

## **SKYJACKS, a division of WACO AFRICA (PTY) LTD**

### **STANDARD TERMS & CONDITIONS OF HIRE**

1. DEFINITIONS: The following terms shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them;
  - (a) The OWNER shall mean Skyjacks, a division of Waco Africa (Pty) Limited.
  - (b) The CUSTOMER shall mean the person or company hiring the GOODS. (hereinafter defined)
  - (c) GOODS shall mean the goods and equipment reflected on the face hereof together with all accessories provided with such goods.
  - (d) HIRE CHARGES shall mean the amount which is calculated by multiplying the HIRE RATE by the HIRE PERIOD.
  - (e) HIRE PERIOD shall mean the period specified on the face hereof for which the GOODS are to be hired by the CUSTOMER, commencing on the SPECIFIED DATE and terminating on the date upon which the GOODS are returned to the OWNER, subject to the provisions of clause 3.
  - (f) HIRE RATE shall mean the hire rate specified on the face hereof at which the HIRE CHARGES payable by the CUSTOMER are to be determined for the HIRE PERIOD.
  - (g) SPECIFIED DATE shall mean the date specified for the collection of the GOODS where the CUSTOMER is to collect the GOODS, or the date the OWNER delivers the GOODS to the CUSTOMER'S premises or nominated site where the OWNER is to deliver the GOODS.
2. The OWNER, in consideration for the payment by the CUSTOMER of the HIRE CHARGES payable in terms hereof, will hire the GOODS to the CUSTOMER.
3. The hire shall subsist for a minimum HIRE PERIOD as set out on the face hereof and thereafter for an indefinite period terminable by either party upon the giving of not less than 7 (seven) days written notice. If a minimum HIRE PERIOD is stated on the face hereof this hire shall subsist for the minimum period and unless terminated by the CUSTOMER upon the giving of not less than 7 (seven) days written notice within such time, shall thereafter automatically be renewed on the same terms and conditions save that it shall endure for an indefinite period terminable on such written notice.
4.
  - (a) The HIRE CHARGES payable by the CUSTOMER to the OWNER shall be determined in accordance with the HIRE RATE.
  - (b) The HIRE CHARGES shall be calculated with effect from the SPECIFIED DATE.
  - (c) Irrespective of whether the GOODS have been used by the CUSTOMER or not, the HIRE CHARGES shall be calculated until the date of termination of the HIRE provided, however that if the GOODS are not received at the OWNER's yard/s by the date of such termination then without prejudice and in addition to any other rights of the OWNER, the HIRE CHARGES shall be calculated until the date upon which the GOODS are so received.
  - (d) The HIRE CHARGES shall be payable by the CUSTOMER by not later than the 15<sup>th</sup> day of the month following the month in which the OWNER's invoice

for such HIRE CHARGES is dated. All other amounts whatsoever payable by the CUSTOMER to the OWNER shall be paid on demand.

- (e) All HIRE CHARGES and other amounts payable by the CUSTOMER to the OWNER shall be paid without any deductions whatever, be free of bank charges, and be paid at Johannesburg on or before the due dates thereof. The CUSTOMER acknowledges that he/it will not be entitled to set off any amounts which the OWNER may now or at any time hereafter owe to the CUSTOMER in respect of any cause of indebtedness whatsoever against any payment to be affected by the CUSTOMER to the OWNER under this contract.
- 5.
- (a) The ownership in the GOODS shall at all times be and remain vested in the OWNER.
  - (b) The risk in and to the GOODS shall pass to the CUSTOMER on receipt of the GOODS by the CUSTOMER and shall remain with the CUSTOMER until the GOODS are returned to the OWNER. During this period the CUSTOMER shall bear every risk of loss, damage or destruction to the GOODS whatsoever and howsoever caused.
  - (c) If any damage or defect in the GOODS is suspected or becomes manifest, the CUSTOMER must notify the OWNER within 1 business day of such suspicion or manifestation, so that the OWNER can remedy the damage or defect in accordance with this contract and the Consumer Protection Act and/or related regulations (if applicable).
  - (d) Should any loss, damage or destruction preclude the CUSTOMER from using the GOODS either temporarily or permanently, the CUSTOMER shall continue to be liable for all HIRE CHARGES payable in respect of the HIRE PERIOD, unless such interruption is due to damage or a defect for which the OWNER is responsible in terms of the Consumer Protection Act and/or relating regulations (if applicable).
  - (e) Should the GOODS or any portion thereof be lost, damaged or destroyed while the CUSTOMER is in possession of the GOODS, the OWNER, without prejudice and in addition to any other rights which it may have, shall be entitled to claim from the CUSTOMER, an amount equal to the OWNER's then current full catalogue price in respect of the GOODS which have been lost, damaged or destroyed.
  - (f) The CUSTOMER:-
    - (i) upon delivery of the GOODS, shall be deemed to have acknowledged that the GOODS are in a state of good working order and repair;
    - (ii) shall be obliged to keep the GOODS at all times throughout the duration of this contract in a state of good order and repair;
    - (iii) undertakes that he/it shall not do or permit to be done anything which may render the GOODS liable to attachment or subject to any lien, and shall maintain the GOODS free of any encumbrances whatsoever.
    - (iv) shall not part with or give up possession of the GOODS to any other person;
    - (v) shall at all times inform the OWNER in writing of the place at which the GOODS may be found from time to time;
    - (vi) shall immediately notify the OWNER in writing of any occurrence of anything which may prejudice any or all of the OWNER's rights in and

- to the GOODS or should the GOODS or any portion thereof at any time be lost, damaged or destroyed.
- (vii) shall not use or permit the GOODS to be used in a manner or for a purpose for which the GOODS were not intended or in contravention of any law or do or permit to be done anything which will jeopardize or invalidate any insurance in respect of the GOODS.
  - (viii) shall have no right to cede or assign this contract or his/its rights to use the GOODS without the prior consent of the OWNER, nor shall he/it allow any parties other than his/its immediate employees to use any of the GOODS.
  - (ix) shall only allow the GOODS to be used by a competent person as defined by the Driven Machinery Regulations.
  - (x) shall not have any claim of any nature whatsoever or howsoever arising against the OWNER in connection with or arising from the use of the GOODS or from any other cause whatsoever.
6. On termination of this contract for any reason whatsoever, the CUSTOMER shall forthwith and at his/its own expense return all the GOODS to the OWNER at the OWNER's address or such other address that the OWNER may in writing direct, in a state of good order and repair, and also in a clean condition. Should the CUSTOMER fail to do so, the OWNER, without prejudice and in addition to any other rights which it may have, shall be entitled to claim from the CUSTOMER all loss, damage (direct, indirect or consequential) costs, expenses and charges whatsoever incurred by the OWNER by reason of such breach. The CUSTOMER acknowledges that the Return Notes issued by the OWNER and recording which of the GOODS have been delivered or collected by the OWNER at any time shall be final and conclusive as to the GOODS so returned or collected, without however affecting the OWNER's rights should any GOODS be returned or collected having been damaged or destroyed.
7. (a) The OWNER, in its discretion and without notice to the CUSTOMER may appropriate and apply, or despite any such appropriation and application, re-appropriate and re-apply any monies received by it from the CUSTOMER arising from this contract towards payment and satisfaction of any cause of indebtedness howsoever arising which the CUSTOMER may then or thereafter owe to the OWNER and irrespective of whether or not such monies were received before or at the time of or after the incurring of such liability, and the CUSTOMER shall forthwith make good any shortfall in any amount due under this contract occasioned by such appropriation or re- appropriation.
- (b) Should the CUSTOMER fail to make payment of any amount as provided for in this contract promptly on the due date for the payment thereof, the OWNER without prejudice and in addition to any other rights which it has, shall be entitled to claim interest at the rate of Prime +5% per annum as quoted by Standard Bank from time to time on all overdue amounts, which interest shall be calculated monthly in advance from the date upon which the amount so overdue should have been paid.
8. Should the CUSTOMER commit a breach of any of his/its obligations in terms of this contract, or should -
- (a) application be made, either voluntarily or compulsory, for the sequestration or liquidation or the placing under business rescue of the CUSTOMER; or
  - (b) any judgement be obtained against the CUSTOMER and remain unsatisfied for a period of three days from the date of such judgment; or

- (c) the CUSTOMER commit an act of insolvency or other to assign his/its estate or effects or offer to effect a compromise with his/its creditors; or
  - (d) the CUSTOMER cease to carry on business,  
then the OWNER shall be entitled, notwithstanding any previous waiver and without prejudice and in addition to any other rights which it may have;
    - (i) at any time thereafter to demand immediate payment of all amounts still to be paid by the CUSTOMER in terms of this contract, which amounts shall upon such demand immediately become due and payable. In such event the OWNER shall be entitled to retake possession of the GOODS to protect its interests and shall on payment of all such amounts return the GOODS to the CUSTOMER who shall be entitled to retain the GOODS until the termination date of this contract; or
    - ii) without notice, to terminate this contract and any other incomplete contract which it may have entered into with the CUSTOMER and in respect of which the CUSTOMER is still to discharge obligations and to claim immediate return of the GOODS;
    - (iii) in addition to (i) and (ii) above to recover from the CUSTOMER all loss or damages whatsoever sustained by the OWNER, including inter alia all legal fees as between attorney and client, collection charges, tracing fees and storage charges.
9. Should the OWNER contend that the CUSTOMER has failed to comply with any of its obligations in terms of this contract the onus shall be and remain on the CUSTOMER to prove to the contrary.
10. This contract of hire and any quotation furnished in connection therewith is subject to the terms and conditions set out in these standard terms and conditions of hire. Unless expressly agreed to in writing by the OWNER, no qualification or variation of waiver or any of these terms and conditions shall be of any force or effect, nor shall any relaxation or indulgence accorded by the OWNER to the CUSTOMER prejudice the rights of the OWNER or be deemed a waiver of the OWNER's rights.
11. The CUSTOMER warrants this his/its address(es) set forth on the face hereof is correct and the CUSTOMER hereby chooses as its/his domicilium his/its physical address for all purposes arising out of or relating to this contract or the termination thereof.
12. The CUSTOMER shall be liable for any loss, damage or injury sustained by any third party arising out of the use of the GOODS during such period as the GOODS are in the possession or under the control of the CUSTOMER.
13. The CUSTOMER shall be obliged to insure the GOODS against all risks from the SPECIFIED DATE until such time as the CUSTOMER returns the GOODS to the OWNER, proof of which insurance shall, if required by the OWNER, be furnished to the OWNER prior to the transportation of the GOODS by the CUSTOMER.
14. The CUSTOMER assumes full responsibility for the security of the GOODS. It is the CUSTOMER's obligation to ensure the safe return of the GOODS to the OWNER. The HIRE CHARGES will continue until such date, irrespective of the fact that the use of the GOODS by the CUSTOMER may have ceased.
15. Any claims for GOODS which may have been damaged prior to delivery, or short-delivered to the CUSTOMER, must be made within 48 hours from receipt; otherwise the OWNER shall have no responsibility whatsoever, for any such damage or short deliveries.

16. In the event of any conflict between these standard terms and conditions and any terms or provisions set out in any document submitted by the CUSTOMER to the OWNER, the provisions of these standard terms and conditions shall prevail and apply.
17. In the event of any conflict between these standard terms and conditions and the provisions of any other applicable document of the OWNER, the provisions of such other document shall prevail and apply.