

Terms & Conditions of hire

Tent Concepts (Pty) Ltd

1. HIRE

The Lessor hereby lets to the Lessee who hereby hires the Goods and Services on the terms and subject to the conditions set out in this Agreement.

2. QUOTATION

2.1 The Quotation to which these terms and conditions ("T&Cs") are attached ("the Quotation") is valid for a period of 7 (seven) days from the date of its receipt by the Lessee and no binding agreement will come into existence prior to the written acceptance of the Quotation and the payment of the Deposit stipulated therein.

2.2 Any request by the Lessee for the amendment of the period of hire ("the Period"), the Goods and/or Services shall only be considered if in writing. In such event the parties agree that the Lessor shall not be obliged to agree to any such amendment and, in the event that the Lessor does agree, the Lessor shall be entitled to amend the Quotation, including, but not limited to, the Charges and Deposit set out therein.

2.3 By signature of the Quotation the Lessee agrees to be bound by these T&Cs, which are incorporated in and form part of the Agreement.

3. PAYMENT

3.1 The Lessee shall pay the Charges stipulated in the Quotation ("the Charges") to the Lessor in cash, EFT or by bank guaranteed cheque on or before the delivery of the Goods by the Lessor or the collection of the Goods by the Lessee at the commencement of the Period, unless otherwise agreed by the Lessor in writing.

3.2 The Charges are, unless otherwise stated, exclusive of any applicable Value Added Tax ("VAT") for which the Lessee shall additionally be liable.

3.3 The Lessee shall pay all sums due to the Lessor in terms of this Agreement without any set-off, deduction, and/or any other withholding of monies and free of any and all exchange, bank or other like charges.

3.4 If any amount due by the Lessee to the Lessor is not paid on due date, then without prejudice to any other remedy to which the Lessor may be entitled, all such overdue amounts shall bear interest at 2% (two percent) above the prevailing prime rate as charged by the Lessor's bank, which interest shall be calculated and compounded monthly in arrears from due date to date of payment thereof, both days inclusive.

4. SITE

4.1 The Lessee warrants that the area on which the Goods will be used and set up ("the Site") is:

4.1.1 easily accessible to standard vehicles;

4.1.2 firm and level;

4.1.3 clear and free of underground, surface or aerial obstructions.

4.2 Should the Site not comply with the warranty made in terms of clause 4.1 above, the Lessor shall be entitled, without prejudice to any other remedy which the Lessor may have, to:

4.2.1 re-determine the Charges payable by the Lessee; or

4.2.2 cancel the Agreement, in which event the Lessee shall have no claim whatsoever against the Lessor in respect of such cancellation.

4.3 The Lessee shall at its cost restore the Site to the condition it was in prior to the delivery of the Goods and/or performance of the Services, it being specifically acknowledged and agreed that the Charges do not include any repairs or remedial action that may be required to the Site.

5. APPROVALS

5.1 The Lessee warrants that it has obtained all necessary governmental, municipal, regulatory, engineering and other approvals and/or consents and/or licenses which may be required for access to and use of the Site, installation of the Goods and/or performance of the Services.

5.2 The Lessee indemnifies and holds the Lessor harmless from and against any and all loss, damage or liability (whether criminal or civil) suffered by the Lessor, including legal fees and costs incurred on a scale as between attorney and own client, as a result of such approvals and/or consents and/or licenses not having been obtained.

6. ACCESS

6.1 The Lessor shall be entitled to access to the Site at all reasonable times to, *inter alia*:

6.1.1 inspect the Site;

6.1.2 compile or amend a Quotation;

6.1.3 deliver and/or collect Goods; and

6.1.4 perform the Services.

6.2 The Lessee shall allow and/or procure sufficient access to and from the Site and procure sufficient unloading space.

6.3 If any Services are delayed, postponed and/or cancelled due to the Lessee failing to comply with its obligations in terms of this clause 6, the Lessee shall be liable to pay the Lessor's additional standard charges from time to time for such delay, postponement and/or cancellation, except where the delay is due to Force Majeure (i.e. causes that could not be anticipated by the Lessee, making performance inadvisable, commercially impracticable, illegal, or impossible including but not limited to acts of God, war, riots, fire, flood, hurricane, typhoon, earthquake, lightning, explosion, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, and acts of state or governmental action).

7. SUBSTITUTION OF GOODS

7.1 If for reasons beyond the control of the Lessor any Goods hired are not available for the Period, the Lessor shall be entitled to erect and/or supply goods similar in size and/or specification to those referred to in the Quotation to meet as near as possible the Lessee's requirements, provided however that such alternative goods shall not materially affect the Lessee's position in relation to the proposed actual use of the Goods by the Lessee.

7.2 In the event that the Lessor is unable to substitute alternative goods the Lessor shall notify the Lessee of the cancellation of the Agreement in which event any Deposit or other monies paid by the Lessee shall be refunded immediately.

8. LESSEE'S DUTIES

8.1. The Lessee undertakes:

8.1.1 not to interfere, nor allow others to interfere, with the Goods, their working mechanisms or any other parts of them and to take reasonable care of the Goods and only use them for the purpose for which they were intended;

8.1.2 to take adequate and proper measures to protect the Goods from theft, damage and/or other risks;

8.1.3 to timeously notify the Lessor of any change of the Site;

8.1.4 to permit the Lessor at all reasonable times to inspect the Goods;

8.1.5 to keep the Goods at all times in its possession and control and not to remove the Goods from the Site without the prior written consent of the Lessor;

8.1.6 not to do or omit to do anything which will or may be deemed to invalidate or negatively affect any policy of insurance in respect of the Goods which is drawn to the attention of the Lessee;

8.1.7 to keep the Goods free from attachment, hypothec or other legal charge or process; and

8.1.8 not to move or modify any Goods set up or erected by the Lessor.

9. RISK, OWNERSHIP AND INSURANCE

9.1 Risk in the Goods shall pass immediately to the Lessee when they leave the physical possession or control of the Lessor.

9.2 Risk in the Goods shall not pass back to the Lessor from the Lessee until such time as the Goods are back in the physical possession of the Lessor. This shall apply even if the Lessor has agreed to cease charging any Charges in respect of the Goods.

9.3 Ownership of the Goods remain vested in the Lessor at all times. The Lessee has no right, title or interest in the Goods other than a right to possess and use the Goods for the agreed Period.

10. LOSS OR DAMAGE TO THE GOODS

10.1 The Lessee shall be responsible for all expenses, loss (including charges) and/or damages suffered and/or incurred by the Lessor arising from any damage to or breakdown of the Goods, howsoever caused, whilst in the possession of, or at the risk of, the Lessee.

10.2 The Lessee shall pay to the Lessor the full replacement cost of any Goods which are lost, stolen or damaged beyond reasonable repair during the Period less the amount paid to the Lessor under any policy of insurance taken out in accordance with this Agreement.

11. EXCLUSION OF LIABILITY

11.1 The Lessor and its representatives, agents, employees, sub-contractors and/or servants shall not be liable to the Lessee for:

11.1.1 any direct damages suffered by the Lessee as a result of:

11.1.1.1 late or non-delivery of the Goods;

11.1.1.2 shortages of Goods (unless notified within 24 (twenty four) hours of delivery;

11.1.1.3 the Lessor's non-performance caused by Force Majeure; or

11.1.1.4 damage to the Site or to any underground, surface or overhead cables and installations on the Site (whether their location has been pointed out to the Lessor or not);

11.1.2 any indirect, consequential or special damages howsoever caused;

11.1.3 any negligent acts of the Lessor and its representatives, agents, employees, sub-contractors and/or servants.

12. INDEMNITIES, WARRANTIES & ACKNOWLEDGMENTS

12.1 The Lessee hereby indemnifies and holds the Lessor and its representatives, agents, employees, sub-contractors and/or servants harmless from and against any and all losses, injury, damage, fines, penalties and claims of whatsoever nature and howsoever arising from or connected with the Goods, or the use or possession thereof and whether or not such claims are caused by any act or omission of the Lessor or by anyone else, including but not limited to, those arising from:

12.1.1 the Lessee's possession and use of the Goods;

12.1.2 damage to or a failure to restore the Site to the condition that it was in prior to delivery of the Goods;

12.1.3 damage to underground, surface or overhead cables and installations (whether their location has been pointed out to the Lessor or not);

12.1.4 the Lessor's late, defective and/or non-performance of its obligations to the Lessee;

12.1.5 the Lessor's negligence;

12.1.6 the failure of the Lessee to obtain any approvals and/or consents and/or licenses in terms of clause 6 above; and

12.1.7 Force Majeure.

12.2 The Lessee acknowledges and accepts that the Goods will not necessarily be an exact replica of any photographs, images, visual documents or computer aided designs shown to the Lessee and the Lessee understands that such images or designs are merely to assist the Lessee in visualising the ultimate product. Moreover, photographs or images of the Goods may include extra equipment that is not stipulated on the quotation and will accordingly not accompany the Goods when delivered.

13. BREACH

1. If the Lessee should –
 1. fail to make any payment timeously; or
 2. breach any provision of this agreement; or

3. be sequestrated or liquidated, whether provisional or final or whether compulsory or voluntary, or placed in business rescue; or
4. in the case of a natural person, commit an act of insolvency as contemplated in section 8 of the Insolvency Act, No. 24 of 1936, as amended (“the **Insolvency Act**”); or
5. in the case of a company or close corporation, commit an act which would constitute an act of insolvency as contemplated in section 8 of the Insolvency Act if committed by a natural person, or commit an act defined in terms of section 344 of the Companies Act, No. 61 of 1973 (as amended); or
6. be placed under business rescue or judicial management, whether provisional or final or whether compulsory or voluntary, or pass a resolution for its winding up, to be placed under business rescue or for the appointment of a judicial manager; or
7. suffer any judgement to be entered against it and fail to take steps to rescind such judgement within 14 (fourteen) days of the judgement coming to its knowledge, or fail to satisfy any such judgement within 14 (fourteen) days of the date of refusal of rescission thereof, then and upon the happening of any of these events the Lessor shall be entitled, in its election and without prejudice to any of its other rights at law or hereunder, to forthwith enforce specific performance or to cancel this agreement, and in either event to claim damages.

14. FORCE MAJEURE

14.1 Notwithstanding anything to the contrary contained in this Agreement, the Lessor shall under no circumstances be liable to the Lessee for any delay, defective or non-performance under this Agreement caused by or arising from Force Majeure.

14.2 In the event of a Force Majeure event occurring, the Lessor shall in its sole discretion determine whether it is possible and/or safe and/or advisable to install the Goods and/or carry out the Services at the Site and/or allow the Goods to remain installed at the Site.

14.3 In the event that the Lessor determines that it is not possible and/or safe and/or advisable for the Goods to be installed and/or the Services to be carried out at the Site and/or for the Goods to remain installed at the Site, this agreement shall be cancelled and the Lessee shall have no claim whatsoever against the Lessor in respect of such cancellation. In such event the Lessor shall be entitled to recover its reasonable costs incurred in attempting to install the Goods and/or carry out the Services in terms of this Agreement.

14.4 In the event of a Force Majeure event occurring, the Lessee shall be responsible for ensuring that it has arranged an alternative venue for the event for

which it required the Goods and/or Services and/or has arranged sufficient event insurance in respect of the event and the Lessor shall have no liability whatsoever in respect thereof.

15. DOMICILIUM

15.1 The Lessee chooses as its *domicilium citandi et executandi* (i.e. address for service of all notices, court process and other documentation) the physical address and email (if any) stipulated in the Quotation, for all purposes arising out of or in connection with this agreement.

15.2 The Lessee may, by giving written notice thereof to the Lessor, change its *domicilium* to any other address provided that such new address is or includes a physical address (which is not a *poste restante*) within South Africa.

16. CERTIFICATE OF INDEBTEDNESS

A certificate signed by any manager or director of the Lessor, whose capacity and authority need not be proved, shall be *prima facie* proof of the evidence stated therein in respect of any indebtedness of the Lessee to the Lessor or in respect of any other fact, for the purpose of obtaining a judgement or an order against the Lessee in any competent court.

17. GENERAL

17.1 No concession, indulgence or additional benefit which a party ("the Grantor") may at any time grant to the other party shall be deemed to constitute a novation or an amendment of this Agreement or a waiver of the rights of the Grantor hereunder.

17.2 No agreement purporting to vary the terms and conditions hereof shall be of any force and effect unless reduced to writing and signed by the parties hereto.

17.3 This Agreement contains the entire agreement between the parties relating to the subject matter hereof and no parties shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

17.4 This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and the parties hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction in respect of all or any disputes which may arise between them in relation to or arising out of the implementation of this Agreement, subject, however to the Lessor's right to proceed in its discretion in any High Court having jurisdiction.

17.5 The Lessee shall be liable to pay to the Lessor all legal costs and disbursements incurred by the Lessor in enforcing its rights under this agreement on

a scale as between attorney and own client, including the costs of tracers and collection commission.

17.7 The Lessee agrees and understands that the above terms and conditions are required, and **no clauses may be crossed out or amended in any manner whatsoever** without the written consent of the Lessor.

Date:

Name:

Signature: