

## 1. Introduction, Definitions and Interpretation

- 1.1 The Company carries on the business of vehicle rental, full maintenance leasing and dedicated transportation services, all of which are governed by these trading terms.
- 1.2 In this Agreement:
- a) **Agreement** means any agreement for the provision of Services between the Parties, which will always include these Trading Terms and all annexures thereto, whether on physical paper or electronic version, including but not limited to the Rental Agreement, Credit Application, Quotations, Master Rental Agreement (FML), and such other terms that may be agreed in writing between the Parties.
  - b) **Anticipated Date of Return** means the date of return of the Vehicle to the Company as agreed in the Initial Rental Agreement or otherwise in writing.
  - c) **Application** means the Client Application Form in the form specified by the Company from time to time.
  - d) **CPA** means the Consumer Protection Act, 2008.
  - e) **NCA** means the National Credit Act 34 of 2005.
  - f) **CIPC** means the Companies and Intellectual Property Commission.
  - g) **Client** means the Client as set out in the Application, if applicable and/or any person, at whose request or on whose behalf the Company undertakes any Business or renders any Services.
  - h) **Company** means Spartan Truck Hire (Pty) Ltd, registration number 1988/005507/07, which may trade under alternate brands including but not limited to Book-a-Bakkie and Dial-a-Truck, as well as subsidiary companies Smart Truck Hire (Pty) Ltd, reg number 2006/023521/07 and Power Truck Hire (Pty) Ltd, reg number 1986/000900/07.
  - i) **Contract Period** means the period during which any Vehicle is rented to the Client, commencing on delivery of the Vehicle to the Client in terms of clause 7 until return of the Vehicle or deemed return of the Vehicle in terms of clause 8, whichever is the later.
  - j) **Down Time/Standing Time** means the moment a vehicle becomes unavailable for use due to damage, theft, hi-jacking or abuse of the vehicle, until such time as the vehicle becomes available for rental again, or the Client or relevant Insurer has settled the insurance claim.
  - k) **Initial Rental Agreement** means the Initial Rental Agreement provided by the Company on rental initiation which outlines details including, but not limited to the vehicle, rates, driver details (if applicable), limitation of liability, KM included (if any) and other critical information relating to the provision of services.
  - l) **Legal Requirement** means any law, by-law, regulation, ordinance, licence, approval, permit, consent, regulation or requirement, or any relevant authority.
  - m) **Party/ies** means either or both, as the context requires, the Client and the Company.
  - n) **POPI Act** means the Protection of Personal Information Act, 2013.
  - o) **Rates** means the Rates charged by the Company for the Services as agreed in the Proposal, Initial Rental Agreement and in accordance with these Trading Terms.
  - p) **Services** means the Vehicle hire, Full Maintenance Leasing and all related transport services provided by the Company in terms of these Trading Terms.
  - q) **Vehicle** means the vehicle(s) hired by the Client, as described in the Initial Rental Agreement, unless otherwise agreed, including its equipment, appurtenances, and accessories.
  - r) **SAPS** means the South African Police Services.
  - s) **Trading Terms** means these standard trading terms and conditions of the Company, along with any other written agreement as stipulated in 1.1(a).
  - t) **Total Loss** in relation to a vehicle means damages where the estimated cost of repairs is such that the vehicle is, in the sole discretion of the Company, uneconomical to repair (written off) or when the vehicle is stolen or hi-jacked.
  - u) **NBCRFli** means the national bargaining council for road freight and logistics industry which applies statutory labour increases as and when may be required.
- 1.3 Any reference in these Trading Terms to:
- a) A **clause** is, subject to any contrary indication, construed as a reference to a clause of this Agreement.
  - b) **"in writing/written"** includes by letter, e-mail, SMS, WhatsApp and or any form of electronic communication.
  - c) **Person** is construed as a reference to any natural person, juristic person, firm, the Company, corporation, government, state, agency or organ of state, association, trust or partnership (whether or not having separate legal entities).
- 1.4 The headings do not govern or affect the interpretation of these Trading Terms.
- 1.5 If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of these Trading Terms.
- 1.6 Unless the contract indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 1.7 The words "including" and "in particular" are without limitation.
- 1.8 Any reference to legislation is to that legislation, as amended or replaced from time to time.
- 1.9 A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 1.10 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 1.11 The termination of these Trading Terms does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

## 2. Application of these Trading Terms

- 2.1 All Business is undertaken by the Company subject to these Trading Terms.
- 2.2 The Company will provide the Services only on the basis set out in these Trading Terms and other terms agreed in writing between the Parties.
- 2.3 Unless the Parties agree in writing specifically to the contrary, these Trading Terms shall prevail in the event of the Client itself having standard trading conditions, even if the latter conditions are apparently incorporated after these Trading Terms in terms of an accepted purchase order or otherwise.
- 2.4 Should the Client amend or strike out any term of these Trading Terms before its signature hereof it must bring that amendment or striking out to the attention of the Company. Any such amendment or striking out amounts to a counteroffer by the Client and is only effective if the Company acknowledges and consents to the amendment or striking out in writing.
- 2.5 The Company is entitled to amend these Trading Terms and to publish supplementary terms and conditions, which amendments and supplements shall take effect 30 days from the date on which they are made by the Company. As and when any amendment or supplement is made it shall be published on the Company's website. Whilst the Company will take reasonable steps to publicise amendments by an indication to that effect on its e-mail correspondence and/or on its website, its failure to do so shall not in any way prevent the amendment or supplement taking effect.
- 2.6 Subject to clause 2.5, no addition to or variation or consensual cancellation of this Agreement, including this clause, has effect unless in writing and signed by the Parties. Only directors or individuals authorised or ratified by the shareholders of the Company are authorised to alter, amend or vary these Trading Terms.

## 3. The Services

- 3.1 The Services provided by the Company will include, wherever reasonably possible and agreed in writing between the Parties:
- a) Vehicle Rental including all ancillary provisions including but not limited to driver, labour assistance, fuel, limitation of liability, tracking etc. which will be made available to Clients who have existing credit facilities with the Company as well as to Clients who may in instances pay cash up front with the Company.
  - b) Full Maintenance Leasing.
  - c) Any other related transportation services.
- 3.2 The Parties specifically agree that the Company is entitled to suspend or refrain from providing the Services where doing so would pose a material risk of death or injury to any person or damage to property.
- 3.3 Wherever it is necessary for instructions to be given to the Company, the Client will provide those instructions timeously wherever possible in writing. In the absence of specific instructions as to the performance of the Services, the Company is entitled to take any steps or refrain from taking any steps it deems fit, in its sole opinion.

- 3.4 If at any stage during the provision of any Service the Company should consider that there is good reason, making it advisable in the Client's interest to depart from any of the Client's instructions, the Company shall be permitted to do so, at the Client's cost, without incurring any additional liability.
- 3.5 The Client warrants that all information provided to the Company from time to time is accurate, complete and up to date.

#### **4. Proposal and Quotations**

- 4.1 Any proposal, quotations, estimates or rate schedules given by the Company shall only be open for acceptance for a period of 30 days of the date of the Proposal or unless a validity date has been otherwise specified on the quotation / proposal, or as agreed between Parties.
- 4.2 The quotation may be supplied either in hard copy or electronic format and will include certain terms of inclusions and exclusions relating to various charges including, but not limited to rental days, rental KM, excess KM charges, insurance, limit of liability excesses, fuel, labour, traffic fines, tracking, delivery and collection fees, document fees, tolls and e-tolls and certain other fees such as recovery fees in the event of an accident, theft or hi-jacking, or non-payment.
- 4.3 Certain quotations may have escalations included relating to various charging items listed in 4.2 above and those escalations will be applicable as may be termed. The rates for short-term vehicle rental will be adjusted and escalated annually in or about March/April of that specific year and such must be mutually agreed upon in writing within a 30-day period. Should no signature be concluded from the client, the company will apply the rate increase unilaterally and payment of an invoice based on the new rate will be deemed to be acceptance of the rate escalation by the client. The escalation schedule details further below:

| Charge Type | Rental Days + KM                            | Limitation Liability | Liability Excess | Fuel    | Labour         | Fines | Tracking | Delivery Fees | Doc Fee | Tolls & Other      |
|-------------|---|----------------------|------------------|---------|----------------|-------|----------|---------------|---------|--------------------|
| Escalation  | Annually in March or as and when negotiated |                      |                  | Monthly | As per NBCRFLI |       |          | Annually      |         | As & when required |

- 4.4 The terms and conditions in a quotation do not supersede this set of Terms and Conditions but rather acts in addition to it.

#### **5. Rates**

- 5.1 Subject to clause 4, the Company will charge the rates set out in the Proposal and Initial Rental Agreement. Rates are payable for each day of the Contract for the full Contract Period.
- 5.2 Any additional service that the Company is obliged or entitled to provide that has not been quoted for or not referred to in the Proposal or Initial Rental Agreement shall be charged at the Company's usual rate or, if it has no usual rate, at a reasonable rate.
- 5.3 Details of rates and charges agreed between the Parties are confidential and may not be disclosed to any third parties without the prior written consent of the Company.
- 5.4 The Company calculates its Rates based on, amongst other things, the period for which the Vehicle is rented. Should any Initial Rental Agreement be terminated prior to the Anticipated Date of Return, without limiting any other provision of this Agreement, the Company reserves the right to change the Rates to the Rates that would have been applicable to the shorter period.
- 5.5 The Rates do not, unless otherwise specified in writing, include any additional costs incurred by the Company in carrying out the Services. Such costs shall be charged to the Customer, including but not limited to Vehicle damages, down time, make good costs, and towing and recovery charges in the event of theft/hijacking or accident including tracking device replacement and Vehicle relicensing fees.
- 5.6 Any mileage travelled in excess of the kilometers stipulated in the Initial Rental Agreement will be charged at the rate indicated in the Rental Agreement, which shall be payable by the Client on demand.
- 5.7 Should the Vehicle not be returned with a full tank of fuel, or in the event of a total loss, the Company will charge the Client for the fuel required to fill or replace the fuel.
- 5.8 Notwithstanding any other provisions of this clause 5, the Client is responsible for the timeous payment of all traffic fines, toll and e-toll costs incurred in respect of any hired or leased Vehicle during the Contract Period. Should the rental be long-term in nature, the client may elect to provide the ID number of the driver in order for the company to automatically redirect fines.

#### **6. Payment Terms**

- 6.1 The Client shall pay the Rates to the Company in accordance with the payment terms agreed in the Client Application. Failing agreement, all Rates must be paid in advance prior to delivery of the Vehicle in accordance with these Trading Terms.
- 6.2 All charges contemplated in clauses 5.5 to 5.8 (both inclusive) must be paid to the Company without deductions, on presentation of an invoice from the Company.
- 6.3 In the event of failure to make payment on or before the due date, the Prescribed Prevailing Rate of Interest Act, 1975 as amended shall apply on the full outstanding amount(s), including admin fees applicable.
- 6.4 The Company is entitled to suspend or refuse to provide Services while any amount due and payable to the Company remains outstanding.
- 6.5 The Client is not entitled to withhold or defer payment pending resolution of any claim, dispute or counterclaim and may not set off any amounts against the amount charged by the Company in any circumstances.
- 6.6 Should the Client rent a Vehicle through the Company's call centre or website services, the following conditions will apply in addition to clauses 6.1 to 6.5 (both inclusive):
- Call centre and website services are provided strictly on a cash basis, and Vehicles will only be released to the Client once payment reflects in the Company's bank account.
  - The Company reserves the right to charge a holding deposit to the Client which will be fully redeemable once the vehicle is returned in accordance with these Trading Terms.
  - The Company reserves the right to retain the holding deposit should any conditions of the Trading Terms be breached or where any additional costs have been incurred by the Company in carrying out the Services set out in these Trading Terms. Should the holding deposit be insufficient to cover the costs, the Client will be required to make payment to the Company immediately on presentation of an invoice.
  - The Company reserves the right to take payment from the Client's credit card within 5 days of presentation of the invoice should the Client fail to make payment on request.
  - In the event that the Client rents a vehicle without a Company Driver, the Client is required to make payment by credit card and the Company reserves the right to charge a 4.5% surcharge over and above the amount payable.
  - Any inclusions and exclusions stated on the pro-forma invoice are deemed to be correct and binding. Additional charges incurred from the exclusions will be passed onto the Client and shall be disclosed to the Client at such time as the Company becomes aware of such charges.
  - The Company can not be held liable for any refunds made into the incorrect bank account in the event that the Client supplies such incorrect information.
  - The Company reserves the right to charge a cancellation fee in the event that the Client cancels the rental for whatever reason.

#### **7. Delivery of the Vehicle to the Client**

- 7.1 The place of delivery of the Vehicle to the Client will be agreed by the Client and the Company in writing.
- 7.2 The Company will use all reasonable endeavours to deliver the Vehicle to the Client on the date and at the time as agreed by both parties in writing but does not guarantee timeous delivery. The Company will not be liable for any cost, loss, liability, damage (direct or indirect) or claim arising out of or in connection with late delivery of the Vehicle.
- 7.3 The Vehicle is deemed to be delivered to the Client when the Vehicle is handed over to the Client or a Representative of the Client and the Initial Rental Agreement is signed and completed.

- 7.4 The Client is given the opportunity to and must undertake a thorough inspection of the Vehicle on delivery in terms of clause 7. Any defect in the Vehicle must be immediately reported to the Company by endorsing the Vehicle check list/Initial Rental Agreement to that effect. Failing such endorsement, the Vehicle is deemed to:
- a) Be delivered in good order and condition, including but not limited to being in a roadworthy condition.
  - b) Be delivered with no damage to paintwork and/or upholstery.
  - c) Be delivered with the odometer reading set out in the Vehicle check list/Initial Rental Agreement.
  - d) Have all accessories and appurtenances in good working order and condition.
  - e) Have all radiator, oil reservoirs and fuel tanks properly filled and have sufficient engine oil and water.
  - f) Be provided with a spare wheel, jack, tools and triangles, all in good working order and condition.

## **8. Return of the Vehicle**

- 8.1 On the Anticipated Date of Return, the Client must, at its own cost:
- a) Immediately discontinue use of the Vehicle, other than is required to comply with clause 8.
  - b) Return the Vehicle to the Company's premises, unless the Company has agreed in writing to collect the vehicle from another agreed point.
  - c) Return the Vehicle in the same good order and condition as it was in when delivered to the Client, fair wear and tear excepted, being at least in proper running order and a roadworthy condition.
  - d) Ensure that the Vehicle is inspected by and the keys returned to an authorised representative of the Company.
  - e) Ensure that the Vehicle is parked in the reserved parking, is properly locked and secured, and, subject to clause 5.7, has a full tank of petrol or diesel (whichever is applicable), and
  - f) Ensure that the return of the Vehicle is accepted in writing by an authorised representative of the Company, who confirms compliance with all of the requirements of this clause in writing.
- 8.2 The Client will be charged for the kilometers travelled to and from the Client and the Company's premises in the event of the vehicle being collected. Collection will be upon request of the Client or in the event of unpaid Rates.
- 8.3 The Client will be charged Down Time at the applicable Rate for the entire period until the deemed return of the Vehicle, regardless of whether the Client is able to use the vehicle or not, following:
- a) Damage to the Vehicle which requires repairs beyond the Anticipated Date of Return. The Vehicle is deemed returned to the Company after all damage has been repaired.
  - b) Total loss of the Vehicle. The Vehicle is deemed returned on payment of the full proceeds by the Client and/or relevant insurer to the Company.
- 8.4 Until such time as the Vehicle's return has been accepted in terms of clause 8.1 (f) or deemed returned in terms of clause 8.3(a), risk of loss or damage to the Vehicle remains with the Client.
- 8.5 Should the Vehicle not be returned on the agreed date and at the agreed time, the Vehicle may be reported as stolen to the relevant authorities, and any costs incurred by the Company as a result thereof will be charged in full to the Customer.
- 8.6 The Company reserves the right to cancel any Agreement on reasonable notice to the Client at any stage. In the event of such cancellation the kilometers travelled will be calculated in accordance with clause 10 and the Rates payable by the Client will be the Rates applicable to the period from delivery of the Vehicle to the date of cancellation by the Company. The Client is obliged to pay the applicable Rates in accordance with the terms stipulated on the invoice or statement issued by the Company.

## **9. Driver of the Vehicle**

- 9.1 Unless otherwise agreed in writing, the Vehicle will only be driven by a driver:
- a) Appointed by the Company; or
  - b) Appointed by the Client where he/she complies with the provisions of these Trading Terms.
- 9.2 The Company makes no warranties in relation to the skill, experience or sustainability of the driver appointed by it.
- 9.3 Subject to the provisions of these Trading Terms, the Rates payable for the driver's services will be set out in the Proposal, Quote or Initial Rental Agreement and are payable in accordance with these Trading Terms.
- 9.4 Regardless of whether the driver is appointed by the Company or the Client, the driver is under the control and direction of the Client and the Client is liable for the acts and omissions of the driver for the full Contract Period. The Company is not liable for any cost, expense, loss, liability, or claim arising from any acts or omissions of the driver and the Client indemnifies the Company against claims arising from or in connection with the conduct of the driver during the Contract Period.
- 9.5 Where the Vehicle is not driven by a driver appointed by the Company, unless agreed otherwise, the Client must provide the Company with all driver(s) details, including addition or change in driver(s), and warrants that the driver(s) will:
- a) Be at least 25 years old.
  - b) Be licensed to drive the Vehicle in South Africa and such licenses will be free of any endorsements.
  - c) Have a Professional Driver's Permit (PDP) where relevant, free of any endorsements, valid for at least three months post the Anticipated Return Date.
  - d) Be familiar and comply with all applicable Legislation Requirements, including without limitation the Road Traffic Act and Regulations, and all regulations and requirements pertaining to the transport of dangerous goods.
  - e) Will not carry, consume or be under the influence of alcohol or any illegal substance whilst driving the Vehicle(s). If tested, the driver is to have a zero blood alcohol level.
  - f) Report any accidents in terms of these Trading Terms regardless of whether or not the Vehicle has sustained damages.
  - g) Will always be contactable by cellular telephone or otherwise.

## **10. Vehicle Odometer**

- 10.1 The reading on the Vehicles Odometer is deemed accurate unless otherwise provided by the party alleging it is not accurate.
- 10.2 The difference between the Odometer reading recorded by the Company upon delivery of the Vehicle in terms clause 7 and the reading recorded by the Company upon return of the Vehicle in clause 8 is *prima facie* proof of the distance covered during the Contract Period, provided that:
- a) Should the Odometer cease to operate efficiently through mechanical fault or breakdown, the Client must immediately report the defect to the Company with full particulars on the use to which the Vehicle has been put during the Contract Period. The distance covered shall, subject to clauses 10.2 (b) and (c), then be determined by the Company in accordance with its tracking devices and its decision will be final and binding.
  - b) Should the Odometer cease to operate efficiently for any reason or found to be damaged, disconnected or tampered with or worked on, the distance covered is deemed to be 500km per day for the duration of the Contract Period.
  - c) Should the Vehicle be stolen, involved in an accident or should any other circumstances prevent an accurate reading of the Odometer the deemed daily distance of 500km will apply.

## **11. General duties of the Client**

The Client agrees:

- 11.1 Not to neglect, abuse or damage the Vehicle or modify, tamper with or remove any of its components.
- 11.2 To adhere to all applicable Legal Requirements.
- 11.3 Not to convey cargo or other material that could cause damage to the upholstery, load body or other parts of the Vehicle.
- 11.4 Not to convey any dangerous or hazardous goods in the Vehicle without the Company's prior written consent.
- 11.5 To whenever possible avert the risk of danger to the Vehicle or other vehicles or road users.

- 11.6 Not to overload the Vehicle or drive the Vehicle recklessly, negligently or without reasonable due care and skill.
- 11.7 Not to allow the Vehicle to enter into or remain in an area:
  - a) Of unrest or any area which poses a reasonable risk that the Vehicle could be damaged through civil unrest, social or economic protest or similar (including any action taken by an authority in order to control or suppress the unrest).
  - b) Which the reasonable person would not regard as safe and which poses a reasonable threat that the Vehicle could be stolen or become the subject of crime.
- 11.8 Not to contravene the terms and conditions of any applicable insurance policy or risk retention conditions or in any way prejudice any applicable insurance cover.
- 11.9 To take all reasonable precautions to keep the Vehicle safe from theft, loss or damage of any nature.
- 11.10 To maintain adequate levels of oil and water tanks at its own cost.
- 11.11 To allow a representative of the Company to inspect the Vehicle(s) at all reasonable times.
- 11.12 To immediately disclose to the Company the Vehicle(s) location, odometer reading and the state of the Vehicle(s) on written request to do so.
- 11.13 Whenever the Vehicle is left parked or unattended, to ensure all doors and windows are locked and/or secured and the gear-lock and alarm or immobilizer device is fitted, operating and activated.
- 11.14 At all times, to ensure that the keys to the ignition, the doors and the security lock are in the possession of the driver or a duly authorised representative of the Client.
- 11.15 At the intervals specified in the Vehicle service manual or at least every 30 days from the date of delivery of the Vehicle to the Client, to return the Vehicle to the Company or where agreed by the Company in writing, to satisfy the Company that the service has been performed. In the event that the service is affected at the instance of the Client at a garage other than that of the Company, the cost of the service and material used in connection therewith are for the Client's account, unless otherwise agreed in writing by the Company.
- 11.16 To ensure that the Vehicle does not cross international borders without the Company's prior written consent and in the event that such consent is provided, to ensure that all cross-border permits are obtained and other Legal Requirements complied with.
- 11.17 To provide consent, in the event that the Client retains insurance on the Vehicle to cover any loss, damages, errors or omissions, to having such insurance information shared with third parties in the event of a claim. The information will be distributed within the POPI Act 2013 parameters.

## **12. Sub-Contracting**

- 12.1 The Company is entitled to sub-contract any or all of the Services without the consent of the Client.
- 12.2 When sub-contracting, the Company acts as an agent for and on behalf of the Client. Where the Company acts as an agent for and on behalf of the Client:
  - a) Any contract concluded with a third party is concluded between the Client and the third party; and
  - b) Unless otherwise agreed in writing, the Company is entitled and authorised to enter into any such contract subject to such terms and conditions as the third party may stipulate on behalf of the Client.

## **13. Legal Requirements**

- 13.1 The Company shall be excused from performing Services if any Legal Requirement required for it to do so is revoked, terminated, not issued or not renewed for any reason whatsoever or the execution thereof would contravene any Legal Requirement.
- 13.2 The Company, by complying with any Legal Requirements shall not be deemed to waive or abandon in any rights in terms of these Trading Terms and shall not be deemed to have assumed any obligation, onus, responsibility or liability in favour of the Client or any other party.

## **14. Ownership and Lien**

- 14.1 Ownership of the Vehicle will at all times remain with the Company and nothing in this Agreement should be interpreted as a transfer of ownership to the Client. The Client is entitled to possession and use of the Vehicle until the Anticipated Date of Return, only as set out in these Trading Terms and as agreed, and these rights will in no circumstances extend beyond the Anticipated Date of Return unless otherwise agreed by the Company in writing.
- 14.2 During the Contract Period, the Vehicle must remain in the possession and control of the Client at all times.
- 14.3 The Client must ensure that the Vehicle remains free of any lien, pledge or other encumbrance and is not entitled to affect any lien, pledge or other encumbrance over the Vehicle for the duration of the Contract Period.

## **15. No Warranties, representations or guarantees by the Company**

Unless specifically agreed to and signed by a director of the Company, the Company gives no warranties or representations in relation to the Services and all warranties whether express, implied or in terms of common law or otherwise are excluded.

## **16. Accidents, Hi-jacking, Theft, Damage to Vehicles**

- 16.1 In the event of an accident or loss in respect of the Vehicle (incident), the following procedure must be followed:
  - a) The Company must be notified of the incident as soon as reasonably possible after becoming aware of the incident, but in any event no later than 36 hours after the occurrence of an accident, or immediately after the Client becomes aware of theft or hi-jacking of the Vehicle.
  - b) Within 24 hours of reporting of the incident, a detailed written report containing the extent of and circumstances relating to the incident must be lodged with the Company, which report must include the following documents:
    - i. A copy of the driver's licence of the person who was driving the Vehicle at the time of the accident.
    - ii. A copy of the driver's personal professional driving permit, if applicable.
    - iii. A copy of the SAPS report and case number.
    - iv. An incident report reasonably acceptable to the Company.
    - v. Clear photographs of the Vehicle and/or place and/or surroundings in which the incident occurred.
  - c) In addition to the above, the Client agrees to furnish all further assistance reasonably required by the Company and to respond to any requests for details, information or documents as soon as reasonably possible after the request, but in any event not later than 3 Business Days after the request by the Company.
  - d) The Client must make adequate provision for the safety and security of the Vehicle and will ensure that the Vehicle is not abandoned under any circumstances.
  - e) The Client must co-operate with the Company in the investigation, the instituting of any claims or the defense of any prosecution, claim or action relating to the incident (including without limitation attesting to any affidavit or providing evidence where reasonably requested to do so).
- 16.2 The Client is liable to pay the Company the full damage and ancillary costs (including, without limitation the replacement cost of the Vehicle and all extra costs) and Down Time incurred in the event of the Vehicle:
  - a) Being involved in a collision or incurring mechanical damage
  - b) Becoming a Total Loss
  - c) Being damaged beyond repair or otherwise not being capable of use
  - d) Being subject to fire, theft, hijacking or other disaster
- 16.3 In the event that any repairs, alterations, improvements or maintenance of any electric or mechanical nature are required:
  - a) As a result of fair wear and tear, repairs will be carried out at the sole discretion of the Company at the Company's cost.
  - b) As a result of any other cause whatsoever, including accident or otherwise, the costs will be borne by the Client.
- 16.4 All repairs and maintenance must be made at the instance of the Company by approved suppliers. Where repairs and maintenance become apparent in terms of clause 16.3(b) after return of the Vehicle, the Company is entitled to forthwith immediately cause the repairs to be carried out and to charge the Client the costs thereof including without limitation losses suffered as a result of Down Time and use of the Vehicle.
- 16.5 The Company reserves the right to apply a surcharge on all servicing, breakdowns and callouts in outlying areas.

**17. Client Liability for Loss of or Damage to the Vehicle**

- 17.1 The Client is liable for:
- a) All damages to or loss of the Vehicle from the time the Vehicle is delivered or deemed delivered to the Client in terms of clause 7 until its return to the Company has been accepted by or deemed returned the Company in terms of clause 8, subject to clause 18.
  - b) Any loss or life, injury or harm suffered by any person travelling in a Vehicle or is harmed as a result of the use of the Vehicle during the Contract Period, whether or not such person is authorised to travel in the Vehicle.
- 17.2 Clause 17.1 applies regardless of whether the Vehicle is driven by a driver of the Client or a driver employed by the Company.

**18. Insurance and Limitation of Liability**

- 18.1 No Vehicle will be released to the Client without sufficient Vehicle insurance cover in place.
- 18.2 In the event that the Company insures the Vehicle for the Contract Period:
- (a) Unless otherwise agreed by the Parties, the Company will, for an additional charge to be added to the Rates (Limitation of Liability Charge), procure insurance arrangements in its name and at its sole discretion.
  - (b) Should the Company be indemnified by its insurer pursuant to a claim under such arrangement, the Client's liability will be limited to:
    - i. The excess set out in the Initial Rental Agreement as well as all ancillary charges not otherwise covered in terms of the Company's insurance arrangement, including but not limited to towing and storage fees, vehicle recovery fees, loss of fuel, loss of or damage to tracking devices, vehicle re-licensing fees, mechanical failure(s), damage as a result of wear and tear or normal application of the vehicle, driver abuse,
    - ii. Damage(s) amounting to less than the excess payable by the Client, including windscreen, tyres, rims, tools and hubcaps
  - (c) The following conditions apply in addition to clause 18.2(a):
    - i. Single vehicle accidents: Double standard excess payable
    - ii. Accidents occurring between 23h00 and 04h00: Double standard excess payable
    - iii. Drivers under the age of 25: Double standard excess payable
    - iv. Drivers with licenses or PDP's less than 5 years: Double standard excess payable
    - v. Rear end damage to third party vehicle(s): Double standard excess payable
    - vi. Accidents caused by speeding: Double standard excess payable
    - vii. Claims not reported, or claims reported after the required reporting period: No cover
    - viii. Drivers with invalid or no PDP's (if required): No cover
  - (d) The Limitation of Liability Charge will be set out in the Initial Rental Agreement and, unless otherwise agreed in writing between the Parties, is payable together with the Rate regardless of whether there is in fact any loss or damage to the Vehicle.
  - (e) The payment of the Limitation of Liability charge shall not be construed as a waiver of the Company's claim.
  - (f) Should any claim made by the Company against its insurers not be paid or not be paid in full by the Company's insurers, the Client remains liable for the full cost or any shortfall of the claim.
  - (g) It is specifically agreed that the Company does not take out any insurance cover on behalf of the Client or in the Client's name. The Company insures its own risk and interests in the Vehicle(s). The Company does not collect insurance premiums from the Client, nor does it purport to provide the Client with any advice relating to insurance.
- 18.3 The Company does not take out insurance for:
- a) Goods in Transit or goods bonded, carried or otherwise stowed on or in the Vehicle from time to time.
  - b) Authorised or unauthorised Passenger Liability.
  - c) Any vehicles other than the Vehicle.
  - d) Injury or loss of life of any person.
  - e) Damage to or loss of the Vehicle where the Client is in breach of these Trading Terms, Insurance Conditions, or the Initial Rental Agreement; or
  - f) Personal Accident insurance.
- 18.4 In the event that the Company agrees (in writing) that the Client will insure the Vehicle for the Contract Period, the Client shall:
- a) Ensure that the cover in place is sufficient to cover loss of or damage to the Vehicle to the reasonable satisfaction of the Company.
  - b) Provide the Company with a copy of the policy and proof that all premiums have been paid in full.
  - c) Ensure that the policy remains valid and enforceable at all times.
  - d) Be liable for any excess payable in terms of the Client's policy.
  - e) Remain liable for any additional costs not otherwise covered by the Client's insurance arrangement.
  - f) Remain liable to the Company for the full cost of repair or replacement of the Vehicle in the event of loss of or damage to the Vehicle during the Contract Period should the Client's insurer not settle all or part of a claim.
  - g) Consent to having their insurance information shared with third parties in the event of a claim. The information will be distributed within the POPI Act parameters.

**19. Limitation of Liability against the Company**

- 19.1 The Company shall not be liable for any cost, expense, demurrage, claim, liability, loss or damage unless:
- a) The Client establishes that such loss or damage was caused by breach of these Trading Terms or the negligence of the Company, or any person for whose acts or omissions the Company is in law responsible (excluding the driver); or
  - b) The Company is liable in terms of section 61 of the CPA, if applicable, but subject always at the exceptions set out in that section.
- 19.2 The burden of proving the Company's negligence shall, at all times rest upon the Client or such other party alleging it.
- 19.3 Subject to clause 19.1(b) and then only to the extent required by section 61 of the CPA, the Company will not be liable for any consequential or indirect damages or loss of profits of the Client or any third party, regardless of the cause.
- 19.4 To the extent allowed by the CPA (where applicable) and without limiting any other provisions of these Trading Terms, the Company shall not be liable under any circumstances for claims arising from or in any way connected with:
- a) An act or omission of the Client or any person acting on its behalf, including any incorrect, incomplete or misleading instructions.
  - b) The malfunction of the Vehicle.
  - c) Any injury or death of the driver and/or passengers of the Vehicle, occupant of the Vehicle of any third party arising out of or in connection with use of the vehicle.
  - d) Any claims by any regulatory or governmental authority, including without limitation fines, penalties, levies or other similar costs.
  - e) The manner in which the Vehicle is driven during the Contract Period or the operation of the Vehicle during the Contract Period, regardless whether the driver is appointed by the Client or the Company.
  - f) The Company complying with instructions given by or on behalf of the Client.
  - g) The Company complying with any Legal Requirement.
  - h) The breakdown or failure of any handling equipment of the Company, provided that the Company has complied with such testing and maintenance standards for the equipment as is customary in the Company's business.
  - i) Any non-compliance with the Legal Requirements by the Client.
  - j) Any cause contemplated in clause 23.



- 19.5 Without limiting any other provision of these Trading Terms, and to the extent allowed by the CPA, the Company's liability for any cost, expense, loss (including loss of life, injury and/or damage to or loss of property), liability, damage, whether direct or indirect, arising out of connection with the Services and/or these Trading Terms will in no circumstances exceed R1 000 000.00 in respect of any one instance or R1 000 000.00 in respect of any number of instances in one calendar year.
- 19.6 The company is not obliged to replace any Vehicle that has been damaged, stolen or rendered unfit for use.

## **20. General Indemnities by the Client**

The Client shall defend, indemnify and hold the Company harmless against all loss (including loss of life, injury and loss or damage to property), damage (direct and indirect), liability, costs (included but not limited to all legal costs on an attorney and own client scale), expenses or claims (whether by the Client or any third party) whatsoever arising from:

- a) Any breach of warranty or obligation by the Client.
- b) Any negligence (of any degree) on the part of the Client or any person acting on its behalf.
- c) Any act or omission of the Client or any person acting on its behalf.
- d) The Company complying with the instructions given by or on behalf of the Client.
- e) The Company complying with the Legal Requirements.
- f) Any advice or information given by the Company and passed on to any third party without the Company's prior written consent.
- g) Any information provided by the Client being inaccurate, incomplete or out of date; and
- h) Any cost, expense, loss, liability, damage or claim:
- i) In excess of the Company's limits of liability contemplated in these Trading Terms; and/or
- j) For which the Company has executed liability in terms of clauses 17, 18, 19 or otherwise in terms of these Trading Terms.

## **21. Force majeure**

- 21.1 To the extent that it becomes impossible for either Party to perform any obligation (other than a payment obligation) in terms of these Trading Terms or any transaction entered into by the Parties because of an event or circumstance that was neither foreseeable nor reasonably foreseeable when these Trading Terms or any transaction between the Parties was entered into or which could not be guarded against or avoided by reasonable care (including strikes, lock outs, acts of God, fire, war or warlike acts, civil insurrection, government interference or restrictions, overburdening of any port, storm, adverse weather conditions, embargo, boycott, government intervention, machinery breakdown, imposition, or restrictions of embargo on imports or exports, or any circumstances beyond the control of the Company), the Party may:
- a) Notify the other Party of the nature, effect, extent and likely duration of the event or circumstance and keep the other party updated as may reasonably be required by that other Party; and
  - b) Resume performance of its obligations when performance becomes possible.
- 21.2 Notwithstanding the provisions of clause 20., a labour dispute, strike or lockout which could be resolved by the affected party acceding to the demands made of it shall, be deemed to be an event of force majeure.
- 21.3 Performance of such obligation is suspended for as long as the event or circumstance continues to make performance impossible and the Party prevented from performing is not liable for any added expense, loss, damage or liability arising out of or in connection with its inability to perform.
- 21.4 If the event or circumstance endures for a period longer than 30 days, either Party is entitled to cancel the affected Services.

## **22. Domicilium**

- 22.1 All notice in terms of these Trading Terms shall be given in writing and delivered by letter or sent via e-mail.
- 22.2 Any notice served by the Company:
- a) By e-mail shall be deemed delivered on the same day sent to the Client's e-mail address set out in the Initial Rental Agreement or otherwise provided to the Company in writing.
  - b) By hand delivered or posted letter shall be deemed delivered on the seventh day after it was sent to the Client's address set out in the Initial Rental Agreement or otherwise provided to the Company in writing.
- 22.3 The Client appoints as its domicilium citandi et executandi for all purposes under these Trading Terms its physical address set out in the Initial Rental Agreement or otherwise provided to the Company in writing.
- 22.4 Despite this clause 22 any notice or document actually received by the Client is sufficient notice for the purpose of these Trading Terms.
- 22.5 In the event that legal proceedings are instituted against the Client, and the Client is not found or present at its chosen *domicilium*, or has failed to notify the Company of a change in its *domicilium* address, it authorises the Company to serve notices and legal processes on its registered address.

## **23. Breach**

- 23.1 Without prejudice to any other rights which it may have, including any right to claim damages or specific performance, the Company shall be entitled to cancel any or all Agreements between it and the Client by prior written notice if:
- a) The Client commits any breach of its obligations under these Trading Terms or any other terms and conditions agreed between the Parties and fails to remedy that breach within seven days written notice calling upon it to do so.
  - b) The Client commits an act of insolvency in terms of any applicable insolvency legislation.
  - c) The Client is deemed to be unable to pay its debts in terms of any deeming provision of an applicable legislation relating to companies or insolvency.
  - d) The Client compromises or attempts to compromise with its creditors.
  - e) Any provisional or final order is granted for the sequestration, winding up, bankruptcy, business rescue or judicial management of the Client, or any equivalent order is made in terms of an applicable law with regard to the status of the Client.
  - f) The Client fails to satisfy any default or other judgment granted against it, within 10 days.
- 23.2 Without prejudice to any other rights which the Client may have, including any right to claim damages or specific performance, the Client shall be entitled to cancel any and all Agreements between it and the Company by 20 days' written notice, if the Company commits any breach of its obligations under these Trading Terms or any other terms and conditions between the Parties.

## **24. General**

- 24.1 This Agreement is the whole agreement between the Parties in regard to its subject matter.
- 24.2 If any legislation is compulsorily applicable to any business undertaken by the Company these Trading Terms will be read as subject to such legislation which shall be incorporated into these Trading Terms.
- 24.3 The defenses and limits of liability provided for by these Trading Terms shall apply in any action against the Company whether such action be founded in contract or delict (tort) or otherwise.
- 24.4 The Company shall only be deemed to have received electronic data and/or messages when such data and/or messages have been received, processed and read by the addressee.
- 24.5 No indulgence by a Party to another party, or failure strictly to enforce the terms of this Agreement, is to be construed as a waiver or be capable of founding an estoppel.
- 24.6 The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of this Agreement.
- 24.7 Save as is specifically provided in these Trading Terms the Client is not entitled to cede any of its rights or delegate any of its obligations under any Agreement without the prior written consent of the Company.

- 24.8 Any illegal or unenforceable provision of any Agreement, including these Trading Terms, may be severed and the remaining provisions of any Agreement continue in force.
- 24.9 These Trading Terms are governed by South African law.
- 24.10 The Parties unconditionally consent in terms of Section 45 of the Magistrate's Court Act, 1944 as amended, to jurisdiction of the Magistrate's Court in respect of any proceedings pursuant to these Trading Terms. The Company has the right, but is not obliged, to institute action in the High Court or any competent Court with jurisdiction.
- 24.11 In the event of the Company instructing a tracing agent, collecting agent or attorney to procure payment of an amount owing in terms of these Trading Terms, or any Initial Rental Agreement, the Client is liable for all costs incurred (on an attorney and own client scale) by the Company and any other costs incidental to the proceedings, including connection commission.
- 24.12 In Legal proceedings the outstanding amount due to the Company will be determined by a Certificate of Balance signed by a Director of the Company, which Certificate will be *prima facie* proof of the amount.
- 24.13 Should these trading terms and conditions be entered into electronically or signed at different venues or at different times or not in the presence of the other party, it will be deemed to have been accepted or signed as if the parties were all present at the time and place of signature.
- 24.14 In the event that the Client changes their name at CIPC, changes its physical address or intends to merge, acquire or be acquired, sell its shares, and or its business, the Client undertakes to notify the Company within 10 days of the said change, merger or acquisition.

**The signatory hereby warrants that he or she has read and understood these Trading Terms, is authorised to bind the Client to these Trading Terms and agrees that all Business undertaken by the Company on behalf of the Client is subject to these Trading Terms.**

Signature: \_\_\_\_\_

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

**For and on behalf of the Client**

Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Who warrants authority