



BWANA

TOOL & PLANT HIRE

THE RIGHT TOOLS, WHEN YOU NEED THEM

STANDARD TERMS AND CONDITIONS AGREEMENT

1. Introduction

1.1. **WHEREAS** Bwana Tool & Plant Hire has been appointed by the Customer to provide Equipment in accordance with this standard terms and conditions Agreement for the rental of specified Goods;

1.2. **WHEREAS** The Customer wishes to obtain the services of Bwana Tool & Plant Hire to supply and/or deliver the Goods on the terms and conditions as set out in this Agreement; and

1.3. **WHEREAS** this Agreement will govern all future contractual relationships between the Parties.

2. Definitions and Interpretation

2.1. The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.

2.2. In this Agreement, unless a contrary intention clearly appears,

2.2.1. words importing

2.2.1.1. any one gender include the other two genders;

2.2.1.2. the singular include the plural and vice versa; and

2.2.1.3. natural persons include created entities (corporate or non-corporate) and vice versa;

2.3. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

2.3.1. **"Agreement"** means this standard terms and conditions agreement together with all written appendices, annexures, exhibits or amendments attached to it from time to time;

2.3.2. **"Bwana Tool & Plant Hire"** means the company in the business of hiring, selling, repairing, installing and preparation of industrial Goods and accessories, as described in the cover page hereto;

2.3.3. **"Commencement Date"** means the date as specified in Annexure "A";

2.3.4. **"Customer"** means the natural or juristic person so defined in the cover page to this Agreement;

2.3.5. **"Goods"** means all goods, equipment and/or accessories leased by the Customer as specified in Annexure "A";

2.3.6. **"Goods /Service"** means any goods, equipment, accessories and/or any Service provided to the Customer as determined Annexure "A";

2.3.7. **"Delivery Date"** means date as specified in Annexure "A" where the Customer will take delivery of the Goods;

2.3.8. **"POPI"** means the Protection of Personal Information Act No. 4 of 2013 (as amended);

2.3.9. **"SEIFSA"** shall mean the Steel and Engineering Industries Federation of Southern Africa;

2.3.10. **"Service"** means any lease, delivery, installation, assembly, dismantling maintenance or repair services offered to the Customer and detailed in Annexure "A".

2.4. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

2.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;

2.6. Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;

2.7. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

2.8. Expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions.

2.9. No rule of construction applies to the disadvantages of a Party on the basis that it prepared or put forward this Agreement or any part of it.

2.10. The terms and conditions as set out in this Agreement will apply to all employees and subcontractors of Bwana Tool & Plant Hire.

3. Duration

3.1. This Agreement shall commence on the Commencement Date and shall continue for a term as elected and specified by the Parties in Annexure "A" hereto.

3.2. The Customer has must notify the Bwana Tool & Plant Hire per telephone, email, or in person of the termination date so that Bwana Tool & Plant Hire may avail themselves to accept delivery of returned goods or schedule transport to collect the goods from the Customer's premises.

3.3. The Customer shall immediately on receipt of notice of termination by Bwana Tool & Plant Hire be allocated with a termination number which shall constitute *prima facie* proof of the giving of notice of termination by the Customer and the date and time when such notice was given.

3.4. In the event that the Customer fails to return Goods on the date of termination, Bwana Tool & Plant Hire shall be entitled to payment of damages in an amount equal to the charges as set out in this Agreement, until the Goods are returned, replaced or paid for in full.

3.5. The charges in respect of this Agreement will end on the date and time of acceptance of the returned Goods by Bwana Tool & Plant Hire at their premises.

3.6. In the event that the Customer;

3.6.1. Does not specify the contract term for Goods hired; and/or

3.6.2. If the Customer has not arranged for the rental of the Equipment to be for an undetermined period then the duration of this Agreement will be deemed to be for 1 (one) day, or until terminated by either Party.

3.7. Notwithstanding duration of this Agreement, the Customer shall inform Bwana Tool & Plant Hire 1 (one) day prior to the termination date of the time and place where the Goods are to be collected or the time when the Goods will be returned to the premises of Bwana Tool & Plant Hire.

3.8. If the Goods are not ready for collection when Bwana Tool & Plant Hire arrives to collect the Goods, the Customer shall be liable to pay for the extra time the Goods is in its possession, as per the standard rates of Bwana Tool & Plant Hire (available on request).

3.9. The Customer must obtain a valid rental termination number in circumstances so stipulated in terms of this Clause 3, must obtain the delivery note from Bwana Tool & Plant Hire stating that the Goods were returned in a good condition, in order for the termination to be valid.

3.10. It is recorded that Saturdays will be deemed to be a working day if the Customer does not notify Bwana Tool & Plant Hire in writing to the contrary.

4. Services

4.1. Delivery

4.1.1. Delivery of the Goods to the Customer shall take place at the premises of Bwana Tool & Plant Hire.

4.1.2. If the Customer should require that Bwana Tool & Plant Hire deliver the Goods to their premises as agreed to by the Parties, then:

4.1.2.1. Bwana Tool & Plant Hire may choose to deliver the Goods, themselves and charge the Customer for the transport costs;

4.1.2.2. Bwana Tool & Plant Hire may choose to utilise the services of a third party transportation company on the terms deemed fit by Bwana Tool & Plant Hire;

4.1.2.3. The Customer shall pay the transport charges to Bwana Tool & Plant Hire as agreed to between the Parties in writing.

4.1.3. The Customer agrees to be at the intended delivery site to accept delivery of the Goods. If for any reason whatsoever the Customer is not at the site specified for delivery, all costs incurred by Bwana Tool & Plant Hire, including third party transporter costs or standing time, will be for the account of the Customer.

4.1.4. On delivery the Customer or the authorised representative shall sign the delivery note of Bwana Tool & Plant Hire if it is satisfied that the correct Equipment in its correct quantity was delivered in good order and is free from any defects.

4.1.5. The Customer shall have 1 (one) day from the delivery of the Goods to inform Bwana Tool & Plant Hire in writing of any defect in the Goods. Should the Customer fail to notify Bwana Tool & Plant Hire of any defect within 1 (one) day from delivery it shall be deemed that the correct Goods was delivered and that all Goods delivered is in working order.

4.1.6. The Customer agrees that Bwana Tool & Plant Hire may deliver the Goods in more than one consignment in which event each consignment may be invoiced separately and charges will begin to run from date of delivery.

4.1.7. The risk of damage or loss to the Goods will pass to the Customer on despatch from Bwana Tool & Plant Hire's premises, as described in clause 7 below.

5. Quotations issued by Bwana Tool & Plant Hire

5.1. Quotations will be issued by Bwana Tool & Plant Hire to any prospective/current Customer within 3 (three) days upon a request for the quotation by a prospective/current Customer.

5.2. Quotations issued shall remain valid for a period of 5 (five) days from the date of issue of the quotation.

5.3. Quotations exclude Value Added Tax (VAT). VAT will be charged and be payable the prescribed rates, unless the Customer provides written proof of its exemption from payment of VAT.

5.4. All quotations are subject to the availability of the Goods or Services and subject to correction of good faith errors by Bwana Tool & Plant Hire.

5.5. Escalation of quoted prices to be charged in accordance with SEIFSA price and indices tables applicable to steel, transport and general costs. The base data used will be that of the month prior to the date of the initial quotation.

5.6. The prices quoted are subject to any increases in the standard cost price of Bwana Tool & Plant Hire before acceptance of the order.

5.7. No Goods or Services will be supplied without an official written order or a letter of acceptance from the Customer.

6. Delays

6.1. If the progress or completion of any project of the Customer is delayed for any reason beyond the control of Bwana Tool & Plant Hire, the Customer agrees that Bwana Tool & Plant Hire will be immediately and irrevocably released from any contractual damages and penalty obligations the Customer may face.

6.2. Bwana Tool & Plant Hire shall also be remunerated for any standing time and costs involved with any delay by the Customer at the appropriate day rates for the Goods leased and Services provided.

7. Risk and Ownership

7.1. Delivery of the Goods to the Customer shall take place at the premises of Bwana Tool & Plant Hire.

7.2. Any Goods supplied by Bwana Tool & Plant Hire shall remain the property of Bwana Tool & Plant Hire.

7.3. The Customer agrees not to encumber or alienate the Goods, or to cede any rights under this Agreement without the written consent of Bwana Tool & Plant Hire.

7.4. The Customer may not sublet any of the Goods to any third party without the prior written consent of Bwana Tool & Plant Hire.

7.5. The Customer shall at the Customer's own cost assist Bwana Tool & Plant Hire to regain possession of any Goods if such Goods are mistakenly attached to meet any claim against the Customer.

7.6. Bwana Tool & Plant Hire may in its sole discretion terminate this Agreement or provide alternative Goods of the same quality and quantity at the same prices to those reflected in an order form to the Customer, should Goods supplied to the Customer be superseded, replaced or their manufacture terminated.

7.7. The Customer shall upon the signature of this Agreement notify Bwana Tool & Plant Hire in writing of the premises or site upon which the Goods will be kept and of the name and address of any landlord of such premises or site so that Bwana Tool & Plant Hire may inform the landlord that any Goods provided will not form part of the tacit hypothec the landlord may have over assets kept on the premises or site by the Customer.

7.8. The Equipment leased to the Customer remains the Customer's responsibility for the duration of the Agreement.

8. Breakdown, repair, replacement

8.1. The Customer shall, at his own cost, keep the oil and fuel levels to the standard required by Bwana Tool & Plant Hire until the Goods are returned to Bwana Tool & Plant Hire.

8.2. The Customer shall immediately notify Bwana Tool & Plant Hire of any breakdown and/or defect and shall not attempt to repair the Goods or replace any part of the Goods. Bwana Tool & Plant Hire shall be entitled to repair or replace the Goods, at its own costs, at the Customer's premises or site unless Bwana Tool & Plant Hire in its sole discretion determines that the breakdown is due to improper use of or failure to service and maintain the Goods in which event the Customer shall on demand reimburse Bwana Tool & Plant Hire with all costs incurred as a result of the breakdown.

8.3. The Customer shall immediately notify Bwana Tool & Plant Hire of any damage to the Equipment and shall notify Bwana Tool & Plant Hire in writing to collect the damaged Equipment. The Customer agrees that Bwana Tool & Plant Hire shall invoice the Customer until such a time as the damaged Equipment is repaired and returned to the premises of the Customer.

8.4. If Bwana Tool & Plant Hire in its sole discretion determines that the damage to the Equipment was not caused by Bwana Tool & Plant Hire, the cost of the damage will be for the account of the Customer.

8.5. Any Equipment lost on site will be charged to the Customer for at the current sale price of the Equipment as determined by Bwana Tool & Plant Hire.

9. Insurance

9.1. The Customer undertakes to comprehensively insure the Goods both against third party claims and against all risk, loss or damage to the Goods for the duration of this Agreement with a registered insurer, for such value as may be determined by Bwana Tool & Plant Hire from time to time.

9.2. The Customer shall provide proof of such insurance, and the payment of all premiums, to Bwana Tool & Plant Hire upon demand, until the Goods are returned.

9.3. When the Customer procures the insurance, the Customer shall procure such insurance on the basis that the Customer's insurer acknowledges that any repairs to the Goods under the policy of insurance must be carried out to the satisfaction of Bwana Tool & Plant Hire.

9.4. In the event of a claim not being covered by the Customer's insurance, the Customer will be held liable for the value of that claim.

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- 9.5. In the event that the Goods or parts thereof is stolen, destroyed or damaged as a result of any cause prior to the return of the Goods, the Customer shall be liable for the replacement value of the Goods and charges shall continue to run up until the Customer has paid for the damages or replacement value of the Goods.
- 10. Bwana Tool & Plant Hire Warranties**
- 10.1. Bwana Tool & Plant Hire warrants that the Goods are fit for the purpose of intended use and that no other warranties, nor representations, shall be binding on Bwana Tool & Plant Hire unless such warranties or representations are in writing and signed by a duly authorised representative of Bwana Tool & Plant Hire.
- 10.2. All other guarantees including common law guarantees are hereby specifically excluded.
- 11. Customer Warranties**
- 11.1. The Customer warrants that all permits or instructions required to carry out the Services will be timely supplied by the Customer to Bwana Tool & Plant Hire.
- 11.1.1. Bwana Tool & Plant Hire will not be held responsible for any delays caused by the Customer with regards to the issuing of work permits, or the carrying out of instructions.
- 11.1.2. Bwana Tool & Plant Hire reserves the right to claim for time spent awaiting permits or instructions at the appropriate day work rates.
- 11.2. The Customer shall allow Bwana Tool & Plant Hire access of the premises or site of the Customer for the purposes of inspection; and/or repairing; and/ repossessing and/or cleaning; and/or servicing of the Goods.
- 11.3. Core Drilling:
- 11.3.1. Prior to Bwana Tool & Plant Hire commencing any concrete core-drilling Services on behalf of the Customer, the Customer must advise Bwana Tool & Plant Hire of, point out and clearly mark the precise location of any and all Services and/or internal structural support system/s embedded below the core-drilling surface ("embedded services and/or structural reinforcement").
- 11.3.2. The embedded services which the Customer has a duty to identify, point out and mark include, but are not limited to, electrical services, gas services, fuel services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, plumbing services, telephone cables, fibre optic cables, oil pumping mains, and any other embedded services and structural reinforcement that could be damaged by core drilling on the site.
- 11.3.3. While Bwana Tool & Plant Hire undertakes to take the necessary precautions to avoid drilling damage to any and all embedded services and / or structural reinforcement the Customer agrees to indemnify Bwana Tool & Plant Hire in respect of any and all loss, damage, costs and/or fines of any nature, which may be sustained, by the Customer in consequence of Bwana Tool & Plant Hire, whether directly or indirectly, causing damage to the said embedded services and/or structural reinforcement due to the Customer not identifying, not having pointed out and/or incorrectly pointed out and not clearly marking the precise location of the said embedded services and structural reinforcement as per clause 11.3.2.
- 11.4. The Customer will be responsible for obtaining the necessary permission in writing, prior to Bwana Tool & Plant Hire's work commencing, for Bwana Tool & Plant Hire to have access to the site to deliver the Goods leased.
- 11.5. Any earthing and/or lightning protection required, is to be performed by the Customer at the Customer's expense. The Customer must also ensure that any electrical works performed on or near Bwana Tool & Plant Hire Goods is safe, correctly insulated and earthed.
- 12. Relocation of Goods**
- 12.1. The Customer shall, prior to the relocation any Goods to another premise or site, obtain the written approval from Bwana Tool & Plant Hire. In the event that the Customer contravenes the terms of this clause then the Customer shall bear the charge levied by Bwana Tool & Plant Hire for travelling costs incurred.
- 12.2. The Customer must specifically state the date of relocation as well as the full particulars regarding the new site address.
- 12.3. If the Goods being moved are sheds, containers or guard huts and the Customer did not obtain the necessary written approval as is stated in Clause 12.1 above, then the Customer will be responsible for any damages incurred in the process of relocation and the costs to remove or relocate the said sheds, containers or guard huts.
- 12.4. If the mobile toilets are not accessible for removal and or is obstructed in some way that may cause difficulty for Bwana Tool & Plant Hire to remove or service the said toilets, then the Customer shall bear the extra costs that may be incurred by Bwana Tool & Plant Hire in order to do the same.
- 13. Construction Industry Annual Holiday**
- 13.1. When the Agreement duration extends through a construction industry annual holiday, this time will be deemed to be part of the Agreement Duration.
- 14. Additional Work**
- 14.1. Additional work is not included in the quotation as part of the scope of works. All additional work to be concluded will be agreed to between the Parties and will be charged at the standard rates of Bwana Tool & Plant Hire. Bwana Tool & Plant Hire will proceed with additional work once it received a signed order form from the Customer.
- 15. Defective Equipment**
- 15.1. Bwana Tool & Plant Hire shall decide, at its sole discretion, if the Equipment is defective or unfit for the purpose for which it is intended and shall be entitled to either terminate this Agreement or refund any hire charges already paid, or replace the defective Equipment.
- 15.2. The Customer shall return any defective Equipment to the premises of Bwana Tool & Plant Hire at the Customer's own cost.
- 16. Indemnification For Loss**
- 16.1. Under no circumstances shall Bwana Tool & Plant Hire be liable for any damages (including consequential damages) including loss of profits or for any delictual liability of any nature whatsoever which may be caused by the Goods or failure of any nature whatsoever of the Goods, whether caused negligently or innocently and the Customer hereby further indemnifies Bwana Tool & Plant Hire against all such claims. It is specifically recorded and agreed that Bwana Tool & Plant Hire shall not under any circumstances whatsoever be liable for any damage to any of the Customer's fixtures, fittings, tiling, glazing or floors.
- 16.2. The Customer acknowledges that it does not rely on any representations made by Bwana Tool & Plant Hire in regard to the Goods and Services or any of its qualities leading up to this Agreement other than those contained in this Agreement and is aware of the proper use of the Goods as well as all safety and maintenance procedures. The Customer acknowledges that the Customer has the necessary knowledge and knows how to safely and correctly use the Goods. All specifications, drawings, diagrams, price lists, dimensions, delivery dates, performance figures, advertisements, brochures and other technical data furnished by Bwana Tool & Plant Hire in respect of the Goods or Services orally or in writing will not form part of the Agreement in any way unless agreed to in writing by Bwana Tool & Plant Hire.
- 16.3. It is the sole responsibility of the Customer to determine that the Goods hired is suitable for the purposes of intended use. The Customer indemnifies Bwana Tool & Plant Hire for all damages or loss suffered by the Customer or a third party, should the Goods be used for any other purpose than that was designed for. The Customer shall comply with any safety instructions for the Goods made available by Bwana Tool & Plant Hire.
- 17. Invoicing and Payment**
- 17.1. The Customer agrees that the amount contained in a tax invoice issued by Bwana Tool & Plant Hire shall be due and payable upon
- 17.1.1. Delivery of the Goods; or
- 17.1.2. if the Customer is a credit approved customer, within 30 (thirty) days from the end of the month in which a tax invoice has been issued by Bwana Tool & Plant Hire.
- 17.2. The Customer agrees to pay the amount on the tax invoice into the bank account details of Bwana Tool & Plant Hire as specified on the tax invoice or communicated to the Customer from time to time.
- 17.3. The risk of loss due to payment by cheque sent to Bwana Tool & Plant Hire through the post rests with the Customer.
- 17.4. Subject to any minimum charge payable, the charges will be calculated at the rate specified, provided that where, during the period of hire, the standard hire charges of Bwana Tool & Plant Hire are increased for any reason whatsoever, such increased charges shall apply to the lease of the Goods from the date of such increase.
- 17.5. The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by Bwana Tool & Plant Hire, reduced to writing and signed by the Customer and a duly authorised representative of Bwana Tool & Plant Hire.
- 17.6. The Customer is not entitled to any deduction or to set off any amount due to the Customer by Bwana Tool & Plant Hire against this debt.
- 17.7. The Customer agrees that the amount due and payable to Bwana Tool & Plant Hire may be determined and proven by a certificate issued and signed by any director, member or manager of Bwana Tool & Plant Hire, whose authority need not be proven or by any independent auditor. Such certificate shall be binding and shall be *prima facie* proof of the indebtedness of the Customer.
- 17.8. If any amount due to the Bwana Tool & Plant Hire is not paid on due date, such amount, as well as this agreement as a whole will become an incidental credit agreement, which will bear interest from that date at the rate as (a) prescribed by First National Bank Limited as their prime lending rate plus an additional 1 (one) % per month or (b) the maximum prescribed interest rate as stipulated in section 42(1) of the National Credit Regulations per month, but only if applicable to the Applicant in terms of sections 4, 5 and 6 of NCA. Such interest will be capitalized monthly in advance.
- 17.9. The Customer agrees that if an account is not settled in full as per clause 16.1 above, Bwana Tool & Plant Hire will be entitled to immediately institute action against the Customer at the sole expense of the Customer; to cancel the Agreement and take possession of any Goods delivered to the Customer and to claim damages. These remedies are without prejudice to any other right Bwana Tool & Plant Hire may be entitled to in terms of this Agreement or in law. Bwana Tool & Plant Hire reserves its right to immediately collect the Goods supplied in terms of this Agreement on cancellation for non-payment.
- 17.10. A credit approved Customer will forthwith lose this approval when payment is not made according to its credit application and all amounts then outstanding shall immediately become due and payable.
- 17.11. Bwana Tool & Plant Hire shall be entitled to withdraw credit facilities provided to a credit approved customer at any time within its sole discretion.
- 17.12. Increases in Bwana Tool & Plant Hire's costs which are consequent upon changes in the said rates or upon any change in or imposition of new government taxes, levies or contributions payable by Bwana Tool & Plant Hire in respect of employees engaged upon or in connection with the Services shall be an agreed addition to the price initially agreed. If the Customer disputes the amount of increase, the amount of the increase may be certified by any independent auditor and such certificate shall be final and binding on the Customer.
- 17.13.
- 18. Occupational Health and Safety Act 85 Of 1993**
- 18.1. Should the Customer perform its own inspections under the Occupational Health and Safety Act 85 of 1993 and should any defects be discovered, then the Customer shall forthwith:
- 18.1.1. Notify Bwana Tool & Plant Hire in writing;
- 18.1.2. Take steps to ensure that the Goods supplied does not constitute a danger to any person or property by reason of such defect;
- 18.1.3. and to disengage the defective portion of the Goods from the rest of the Goods.
- 19. Surety**
- 19.1. Any Customer entering into a credit application agreement will need to complete a surety agreement attached to the credit application agreement before any application for credit is considered.
- 20. Cession in securitatem debiti**
- 20.1. The Customer hereby irrevocably and cedes, pledges, assigns and transfers in favour of Bwana Tool & Plant Hire, all its rights, title, interest in and to all claims of any book debt owed to the Customer howsoever arising which the Customer may now, or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Customer from whatsoever cause or causes arising, which the Customer may be or become bound to perform in favour of Bwana Tool & Plant Hire, if being acknowledged that this cession is a cession in *securitatem debiti* and is not an out and out cession.
- 21. Force Majeure**
- 21.1. Bwana Tool & Plant Hire will not be held liable for any damages arising from its inability to perform in terms of the Agreement due to any force majeure including any acts of God or any circumstance beyond the control of Bwana Tool & Plant Hire, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.
- 22. Breach, penalties and termination:**
- 22.1. In the event that any Party breaches any term of this Agreement, then without prejudice to the other party and/or other rights in terms of this Agreement or in law, the innocent party shall have the right to terminate this Agreement by notice if:
- 22.1.1. the Customer fails to pay any amount owing to Bwana Tool & Plant Hire on due date and fails to make such payment within 7 (seven) days of receipt of written demand thereof from Bwana Tool & Plant Hire;
- 22.1.2. any Party is unable to pay its debts, commits any act of insolvency as described in the Insolvency Act, 1936, or application is made for the surrender, sequestration, liquidation or winding-up of its estate or if the innocent party anticipates that any of the events as set out in this clause 21.3. are imminent;
- 22.1.3. if the Customer does or allows to be done anything which in Bwana Tool & Plant Hire's opinion will or may have the effect of negatively affecting the operation of the Services, and fails to remedy such breach within 7 (seven) Calendar Days of receipt of written demand to that effect from Bwana Tool & Plant Hire's ; or
- 22.1.4. if the defaulting party who commits a breach of any of the terms or conditions of this Agreement and fails to remedy such breach within 14 (fourteen) days after receipt of a notice from the innocent party requesting the defaulting party remedy such breach.
- 22.2. Upon termination of this Agreement for any reason whatsoever, Bwana Tool & Plant Hire shall remove its employees and Goods from the premises or site of the Customer and shall provide all reasonable assistance for a handover to a new service provider for a nominal fee.
- 22.3. Without prejudice to any other remedies which either of the Parties may otherwise have in terms of the Agreement or at law, either of the Parties will be entitled to prematurely terminate the Agreement, by 7 (seven) days written notice to the each other.
- 22.4. If the Customer terminates the Agreement before the termination date they will be liable to pay the amount due for the full contract term.
- 22.5. In the event of cancellation, the Customer shall be liable to pay all outstanding charges and all other costs incurred in the repossession of the Goods. If the Goods are not recovered for any reason whatsoever, the value shall be deemed to be nil and the Customer shall be liable to pay Bwana Tool & Plant Hire's the replacement value of the Goods.
- 22.6. In the event of cancellation of the Agreement by Bwana Tool & Plant Hire, it is entitled not to recover any loss sustained thereby from the Customer.
- 22.7. Any order is subject to cancellation by Bwana Tool & Plant Hire if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation,

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- sequestration, termination or judgement is recorded against the Customer or any of its principals.
- 22.8. The failure by the Customer to obtain the written consent of Bwana Tool & Plant Hire to:
- 22.8.1. dispose of possession of the Goods; and/or
- 22.8.2. to remove the Goods from the Customer's premises; and/or
- 22.8.3. to use of the Goods for any purpose other than indicated by the Customer; and /or
- 22.8.4. use the Goods over the duration specified and or
- 22.8.5. use of the Goods by unauthorised, inexperienced, unqualified or unlicensed persons will incur penalties of 50% (fifty percent) of the agreed daily rate from the moment of occurrence until issue of an accepted rectification notice delivery note by Bwana Tool & Plant Hire.
- 23. Privacy/ Compliance with POPI**
- 23.1. The Customer hereby consents to the processing by Bwana Tool & Plant Hire of their personal information that it has provided to Bwana Tool & Plant Hire for establishing its credit rating and to Bwana Tool & Plant Hire disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that Bwana Tool & Plant Hire will not be held liable for the good faith disclosure of any of this information to such third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific connected third party.
- 23.2. The Customer hereby consents that Bwana Tool & Plant Hire can provide personal information of the Customer to third parties, if the Customer has indicated Bwana Tool & Plant Hire as a trade reference to third parties and the Customer agrees that Bwana Tool & Plant Hire will not be liable for the good faith disclosure of any of this information to such third parties.
- 24. Gifts and Commission**
- 24.1. Save as permitted in and subject to internal customer policies, Bwana Tool & Plant Hire or any person acting on its behalf shall not offer, give or agree to give to any person, nor shall Bwana Tool & Plant Hire accept or receive or agree to accept or receive any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the fulfilment of its obligations under this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other contract with Customer.
- 25. Notices and Domicile**
- 25.1. All notices, authorisations and requests given or made in connection with the Agreement must be sent by hand, pre-paid registered post or facsimile to the addresses and numbers set out on the cover sheet and Annexure "A" of this Agreement.
- 25.2. The Parties hereby choose *domicilia citandi et executandi* (its domicile for the purpose of being served summons and execution levied) for all purposes under the Agreement the physical addresses set out on the cover sheet and Annexure "A" of this Agreement.
- 25.3. Change of addresses and numbers.
- 25.3.1. Each Party may by giving written notice to the other Party, change the addresses and numbers set out on the cover sheet of this Agreement to any addresses and numbers in the Republic of South Africa, provided that such change shall only take effect fourteen 14 (fourteen) Calendar Days after delivery of such written notice.
- 25.4. Deemed delivery.
- 25.4.1. Notice shall be deemed to have been given –
- 25.4.1.1. if delivered by hand to a responsible person during Business Hours to the designated physical address, on the date of delivery;
- 25.4.1.2. if sent by pre-paid registered post in a correctly addressed envelope to the designated postal address, on the 7th (seventh) working day after the date of posting; or
- 25.4.1.3. if sent by fax to the designated fax number, on the 1st (first) working day following the date of successful transmission.
- 25.5. Notice actually received.
- 25.5.1. Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.
- 26. Entire Agreement**
- 26.1. The Agreement constitutes the entire Agreement between Customer and Bwana Tool & Plant Hire in respect of the subject matter referred to in this Agreement, the delivery note and/or tax invoice and/or credit application and/or cash Customer information and/or Suretyship and neither party shall be bound by any undertakings, representations, warranties or promises not recorded in the Agreement.
- 27. Variation**
- 27.1. No amendment or modification to the Agreement shall be effective unless in writing and signed by both parties.
- 28. Waiver**
- 28.1. No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of the Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 29. Severability**
- 29.1. If the whole or any part of a provision of the Agreement is void or voidable by either party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of the Agreement shall have full force and effect, provided such severance does not alter the nature of the Agreement between the parties.
- 30. Governing Law and Jurisdiction**
- 30.1. The Agreement shall be governed and construed according to the laws of the Republic of South Africa and the parties agree to submit to the exclusive jurisdiction of the South African courts.
- 30.2. The Customer hereby consents that Bwana Tool & Plant Hire shall have the right to institute any legal action in either the Magistrate's Court or the High Court as per the jurisdiction in clause 30.1 at its sole discretion. These South African courts shall have exclusive jurisdiction in any litigation between the parties arising from whatsoever source.
- 31. Costs**
- 31.1. Each Party shall be responsible for its own legal and other costs relating to the drafting and negotiation of the Agreement.
- 31.2. The Customer shall be liable to Bwana Tool & Plant Hire for all legal expenses on the attorney-and- own-client scale incurred by Bwana Tool & Plant Hire in the event of:
- 31.2.1. any default by the Customer or
- 31.2.2. any litigation in regard to the validity and enforceability of this Agreement.
- 31.3. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Bwana Tool & Plant Hire may demand.
- 32. Publicity**
- 32.1. Neither Party will make or issue any formal or informal announcement or statement to the press in connection with the Agreement, without the prior written consent of the other Party.
- 33. Right to Reference**
- 33.1. Bwana Tool & Plant Hire shall not use Customer's name and a general description of the Services undertaken by Bwana Tool & Plant Hire in terms of the Agreement in any form in any proposals or other similar such documents which Bwana Tool & Plant Hire may issue or submit from time to time, without the prior written consent of Customer.