



6. Nature of business: \_\_\_\_\_

7. Name of responsible person for:

7.1 Manager \_\_\_\_\_ Tel: \_\_\_\_\_ E-mail: \_\_\_\_\_

7.2 Orders \_\_\_\_\_ Tel: \_\_\_\_\_ E-mail: \_\_\_\_\_

7.3 Accounts \_\_\_\_\_ Tel: \_\_\_\_\_ E-mail: \_\_\_\_\_

7.4 Site \_\_\_\_\_ Tel: \_\_\_\_\_ E-mail: \_\_\_\_\_

8. Are official order numbers used? \_\_\_\_\_

9. Why did you choose MASS HIRE? (Tick appropriate block)

Referral	<input type="checkbox"/>	Yellow pages	<input type="checkbox"/>	Advertisement	<input type="checkbox"/>
Internet	<input type="checkbox"/>	Other	<input type="checkbox"/>	_____	

**C. TERMS AND CONDITIONS**

1. Definitions and Interpretation: For purposes of this Agreement:

- 1.1. 'Agreement' means the entire Application for cash rentals, the Terms and Conditions thereof, its annexures and the Suretyship;
- 1.2. 'Parties' means the parties to this agreement, being MASS HIRE and the Customer,
- 1.3. 'MASS HIRE' means any one, or a collection of the subsidiary, affiliate and connected companies as described in paragraph A above ('MASS HIRE DETAILS'), as well as any other subsidiaries, affiliate or connected companies not listed but with whom the Customer subsequent to this Agreement may contract;
- 1.4. 'Consumables' mean all the consumable items and sales stock as used or purchased by the Customer in connection with a rental Contract, Sales Contract or Services Contract.
- 1.5. 'Customer' means the person or entity set out in paragraph B above ('CUSTOMER DETAILS'), and its successors in title, liquidators, executors, trustees or permitted assigns.
- 1.6. 'Business Day' – means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.7. 'Effective Date' means, unless a specific date is stipulated here, the date on which MASS HIRE signs this Agreement. Specific date: \_\_\_\_\_
- 1.8. 'Suretyship' means each and every suretyship issued in consequence to this Agreement, whether attached hereto or done separately;
- 1.9. 'Securities' means any movable or fixed assets, rights, suretyships, pledges, sessions or other instruments held by MASS HIRE as security for the due fulfilment of the obligations of the Customer in terms of this Agreement or any other agreement;
- 1.10. 'Prime Rate' – means the prime bank overdraft rate of interest charged by Standard Bank Limited from time to time, calculated and compounded monthly in arrears;
- 1.11. 'Goods' shall mean the equipment rented according to the Rental Contract or sold according to the Sales Contract or serviced (maintained or repaired) according to the Service Contract;
- 1.12. 'Rental Contract' shall mean all existing or future agreements for the short or long-term hire of Goods (and the accompanying Consumables and Services) between the Customer and MASS HIRE, and includes orders, delivery notes, hire contracts and accepted quotations;
- 1.13. 'Sales Contract' shall mean all existing or future agreements for the sale of Goods and Consumables between the Customer and MASS HIRE, and includes orders, delivery notes, hire contracts and accepted quotations;
- 1.14. 'Services Contract' shall mean all existing or future agreements for Services between the Customer and MASS HIRE and includes orders, delivery notes, hire contracts and accepted quotations;
- 1.15. 'Services' shall mean any services which the Customer may contract MASSHIRE to perform, such as but not limited to maintenance, repair, core drilling and scaffolding services;
- 1.16. a substantive provision in a definition conferring rights or imposing obligations shall operate as if a substantive clause in the body of the Agreement;
- 1.17. if any period is referred to as a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day;
- 1.18. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.19. where reference is made to an act or action by the Customer, it will, unless the context clearly indicates otherwise, include a reference to the Customer's employees, representatives and contractors.
- 1.20. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as 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 that the clauses themselves do not expressly provide for this.
- 1.21. The terms of this Agreement, having been negotiated, shall not be interpreted against the Party who procured its preparation and drafting.
- 1.22. an expression which denotes any gender includes the other genders, a natural person includes a juristic person and vice versa; and the singular includes the plural and vice versa;
- 1.23. This Agreement shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.

2. General Terms and Conditions:

- 2.1. This Agreement governs the commercial relationship between the Parties resulting from a Rental Contract, Sales Contract or Services Contract (altogether the 'Contracts'). To the extent that the relevant Contracts specifically and clearly provides different terms and conditions as contained in this Agreement, the terms and conditions of relevant Contracts will prevail, except for as far as MASS HIRE's banking details are concerned, in which case clauses 3.2 and 3.3 below strictly prevails.
- 2.2. All quotations for Goods and/or Consumables or Services will be valid for 10 (ten) Business Days from the date of issue, unless specified otherwise and subject to availability.
- 2.3. The Customer agrees to pay all additional costs resulting from any acts or omissions by the Customer, including suspension of work, modification of requirements, failure or delay in giving particulars required to enable work to proceed on schedule or requirements for expediting.
- 2.4. The risk in the Goods shall pass to the Customer on delivery, notwithstanding the reservation of ownership therein. If the Goods is transported from the Company's premises by the Customer, delivery shall be deemed to have taken place as soon as the Goods has been loaded onto the Customer's own or designated transport.
- 2.5. Goods rented to the Customer shall remain the property of MASS HIRE at all times and shall not be subject to a landlord's tacit hypothec for rent or to any other lien or right and is not attachable by process of Court and the Customer shall keep the Goods free from any such encumbrance at its own cost. The same will apply to Goods sold to the Customer until ownership passes to the Customer.
- 2.6. The Customer hereby gives MASS HIRE permission to perform a credit search on any personal and company information, as supplied by the Customer when assessing the Customer's application for credit, monitor the Customer's credit behaviour through credit bureaus and to a negative listing of its credit information should the account remain outstanding after demand.
- 2.7. The placement of an order by the Customer under this Agreement is subject to rates at the time and the availability of materials and labour.
- 2.8. The Customer indemnifies MASS HIRE against any claims resulting from the Goods being in the possession, or under the control of the Customer, it's assigns, employees or subcontractors, or for the Services rendered to the Customer, by any party for any damages of any nature whatsoever, including but not limited to injury to persons or damage to property caused by, or in connection with, or arising out of, or involving the Goods or Services, and in respect of all costs and charges in connection therewith, whether arising under common or statutory law whether as a result of MASS HIRE's negligence or otherwise.
- 2.9. The Customer warrants that the terms of this Agreement will apply to all its assigns, employees or subcontractors.

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2.10. This Agreement or any written extension thereof shall be the whole agreement between the Parties and shall supersede all other agreements relating to the Goods and Services. No amendment or variation of this Agreement shall be binding unless reduced to writing and signed by both Parties.

2.11. Should any dispute arise between the Parties in regard to any aspect whatsoever relating to the Agreement, such dispute shall at the election of MASS HIRE be decided by a single arbitrator at George, Western Cape, without the right of appeal and in accordance with the rules of the Arbitration Foundation of Southern Africa (“AFSA”), and which arbitrator shall be appointed forthwith by AFSA at the request of MASS HIRE.

2.12. No latitude, extension of time or other indulgence MASS HIRE in respect of the Customer’s obligations hereunder, and no delay in or partial exercise of any right by MASS HIRE, shall in any

circumstances be construed to be an implied consent, waiver or

novation of its rights or prevent MASS HIRE from enforcing at any time and without notice, strict and punctual compliance by the Customer.

2.13. The Customer may only rely on this Agreement as to the subject matter hereof and no other agreements, representations or warranties by MASS HIRE regarding the subject matter will be binding on MASS HIRE unless reduced to writing and signed by the duly authorised MASS HIRE representative.

2.14. The Customer warrants that it will observe good faith in contracting and dealing with MASS HIRE and will perform its obligations arising from this Agreement diligently and with reasonable care.

2.15. The Customer chooses the domicilium citandi et executandi address in paragraph B above (“CUSTOMER DETAILS”) for all processes and notices arising out of or in connection with this Agreement. Notwithstanding the foregoing, a written notice or communication actually received by the Customer, including by way of e-mail, shall be adequate written notice or communication.

2.16. Should the Customer commit a breach of this Agreement and fail to remedy that breach within 5 (five) days after receipt of a written notice calling upon it to do so, then MASS HIRE shall be entitled, in addition to and without prejudice to any right or remedy it may have in terms of this Agreement, to enforce the performance of the terms hereof and claim damages, or cancel this Agreement and claim damages, and to in addition terminate any other credit facilities granted to the Customer by MASS HIRE and claim immediate full and complete payment of all amounts owed to MASS HIRE in terms thereof, notwithstanding any agreed repayment period and instalments.

2.17. The Customer shall be liable for all costs and expenses (calculated on an attorney and own client scale) including collection charges, tracing fees and all disbursements incurred as a result of or in connection with the enforcement by MASS HIRE of his Agreement against the Customer.

2.18. The Customer agrees to the jurisdiction of the Magistrate's Court despite the fact that the amount claimed might exceed the jurisdiction of the Magistrate's Court.

2.19. This Agreement and its continuance is subject to the submission of a completed surety attached as Annexure A hereto.

2.20. Any conflicting conditions stipulated by the Customer in this Agreement are expressly excluded unless agreed to under signature of a MASS HIRE director.

2.21. This Agreement supersedes all previous agreements with the Customer regarding Goods and Services, but without prejudice to any Securities. Any amendment or renewal of this Agreement will be without prejudice to existing Securities, unless a MASS HIRE director has agreed thereto in writing.

2.22. The Customer shall not cede or assign its rights and obligations in terms of this Agreement, a Rental contract, Sales contract or services Contract to any third party without prior written consent of MASS HIRE.

2.23. The signatory(ies) hereto warrant that they do so in a duly authorised capacity.

2.24. The signatory(ies) hereto agree by way of his/her signature to in a private and individual capacity be bound as surety and co- principal debtor in solidum with the Customer in favour of MASS HIRE for the due performance of any obligation of the Customer and for the payment to MASS HIRE by the Customer of any amounts which may now or at any time be or become owing to MASS HIRE by the Customer from whatsoever cause arising and including, but without limiting the generality of the foregoing, any claims and actions against the Customer acquired by way of cession. This suretyship shall be a continuing covering guarantee/surety which may only be cancelled in writing by MASS HIRE and then only, in the event that the sums then owing by the Customer (whether due or not) to MASS HIRE have been paid in full. The Signatory(ies) accepts that in the event that the Customer is placed under business rescue MASS HIRE’s claim against him/her/it will survive any compromise with the Customer in terms of Section 150 of the Companies Act 71 of 2008 and that he/she will remain liable to MASS HIRE despite the fact that the principal debt has been discharged. The Signatory(ies) hereby renounces the benefits of the legal exceptions “non Causa Debiti”, “Ordinis Seu Excussionis et Divisionis” and “cession of Action” with the force, meaning and effect of which he/she declares himself/herself to be fully acquainted.

### 3. Payments

3.1. All payments to be made in terms of this Agreement shall be made free of exchange, without any deduction or set off, and in South African Rand.

3.2. The Customer shall make any and all payments in terms of this Agreement strictly to the relevant MASS HIRE entity to which such payments are due and only into such entity’s bank account as stipulated under paragraph A above (“MASS HIRE DETAILS”). Any payments not made accordingly will be at the sole risk of the Customer.

3.3. The Customer must ensure that any payment instruction on an invoice or otherwise correspond with the entity and its banking details as per paragraph A above (“MASS HIRE DETAILS”).

3.4. The Customer agrees to notify MASS HIRE within 7 (seven) days of receiving an invoice if any invoice amount is disputed, after which date the Customer will be deemed to regard the invoice as correct and final. MASS HIRE retains the right to at any time correct and re-issue a defective invoice.

3.5. Unless stated differently in the Rental Contract, Sales Contract or Services Contract, invoices will be payable unconditionally to MASS HIRE immediately.

3.6. Payment by the Customer to MASS HIRE will only be in cash, electronic bank transfer, credit card, debit card or bank guaranteed cheques.

3.7. The Customer shall not be entitled to withhold or defer payment of any amount owing for any reason whatsoever. In the event of any dispute arising between the Parties, the Customer shall, pending the settlement of the dispute, continue to pay all amounts payable in terms hereof on their due dates, including the amounts in dispute.

3.8. All payments received from the Customer in terms of this Agreement will be applied firstly towards payment of any and all costs and expenses (including legal and/or arbitration fees) relating to the enforcement, or the preservation by MASS HIRE of this Agreement, secondly towards payment of accrued interest, and thirdly towards payment of the capital outstanding.

3.9. Unless otherwise agreed to in writing, all prices and invoice amounts shall exclude Value Added Tax and not be subject to any discount whatsoever.

3.10. No extension of payment of any nature to the Customer shall be valid unless agreed to by the Company, reduced to writing and signed by a MASS HIRE director.

3.11. A certificate signed by a manager or any director of MASS HIRE reflecting the amount owing by the Customer shall be prima facie proof of the fact and that such amount is due, owing and unpaid.

3.12. If the Customer fails to pay any amount due in terms of this Agreement on the due date, or commits any act of insolvency, or fails to satisfy any judgment on demand, or offers to assign his estate or effect or offers to effect a compromise with its creditors or is placed in liquidation (voluntary or compulsory) or under business rescue or dies or ceases to carry on business or if the Customer fails to observe or perform any provision of this Agreement (including any agreed extension thereof), MASS HIRE shall be entitled to cancel this Agreement forthwith and retake possession of any Goods without prejudice to its right to claim all damages suffered as a result of the Customer’s breach or the described situations, and all amounts due by the Customer to MASS HIRE, irrespective of any agreed repayment period and instalments, shall immediately become due and payable.

3.13. Without prejudice to MASS HIRE’S rights, including to claim specific performance, the Customer will pay interest on all overdue amounts at the Prime Rate plus 2% (percentage points), calculated from the date that it became due until date of payment, both days included.

3.14. The Customer remains responsible for payment of all invoices reflecting Goods delivered or Services rendered on demand of, and delivery notes signed by, any employee, representative or contractor of the Customer. If the Customer authorised only specific individuals to place orders, to accept deliveries, or effect a return of Goods, it is the Customer’s responsibility to inform MASS HIRE of such arrangements in advance and in writing, failing which, the Customer may not rely on the lack of authority of any of its employees, representatives or contractors who contracted with MASS HIRE in any way.

### 4. Commencement and Duration:

This Agreement shall become operative only on signature thereof by MASS HIRE, but with effect from the Effective Date, and continue to be of force and effect until terminated by either Party by way of a 5 (five) Business Day written notice to such effect, subject to the provisions of clause 2.16 above.

### 5. Rentals:

MASS HIRE rents the Goods and provide associated Consumables to the Customer as per the terms of this Agreement and the Rental Contract. Unless the Rental Contract clearly and specifically provides otherwise:

5.1. The Customer shall pay the rental rate for the Goods from the time it leaves MASS HIRE’S yard until the Goods are returned to MASS HIRE’S yard, i.e. for time out of MASS HIRE’S possession and not for the time that the Goods were in fact used by the Customer.

5.2. If the Goods are not returned on the date agreed to, the rental period will automatically be extended on similar terms until terminated by MASS HIRE, or by the Customer.

5.3. Unless the Rental Contract specifies differently, all rental rates are based on a minimum 9-hour day (from 07:00 and 18:00 daily), 54-hour week (Monday to Saturday).

5.4. The Customer shall pay the deposit stated in the Rental Contract to MASS HIRE, which shall be refunded within 7 (seven) Business Days of the return of the Goods, less all amounts due in terms hereof.

5.5. While making every effort to supply the Goods promptly, MASS HIRE does not guarantee delivery at any particular date and accepts no liability for a delay in delivery or collection of the Goods.

5.6. The Customer shall not be entitled to refuse acceptance of late deliveries, unless the Customer cancels the delivery in writing before the Goods are dispatched from the MASS HIRE premises.

5.7. Transport of the Goods to the site where it will be utilised is the responsibility of, and for the account of the Customer. If MASS HIRE agrees to deliver and collect, then it is agreed that proper delivery of the Goods will have been made on physical delivery on site, even if the Customer has no representatives at the site to take delivery thereof.

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5.7. Transport of the Goods to the site where it will be utilised is the responsibility of, and for the account of the Customer. If MASS HIRE agrees to deliver and collect, then it is agreed that proper delivery of the Goods will have been made on physical delivery on site, even if the Customer has no representatives at the site to take delivery thereof. 5.8. Should it be agreed that MASS HIRE collect the Goods from the relevant site where it is situated, the Customer shall ensure that the Goods are readily accessible, properly vacated and recoverable and in the case of access control to the site, that the necessary arrangements are made for prompt access by MASS HIRE. Should MASS HIRE not be able to gain prompt access to the site, it will be entitled to return later when access has been arranged, with the additional delivery costs being for the Customer's account.

5.9. If a call-out is requested by the Customer, and the breakdown or defect occurred because of negligence such as Goods running out of fuel or not switched on or properly operated, and a MASS HIRE technician needs to intervene, refuel, bleed or switch on the Goods, the applicable service rate per hour will be as per the standard MASS HIRE Rates, available on request, calculated from the time the technician leaves the MASS HIRE premises until time of return. A travelling fee per kilometre to and from the site will be charged as per the standard MASS HIRE Rates, available on request.

5.10. MASS HIRE reserves the right at its sole discretion to provide alternative Goods of the same quality and quantity at the prevailing prices/rates to that ordered by the Customer should such Goods be out of stock, superseded, replaced or its manufacture be discontinued.

5.11. Unless otherwise specified by the Rental Contract, the provision of fuel, oil, water, electricity or other facilities which may be necessary for the operation of the Goods will be the Customer's responsibility and for his account.

5.12. The Customer will ensure that in the case of any refueling of, or the addition of oil, additives or water, etc., to the Goods, such will strictly be done with MASS HIRE specified fuel, oil, additives and clean water. Such refueling or additions will furthermore strictly be done under clean and contaminant free conditions and using clean containers, funnels, cloths, etc. Any damage to the Goods as a result of not complying with these requirements will be for the Customer's account.

5.13. It remains the Customer's responsibility to ensure an authorised person is on site to sign the delivery note confirming that Goods delivered to site is not short delivered or damaged on delivery. MASS HIRE will not be liable for alleged short deliveries or damaged and/or defective Goods not reported upon delivery.

5.14. MASS HIRE will only be responsible for the collection of Goods after receipt of a written notice from the Customer that the Goods are due for collection, which notice must be acknowledged by MASS HIRE in writing in order to qualify as a valid notification.

5.15. Goods are checked and tested by MASS HIRE prior to delivery thereof to the Customer. If mechanical Goods break down due to fair wear and tear or any latent defect, the Customer will notify MASS HIRE in writing and MASS HIRE will arrange for a service mechanic to repair the Goods, or at its sole discretion, replace the Goods with a similar unit as soon as is reasonably possible. The service will be rendered free of charge to any sites within a radius of 50 Km from MASS HIRE's premises. The Customer will be charged with the travel costs of the repairer to sites further than 50 Km from MASS HIRE's premises.

5.16. The Customer acknowledges that it is aware of the purpose for which the Goods were designed as well as all safety and maintenance procedures which are required in respect of the Goods by any lawful authority and shall only utilise the Goods for such purpose and shall comply with all such safety and maintenance procedures. If Goods break down due to the abuse or misuse thereof or through the negligence of the Customer, the Customer will remain solely responsible for either the repair or the replacement of the Goods, as directed by MASS HIRE.

5.17. The Customer shall be responsible for any loss or damage to the Goods, and shall return them as received, cleaned and oiled within the MASS HIRE specification and in sound condition, fair wear and tear excepted.

5.18. In the event of a loss or damage to the Goods, replacement thereof shall be for the Customer's account at the catalogue price thereof, and in case of repair, for the Customer's account at the cost of repair by MASS HIRE or its service provider. Apart from the Customer's duties in terms of clause 5.16 above, only MASS HIRE may conduct maintenance or repair service on the Goods.

5.19. The Customer shall keep the Goods on the site where it was delivered to and shall advise MASS HIRE in writing if it is moved to another site.

5.20. The Customer shall immediately inform MASS HIRE telephonically and in writing of any loss of, or damage to the Goods.

5.21. MASS HIRE shall be entitled to inspect the Goods on site at any time during the rental period.

5.22. At the expiry of the rental period, the Customer shall at its expense return the Goods to the MASS HIRE entity it came from, unless arrangements have been made for collection as per clause 5.13 above.

5.23. When the Goods are returned to MASS HIRE upon the termination or expiry of any rental period, it is the responsibility of the Customer to ensure that it receives a Returns Note issued by MASS HIRE stipulating that the Goods were returned in a proper state. In the absence of such note, the Customer will be held responsible for defective Goods so returned.

5.24. In instances where the Goods are rented with an operator, MASS HIRE shall ensure that the operator is duly qualified and certified, but MASS HIRE carries no responsibility and the Customer indemnifies MASS HIRE against any claims for the actions of the operator, as the operator shall be deemed to be under the direct control and command of the Customer.

5.25. The Customer shall comprehensively insure the Goods for the time in its possession, including the time the goods are being transported .

**6. Sales Contracts**

MASS HIRE sells the Goods and/or Consumables to the Customer as per the terms of this Agreement and the Sale Contract. Unless the Sale Contract clearly and specifically provides otherwise:

6.1. In the event of a sale of Goods and/or Consumables, ownership shall only pass after the purchase price and all other amounts due as a result of the sale has been settled in full. The Customer will until then maintain the Goods in a good state of repair.

6.2. The purchase price in the Sale Contract relates only to the Goods and/or Consumables specified. Any alteration or addition to, or deviation therefrom must be recorded and agreed to in writing.

**7. Services Contracts**

7.1. MASS HIRE provides the Services to the Customer as per the terms of this Agreement and the Services Contract.

7.2. Prior to commencing any concrete core drilling work on behalf of the Customer, the Client must advise MASS HIRE of, point out and clearly mark the precise location of any and all services and/or internal structural support system/s embedded below the core-drilling surface, including, but not limited to, electrical services, gas services, fuel services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, plumbing services, sewer connections, sewer sludge mains, water mains, irrigation pipes, plumbing services, telephone cables, fibre optic cables, oil puming mains, and any other embedded services and structural reinforcement that could be damaged by core drilling on the site (hereinafter the 'embedded services and/or structural reinforcement'). The Client agrees to indemnify MASS HIRE in respect of any and all loss, damage, costs and/or fines of any nature, which may be incurred by the Customer or any other party in consequence of MASS HIRE, whether directly or indirectly, causing damage to the said embedded services and / or structural reinforcement due to the Client not identifying, not having pointed out and / or incorrectly pointed out and not clearly marking the precise location of the said embedded services and structural re-enforcement.

We / I understand our / my right to privacy and the right to have my personal information processed in accordance with the conditions for the lawful processing of personal information and hereby give my consent to MASS HIRE to collect, process and distribute relevant personal information where the company is required to do so.

We / I acknowledge having read the above terms and conditions and without limiting the generality thereof, people agree to be bound by all such terms and conditions.

Full name: \_\_\_\_\_

Full name: \_\_\_\_\_

ID number: \_\_\_\_\_

ID number: \_\_\_\_\_

1. \_\_\_\_\_  
Signature

2. \_\_\_\_\_  
Signature

Dated at: \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

In my personal capacity as surety and co-principal debtor in accordance with paragraph 2.24 above and in my capacity as the duly authorised representative of the Applicant.

Surety and co-principal debtor:

1. \_\_\_\_\_  
Signature

2. \_\_\_\_\_  
Signature

Witnesses:

Full name: \_\_\_\_\_

Full name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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