promotional activities, business processing activities, contract and event management, legal investigations and responding to your enquiries. If you do not provide the information requested (or do not consent to its collection), we may elect not to permit you to participate in Activities at AARC. We may share information about you with third parties including, but not limited to, WorkSafe Victoria, law enforcement agencies, event promotion consultants and service providers for the purposes referred to above. We are not likely to disclose the information to overseas recipients. We will not send promotional and marketing material to you if you ask us not to by selecting the unsubscribe option where applicable or by calling us or emailing us. You can refer to our Privacy Policy on our website [www.aarconline.com](http://www.aarconline.com). The Privacy Policy contains more information about your right to access and seek the correction of the information we hold about you or to complain about a breach of the Australian Privacy Principles and how we will deal with such a complaint. Alternatively, you may direct any queries you may have in relation to the Privacy Policy or the use of information about you to AARC, PO Box 24, Anglesea, Victoria, 3230, phone +61 3 5288 7306 or Contact us via [www.aarconline.com](http://www.aarconline.com).

## CONTINUING INDEMNITY

12. These terms and conditions apply to the User's entry to and use of AARC on the date set out in the Schedule. However, these terms and conditions also apply to each occasion on which the User enters or uses AARC after the date set out in the Schedule, unless and until the User signs a further release and indemnity. The User acknowledges that AARC may require (but is not obliged to require) the User to sign a further release and indemnity for any future entry to or use of AARC.

## DEFINITIONS

13. In this document:
- AARC** means the Australian Automotive Research Centre at 445 Gum Flats Road, Wensleydale, Victoria, including its land, buildings, track, roads, infrastructure, facilities and equipment including common areas.
- AARC Regulations and Safety Instructions** means the document of this title (available to download from our website or in printed form from our office).
- Activities** means the activities which the User will or may undertake at AARC.
- Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- Loss** means loss, damage, liability, costs, injury (including death), charges and expenses of any kind whatsoever (including economic loss) whether arising under statute, from negligence, personal injury, death, property damage or infringement of third party rights or otherwise.
- Manager** means Australian Automotive Research Centre Pty Ltd ACN 005 325 100 and its Personnel.
- Personnel** means the officers, employees and agents of an entity, all related entities (within the meaning of the *Corporations Act 2001* (Cth.)) of the entity and the officers, employees and agents of those related entities.
- Recreational Services** means:
- a sporting activity or similar leisure time pursuit; or
  - an activity that:
    - involves a significant degree of physical exertion or physical risk; and
    - is undertaken for the purposes of recreation, enjoyment or leisure.
- User** means the person named on the Schedule below.

One gender includes the others and the singular includes the plural and vice versa.

Where any form of the word "include" is used, it is to be read as if followed by the words "without limitation".

To the extent necessary to enable any Personnel to enforce a release or indemnity in this document, the Manager holds the benefit of each release and indemnity both in its personal capacity and on trust for each of the Personnel. However, only the Manager is entitled to agree to a variation to the terms of any release or indemnity.

Any provision of these terms and conditions which is prohibited by law or unenforceable must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the terms and conditions. That does not invalidate the remaining terms and conditions.