

TERMS AND CONDITIONS OF HIRE

THE PARTIES: LESSOR: PMB SMALL PLANT HIRE (PTY) LTD (Registration number: 2012/207753/07) trading as Scotty's Small Plant Hire

LESSEE: _____

(ID/Company Registration number _____)

AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 In this agreement unless the context indicates otherwise the following phrases will have the meaning ascribed to them in this clause:

1.1.1 "the rental period" means the period from the time the equipment is delivered to the LESSEE until its return to the LESSOR by the LESSEE;

1.1.2 "the equipment" means all the equipment described in the hire note including all tools, accessories and documents in and on the equipment when the LESSEE takes delivery of the equipment and includes any replacement for the equipment which has been officially authorized by the LESSOR, whether or not such replacement was authorised or approved by the LESSEE.

1.2 Any heading in this agreement is for the sake of convenience only and is not to be taken into account for the purposes of interpretation.

2. HIRE TERMS

2.1 The LESSOR rents to the LESSEE, who hires the equipment on the terms and conditions set out in this agreement and binds himself to these terms and conditions.

2.2 The LESSEE declares him/herself to be fully au fait with the terms of hire and credit facilities.

2.3 The person entering into a hire agreement and/or collecting the equipment and/or signing the delivery note is duly authorized to do so and acknowledges that the LESSOR will institute criminal action in the event of the LESSOR becoming aware that such authority was lacking.

2.4 Signature by the LESSEE or by any representative or employee of the LESSEE of the hire note shall be regarded as acceptance by the LESSEE that the equipment reflected in such hire note has been properly and completely delivered.

2.5 The LESSEE shall not be entitled to cede any of their rights under this agreement or to sub let or part with possession of the equipment, its accessories or any part of it.

2.6 The LESSOR shall be entitled to carry out a credit check on the LESSEE with one or more credit agencies who may retain a record thereof and the LESSOR shall be entitled to record any default by the LESSEE with any credit agency. Such records may be made available by the credit agencies to third parties.

2.7 If the LESSEE enters into this agreement on behalf of any principal, including any undisclosed principal, they shall be personally liable, jointly and severally with this principal.

2.8 Notwithstanding anything to the contrary anywhere else in this agreement, the LESSOR may terminate the agreement at any time by notice via email, facsimile or SMS to the LESSEE, whereupon the LESSEE shall return the equipment to the LESSOR within 24 hours. The obligations of the LESSEE and the rights of the LESSOR in terms of this agreement shall remain in full force and effect until the equipment has been returned to the LESSOR and the LESSEE has complied with all their obligations.

3. OWNERSHIP

The equipment hired shall at all times remain the exclusive property of the LESSOR and the LESSEE may not alienate, sub hire, lend or in any other way dispose of the equipment. The LESSEE shall be deemed to be in possession of the equipment from the time he takes delivery of the equipment from the LESSOR.

4. SUITABILITY OF EQUIPMENT

4.1 The LESSEE must satisfy themselves as to the suitability of the equipment hired for their intended use. The LESSOR has no control over the use or installation of the equipment and will not be held liable for any damage caused, harm suffered, injury caused or consequential damages caused due to the misuse or abuse of the equipment or incorrect installation or failure to follow usage or installation instructions.

4.2 The LESSEE acknowledges that the equipment is hired in the condition it is delivered.

4.3 The LESSOR and the LESSEE agree that the LESSOR will not have any claim against the LESSEE whether for damages or otherwise, including claims by third parties, arising out of the hiring by the LESSOR to the LESSEE, unless the claim arises out of the LESSEE'S negligence, abuse or misuse or failure to abide by the usage and care instructions.

4.4 The LESSEE undertakes to immediately inform the LESSOR of any defect, failure or hazard relating to the equipment and promptly claim any refund, remedy or repair.

5. RETURN OF EQUIPMENT

5.1 The LESSEE shall at their own cost return the equipment to the LESSOR on the agreed return date and time, or if the agreement is terminated at any time before the date agreed upon, the LESSEE undertakes to return the equipment immediately after such termination.

5.2 The LESSEE shall return the equipment to the LESSOR in the same condition as received, fair wear and tear excepted.

5.3 The rental period is a 24 hour period. Equipment must be returned within 24 hours or another full day's hire will be charged.

5.4 Equipment hired after 12 noon on a Friday or after 9am on a Saturday will be charged in terms of paragraph 5.3 notwithstanding that the equipment could not be returned within the 24 hour period due to the LESSOR'S closing hours.

5.5 The equipment will only be deemed to be returned to the LESSOR against acknowledgement of the return by a duly authorized representative of the LESSOR who must append their signature on the tax invoice/hire note which records the return of the equipment.

5.6 Without derogating from anything in this agreement, on the expiry or termination of this agreement for any reason, the LESSOR shall be entitled to take possession of the equipment wherever it may be located and remove it from the possession of any person at that time.

5.7 The LESSEE undertakes to pay any expenses incurred by the LESSOR to ensure the return of the equipment including collection and re-attachment costs.

6. RISK

- 6.1 The LESSEE assumes all risk relating to the equipment during the entire period the LESSEE is in, or is deemed in terms of this contract, to be in possession thereof.
- 6.2 The LESSEE shall pay to the LESSOR the costs of any repairs to the equipment, or if the equipment is or any part of the equipment has been stolen or damaged beyond economic repair, the fair market value thereof before the damage occurred, including any incidental costs incurred by the LESSOR. Determination of the cause and monetary value of the damage or loss will be exercised in the sole discretion of the LESSOR.
- 6.3 Notwithstanding anything to the contrary in this agreement, the LESSOR shall not be obliged to make, institute or proceed with any claim which the LESSOR may otherwise have had against a third party for the recovery of any loss or damage to or in connection with the equipment and the LESSOR shall be entitled in its sole discretion to abandon such claim or to settle such claim on any terms.

7. FAILURE TO RETURN

- 7.1 In the event of the LESSEE failing to return the equipment on expiry of the rental period, The LESSOR shall have the right to forthwith and without notice take possession of the equipment, alternatively, recover from the LESSEE the replacement value of the equipment.
- 7.2 The LESSOR retains the right of access to any place where the equipment may be, for the purpose of repossessing the equipment should the LESSEE not comply with any of the conditions of hire.
- 7.3 The LESSOR shall be entitled to claim and the LESSEE shall be bound to pay damages for any losses suffered by or harm caused to The LESSOR as a result of the LESSEE's failure to return the equipment timeously and such losses shall include inter alia the loss of potential earnings or profits.

8. HIRE CHARGES

- 8.1 Notwithstanding the period of hire, the LESSEE shall be liable for and pay the daily rate, inclusive of Valued Added Tax, for each day or part thereof until the equipment is returned or the replacement value paid by the LESSEE to the LESSOR.
- 8.2 All rentals are strictly cash up front unless the LESSEE is an approved account customer in good standing.
- 8.3 No amounts whatsoever may be deducted from invoices without the LESSOR's authorization and the LESSEE shall not be entitled to make any deductions of any amount due by reason of the fact they contend they have a claim of any nature whatsoever against the LESSOR.
- 8.4 Where the LESSEE with the written consent of the LESSOR pays the rental amount on an account basis, all outstanding monies become due and payable by the last business day of the succeeding month.
- 8.5 In the event of the LESSEE being unable to use the equipment due to adverse weather conditions, the LESSEE shall not be entitled to a reduction of the hire charges unless the LESSEE has obtained an off-hire number from the LESSOR.
- 8.6 The LESSEE agrees to the LESSOR's ruling rate of hire at the time of delivery.

9. DEFAULT

- 9.1 Should the LESSEE fail to pay any amount on due date or fail to fulfil or be in breach of any term or condition of this agreement, or commit any act of insolvency or be wound up, whether provisionally or finally, then and in any of these events, the LESSOR shall be entitled at its election and without any prejudice to any other right to:
- a) Claim immediate payment of all amounts payable in terms hereof and in terms of a subsequent order irrespective of whether such amounts are due at that stage; or
- b) Immediately terminate this agreement, cease supply, retake possession of the equipment hired and claim payment of any damages suffered by the LESSOR which shall include loss of profit suffered as a result of the breach;
- c) Claim payment of all attorney and own client costs incurred, together with collection commission and tracing charges, and all interest calculated at the maximum permissible rate payable in terms of the Prescribed Rate of Interest Act 7 of 1997, as amended, at the relevant time.
- 9.2 The balance reflected on any statement issued by the LESSOR shall be prima facie evidence of the amount due and owing for the purposes of legal proceedings against the LESSEE including the obtaining of a summary judgement or otherwise or provisional sentence.

10. MAINTENANCE OF EQUIPMENT

- 10.1 The LESSEE shall be responsible for cleaning and maintaining the equipment whilst on hire and shall, where applicable, top up with oil and clean the air filter and plugs of the equipment daily.
- 10.3 The LESSEE acknowledges that they are fully responsible for the equipment during the rental period and shall take every possible precaution to safeguard the equipment and in particular, but without limiting the generality of the foregoing, shall keep the equipment properly locked up and secure whether the equipment is in use or not.
- 10.4 The LESSOR shall at all reasonable times be entitled access to the premises of the LESSEE for the purposes of inspection; repairing; servicing; cleaning or repossessing the equipment.

11. USE OF EQUIPMENT

The equipment may not be used:

- 11.1 contrary to any Act;
- 11.2 by any person who provides mistaken, false or fraudulent information to the LESSOR and the LESSOR shall not be liable in any way whatsoever in the event that such mistaken, false or fraudulent information has been provided; or
- 11.3 by anyone other than an individual properly capable and informed in the proper use of the equipment; or
- 11.4 beyond the borders of the Republic of South Africa, or in any territory where there is or may be a risk of civil unrest, political disturbance, riots or any activity associated with any of the foregoing.



12. RESPONSIBILITY AFTER LOSS OR DAMAGE

If during the rental period the equipment is involved in any accident or is lost or stolen, the LESSEE shall take every reasonable precaution to safeguard the interests of the LESSOR, including but without being limited to:

- 12.1 obtaining the name, address and contact details of every person involved in the accident and the names, addresses and contact details of any possible witnesses;
- 12.2 shall not admit any responsibility or liability, nor release any party from any liability or potential liability, nor settle any claim or potential claim against or by any party, nor accept any disclaimer of liability;
- 12.3 notify the LESSOR within 24 hours of the occurrence of the incident;
- 12.4 furnish the LESSOR with all the relevant information pertaining to the incident within 48 hours of the occurrence of the incident
- 12.5 co-operate with the LESSOR in the event that the LESSOR at its sole discretion decides to institute any action against any third party or to defend any action instituted by a third party relating to the incident.

13. LEGAL COSTS

13.1 In the event of the LESSOR instituting legal action against the LESSEE to enforce any of its rights under this agreement, it shall be entitled to:

- 13.1.1 institute such proceedings in the Magistrate's Court as per the jurisdiction recorded on the tax invoice/hire note, irrespective of the amounts claimed or the value of the equipment involved in such action, without prejudice to the LESSOR's rights to institute proceedings in any other Court having jurisdiction in the matter, and
- 13.1.2 to recover from the LESSEE all the legal costs on the scale as between Attorney and Client, including collection commission.
- 13.2 The LESSEE agrees that the LESSOR will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.

14. INDEMNITY

14.1 The LESSOR shall not be liable:

- 14.1.1 for any loss, theft or damage to the equipment of any nature whatsoever during the rental period; or
- 14.1.2 for any loss, theft or damage to the loading vehicle of any nature whatsoever; or
- 14.1.3 for any loss, damage or injury of whatsoever nature caused to third parties for whatever reason by the equipment; or
- 14.1.4 for any loss or damage suffered by the LESSEE or any other person resulting from the theft of the equipment.

14.2 The LESSEE further indemnifies the LESSOR in respect of all claims by any person in respect of any injury to persons caused by or arising out of the hire of the equipment.

14.3 The LESSOR shall not be responsible for non-delivery or part delivery of equipment or delay in delivery for whatsoever reason and delivery times are not guaranteed.

15. GENERAL

15.1 No amendment, deletion, variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by both parties.

15.2 No relaxation or indulgence granted by the LESSOR shall in any way prejudice the LESSOR's rights and shall not be regarded as a waiver of such rights or as novation of this agreement.

15.3 The LESSEE undertakes to inform the LESSOR in writing within seven days of any change of director, member, owner or partner or any change of address or fourteen days prior to selling or alienating the LESSEE's business and failure to do so will constitute a material breach of this agreement. Upon receipt of such notification, the LESSOR reserves the right, at its sole discretion, to withdraw any credit facility advanced to the LESSEE.

15.3 The LESSEE acknowledges that no representations that lead to signature of these terms and conditions, other than those contained in these terms and conditions, were made to them.

15.4 The LESSEE chooses the address, facsimile number, cellphone number and email address in the attached customer information form as his domicilium citandi et executandi and any notice posted, faxed, Sms'd or emailed to them there shall be deemed to be received three days after it is posted or on generation of a facsimile, SMS or email transmission report.

15.5 The LESSEE guarantees the correctness of the information provided in this agreement.

Signature: _____

Date: _____

Full Name: _____

Designation (company only: _____)