



Standard Trading Terms

of

Spartan Truck Hire (Pty) Ltd

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Introduction

A The Company carries on the business of vehicle rental and ancillary logistics services.

B All and any Business undertaken by the Company will be governed by these Trading Terms.

1 Definitions and interpretation

1.1 In this Agreement:

(1) Agreement means any agreement for the provision of the Services between the Parties, which will always include these Trading Terms and all annexures, if any, the Initial Rental Agreement, Proposal, quotation and such other terms as may be agreed in writing between the Parties;

(2) 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;

(3) Application means the Client Application Form in the form specified by the Company from time to time;

(4) Business means all and any business undertaken by the Company, including but not limited to any advice, information or service provided, whether gratuitously or not, in connection with the Services;

(5) CPA means the Consumer Protection Act, 2008;

(6) 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;

(7) Company means Spartan Truck Hire (Pty) Ltd, registration number 1988/005507/07;

(8) 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;

(9) Down Time/Standing Time means the moment a vehicle becomes unavailable for use due to damage, theft, hi-jacking or abuse of the vehicles, until the vehicle becomes available for rental again;

(10) Initial Rental Agreement means the Initial Rental Agreement (in the form specified by the Company from time to time) setting out the agreement between the Parties and the details of the Services, including without limitation the Vehicles hired by the Client, the Rates payable by the Client;

(11) Legal Requirements means any law, by-law, regulation, ordinance, licence, approval, permit, consent, regulation or requirement or any relevant authority;

(12) Party/ies means either or both, as the context requires, the Client and the Company;

(13) 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;

(14) Services means the Vehicle hire and ancillary logistics services provided by the Company in terms of these Trading Terms;

(15) Vehicle means the Vehicle hired by the Client, as described in the Initial Rental Agreement, unless otherwise agreed, including its equipment, appurtenances and accessories;

(16) Trading Terms means these standard trading terms and conditions of the Company, including any annexure hereto and any Client application completed by the Client.

1.2 Any reference in these Trading Terms to:

(1) a clause is, subject to any contrary indication, construed as a reference to a clause of this Agreement;

(2) "in writing/written" includes by letter, facsimile or e-mail;

(3) person is construed as a reference to any natural or juristic person, firm, the Company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).

1.3 The headings do not govern or affect the interpretation of these Trading Terms.

1.4 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.

1.5 Unless the context 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.

1.6 The words "including" and "in particular" are without limitation.

1.7 Any reference to legislation is to that legislation, as amended or replaced from time to time.

1.8 A reference to a Party includes that Party's successors-in-title and permitted assigns.

1.9 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.

1.10 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 counter offer 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 email 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 Company will provide the Services to the Client in terms of these Trading Terms only. All of the provisions of these Trading Terms apply to the Vehicle hired by the Client for the further Contract Period.

3.2 The Services provided by the Company will include, wherever reasonably possible and agreed in writing between the Parties:

- (1) the hire of Vehicles agreed in the Initial Rental Agreement;
- (2) the services of a Driver to drive those Vehicles; and/or

(3) any other support service as agreed by the Parties.

3.3 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.

3.4 Wherever it is necessary for instructions to be given to the Company, the Client will provide those instructions timeously and 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 seems fit, in its sole opinion.

3.5 If at any stage during the provision of any Services 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.

3.6 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 (Proposal) given by the Company shall only be open for acceptance for a period of 30 days of the date of the Proposal.

4.2 Proposals are non-binding estimates and the Company is only bound to perform on written acceptance of the Proposal or Initial Rental Agreement by an authorised representative of the Company. Prior to that acceptance by the Client, the Company is entitled to withdraw and/or amend its Proposal.

4.3 In the event of the cost to the Company of providing any Service increasing for any reason whatsoever subsequent to the Company Quoting for it or acceptance of the Proposal, the charge agreed with the Client for such Service shall be automatically increased accordingly and the Client will be liable to pay for the increased cost in terms of these Trading Terms.

4.4 Any additional service that the Company is obliged or entitled to provide that has not been Quoted for or referred to in the Proposal or Rental Agreement shall be charged at the Company's usual rate or, if it has no usual rate, at a reasonable rate.

4.5 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 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 Period, for the full Contract Period.

5.2 The Rates will escalate annually by the amount specified by the Company in writing not less than 30 days prior to the date on which the escalation will apply.

5.3 In addition to the escalation in clause 5.2, the Company is entitled to increase the Rates on reasonable written notice in the event of any material increase in the variable costs of the providing the Services including:

- (1) insurance premiums;
- (2) labour (including without limitation overtime remuneration and sleep out charges);
- (3) the cost of obtaining and complying with all Legal Requirements;
- (4) fuel;
- (5) toll fees;
- (6) e-toll fees;
- (7) the costs incurred for the delivery and collection fees on vehicles;
- (8) fines;
- (9) document fees;
- (10) tracking fees; and/or
- (11) administration fees.

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 Should the Client be dissatisfied with an increase in terms of clauses 5.2 or 5.3 above, the Client is entitled to cancel the Services on or before the date that the increase takes effect, on 14 days' written notice. The Rates do not, unless otherwise specified in writing, include any additional costs incurred by the Company in carrying out the Services, including payment of fines, vehicle abuse, down time, excess kms, driver overtime, claims handling fee, delivery and/or collection costs, and/or a recovery fee of the Vehicle (in the event an accident, hi-jacking, or other loss of the vehicle) of R 5000.00, which shall be payable by the Client on demand.

5.6 Should the Vehicle not be returned with a full tank of fuel, the Company will charge the Client for the fuel required to fill the tank.

5.7 Notwithstanding any other provision of this clause 5 the Client is responsible for timeous payment of all traffic fines, toll and e-toll costs incurred in respect of any Vehicle during the Contract Period.

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 advance on delivery of the Vehicle by the Company in accordance with these Trading Terms.

6.2 The Company may require payment by debit order. The Client will, on demand, sign all documentation necessary to affect the debit order.

6.3 All charges contemplated in clauses 5.5 to 5.7 (both inclusive) must be paid to the Company without deduction on presentation of an invoice from the Company.

6.4 In the event of a failure to make payment on or before the due date, the Prescribed Rate of Interest Act, 1975 as amended shall apply.

6.5 The Company is entitled to suspend or refuse to provide the Services while any amount due and payable to the Company remains outstanding.

6.6 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.

6.7 For transactions conducted on a cash sale basis, Spartan Truck Hire retains the right to claim any outstanding monies owed from the credit card as provided by the hirer prior to a vehicle rental.

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, expense, loss, liability, damage (direct or indirect) or claim arising out or in connection with late delivery of the Vehicle.

7.3 The Vehicle is deemed to be delivered to the Client when the Vehicle exits the entrance to the Company's premises.

7.4 The Client is given the opportunity to and must undertake a thorough inspection of the Vehicle on delivery in terms of this 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:

(1) be delivered in good order and condition, including but not limited to being in a road worthy condition;

(2) be delivered with no damage to paintwork and/or upholstery;

(3) be delivered with the odometer reading set out in the Vehicle check list/Initial Rental Agreement;

(4) have all accessories and appurtenances in good working order and condition;

(5) have all radiator, oil reservoirs and petrol tanks properly filled and have sufficient engine oil and water;

(6) 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:

(1) immediately discontinue use of the Vehicle, other than as is required to comply with this clause 8;

(2) return the Vehicle to the Company's premises, unless the Company has agreed in writing to collect the Vehicle from another agreed point;

(3) 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 and proper running order and a roadworthy condition;

(4) ensure that the Vehicle is inspected by and the keys are returned to an authorised representative of the Company;

(5) ensure that the Vehicle is parked in the reserved parking, is properly locked and secured and, subject to clause 5.6, has a full tank of petrol or diesel (whichever is applicable); and

(6) 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 In the event of:

(1) damage to the Vehicle which requires repairs beyond the Anticipated Date of Return, the Vehicle is deemed returned on return of the Vehicle to the Company after all damage has been repaired;

(2) total loss or theft of the Vehicle, the Vehicle is deemed returned on payment of the full proceeds by the relevant insurer to the Company;

the Client will be charged for Down Time at the applicable Rate for the entire period until the deemed return of the Vehicles in terms of this clause 8.2, regardless of whether the Client is able to use the Vehicle or not.

8.3 Until such time as the Vehicle's return has been accepted in terms of clause 8.1 (6) or deemed returned in terms of clause 8.2, risk of loss of or damage to the Vehicle remains with the Client.

8.4 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.

8.5 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 kilometres 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 statements 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:

- (1) appointed by the Company; or
- (2) appointed by the Client where he/she complies with the provisions of these Trading Terms.

The Company makes no warranties in relation to the skill, experience or suitability of the driver appointed by it.

9.2 Subject to the provisions of these Trading Terms, the Rates payable for the driver's services will be set out in the Initial Rental Agreement and are payable in accordance with these Trading Terms.

9.3 For the Contract Period, 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.

9.4 Where the Vehicle is not driven by a driver appointed by the Company, the Client must provide the Company with all drivers' details and warrants that the driver(s) will:

- (1) be at least 25 years old;
- (2) be licensed to drive the Vehicle in South Africa and such licence will be free of any endorsements;
- (3) have a professional driver's permit (free of any endorsements), valid for at least three months post the Anticipated Return Date;

(4) be familiar with and comply with all applicable Legal Requirements, including without limitation the Road Traffic Act and regulations and all regulations and requirements pertaining to the transportation of dangerous goods;

(5) will not carry, consume or be under the influence of alcohol or any illegal substance whilst driving the Vehicles or have a blood alcohol level of over the legal limit;

(6) immediately report any accidents in terms of these Trading Terms;

(7) will always be contactable by cellular telephone or otherwise.

10 Vehicle Odometer

10.1 The reading on the Vehicle's Odometer is deemed accurate unless otherwise proved by the party alleging it is not accurate.

10.2 The difference between the Odometer reading recorded by the Company at delivery of Vehicle in terms clause 7 and the reading recorded by the Company on return of the Vehicle in terms of clause 8 is prima facie proof of the distance covered during the Contract Period, provided that:

(1) 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 (2) and (3), then be determined by the Company in accordance with its tracking devices and its decision shall be final and binding;

(2) 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;

(3) 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 obligations 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 materials that could cause damage to the upholstery 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 wherever possible avert the risk of danger or damage to the Vehicle or other vehicles or road users;

11.6 not to overload the Vehicle or drive the Vehicles recklessly, negligently or without reasonable due care and skill;

11.7 not to allow the Vehicle to enter into or remain in an area:

(1) 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);

(2) 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. The relevant provisions of such policies will be communicated to the Client on request;

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 at all reasonable times;

11.12 to immediately disclose to the Company the Vehicles location, odometer reading and the state of the Vehicle 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 immobiliser 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 effected at the instance of the Client at a garage other than that of the Company, the cost of the service and materials 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.

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 subcontracting, 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:

(1) any contract concluded with a third party is concluded between the Client and the third party; and

(2) 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 Non-solicitation

The Client agrees not to approach an employee or staff member of the Company with any offer of employment or to employ any such employee, whether directly or indirectly during any period in which the Company provides Services to the Client and for a period of two years thereafter.

14 Legal Requirements

14.1 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.

14.2 The Company, by complying with any Legal Requirements shall not be deemed to waive or abandon 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.

15 Ownership and liens

15.1 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 the 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.

15.2 During the Contract Period, the Vehicle must remain in the possession and control of the Client at all times.

15.3 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.

16 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.

17 Accidents, collisions, damage or loss

17.1 In the event of a collision, accident, damage or loss in respect of the Vehicle (Incident), the following procedure must be followed:

(1) the Company must be notified of the Incident as soon as reasonably possible after becoming aware of the Incident, but in any event not later than 24 hours thereafter;

(2) within 24 hours of the Incident, a detailed written report of the extent of and circumstances relating to the Incident must be lodged with the Company, which report must include the following documents:

(a) a copy of the drivers licence of driver who was driving the Vehicle at the time of the accident;

(b) a copy of the drivers personal professional driving permit, if applicable;

(c) a copy of the relevant SAPS report and case number;

(d) an Incident report form reasonably acceptable to the Company;

(e) clear photographs of the Vehicle and/or place and/or surroundings in which the Incident occurred;

(3) in addition to the above, the Client agrees to furnish all further assistance reasonably required by the Company and to respond to any request for details, information or documents as soon as reasonably possible after the request, but in any event not later than three Business Days after the request by the Company;

(4) 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;

(5) the Client must co-operate with the Company in the investigation, the instituting of any claims or the defence 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).

17.2 In the event of the Vehicle:

- (1) being involved in a collision or incurring mechanical damage;
- (2) becoming a total write-off or loss;
- (3) being damaged beyond repair or otherwise not being capable of use;
- (4) being subject to fire, theft or hijacking or other disaster;

the Client is liable to pay the Company the full damage and cost (including without limitation the replacement cost of the Vehicle and all extra costs) and Down Time incurred; as the case may be.

17.3 In the event that any repairs, alterations, improvements or maintenance of any electronic or mechanical nature are required:

(1) 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;

(2) as a result of any other cause whatsoever, including accident or otherwise, the costs will be borne by the Client, subject to clause 18;

17.4 All repairs and maintenance must be made at the instance of the Company, by approved suppliers. Where repairs and maintenance become apparent after return of the Vehicle, and when 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 result of downtime and use of the Vehicle.

18 Liability of the Client for loss of or damage to the Vehicle

18.1 The Client is liable:

(1) for all damage to or loss of the Vehicle from the time 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 to the Company in terms of clause 8;

(2) for any loss or life, injury or harm suffered by any person traveling in a Vehicle or harmed as a result of the use of the Vehicle during the Contract Period.

8.2 Clause 18.1 applies regardless of whether the Vehicle is driven by a driver of the Client or a driver employed by the Company.

18.3 The Company is not obliged to replace any Vehicle that has been damaged, stolen or rendered unfit for use.

18.4 Unless otherwise agreed in writing, the Company will insure the Vehicle for loss or damage under its existing policy in place. In the event that the Company agrees (in writing) that the Client will insure the Vehicle for the Contract Period under its insurance policy the Client shall:

(1) ensure that the cover in place is sufficient to cover loss of or damage to the Vehicle to the reasonable satisfaction of the Company;

(2) provide the Company with a copy of the policy and proof that all premiums have been paid in full;

(3) ensure that the policy remains valid and enforceable at all times;

(4) 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; and

(5) be liable for any excess payable in terms of Client's policy.

18.5 In the event that the Company insures the Vehicle during the Contract Period, the Client will nevertheless be liable for the full costs of repair or replacement of the Vehicle in the event of loss of or damage to the Vehicle during the Contract Period, less any amount paid to the Company by its insurers or otherwise recovered by the Company pursuant to its insurance arrangements. For the avoidance of doubt the amount payable to the Company by the Client in terms of this clause 18.5 includes:

(1) any excess;

(2) any surplus costs in the event of the proceeds not being sufficient to cover the costs or repair or of replacement; and/or

(3) the full cost or repair or replacement in the event that the loss or damage is not covered by the Company's insurance arrangements for any reason.

18.6 Where the Company insures the Vehicle for the Contract Period:

(1) Unless otherwise agreed by the Parties, the Company will, for an additional charge to be added to the Rates (Limitation of Liability Charge), procure additional insurance arrangements (in its name and at its sole discretion) and thereby mitigate the liability of the Client in terms of clause 18.7.

(2) Should the Company be indemnified by its insurers pursuant to a claim under those arrangements, the Client's liability will be limited to the excess set out in the Initial Agreement.

(3) 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 Rates regardless of whether there is in fact any loss or damage to the Vehicle.

(4) The payment of the Limitation of Liability charge shall not be construed as a waiver of the Company's claim in terms of clause 18.7. The Client remains liable for any amount owing in terms of that clause, less any amount paid to the Company by the Company's insurers.

(5) 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 any shortfall.

18.7 The Company will not take out insurance for:

- (1) goods in transit or goods bonded, carried or otherwise stowed on or in the Vehicle from time to time;
- (2) any vehicles other than the Vehicle;
- (3) injury or loss of life of any person;
- (4) damage to or loss of the Vehicle where the Client is in breach of these Trading Terms or the Initial Rental Agreement; or
- (5) personal accident insurance.

18.8 It is specifically agreed that the Company does not take out any insurance cover on behalf of the Client, in the Client's name. The Company insures its own risk and interest in the Vehicle which in turn mitigates against possible claims it may have against the Client. The Company does not collect insurance premiums from the Client nor does it purport to provide the Client with any advice relating to insurance.

19 Limitation of liability and claims against the Company

19.1 The Company shall not be liable for any cost, expense, demurrage, claim, liability, loss or damage unless:

- (1) the Client establishes that such loss or damage was caused by a breach of these Trading Terms or the negligence of:
 - (a) the Company; or
 - (b) any person for whose acts or omissions the Company is in law responsible (excluding the driver); or
- (2) the Company is liable in terms of section 61 of the CPA, if applicable, but subject always to 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(2) 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:

- (1) an act or omission of the Client or any person acting on its behalf, including any incorrect, incomplete or misleading instructions;
- (2) the malfunction of the Vehicle;

(3) any injury or death of the driver of the Vehicle, occupant of the Vehicle of any third party arising out or in connection with use of the Vehicle;

(4) any claims by any regulatory or governmental authority, including without limitation fines, penalties, levies or other similar costs;

(5) the manner in which the Vehicle is driven during the Contract Period or the operation of the Vehicle during the contract period, regardless of whether the driver is appointed by the Client or the Company;

(6) the Company complying with instructions given by or on behalf of the Client;

(7) the Company complying with any Legal Requirement;

(8) the breakdown of 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 are customary in the Company's business;

(9) any non-compliance with the Legal Requirements by the Client;

(10) any cause contemplated in clause 21.

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 or in connection with the Services and/or these Trading Terms will in no circumstances exceed R 1 000 000.00 in respect of any one instance or R 1 000 000.00 in respect of any number of instances in one calendar year.

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 of or damage to property), damage (direct and indirect), liability, costs (including 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:

(1) any breach of warranty or obligation by the Client;

(2) any negligence (of any degree) on the part of the Client or any person acting on its behalf;

(3) any act or omission of the Client or any person acting on its behalf;

(4) the Company complying with the instructions given by or on behalf of the Client;

(5) the Company complying with any Legal Requirements;

(6) any advice or information given by the Company and passed on to any third party without the Company's prior written consent;

(7) any information provided by the Client being inaccurate, incomplete or out of date;
and

(8) any cost, expense, loss, liability, damage or claim:

(a) in excess of the Company's limits of liability contemplated in these Trading Terms; and/or

(b) for which the Company has excluded liability in terms of clause 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 circumstance beyond the control of the Company), the Party may:

(1) 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

(2) resume performance of its obligations when performance becomes possible.

21.2 Notwithstanding the provisions of clause 21.1, 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 cost, 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 of longer than 30 days, either Party is entitled to cancel the effected Services.

22 Domicilium

22.1 All notices in terms of these Trading Terms shall be given in writing and delivered by letter or sent by fax or email.

22.2 Any notice served by the Company:

(1) by fax shall be deemed to have been given on the first business day in the Client's country following the day on which it was faxed to the Client's fax number set out in the Initial Rental Agreement or otherwise to the Company in writing;

(2) by email or by hand shall be deemed delivered on the same day as sent to the Client's email address set out in the Initial Rental Agreement or otherwise to the Company in writing;

(3) by 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 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 purposes of these Trading Terms.

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 written notice if:

(1) 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 of written notice calling upon it to do so;

(2) the Client commits an act of insolvency in terms of any applicable insolvency legislation;

(3) the Client is deemed to be unable to pay its debts in terms of any deeming provision of any applicable legislation relating to companies or insolvency;

(4) the Client compromises or attempts to compromise with its creditors;

(5) 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 any applicable law with regard to the status of the Client;

(6) 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 or 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 agreed 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 defences 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 or messages when such data and/or messages have been retrieved, 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 and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division in regard to all matters.

24.11 In the event of a Company instructing a tracing agent, collecting agent or attorney to procure payment of any 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.

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