



YELLOW PLANT BROKING (PTY) LTD

STANDARD TERMS AND CONDITIONS OF HIRE

1. DEFINITIONS

(a) The "Contract" is the Contract between the Owner, represented by Yellow Plant Broking (Pty) Ltd as it's duly appointed agent and as brokering agent, and/or Yellow Plant Broking (Pty) Ltd (as the case may be) and as elected on the Rental Schedule and the Hirer for the hire of Plant, which and is governed by these conditions.

(b) The "Hire Period" shall commence from the time when the Plant leaves the Owner's and or Yellow Plant Broking (Pty) Ltd.'s depot or place where last employed and shall continue until the Plant is received back at the Owner's and or Yellow Plant Broking (Pty) Ltd.'s named depot or other agreed location. The Hire Period includes any time the Plant is left on site during a Holiday Period.

(c) The "Hirer" is the Company, firm, person, Corporation or public authority taking the Plant on hire and includes their successors or personal representatives.

(d) "Hire Charges" are the rates charged and on the basis set out in The Rental Schedule to this Contract.

(e) "Holiday Period" covers any stoppage of work over Easter, Christmas and the New Year; as well as any other Public holidays.

(f) "On-hires" is when Yellow hires from the Owner and On-Hires Plant owned by the Owner.

(g) The "Owner" is the company, which is the Owner and/or Yellow (as the case may be) the Plant on hire and includes their successors, assignees or personal representatives.

(h) "Plant" covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefor, which is hired to the Hirer, or anything which is supplied to the Hirer to effect the hire, and anything supplied to the Hirer for the safe operation and routine inspection and maintenance of the Plant, and which is described in The Rental Schedule to this Contract.

(i) "Period" is the period of hire of Plant by the Hirer and shall be a minimum of 8 hours per "Working Day", a minimum of 6 hours per weekend day or public holiday, a minimum of 4 hours per day where there is inclement weather, and a minimum of 4 hours per day where there is standing time.

(j) "Rental Schedule" is the document signed by the parties which sets out the Hire Rates and Plant hired, and which document incorporates the terms and conditions of this Contract.

(k) A "Working Day" shall be a minimum of 8 hours, Monday to Friday

(l) Yellow Plant Broking (Pty) Ltd ("Yellow") is the company which either "on-hires" the Plant to the Hirer, or the duly appointed brokering agent of the Owner, as the case may be.

2. EXTENT OF CONTRACT

2.1 Yellow hires to the Hirer who hires the Plant as described in the Rental Schedule, in consideration for the payment of or an undertaking by the Hirer to pay the amount of the Hire Charges for the Period calculated as set out in the Rental Schedule.

- 2.2 The conditions of hire set out in this Contract take precedence over any other terms which may have been included in the Hirer's offer to hire or enquiry and signature by the Hirer of this Contract constitutes a cancellation of any such prior terms. This agreement records the whole agreement between the Owner and /or Yellow (as the case may be) and the Hirer and overrides all other agreements, terms or conditions purporting to relate to the hire of the Plant and collateral verbal agreements are expressly excluded. No condition, terms or representation not expressed herein shall be binding on the Owner and/or Yellow (as the case may be) of the Hirer and no variation shall be binding on either of the parties unless reduced to writing and agreed to by the Owner and/or Yellow (as the case maybe) and the Hirer.
- 2.3 In the event that the Hirer "on-hires" the Plant to a third party, the Hirer shall be obliged to have adequate insurance in place that includes "on-hire" liability to cover any obligations that the Hirer may have to Yellow and/or the Owner of the Plant (as the case may be) and the interests of yellow and / or the owner shall be noted in that policy.

3. ACCEPTANCE OF PLANT

Acceptance of the Plant on site implies acceptance of all terms and conditions of this Contract and the Rental Schedule unless otherwise previously agreed in writing.

4. UNLOADING AND LOADING

The Hirer shall be responsible for the unobstructed access and egress and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site; and any personnel supplied by the Owner and/or Yellow (as the case may be) for such unloading and / or loading shall be deemed to be under the direction and control of the Hirer. Such personnel shall for all purposes in connection with their employment in the unloading and / or loading of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) who shall be solely responsible for all claims arising in connection with unloading and / or loading of the Plant by, or with the assistance of, such personnel.

5. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

- 5.1 Unless notification in writing to the contrary is received by the Owner and/or Yellow (as the case may be) from the Hirer in the case of Plant supplied with an operator within 1 one, and in the case of Plant supplied without an operator within 3 hours, of the Plant being delivered to the site, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Contract. The Hirer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and / or the Owner and/or Yellow's (as the case may be) recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted).
- 5.2 The Hirer shall at all times when hiring Plant without the Owner and/or Yellow's (as the case may be) operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the Plant. If such Plant is continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising therefrom.

6. RISK

- 6.1 The risk of any loss of or damage to the plant howsoever caused, including theft or any attempted theft, and the risk of any loss or damage to property or persons, passes to the Hirer on commencement of the Hire Period.
- 6.2 Such risk remains with the Hirer until the Plant is delivered to the Owner and/or yellow (as the case may be) at the end of the Hire Period.
- 6.3 The risk remains with the Hirer irrespective of any insurance policy covering either the plant or the Hirer's liability for damage to the Plant.
- 6.4 Where the Plant is required to be transported by low-bed or any other means of transport, excluding self-propulsion, which is provided or arranged by the Hirer, the risk of loss or damage to the Plant whilst in transit or being handled, loaded or off-loaded at any place shall be assumed by and shall pass to Hirer at the commencement of the loading operation at the Owner's and/or Yellow's (as the case may be) depot or nominated site and shall remain with the Hirer until the Plant has returned to the Owner and or Yellow (as the case may be) for off-loading by it at it's depot or nominated site.

- 6.5 In any case, where transport is provided or arranged by the Hirer, whether on commencement or termination of the Hire Period, the Hirer indemnifies the Owner and/ or Yellow (as the case may be) against any loss of or damage to any property whatsoever or arising from injury or death of any person caused or occurring whilst the Plant is in transit or being loaded, off-loaded or handled.

7. INSURANCE

- 7.1 Hirer is obliged and undertakes to have in place adequate comprehensive insurance cover for all risks associated with the hire of the Plant and which shall include, but not be limited to, any and all damage to or theft of the plant, general and public liability (including employment liability) and to have the interest of the Owner and/or Yellow noted in the policy and to provide to the Owner and/or proof of cover. In the event that the Hirer "on-hires" the Plant to a third party, the Hirer shall be obliged to have adequate insurance in place that includes "on-hire" liability to cover any obligations that the Hirer may have to Yellow and/or the Owner of the Plant (as the case may be) and the interests of yellow and / or the owner shall be noted in that policy.
- 7.2 Hirer shall be solely responsible for all excesses payable in the event of a claim and Hirer's liability in terms of this Contract shall in no way be limited to any amount payable by Hirer's insurers in the event of a claim being paid.

8. SERVICING AND INSPECTION

The Hirer shall at all reasonable times allow the Owner and/or Yellow (as the case may be), his agents or his insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Hirer shall allow such access during the Working Day.

9. GROUND AND SITE CONDITIONS

- 9.1 The Hirer is deemed to have knowledge of the site or the property or land where the Plant is to be delivered and the Hirer warrants that the condition of the site or place of delivery of the Plant is suitable for the use of such Plant.
- 9.2 The Owner and/or Yellow (as the case may be) or its duly authorised representatives shall at all times be entitled have access to the site and to inspect the Plant.
- 9.3 Where the ground or surface at the site is soft or unsuitable for the safe travelling or operation of the Plant, the Hire shall be obliged, at its own cost, to provide and lay suitable materials for the Plant to travel or operate on site.
- 9.4 Failure by the Hirer to comply with this obligation will constitute a breach of a material term of this Contract entitling the Owner and/or Yellow (as the case may be) to cancel the Contract, alternatively excusing the Owner and/or Yellow (as the case may be) from performance of its obligations until such time as the Hirer has provided and laid suitable materials.
- 9.5 The Hirer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the site and the Hirer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

10. HANDLING OF PLANT

- 10.1 When a driver or operator or any person is supplied by the Owner and/or Yellow (as the case may be) with the Plant, the Owner and/or Yellow (as the case may be) shall supply a person competent in operating the Plant or for such purpose for which the person is supplied and such person shall be under the direction and control of the Hirer. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) and the Hirer shall be solely responsible for all claims arising in connection with the operation of the Plant by the said drivers / operators / persons.
- 10.2 The Hirer shall not allow any other person to operate such Plant without the Owner's and/or Yellow's (as the case may be) prior written consent.
- 10.3 Such drivers or operators or persons shall not operate any other Plant or machinery or undertake work other than that for which they are supplied by the Owner and/or Yellow (as the case may be) unless previously agreed in writing between the Owner and/or Yellow (as the case may be) and the Hirer.

11. HIRER'S OPERATOR

- 11.1 The Hirer shall not permit or allow any person other than the operator assigned by the Hirer to operate the Plant without the prior written consent of the Owner and/or Yellow (as the case may be).
- 11.2 The Hirer shall provide a competent plant operator, licenced where required by law to operate the Plant and shall undertake such regular daily service of the Plant as is necessary to keep it in good working order and condition, which such said daily service will consist of topping up of the engine and other oils, water, diesel, maintaining the correct air within the tyres and repairing all tyre punctures, checking all fan belts and the air-end oil, all of which shall be solely for the Hirer's account.
- 11.3 The Hirer also undertakes to at all times keep the diesel tank free from dirt and contamination.

12. BREAKDOWN AND REPAIRS, TYRES & TUBES

- 12.1 The Hirer shall be obliged to notify the Owner and/or Yellow (as the case may be) of any defects or deficiencies in the Plant, which are, or which become apparent, and /or notified to the Hirer by the operator, immediately and by the quickest practical method, and shall be confirmed in writing.
- 12.2 In such event the Hirer shall cease using the Plant forthwith failing which the Hirer shall be liable for all and any loss or damage, including consequential loss or damage, sustained by the Owner and /or Yellow (as the case may be) arising out of such continued use of the Plant.
- 12.3 The Hirer shall be obliged to notify the Owner and/or Yellow (as the case may be) of any breakdowns in the Plant, which are, or which become apparent, and /or notified to the Hirer by the operator, immediately and by the quickest practical method, and shall be confirmed in writing.
- 12.4 If a breakdown of the Plant due to its defect has been reported in accordance with this clause, the Hirer shall not be charged for the duration of the Plants downtime.
- 12.5 Should the Hirer fail to notify the Owner and/or Yellow (as the case may be) of any breakdown to the Plant caused by any defect in the Plant in accordance with this clause, then the Hirer shall not be entitled to any reduction in the Hire Charge.
- 12.6 Unless indicated otherwise in this Contract, tyres and tubes are the Hirer's responsibility and the Owner and/or Yellow (as the case may be) warrants that the tyres on the Pant will be in good working condition.
- 12.7 The Hirer shall be responsible for the cost of repairing all tyre and tube punctures or other damage to tyres or tubes during the Hire Period and shall be responsible for all cuts and abrasion of tyres and tubes and the replacement thereof while the Plant is on site.
- 12.8 Unless the Hirer notifies the Owner and/or Yellow (as the case may be) to the contrary within 1 hour of delivery of the Plant to site, the tyres on the Plant shall be deemed to be in good working condition.

13. OTHER STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" (clause 9) or for "Idle Time" (clause 25), as herein provided), for stoppages through causes outside the Owner and/or Yellow's (as the case may be) control, including but not limited to bad weather and / or ground conditions nor shall the Owner and/or Yellow (as the case may be) be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Hirer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.

14. LOSS OF OTHER PLANT DUE TO BREAKDOWN

Each item of Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner and/or Yellow (as the case may be) or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

15. LIMITATION OF LIABILITY

- 15.1 Except for liability on the part of the Owner and/or Yellow (as the case may be) which is expressly provided for in the Contract (including these clauses):

15.1.1 the Owner and/or Yellow (as the case may be) shall have no liability or responsibility for any loss, or damage of whatsoever nature due to or arising through any cause beyond its reasonable control;

15.1.2 the Owner and/or Yellow (as the case may be) shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any wrongful act (including but not limited to negligence) in connection with the hire, for any of the Hirer's loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and / or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and

15.1.3 whenever the Contract (including these clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Hirer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made.

15.1.4 For the avoidance of doubt, nothing in these conditions limits or seeks to exclude the Owner and/or Yellow (as the case may be)'s liability for claims of death or personal injury caused by the Owner and/or Yellow's (as the case may be) gross negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

15.2 Where the Hirer enters into this Contract with Yellow on the basis of On-Hire, in each and every case where the Hirer has any liability in this Contract, such liability shall also extend to the Owner of the Plant.

16. INDEMNITY BY THE HIRER AND EXCLUSION OF OWNER'S AND/OR YELLOW'S LIABILITY

16.1 While the Plant is at the risk of the Hirer, the Owner and/or Yellow (as the case may be) shall not be responsible or liable to the Hirer or to any other person for any acts or omissions on the part of the Owner's and /or Yellow's (as the case may be) operator (or on the part of the Hirer's servants or employees or contractors), nor shall the Owner and/or Yellow (as the case may be) be liable for any damages whether direct or consequential of whatsoever nature and howsoever arising occasioned to the Hirer or to any other person, and the Hirer hereby expressly indemnifies and holds the Owner and/or Yellow (as the case may be) harmless against all such claims including all the costs of defending such claim or action.

16.2 The Owner and/or Yellow (as the case may be) shall not be liable or responsible to the Hirer or to anyone else for any direct, indirect or consequential loss or damage suffered by the Hirer or any other person arising out of stoppage of the Plant through any cause whatsoever, non-arrival of the Plant or any accident or breakdown of the Plant at any time, which cannot be attributed to any fault on the part of the owner and/or Yellow (as the case may be).

17. NOTICE OF ACCIDENTS

If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Hirer to the Owner and/or Yellow (as the case may be) by telephone and confirmed in writing to the Owner and/or Yellow (as the case may be) no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Hirer is not bound to fully indemnify the Owner and/or Yellow (as the case may be), no admission of liability, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's and/or Yellow's (as the case may be) prior written permission.

18. RE-HIRING / ON-HIRING

Neither the Plant nor any part thereof shall be re-hired, on-hired, sub-let, or lent to any third party without the prior written permission of the Owner and/or Yellow (as the case may be).

19. CESSION

19.1 The Hirer hereby irrevocably and in rem suam (concerning one's own affairs) cedes, pledges, assigns, transfers and makes over to and in favour of the Owner and /or Yellow (as the case may be), all its rights, title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Hirer 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 some of money which may now or at any time hereafter be or become owing by the Hirer from whatsoever cause or causes arising, which the Hirer may be or become bound to perform in favour of the Owner and/or Yellow (as the case may be), it being acknowledged that this cession is a cession in securitatem debiti and is not an out and out cession.

- 19.2 Should it transpire that the Hirer entered into prior deeds of cession or otherwise disposed of any of the rights, title and interest in and to any of the debts which will from time to time be subject to the cession, then this cession shall operate as a cession of all of the Hirer's reversionary rights.

20. CHANGE OF SITE

The Plant shall not be moved from the site to which it was delivered or consigned without the prior written permission of the Owner and/or Yellow (as the case may be).

21. RETURN OF PLANT FOR REPAIRS

- 21.1 If during the Hire Period the Owner and/or Yellow (as the case may be) decides that urgent repairs to the Plant are necessary then it may arrange for such repairs to be carried out on site or at any location of its nomination. In the event that urgent repairs to the Plant are necessary the Owner and/or Yellow (as the case may be) shall be obliged to replace the Plant with similar Plant if available, the Owner and/or Yellow (as the case may be) (but without prejudice to any of the provisions of clauses 9 and / or 13) shall pay transport charges involved or arrange for transportation of the Plant. In the event of the Owner and/or Yellow (as the case may be) being unable to replace the Plant they shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of clauses 9 and / or 13) by giving written notice to the Hirer.

22. BASIS OF CHARGING

- 22.1 The Hirer shall render to the Owner and/or Yellow (as the case may be) for each Working Week/ month an accurate statement of the number of hours the Plant has worked each day subject to the minimum hours chargeable. When any personnel, operator or driver is supplied by the Owner and/or Yellow (as the case may be), the Hirer shall sign their time record sheets. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time records sheets.
- 22.2 Plant shall be hired out for a stated minimum number of hours per Working Day

23. "ALL-IN" RATES

Where "All-In" rates are charged by agreement the minimum period shall be as defined in the Contract and in accordance with the Hire Charges and terms contained therein, subject to the provisions of clause 24.

24. COMMENCEMENT AND TERMINATION OF CONTRACT (TRANSPORT OF PLANT)

- 24.1 The Hire Period shall commence from the time when the Plant leaves the Owner and/or Yellow (as the case may be)'s depot or place where last employed and shall continue until the Plant is received back at the Owner and/or Yellow (as the case may be)'s named depot or other agreed location but an allowance shall be made of not more than one day's hire charge each way for travelling time.
- 24.2 Upon the completion of the Hire Period, the Hirer shall clean and where necessary, decontaminate the Plant. All fuel and contaminants will be removed from bunds, storage tanks and bowsers. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner and/or Yellow (as the case may be) should the Hirer fail to comply with this clause.

25. HIRER'S LIABILITY DURING THE NOTICE OF TERMINATION OF CONTRACT

- 25.1 Where the Hire Period is indeterminate or having been defined becomes indeterminate the Contract shall be terminable by seven days' notice in writing given by either party to the other except in cases where the Plant has been lost or damaged. Notwithstanding that the Owner and/or Yellow (as the case may be) may have agreed to accept less than 7 days' notice of termination, the Hirer's obligations under clause 13 shall continue until the Plant is returned to the Owner and/or Yellow (as the case may be) in accordance with clause 31 or until the Owner and/or Yellow (as the case may be) has collected the Plant within the 7 days following the acceptance of short notice. Oral notice given by the Hirer to the Owner's and/or Yellow's (as the case may be) driver or operator shall not be deemed to constitute compliance with the provisions of this clause.

25.2 Without prejudice to clause 24.1, should the Hirer fail to make the Plant available for collection by the Owner and/or Yellow (as the case may be) before the end of the 7 day notice, the Hirer's obligations under clause 13 shall continue for a further 3 days or until such time as the Plant is made available for collection and the Owner and/or Yellow (as the case may be) has collected the Plant. For the avoidance of doubt, where the Hirer gives a notice pursuant to clause 24(a) but subsequently and with the consent of the Owner and/or Yellow (as the case may be), withdraws such notice, the obligations of clause 13 shall continue to apply and the requirements of clause 24 will apply to any later termination of the Contract.

26. IDLE TIME

When the Plant is prevented from working, the hire charges shall be two thirds (??) of the hire rate or such other idle time rate as is agreed in writing by the Owner and/or Yellow (as the case may be) for the period during which the Plant is not in use. If the Plant works for any time during the Working Day, then the whole of that Working Day shall be charged as working time. In any case no period less than one Working Day shall be reckoned as idle time save for as provided for in clause 19.5. Where an "All-In" rate is charged, idle time is calculated on the machine element only. Full rate will be charged for the operator.

27. WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT

All chargeable items shall be paid by the Hirer at the rates set out in the Contract save that any subsequent increases before and / or during the Hire Period arising from awards under any wage agreements and / or from increases in the Owner's and/or Yellow's (as the case may be) statutory contribution shall be charged as additions at cost by the Owner and/or Yellow (as the case may be) and shall be admitted and paid by the Hirer.

28. TRAVELLING TIME AND FARES

Travelling time, fares and similar expenses for drivers, operators and any person supplied by the Owner and/or Yellow (as the case may be), incurred at the beginning and end of the Hire Period and where appropriate return fare of the driver, operator and any person supplied by the Owner and/or Yellow (as the case may be) to his home will be chargeable at cost. No charge shall be made by the Owner and/or Yellow (as the case may be) for any such expenses incurred by other employees of the Owner and/or Yellow (as the case may be) for the purpose of servicing, repair or maintenance of Plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the Plant.

29. FUEL, OIL AND GREASE

Oil and grease shall, when supplied by the Owner and/or Yellow (as the case may be), be charged at net cost or an agreed estimate of net cost, and when supplied by the Hirer, shall be of a grade or type specified by the Owner and/or Yellow (as the case may be). The Hirer shall be solely responsible for all damages, losses, costs and expenses incurred by the Owner and/or Yellow (as the case may be) if the Hirer uses the wrong fuel, oil or grease.

30. SHARPENING OF BLADES ETC.

The cost of re-sharpening or replacement of blades and other ancillary items shall be borne by the Hirer.

31. OWNER'S AND/OR YELLOW'S (AS THE CASE MAY BE) NAME PLATES

The Hirer shall not remove, deface or cover up the Owner's and/or Yellow's (as the case may be) name plate or mark on the Plant indicating that it is his property, without the prior written permission of the Owner and/or Yellow (as the case may be).

32. PERMITS

32.1 The Hirer shall at its own expense apply for and obtain any permits, licences, certificates, permission or exemptions which may be required for and in connection with the entry and use of Plant on the site.

32.2 The Hirer shall indemnify the Owner and/or Yellow (as the case may be) against any charges or fines that the Owner and/or Yellow (as the case may be) may become liable for as a result of the operation of the Plant during the Hire Period as well as any other costs incurred by Owner and/or Yellow (as the case may be).

33. OCCUPATIONAL HEALTH AND SAFETY ACT, 85 OF 1993 ('OSHA')

33.1 Acceptance of this Contract constitutes an acknowledgement by the Hirer that it is familiar with the provisions of OSHA and the Regulations made thereunder insofar as they relate to plant and machinery and the Hirer undertakes to the extent that it is an employer user in terms of OSHA, it will comply with the provisions of OSHA and the Regulations.

- 33.2 The Hirer shall indemnify the Owner and/or Yellow (as the case may be) against any charges or fines that the Owner and/or Yellow (as the case may be) may become liable for as a result of the operation of the Plant during the Hire Period as well as any other costs incurred by Owner and/or Yellow (as the case may be).

34. PROTECTION OF OWNER'S AND/OR YELLOW'S (AS THE CASE MAY BE) RIGHTS

- 34.1 The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant except as provided under clause 15 and shall protect the same against distress, execution or seizure and shall indemnify the Owner and/or Yellow (as the case may be) against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition.

35. TERMINATION OF AGREEMENT BY THE OWNER AND/OR YELLOW (AS THE CASE MAY BE)

- 35.1 The Owner and/or Yellow (as the case may be) may terminate the Contract forthwith by written notice to the Hirer if one or more of the following events occur:
- 35.1.1 The Hirer defaults in punctual payment of any sum due to the Owner and/or Yellow (as the case may be) for hire of Plant or other charges payable pursuant to these conditions;
 - 35.1.2 The Hirer fails to observe and perform the terms and conditions of the Contract;
 - 35.1.3 The Hirer suffers, or the Owner and/or Yellow (as the case may be) reasonably believes that the Hirer shall suffer, any distress or execution to be levied against him
 - 35.1.4 The Hirer makes or proposes to make any arrangement with his creditors or becomes insolvent;
or
 - 35.1.5 The Hirer does or causes to be done or permit or suffer any act or thing whereby the Owner and/or Yellow (as the case may be)'s rights in the Plant may be prejudiced or put into jeopardy.
- 35.2 In the event of termination above:
- 35.2.1 The Hirer undertakes to give the Owner and/or Yellow (as the case may be) or his agents, immediate unobstructed access to recover the Plant.
 - 35.2.2 The Owner and/or Yellow (as the case may be) shall be entitled to claim the Hire Charges outstanding as at the date of termination of the hire under this clause and return transport charges under clause 31.
 - 35.2.3 The Owner and/or Yellow (as the case may be) shall be entitled to claim the Hire Charges for the remaining Hire Period.
- 35.3 The rights under 35 above:
- 35.3.1 May be exercised notwithstanding that the Owner and/or Yellow (as the case may be) may have waived some previous default or matter of the same or a like nature.
 - 35.3.2 Shall not affect the Owner's and/or Yellow's (as the case may be) right to claim damages for breach of Contract or recover any sums due under the Contract as a debt.

36. PAYMENT – NO SET OFF

- 36.1 Payment of the amount shown as due by the Hirer on the Owner's and/or Yellow's (as the case may be) shall be made within the stipulated period and Hirer shall not be entitled to deduct any amount therefrom whatsoever.
- 36.2 If this Contract is one of On-Hire by Yellow, payment due by Yellow to the Owner shall only be due and payable, after deduction by Yellow on receipt of payment in full to Yellow by the Hirer.
- 36.3 If this Contract is one where Yellow is the broking agent of the Owner, then upon payment by Hirer, Yellow shall be entitled to deduct it's commissions and the balance shall be payable to the Owner.
- 36.4 Interest on overdue accounts will accrue at 2% above the prime overdraft rate charged by Yellow's bankers from time to time, and will be calculated and compounded monthly in arrears.

- 36.5 The Hirer agrees that the amount due and payable to the Owner and/or Yellow (as the case may be) may be determined and proven by a certificate issued and signed by a director or member or manager of the Owner and/or Yellow (as the case may be), whose authority need not be proven, or by the auditor of the Owner and/or Yellow (as the case may be). Such certificate will be binding and shall be prima facie proof of the indebtedness of the Hirer.

37. AUTHORISATION TO YELLOW TO RECEIVE PAYMENT OF HIRE CHARGES FROM HIRER WHEN YELLOW IS THE BROKERING AGENT

- 37.1 The Owner irrevocably and *in rem-suam* authorises Yellow to recover and receive on the owner's behalf the Hire Charges payable by the Hirer. This provision shall serve as authorisation for the payment to Yellow of any amounts due to the Owner from the Hirer.

- 37.2 Yellow shall deduct the brokerage fee, and any unpaid disbursements, from any amounts so received, before paying the balance to the owner.

38. SEVERABILITY

If any of these clauses are held to be unlawful, void or unenforceable, then that clause will be deemed severable and will not affect the validity and enforceability of the remaining clauses, to the extent permitted by law.

39. GOVERNING LAW AND JURISDICTION OF MAGISTRATE'S COURT

- 39.1 This Contract shall be governed by the laws of the Republic of South Africa.
- 39.2 The Hirer consents to the jurisdiction of the Magistrates Court Act 32 of 1944 (the "Act") (as amended) having jurisdiction under section 28 of the Act in all actions of whatsoever nature, notwithstanding that the claim by the owner exceeds the normal jurisdiction amount of the Magistrates Court.

40. SURETY AND CO-PRINCIPAL DEBTOR

- 40.1 The signatory hereby binds himself / herself in his/ her personal capacity as Shareholder (in the case of a company), Member 9in the case of a close corporation), or Owner or Partner, as surety and co-principal debtor jointly and severally for the full amount due to the Owner and/or Yellow (as the case may be) and agrees that these terms and conditions of this Contract will apply in the exact same way to him/her.
- 40.2 The Hirer guarantees payment to the Owner and/or Yellow (as the case may be) of the difference between any amount owed to the Owner and/or Yellow immediately prior to any compromise, settlement or pursuant to any business rescue plan as provided for in the Companies Act 71 of 2008 and the amount that the Owner and/or Yellow (as the case may be) actually received from the Hirer by way of reduction of the Owner's and/or Yellow man's (as the case may be) claim against the Hirer, whether having received the amount by way of compromise, settlement or pursuant to any business rescue plan, irrespective of whether the plan provides for the release of the Hirer, or under any circumstances of whatsoever nature.

41. COSTS

The Hirer shall be liable to the Owner and/or Yellow (as the case may be) for all and any legal expenses on the attorney-and-own-client scale incurred by the Owner and/or yellow (as the case may be) in the event of the Hirer defaulting or breaching this Contract.

42. PERSONAL INFORMATION

- 42.1 The Hirer hereby consents to the storage and use by the Owner and/or Yellow (as the case may be) of the personal information that it has provided to the Owner and/or Yellow (as the case may be) for establishing the Hirer's credit rating and to the Owner and/or Yellow (as the case may be) disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Hirer agrees that the Owner and/or Yellow (as the case may be) 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 third party.
- 42.2 the Hirer herby consents that the Owner and/or Yellow (as the case may be) can provide personal information of the Hirer to third parties, if the Hirer has indicated the Owner and/or Yellow (as the case may be) ad a trade reference to third parties and the Hirer agrees that the Owner and/or Yellow (as the case may be) will not be liable for the good faith disclosure of any of this information to such third parties.

43. GENERAL

By their signature to this Contract, Hirer acknowledges that the terms and conditions of this Contract form the standard terms and Conditions of hire by the Owner and/or Yellow (as the case may be) and are specifically incorporated by reference to the Rental Contract signed from time to time by the Hirer.

Dated and signed at _____ on this _____ day of

_____ 20 _____

For the Owner and /or Yellow

Name:

Designation:

Duly authorised

1. Witness: _____

2. Witness: _____

Dated and signed at _____ on this _____ day of

_____ 20 _____

The Hirer

Name:

Designation:

Duly authorised

3. Witness: _____

4. Witness: _____

YELLOW PLANT

Broking