STANDARD CONDITIONS OF HIRE

1. AGREEMENT
The Owner, in consideration of the payment by the Hirer to the Owner of the amount of the hire rates set out, will let or hire to the Hirer the plant described. The anticipated hire period specified or contemplated under Clauses 16 and 17 below will be deemed to be automatically extended at the end of such period for additional periods of 24 (twenty four) continuous hours upon the same terms and conditions and upon payment by the Hirer to the Owner of the hire rates specified (or in these conditions) until terminated either by the Owner or the Hirer in terms hereof.

2. CESSION
The Hirer shall not cede or assign this agreement nor subject, mortgage, pledge nor in any way encumber the Plant, lend or part with possession thereof and shall be obliged to retain the Plant on the Site and, save for the purpose of returning it to the Owner, shall neither remove nor allow it to be removed therein or without first obtaining the written consent of the Owner.

3. PERMITS
The Hirer shall at his/its own expense apply for and obtain any permits, licenses, certificates, permission or exemptions which may be required for and their connection with the entry and use of the Plant on the Site. The Owner shall be responsible for any permits, licences, certificates, permission or exemption which may be required for the legal operation of the Plant, including any insurance required in terms of the Compulsory Motor Vehicle Insurance Act, No. 56 of 1972, as amended.

4. ACCESS
The Owner of his/its duly authorized representative shall at all times be entitled to have access to and to inspect the Plant.

5. WARRANTY
The Owner warrants that the Plant, as described, is in good working order and shall be serviced and maintained by him/it. Subject to the provisions of Clause 15 below, the signature of the daily time sheets or delivery note, where no operator is supplied in terms of Clause 10 below, shall be deemed to be acceptance by the Hirer that the Plant has performed satisfactorily or in the case of non-operated Plant is expected to perform satisfactorily.

6. DEFECTS
The Hirer shall be obliged to notify the Owner of any defect or deficiencies in the Plant immediately by the quickest practical method when such defect and deficiencies became apparent to the Hirer failing which the Hirer will be responsible for the agreed hire rate specified and the damages suffered by the Owner arising from such defect or deficiency as a result of the continued use of the Plant.

7. USE OF PLANT
During the period the Hirer undertakes and warrants that he/it will use or permit the Plant to be used only for the purposes for which it was hired and specified and not for work of a more arduous or damaging nature to the Plant.

8. FUEL, OIL & GREASE
If it is specified that the Hirer will supply fuel or oil or grease for the Owner’s account, the price charged by the Hirer to the Owner will be the lowest ruling rate in the area for fuel, oil or grease for the Plant plus a handling charge of 10% (ten per centum). Fuel, oil or grease supplied by thehirer for the Owner’s account shall be reflected daily on the daily time sheets referred to in Clause 15 hereof.

9. ESCALATION
The agreed hire rates specified overleaf shall be firm and binding on both parties. However, if there is a statutory or Government escalation in the costs of fuel, oil, grease, tyres, tubes, parts or labour during the currency of the anticipated hire period (including variations arising from any form of duty or taxation) the Owner will in terms of s 104(2) of the National Credit Act 34 of 2005 (hereafter referred to as “the Act”) give written notice to the Hirer of such changes in costs.

10. OWNER’S OPERATOR
If the Plant is supplied with the Owner’s operator (who shall be a competent plant operator and licensed where required by law), then while on Site the operator shall be under the sole and absolute control of the Hirer who/which warrants and undertakes the he/it will give the operator clear and specific instructions and directions regarding the nature and manner of all work to be performed by the operator and the Plant on the Site: The Hirer shall be obligated and warrants that he/it will during the hours that the Hirer requires the Plant to operate provided responsible supervision for the operator while the Plant is on the Site during the period of the hire. Notwithstanding anything to the contrary hereinbefore contained, the Owner shall remain the general employer of the operator and no obligation shall be placed upon the Hirer to observe the provisions of any statutory laws regulating the relationship between the Owner and the operator. Where the Site is situated outside of confines of the operator’s residence so that it is necessary for the operator to reside on or near the Site during the period of the Agreement and it is agreed that the Hirer shall supply accommodation, then such fact shall be specified, and throughout such period the Hirer shall be obliged and undertakes to provide reasonable accommodation of a standard appropriate to an operator for the operator, and transport to and from such accommodation to the Site.

11. SUBSTITUTE OPERATOR
In the event that the Owner’s operator is indisposed through illness or refuses, fails or neglects to perform his duties or in the further event that the Owner’s operator performs his duties inefficiently or fails to satisfy the requirements of the Hirer in terms of this agreement of hire then in any one of the aforementioned events the Hirer shall forthwith report to the Owner any such illness, refusal, failure, neglect, inefficiency or dereliction of duty on the part of the operator in which event the Owner shall provide, substitute operator.

12. INDEMNITY
Anything to the contrary herein contained notwithstanding while the Plant is on Site, the Owner shall not be responsible or liable to the Hirer or any other person for any acts on the part of the Owner’s operator while such operator is carrying out the instruction of the Hirer or any acts on the part of the Hirer’s operator or for any loss or damage whatsoever occasioned to the Hirer or any other person, property or thing and the Hirer indemnifies and hold harmless Owner against all claims for any nature whatsoever for any loss or damage aforesaid including all costs relating to such claims, but his indemnity shall not extend to an act solely attributable to the Owner’s operator.

13. AUTHORISED OPERATOR
Without first obtaining the written consent of the Owner, the Hirer shall not permit or allow any person other than the operator supplies with the Plant to operate the Plant.

14. HIRER’S OPERATOR
If the Plant is supplied without the Owner’s operator or if the Owner agrees to the Hirer providing and operator in terms of Clause 13 then the Hirer shall supply a competent plant operator and licensed where required by law to operate the Plant and shall undertake such regular daily routine service of the Plant if it is necessary and/or requisite to keep it in good working order and condition, subject to the provisions of Clause 8 above, the Hirer shall supply for the Plant any lubricants and water of the correct grade and type recommended and stipulated in the Plant Manufacturer’s Handbook.

15. TIME SHEETS
The Hirer shall be charged on the basis of daily time sheets where these are applicable. Such time sheets shall be kept in the custody of the Owner’s operator, if an operator is supplied and shall be presented to the Hirer each day for signature and if signed by the Hirer such daily
time sheets be deemed accepted by him/it. All time sheets shall be signed clearly by or on behalf of the Hirer and the person so signing shall also clearly print his name. In the event that the Hirer refuses to sign any daily time sheets and accept the figures appearing thereon he/it shall be obliged to notify the Owner of his/is refusal and the reason therefore within 24 (TWENTY FOUR) continuous hours and should he/it fail to do so, for any reason whatsoever then, in such event, the figures appearing on a signed sheet shall be evidence of the operating time and the amount owing thereunder subject to the provisions of Clause 16a hereof, which shall automatically apply if the daily time sheets are not for any reason completed.

16a MINIMUM HOURS
Subject to the provisions of Clauses 18, 19, 22, 23 and 24 below, and unless otherwise agreed and specified in writing on a separate document signed by the Owner and the Hirer, the hire rate shall be charged at the minimum hours specified per diem on weekdays, from Mondays to Fridays inclusive, and on Saturdays, should the Plant be required on Saturdays, whether or not the Plant operates for such period of time. If the Plant is supplied with the Owner’s operator and cannot be operated due to inclement weather conditions, the hire rate for the period concerned shall be the rate for inclement weather. If it is the Owner’s responsibility to supply an operator no hire shall be charged for those hours during which no operator is available, in terms of the provisions of Clause 1 above.

16b IDLE TIME
Where the actual hire period exceeds 30 (THIRTY) consecutive days and the Plant is thereafter idle, i.e. when the Plant is operative but not required by the Hirer to operate, for the whole of the minimum period referred to in Clause 16a above such period may be considered as idle time, idle time shall charges be at the rate specified.

17. TERMINATION
17.1 Subject to the provisions of Clause 1 above, should the Hirer wish to terminate the hire, the Hirer will do so in terms of s 122 of the Act. The Hirer is obligated to give the Owner 24 (twenty four) hours notice of such termination, where after the Owner shall have the right to retake possession of the Plant.

18. DOWNTIME
Downtime means the time when the Plant is inoperative through its inherent fault, fair wear and tear, and normal running repairs, or time for changing tyres and repairing punctures in excess of 2 (TWO) hours, or when no operator is available in terms of the provisions of Clause 11, or when the Plant is inactive during the periods of refuelling where the Owner is responsible for refuelling, but shall not include periods when then Plant is refuelling when the Hirer is responsible for the supply of the supply of fuel, or is inoperative due to the Hirer’s misuse, misdirection or negligence or when it is specified in terms of Clause 20a below, that tyre and tube maintenance is the Hirer’s responsibility.

19. BREAKDOWN REPORT
A breakdown shall in the first instance be reported by the quickest practical means by the operator to the Hirer or Hirer’s representative whereafter the Hirer shall immediately report any breakdown to the Owner by the quickest practical means of communication available to the Hirer and shall forthwith furnish confirmation in writing. If a breakdown has been reported in accordance with this Clause the Hirer shall not be charged for the duration of the downtime which shall then be deducted from the minimum hours specified. If the Hirer fails to notify the Owner of the breakdown in the Plant in terms of this Clause then the Hirer shall not be entitled to any reduction in the hire rate until he/it notifies the Owner of such breakdown.

20a TYRES AND TUBES HIRE’S RESPONSIBILITY
If it is agreed and recorded in a separate document signed by the Owner and the Hirer that tyres and tubes are the Hirer’s responsibility then the Owner warrants that the tyres on the Plant supplied will be in good condition and the Hirer shall be liable and responsible for all repairs or the cost of repairing all tyre and tube punctures or damage to tyres during the period of hire and shall be responsible for all losses, cuts or abrasions of tyres and the replacement thereof while the Plant is on Site. Unless the Hirer notifies the Owner on writing to the contrary within 24 (TWENTY FOUR) continuous hours of delivery of the Plant to Site, the tyres on the Plant shall be deemed to be in good condition. Should the Hirer object to the condition of the tyres in terms of this Clause, and a dispute arises as to such condition then the dispute shall be referred to a representative appointed by the Company which supplied the tyres, whose decision shall be final and binding on both parties.

20b TYRES & TUBES OWNER’S RESPONSIBILITY
Unless the provisions of Clause 20a above apply, tyres and tubes are the Owner’s responsibility and the Owner shall be liable and responsible for all repairs or cost of repairing all tyres and tube punctures or damage to tyres during the period of hire and shall be responsible for all losses, cuts or abrasions of tyres and tubes and the replacement thereof while the Plant is on Site, save where such damage or replacement is due to the HIRE’S misuse, misdirection or negligence.

21. CARE OF PLANT
Subject to Clauses 10 and 12 above the Hirer shall be responsible for all expenses arising from the breakdown, loss of or damage to the Plant occurring through the Owner’s negligence, misdirection or misuse, and shall include the traveling time and costs of the Owner or his /its nominee and time lost and expenses incurred through the Plant, being immobilised or bogged in wet ground, rockfall subsidence, inundation or the like.

22. SELF PROPELLED PLANT
Where the Plant is self propelled and is required to travel under its own power then the period of hire shall be deemed to commence from the time it commences to move on dispatch from the Owner’s depot or site nominated by the Owner, whichever is the nearer to the Site where it is required by the Hirer until the time it ceases to move on its return to the Owner’s depot or site nominated by the Owner, whichever is the nearer to the Site where it is required by the Hirer. When the Plant, being self propelled, is required to travel under its own power with an operator supplied by the Owner, the risk of loss or of damage to the Plant shall pass to the Hirer when the Plant is delivered or presented for delivery to the Hirer’s site specified, and shall revert to the Owner when the Plant commences to move on its return to the Owner’s depot or site nominated by the Owner.

23. OWNER’S TRANSPORT
Where the Plant is required to be transported by lowbed or any other means of transport and such transport is undertaken by the Owner or is arranged by him/it then, unless otherwise specified, the hire period shall be deemed to commence when the Plant is offloaded on delivery to the Site and the risk of loss or of damage to the Plant shall pass to the Hirer when the Plant is delivered or presented for offloading at the Hirer’s site specified, and shall revert to the Owner when the Plant has been loaded for return to the Owner’s depot or site nominated by the Owner, or after the period of notice specified in Clause 17 above has expired, whichever of the two events shall occur first.

24. HIRER’S TRANSPORT
When the Plant is required to be transported by lowbed or any other means of transport, excluding self-propulsion, which is provided or arranged by the Hirer, then, unless otherwise specified, the hire period shall be deemed to commence when the Plant is offloaded on delivery to the Site but not withstanding the a foregoing in either of the above events the risk of loss of or damage to the Plant while in transit or being handled, loaded or offloaded at any place other than the Owner’s depot or nominated site shall be assumed by and shall pass to the Hirer when the Plant had been loaded at the Owner’s depot or nominated site, and shall remain with the Hirer until the Plant is returned to the Owner for offloading by it at its depot or nominated site, whichever is the nearer to the Site where it is required by the Hirer, without derogating from the
Owner’s right to claim from the Hirer such further damages as it might suffer consequent upon such loss of or damage to the Plant. In any case, where transport is provided or arranged by the Hirer whether on commencement or termination of the hire period then the Hirer shall be obliged to provide for such transport forthwith.

25 ACCOUNT
The Owner undertakes to provide the Hirer with statement of account as in the terms of the provision of s 108 to s 110 of the Act; Payments of the amount shown as owing by the Hirer on any account rendered by the Owner in terms of Clause 25.1 shall be made by him/it within 30 (thirty) days of the date of such account; The company shall be entitled to charge interest on all overdue amounts subject to the provisions of s 101(d) and s 103 of the Act. Such interest shall be calculated and payable monthly in advance on the first day each and every successive month on the balance outstanding from time to time by the customer to the company, and shall be added to the amount due to the company by the customer in respect of the purchase price of the goods; In the event of a dispute between the parties with regard to any aspect concerning an account, the parties will follow the prescribed procedure regarding “Disputed entries in accounts” as set out in s 111 of the Act.

26 DEFAULT
26.1 In the event that the customer defaults on payment of its account strictly on the due date the company shall, in addition to all other remedies available to it in the law:
26.1.1 In terms of s 129(1)(a) of the Act, draw the default to the notice of the customer,
26.1.2 Should the customer not remedy its default in accordance with the provisions contained in the letter sent in terms of clauses 26.1.1, the company shall thereafter initiate legal proceedings against the customer in terms of s 130 of the Act;
26.1.3 The company shall furthermore be entitled to terminate the agreement in terms of s 123(2) or (b) respectively;
26.1.4 The customer will however remain liable to make payment for all amounts lawfully charged in terms of the agreement as is provided for in s 123(4) of the Act, despite action in terms of clause 26.1.3 having been taken by the company;
26.1.5 The company will be entitled to claim compensation in terms of s 132(1) of the Act in respect of any costs of repossession of property as a result of action being taken in terms of clause 13.1.2 as well as collection costs in terms of s 101(1)(g) of the Act;
26.1.6 As in terms of s 95 of the Act, no relaxation which the seller may have permitted on any occasion in regard to the carrying out of the debtor’s obligations shall prejudice or be regarded as a waiver of the seller’s rights to enforce its obligations or any subsequent occasions.
26.1.7 The company shall be entitled to institute legal proceedings against the debtor as in terms of clause 26.1.2 in any Magistrate’s Court having jurisdiction over the debtor notwithstanding that the claim or the value of the matter in dispute may exceed the jurisdiction of the Magistrate’s Court, and the debtor shall be entitled for costs in the action as in terms of clause 26.1.5.

27 PAYMENT
Unless otherwise directed in writing by the Owner personally or through his/its Attorneys all payments to be made hereunder shall be made free of exchange at the place indicated on the owner’s statements or accounts and payments shall not be valid and binding upon the Owner unless so made.

28 WHOLE AGREEMENT
This agreement records the whole agreement between the Owner and the Hirer and overrides all other agreements purporting to relate to the hire of the Plant and collateral verbal agreements are expressly excluded. No condition, term or representation not expressed herein shall be binding on the Owner or the Hirer. No variation shall be binding on either of the parties unless agreed to by the Owner and Hirer in writing.

29a CONSEQUENTIAL LOSS
Neither party shall under any circumstances whatsoever at any time be liable for any claims for consequential loss or damage which may be sustained by the other.

29b The Owner shall under no circumstances whatsoever, at any time, be liable for any claims for consequential loss or damage which may be made by an third party whatsoever in connection with or arising out of this agreement and/or the use of the Plant, save when such claim arises from an act solely and directly attributable to the Owner’s operator, or where the risk of loss of or damage to Plant while it is in transit or being handled remains with the Owner in terms of this agreement, and the Hirer hereby further indemnifies the Owner against all such claims.

30a GENERAL
Marginal Captions: The marginal captions are intended to facilitate easy reference to the provisions of this agreement and shall not affect the interpretation of such provision.

30b Jurisdiction: The Owner shall be entitled, at his/its option, to institute any legal proceedings against the Hirer which might arise out of or in connection with this agreement in any Magistrate’s Court having jurisdiction in respect of the Hirer’s person, not withholding that the claim or the value of the matter in dispute exceeds the jurisdiction of such Court in respect of the causes of action.

30c Waiver: Any act of relaxation, indulgence or grace granted by the Owner to the Hirer shall not operate as or be deemed to as a waiver by the Owner of his/its rights hereunder or novation of this agreement.

31 Anything to the contrary hereinafter contained express or implied notwithstanding where the Plant described is non-operated plant then the following additional Terms and Conditions of Hire relating to non-operated plant shall apply:

32 SPECIAL TERMS AND CONDITIONS FOR THE HIRE OF NON-OPERATED Plant

32a ACCESSORIES:
(i) Unless the context otherwise required, the word Plant shall be deemed to be the power source and shall include any accessories supplied with the Plant at the commencement of the anticipated hire rate of the Plant specified.
(ii) Accessories to or for the Plant shall be hired independently from the Owner and the breakdown of any accessory shall not be deemed to be a breakdown in the Plant and shall not affect the hire rate of the Plant specified.
(iii) Should the Plant, being the source of power upon which the accessories are dependent for their operation, breakdown, otherwise than through the Hirer’s negligence, misdirection or misuse, then, subject to the provision of Clause 19 above, the Hirer shall not be charged the hire rate for those accessories during the duration of the downtime applicable to the power source.
(iv) Accessories ordered by the Hirer and supplied by the Owner subsequent to the commencement of the hire periods shall be deemed accessories specified.

32b HIRE OF NON OPERATED PLANT AND TRAVELLING;
Not withstanding anything to the contrary contained in Clause 23 and 24 above, the hire period in respect of any non operated plant, whether self propelled or transported, shall be deemed to commence when the Plant described leaves the Owner’s depot or nominated site, whichever is the nearest to the site where it is required by the Hirer, until the time it is delivered, to the Owner’s depot or site nominated by the Owner.