

# TERMS AND CONDITIONS OF HIRE

This agreement comprises of two parts namely Part A containing certain Important Information and Part B containing the Terms and Conditions

## PART A : IMPORTANT INFORMATION

### EXPLANATORY NOTES

#### Who is the rentor?

Limekilns (Pty) Ltd T/A Premium SA Plant Hire, Registration Number : 2014/073456/07 with chosen *domicilium* address as in the order form (hereinafter referred to as "*the rentor*")

#### Who is the hirer?

hereby rents to the client, with chosen *domicilium* address as reflected in the order form, (hereinafter referred to as "*the hirer*"),

#### What is rented?

operators, machinery and/or equipment as ordered by the hirer on an order form from time to time (hereinafter referred to as "*machinery*"),

#### Who shall operate the machinery?

which machinery shall only be operated by the operators supplied by the rentor,

#### How long is the machinery rented for?

for the amount of working days as indicated by the hirer on the order form or as instructed by the hirer to the rentor,

#### How long is a "working day" deemed to be?

which working days shall consist of a minimum of 9 hours each,

#### What are the terms of payment?

and rent shall be charged to the account of the hirer with the rentor and payable in accordance with the terms of payment as reflected on the order form ("*terms of payment*"), and

#### Hiring of machinery subject to certain conditions.

the hiring of machinery in terms hereof shall be subject to:

- the right of the rentor to perform a credit assessment on the hirer and to insist on the provision of guarantees by the representatives of the hirer in their personal capacity in terms hereof or a separate guarantee; and
- the availability of machinery; and

#### Consequences of failure to make payment on time.

if the hirer fails to make payment in accordance with the terms of payment as reflected above:

- interest may be levied by the rentor on all outstanding amounts at a rate equal to the prime rate plus 3% and compounded monthly; and
- the rentor may immediately reclaim possession of all machinery in the possession of the hirer and claim immediate repayment of all outstanding monies; and
- the rentor may enforce its rights in terms of this agreement and any guarantee.

## PART B: TERMS AND CONDITIONS

### 1. Interpretation

- 1.1 The headings of the clauses of these conditions are for reference purposes only and shall not aid in the interpretation of the clauses to which they apply.
- 1.2 Unless the context clearly indicates a contrary intention, the following terms shall have the meanings assigned to them hereunder, words importing:-
- 1.2.1 Any one gender shall include the other two genders.
- 1.2.2 Any singular shall include the plural and vice versa.
- 1.2.3 Natural persons shall include juristic persons and vice versa.
- 1.2.4 **Agreement** Means these terms and conditions, including Part A (Important Information) and Part B (Terms and Conditions) hereof and shall include a guarantee if same is attached hereto.
- 1.2.5 **Consumables** Shall mean ground engaging parts such as cutting edges and "teeth" of machinery as is used by the hirer.
- 1.2.6 **Hirer** Means the hirer with particulars as recorded in the order form.
- 1.2.7 **Machinery** Means any machinery, equipment and operators as rented by the rentor to the hirer from time to time;
- 1.2.8 **Order form** Means the order form supplied to the hirer by the rentor, being the only valid method of hiring machinery.
- 1.2.9 **Parties** Means the hirer and the rentor.
- 1.2.10 **Prime rate** Means the publicly quoted prime interest rate as published from time to time by the rentor's bankers, computed on a daily balance and capitalised monthly in arrears.
- 1.2.11 **Rentor** Means the rentor of machinery the particulars of which are recorded in Part A of this agreement.

### 2. Payment

The hirer shall effect payment into the bank account of the rentor as indicated by the rentor from time to time, on the terms of payment as recorded in the order form.

### 3. Representation

The signatory (ies) hereby warrant that he/they act within the scope and authority of his/their authority and that he/they are duly authorised to enter into this agreement on behalf of the hirer.

### 4. Risk and Ownership

- 4.1 Any and all risks directly or indirectly associated with the machinery and operators shall pass from the rentor to the hirer at the moment when the machinery is accepted by the hirer on the site on which it will be utilised or at any other venue.
- 4.2 Notwithstanding the transferring of risk as contemplated in 4.1 above, the rentor shall retain ownership of the machinery at all times, and the hirer shall be obliged to communicate same to any third party who may have the intention to interfere with any of the rentor's rights as owner of the machinery.

**5. Operators**

5.1 No machinery hired in terms hereof or otherwise shall be operated by any other persons than the operators provided by the rentor from time to time, except if the hirer obtains written permission from the rentor to the effect that persons other than the operators may operate the machinery.

5.2 Notwithstanding the provision of operators as contemplated in 5.1 above, the operators shall be deemed to operate the machinery on the instruction of and as agents of the hirer at all times during which machinery are being operated for the benefit of the hirer.

**6. Machinery**

The rentor shall use all reasonable endeavours to ensure that the machinery provided to the hirer is materially of a standard similar to that of machinery hired by the rentor's other customers, but does not warrant that the machinery is sufficient for the purposes that the hirer intends to use it for.

**7. Breakdowns**

Any breakdowns of machinery shall be reported by the hirer to the rentor as soon as possible. Broken down machinery shall be deemed to be used by the hirer until the moment that the breakdown of such machinery is reported to the rentor on the job sheet supplied by the hirer to the rentor.

**8. Diverse conditions**

8.1 In the event where machinery is not used by the hirer for any period of time, due to circumstances completely or partly beyond the control of the rentor, the rentor shall be entitled to charge the hirer a fee in accordance with the normal standing rate in terms of any applicable regulation.

8.2 The rentor shall be entitled to charge additional fees for the wear and tear of consumables where ground conditions are of such a nature that wear and tear of consumables occurs more rapidly than usual, unless otherwise agreed upon by the hirer and rentor in writing.

8.3 In the event of punctures, the hire shall not be entitled to receive any "downtime" from the working hours quoted for.

8.4 The hirer shall obtain any permits, which may be required for the entry and the use of plant on site and shall procure that machinery is operated in accordance with any permits applicable on such operation and/or the site on which machinery is used.

**9. Supervision**

The operators and machinery shall be under the sole supervision of the hirer for the full duration of the time for which such operators and machinery is hired by the hirer.

**10. Safe keeping**

The hirer shall have the sole responsibility in respect of the safe keeping of machinery (and all attachments thereto) and the hirer shall be responsible for any loss or damage incurred by the rentor as a result of the hirer's failure to procure sufficient safe keeping of machinery.

**11. Damage to machinery**

In the event where the machinery is used recklessly or for a purpose it was not manufactured for, and damage is incurred by the rentor directly or indirectly as a result of such misuse, the hirer shall be obliged to repair such damages or replace such machinery (dependent on the preference of the rentor),

**12. Cancellation**

12.1 Provided that machinery is hired for at least 48 hours, the hirer shall inform the rentor at least 24 hours before the hirer intends to discontinue the hiring of the machinery.

12.2 In the event where the hirer fails to inform the rentor of the cancellation of termination of hire as described in 12.1 above, the rentor shall be entitled to charge the hirer for a further 9½ hours to cover for the loss of time, incurred as a result of such failure of the hirer.

**13. Notice to landlord**

The hirer shall be obliged to (and the rentor shall be entitled to) deliver a written notice to the landlord of any premises on which machinery is used and/or stored, informing the landlord that the machinery is owned by the rentor.

**14. Indemnity**

14.1 Notwithstanding anything to the contrary contained herein, otherwise, and liability in terms of any law, the rentor shall not be held liable for any loss or damage whatsoever, whether due in whole or in part (including consequential or economic loss and loss of production or profit arising out of such loss or damage) incurred by any person, only if:-

14.1.1 Such loss or damage is directly or indirectly related to the rentor's failure to perform any obligation in terms hereof or otherwise, which failure is attributable to circumstances completely or partly beyond the control of the rentor; or

14.1.2 The hirer and any other person fail to prove that the rentor did not implement reasonable processes to prevent such loss or damage; or

14.1.3 The failure as recorded in 14.1.1 above is directly or indirectly attributable to instructions provided by the hirer; or

14.1.4 Such loss or damage is directly or indirectly attributable to the failure of the hirer to provide sufficient supervision of machinery and/or operators; or

14.1.5 Such loss or damage is directly or indirectly related to any conduct of the operators, while acting as agents of the hirer.

14.2 The hirer hereby indemnifies the rentor in respect of any claim of whatsoever nature that may be made against the rentor in respect of any loss or damage incurred by the hirer or any other person, arising out of or in connection with the operation of the machinery whilst being hired by the hirer.

**15. Order form**

No order form shall be valid unless signed by the representative/agent/employee of the hirer who confirms its authority to represent the hirer in writing.

**16. Credit assessment**

The hirer acknowledges that the rentor may:

16.1 Assess any application for credit by obtaining details of the hirer from any credit listing organisation; and

16.2 If such credit application is successful, register any relevant details of the hirer with any credit listing organisation.

**17. Business rescue proceedings**

Insofar as may be applicable, if the hirer's directors intend to pass a resolution to apply for business rescue voluntarily, or if any person submits an application that the hirer is placed under business rescue the hirer shall notify the rentor by means of a written notice on the same day that the first director of the hirer or other person receives such (or similar) notice.

**18. Breach**

In the event where the hirer fails to pay any amount due to the rentor in terms of this agreement or is provisionally or finally liquidated or sequestered or should any administration order be granted against the hirer or should any person submit an application that the hirer is placed under business rescue or should the hirer suffer judgment to be entered against it and fails to satisfy the judgment within 7 (seven) days or commits any other breach in terms of this agreement and fails to remedy such breach within 7 (seven) days of written notice by the rentor requiring the hirer to remedy such breach, the rentor shall

18.1 not be obliged to perform any of its obligations to the hirer in terms of this agreement or otherwise; and

18.2 have the right in addition to any other common law right it may have to terminate this agreement and claim damages or enforce the terms of this agreement and claim damages.

**19. Guarantee**

19.1 The signatory hereto hereby unconditionally and irrevocably guarantees and undertakes as principal and independent obligations to the rentor and/or its successors in title and assigns to pay on written demand therefore from the rentor any amounts payable to the rentor from time to time by the hirer as

co-principal debtor of the hirer, whether such amounts payable are existing, future and/or contingent and irrespective of the nature thereof, or

if the hirer breaches any material term of this agreement (whether referring to payment or in general) or in the event where the rentor receives a notice as contemplated in clause 17 above.

19.2 This clause shall at all times be fully and immediately enforceable, despite the termination (whether lawful or unlawful) of this agreement by any business rescue practitioner or other person.

19.3 This clause constitutes a continuing covering guarantee, meaning it shall remain in force and effect irrespective of a temporary fluctuation or extinction of any obligations of the hirer to the rentor and shall remain in full force and effect until terminated by the rentor in writing.

19.4 Any admission of liability by the hirer shall be binding upon the signatory hereto as guarantee.

**20. Jurisdiction**

20.1 In the event of the rentor enforcing any of its rights or in the event of a dispute relating to these terms and conditions, the rentor may exercise its discretion as to the court in which legal proceedings are to be initiated, which may be in the Magistrates Court, whose jurisdiction the hirer hereby consents to, notwithstanding the fact that the amount in dispute may exceed the jurisdiction of such court.

20.2 The provisions of 20.1 above shall not prohibit the rentor from proceeding in any other court or competent jurisdiction and claiming costs in accordance with the rules of such court.

20.3 This agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

20.4 No alteration, variation, amendment or purported consensual cancellation of this agreement or this clause or any deletion therefrom shall be of any force or effect unless reduced to writing and signed by or on behalf of both parties hereto.

**21. Renunciation**

The hirer hereby renounces all legal immunities, defences and exceptions applicable to the extent that they would be applicable to this agreement in the absence of this renunciation, including (but not limited to the following):

21.1 That the rentor and not the hirer is obliged to prove the cause of any debt;

21.2 That the amount claimed has been incorrectly calculated;

21.3 That the products in respect of which any amount is claimed in terms hereof, was in fact never received by the hirer.

**22. Domicilium**

The parties nominated as their domicilium address the physical address as reflected in Part A hereof, for service upon them of all notices and processes in connection with this agreement.

**23. General**

23.1 A certificate or account signed by a director (or other officer) of the rentor (whose appointment the rentor need not prove), stating the existence and amount of the hirer's indebtedness to the rentor and/or the fact that such amount is due and payable by the rentor and/or the amount of interest accrued on debt, shall for the purposes of provisional sentence or summary judgement or any other proceedings against the hirer (or the signatory hereto as guarantee) constitute proof thereof unless the hirer proves the contrary and shall be valid as liquid document and may be used in any legal proceedings against the hirer (or the signatory hereto as guarantee) in any court that has jurisdiction in this regard.

23.2 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement shall operate so as to preclude the rentor thereafter from exercising its rights strictly in accordance with this agreement.

23.3 This agreement constitutes the entire contract between the parties and no provisions, terms, conditions, stipulations, warranties or representations of whatsoever nature, whether express or implied, have been made by or behalf of the rentor except as are recorded herein.

23.4 No alteration, variation, amendment or purported consensual cancellation of this agreement or this clause or any deletion therefrom shall be of any force or effect unless reduced to writing and signed by or on behalf of both parties hereto.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Witnesses:	
1	
2	
(Signatures of witnesses)	(Signature of hirer) The hirer hereby irrevocably and unconditionally accepts the terms and conditions of hire.