

CONDITIONS OF HIRE

1. EQUIPMENT

The Rentor hereby lets to the User which hereby hires from the Rentor the equipment described herein and upon the terms and conditions set out hereunder.

2. RENTAL

2.1 The rental amounts and other charges to be paid by the User to the Rentor in respect of the equipment shall be the agreed rental amounts set forth in the schedule on the reverse side hereof and shall be payable in cash, free of exchange, bank commission, and without any deduction or set off whatsoever, including any deductions in respect of discount, by the User to the Rentor at the Rentor's normal place of business, or at any other places which the Rentor may, in writing, advise the User thereof, from time to time nominate.

2.2 All prices quoted are as agreed upon a daily/weekly/monthly basis. Daily rate is not more than 9 hours or part thereof. Weekly rate is not more than 7 days or part thereof. Monthly rate is not more than 1 calendar month of part thereof.

2.3 The minimum rental period will be for 2 days or as stated herein.

2.4 The rental amounts shall be payable by the User to the Rentor **within seven** days of date of invoice.

3. DELIVERY

The Rentor will deliver the equipment to the User at the premises nominated by the User. The Rentor shall, however, not be responsible for any reason whatsoever for any loss or damage whatsoever or howsoever such loss or damage occurs or consequential loss of whatsoever kind or nature, which the User may suffer owing to the equipment not being delivered on due date or within a reasonable time thereafter, or not being delivered at all or if the equipment is not in proper working order.

4. CHECKLIST

The Rentor and User shall duly complete the checklist in Addendum "A" hereto a delivery of the equipment and will complete the checklist in Addendum "B" on return of the equipment to the Rentor.

5. TERMINATION

The hire period in this contract will automatically be renewed on a daily/weekly/monthly basis as is stipulated in this contract unless a written notification is received by the Rentor cancelling the period timeously. This means that where there is a hire period for a daily period, notification must be received at least **24 (TWENTY FOUR)** hours prior to the termination of the Rental. In the event of the hire period being for a weekly period notification must be received at least **48 (FORTY EIGHT)** hours prior to the lapse of the week in question. In the event of the hire period being a monthly period of hire then and in that event notification must be received at least **72 (SEVENTY**

TWO) hours prior to the end of the particular month. Unless notification is received within the periods stipulated above and further, unless such notification is made in writing by the User to the Rentor, the User acknowledges and understands that the hire will automatically continue and that he/it will irrevocable and unconditionally be bound to pay the hire charges for an extended renewal period of days/weeks/months originally contracted for. A certificate of balance by any director or manager of the Rentor, whose appointment need not be proved, stipulating the period of the hire and the charges made in respect thereof will be *prima facie* proof of the period of the hire and the total amounts due by the User to the Rentor in respect thereof for all purposes.

The minimum hire period is as follows:

- (a) On a daily basis - for not less than 2 (TWO) days, and/or
- (b) A weekly basis - not less than 1 (ONE) full week (that is seven days), and
- (c) On a monthly basis - not less than 30 (THIRTY) days.

6. ESCALATION

The agreed hire rates, shall be firm and binding upon both parties. However, if there is a statutory or government approved variation/increase of *inter alia* costs, VAT or interest rates affecting this contract, relating to materials, labour and anything else during the currency of the period of this Agreement then and in that event the User shall be liable to pay such increases upon receipt of a certificate from the Rentor setting out the increased rate. The certificate from the Rentor shall be *prima facie* proof of the amount of the increase and the User unconditionally and irrevocably undertakes to pay such increased rental on demand.

7. RISK

The ownership in and to the hire equipment shall at all times remain vested in the Rentor notwithstanding the fact that all the risk in and to the equipment shall pass to and vest in the User from the date of signature of this agreement of Hire. The User undertakes to keep the equipment in his/its sole custody properly garaged and/or stored and/or covered for the purpose of properly protecting it from any loss or damage of any nature and free of any lien, hypothec or attachment and undertakes not to sell, alienate or in any other manner whatsoever dispose of, encumber or deal with the said equipment or any part thereof.

8. FITNESS OF EQUIPMENT

The User hereby acknowledges that:

- 8.1 It has carefully and properly inspected and examined the equipment in every way and that it hires the equipment in the condition in which it stands;
- 8.2 the Rentor has given it no warranties or guarantees of any kind whatsoever, whether express or implied, relating to, concerning or in connection with the equipment, or any other

- matter or thing relating thereto, save as may hereinafter be specifically stated;
- 8.3 the equipment is in good condition and full working order in all respects and that it measures up to all the reasonable requirements and standards in regard to the purpose for which it is to be used;
- 8.4 the equipment is fit in every way for the purpose for which it is intended.
- 9. USE AND MAINTENANCE OF EQUIPMENT**
- The User shall:
- 9.1 ensure that the equipment shall be used solely and exclusively in the conduct of the User's business and shall only permit the equipment to be operated by competent and duly trained and authorised persons;
- 9.2 keep the equipment safe and secure at all times;
- 9.3 use the equipment strictly for the purpose and the manner for which it is intended to be used;
- 9.4 keep the equipment in its possession and under its control and not use or cause it to be used in contravention of any laws in operation from time to time or in any manner as may vitiate the insurance policy thereon;
- 9.5 conduct thorough daily maintenance checks and remedy any faults when required including the proper checking of oil levels, air cleaner, water, tyres, wheel studs, battery, v-belts and working order of the hour meter, etc.
- 9.6 use only the prescribed fuels and lubricants for the equipment;
- 9.7 note that all and any tyre maintenance and replacement tyres is strictly for User's account;
- 9.8 not make any alterations or modifications of any nature whatsoever to the equipment without the prior written consent of the Rentor, and in the event of such alterations or modifications being made (whether with or without the Rentor's consent) then, at the Rentor's election at the termination of this agreement, such alterations or modifications shall accede to the equipment and the User shall receive no compensation therefore, or the Rentor may require the User to remove and make good at its sole expense within fourteen (14) days of receipt of written demand to do so, any such alterations or modifications, in which latter event the User shall be required to pay on demand compensation for any damage occasioned by the making good and removal of the said alterations and modifications;
- 9.9 also be liable for the payment of the rental for the period involved in making good the modifications;
- 9.10 advise the Rentor of the name and address of the landlord of any premises at which the equipment is kept or stored and shall, in addition, duly and properly notify the said landlord of the Rentor's rights of ownership in and to the goods;
- 9.11 not remove, obliterate, deface or cover up the plate or plates or other marks on the equipment in any way, indicating that the equipment is the property of the Rentor;
- 9.12 permit the Rentor at all reasonable times to enter into or upon the premises of the User either personally or through the Rentor's agents, employees, workmen, engineers, servants or contractors in order to carry out, without hindrance or interference by the User, any work which may be required to be done to the equipment, including servicing thereof and if the Rentor so wishes, to make such alterations or improvements thereto as the Rentor may deem fit;
- 9.13 in the event of any defect or deficiencies in the equipment including the hour meter attached thereto the User shall immediately notify the Rentor's Branch Manager or Hire Manager in writing and forthwith cease using the equipment in any way, failing which the User will be held solely responsible for all and any damage resulting from the continued use of the equipment;
- 9.14 herewith take note that any breakdown resulting from fair wear and tear should be subject to the Rentor having 48 hours to effect the necessary repairs without any loss of hire revenue to the Rentor;
- 9.15 herewith further take note that in the event of the seizure of the engine fitted to the equipment due to lack of the routine daily maintenance checks, the failure will be deemed as an abusive or negligent action by the User, its employee or his representative and the User shall be solely liable for any and all such damages;
- 9.16 ensure that the equipment is returned in exactly the same condition and state of repair as what the equipment was received in, fair wear and tear only being exempted;
- 9.17 herewith take note that all rental units will be delivered with a full tank of fuel and the cost thereof will be for the User's account. The User will ensure that at all time's at the termination of the agreement that there will be sufficient fuel to effect the uplift of the unit from the User's premises;
- 9.18 herewith further take note that any delay in uplifting the equipment as a result of not complying with this contract, will be for the User's account, including the cost of fuel and loss of revenue by the Rentor.

10. UTILIZATION

10.1 The rental unit is fitted with a hour meter which will be checked at time of delivery and on termination of the contract or weekly/monthly if applicable. All excess hours recorded will be charged at the rate specified herein and the User shall be liable for payment thereof.

10.2 Any damage to the hour meter will be made good by the User on demand and could result in an excess charge being levied based on the average hours recorded on the hour meter reading at the time of failure from whichever cause.

11. INSURANCE

11.1. Whilst the Rentor provides insurance cover for the equipment rented or hired it does not accept responsibility for any liability of any nature whatsoever, any loss or damage, injuries, illness or consequential loss arising out of the use by the User of the equipment. The cost of insurance will be borne by the User at the prescribed rates as reflected herein. The User will further bear the costs of any excess and/or shortfall that may be outstanding or required to be paid over and above the amount payable by the insurer. The excess and or shortfall shall be payable on demand by the Rentor.

11.2 Should the User choose not to take up the insurance cover provided by the Rentor as contemplated in clause 11.1 above, the User shall be required to take up comprehensive insurance cover for the equipment at the prescribed rates for the rented equipment, failing which, in the event of any loss or damage to the equipment and in the absence of insurance cover, the User shall be fully liable for all the replacement and/or repair costs of the equipment. The replacement and/or repair costs referred to herein, shall be immediately payable on demand by the Rentor.

12. INDEMNITY

Notwithstanding anything to the contrary herein contained, while the equipment is at the risk of the User in terms of this contract, the Rentor shall not in any way whatsoever be responsible or liable to the User or any other person or persons for any acts or omissions on the part of the User or Rentor's operator or for any damages whether direct or consequential, of whatsoever nature and howsoever arising suffered by the User or any other person/s, property or thing and the User hereby irrevocably indemnifies and holds the Rentor harmless against all and any such claims including all costs relating thereto.

13. OWNERSHIP

The equipment, together with all accessories thereto and parts thereof, shall at all times remain the sole and exclusive property of the Rentor and ownership therein shall not pass to the User during, or on the termination of this agreement. The User undertakes that at all times it will protect and defend at its own cost and expense the title of the Rentor from and against all claims, liens and legal processes of creditors of the

User and shall keep the equipment free of such claims, liens, attachments and processes.

14. PROOF OF AMOUNTS

A certificate under the hand of any director or manager of the Rentor stating the amounts to be due and payable by the User to the Rentor at any time shall be *prima facie* proof for all purposes of the amounts owing at such time by the User to the Rentor, including any abuse charges and damages. Such certificate shall be sufficient for the Rentor to obtain any judgement against the User in any competent court. The User hereby waives the benefit of the legal exceptions "*non causa debiti*", "*non numeratae pecuniae*" and "*revision of accounts*".

15. DAMAGE TO EQUIPMENT

15.1 The User acknowledges that he/it shall be responsible for all and any loss and damage of any nature whatsoever and howsoever caused to the equipment as a result of abusive and or negligent handling and/or lack of daily maintenance and irrevocably and unconditionally undertakes to pay the costs of repairing such damage or making good such loss.

15.2 Abusive and/or negligent handling of the equipment and lack of daily maintenance resulting in downtime, will be for the User's account, including but not limited to the cost of repair and rental revenue due to the Rentor during the period that the equipment is inoperative. The User irrevocably undertakes to pay to the Rentor the Rentor's usual charge for hire of that equipment on a daily basis.

15.3 The User shall not be entitled to rely on any complaint which he/it might have against the Rentor unless he/it shall have given the Rentor written notice thereof **within 7 (SEVEN)** days of the cause of such complaint having arisen.

16. COSTS

The Rentor shall be entitled to recover from the User all costs to which it may be entitled in law incurred by the Rentor in connection with the recovery of any amount and/or interest in terms of this agreement, including valuation fees, storage charges, tracing fees, legal expenses and all other fees, charges, disbursements, expenses and/or commission of any nature incurred by the Rentor with attorneys or collection or tracing agents or any other person, and including attorney and own client charges and collection commission, whether legal action has been instituted or not, provided that such fees, charges, disbursements, expenses and/or commissions have been incurred in consequence of any act or omission or default of the User.

17. JURISDICTION

The User hereby consents, in terms of section 45 (1) of the Magistrate's Court Act 32 of 1944, as amended from time to time, to the jurisdiction of any Magistrate's Court which at the time of the institution of proceedings has jurisdiction over the User, in respect of any proceedings which may be instituted against it by the Rentor arising out of or in connection with this

agreement. The User further agrees that the Rentor shall, if it be awarded the costs of any proceedings, be entitled to tax such costs as between attorney and client. Notwithstanding the foregoing, the Rentor may,, in its sole discretion, disregard the foregoing consent to jurisdiction and institute any proceedings arising out of or in connection with this agreement in any division of the High Court of South Africa having jurisdiction over the User. The User further agrees that should the Rentor be awarded costs of any action instituted in the High Court of South Africa, such costs will be as between attorney and own client at a High Court scale..

18. NO WAIVERS

Notwithstanding any express or implied provisions of this agreement to the contrary, any latitude or extension of time which may be allowed by the Rentor to the User in respect of any payment provided for herein, or any indulgence of whatsoever nature shown by the Rentor to the User shall not prejudice the rights of the Rentor under this agreement, nor be deemed to be a waiver of the Rentor's rights and in particular of the Rentor's rights at any time and without notice to require strict and punctual compliance with all terms of this agreement, not be construed as a novation of this agreement.

19. ENTIRE AGREEMENT

19.1 This agreement constitutes the entire agreement between the parties and the User acknowledges that there are no representations and no collateral oral agreement of conditions precedent which in any way will vary the terms and conditions of this agreement, and no variation or amendment to any term of this agreement shall be of any force or effect, unless reduced to writing and signed by the parties hereto. The parties further confirm that this agreement correctly reflects the nature of the agreement between them, the intention of the parties, that it contains no errors or mistakes and that it is not a simulated transaction.

19.2 The User acknowledges, records and agrees that this contract shall not constitute an agreement between the parties until and unless signed on behalf of the Rentor by a director or manager of the company.

19.3 In this regard the offer of the User to enter into this contract with the Rentor shall be irrevocable for 14 (FOURTEEN) days from the date of the User's signature to this agreement and the contract shall only come into force immediately upon acceptance thereof by a director or manager of the Rentor who must place his signature to this agreement. It is expressly agreed upon between the parties that it is not necessary for the Rentor to communicate its acceptance of this agreement to the User and such notification as the User is entitled to in law is hereby waived and abandoned by him/it.

19.4 It is hereby recorded that this contract constitutes the entire contract between the parties hereto and that there were no representations, warranties, inducements or other conditions of whatsoever nature, including conditions

precedent to this contract,save insofar as such representations, warranties, inducements or other conditions are contained in this contract. It is expressly understood by the User that the Rentor employs the services of salesmen and that User expressly agrees and understands that the Rentor will not be liable for any representations, warranties, inducements or other conditions including conditions precedent to this contract entered into between the Rentor and the User relating and pertaining to such representations, warranties, inducements or other conditions which are contained on the face of this agreement and which have been accepted and signed by a director of the Rentor. If no reference on the face of this agreement is made in regard to any of the representations, warranties, inducements or other conditions precedent to this agreement given by the salesman to the User, then and in that event they shall not form part and parcel of this agreement and the Rentor shall not be liable for any such representations, warranties, inducements or other conditions given by such salesman to the User and the User shall not be entitled to set up such representations, warranties, inducements or other conditions precedent to this agreement as a defence to any action instituted against him/it by the Rentor in terms of this agreement, nor shall the User be entitled in any Court to claim rectification of this agreement so as to attempt in any way whatsoever to include any such representations, warranties, inducements or other conditions given to him by the Rentor's salesman as part and parcel of this agreement.

20. NOTICES

Any notice or communication required or permitted to be given in terms of the agreement shall be valid and effective only if in writing. Any notice to a party contained in a correctly addressed envelope and:

20.1 sent by prepaid registered post to it at its domicilium citandi et executandi; or

20.2 shall be deemed to have been received in the case of 19.2, on the third business day after posting (unless the contrary is proved) and, in the case of 19.2 on the day of delivery.

20.3 Notwithstanding anything contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to him notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

21. If the User:

(a) Fails to pay any instalment contained in this agreement on due date; and/or

- (b) Fails to pay any other sum or sums payable under this agreement on due date; and/or
- (c) Commits any other breach of this agreement; and/or
- (d) Assigns or attempts to assign his/its estate; and/or
- (e) Compromises or attempts to compromise with his creditors; and/or
- (f) Commits any act of insolvency; and/or
- (g) Is sequestrated or surrenders or applies to surrender his estate; and/or
- (h) Being a company commits any act that would result in the winding up of the company for inability to pay its debts or is or applies to be wound up or placed under business rescue; and/or
- (i) Allows any Judgment taken out against him/it to remain unsatisfied for a period exceeding 14 (FOURTEEN) days; and/or
- (j) Does or allows to be done or suffers to be done any act, matter or thing which may prejudice the rights of the Rentor under this agreement.

then in any of these above instances the Rentor, without prejudice to any other claims or rights including a claim for damages which it may have against the User, shall have the right to forthwith terminate this agreement and upon such termination the Rentor shall have the right to immediately enter upon the premises of the User and to recover possession of the goods rented and to retain by way of a penalty all payments made to date of retaking possession, and further to recover all monies due under the Agreement which have not been paid to the date of retaking possession of the equipment. The Rentor shall further have the right to claim any other and further damages which it has suffered arising out of the User's breach aforesaid, including any abuse charges and costs of repair or replacement of the equipment.

- 22. The User hereby appoints the address as set out on the face of this agreement as his/its *domicilium citandi et executandi* for all purposes incidental to and relating to this agreement and at which address the User agrees and undertakes to accept all notices or legal processes relating and pertaining to this agreement.
- 23. The Rentor shall at all times become entitled to cede and assign its rights and/or obligations in terms of this agreement or any part thereof to any person whatsoever and such consent as is required to be given by the User in law is hereby deemed to have been given by the User.
- 24. The User shall not be entitled to cancel this agreement without the prior written consent of the Rentor and should the lessee attempt to do so prior to the commencement of the Rentor's contractual obligations in terms of this contract, the User agrees to pay to the Rentor a sum equal to 33 % (THIRTY THREE PERCENTUM) of the gross total amount of rental which would have been paid by the User to the Rentor during the entire period of the Agreement as is stipulated on the face of this contract as agreed liquidated damages and upon payment having been effected neither party shall have any further

action against the other of them arising out of this contract. The User specifically records that the 33 % referred to is a fair and reasonable amount and represents an agreed pre-estimation of damages which the User understands the Rentor will suffer as a result of the User's attempt to cancel this contract.

- 25. Any claim or dispute between the parties hereto shall not be a valid reason for deferring payment of any monies due by the User to the Rentor in terms of this agreement.
- 26. The User expressly acknowledges that under no circumstances shall he/it have any counterclaim or right of set-off against any amounts which are due in terms of this agreement, and should the User have any such claims they shall form the subject matter of a separate action to be instituted by the User and shall not be capable of being raised by way of set-off against any claim which the Rentor may have by virtue of this agreement and such rights to set-off are hereby waived and abandoned by the User.
- 27. Insofar as the Rentor is a company duly registered and incorporated with limited liability according to the laws of the Republic of South Africa the User hereby waives and abandons any rights which he/it has in law in terms of Rule 62 of the Rules of the Magistrates Court Act Number 32 of 1944, or as amended from time to time, to call upon the Rentor to furnish security for costs of any action which the Rentor might institute against the User in the case of any dispute or difference arising between the User and the Rentor either during the progress or after the conclusion of the Rentor's contractual obligations in terms of this agreement relating and pertaining to any matter or thing arising hereunder or any dispute or difference arising between the Rentor and the User as to the interpretation of this contract.

28. **CONSENT TO CREDIT ENQUIRIES AND PROCESSING OF PERSONAL INFORMATION**

By signing this agreement the User hereby acknowledge and agree that it is fully aware of its rights in terms of the **Protection of Personal Information Act, Act 4 of 2013 (hereinafter referred to as POPI)** and that it had sufficient time to familiarize itself with its rights in terms thereof. The User irrevocably consents to the Rentor making enquiries about the User's credit record with any credit reference agency, bank and/or financial institution. The User likewise agrees and consents to the following:

- 28.1. For the Rentor to also provide credit reference agencies with regular updates regarding the manner in which the User manages its account including any failure to meet agreed terms and conditions;
- 28.2. To credit reference agencies making the records and details available to other credit grantors;
- 28.3. To the Rentor giving this information to any person who, in the Rentor's opinion, needs the information to carry out or protect any of the Rentor's rights or duties arising from this contract.
- 28.4. That the Rentor has the right to cede any or all of its rights or to delegate any or all of its obligations it may have arising out this agreement for inter alia the following purposes:

- 28.4.1. To obtain finance,
- 28.4.2. The sale of its business or part thereof.
- 28.4.3. To give effect to the rights of the Rentor as set out above, the User hereby consents that the Rentor may transfer all of the personal information collected of the User and as obtained in terms hereof, to any such third party.
- 28.5. The User hereby confirm that it voluntarily consent and agree that the Rentor may obtain personal information from the Dealer.
- 28.6. That any and all such personal information so obtained may be retained by the Rentor for the purposes of any future applications.
- 28.7. That the User is aware that it may refuse and object to the processing of its personal information but acknowledge that should the User not consent as aforesaid then the Rentor may decline this Agreement.
- 28.8. That the User has the right of access to and the right to rectify any such personal information collected.
- 28.9. That the User has the right to lodge a complaint to the Information Regulator.
- 28.10. That the User hereby **consent / do not consent (CIRCLE THE CHOSEN ONE)**, to the Rentor processing its personal information for the purposes of marketing by means of any form of electronic communication.