

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 satisfactory or in the case of non-operated **Plant** is expected to perform satisfactory.

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 hires 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 the **Hirer** 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 an 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/its 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 there under 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 be charged 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 refueling where the **Owner** is responsible for refueling, but shall not include periods when the **Plant** is refueling 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 he **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 **Hirer'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 hire period 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 of or 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 of or 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 a 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, notwithstanding 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 be a waiver by the **Owner** of his/its rights hereunder or novation of this agreement.

31 Anything to the contrary hereinbefore 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:**

Notwithstanding 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**.