

TERMS AND CONDITIONS

1. **Delivery:**
 - 1.1. The Lessee shall, at its own expense, arrange for and accept delivery of the Goods from the Lessor and shall, for the duration of this agreement keep the Goods on behalf of the Lessor. It is placed on record that the Lessor tenders delivery of the Goods to the Lessee on the commencement date.
 - 1.2. On date of collection of the Goods, the parties or their agents shall, before physical delivery of the Goods are taken, inspect the Goods together and shall simultaneously complete and sign a "proof of delivery" form wherein the Goods and accessories are described.
 - 1.3. On delivery to the Lessee, the Goods shall be deemed to be in a good working condition, without any visible or latent defects.
 - 1.4. The onus is on both parties to indicate any defects or shortcomings during inspection before delivery, in failing to do so it shall be assumed that the Goods are in good working order.
2. **Ownership:**

Ownership of the Goods shall remain vested in the Lessor for the duration of this agreement, and neither the Lessee, nor anyone else acting on behalf of the Lessee, shall be entitled to ownership of the Goods or shall acquire any rights on the Goods other than those rights specifically outlined in this agreement.
3. **Risk:**

On delivery of the Goods to the Lessee, all risk associated with the Goods passes to the Lessee until such time as the Goods are returned to the Lessor at termination or cancellation of this agreement.
4. **Use:**

The Lessee shall:

 - 4.1. Only use the Goods for the purpose for which it was manufactured and/or designed, and shall only use the Goods within the borders of the Republic of South Africa and/or such area to which the Lessor agrees to in writing.
 - 4.2. Not use the Goods or allow the Goods to be used in conflict with any statute, ordinance or regulation pertaining to road freight transport or the Goods itself.
 - 4.3. Apply the necessary care and take the necessary precautionary measures in order to safeguard the Goods against loss or damage as well as excessive wear and tear.
 - 4.4. Ensure that the Goods are only used with the necessary skill and care and according to the specifications of the manufacturer.
 - 4.5. Not permit the Goods to be used by anyone else outside its employ.
 - 4.6. Not sublease the Goods to any person or entity at any stage during the existence of this agreement.
 - 4.7. The Lessee shall service and upkeep the goods on his own account and will see to it that the goods are serviced on a regular basis as agreed upon by both parties at a depot of Rentco. Furthermore all costs involved in doing so will be for the Lessee account. All replacement parts are seen as part of the goods and as such belong to the Lessor.
 - 4.8. Cooling units on refrigeration trailers shall be serviced on a regular basis as prescribed by the service manual of the unit by an authorised dealer and the Lessee will pay for this.
5. **Insurance:**
 - 5.1. The Lessee shall, at its own cost, keep the Goods insured for the full term of this agreement against such risk of loss, damage, destruction or mechanical defectiveness usually applicable to Goods of this nature.
 - 5.2. The Lessee shall not do anything to, handle or store the Goods in such a way, alternatively to permit anyone else to do anything to, handle or store the Goods in such a way as is liable to

- 5.3. enhance any of the risks against which the Goods are insured to the extent that the insurance of the Goods is rendered void or avoidable, or the premiums of such insurance are, or become liable to be increased.
- 5.4. Without prejudice to any other right of action or remedy which the Lessor may have arising out of a breach of the foregoing provision, the Lessor may recover from the Lessee on demand the full amount of any increase in insurance premiums in respect of the Goods attributable to such breach.
- 5.5. For the purposes of the provisions herein above, the Lessor shall be entitled to assume that the Goods are at all material times insured against such risks, on such terms, against such value and at such premiums as are for the time being usual in respect of similar Goods in the same industry.
6. **Damage to or loss of Goods:**
 - 6.1. In the event that the Goods are damaged, destroyed, stolen or lost, the Lessee shall inform the Lessor thereof in writing within 24 hours.
 - 6.2. The Lessee shall report any accident and theft involving the Goods to the police and shall furnish Lessor with all relevant case- and accident reference numbers.
 - 6.3. In the event of theft, loss or damage to the Goods and where the insurance claim is repudiated for whatsoever reason as a result of the gross negligence or action(s) of the Lessee or any person in its employ, the Lessee shall be compelled to, without delay or set-off, pay to the Lessor the market value of the Goods as indicated on the insurance policy for the said Goods. The Lessee shall also remain liable towards the Lessor for payment of all rental premiums up and until the date on which the market value of Goods is paid to the Lessor, at which stage this agreement may be terminated by the Lessor in its absolute discretion.
 - 6.4. If the damage to the Goods is economically repairable, the reparations shall be done immediately at any of the Lessor's Rentco yards, and shall the Lessee remain liable for the payment of any contributions in respect of the insurance claim by the Lessor for the reparation of any such damage.
 - 6.5. The Lessee shall remain liable for any and all rental premiums for the full period during which the Goods are being repaired as damages for loss of income to the Lessor for that period.
 - 6.6. In the event of theft, loss or damage not contributable to the negligence or action(s) of the Lessee, this agreement shall either be terminated and shall all rights and obligations in terms of this agreement between the parties cease to exist, save that the Lessee shall remain liable for the rental premium applicable in respect of the month in which the unfortunate event occurred, or shall the Lessee be issued with replacement Goods for the remainder of this agreement, the same terms and conditions to apply.
7. **Warranty:**
 - 7.1. The Lessor warrants that it is the registered owner, alternatively the *bona fide* possessor of the Goods, and is duly authorised to enter into this agreement.
 - 7.2. The Lessor warrants that the Goods are registered and roadworthy, and at the time of signature hereof, are free from any defects (mechanical etc.) and that it is fit for the purposes for which it is let.

SIGNATURE :

PLACE :

DATE :

- 8. **Indemnity:**
The Lessor shall not be liable for, and is hereby indemnified against liability for any loss or damage of whatsoever nature (direct or consequential and including special damages), that the Lessee, or any other person may suffer as a result of the use of the Goods or as result of any defect of any nature to the Goods, even if such defect has the result that the Goods become unserviceable or cannot be used by the Lessee.
- 9. **Alienation and Cession:**
 - 9.1. The Lessor is entitled to, without prior notice to the Lessee, cede, assign or transfer any of its rights, title and interest in this agreement and/or ownership of the Goods to any person whomsoever.
 - 9.2. The Lessee shall not cede, assign or transfer any of its rights or obligations in terms of this agreement. The Lessee is also not entitled to sub-let the Goods and shall remain in possession thereof until termination of this agreement.
 - 9.3. The Lessee shall not be entitled to, in any way, alienate, pawn or encumber the Goods.
- 10. **Further Duties and Limitations:**
 - 10.1 The Lessee shall:
 - 10.1.1 Not be entitled to incur any liability on behalf of the Lessor.
 - 10.1.2 See to the payment of all running expenditures in respect of the Goods, which shall include but not be limited to the repair and replacement of tyres.
 - 10.1.3 Return the Goods at termination of this agreement fitted with tyres matching the same specifications and condition as on the commencement date. The specifications and condition of the tyres fitted on the Goods shall be noted on the "proof of delivery" forms during the pre-delivery inspections on both the commencement and termination dates, and shall this serve as warranted proof thereof.
 - 10.1.3 Not change, modify, paint or bring about any fixtures, marks or writing on the Goods without the prior written consent of the Lessor.
 - 10.1.4 Adhere to the service regulations applicable to goods as provided by the Lessor, and shall ensure that the Goods are serviced at the required intervals therefore and only at any of the Lessor's Rentco yards.
 - 10.1.5 Allow the Lessor or his representative to inspect the Goods at any reasonable time and at any place whatsoever.
 - 11. **Breach of Contract:**
 - 11.1. Breach of contract will take place if the Lessee:
 - 11.1.1. fails or neglects to punctually pay all payments in terms of this agreement; or
 - 11.1.2. fails to strictly comply with any of his obligations in terms of this agreement; or
 - 11.1.3. breaches any of the terms of this agreement; or
 - 11.1.4. fails to comply with any judgment granted against him in any Court within seven (7) days after the date of such judgment; or
 - 11.1.5. commits any act of insolvency as contemplated in the Insolvency Act number 24 of 1936, as amended; or
 - 11.1.6. trades under insolvent circumstances; or
 - 11.1.7. in event of a natural person, dies, in event of a partnership, dissolves, in event of a private company, undergoes a change in shareholding, or in the event of a close corporation undergoes a change in membership, or
 - 11.1.8. is placed under provisional or final liquidation or sequestration, or is placed under judicable management; or
 - 11.1.9. in general does anything or neglects to do anything which can effect the rights of the Lessor in terms of this agreement in the negative or cause the Lessor to suffer any loss or damage.
 - 11.2. In the event of a breach of contract, the Lessor shall be entitled to, in its absolute discretion, and without prejudice to any other remedies which he may have:

- 11.2.1. without notice, claim immediate payment of all rental and other amounts payable in terms of this agreement, or
- 11.2.2. recover such damages from the Lessee as the Lessor may have suffered; or
- 11.2.3. without notice, immediately terminate this agreement in which event:
 - 11.2.3.1. the Lessor shall be entitled to payment of all rental and any other amounts due but unpaid on date of cancellation, together with any such amount of damages that the Lessor may have suffered as a result of the Lessee's breach of contract;
 - 11.2.3.2. the Lessee shall be compelled to, without delay, deliver the Goods to the Lessor at its premises.
- 12. **Interest:**
All amounts due, but unpaid shall bear interest at the rate of 2 (Two) percentage points above the prime ending overdraft rate charged from time to time by a bank, nominated by the Lessor, as certified by any manager on that day whose appointment and authority it shall not be necessary to prove, from due date until payment in full, both days inclusive.
- 13. **Deposit:**
 - 13.1 The deposit referred to in the Schedule shall be kept by the Lessor as security for the due and proper compliance by the Lessee of its obligations in terms of this agreement.
 - 13.2 The Lessor shall be entitled to recover any rental or any other due amount in terms of this agreement, be it damages or otherwise, from the deposit and to pay the balance thereof, if any, over to the Lessee within 7 (Seven) business days following date of termination or cancellation of this agreement.
 - 13.3 The Lessor shall be entitled to retain any interest which may accrue in respect of the deposit while this agreement is in force.
- 14. **Non variation:**
 - 14.1 These terms and conditions, read together with any agreement or schedule signed by the parties, constitute the whole of the agreement between the parties relating to the matters dealt with herein.
 - 14.2 No undertaking, representation, term, condition or any variation or addition relating to the subject matter hereof, and not incorporated herein or reduced to writing and signed by the parties shall be binding.
 - 14.3 No concession or relaxation that the Lessor might allow the Lessee regarding any of its obligations in terms of this agreement, shall be regarded as a renunciation or novation of any of the rights that the Lessor might hold.
- 15. **Domicilium:**
The parties choose their respective *domicilium citandi et executandi* for purposes of service and delivery at the addresses stated in the Schedule.
- 16. **Jurisdiction and cost:**
 - 16.1. For the purposes of any action which may arise out of this agreement, and in terms of the provisions of Section 45 of Act no 32 of 1944, the Lessee consents to the jurisdiction of the Magistrate Court holding jurisdiction over the Lessor's area of domicile, however the Lessor is entitled to institute action in any other competent Court having jurisdiction in order to obtain the desired relief.
 - 16.2. The Lessee shall be liable to pay any and all legal costs incurred by the Lessor in obtaining any order for relief against the Lessee, which costs shall be on the scale as between attorney and own client.

SIGNATURE :

PLACE :

DATE :

17. **Termination:**

- 17.1. Upon termination of this agreement, for whatsoever reason, and subject to the provisions in sub-clause 10.1.3, the Lessee shall return the Goods at its own expense to the premises of the Lessor in the same good and working condition in which the Lessee received same, reasonable wear and tear excluded.
- 17.2. In the event that the Lessee, for whatsoever reason, refuses or neglects to return the Goods to the Lessor following termination of this agreement, then and in such instance, the Lessee shall, without prejudice or revocation to and of any other rights that the Lessor might have, remain liable for payment of the monthly rental determined herein plus an amount equivalent to 20% thereon, until such time as delivery of the Goods have been effected to the Lessor.
- 17.3. Any rental payments that become due and payable following termination of this agreement, shall be interpreted as the recovery of damages by the Lessor, and not as monthly rentals.

18. **General:**

- 18.1. A certificate signed by the owner or any manager of the Lessor, regarding any amount payable and/or due in terms of or as a result of this agreement, is *prima facie* proof of such an amount for all purposes, and includes a provisional sentence, summary judgment or any other judgment.
- 18.2. In the event of more than one person signing this agreement on behalf of the Lessee, the signatories shall be liable jointly and severally in respect of the Lessee's obligations to the Lessor.
- 18.3. If this agreement is not signed by all the persons stipulated hereinabove, as either Lessees, or as all the partners of the Lessee (if partnership), this agreement is binding on those persons who signed as Lessee(s) or on behalf of the Lessee (if partnership), as the case may be.
- 18.4. If the Lessee is a company or a close corporation, then and in that event the person who signs on behalf of the company or the close corporation, binds himself or herself as surety and co-principal debtor in *solidum* towards the Lessor for the proper compliance of the Lessee's obligations in terms hereof.
- 18.5. This agreement is governed by and shall be interpreted according to the Laws of the Republic of South Africa. the Lessee on demand the full amount of any increase in insurance premiums in respect of the Goods attributable to such breach.

SIGNATURE :

PLACE :

DATE :