

**TERMS AND CONDITIONS (Please initial all pages)****1. DEFINITIONS AND INTERPRETATION**

In this Agreement, unless the contrary intention appears, the following expressions shall have the following meanings:

- 1.1. The head notes to this agreement are for the purpose of reference only and shall not govern the interpretation hereof. Such headings shall not be deemed to govern, limit, modify or affect the scope, meaning or intent of the provisions of this Agreement or any part of it; nor shall such headings otherwise be given any legal effect.
- 1.2. Words importing the singular shall include the plural, and vice versa and words importing the masculine gender shall include the feminine gender and words importing persons shall include partnerships and bodies corporate, and vice versa.
- 1.3. This agreement shall be binding on and enforceable by and against the estate, heirs, executors, administrators, trustees, assigns, liquidators, curators or other legal representatives of the parties as fully and effectually as if they has signed this agreement in the first instance and reference to any party shall be deemed to include such party's estates, heirs, executors, administrators, trustees, assigns, liquidators, curators or other legal representatives as the case may be.

**2. INTRODUCTION**

- **WHEREAS** the "OWNER" provides off-road and other trailers and other services to various individuals and institutions such as the "CLIENT";
- **AND WHEREAS** the "CLIENT" expressed an interest to hire such off-road and other trailers and/or services;

**NOW THEREFORE THE PARTIES AGREES AS FOLLOWS:****3. RENTAL AGREEMENT**

The Owner hereby lets to the Client ["the hirer"] who hires the goods ("the goods") described in the schedule attached hereto subject to the terms and conditions recorded herein and the terms and conditions attached.

**4. DURATION OF RENTAL**

The minimum rental shall be 3 days. In calculating the number of days, the day of collection of the good will be regarded as the first day of the rental, regardless of the time of collection and the day of return will be regarded as the last day.

**5. ACCIDENTS/DAMAGE**

5.1 Should the rental trailer or goods be involved in an accident/loss and is not towable or driveable [as the case may be], a replacement trailer or goods, if available, may be collected from the Owner.

5.2 Should the client require delivery of a replacement trailer or goods, the charges will be borne by the Client.

5.3 The Client shall be responsible for the recovery of the damaged trailer or goods to the original rental depot.

5.4 Should the Client be unable or unwilling to take a replacement trailer or goods, no refunds for early termination of the contract will apply.

5.5 No refund of rental days lost will be considered during the period in which a replacement trailer or any accessories or goods are being organised.

5.6 In the event of the Client continuing with a replacement trailer/goods a new rental agreement will be entered into and new insurance conditions will apply.

5.7 The Owner reserves the right to apply the above conditions as they deem fit.

**6. PAYMENT**

All payments to the Owner must be made by cash or electronic fund transfers [EFT] or travelers cheques, before taking delivery of the vehicle. ABSA BANK Swellendam Account name JW Swart Account number 2220143271 Branch code 3384-813

**7. BUSINESS HOURS FOR PICK-UP & DROP OFF**

7.1 The hours for pick-up and drop off are Monday to Friday from 8:00 am to 16:00 pm.

7.2 Collection or returns on weekends and public holidays are made by arrangement only.

**8. INSURANCE**

8.1 The trailer is comprehensively insured and the prices quoted include insurance.

8.2 A damage excess as quoted will be levied against the Clients' credit card on an authorisation basis only [or cash or travelers cheques as the case may be] and for other goods as described on our rates card which will be cancelled once all the goods are returned to the Owner in good order.

8.3 The Client shall be liable for all loss or damage in the event of the insurance company failing to compensate the Owner for losses due to actions of the Client.

**9. EXCLUSIONS**

9.1 The Client will be fully liable for any damage to the trailer [including losses for not being able to rent out the goods until repaired or replaced] or a third party vehicle / property if:

- The terms of this agreement are breached;
- Damage to the trailer is caused by careless, willful or reckless driving;
- Driving under the influence of drugs or alcohol, while towing the trailer;
- Driving on restricted roads;
- Water submersion or salt-water damage is caused;
- Damage caused by overloading of trailer.

9.2 In Case of any damage to the trailer or third party vehicle / property the client shall be responsible for a further excess amount to cover the excess for any subsequent damage as provided for in terms hereof.

**10. TRANSPORTATION OF HUMANS / ANIMALS**

It is not permitted to transport any person or animal in the trailer.

**11. INFRINGEMENTS**

The Owner reserves the right to charge the Client for any traffic fines, associated administration costs and / or accidents including third party vehicle/property damage not reported on the return of the trailer.

**12. OVERLOADING**

12.1 In the case of vehicles rented, it shall be the responsibility of the customer not to overload the rented trailer.

12.2 Any damage caused by overloading will be claimed from the customer.

- 13. CREDIT CARDS**  
No credit card accepted.
- 14. LICENSE**  
14.1 A valid non-endorsed driver's license is required.  
14.2 International license is preferred for the driver of the towing vehicle in the event of trailer hire.
- 15. ROAD RESTRICTIONS**  
15.1 Trailer/goods may be taken into South Africa's neighbouring states [for which the Owner shall issue the necessary Border Letters] but are not allowed into Angola, Zimbabwe or Malawi.  
15.2 All insurance cover is void if trailer enter prohibited areas.  
15.3 The Owner reserves the right, at its sole discretion, to restrict trailer movements in certain areas due to adverse road or weather conditions, political situations or any other reason.
- 16. REPAIRS**  
16.1 Emergency repairs of up to R1,000.00 may be affected without authorisation and will be reimbursed upon presentation of receipts.  
16.2 In cases where the repairs amounts to more than R1,000.00 such repairs will only be reimbursed after obtaining the written approval of the Owner.
- 17. CLEANING OF VEHICLE/EQUIPMENT**  
In the event of the trailer and/or equipment being returned to the Owner in a very dirty condition, a cleaning levy of R450.00 will be charged.
- 18. RECOVERY CHARGE**  
In the event of the Owner be compelled to recover any trailer or goods, a recovery charge of R10.00 per kilometer will be levied plus accommodation of their staff should the recovery take longer than 24 hours.
- 19. CHANGE OF VEHICLE/GOODS**  
19.1 The Owner reserves the right to substitute a comparable or superior trailer should the requested trailer or any of the equipment and/or accessories not be available due to unforeseen circumstances.  
19.2 This shall not constitute a breach of contract and does not entitle the Client to any refund.
- 20. CANCELLATION FEES**  
20.1 Should the Client cancel before 42 days prior to pickup, no charge will be applicable.  
20.2 Should the Client cancel between 41 and 28 days prior to pickup, a 25% charge of gross rate shall be applied.  
20.3 Should the Client cancel between 27 and 8 days prior to pickup, a 50% charge of gross rate shall be applied.  
20.4 Should the Client cancel between 7 and 0 days prior to pickup, a 100% charge of gross rate shall be applied, in other words the full contract price will be applied.
- 21. VAT**  
All rates are being quoted inclusive of Value Added Tax. Please ask for a tax invoice should you require one.
- 22. NO SMOKING**  
It is not permitted to smoke in the trailer or light a candle or similar device in the vehicles.
- 23. DISCLAIMER**  
23.1 Illustrations and text in any of the Owners' brochures are only a representation of the trailer and/or the equipment or accessories depicted.  
23.2 Variances in the trailer(s), equipment or accessories offered for rental could occur due to modifications and /or upgrades to the trailer design etc.
- 24. LATE RETURNS**  
24.1 All late returns will incur a penalty at rate plus 50% per day for every day that the trailer or goods is late.  
24.2 It will be regarded as a late return for every day that the goods are being repaired or for delays in replacing it, thus making the goods non-rentable.
- 25. COSTS**  
All costs and disbursements including legal costs on the attorney and client scale incurred by the Owner in recovering possession of the goods/trailer, as the case may be, and/or in tracing the Client or the goods, and/or in disposing of the goods, and/or in collecting or endeavouring to collect any amounts due in terms hereof are payable by the Client on demand including collection commission, selling commission, dismantling and removal charges, costs and repairing and restoring the goods to their former condition, the costs of storage and all like charges.
- 26. JURISDICTION**  
26.1 The hirer hereby consents to the jurisdiction of the magistrate's court having jurisdiction over his person in respect of all legal proceedings connected with this agreement, notwithstanding that the amount of the matter in dispute exceeds the court's jurisdiction.  
26.2 Notwithstanding the a foregoing the Owner is entitled to institute proceedings against the Client in the division of the High Court having jurisdiction in the matter.
- 27. PROOF OF AMOUNTS DUE**  
A certificate signed by any manager, accountant or director of the Owner whose capacity and authority need not be proved is *prima facie* proof of the matter of evidence stated therein in regard to any amount owing by the Client and the finance charge rate applicable.
- 28. DOMICILIUM**  
28.1 The parties hereby choose domicilium citandi et executandi for all notices and processes at their respective home addresses as given at the beginning of this agreement.  
28.2 Any notice of any change of address must be given in writing by the party concerned and delivered by hand or sent by registered mail to the other party.  
28.3 The address so notified then becomes the domicilium citandi et executandi.  
28.4 In the event of either party indicating a telephone facsimile number in the schedule hereto or in the credit application form, the parties agree that unless the contrary is proved any notice sent by telephone facsimile is deemed to have been received on the day of dispatch thereof.
- 29. APPLICABLE LAW**  
This agreement is in all respects governed and construed in accordance with the laws of the Republic of South Africa.
- 30. COST OF REPLACEMENT, DAMAGES AND LATE RETURN OF GOODS**  
The Client shall be liable for any damage or loss, howsoever caused to the trailer, or the goods/equipment rented in terms hereof.

- 31. INDEMNITY: TRIP & TOURS**  
 31.1 Whereas, the Client may willingly be participating in a leisure and/or holiday trip, tour or safari, the Client acknowledge that in participating in these activities he/she/they shall be subjecting themselves, their passengers and their trailer to danger and the possibility of personal injury, loss of support and/or the loss of life or passengers lives, and/or the loss or damage of personal possessions.  
 31.2 The Client do hereby acknowledge that I/we have freely and voluntarily accepted fully the risk to myself/ourselves and do thereby on behalf of myself/ourselves, my heirs, executors, administrators or assigns forever discharge, release and indemnify, hold harmless and absolve the Owner their committee, member clubs and their members, land owners and any other person involved in the above activities even where such activities constitute a negligent act or omission of the part of Owner from any claim or claims of whatsoever nature prior to and including the date/s of the activities and particularly as a result of any activity of whatsoever nature in which the Owner is in any way party to.  
 31.3 And I/we do further indemnify the Owner against any claim or claims, which may be preferred against them by any other person or body arising out of my/our actions aforementioned, and in particular against claims made against the Owner for any claim or claims preferred against them by my/our dependants.  
 31.4 I/we acknowledge that I/we have given this indemnity form to each of my passengers and that they have accepted the conditions as set out above.
- 32. SEVERABILITY**  
 Each of the undertakings set out in clauses 4 and 5 (including those appearing in a single clause) is severable *inter alia* as to the nature of the interest, act or activity and are acknowledged to be reasonably required for the protection of the "OWNER" and are generally fair and reasonable.  
 The "CLIENT" acknowledges that the "OWNER" will suffer serious financial harm and loss if they breached any provisions of clauses 4 and 5, it being acknowledged that the "OWNER" would not have released any information, but for the undertakings contained in clauses 4 and 5.
- 33. NO INDULGENCES**  
 No indulgence, leniency or extension of time which any party ("the granting party") may grant or show to any other party shall in any way prejudice the granting party or preclude the granting party from exercising any of its rights in the future.
- 34. VARIATIONS**  
 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all the parties to this Agreement or their duly authorized representatives.
- 35. ILLEGALITY AND DIVISIBILITY**  
 Nothing contained herein shall require the commission of any act or the payment of a compensation that is contrary to an express provision of law. If there shall exist any conflict between any provision contained herein and any such law or policy, the latter shall prevail; and the provision or provisions herein affected shall be curtailed, limited or eliminated to the extent (but only to the extent) necessary to remove such conflict; and as so modified the remaining provisions of this Agreement shall continue in full force and effect.
- 36. ASSIGNMENT**  
 None of the rights herein can be assigned by either party.
- 37. FORCE MAJEURE**  
 Force Majeure means any fire, flood, earthquake or public disaster, strike, labour dispute or unrest, embargo, riot, war, insurrection or civil unrest; any other act of God, any act of legally constituted authority; or any other cause beyond the parties control which would excuse the parties' performance as a matter of law. If because of force majeure, the parties' performance hereunder is delayed or prevented, then any performance period granted to the party shall be extended for the time of such delay or prevention.
- 38. NO WAIVER OF RIGHTS**  
 No conduct of any kind by either party that seems to exhibit an indulgence and acceptance of any breach by either party will constitute a waiver of any rights as contained in this Agreement. Any variation of rights as contained herein can only be altered by the process outlined in clause 10.
- 39. CUMULATIVE RIGHTS AND REMEDIES**  
 All rights, remedies, licenses, undertakings, obligations, covenants, privileges and other property granted herein shall be cumulative and the parties may exercise or use any of them separately or in conjunction with any one or more of the others.
- 40. CONSENSUS OBTAINED BY IMPROPER MEANS**  
 Both parties hereto warrant that no misrepresentation of any sort has induced any of them to engage in contracting with each other as set out in this instrument and that both parties have explored and investigated all the facts and conditions pertaining hereto and therefore shall not have any claim to have this Agreement rescinded or, alternatively, shall not have any claim for a monetary award against each other based on misrepresentation. It is however, understood that a claim for rescission or monetary compensation based on duress or undue influence, cannot be excluded.

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