

## TERMS AND CONDITIONS

### 1. RENTAL AGREEMENT BETWEEN YOU AND US

These Terms and Conditions, together with:

- (a) Each Rental Schedule provided to You by Us, whether signed or not; and
- (b) Any Special Conditions (if any) specific to the type of Equipment You have rented,

sets out the terms of the rental agreement (the "Rental Agreement") between You and Us. The provision or acceptance of a Rental Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Rental Agreement. Any terms contained in any document supplied by You, including any terms in Your purchase order, will not form part of the Rental Agreement.

### 2. DEFINITIONS

When We refer to the following terms in this document:

- *"Credit Application" means any application for a Credit Account completed by You.*
- *"Credit Account" means any billing arrangement We have extended to You upon Our approval of the Credit Application.*
- *"Environmental Laws" means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment.*
- *"Equipment" means any equipment provided by Us to You under the Rental Agreement, including any associated or attached tools, accessories and parts available for rental.*
- *"Rental Charge" or "Rental Charges" means the rates and charges payable by You for the rental of the Equipment.*
- *"Rental Period" means the period described in clause 4.*
- *"Rental Schedule" means the document provided by Us to You which includes details of the Equipment You have rented, the Rental Charge, any other applicable charges, the expected rental period and the address of use of OR for delivery of the Equipment.*
- *"Relevant Documents" means: (a) the Credit Application; and (b) any Guarantee, Indemnity & Charge which guarantees all monies owing by You to Us.*
- *"We/Us/Our" means the legal entity of Full Spectrum Hire (Pty) Ltd Hillfox. We are in the business of renting; sales and repairs of equipment to construct; develop; improve and renovate.*
- *"You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us. The reference to "You/Your" includes any of your employees, agents and contractors.*

### 3. OUR RENTAL COMMITMENT TO YOU

We agree to rent the Equipment to You and:

- (a) guarantee to provide Equipment to You that are suitable for the purposes of intended use; and
- (b) subject to clause 8.6, allow You to exclusively use the Equipment during the Rental Period.

### 4. THE RENTAL PERIOD

- 4.1 The Rental Period commences on the earlier of the following:
  - (a) when You take possession of the Equipment; or
  - (b) if You request delivery and collection of the Equipment, the time We deliver the Equipment to the address in the Rental Schedule.
- 4.2 In the case of equipment delivered and returned by Us, the Rental Period is deemed to be in effect until such a time that you have notified Us via Phone or via Fax or Personally of the termination of the Rental Period. It is your responsibility to ensure that you are issued with and receive a Rental Termination Number, especially in the case of cancellation via fax. Should the Date and Time of your Rental Period be disputed, the Rental Termination Number and the registered date and time (as recorded by us) of the allocation of such Number, shall constitute *prima facie* proof of the Date and Time when such Notice was given.
- 4.3 The Rental Period includes weekends and public holidays.
- 4.4 In the event that You do not return the equipment on the termination date, We shall be entitled to payment of damages in an amount equal to the rental costs stated in this Agreement until such a time that the equipment is returned, replaced or paid in full.
- 4.5 The Rental Period shall continue until such date and time when:
  - (a) We accept return of the equipment at our offices during office hours, after which the rental charges in terms of this Agreement shall cease;
  - (b) You inform Us via Phone; Fax or Personally, and You in turn, receive a Rental Termination Number;
  - (c) We notify You via Phone or Fax, after which We are entitled to collect the equipment from You or Your site;
- 4.6 In the event where You do not specify the Rental Period for equipment being hired and/or if You did not specify that the rental period will be indefinite, the Rental Period for unreturned equipment shall be deemed to be 24 (twenty-four) hours, or until such a time when the Rental Period is terminated by either party.
- 4.7 Notwithstanding the fact that You have specified the Rental Period for the equipment so rented, You must notify Us 1 (one) day before termination of the rental period of the time, date and place where the equipment is to be collected, should it have been agreed upon that We shall collect the equipment. If the equipment is not ready for collection when We arrive to collect the equipment on the

agreed upon date, time and place, You will be liable for the extra time that You are in possession of the equipment as well as the non-collection of the equipment at Our Standard Rates (available on request).

- 4.8 Either party may terminate the extended Rental Period by giving 24 (twenty-four) hours' notice.
- 4.9 You must obtain a valid Rental Termination Notice Number, as set out in Clause 4.2 above and, in all circumstances, ensure that You obtain a copy of the Rental/Delivery letter from Us, on which the returned equipment is to be documented, for the termination to be valid.
- 4.10 Saturdays are deemed to be working days, unless You inform Us, in writing, to the contrary.
- 4.11 One (1) working day is deemed to be equivalent to 9 (nine) business hours.

## 5. HOW WE CALCULATE YOUR RENTAL CHARGES

- 5.1 You will pay Us for the rental of the Equipment and/or Services at Our Standard Rates which is available on request.
- 5.2 The Rental Schedule will specify the type of rate which will apply to You and the method of calculation.
- 5.3 Additional Rental Charges as set out in the Rental Schedule will apply if the Equipment is used for more than 9 hours per day.
- 5.4 You will be charged for the rental of Equipment for the full Rental Period. For the avoidance of doubt, You must continue to pay the Rental Charges and other charges after the Rental Termination Date if You have not returned the Equipment to Us by the Rental Termination Date. This obligation survives termination of the Rental Agreement.

## 6. OTHER CHARGES

In addition to the Rental Charges, You agree to pay:

- (a) for any consumables, fuel or trade materials We supply to You;
- (b) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Rental Schedule. Such charge may include a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by You.
- (c) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
- (d) a charge for pumping out waste tanks or refilling water or fuel tanks;
- (e) any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;
- (f) if You request operational guidance or training on the use of the Equipment and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us;
- (g) any reasonable charges incurred by Us if we are unable to inspect or carry out maintenance on the Equipment during normal working hours;

## 7. PAYMENT

- 7.1 You must pay all Rental Charges and other fees, charges and costs that become due and payable under this Rental Agreement and as reflected on any Tax Invoice issued by Us relating to the transaction in question, against order or within the period as stipulated herein below. Such payment must be made in the following terms:
  - In cash (South African Currency) on order;
  - The risk of payment via cheque by post vests in You;
  - If You are a cash hire Client – the cost of the deposit and the hire (as determined by Us);
  - If You are a credit approved Client – within 30 (Thirty) days from the end of the month in which a Tax Invoice has been issued by Us;
  - You agree to pay the amount on the Tax Invoice at Our offices.
- 7.2 If You do not pay the Tax Invoice in full and on the due date as stipulated in clause 7.1, We are entitled to:
  - (a) institute immediate action against You at Your sole expense;
  - (b) terminate the Agreement and take possession of any Equipment rented or sold to You and claim damages;
  - (c) claim all other amounts in respect of all transactions between You and Us, which shall be due, owing and payable immediately, irrespective of the date(s) on which these transactions were effected or when payment thereof would become due and payable.
- The remedies available to Us as stipulated in clauses 7.1 and 7.2 are without prejudice to any other right that We may have under this Agreement or in Law.
- 7.3 We expressly reserve Our right to stop any and all further services and/or supply to You upon cancellation of the Agreement or Non-Payment.
- 7.4 You will lose your credit approval immediately if payment is not made in terms of clause 7.1. Furthermore, all outstanding amounts become immediately due and payable. Any and all discounts will also be forfeited should the full amount not be made on the due date.
- 7.5 Should You dispute a Tax Invoice amount, You agree and undertake to notify Us in writing within 14 (Fourteen) days after receipt of such Tax Invoice, failing which and after 14 (Fourteen) days after issuing a Tax Invoice, same shall be considered to be correct and final.
- 7.6 If You do not pay the Tax Invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Rental Agreement, Interest, and in the following terms:
  - Interest will be payable at the maximum legal interest rate prescribed by the National Credit Act, Act 34 of 2005 if this Act is applicable; or
  - Interest will be payable at double the repo-rate as declared by the Reserve Bank if the National Credit Act is not applicable;
  - Interest will be calculated on any amount due to Us daily and compounded monthly from the date of acceptance of the order.
- 7.7 You agree that no debt to us shall become prescribed prior to the expiration of a period of 6 (six) years from the date on which the debt becomes due and payable.
- 7.8 You agree that We may determine and prove the amount due and payable to us by a Certificate of Indebtedness, which is to be issued and signed by any of Our Directors or Members or Managers, whose authority does not need to be proved, or by any independent auditor. Such Certificate is binding and constitutes *prima facie* proof of Your indebtedness to Us.
- **SURETYSHIP:**

- 7.9 The signatory hereto commits himself/herself in his/her personal capacity as Shareholder (in the case of a company); Member (in the case of a corporation) or Owner or Partner, as surety and co-principal debtor, jointly and separately, for the full amount due to Us and agrees that these Standard Terms and Conditions and Terms of Agreement will apply in exactly the same way to him/her.
- 7.10 It is specifically stated that the signatory hereto, in his/her capacity as surety, chooses its address for any notice or service of legal documents or processes as the business address of the Client or his/her physical address as found in the Credit Application or Rental / Delivery Note or Tax Invoices.
- 7.11 You guarantee payment to Us of the difference of any amount due to Us prior to any compromise, settlement or in terms of any business rescue plan provided for in the Companies Act, Act 71 of 2008, and the amount We actually received from You through the reduction of Our claim against You, whether the amount received by way of compromise, settlement or on the basis of any business rescue plan, regardless of whether the plan provides for Your release, or under any circumstances whatsoever.

## 8. YOUR OBLIGATIONS TO US

- 8.1 This Rental Agreement is personal to You and You must not allow nor authorise any other person or entity to use, re-rent or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- 8.2 You agree that before taking delivery of the Equipment, You have satisfied Yourself as to the suitability and condition of the Equipment and You will ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer. Subject to clauses 14.2 and 14.3, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose. We further do not undertake to provide You with any technical advice. Should we, however, elect to provide such technical advice, We cannot verify the correctness of such technical advice.
- 8.3 You must:
  - (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - (b) ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to perform high risk work;
  - (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer or any legal authority;
  - (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
  - (e) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
  - (f) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.
- 8.4 You must:
  - (a) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and Our instructions at Your own cost;
  - (b) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent;
  - (c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment;
  - (d) not remove fuel or oil tank caps, plugs or seals from the Equipment and ensure that they are in place when You return the Equipment; and
  - (e) arrange for the emptying of any waste tanks.
- 8.5 You will allow Us to enter Your premises and inspect and/or maintain and/or recover and/or repair the Equipment at all reasonable times during the Rental Period during normal working hours. You can also request to conduct a joint inspection of the Equipment with Us at the end of the Rental Period.
- 8.6 Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- 8.7 You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.
- 8.8 You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances. You must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, You must effectively decontaminate the Equipment, as well as provide Us with written details of decontamination processes applied. If, in Our opinion acting reasonably, the Equipment is not capable of being decontaminated, You will be charged for the new replacement cost of the Equipment.
- 8.9 You agree that You have no right to withhold any payments from Us for any reason whatsoever and that You are not entitled to set off any amount due to Us against any amount due to You by Us against any debt.
- 8.10 You agree that no extension of any payment will be extended to You, further that any such extension shall not be applicable nor enforceable unless We have agreed thereto. In such event, any such extension must be reduced to writing and must be signed by You and Our duly authorised representative.

## 9. OWNERSHIP OF THE EQUIPMENT

- 9.1 Except as detailed in clause 9.4, You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment. Your rights to use the Equipment are as a renter only.
- 9.2 You are not entitled to offer, sell, assign, sub-let, charge, encumber or create any form of security interest over, or otherwise deal with the Equipment in any way.
- 9.3 In no circumstances will the Equipment be deemed to be a fixture.
- 9.4 In the event that any equipment rented to You is of a generic nature and becomes Your property by way of legislation (*commixtio confusio*), equipment of the same nature, quality and quantity shall be transferred to us on notice of cancellation of the Agreement.

## 10. RESPONSIBILITY FOR THE EQUIPMENT

- 10.1 You are responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Rental Period.
- 10.2 You undertake to comprehensively insure the Equipment for the new replacement value (including Value Added Tax) until the Equipment is returned.
- 10.3 You are responsible for the Equipment at all times during the Rental Period and before the Equipment is returned by You and accepted by Us on expiry of the Rental Period or cancellation of the Agreement.
- 10.4 Should the Agreement be that We collect the Equipment from You, risk and responsibility transfers to Us from such time that We take possession of the Equipment, or within 48 (forty-eight) hours (Saturdays; Sundays and Public Holidays excluded) from notice of termination of the rental period by You (who should be in the possession of a valid Termination Number), whichever comes first.
- 10.5 At all times during the Rental Period, You must store the Equipment safely and securely.

## 11. RETURN OF EQUIPMENT

- 11.1 You must return the Equipment to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. If You do not properly clean the Equipment, We will charge You a cleaning cost in accordance with clause 6(c).
- 11.2 If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection. You will further ensure that the equipment is readily accessible, properly vacated and recoverable.
- 11.3 You indemnify us against any and all claims for damages and/or losses arising from any direct or indirect act or omission by You, Your employees or agents during the removal of the equipment from You.

## 12. WHAT TO DO IF EQUIPMENT BREAKS DOWN

- 12.1 In the event that the Equipment breaks down or becomes unsafe to use during the Rental Period You must:
  - (a) immediately stop using the Equipment;
  - (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - (c) take all steps necessary to prevent any further damage to the Equipment itself; and
  - (d) not repair or attempt to repair the Equipment without Our written consent.
  - (e) notify Us telephonically of such breakdown or defect. Upon receipt of such breakdown or defect, You will be issued with a Breakdown Number. The date and time recorded by Us upon issuing You with such number, will be used as *prima facie* proof of the date and time of Your notice, in the event of a dispute.
- 12.2 Except if clause 13.1 applies, upon receiving notice from You under clause 12.1, We will:
  - (a) determine whether the equipment is defective or unfit for the purpose for which it is intended; and
  - (b) be entitled to either terminate this Agreement; or
  - (c) take all reasonable steps to provide suitable substitute Equipment as soon as reasonably possible after being notified by You; or
  - (e) refund any rental charges already paid.

## 13. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED

- 13.1 If the Equipment has broken down or becomes unsafe to use as a result of Your acts or omissions, (or the acts or omissions of Your employees or contractors) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Rental Period, You will be liable for:
  - (a) any costs incurred by Us to recover and repair or replace the Equipment; and
  - (b) the Rental Charges for that portion of the Rental Period during which the Equipment is being recovered and repaired or replaced,
- 13.2 Provided that You pay the costs and charges described in clause 13.1, We will return or replace the Equipment, and You must continue to pay the Rental Charges for the remainder of the Rental Period.

## 14. INDEMNITIES AND EXCLUSION OF LIABILITIES

- 14.1 Except as expressly provided to the contrary in this Rental Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Rental Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 14.2 Nothing in this Rental Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited.
- 14.3 We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that You are liable to Your customers for or any loss suffered by third parties under or relating to this Rental Agreement or its subject matter, whether in contract, damage (including without limitation negligence), in equity, under law, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 14.4 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:
  - (a) personal injury;
  - (b) damage to property; or
  - (c) a claim by a third party,
- in respect of Your rental or use of the Equipment or Your breach of the Rental Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Rental Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

- 14.5 Each indemnity in this Rental Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Rental Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Rental Agreement.
- 14.6 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Rental Period and you indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.
- 14.7 You acknowledge that You do not depend on any representations made by Us in respect of the Equipment and services or any of its attributes that lead to this Agreement except those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data provided by Us in respect of the Equipment or services, orally or in writing, shall not be in any way part of the Agreement, unless agreed to in writing by Us.
- 14.8 You indemnify Us and any of Our employees for any and all losses and/or damages suffered by You or any other third party if the Equipment was used for any other purpose for which it was designed for. Your responsibility and liability will not be limited or excluded under the Rental Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Rental Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.
- 14.9 You confirm that You use and implement the Equipment at Your own risk and You indemnify Us against any claims of any kind whatsoever by You, employees, agents, representatives or third parties arising from the use of the Equipment whilst under Your control in terms of the above. All costs and expenses or representations shall be binding on You.
- 14.10 A failure by You, without the prior written consent of Us to retain the possession or removal of the intended rental or use of the Equipment for any purpose other than those indicated or used at the time of the order beyond the stipulations of Use of the Equipment by unauthorized, inexperienced, unqualified or unlicensed persons will incur an additional charge of 50% (Fifty Percent) of the agreed upon daily rate over and above the standard agreed upon daily rate, from the moment of occurrence to the issue of a delivery letter by Us.
- 14.11 You agree to pay all additional costs arising from any acts or omissions by You, including, but not limited to suspension of work, amendment of requirements, failure or delay to provide details necessary to continue work according to schedule or requirements that have been completed earlier than agreed.
- 14.12 We reserve the right, at Our sole discretion, to provide alternative Equipment of the same quality and quantity at the prevailing prices as those ordered by You if such Equipment is replaced, superseded or the manufacture thereof is terminated.
- 14.13 Under no circumstances shall We be liable for any damage arising from any use, abuse, misuse or improper care of the Equipment by You, Your employees or Your agents which causes the Equipment to be damaged while in Your, Your employees' or Your agents' care and control.
- 14.14 We will under no circumstances be liable for any resulting damages, including loss of profits or any delictual liability of whatever nature, whether caused negligently or innocently.
- 14.15 Delivery and performance times quoted are merely estimates and are not binding on Us.
- 14.16 If We agree to involve a third party in order to transport the Equipment, We are hereby authorized to engage a third party on behalf of You and under the conditions appropriate to Us.
- 14.17 You indemnify Us against any claims against Us that may arise from such agreement in clause 14.16.
- 14.18 Any person making use of transport provided by Us; Our Owner; any of Our Employees; agents or any person acting on Our behalf in the course of Our business, do so entirely at their own risk. You hereby indemnify Us against any loss or damage (including consequential or special damage or loss to any profits); loss of life; bodily injury or damage to or loss of property of whatever nature, whether directly or indirectly, by any form of negligence by Us; Our Owner; any of Our Employees; agents or any person acting on Our behalf arising out of or in any way connected with the conveyance or transportation of a passenger getting into; onto and/or alighting from any vehicle on any public or private road in the Republic of South Africa.

## 15. TERMINATION OF RENTAL AGREEMENT BY US

- 15.1 We may terminate this Rental Agreement and any Rental Period immediately by giving notice to You, if:
  - (a) You breach any term of the Rental Agreement and fail to remedy the breach within 7 (Seven) days of written notification of the breach; or
  - (b) You become bankrupt or insolvent, execute a personal insolvency agreement, enters into liquidation, administration, ceases to carry on business or judgment is obtained against You or any of Your principals.
- 15.2 We may terminate the Rental Agreement and any Rental Period for any other reason on 24 hours' notice.
- 15.3 We may terminate the Rental Agreement immediately if You or any third party has made a false statement in, or breached any provision of the Relevant Documents.
- 15.4 These rights of termination are in addition to any other rights either party has under the Rental Agreement and does not exclude any right or remedy under law or equity.
- 15.5 We may cancel an order due to causes beyond Our control including but not limited to acts of God, war, terrorism, protests, civil commotion, riots, strikes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain power, employees, materials or supplies or transportation.

## 16. RECOVERY OF THE EQUIPMENT

- 16.1 If You are in breach of the Rental Agreement or if the Rental Agreement or a Rental Period has been terminated under clause 15, We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so and You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.
- 16.2 In the case of cancellation, You will be liable to pay:
  - (a) The difference between the selling price and the value of the equipment at the time of recovery; and
  - (b) All other costs incurred in the recovery of the equipment.
- 16.3 The value of such recovered or retained pledged equipment will be deemed to be the value placed on them by a sworn valuator after such recovery and such valuation will be sufficient proof of the value. If the equipment is not recovered for any reason whatsoever, the value shall be deemed and accepted to be zero.
- 16.4 In the case of cancellation by Us, we are entitled to recover/repose the equipment rented or sold that has been delivered to You and remains unpaid by the due date.
- 16.5 In the event of cancellation of this Agreement by Us, we are entitled to not draw up and produce an unmade balance of a contract and to recover any loss suffered thereby from You.

## 17. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND / OR DEFECTIVE CONDITION

If You collect or receive the Equipment and find that it is broken, damaged and/or defective, You must notify Us within 1 (one) hour after You collect or receive the Equipment. If You do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.

## 18. CALL OUT FEE

- 18.1 Should one of Our Technicians be called out by you, and the breakdown and or defect is caused by Your negligence, including, but not limited to:
  - Equipment not switched on; or
  - Equipment running out of fuel;
 And Our Technician must turn on the equipment; refuel and/or bleed the equipment, an appropriate hourly rate call out fee will be applicable. This hourly rate is based on our standard rates and is available on request.
- 18.2 Such call out fee will be calculated from the time Our Technician leaves our premises and until time of return.
- 18.3 A travelling fee will be charged, based on our standard rates and is available on request. Such travelling fee will be calculated per kilometre that the Technician travelled from Our premises to You and back to Our premises.
- 18.4 For the avoidance of doubt, You remain responsible for daily maintenance and care of all Equipment in accordance with clause 8, including but not limited to, checking of all fluids (fuel, oil, water, battery levels, waste tanks etc.), checking of all hoses (hydraulic, fuel and water), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

## 19. PRIVACY

- 19.1 We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence details, credit card details, date of birth, and credit or business history. You consent to Us using Your personal information in order to:
  - (a) fulfil functions associated with the rental of Equipment to You, including but not limited to assessing Your credit worthiness;
  - (b) provide services to You;
  - (c) prevent theft of Our Equipment;
  - (d) enter into contracts with You or third parties.
- 19.2 You also consent to Us disclosing Your personal information:
  - (a) to any credit provider, credit control agency banks and other institutions involved in rating credit for the purposes of determining Your credit worthiness; and
- 19.3 You agree that You will not hold Us liable for the good faith disclosure of any of this information to such third parties and that no further specific consent needs to be obtained for such disclosure to such third parties.
- 19.4 You agree that we may share Your personal information to third parties in the event that You have indicated that We have a trade reference to such third party and You agree that We will not be liable for the good faith disclosure of any of this information to such third parties.
- 19.5 You have the right to access the personal information We hold about You.

## 20. SEVERABILITY

If any part of this Rental Agreement becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

## 21. GOVERNING LAW

The Rental Agreement and its interpretation is governed by the laws of South Africa and each party submits and consents to the jurisdiction of any competent Magistrate Court in respect of any proceedings arising in connection with the Rental Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## 22. ENTIRE AGREEMENT

- 22.1 The Rental Agreement comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the rental of the Equipment unless agreed to by both parties, reduced to writing and signed by you and a duly authorised representative of Us.
- 22.2 This Agreement will govern all future contractual relationships between You and Us.
- 22.3 This Agreement applies to all current- and future debts between You and Us.
- 22.4 This agreement is final and binding and is not subject to any suspensive or resolutive conditions.
- 22.5 Any contradictory terms by You is expressly excluded.
- 22.6 These Terms and Conditions supersede all prior terms and/or conditions of agreement without any prejudice to any securities or guarantees held by us.
- 22.7 These Terms and Conditions apply to all of Our employees, servants and subcontractors.

## 23. DELIVERY

- 23.1 A signed Delivery Note will constitute sufficient proof that the Equipment has been delivered to and received by You in good condition.

- 23.2 Delivery of the Equipment or services to You will take place at our Place of Business.

## 24. VARIATION

To the extent that a variation to this Rental Agreement is not detrimental to You, from time to time, We may vary this Rental Agreement. If We intend to do so, We will give You 28 days' written notice of our varied terms. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Rental Agreement without penalty within 28 days of receiving Our written notice. Any other variation of the Rental Agreement must be agreed in writing by You and Us.

## 25. NO WAIVER OF RIGHTS

You agree that any delay or omission by Us to exercise any right, power or remedy available to Us as a result of a continuing breach or default under the Rental Agreement will not impair any such right, power or remedy, nor will it be construed to be a waiver of Our rights to take action or make a claim in respect of a continuing breach or default against you. We will under no circumstances be stopped from exercising any of Our rights under this Agreement.

## 26. REVIEW OF YOUR CREDIT APPROVAL

- 26.1 From time to time We may review any Credit Account We have granted to You without notice.
- 26.2 We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Rental Agreement.
- 26.3 If we withdraw credit you may terminate this Rental Agreement immediately by giving Us written notice. However, if You do so You must:
  - (a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
  - (b) pay all amounts due to Us under this Rental Agreement, including rental charges until the Equipment is returned to Us and is in Our possession.

## 27. SIGNING THIS RENTAL AGREEMENT

- 27.1 The person signing or accepting the terms of any document which forms part of the Rental Agreement or Relevant Documents for and on behalf of You hereby warrants that he or she has Your authority to enter into the Rental Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Rental Agreement and each security interest granted in connection with it.
- 27.2 The person signing or accepting the terms of this Rental Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Rental Agreement not in fact having such power and/or authority.
- 27.3 This Agreement shall only become final and binding on the Parties once We have received and accepted the offer at our Business Address as recorded on the Rental Agreement / Delivery Note / Tax Invoice / Credit Application / Credit Agreement / Cash Client Information and Suretyship.
- 27.4 Any order shall only become final and binding once such order has been received and accepted by Us at our Business Address as per clause 31.3.
- 27.5 Notwithstanding the provisions above, all orders or agreed changes to orders, whether verbally or in writing, will be binding and subject to these Terms and Conditions of Agreement and may not be withdrawn by You.
- 27.6 We are entitled to split the delivery/performance of the equipment and/or services at Our sole discretion and in the quantities and on the dates We decide.
- 27.7 We are entitled to invoice any actual delivery/performance separately.
- 27.8 The Parties agree and consents to the Jurisdiction of any competent Magistrate's Court.
- 27.9 The Parties agree that any printout of computer evidence that is presented by either Party, will be admissible evidence. Furthermore, the Parties agree that no objections will be raised regarding the admissibility of such evidence purely on the grounds that same constitutes computer evidence or that the requirements of the Electronic Communications and Transactions Act, Act 25 of 2002, have not been complied with.

## 28. WARRANTIES

- 28.1 We do not offer any warranties, nor do we make any representations, other than those contained herein.
- 28.2 No warranties, nor representations, shall be binding on Us unless such warranties or representations are reduced to writing and signed by a duly authorised representative of Us.
- 28.3 All other guarantees, including common law guarantees, are hereby specifically excluded.
- 28.4 You agree that you will not hold Us liable for any innocent misrepresentations made to You.
- 28.5 Any item delivered to Us serves as pledge in favour of Us for present- and/or past debts and We shall be entitled to retain and/or realize such pledges as We deem fit with the value stated in Clause 16.3. The sworn or realized value of the pledged Equipment will be settled against Your debt. Any excess balance will be paid to You.

## 29. CESSION

- 29.1 The Client hereby irrevocably and in *rem suam* (concerning one's own affairs) cedes, pledges, assigns, transfers and surrenders to and in favor of Full Spectrum Hire, all its rights, title, interest in and upon all claims of any nature and description and howsoever arising which the Client may now, or, at any time hereafter, have against any and all persons, companies, corporations, firms,

partnerships, associations, syndicates and other legal entities, without exception, to the security for the payment of any sum of money which may now or at any time hereafter be due or owed by the Client, for whatever nature or cause, which the Client may be or may become bound to perform in favor of Full Spectrum Hire, if being acknowledged that this cession is a cession *securitatem debiti* and is not an out and out cession.

- 29.2 If it appears that the Client has entered into prior deeds of cession or in any other manner disposed of any of its rights, title and interest in and to any of the debts subject to the cession from time to time, this cession shall operate as a cession of all the Client's reversionary rights.

### 30. SHEDS, CONTAINERS, GUARD HUTS AND MOBILE TOILETS

- 30.1 You shall, before relocating any sheds, guard huts, containers or mobile toilets to any other site, obtain Our written approval. If You violate the terms of this clause, then and in that instance, You will be liable for the surcharges levied by Us for travel expenses, which will be similar to the service fee charged for the maintenance of the mobile toilets.
- 30.2 You must specifically specify the date of relocation as well as the full details regarding the new site address.
- 30.3 If the Equipment being moved are sheds, guard huts or containers and You did not obtain the necessary written approval as stated in Clause 34.1 above, You shall be liable for any damage incurred in the relocation process caused to the Equipment.
- 30.4 If the Equipment being moved are sheds, guard huts or containers and You did not obtain the necessary written approval as stated in Clause 25.1 above, but You have attached certain structures to the sheds, guard huts or containers, then and in that instance, You shall be liable for any additional costs incurred by Us to remove or relocate the mentioned sheds, guard huts or containers.
- 30.5 If the mobile toilets are not available for removal and/or service and/or in anyway obstructed, that may cause difficulty to Us from removing or serving the said toilets, You shall bear the additional costs We may incur in order to effect such removal or service.

### 31. CORE DRILLING

- 31.1 Before We will commence any concrete core-drilling on behalf of You, You should advise Us of, point out and clearly mark the exact location of any and all services and/or internal structural support system(s) located under the core drill site ("embedded services and/or structural reinforcement").
- 31.2 The embedded services, of which You oblige to identify, point out and mark includes, but is not limited to, electrical -, gas -, fuel-, sewerage and pumping services, sewerage connections, sewerage pipelines, water pipelines, irrigation pipes, plumbing services, telephone cables, fibre optic cables, oil pumping mains and any other embedded services and structural reinforcement that can be damaged by core drilling on site.
- 31.3 While We undertake to take the necessary precautions to avoid drilling damage to any and all embedded services and/or structural reinforcement, You agree to indemnify Us in respect of any loss, damage, cost and/or fines of any nature that may be sustained by You as a result of Us, either direct or indirect, causing damage to the aforementioned embedded services and/or structural reinforcement caused by You not identifying, not giving notice of and/or incorrectly giving notice of and not clearly marking the exact location of said embedded services and structural re-enforcement as per clause 35.1.

### 32. LEGAL ADDRESSES AND NOTICES

- 32.1 You choose Your address for any notice or service of legal documents or processes as the business address or the physical addresses (*domicilium citandi et executandi*) of any Director (in the case of a company), any Member (in the case of a close corporation) or of the Owner(s) or Partner(s) as found in the Credit Application or Cash Client Information and Suretyship or Tax Invoice(s).
- 32.2 Any document is deemed to be duly served on and accepted by You
  - (a) within 5 (five) days of prepaid registered post to any of Your business or postal addresses or to the personal address of any director, member or owner of You; or
  - (b) within 24 (twenty-four) hours of being faxed to any of Your fax numbers or any fax number of any director, member or owner; or
  - (c) when hand delivered to You or any director, member or owner of You; or
  - (d) within 48 (forty-eight) hours if sent by overnight courier; or
  - (e) within 7 (seven) days after being sent by post; or
  - (f) within 24 (twenty-four) hours by e-mail to any e-mail address provided by You.
- 32.3 You undertake to make Us aware, within 7 (seven) days of any change of Director, Member, Shareholder, Owner or Partner, or any change of any address, or 14 (fourteen) days prior to the sale or alienation of Your business, and failure to do so will constitute a material breach of this agreement. Upon receipt of such written notice, We reserve the right, at Our sole discretion, to withdraw any credit facility transferred to You.

### 33. LEGAL COSTS AND PROCEEDINGS

- 33.1 You shall be liable to Us for all legal costs and expenses on the attorney-and-client scale incurred by Us in the case of:
  - (a) any non-payment by You; or
  - (b) any litigation relating to the validity and enforceability of this Agreement.
 You will also be liable for any tracing, collection or valuation fees so incurred as well as any costs, including stamp duty, and any form of security that We may require.
- 33.2 You agree that We will not be obliged to provide security in terms of Rule 62 of the Rules of the Court of the Magistrate's Court or in terms of Rule 47 of the Law of the Supreme Court Act 59 of 1959.
- 33.3 You agree that We have the right to bring any legal proceedings in the Magistrate's Court or the High Court as per the jurisdiction as noted on the Rental Contract / Delivery Note and/or Tax Invoice and/or Credit Application, at its sole discretion. These South African Courts shall have exclusive jurisdiction in any litigation between the parties arising from any source.

### 34. QUOTATIONS

- 34.1 All quotations will remain valid for a period of 5 (Five) days from date of the quotation.
- 34.2 All quotations are subject to the availability of the Equipment or services, including normal increases (e.g. increase in cost price; currency fluctuations) without prior notice. The quotations are further subject to the correction of good faith errors by Us. Should you contest the amount of the increase, the amount of the increase may be certified by any independent auditor and such certificate shall be binding on You.
- 34.3 You hereby confirm that the Equipment and/or services reflected on the signed delivery note issued, duly represents the Equipment and/or services ordered and received by You and at the prices agreed to by You.



- 34.4 Where delivery of the Equipment and/or service to You or Your site has already taken place, you confirm that the Equipment and/or services were inspected and that You are satisfied that it conforms, in all respects, to the quality and quantity ordered and is free from any defects, whether signed by You, an employee, agent or a representative of You.