

## TERMS AND CONDITIONS

The APPLICANT hereby applies for a credit facility and acknowledges that the following terms and conditions shall be applicable:

1. The APPLICANT, by its signature hereto, hereby subscribes to the terms and conditions herein contained and furthermore accepts the CREDITOR's terms and conditions of hire set forth on the rental agreement as read with any terms recorded on the CREDITOR's invoices / delivery notes. The APPLICANT acknowledges that any terms and conditions of the CREDITOR and those herein contained shall supersede and replace all and any of the APPLICANT's terms and conditions of trade/sale, wherever contained, even if signed for by the CREDITOR. This agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
2. The APPLICANT acknowledges that the credit facility (amount owing) granted by the CREDITOR is PAYABLE STRICTLY WITHIN 30 (THIRTY) DAYS FROM DATE OF STATEMENT, without deduction, counterclaim or set off;
3. The CREDITOR shall be entitled to charge interest, at a rate of 4% plus the prime overdraft rate of the CREDITOR'S bankers on all overdue amounts in terms of this agreement from the date upon which such amount became due and payable until date of payment. The APPLICANT agrees to make such payment. Payment will be allocated firstly to any legal costs incurred as a result of the APPLICANT's default, thereafter to interest and finally to the outstanding balance.
4. The credit facility may be withdrawn by the CREDITOR at any time without prior notice and without any liability to the APPLICANT and the CREDITOR reserves the right to review the extent, nature and duration of such facility at all times. Notwithstanding the APPLICANT exceeding the credit limit granted to it, these terms and conditions shall remain applicable for all amounts owing by the APPLICANT to the CREDITOR.
5. The APPLICANT nominates as its domicilium citandi et executandi [official address where all notices and court process may be delivered] the business address as reflected on the face hereof, for service upon it of all notices and processes, arising out of credit granted by the CREDITOR to the APPLICANT.
6. Notwithstanding the amount which may at any time be owing, the parties consent in terms of Section 45 of the Magistrate's Court Act (No. 32 of 1944, as amended) to the Magistrate's Court hearing any action or proceeding which normally the Magistrate's Court could not hear because the amount is too large, it being understood, however, that the parties shall at all times be entitled to bring any such action or proceeding in the High Court and if any such actions are necessary, the APPLICANT agrees, in the event of the CREDITOR being successful, to pay all costs and disbursements as between attorney and own client (including tracing fees and the like) and collection commission. This means all the attorney's/s' costs which are payable by the CREDITOR to the attorney/s in the event of the APPLICANT being unsuccessful in any contemplated proceedings.
7. The CREDITOR shall not be liable for any damage/s of whatsoever nature arising out of any delay or failure to deliver a vehicle, driver or other facilities.
8. The APPLICANT assumes full responsibility and liability for all loss including consequential loss or damage resulting from the handling or use of all vehicles and drivers supplied by the CREDITOR, and hereby indemnifies the CREDITOR against any and all claims for damage/s or otherwise sustained by reason of the failure of any vehicle supplied by the CREDITOR or the use thereof or non/mal- performance of any driver.
9. The CREDITOR hereby has the APPLICANT'S consent at all time to contact and request any information from any persons, credit bureaus or businesses including those mentioned in this credit application and to obtain any information relevant to the APPLICANT's] credit assessment including, but not limited to, information regarding the amounts purchased from suppliers per month, length of time that the APPLICANT has dealt with such supplier, type of goods or services purchased and manner of time of payment. The APPLICANT agrees that information given in confidence to the CREDITOR by a third party on the APPLICANT, will not be disclosed to the APPLICANT.
10. The APPLICANT hereby consents to and authorises the CREDITOR at all times to furnish personal and credit information concerning the APPLICANT'S dealings with the CREDITOR to a credit bureau and to any third party seeking trade reference regarding the APPLICANT in its dealings with the CREDITOR.
11. The terms and conditions contained in this credit application and the standard terms and conditions of rental, shall constitute the entire agreement between the CREDITOR and the APPLICANT and no variation, amendment,

### **Imperial Logistics South Africa Group (Pty) Ltd**

**Board of Directors:** M Swanepoel (Chairman), N van der Westhuizen (CEO), PE Hancock, GC Hocking, S Madiba-Vara, M Moodley, L Mtya, CE Parker, FE Seedat, D Vela, S Zikalala

**Truck Rental Executive:** CE Parker (Chairman), JC Wright (Managing), BR Paulse, S Kanjee, AM Leaker, S Phin, AM Tarr

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- consensual cancellation or otherwise shall be of any force or effect unless agreed to by both the APPLICANT and the CREDITOR in writing by means of handwritten non-electronic signatures.
12. No indulgences, latitude, extension of time or the like granted by the CREDITOR to the APPLICANT shall in any way whatsoever constitute a novation or waiver of any rights which the CREDITOR may have against the APPLICANT nor may it operate as an estoppel (a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation or denial or as a basis for denying the CREDITOR relief) against the CREDITOR.
  13. The APPLICANT confirms that a certificate signed by the Credit Manager or any director of the CREDITOR showing the amount owing by the APPLICANT to the CREDITOR shall be prima facie [on the first appearance, presumed correct until the contrary is proved] proof that the said amount is due, owing and unpaid and shall be satisfactory proof of what is contained therein for the purpose of any action (whether by way of provisional sentence, summary judgment or otherwise) proof of the debt on insolvency or for any purpose whatsoever. Where the quantum of the CREDITOR's claim is thereafter disputed by the APPLICANT, the APPLICANT shall bear the onus of proving that such amount is not owing and/or due and/or payable.
  14. The APPLICANT agrees to notify the CREDITOR in writing within 7 (seven) days of such event of any material facts which may directly or indirectly affect risk exposure of the CREDITOR in considering and / or granting credit facilities to the APPLICANT, of any change in ownership of the APPLICANT's business or any transaction where shares or members' interest in excess of 25% of the issued share capital of the APPLICANT or members interest changes hands.
  15. The APPLICANT hereby cedes, as security for its indebtedness to the CREDITOR arising out of the credit facilities advanced/to be advanced to it, all right, title and interest in and to its APPLICANT's accounts receivable, past, present and future, to the CREDITOR or in the event of a cession already having taken place then the reversionary (whatever remains) right in and to such accounts receivable, if any.
  16. The APPLICANT hereby acknowledges that the credit facilities to be afforded to it shall constitute an incidental credit agreement in terms of the NCA and in the circumstances the NCA has limited application to these terms and conditions. The APPLICANT further acknowledges that in the event of it being a juristic person, whose assets exceed the value referred to in clause 6.1 of Section 1 above or its annual turnover exceeds the value referred to in clause 6.1 of Section 1 above, then and in such event the NCA shall not be applicable to the APPLICANT and the contemplated credit facilities hereunder.
  17. The APPLICANT hereby acknowledges that in the event of it being a juristic person, whose assets exceed the value referred to in clause 6.2 of Section 1 above or its annual turnover exceeds the value referred to in clause 6.2 of Section 1 above, then and in such event the CPA shall not be applicable to the APPLICANT.
  18. Where the APPLICANT is a Company, Close Corporation, Partnership or Business Trust: The signatory to this agreement states that he/she is authorised to represent the APPLICANT and to bind the APPLICANT as APPLICANT in this application to these terms and conditions.
  19. **SURETYSHIP**
    - 19.1. Each signatory to this agreement by his/her signature hereto binds him/herself jointly and severally in his/her personal capacity as a surety and co-principal debtor in solidum [for the whole] with the APPLICANT to the CREDITOR for the due and punctual payment to the CREDITOR of all amounts owing, and the fulfilment of all obligations owed by the APPLICANT to the CREDITOR, past, present or future, from whatever cause and howsoever arising including for losses and damages.
    - 19.2. The Surety/ Sureties hereby bind themselves in his/her/their personal capacity to all the terms and conditions contained herein in this Credit Application and hereby give his/her/their authority and acknowledgement to be bound in this regard.
    - 19.3. This suretyship is a continuing covering suretyship, and notwithstanding interim discharge or settlement, shall automatically revive upon the APPLICANT becoming indebted to the CREDITOR. This suretyship can only be extinguished by written cancellation by the CREDITOR.
    - 19.4. Each surety nominates as his/her *domicilium citandi et executandi* [official address where all notices and court process may be delivered] the APPLICANT's physical address as recorded above.
    - 19.5. Each surety agrees to be bound by all and any undertakings and acknowledgments made by the APPLICANT in favour of the CREDITOR notwithstanding that such acknowledgments or undertakings are made without the surety's knowledge and / or consent. Each Surety agrees to be liable for the CREDITOR's legal costs in respect of any action instituted against the APPLICANT or the Surety on the scale as between attorney and own client as well as for collection commission. This means all the attorney's/s' costs which are payable by the CREDITOR to the attorney/s in the event of us being unsuccessful in any contemplated proceedings.
    - 19.6. Each Surety renounces the benefit of the legal defence "*non causa debiti*" (this defence places the onus of proving no cause of action upon him/her/them) and the legal exceptions, "*ordinis seu excussionis et divisionis*" and "cession of action" having declared him/herself to be acquainted with the meaning and effect thereof. By renouncing these benefits, each Surety understands that:
      - 19.6.1. the CREDITOR becomes entitled to sue him/her/them for the full amount for which he/she/they is/are liable in terms of this suretyship, without first proceeding against the APPLICANT;
      - 19.6.2. the CREDITOR becomes entitled to sue him/her them without first ceding the CREDITOR's right of action against the APPLICANT to him/her them;

- 19.6.3. where there is more than one surety for the APPLICANT'S obligations, the CREDITOR will be entitled to sue each such surety for the full amount owing under this suretyship and not only for a pro-rata [in proportion] share;
- 19.7. In the event the sequestration, business rescue or liquidation of the APPLICANT, no dividends or payments which the CREDITOR may receive, shall prejudice the CREDITOR'S right to recover from the sureties to the full extent of the total amount owing by the APPLICANT, including but not limited to legal costs and interest.
- 19.8. Each Surety acknowledges that this suretyship shall be in addition to and without prejudice to any other suretyship/s or security/ies past, present or hereafter held by the CREDITOR in respect of the liabilities and/or obligations of the APPLICANT to the CREDITOR.
- 19.9. Each Surety who signs this document acknowledges and records that, notwithstanding the fact that it may provide for signature hereof by other sureties, there is a separate, distinct and independent contract of suretyship and guarantee brought into existence by each Surety who does sign it. If, for any reason any surety named herein shall fail to sign this Surety or if this Surety shall for any reason, cease to be or is not binding on any one or more of the sureties, then the obligation of the others shall be and continue to be binding and remain of full force and effect in terms hereof.
20. **GENERAL**
- 20.1. The signature of this agreement by the APPLICANT shall constitute authority, until written notice is received by the CREDITOR from the APPLICANT to the contrary, to supply vehicles, drivers and other facilities and/or service(s) for and on behalf of the APPLICANT from time to time, whilst this agreement is in existence. Every order for the CREDITOR'S supply of vehicles, drivers and other facilities and/or service(s) made by the APPLICANT, whether in writing, orally, partly in writing and partly orally or whether by trade practice or implication, shall be deemed to be governed by the provisions of this agreement and the APPLICANT agrees to be bound by the terms and provisions hereof, with effect from the date of signature of this agreement and thereafter in respect of every supply by the CREDITOR to the APPLICANT of the vehicles, drivers and other facilities and/or service(s). All employees of the APPLICANT shall be deemed to have authority to bind the APPLICANT to any order made; unless and until written notice to the contrary is received by the CREDITOR. The APPLICANT further acknowledges that in addition to the terms of this agreement, it shall be bound to the terms of any additional contract entered into with the CREDITOR by any person at the APPLICANT'S instance. Where any provision in any such additional contract is in conflict with the provisions of this agreement, the provisions hereof shall prevail.
- 20.2. Where it is a term of the hiring that the CREDITOR shall provide or appoint labourers or assistants in connection with the packing, loading, tying, lifting or off-loading or transport of any goods, such persons shall at all times be deemed to be the employees, servants or agents of the APPLICANT. The CREDITOR does not warrant their special skills or abilities to perform any of the above services or functions all of which shall be performed under the direct supervision of the APPLICANT, and the CREDITOR shall be absolved from and indemnified against all and any loss or damage which may be suffered in any way arising from or connected to any of the work so performed.
- 20.3. No employee, driver or agent of the parties shall have any right to waive, amend or abandon the terms and conditions of this agreement.
- 20.4. Without prejudice to any other provision of this agreement, any successor-in-title, including any executor, assigns, administrator, heir, liquidator, business rescue practitioner, curator or trustee, of either party shall be bound by this agreement.
- 20.5. The APPLICANT warrants that every fact, term, condition, obligation and warranty committed to by the APPLICANT in entering into this agreement shall be material and essential to this agreement and are specifically intended to be acted on and relied upon by the CREDITOR and the CREDITOR would not have concluded this agreement without these safeguards.
- 20.6. If any provision of this agreement is held to be unenforceable by any court of law or other tribunal or competent authority, such provision shall be severable from this agreement and shall not affect the remaining provisions of this agreement which shall remain in full force and effect. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate in good faith an amendment to remove the invalidity. The parties declare that it is their intention that this agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 20.7. No oral *pactum de non petendo* (agreement not to sue) shall be of any force or effect.
- 20.8. The parties acknowledge that they have been free to secure independent legal advice as to the nature and effect of the provisions of this agreement and that they have either taken such independent legal advice or dispensed with the necessity of doing so.
- 20.9. No agreement shall be deemed to come into force between the parties until this written document has been executed by all the parties, duly authorised, this notwithstanding the exchange of drafts between the parties.
- 20.10. The expiration or termination of this agreement shall not affect those provisions of this agreement which expressly provide that they will operate after any such expiration or termination or which, of necessity, must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide this.

- 20.11. This agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the party last signing one of the counterparts.

### **TERMS AND CONDITIONS – SECTION 3**

In addition to the foregoing, the APPLICANT hereby specifically acknowledges and agrees that the following terms and conditions shall apply in respect of all and any vehicles hired by it from the CREDITOR:

#### **1. DEFINITIONS**

In this agreement, the words hereunder shall bear the meanings assigned thereto, unless the contrary appears clearly from the context:

- 1.1. *“the Act”* means the National Road Traffic Act 93 of 1996 as amended;
- 1.2. *“anticipated date of return”* means the latest date upon which the parties agree, in writing, the vehicle would be returned to the CREDITOR;
- 1.3. *“bank credit card”* means a credit card issued in terms of the National Credit Act 34 of 2005, as amended from time to time;
- 1.4. *“contract period”* means the period calculated from the time the rental agreement is entered into until the anticipated date of return;
- 1.5. *“commencement date”* means the date that the APPLICANT signs the agreement;
- 1.6. *“day”* on the first day of the contract means the period from the time of collection 08h00 until 07h59 the following day, unless otherwise specified in this contract, and on the day of return of the vehicle to the CREDITOR, it shall mean from 08h00 on that day to any time thereafter on that day;
- 1.8. *“E-toll”* – means electronic toll collection;
- 1.9. *“extended period”* means any day or time or period beyond the contract period for whatever reason which shall be deemed to include:
  - 1.9.1. in the case of damage to the vehicle, the date on which such damage has in fact been repaired to the satisfaction of the CREDITOR and the vehicle returned to service;
  - 1.9.2. in the case of total loss, the date upon which reimbursement in full in respect thereof is received by the CREDITOR from any party liable to the CREDITOR in that regard, including but not limited to, interest, damages and all legal costs; and
  - 1.9.3. in the case of theft or other deprivation, the date on which the CREDITOR has in fact received payment of all amounts due to the CREDITOR.

For purposes of item 1.9.3, standing/down time will be automatically included in the amounts due in terms of this clause;
- 1.10. *“extra-ordinary costs”* means the actual cost to the CREDITOR in the provision and installation of appliances, accessories and/or improvements (in regard to all of which the APPLICANT agrees, consents, requests such and accepts that the production of any invoice or account or quotation relating to any such items shall constitute sufficient proof of the nature and the value thereof in the event of any claim, of whatever nature, by the CREDITOR);
- 1.11. *“Goods in Transit Insurance”* means insurance cover taken by the APPLICANT to cover freight carried/transported (where applicable in the rental agreements). This insurance will be in accordance with the policy terms, conditions, benefits and limitations as detailed in such policy;
- 1.12. *“high risk area”* means an area where the vehicle may be, based on the information readily available to the public at the time, considered a risk to the vehicle and /or its occupants.
- 1.13. *“PAI”* means Personal Accident Insurance comprising of a policy of personal injury insurance arranged by the CREDITOR, on behalf of the APPLICANT for the fee reflected on the cover page of the rental agreements and in accordance with the standard terms, conditions and benefits and limitations as detailed in such policy (where applicable in the rental agreements);
- 1.14. *“rental agreement/s”* means the rental agreement/s to be concluded between the CREDITOR and the APPLICANT from time to time;
- 1.15. *“SANRAL”* means the South African National Roads Agency;
- 1.16. *“standing time or down time”* means the time calculated from the moment a vehicle becomes unavailable for rental activity in the CREDITOR’s normal course of business, if due to damage, until such time as the vehicle again becomes available for rental activity, or if due to theft of the vehicle, until the insurance CREDITOR (whether the APPLICANT’s own or the CREDITOR’s insurance, whichever is applicable) has paid out for the theft of the vehicle, or if due to damage beyond economic repair, until the date which the CREDITOR is reimbursed for the loss;
- 1.17. *“vehicle”* means the vehicle as described in the respective rental agreement as being hired, with all its equipment, accessories and appurtenances, unless inconsistent with the context thereof, or any replacement thereof;
- 1.18. References herein to *“the APPLICANT”* means, unless the context indicates otherwise, the APPLICANT and the operator (driver) (as defined in the Act) of the vehicle.

#### **2. ACKNOWLEDGEMENTS AND WARRANTIES**



- 2.1. The APPLICANT warrants and undertakes that any driver of the vehicle shall:
  - 2.1.1. be at least 23 years of age;
  - 2.1.2. be duly licensed to drive the vehicle in the Republic of South Africa;
  - 2.1.3. have a Professional Driver's Permit which shall be valid for at least three months after the anticipated return date of the vehicle and shall have such license and permit with him/her at all times whilst driving said vehicle.
- 2.2. The checklist annexed to the rental agreements forms part of the rental agreements;
- 2.3. A vehicle crossing international borders requires a cross-border permit obtainable from the Cross Border Road Transport Agency;
- 2.4. The APPLICANT and the driver are familiar with the requirements and stipulations of the Road Traffic Act, Act 93 of 1996;
- 2.5. The APPLICANT and the driver are familiar with the Road Traffic Regulations regulating the transportation of Dangerous Goods.
- 2.6. In the event of the APPLICANT being in breach of clause 2.1, the APPLICANT assumes full liability for any accidental damage/theft, which may occur, and there is no insurance waiver in respect of any collision damage or loss in these circumstances.
- 2.7. The APPLICANT agrees and undertakes that it will not offer employment, solicit and/or employ whether directly and/or indirectly any of the CREDITOR's staff.
- 2.8. Should the APPLICANT employ a staff member of the CREDITOR in breach of clause 2.7 then and in that event, the APPLICANT agrees and undertakes to pay to the CREDITOR on demand an amount equivalent to 15% (fifteen percent) of the annual salary of such staff member as due and liquidated damages which the APPLICANT acknowledges is a genuine pre-estimate of damages which will be sustained by the CREDITOR as a result of such employment.

### 3. **RENTAL**

The CREDITOR shall rent out the vehicle for the contract period and subject to the terms and conditions herein contained and those contained in the rental agreement/s and on the CREDITOR's website. In the event of a conflict between the terms of this agreement on the one hand and the rental agreement/s or the CREDITOR's website on the other hand, the terms of this agreement shall prevail.

### 4. **CHARGES AND PAYMENTS**

- 4.1. The APPLICANT shall pay the CREDITOR the charges for hire, as set out in the schedule of charges on the face of the respective rental agreements upon the CREDITOR'S agreed terms of payment.
- 4.2. The hire charges shall be the prevailing rate quoted to the APPLICANT failing which the prevailing brochure rate at the time of hire.
- 4.3. In the event of cash transactions all amounts owing by the APPLICANT shall be payable on demand.
- 4.4. The APPLICANT may not withhold any payment or set off or deduct any claim or counterclaim which it may wish to raise against the amount invoiced by the CREDITOR.
- 4.5. In the event of the contract period being terminated prior to the anticipated date of return, for any reason whatsoever, the CREDITOR shall have the right to adjust the applicable rate and the APPLICANT shall be obliged to make payment according to such adjusted rate, in addition to any cancellation charges and or penalties.

### 5. **E-TOLLING**

- 5.1. In order to comply with the provisions of the **National Roads Act No 7 of 1998** ("the Act") and the conditions regarding toll roads, toll tariffs, the **e-tag** and/or the **e-toll** accounting system, the CREDITOR shall equip all its vehicles with an **e-tag** and utilise the **Transaction Clearing House** "the TCH" for processing of all toll transactions.
- 5.2. The APPLICANT understands and agrees it is liable to pay all toll charges which will arise when the vehicle that it rents from the CREDITOR passes a tolling point. The APPLICANT acknowledges that the tolls are calculated when a vehicle that it rents from the CREDITOR fitted with, or displaying the **e-tag** supplied by the CREDITOR, passes through a tolling point, at which point the information on the **e-tag** is read by the road side equipment.
- 5.3. The APPLICANT acknowledges that when it uses an **e-road**, the service in respect of its use of such **e-road** is being provided by SANRAL as a result of which the CREDITOR, by virtue of the fact that its vehicle, as hired by the APPLICANT, is fitted with an **e-tag**, will be billed for toll transactions by the TCH on behalf of SANRAL.
- 5.4. The APPLICANT shall however be liable for the amount of toll levied at the standard rates, from time to time, in respect of each toll transaction for every vehicle hired by the APPLICANT from the CREDITOR, in terms of section 27(3)(c) of the Act.
- 5.5. The APPLICANT shall pay the standard rate of toll levied by SANRAL, in respect of each toll transaction for every vehicle hired by the APPLICANT from the CREDITOR, to the CREDITOR who shall thereupon settle its debt to SANRAL.
- 5.6. The CREDITOR shall charge the APPLICANT a handling fee on all capped toll transactions processed by the CREDITOR in respect of vehicles hired by the APPLICANT.



- 5.7. The APPLICANT will not use, or permit the use of the CREDITOR's **e-tag**, on any motor vehicle other than the CREDITOR's duly designated vehicle. The APPLICANT is aware that such conduct would amount to a fraudulent misrepresentation which could give rise to criminal charges.
- 5.8. In the event where the **e-tag** is not returned with the vehicle, and where the vehicle was not driven by an employee of the CREDITOR, a penalty of R50.00 will be levied for which the APPLICANT shall be liable.
- 5.9. In circumstances where the **e-tag** is defective, and the APPLICANT fails to inform the CREDITOR of this fact within 24 hours, the CREDITOR reserves the right to levy a penalty equal to 30% of the toll transactions over the relevant period for which the APPLICANT shall be liable.
- 5.10. In instances where the APPLICANT hires a vehicle for a period of less than a week, the APPLICANT shall pay a deposit in respect of future toll transactions. Should the toll fees incurred by the APPLICANT during the period exceed the deposit, the APPLICANT shall be required to pay the outstanding amount immediately upon termination of the rental agreement or upon demand whichever is sooner.
- 5.11. Should any amount due by the APPLICANT to the CREDITOR as a result of the **e-toll** accounting system not be paid when required for whatever reason, in addition to any other rights of the CREDITOR arising from such non-payment, the APPLICANT will be liable for all additional fees together with legal costs that the CREDITOR may incur for recovery of any outstanding debt.
- 5.12. On termination of the rental agreement, any remaining portion of the deposit, less any penalties payable to the CREDITOR, will be refunded to the APPLICANT.
- 5.13. Fees charged shall be deemed to be correct, unless the user is able to demonstrate that they are incorrect.
- 5.14. Disputes or queries in respect of any toll transactions must be reported by the APPLICANT to the CREDITOR within 24 hours after receipt of the daily **e-toll** transaction report ("The report"). Discrepancies or disputes not reported within 24 hours after receipt of the report, will not be considered and no credit will be granted to the APPLICANT.

## 6. ACCOUNTING

- 6.1. Without prejudice to any of the CREDITOR'S rights or claims herein, the CREDITOR shall be entitled at any time, and from time to time to close its books and to account to the APPLICANT; even though the contract period has not terminated. The CREDITOR may then:
  - 6.1.1 estimate the kilometres travelled by the vehicle as at such closing off date from the commencement of the contract period, or previous close-off date, whichever is applicable at the time; and
  - 6.1.2 calculate the total indebtedness of the APPLICANT as at such provisional close off date and complete the calculations of the APPLICANT'S indebtedness accordingly;
- 6.2. The APPLICANT shall in such event be obliged to make payment to the CREDITOR as stipulated on the invoices and/or statement of the CREDITOR.
- 6.3. The APPLICANT consents to the CREDITOR verifying the APPLICANT'S creditworthiness and other details, and furnishing credit references, where requested.

## 7. THE ODOMETER

- 7.1. The odometer on the vehicle shall be deemed to accurately record the distance covered by the APPLICANT.
- 7.2. The difference between the odometer reading recorded on the checklist (on the commencement date) and the odometer reading on the date upon which the vehicle is returned, shall be *prima facie* [on the first appearance, presumed correct until the contrary is proved] proof of the correctness of the distance covered, provided that:
  - 7.2.1 Should it cease to operate efficiently through mechanical fault or breakdown, (the onus of proof of which shall be on the APPLICANT) the APPLICANT shall immediately report such defect to the CREDITOR with full particulars of the use to which the vehicle has been put. The distance covered shall then be assessed by the CREDITOR in its sole discretion (acting as an expert and not an arbitrator) and such assessment shall be final and binding on the APPLICANT;
  - 7.2.2 Should the odometer (or hubodometer, where applicable) cease to operate efficiently for any reason, or be found by the CREDITOR to have been damaged, disconnected, tampered with or worked on, the distance covered shall be deemed to be 800 kilometres per day calculated from the commencement of the contract period;
  - 7.2.3 Should the vehicle be stolen, be involved in an accident, or be in any other circumstances, which may prevent the accurate reading of its odometer, the contract period shall be deemed to extend to such date as the CREDITOR is reimbursed for such loss or damage. In such an event, the distance covered and charged for shall be calculated according to the formula in 7.2.2.

## 8. RETURN OF THE VEHICLE

- 8.1. By the latest, on the anticipated date of return or earlier termination of the agreement for any reason whatsoever, at the discretion of the CREDITOR, the APPLICANT shall:
  - 8.1.1 discontinue all use of the vehicle; and
  - 8.1.2 return the vehicle back to the designated address of the CREDITOR in good condition, proper running order and in a roadworthy condition.
- 8.2. Notwithstanding anything to the contrary, the CREDITOR, in its sole discretion, shall be entitled to, without any notice, terminate the rental agreement forthwith and to take immediate possession of the vehicle.
- 8.3. For the duration of the contract period, the CREDITOR shall endeavour to keep the vehicle free from defects. In the event of the vehicle, however, becoming faulty or unfit for use during the contract period, the CREDITOR

may, in its sole discretion, substitute, or replace another vehicle in its place, whereupon the rental agreement shall continue to apply to such substituted vehicle, *mutatis mutandis* [in all respects].

## 9. DELIVERY AND RISK

- 9.1. The CREDITOR does not warrant that the vehicle will be available to the APPLICANT at any stipulated or prearranged hour or date and the APPLICANT shall have no claims whatsoever for loss, inconvenience or damages howsoever arising from any late delivery. The APPLICANT hereby indemnifies the CREDITOR against all claims instituted by third parties which emanate from such late delivery.
- 9.2. The CREDITOR shall not be obliged to place another vehicle at the disposal of the APPLICANT in the event of the vehicle being damaged, stolen or rendered unfit for use.
- 9.3. Notwithstanding that the vehicle may be driven by a driver employed by the CREDITOR, all risks and responsibilities in regard to the operation of the vehicle are transferred to the APPLICANT on commencement of the contract period and shall remain in effect until the vehicle is returned to the CREDITOR.
- 9.4. The APPLICANT hereby acknowledges that the vehicle was delivered to it by the CREDITOR:
  - 9.4.1 in good order and repair with all its accessories and appurtenances in place and in good working order, and in a roadworthy condition; and
  - 9.4.2 with its radiator, oil reservoirs, and petrol tank properly filled, and the APPLICANT undertakes that until the vehicle is returned to the CREDITOR it will maintain, at its own expense, a sufficient quantity of water and appropriate oil in the engine of the vehicle;
  - 9.4.3 complete with spare wheel, jack, wheel brace and triangles.
- 9.5. The APPLICANT indemnifies and holds the CREDITOR harmless against all claims of whatsoever nature and howsoever arising which may be made against the CREDITOR resulting from the use of the vehicle or the manner in which it is driven while it is in the possession of the APPLICANT, including claims which may be attributable to acts or omissions of the CREDITOR, its employees, agents or servants.
- 9.6. The APPLICANT hereby absolves the CREDITOR from any liability arising from the malfunctioning of the vehicle.
- 9.7. In no event shall either party be liable to the other party for any indirect or special or consequential losses or damages, loss of profits, business, revenue, goodwill or anticipated savings suffered by the other party arising from this agreement or the rental agreements.

## 10. OWNERSHIP AND LIENS

- 10.1. The ownership of and all rights and entitlement to the vehicle shall under no circumstances be transferred to the APPLICANT nor shall same in any manner be disputed or challenged by the APPLICANT.
- 10.2. The APPLICANT shall not retain possession, use or enjoyment of the vehicle beyond the contract period unless there is express permission granted in writing by the CREDITOR and, in such circumstances, only to the extent of such granted permission by the CREDITOR.
- 10.3. The vehicle must remain in the possession or under control of the APPLICANT at all times for the duration of the contract period and extension thereof.
- 10.4. The APPLICANT shall not:
  - 10.4.1 sub-contract, cede, assign, sublet or lend the vehicle out or allow anyone to take possession of the vehicle without the CREDITOR'S prior written permission;
  - 10.4.2 allow any lien, attachment or other encumbrance to come into effect in respect of the vehicle. The APPLICANT shall be obliged to advise its landlord in writing of the fact that it is not the owner of the vehicle.

## 11. WARRANTIES AND REPRESENTATIONS

- 11.1. The APPLICANT warrants that it has not been unduly influenced to enter into this agreement or the rental agreements nor has it relied on any representations made by or on behalf of the CREDITOR in regard to the condition, state of repair, capabilities, fitness or suitability for any purpose, the year of the vehicle manufacture, odometer reading or performance of the vehicle/s.
- 11.2. The APPLICANT acknowledges that all warranties, express, tacit or implied by law, are specifically excluded and not available to the APPLICANT.
- 11.3. The APPLICANT hereby warrants and represents that all statements contained in the rental agreements are true and correct. It is furthermore agreed that all details appearing on the face of the rental agreements shall be deemed to form part of this agreement.

## 12. USE AND CONTROL

- 12.1. The APPLICANT shall not and shall procure that its drivers shall not:
  - 12.1.1 cause or allow the vehicle to be neglected, abused, damaged, modified in terms of its components, be tampered with or removed or the components of the vehicle to be replaced or to be used for any purpose for which it is not designed or intended to or be used in contravention of any law or in circumstances such that there will be increased risk of danger or loss or damage or undue wear thereof or to be overloaded, driven recklessly and/or negligently;
  - 12.1.2 convey articles in the vehicle which may cause damage to the upholstery or any other part of the vehicle or increase the risk of damage to the vehicle;
  - 12.1.3 allow any person to drive or control the vehicle without such a person being in possession of a valid Professional Driving Permit and/or driving license – (whichever is applicable) such license or permit to be free



- of any endorsements – or allow any other person to drive or control the vehicle unless similarly licensed or permitted;
- 12.1.4 contravene, but instead shall comply with the terms and conditions of every insurance policy issued in respect of the vehicle;
- 12.1.5 permit any person to drive the vehicle while under the influence of drugs or medication or alcohol;
- 12.1.6 allow the vehicle to be in any area, such as an unrest area, where there is or could be a risk that the vehicle may be damaged, through civil disturbance, social or economic protest or any act associated with the foregoing, including any act by any person in authority taken for purposes of controlling or preventing or suppressing or otherwise dealing with any such occurrences;
- 12.1.7 permit any person other than himself or his duly appointed driver to drive the vehicle during the contract period or extended period (if applicable), without first obtaining the prior written approval of the CREDITOR.
- 12.2. The APPLICANT shall at all times exercise due care during the contract period and any extension thereof including, but not limited to:
  - 12.2.1 taking all reasonable precautions at its own expense, to safeguard the vehicle from any loss, harm or damage;
  - 12.2.2 paying all costs of the prescribed fuel and oil consumed by the vehicle, and, in this regard, the APPLICANT acknowledges that the fuel tank was full when the vehicle was delivered to the APPLICANT at the inception of the rental agreement and unless the vehicle is returned with a full tank – the APPLICANT shall pay the actual cost of filling the tank;
  - 12.2.3 allowing the CREDITOR, or its servant or agent all reasonable rights and access to the vehicle and if called on to do so, disclose to the CREDITOR the vehicle’s locality, kilometres on the odometer and state of the vehicle at any time.
- 12.3 The APPLICANT shall ensure that:
  - 12.3.1 whenever the vehicle is left parked or unattended, all doors and windows are locked and/or secured and the gearlock and alarm/immobiliser device, if fitted, is operating and activated;
  - 12.3.2 the keys to the ignition, the doors and security lock (where applicable) of the vehicle are, at all times, in the possession of the APPLICANT;
  - 12.3.3 in the event of any collision, accident, damage or loss, a written report of the full extent and true circumstances of the event is lodged within 24 hours of the event at the offices of the CREDITOR accompanied by the documents as detailed below:
    - 12.3.3.1 a copy of the actual driver’s driving license;
    - 12.3.3.2 a copy of the driver’s Professional Driving permit (if applicable);
    - 12.3.3.3 a copy of the relevant SAPS report and case number;
    - 12.3.3.4 a duly completed claim form as is required by the relevant insurer;
    - 12.3.3.5 clear photographs of the vehicle and/or place and/or surroundings where the event occurred; and
    - 12.3.3.6 copies of any other relevant evidence.
  - 12.3.4 In addition to the aforesaid, the APPLICANT shall furnish all further assistance, details and co-operation as may be required by the CREDITOR and/or its insurers to deal with any matters arising from the above said event and/or the recovery of the CREDITOR’S losses and/or assessment of its liabilities.

### 13 **INDEMNITY**

- 13.1 The APPLICANT, its employees, agents, servants, the drivers or contractors, shall under no circumstances whatsoever be deemed to be the agent, servant or employee of the CREDITOR.
- 13.2 In the event of the CREDITOR providing the APPLICANT with a driver or equipment operator for the vehicle and or crane or other equipment accompanying same, such driver or equipment operator shall be deemed to be in the employ of the APPLICANT for the contract period or any extension thereof, and the APPLICANT hereby indemnifies and holds the CREDITOR harmless against any action that may be brought against the CREDITOR by any third party as a result of any action whether wilful negligent or otherwise of the driver or equipment operator.
- 13.3 The APPLICANT shall be liable for all actions associated with the hire and operation of the vehicle and hereby indemnifies and holds harmless the CREDITOR against any losses, damage/s or claims by anyone whomsoever and howsoever arising relating to the vehicle and its usage during the contract period and/or extended period and/or arising from or relating to:
  - 13.3.1 any harm, bodily injury to or death of the APPLICANT, user, driver any occupant or any other third party or person that may in their own right or via dependents or other derivative action in any way, endeavour to seek recourse against the CREDITOR;
  - 13.3.2 any loss, damage/s or destruction of any property belonging to the APPLICANT, any employee or contractor of the APPLICANT or any other person;
  - 13.3.3 any claims or acts of any competent governmental or statutory authority or body including any fines, penalties or levies prosecutions or claims made against the CREDITOR;
  - 13.3.4 any and all costs incurred by the CREDITOR in considering, investigating or resisting or otherwise dealing with any purported claim by any such other person or authority.
- 13.4 The APPLICANT agrees that in the event that any of the aforesaid matters occur, the CREDITOR shall not be obliged to resist, defend, debate or await judgment or conviction on any alleged claim or contravention but shall



- be entitled to recover any losses or amount demanded, claimed or levied by such other party or authority, directly from the APPLICANT.
- 13.5 In the event of the vehicle suffering collision or mechanical damage, or becoming a total write-off or loss, or is subjected to fire, theft, hijacking or other disaster during the contract period arising from any cause whatsoever, the APPLICANT shall pay the CREDITOR the damages or costs (including standing or down time incurred and the value in full of the vehicle) – as the case may be.
- 13.6 In the event of negligence or an unlawful act being a relevant factor concerning the APPLICANT's liability for payment of any amount whatsoever in terms of this agreement, it shall be presumed that the APPLICANT was negligent, until it proves the contrary.
- 13.7 Should the APPLICANT have subscribed for vehicle damage and theft insurance, such liability as described in 13.5 above will be assessed by the agent of the CREDITOR.
- 13.8 The APPLICANT shall on the commencement date supply proof to the satisfaction of the CREDITOR, that adequate insurance cover exists at all times for the duration of a rental agreement and, where applicable, for any extensions of the rental agreement thereafter.
- 13.9 All obligations for payments by the APPLICANT under this clause shall be due and payable on demand, irrespective of the cause of such loss or damages and the APPLICANT shall not be entitled to require the CREDITOR to effect or attempt to effect recovery from any other party.

#### **14 REPAIRS TO VEHICLE**

- 14.1 Any repairs, alterations, improvements, maintenance of an electronic or mechanical nature to the vehicle will be done in the sole discretion of and according to the terms specified by the CREDITOR. In the event that damages to the vehicle is covered by the INSURER of the APPLICANT, the APPLICANT or its INSURER can only have the vehicle repaired at one of the CREDITOR's approved Panel Beaters.
- 14.2 In the event of the APPLICANT effecting any repairs to the vehicle without the prior written authority of the CREDITOR, the costs of such repairs shall be borne by the APPLICANT.
- 14.3 The APPLICANT undertakes to return the vehicle to the CREDITOR for lubrication service as per the vehicle's specified service intervals or every 30 days after delivery of the vehicle to it, whichever occurs first, or alternatively, shall satisfy the CREDITOR that such service has been performed. In the event of any service being effected at the instance of the APPLICANT at a garage other than that of the CREDITOR, then the cost of such service and materials used in connection therewith shall be borne by the APPLICANT.
- 14.4 If it appears upon the return of the vehicle to the CREDITOR that it is reasonably necessary to affect mechanical repairs to the vehicle, which need for repairs has arisen by virtue of the APPLICANT's abuse or negligent use of the vehicle, then the CREDITOR shall forthwith cause the repairs to be effected to the vehicle and shall have the right to hold the APPLICANT liable for the cost thereof.
- 14.5 In such event as stipulated in above, or in the event of the vehicle being damaged in a collision as a result of the APPLICANT's negligence, the hire of the vehicle shall be deemed to continue until the day upon which the repairs are completed.
- 14.6 Similarly, in the event of the vehicle being damaged beyond economic repair, the APPLICANT shall be obliged to pay to the CREDITOR the hire charges from the time of delivery of the vehicle to the CREDITOR until the date on which the CREDITOR is reimbursed in respect of the loss.
- 14.7 In the event of the vehicle being stolen, the hire of the vehicle shall be deemed to continue until the insurance company (whether the APPLICANT's own or the CREDITOR's – whichever is applicable) has paid out for the theft of the vehicle.
- 14.8 The calculation for all these incidents in this clause 14 shall be based upon the prevailing agreement rates and 200 kilometres per day.

#### **15 VEHICLE DAMAGE INDEMNIFICATION (VDI)**

- 15.1 The APPLICANT acknowledges that although the CREDITOR has subject to the terms and conditions hereof, waived own collision damage and/or theft, provided the APPLICANT has requested and paid for the CREDITOR's collision damage and theft loss waiver, the APPLICANT shall be liable for the payment of the "excess" as stated on the face hereof.
- 15.2 The APPLICANT acknowledges and warrants that it is aware that the collision damage/theft waiver is in respect of the hired vehicle only and there is no insurance cover in regard to other vehicles or persons other than provided by the Road Accident Fund.
- 15.3 Collision damage/theft waiver shall only apply provided the APPLICANT is not in breach of any of its obligations in terms of this agreement or the relevant rental agreement.
- 15.4 The APPLICANT shall be liable for the costs of repairing and/or replacing the windscreen or any other glass fitted to the vehicle should such glass be damaged (however slightly) or broken during the hire of the vehicle.
- 15.5 The APPLICANT shall ensure that the vehicle, whilst in the APPLICANT's possession, is at all times insured.
- 15.6 Accordingly, should the APPLICANT elect not to effect such VDI with the CREDITOR, the APPLICANT shall ensure that:
- 15.6.1 It furnishes the CREDITOR with a copy of the APPLICANT'S policy of insurance before taking delivery of the vehicle which shall be from a reputable insurance CREDITOR approved of by the CREDITOR;
- 15.6.2 The policy of insurance stipulates that:



- 15.6.2.1 the insurance cover applicable shall comprehensively cover the vehicle against all contingent risks stipulated by the ;
- 15.6.2.2 any repairs to the vehicle shall be affected by agents nominated by the CREDITOR, but the insurer shall have the right to approve such quotations prior to the repair of the vehicle;
- 15.6.2.3 insurance cover shall continue until the APPLICANT returns the vehicle to the CREDITOR;
- 15.6.2.4 in the event of the vehicle being exchanged for another vehicle, hired from the CREDITOR, such exchange vehicle shall similarly be covered, *mutatis mutandis*, in accordance with the above provisions.
- 15.6.3 In the event of an accident, the APPLICANT will have 5 working days from receipt of quote to authorize repairs. Until such time, the APPLICANT will be charged your normal rental rate. Failing compliance with the above provisions, the CREDITOR reserves the right, notwithstanding the provisions of this agreement or the rental agreement, to cancel the rental agreement with the APPLICANT forthwith.
- 15.7 The CREDITOR reserves the right to cancel a rental agreement with immediate effect should the APPLICANT fail to comply with the terms as specified in this clause 15. The insurance effected by the APPLICANT and even compliance with this clause 15, is without prejudice to any right the CREDITOR has in term of this agreement.
- 16 **PERSONAL ACCIDENT INSURANCE (PAI)**  
Where the APPLICANT has opted to subscribe for PAI the APPLICANT agrees and acknowledges that:
- 16.1 the CREDITOR acts merely as a broker and accepts no liability in its provision of this role;
- 16.2 it shall be the duty and obligation of the APPLICANT or its successor-in-title to refer, process and pursue its claim for recovery for any amount/s due thereunder against the insurers.
- 17 **GOODS IN TRANSIT (GIT) INSURANCE**  
Where the APPLICANT has opted to subscribe for GIT, the APPLICANT agrees and acknowledges that:
- 17.1 The CREDITOR shall not be liable for the loss or damage to any property left or transported in or upon the vehicle, irrespective of whether or not the loss or damage resulted from the negligence of the CREDITOR, its agents or employees. The APPLICANT hereby assumes full responsibility for such loss or damage, and hereby waives all claims against the CREDITOR arising therefrom and the APPLICANT hereby indemnifies the CREDITOR in respect of all claims arising therefrom.
- 17.2 Responsibility for all goods loaded and transported on the vehicle shall at all times be vested with the APPLICANT, irrespective of whether GIT insurance is affected or not. Moreover, even if the APPLICANT has specifically opted to subscribe to GIT, the APPLICANT agrees and acknowledges that:
- 17.2.1 the CREDITOR acts merely as a broker and accepts no liability in its provision of this role;
- 17.2.2 it shall be the duty and obligation of the APPLICANT or its successor-in-title to refer, process and pursue its claim for recovery for any amount due thereunder against the insurers.

