

# GENERAL TERMS AND CONDITIONS FOR PLANT HIRE AND SERVICES

## INDEX

<u>CLAUSE</u>	<u>PAGE NO.</u>
0 INDEX .....	1 - 2
1 INTRODUCTION.....	3
2 DEFINITIONS.....	3 - 4
3 INTERPRETATION.....	4-5
4 CONTRACTED SERVICES.....	5
5 PERIOD OF CONTRACTED SERVICES.....	5
6 MASTER AGREEMENT.....	5 - 6
7 VARIATIONS TO THE QUOTATION/PROPOSAL .....	6
8 RATE, INVOICING AND PAYMENT TERMS.....	6 - 7
9 MINIMUM OPERATING HOURS .....	7
10 COLLECTION, DELIVERY AND RETURN OF PLANT AND EQUIPMENT.....	7 - 8
11 OWNERSHIP OF PLANT AND EQUIPMENT INCIDENTAL EQUIPMENT.....	8
12 FAULTS, DEFECTS OR BREAKDOWN OF PLANT AND EQUIPMENT.....	8 - 9
13 TYRES AND TUBES .....	9
14 GROUND ENGAGING TOOLS .....	9 - 10
15 LOSS, THEFT OF, OR DAMAGE TO THE PLANT AND EQUIPMENT.....	10
16 USE OF PLANT AND EQUIPMENT .....	10 - 11
17 OPERATORS AND EMPLOYEES.....	11
18 CLIENT OBLIGATIONS .....	11 - 12
19 GROUND CONDITIONS .....	12
20 FUEL .....	12
21 ACCESS TO SITE AND USE OF FACILITIES .....	12
22 DAMAGE TO SITE.....	12
23 NOTIFICATION OF ACCIDENTS.....	13
24 SAFEKEEPING .....	13
25 INCLEMENT WEATHER.....	13 - 14
26 STANDING TIME.....	13 - 14
27 NOTIFICATION OF CHANGE OF SITE.....	14
28 TERMINATION AND BREACH.....	14 - 15
29 LIMITATION OF LIABILITY.....	15
30 INSURANCE .....	15 - 16

31	ASSIGNMENT AND CESSION.....	16
32	FORCE MAJEURE.....	16
33	DISPUTES.....	16 - 17
34	NOTICES, DOMICILIA CITANDI ET EXECUTANDI.....	17
35	GENERAL.....	17
36	ARBITRATION.....	17
37	CONFIDENTIALITY.....	17

## **GENERAL TERMS AND CONDITIONS**

### **1. INTRODUCTION**

- 1.1. These General Terms and Conditions as read with the Quotation/Proposal, record the only terms and conditions governing the relationship between SPH and the Client pertaining to :
- 1.1.1. the Hire of Plant and Equipment; and/or
- 1.1.2. Services;
- to be provided by SPH to the Client.
- 1.2. The Quotation/Proposal is :
- 1.2.1. made in response to a request from the Client;
- 1.2.2. made on the terms set out in the Quotation /Proposal as read with these Conditions;
- 1.2.3. valid for thirty (30) days from the Quotation /Proposal Date.
- 1.3. In the event of a conflict between these Conditions and any terms and conditions which the Client may seek to impose on the performance of the Contracted Services, the provisions of the Quotation/Proposal as read with the Conditions, shall take precedence and shall be of application to the exclusion of the provisions of the Client's terms and conditions which are in conflict.

### **2. DEFINITIONS**

The following words and phrases shall have the meanings assigned to them as set out below in these Conditions and in the Quotation/Proposal:

- 2.1. **"Agreement"** means the agreement between the Client and SPH comprising the Quotation/Proposal, these Conditions and any schedules or annexures attached to these Conditions and/or Quotation/Proposal or incorporated into them by reference for the provision of the Contracted Services.
- 2.2. **"Client"** means the legal entity or person described as such in the Quotation/Proposal;
- 2.3. **"Commencement Date"** means the date on which the provision of the Contracted Services commences and includes the commencement date of the Hire Period;
- 2.4. **"Completion Date"** means the date on which the Contracted Services are completed and includes the Date of Return of Plant and Equipment;
- 2.5. **"Conditions"** means these General Terms and Conditions as well as the Quotation/Proposal to which these General Terms and Conditions are attached, and any other annexures, schedules or attachments hereto;
- 2.6. **"Conditions Precedent"** means the conditions detailed in the Quotation/Proposal which must be fulfilled prior to the Agreement becoming of any force or effect;
- 2.7. **"Contracted Services"** means, collectively or individually, the provision of the Services and/or the Hire of the Plant and Equipment, as the case may be;
- 2.8. **"Date"** means the date identified as such in the Quotation/Proposal;
- 2.9. **"Date of Return"** means:
- 2.9.1. if the Plant and Equipment is in good working order and does not need repair, the date that it is returned to SPH's nominated address, whether or not SPH is responsible to arrange the return of the Plant and Equipment; or
- 2.9.2. if the Plant and Equipment is damaged whilst in the possession, custody or power of the Client, the date that the Plant and Equipment is repaired and returned to SPH; or
- 2.9.3. if the Plant and Equipment is lost or destroyed, or otherwise incapable of repair, the date of receipt by SPH of a replacement for that Plant and Equipment or if SPH elects not to replace the Plant and Equipment, the date that it could have received a replacement; or
- 2.9.4. the date of the last day of the Term;
- 2.10. **"De-establishment"** means the demobilisation of the Site by SPH, commencing on the Completion Date and enduring until De-establishment has been completed;
- 2.11. **"De-establishment Charge"** means the amount reflected in the Quotation/Proposal payable in respect of the De-establishment and/or if not reflected in the Quotation / Proposal, the costs reasonably incurred by SPH (including a reasonable charge for all labour provided by SPH) in recovering possession of and/or removing the Plant and Equipment from the Client;
- 2.12. **"Employee"** means an employee of SPH, an agent of SPH and any person over whom SPH exercises direction and control and shall include Operators provided by SPH to the Client to operate the Plant and Equipment;
- 2.13. **"Ground Engaging Tools"** means any wear part and/or tool of the Plant and Equipment that engages the ground and/or comes into contact with specific material;
- 2.14. **"Hire"** means the hire of the Plant and Equipment to

the Client either with or without an Operator, and the Client's right to use the Plant and Equipment as granted by SPH to the Client in terms of the Agreement, where applicable;

- 2.15. **"Hire Period"** means the period during which the Plant and Equipment is hired by the Client as determined in accordance with **Clause 5.2**;
- 2.16. **"Inclement Weather"** means conditions deemed to be inclement as contemplated in **Clause 25**;
- 2.17. **"Induction Programme"** means the Client's mandatory process to be undertaken by SPH in respect of entry, periodical and exit programmes;
- 2.18. **"Operator"** means a person or persons supplied by either SPH or the Client, as indicated in the Quotation/Proposal, to operate the Plant and Equipment;
- 2.19. **"Party/Parties"** means collectively or individually, as the case may be, SPH and the Client;
- 2.20. **"Plant and Equipment"** means the plant and equipment, as specifically identified in the Quotation/Proposal which SPH agrees to use/supply for the provision of the Contracted Services to the Client on terms and conditions set out in the Quotation/Proposal as read with these Conditions, and which includes any substitution, replacement of and /or addition to that which is reflected in the Quotation/Proposal, together with any manuals, accessories or other items which may be supplied from time to time. Any reference to the Plant and Equipment includes a reference to any part thereof.
- 2.21. **"Quotation/Proposal"** means the schedule, to which these Conditions are attached and which shall be read and form part of the Quotation/Proposal, which schedule describes in some detail the various components or aspects of the Contracted Services, as may be amended by the Parties from time to time in accordance with the provision of **Clause 6** below. Any reference to the Quotation/Proposal shall include a reference to these Conditions and vice versa;
- 2.22. **"Rate"** means the amount as reflected in the Quotation/Proposal in respect of the provision of the Contracted Services;
- 2.23. **"Rate Adjustment Period"** means the period as contemplated in the Quotation/Proposal;
- 2.24. **"Services"** means the work detailed in the Quotation/Proposal to be supplied by SPH to the Client using SPH's Plant and Equipment in accordance with the Quotation/Proposal as read with these Conditions;
- 2.25. **"Signature Date"** means the date on which the Client signs the Quotation/Proposal; or in the absence of the Client's signature on the Quotation/Proposal the date the Client signs an official written instruction to SPH accepting SPH's Quotation/Proposal; or the date the Client forwards an email to SPH accepting the Quotation/Proposal.
- 2.26. **"Site"** means the location as identified in the Quotation/Proposal where the Client intends to use the Plant and Equipment and/or where SPH shall render the Contracted Services;
- 2.27. **"Site Establishment Date"** means the date, subject to the fulfilment of the Conditions Precedent, when the Site Establishment commences;
- 2.28. **"Site Establishment"** means the mobilisation period/process in terms of which SPH's personnel attend the Induction Programme, and/or establishment on Site takes place, and shall continue until the Commencement Date.
- 2.29. **"Site Establishment Charge"** means the amount reflected in the Quotation/Proposal payable in respect of Site Establishment and/or if not reflected in the Quotation / Proposal, the costs reasonably incurred by SPH (including a reasonable charge for all labour provided by SPH) in respect of Site Establishment;
- 2.30. **"SPH"** means SPH Kundalila (Pty) Limited, a limited liability Company duly registered according to the laws of the Republic of South Africa, with registration number 1997/015857/07;
- 2.31. **"Standing Time"** means that time during which Plant and Equipment is idle and is not utilised in any Working Day as evidenced in the manner contemplated in **Clause 26** below;
- 2.32. **"Standing Time Rate"** means the Rate payable in respect of Standing Time as reflected in **Clause 26** and/or in the Quotation/Proposal;
- 2.33. **"Tax Invoice"** means a tax invoice issued in accordance with the VAT Act by SPH to the Client in accordance with these Conditions;
- 2.34. **"Term"** means the period of time in terms of the Agreement, as from and including the Commencement Date until the Completion Date;
- 2.35. **"VAT"** means Value Added Tax charged in terms of the VAT Act;
- 2.36. **"VAT Act"** means the Value Added Tax Act No 89 of 1991, as amended from time to time;
- 2.37. **"Working Day"** means a day commencing and ending at times specified in the Quotation/Proposal in the same day;
- 3. INTERPRETATION**
- 3.1. Words and phrases defined in these Conditions

shall have the same meanings when utilised in the Quotation/Proposal, and vice versa.

- 3.2. If there is a conflict between these Conditions and the Quotation/Proposal, the Conditions shall take precedence.
- 3.3. Any reference to any statute or statutory provision is a reference to that statute or statutory provision at the Signature Date and as amended or re-enacted from time to time.
- 3.4. If any provision in this clause is a substantive provision conferring rights or imposing obligations on the Parties, effect shall be given to it as if it were a substantive provision in the body of these Conditions.
- 3.5. The rule of construction that a contract be interpreted against the Party responsible for the drafting or preparation of these Conditions, shall not apply.

#### **4. CONTRACTED SERVICES**

- 4.1 SPH will render the Contracted Services to the Client which will include:-
  - 4.1.1 the Hire of Plant and Equipment with Operators; and/or
  - 4.1.2 the Hire of Plant and Equipment without Operators; and/or
  - 4.1.3 the provision of Services;
 

as prescribed in the Quotation/Proposal as read with these Conditions.
- 4.2 The quantity, quality, description of and any specification for the Contracted Services shall be as expressly set out in the Agreement as informed and acknowledged by the Client.
- 4.3 SPH reserves the right to make changes in the specification of the Contracted Services which are required to conform with any applicable statutory or regulatory requirement which do not materially affect quality or performance.
- 4.4 Any variation to the Contracted Services shall be carried out strictly in accordance with **Clauses 6 and 7** below.
- 4.5 Any documentation, including without limitation, pamphlets, marketing documentation, Quotation/Proposals which may have been delivered by SPH to the Client, or representations made by or on behalf of SPH (whether written or oral) which is not included in the Quotation/Proposal or referred to in these Conditions shall not form part of the Agreement.

#### **5 PERIOD OF CONTRACTED SERVICES**

##### **5.1 THE SERVICES**

5.1.1 SPH will commence with the provision of the Services upon the Commencement Date, subject to its Employees undergoing the Client's required Induction Programmes;

5.1.2 The Services will terminate upon the Completion Date, subject to the terms and conditions reflected herein.

##### **5.2 HIRED PLANT AND EQUIPMENT**

###### **5.2.1 Hire Period**

5.2.1.1 Unless otherwise agreed in writing by SPH, the Hire Period will commence on :-

- a) the date upon which the Company has notified the Client that the Hired Plant and Equipment will be available for Collection; or
- b) where SPH has agreed to deliver the Hired Plant and Equipment to the Client, the date that the Hired Plant and Equipment is despatched to the Client.

5.2.1.2 Hired Plant and Equipment is subject to a minimum Hire Period as reflected in **Clause 9**, unless otherwise notified by SPH in writing.

5.2.1.3 The Hired Plant and Equipment remains on Hire until the Date of Return, subject to **Clause 10.5**;

5.3 SPH shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly or as a consequence of a delay or interruption in the provision of the Contracted Services caused by or as a consequence of an act or omission on the part of the Client.

##### **5.4 EXTENSION OF TERM**

5.4.1 If the Client wishes to extend the term of the Contracted Services, the Client shall give written notice of its request to SPH, specifying the length of time by which the Client wishes to extend the duration and subject to **Clause 6** below. SPH may refuse or agree to the extension of the duration on such terms and conditions as SPH in its absolute discretion sees fit. Without limiting the scope of SPH's discretion, SPH may have regard to the availability of the Plant and Equipment and (if applicable) an Operator and the extent to which the Client has complied with the terms of the Agreement. Subject to **Clause 6** below, the terms of the Agreement shall apply to the extended duration subject to any terms and conditions imposed by SPH.

#### **6 MASTER AGREEMENT**

6.1 It is anticipated that from time to time, the Quotation/Proposal, an annexure, a schedule and/or an attachment, may need to be varied or

amended by mutual agreement between the Parties.

- 6.2 In such event, the Quotation/Proposal, annexure, schedule or attachment in question, shall be amended by the creation of a new and amended Quotation/Proposal annexure, schedule and/or attachment stating the variation or attachment to such Quotation/Proposal, annexure, schedule and/or attachment, as the case may be. Such amended Quotation/Proposal, annexure, schedule and/or attachment will be added, substituted or deleted as determined in accordance with the provisions of this clause of these Conditions.
- 6.3 An amended Quotation/Proposal annexure, schedule and/or attachment shall only be read with and form part of these Conditions when it is reduced to writing and the Parties have:
- 6.3.1 initialled each page of the amended Quotation/Proposal, annexure schedule and/or attachment;
- 6.3.2 signed in full as indicated on the amended Quotation/Proposal or annexure;
- 6.3.3 indicating the date upon which the amended Quotation/Proposal, annexure, schedule and/or attachment is to become effective.
- 6.4 In the instance of an addition or substitution of an amended Quotation/Proposal, annexure, the amended Quotation/Proposal, annexure, schedule and/or attachment having been properly executed in accordance with **Clause 6.3** above, the amended Quotation/Proposal, annexure, schedule and/or attachment reflecting the latest date will be the Quotation/Proposal, annexure, schedule and/or attachment which is binding on the Parties. The provisions of these Conditions to the contrary and/or all previously dated versions of an amended Quotation/Proposal, annexure, schedule and/or attachment which is substituted will not be binding on the Parties henceforth.

## **7 VARIATIONS TO THE QUOTATION/PROPOSAL**

- 7.1 The Quotation/Proposal is based on the inputs provided by the Client. If however, during the course of providing the Contracted Services, it is found that the information furnished by the Client is in any way in conflict with documentation or information provided in terms of the Quotation/Proposal, SPH reserves the right to alter or amend the Quotation/Proposal with the concurrence of the Client, on the terms and conditions provided in **Clause 6** above, which shall then become binding on the Client. The Client agrees to provide SPH with reasonable time to amend the Quotation/Proposal. SPH reserves the right to amend its final Tax Invoice to take account

of any financial consequences arising from the change in information as contemplated in these Conditions.

- 7.2 Any alterations to the Quotation/Proposal shall be in writing and signed by the parties.

## **8 RATE, INVOICING AND PAYMENT TERMS**

### **8.1 RATE**

- 8.1.1 Unless otherwise expressly specified in the Quotation/Proposal, the Rate is :

- 8.1.1.1 exclusive of the cost of fuel and VAT thereon;
- 8.1.1.2 inclusive of all costs associated with labour, equipment, spares and consumables, such as may be required during the course of the provision of the Contracted Services;

- 8.1.1.3 inclusive of all Employee costs associated with travel, accommodation and/or subsistence associated with the provision of the Contracted Services;

- 8.1.1.4 inclusive of all costs associated with the maintenance of the Plant and Equipment in good condition throughout the period that the Contracted Services are provided.

### **8.1.2 Hire and Service Charges**

- 8.1.2.1 Unless detailed to the contrary in the Quotation/Proposal, the Contracted Services rendered will be charged in accordance with the Rates reflected therein and subject to the terms of these Conditions and/or the Quotation/Proposal.

- 8.1.2.2 Timesheets and/or metered readings will be recorded and submitted to the Client for the necessary approval and endorsement, unless agreed to otherwise by the Parties. SPH's decision relating to data captured on timesheets and/or records of metered readings will be final and binding on the Client. In the event of any conflict between SPH's records and any other information obtained or kept by either Party in respect of hours worked by SPH in the course of performing the Services, SPH's timesheets and/or metered readings shall prevail.

### **8.1.3 Preliminaries and General**

Unless detailed otherwise in the Quotation/Proposal, the following additional charges will also apply to the provision of the Contracted Services:-

- 8.1.3.1 charges for transportation of Plant and Equipment including mobilisation and demobilisation thereof in respect of both despatch and return of such equipment to SPH's premises;

8.1.3.2 charges for mobilising and de-mobilising SPH's Employees used in respect of the Agreement;

8.1.3.3 charges for fuelling the Plant and Equipment prior to collection or delivery of the Plant and Equipment to and from SPH's premises;

8.1.3.4 other charges reflected herein and/or in the Quotation/Proposal.

#### 8.1.4 **Rate Adjustment**

8.1.4.1 SPH reserves the right to request an adjustment to the Rate payable in respect of the rendering of the Contracted Services.

8.1.4.2 Applications for Rate adjustments shall be submitted as follows :

8.1.4.2.1 in respect of an annual increase, submitted not less than thirty (30) days prior to the requested effective date of such adjustment;

8.1.4.2.2 in respect of such statutory fuel adjustments, submitted within one (1) day prior to the effective date of such adjustment or within one (1) Working Day after SPH received notification of such statutory fuel adjustment, provided that all statutory fuel adjustments will be effective by the first Wednesday of the subsequent calendar month;

8.1.4.2.3 in respect of adjustments for unforeseen expenses beyond SPH's control, submitted in the same month as the requested effective date of such adjustment.

#### 8.2 **INVOICING AND PAYMENT TERMS**

8.2.1 SPH shall issue a Tax Invoice which shall be submitted to the Client monthly. The amounts claimed in respect of Tax Invoices shall be due and payable within 30 (thirty) days from date of the Tax Invoice, unless detailed to the contrary in the Quotation/Proposal and providing the Client has been offered credit facilities with SPH. Payment by the Client to SPH shall be by electronic funds transfer to the credit of the bank account, the details of which are set out on the Tax Invoice in question.

8.2.2 Interest shall accrue at a rate of 2% (two percentum) per month, compounded monthly on all amounts due and payable in terms of a Tax Invoice but which remain unpaid 30 (thirty) days after the date of the Tax Invoice.

8.2.3 In case of failure or refusal by the Client to timeously pay any or all Tax Invoices rendered to the Client, SPH reserves the right to :

8.2.3.1 proceed against the Client in terms of law and the costs incurred in respect thereof, shall be recovered from the Client on the Attorney and own Client scale;

8.2.3.2 suspend the rendering of all or any of its Contracted Services to the Client until such time as the Tax Invoice/s is/are settled.

8.2.4 Unless otherwise specifically agreed, all Tax Invoices will be sent to the Client electronically in order to honour SPH's commitment to support a sustainable environment.

8.2.5 All payments due to SPH by the Client shall be made without any set-off deduction, counter-claim and any other basis for withholding payment.

### 9 **MINIMUM OPERATING HOURS**

9.1 Plant and Equipment is hired to the Client by SPH subject to a deemed minimum usage of 9½ (nine and a half) hours in any Working Day, regardless of the number of hours which the Plant and Equipment worked in the same Working Day, unless the Quotation/Proposal specifies to the contrary.

### 10 **COLLECTION, DELIVERY AND RETURN OF PLANT AND EQUIPMENT**

10.1 SPH will use reasonable endeavours to have each item of Plant and Equipment available for delivery or collection on the date requested by the Client. However, any dates quoted for delivery or collection of the Hired Plant and Equipment is approximate only and SPH shall not be liable for any delay in delivery howsoever caused.

#### 10.2 **SERVICES**

10.2.1 Unless detailed to the contrary in the Quotation/Proposal, SPH shall be responsible for the delivery, unloading, and where appropriate installation and dismantling, as well as the reloading of the Plant and Equipment at the Site associated with the provision of the Contracted Services.

10.2.2 All Plant and Equipment shall be located on the Site as directed by the Client.

10.2.3 As soon as possible after the Completion Date, SPH shall remove all Plant and Equipment, unless detailed to the contrary in the Quotation/Proposal and leave the Site in a clean condition taking into account the work that has been done on the Site by SPH.

#### 10.3 **HIRED PLANT AND EQUIPMENT**

10.3.1 Delivery of Hired Plant and Equipment shall be made either :-

10.3.1.1 by the Client collecting the Hired Plant and Equipment from SPH's premises; or

10.3.1.2 If SPH has agreed to deliver the Hired Plant and Equipment, by SPH delivering the Plant and

Equipment (at the Client's cost) to the Site or such other location as SPH may agree:

- 10.3.2 SPH will submit a checklist and a delivery and acceptance form (or similar document) for each item of Hired Plant and Equipment which will specify the precise details of the Hired Plant and Equipment and the visual inspection of the Plant and Equipment to be undertaken prior to acceptance thereof. At the time of delivery or collection of the Hired Plant and Equipment the said forms will be signed by the Client or by a person authorised on its behalf, and such signature shall constitute the Client's acceptance that the Hired Plant and Equipment is in good working order upon delivery.

#### 10.4 **RETURN**

- 10.4.1 On termination or expiry of the Hire Period, the Client shall, unless agreed otherwise by SPH in writing, return the Hired Plant and Equipment at its own risk and expense to SPH at such place within South Africa as SPH requires. The Hired Plant and Equipment shall be returned in a good, clean, safe and serviceable condition and state of repair (fair wear and tear excepted) or otherwise in the condition required under the Agreement.

- 10.4.2 In the event that SPH agrees in writing pursuant to **Clause 10.4.1** to collect the Hired Plant and Equipment from the Client, it shall do so at the expense of the Client and subject to such terms and conditions as SPH may notify to the Client.

#### 10.5 **LATE RETURN**

For avoidance of doubt, the Client acknowledges that it shall be responsible to pay the Rates in respect of the period to:-

- 10.5.1 (if the Plant and Equipment is in good working order and does not need repair), the date that it is returned to SPH's nominated address, whether or not SPH is responsible to arrange the return of the Equipment; or
- 10.5.2 (if the Plant and Equipment is damaged whilst in the possession, custody or power of the Client), the date that the Plant and Equipment is repaired and returned to SPH; or
- 10.5.3 (if the Plant and Equipment is lost or destroyed, or otherwise incapable of repair), the date of receipt by SPH of a replacement for that Plant and Equipment or if SPH elects not to replace the Plant and Equipment, the date that it could have received a replacement; or
- 10.5.4 the date of the last day of the Term;  
whichever is the later date.

## 11 **OWNERSHIP OF PLANT AND EQUIPMENT AND INCIDENTAL EQUIPMENT**

- 11.1 SPH are the owners of the Plant and Equipment:
- 11.1.1 hired to the Client in terms of the Quotation /Proposal; or
- 11.1.2 which may be utilised to provide the Contracted Services rendered to the Client in terms of the Quotation/Proposal.
- 11.2 SPH may provide and/or use vehicles, equipment and/or materials incidental to the Contracted Services (Incidental Equipment) but which do not form part of the Contracted Services.
- 11.3 Notwithstanding anything to the contrary contained in these Conditions, ownership in the Plant and Equipment and Incidental Equipment shall always remain vested in SPH at all times and the Client shall not attempt to or purport to sell, loan, pledge, mortgage or in any way alienate, re-hire or part with possession of the Plant and Equipment and/or Incidental Equipment.
- 11.4 The Client shall not allow any lien (including without limitation Landlord's lien) to be created over the Plant and Equipment and/or Incidental Equipment.
- 11.5 The Client shall further protect the Plant and Equipment and/or Incidental Equipment against seizure or execution and shall indemnify SPH against all damage charges, costs, losses or expenses arising from any breach of its obligations in terms of this **Clause 11** and/or a failure to protect the Plant and Equipment and Incidental Equipment as contemplated in this **Clause 11**.
- 11.6 The Client shall not remove, deface or cover up any nameplate or identification mark or number on the Plant and Equipment, nor put any mark on the Plant and Equipment, which might indicate or suggest that ownership in the Plant and Equipment vests in the Client.

## 12 **FAULTS, DEFECTS OR BREAKDOWN OF PLANT AND EQUIPMENT**

- 12.1 Having regard to the provision of the Contracted Services, the Client shall inform SPH immediately if the Plant and Equipment breaks down or suffers a fault or defect such that it is inoperable or unsafe to use. In such event the Client shall cease using the Plant and Equipment immediately, failing which the Client shall be liable for all loss or damage, including consequential loss or damage sustained by the Client arising out of such continued use of the Plant and Equipment.
- 12.2 Under no circumstances shall the Client repair the Plant and Equipment. Where the Plant and Equipment is faulty or defective SPH will send out a



technician within 24 hours to inspect and/or repair the Plant and Equipment, provided that where the Plant and Equipment is not readily repairable, SPH may arrange for repairs to be carried out at any location deemed appropriate by SPH. In the event that SPH deems it necessary to remove the Plant and Equipment from Site, SPH will provide appropriate replacement Plant and Equipment, if available.

### 12.3 **MAINTENANCE**

12.3.1 SPH shall cause :

12.3.1.1 regular and appropriate inspections and maintenance of the Plant and Equipment to be carried out by competent persons, unless detailed to the contrary to the Quotation/Proposal and/or Agreement;

12.3.1.2 all statutory requirements as regards the maintenance of the Plant and Equipment to be observed;

12.3.1.3 the maintenance of the Plant and Equipment to be scheduled, where possible at times convenient to the Client.

12.3.2 Notwithstanding the provisions of this **Clause 12** to the contrary, should the Client operate or instruct SPH to operate the Plant and Equipment in an area or manner which is likely to result in excessive wear to or damage to the Plant and Equipment, the Client shall notify SPH of such proposed usage and in such event all costs of repair or replacement shall be for the Client's account.

12.3.3 Where the Client provides its own Operator to operate the Plant and Equipment the Client shall :-

12.3.3.1 visually inspect the whole of the Plant and Equipment daily in accordance with the checklist provided by SPH in terms of Clause 12.3.4 below, for any defect, damage or wear and notify the Company immediately should a defect, damage and wear be evident; and

12.3.3.2 undertake, together with a SPH appointed representative, (unless detailed to the contrary in the Agreement) such daily routine servicing of the Plant and Equipment as is necessary to keep it in good working order and condition, which such daily routine servicing will consist out of but not necessarily limited to, replacement of globes, maintaining the correct air within the tyres and repairing all tyre punctures and fan belts. SPH may provide to the Client, free of charge, a basket of bare essential consumables, necessary for the routine servicing of the Plant and Equipment. All other consumables required for the routine servicing of the Plant and Equipment will be for the Client's account.

12.3.3.3 undertake to ensure at all times that no dirt will under any circumstances contaminate the diesel tank.

12.3.4 In terms of **Clause 12.3.3** above, the Company will provide a checklist to the Client which the Client shall check and adhere to on a daily basis or as indicated therein.

## 13 **TYRES AND TUBES**

13.1 SPH warrants that the tyres on the Plant and Equipment supplied will be in good working condition.

13.2 Where SPH provide their own Operator to operate the Plant and Equipment SPH will at its own expense repair and/or replace any tyre on the Plant and Equipment that is damaged and/or lost except where :-

13.2.1 the ground conditions are unfavourable and the tyres are prone to punctures and/or damage;

13.2.2 the punctures, damage and/or loss was as a result of the Client's misdirection, misuse, negligent, misconduct and wilful acts.

13.3 Where the Client provides their own Operator to operate the Plant and Equipment, the Client will :-

13.3.1 at its own expense repair and/or replace any tyre on the Plant and Equipment that is damaged, destroyed, and/or lost, whilst in the possession of the Client;

13.3.2 undertake a daily inspection of the tyres in accordance with SPH's Tyre Inspection Checklist;

13.3.3 upon the Date of Return of the Plant and Equipment, and as assessed by SPH's tyre expert, be responsible for the percentage damage to the tyre as measured on one-fourth of the tread on the inside and outside of the tyre.

13.4 The Client will reimburse SPH the *new price of the respective tyre* multiplied by the *remaining % tread on the tyre* as determined by SPH's tyre expert.

13.5 Should the Client request that the tyre assessment be carried out by an independent party, such costs shall be for the Client's account. The final decision shall rest with SPH. In terms of this **Clause 13.5**, the Client shall reimburse SPH the applicable Standing Time Rate for as long as the Plant and Equipment is idle.

## 14 **GROUND ENGAGING TOOLS (G.E.T.)**

14.1 Plant and Equipment will be delivered to the Client with a G.E.T. report reflecting :-

14.1.1 the condition of the respective G.E.T such as the bucket; and

14.1.2 photograph/s of the G.E.T. and/or bucket condition;

and

14.1.3 a *G.E.T. Checklist* to be completed and authorised by both Parties;

14.2 Wear on the G.E.T. (e.g. bucket) will be monitored and inspected by SPH.

14.3 The Client will at its expense replace and/or repair any part of the G.E.T. that is damaged, lost or destroyed whilst in the possession of the Client, unless detailed to the contrary in the Quotation/Proposal. SPH will have the final decision whether the G.E.T. should be repaired or replaced including the decision as to the respective contractor to repair and/or supply the G.E.T.

14.4 Where SPH provide their own Operator to operate the Plant and Equipment SPH will at its own expense repair and/or replace any G.E.T. that is damaged and/or lost except where :-

14.4.1 the ground conditions are unfavourable and the G.E.T. is prone to excessive wear and/or damage;

14.4.2 the G.E.T. damage and/or loss was as a result of the Client's misdirection, misuse, negligence, misconduct and wilful acts.

14.5 Should the Client request that the G.E.T. assessment be carried out by an independent party, such costs shall be for the Client's account. The final decision shall be with SPH. In terms of this **Clause 14.5**, the Client shall reimburse SPH the applicable Standing Time Rate for as long as the Plant and Equipment is idle.

## 15 LOSS, THEFT OF, OR DAMAGE TO THE PLANT AND EQUIPMENT

15.1 If the Plant and Equipment is lost, damaged, destroyed or stolen whilst in the Client's care and/or on the Site as a result of the Client's misdirection, misuse, misconduct or negligent or wilful acts, the Client will be liable for the full cost of repairing or replacing the Plant and Equipment.

15.2 Where the Plant and Equipment or any part of it is lost, stolen, damaged or destroyed, the Client must notify SPH and the police immediately.

## 16 USE OF PLANT AND EQUIPMENT

16.1 The Client will :

16.1.1 at its own expense apply for and obtain any permits, licenses, certificates, permission or exemptions which may be required for and in connection with the entry, use and operation of the Plant and Equipment on Site. The Client shall indemnify SPH against all fines, penalties and liabilities imposed on SPH or arising in respect of any non-compliance or contravention of any law or regulation in the unauthorized use of the Hired

Plant and Equipment together with any cost or expense relating thereto and incurred by SPH;

16.1.2 without limiting the other obligations of the Client under these Conditions in any way, take reasonable care of the Plant and Equipment as if it was the beneficial owner thereof and comply with all manufacturer's instructions;

16.1.3 display, maintain and draw attention to any safety signs and instructions in relation to the Plant and Equipment;

16.1.4 bear the cost of repair or rectification of any damage to the Hired Plant and Equipment resulting from negligence or improper use of the Hired Plant and Equipment by the Client or any person permitted by the Client to use the Hired Plant and Equipment;

16.1.5 take all necessary steps at its own expense to retain and recover possession and control of any Hired Plant and Equipment of which the Client loses possession or control;

16.1.6 keep the Hired Plant and Equipment at the Site or otherwise as indicated in **Clause 27** (Notification of Change of Site).

16.1.7 in respect of the condition and maintenance of the Hired Plant and Equipment, be solely responsible at its own cost for using, cleaning, tuning and adjusting the Hired Plant and Equipment solely in accordance with the operating instructions provided by SPH;

16.2 The Client agrees that it will not :-

16.2.1 effect any mechanical or other modification, make any alterations or additions, fit any equipment or other accessories to the Hired Plant and Equipment;

16.2.2 remove or interfere with any identification marks fixed to the Hired Plant and Equipment nor attempt or purport to do so nor permit the same.

16.3 The Client acknowledges that SPH has tendered to the Client the manufacturers rated capacity and specifications of the Plant and Equipment.

16.4 Signature by the Client of the delivery note shall be deemed to be acceptance by the Client that having regard to the manufacturers rated capacity and specifications, the Plant and Equipment is fit for the purpose for which it has been Hired.

16.5 The Client undertakes and warrants that it will only use or permit the Plant and Equipment to be used for the purpose for which it was hired, be used only in a responsible manner and undertakes not to perform or attempt to perform any work beyond the Plant and Equipment's rated capacity and specification.

- 16.6 The Client shall not instruct, use or permit the use of and/or instruct SPH's Operators / Employees in the use of the Plant and Equipment :
- 16.6.1 for any purpose beyond its capacity; or
- 16.6.2 in a manner likely to result in excessive wear to the Plant and Equipment;
- 16.6.3 in a manner likely to result in damage to the Plant and Equipment.

## **17 OPERATORS AND EMPLOYEES**

### **17.1 SPH OPERATORS AND EMPLOYEES**

- 17.1.1 SPH shall provide the Operators for the Plant and Equipment, unless detailed to the contrary in the Quotation/Proposal. The Operators provided by SPH shall comply with all :
- 17.1.1.1 rules and regulations pertaining to the Site as specified by the Client, provided that the Client has notified SPH of the relevant rules and regulations in writing; and
- 17.1.1.2 statutory rules and regulations applicable to the operation of the Plant and Equipment.
- 17.1.2 No person other than SPH's designated Operators, shall be permitted to operate or attempt to operate or move any item of the Plant and Equipment without the prior written consent of SPH.
- 17.1.3 Where the Client Hires the Plant and Equipment from SPH with a SPH Operator, all instructions from the Client as regards the use and operation of the Plant and Equipment shall be conveyed to SPH's Site Supervisor who shall, in turn instruct the Operator provided by SPH.
- 17.1.4 SPH Operators shall hold the appropriate statutory licence for operating /driving the Plant and Equipment in question. Any decision on the competence or otherwise of the Operator, shall be made by SPH, which decision shall be final and binding on the Client.
- 17.1.5 Where SPH renders a Service to the Client, SPH shall :
- 17.1.5.1 provide the Employees who shall be under SPH's direction and control who are competent to render the Services as contracted; and
- 17.1.5.2 ensure that such Employees comply with all the Client's requirements necessary for working on the Client's Site, providing that the Client has notified SPH of such requirement/s; and
- 17.1.5.3 ensure compliance with all statutes and statutory regulations applicable to the rendering of the Services.
- 17.1.6 SPH shall :

- 17.1.6.1 adopt safe working practices;
- 17.1.6.2 install and supply such safety devices;
- 17.1.6.3 supply to all Employees associated with the performance of the contract with safety clothing; as may be necessary to comply with all health and safety legislation applicable from time to time.

### **17.2 CLIENT OPERATORS**

- 17.2.1 Where the Client provides its own Operators as reflected in the Quotation/Proposal, the Client shall :-
- 17.2.1.1 supply competent Operators licensed where required by law to operate such Plant and Equipment;
- 17.2.1.2 ensure that the Client's Operators are fully conversant with the Plant and Equipment and have the appropriate skills and qualifications for the safe and efficient operation of the Plant and Equipment;
- 17.2.1.3 provide valid documentation stating the training and certification of the respective operator/s in terms of **Clause 17.2.1.2** above;
- 17.2.1.4 not permit or allow any person other than the operator assigned by the Client to operate the Plant and Equipment without the prior written consent of SPH.

## **18 CLIENT'S OBLIGATIONS**

- 18.1 To enable SPH to perform its obligations in respect of the provision of the Contracted Services, the Client shall:
- 18.1.1 co-operate with SPH; and
- 18.1.2 provide to SPH such information as SPH may reasonably require for the purposes of providing the Contracted Services and ensure that it is accurate in all material aspects;
- 18.1.3 obtain all necessary permissions and consents which may be required before the commencement of the Contracted Services;
- 18.1.4 comply with such other requirements as are contemplated in the Quotation/Proposal and/or these Conditions.
- 18.1.5 permit SPH, its agents, subcontractors and Employees, in a timely manner and at no charge, with access to the Site and the Client's premises, office accommodation and other facilities as reasonably required by SPH for the purposes of providing the Services;
- 18.1.6 be responsible (at its own cost) for preparing and maintaining the Site for the provision of the Contracted Services;
- 18.1.7 provide all SPH Employees employed in providing

the Contracted Services with a full induction in relation to all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;

- 18.1.8 permit SPH where required, to deliver and store any items of SPH's Plant and Equipment or any other items necessary for the performance of the Contracted Services to the Site prior to the agreed Commencement Date;
- 18.1.9 inspect the Contracted Services upon completion and approve the appropriate timesheet and joint completion certificates, where applicable, before Site De-establishment. For avoidance of doubt, this obligation under this **clause 18.1.9** does not apply to Hired Plant and Equipment where the Client provides its own Operator;
- 18.1.10 if SPH's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants of its Employees, SPH shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 18.2 The Client shall be liable to compensate SPH for any damages and /or expenses incurred by SPH as a result of the Client being in breach of its obligations in terms of this clause.
- 18.3 In the event that the Client or any third party, (other than a third party who is a sub-contractor of SPH), omits any action or commits an act which has the effect of preventing or delaying SPH from undertaking or complying with any of its obligations in terms of these Conditions, then SPH shall notify the Client as soon as possible and:
  - 18.3.1 SPH shall have no liability in respect of any delay to the completion of any project in terms of these Conditions;
  - 18.3.2 if applicable, the timetable for the Contracted Services will be modified accordingly;
  - 18.3.3 SPH shall notify the Client at the same time if it intends to make any claim for additional costs.

## **19 GROUND CONDITIONS**

- 19.1 The Client will be totally responsible for the ground condition upon which the Plant and Equipment is to work and wherever unsuitable ground conditions could threaten the safety of the Plant and Equipment, the Client will be responsible for any costs of recovery of the Plant and Equipment from unsuitable ground.
- 19.2 Failure by the Client to comply with this obligation will constitute a breach of a material term of the Agreement entitling SPH to cancel the Agreement, alternatively excusing SPH from performance of its

obligations until such time as the Client has provided and laid suitable materials.

## **20 FUEL**

- 20.1 Unless detailed to the contrary in the Quotation/Proposal, SPH shall provide the fuel for the Plant and Equipment for the Term of the Agreement.
- 20.2 Where the Client is required to provide the fuel for the Plant and Equipment in terms of the Agreement:-
  - 20.2.1 SPH shall ensure the Plant and Equipment is delivered with a full tank of fuel; and
  - 20.2.2 the Client shall ensure the Plant and Equipment is returned to SPH with a full tank of fuel, failing which the Client shall be liable to SPH for the full cost thereof;
  - 20.2.3 the Client shall ensure that no bio fuels are used in Plant and Equipment. Only fuel obtained from approved suppliers may be used (i.e. Shell, BP, Engen, Total, Sasol and Caltex).

## **21 ACCESS TO SITE, AND USE OF FACILITIES**

- 21.1 SPH shall have access to such parts of the Site as are reasonably required to fulfil the scope of the Contracted Services as contemplated in the Quotation/Proposal, as well as is necessary for all associated activities such as the inspection for the maintenance, replacement or repossession of the Plant and Equipment together with any other parts of the Site as the Client may from time to time authorise whether upon the request of SPH or otherwise.
- 21.2 Notwithstanding the provisions of **Clause 21.1** above to the contrary, SPH may, with the prior written consent of the Client, be permitted to use such supplies of electricity, water, gas and any other services as may from time to time be available from the Client on Site, free of charge.

## **22 DAMAGE TO SITE**

- 22.1 Where Plant and Equipment Operators are required by the Client to work close to buildings, structures, kerbs, paving, manholes, cables, vehicles, pipes and /or other services, (whether above, on or below the ground level) (which may be occasioned due to the necessity to gain access to the working area on Site or to the travelling positioning or working of any item of Plant and Equipment), the operators shall always operate using their best skill and endeavour not to cause damage, but the cost of repair of any damage or the responsibility for any injury to the Client's employees or property, or SPH's employees or property, or to any third party or its property howsoever caused, will be the sole responsibility of

the Client.

## **23 NOTIFICATION OF ACCIDENTS**

- 23.1 It is the duty of the Client to notify SPH immediately by telephone if the Plant and Equipment is involved in an accident resulting in damage to property or injury to any person, and to confirm this in writing giving full details within 24 hours of such incident. The obligation contemplated in this **Clause 23.1** applies whether Services are being provided and/or whether Plant and Equipment is being hired to the Client.

## **24 SAFEKEEPING**

The Client shall be responsible for the safekeeping of the Plant and Equipment whilst in its care and possession, and undertakes to exercise adequate security and care in respect of the Plant and Equipment.

## **25 INCLEMENT WEATHER**

- 25.1 The Parties shall confer (within a reasonable period of time which should not exceed 30 minutes) for purposes of determining whether or not conditions are inclement, (i.e., conditions in terms of which it is not reasonable or safe to expect SPH and /or its Employees and /or its contractors and/or the Client's Operators to continue working), provided that if the Client fails to or refuses to confer within such reasonable period, SPH shall be entitled to :-
- 25.1.1 cease work for the rest of the day and be paid in accordance with the Quotation/Proposal in respect of Inclement Weather; or
- 25.1.2 where the Client hires the Plant and Equipment and provides its own Operator/s, invoice the Client the Agreement Rate, irrespective whether the Plant and Equipment was idle.
- 25.2 Where the Parties confer, the weather shall only be regarded as Inclement Weather if the Client and SPH agree that the weather is inclement.
- 25.3 At the time a Party ceases work due to Inclement Weather, the Parties shall note the time of cessation of work. Once the Inclement Weather clears, the Client and SPH shall note the time.
- 25.4 The respective Party shall immediately resume work once the Inclement Weather has cleared.
- 25.5 SPH shall issue a Tax Invoice in respect of the time adjudged by SPH and the Client to have been lost (i.e Standing Time) due to Inclement Weather in accordance with **Clause 26.5 below**.

## **26 STANDING TIME**

### **26.1 STANDING TIME DUE TO NEGLECT OR FAILURE OF THE CLIENT**

- 26.1.1 In the event that due to any act or omission on behalf of the Client the Plant and Equipment is idle, SPH and the Client shall record :
- 26.1.1.1 the time from which the Plant and Equipment is idle;
- 26.1.1.2 the time at which the Plant and Equipment commences operation and/or is no longer idle as acknowledged in writing by SPH.
- 26.1.2 Having calculated the hours (or part thereof) for which the Plant and Equipment stood idle, SPH shall issue a Tax Invoice in respect of the number of such hours multiplied by the Standing Time Rate for each hour (or part thereof) or a rate per day, as the case may be, and as reflected in the Quotation/Proposal, or if not detailed in the Quotation/Proposal then at a rate determined by SPH. Such Tax Invoice shall be paid by the Client in accordance with the provisions of **Clause 8.2** above.
- 26.1.3 The failure by SPH and the Client to make the records contemplated in **Clause 26.1** shall not invalidate the Client's responsibility to reimburse SPH for the hours of time during which the Plant and Equipment were idle as a consequence of any act or omission on the part of the Client.

### **26.2 STANDING TIME DUE TO BREAKDOWN OF PLANT AND EQUIPMENT**

- 26.2.1 The Client shall not be liable for Hire and/or Service charges during such period as when the Plant and Equipment is idle due to an unplanned breakdown of the Plant and Equipment which defect did not arise from an act or omission of the Client in breach of the Agreement, as approved by SPH.

### **26.3 DELAYS ARISING FROM PLANT AND EQUIPMENT MAINTENANCE, NEGLECT OR FAILURE ON THE PART OF SPH**

- 26.3.1 SPH shall not be responsible to the Client and the Client shall not be released from its payment responsibility or any other obligation in terms of the Agreement, where the Plant and Equipment is idle due to delays and interruption in the Commencement Date, Hire Period, Completion Date, or Date of Return including but not limited to normal running repairs to the Plant and Equipment, re-fuelling, changing tyres and/or repairing punctures, or as a result of any other factor beyond SPH's control except, where detailed to the contrary in these Conditions and/or the Quotation/Proposal. The Client shall be liable for on-going Hire and/or Service charges calculated at the respective Rates reflected in the Agreement, or if not reflected therein, then at a Rate determined by SPH.

26.3.2 SPH shall attempt to make up time lost in the Services, at its sole discretion, as soon as possible and the Client shall extend the Term to the total extent of delays reported and recorded by the Parties. Where SPH works in the lost time, the Client will reimburse SPH the Rates as indicated in the Agreement.

**26.4 STANDING TIME DUE TO FORCE MAJEURE**

26.4.1 Notwithstanding Force Majeure in terms of **Clause 32** below, the Client shall be liable to pay SPH the Standing Time Rate reflected in the Agreement, or if not indicated therein, the fixed monthly charge and/or 50% of the daily Rate, during such period that the Plant and Equipment is idle due to Force Majeure.

**26.5 STANDING TIME DUE TO INCLEMENT WEATHER**

26.5.1 Subject to **Clause 25**, the Client shall be liable to pay SPH the Standing Time Rate reflected in the Agreement, or if not indicated therein, the fixed monthly charge and/or 50% of the daily Rate, during such period as when the Plant and Equipment is idle due to Inclement Weather.

**27 NOTIFICATION OF CHANGE OF SITE**

27.1 The Client may not remove the Plant and Equipment from the Site. Should it be necessary, following a specific written request from the Client to move the Plant and Equipment from the Site to an alternative location, SPH shall first provide to the Client a written quotation for the removal of the Plant and Equipment to the new location and the Client shall accept such quotation by notifying SPH in writing of such acceptance, unless advised to the contrary by SPH.

27.2 For avoidance of doubt, removal of Plant and Equipment to alternative sites as indicated in **Clause 27.1**, shall be by means of a lowbed as approved by SPH. No Plant and Equipment may be driven on public tarred roads from one site to another.

27.3 Following the removal of the Plant and Equipment to a new location, SPH shall issue the Client with a Tax Invoice in respect of the costs of removal (as per the written and accepted quotation), following the receipt of which the Client shall effect payment to SPH in accordance with the provisions of clause 7.2 above.

**28 TERMINATION AND BREACH**

**28.1 BREACH**

28.1.1 Should either Party (“the defaulting Party”) commit a breach of these Conditions and /or the Quotation/Proposal, then the other Party (“the aggrieved Party”), (should it wish to enforce its remedies arising from such breach), shall be

entitled to give the defaulting Party seven (7) days written notice to remedy the breach. Should the defaulting Party fail to remedy such breach, the aggrieved Party shall be entitled, to :

28.1.1.1 cancel these Conditions and the Agreement and/or claim immediate payment and/or performance by the defaulting Party of all the defaulting Party’s obligations whether or not the due date for payment and/or performance shall have arrived, in either event, without prejudice to the aggrieved Party’s right to claim damages; and/or

28.1.1.2 refuse forthwith to continue to provide the Contracted Services as contemplated in the Quotation/Proposal as read with these Conditions.

28.1.2 The Parties agree that the rights of the aggrieved Party as set out in **Clause 28.1** are without prejudice to such other rights as the aggrieved Party may have in terms of the Agreement in terms of the law.

**28.2 TERMINATION BY GIVING A PERIOD OF NOTICE**

28.2.1 In terms of Services, either Party may, unless agreed to otherwise by the Parties:-

28.2.1.1 terminate the Agreement as read with these Conditions in full by giving 30 (thirty) days written notice of termination, one Party to the other Party; or

28.2.1.2 terminate a portion of the Services by giving 7 (seven) days written notice of termination, one Party to the other Party.

28.2.2 In terms of Hire of Plant and Equipment, unless agreed to otherwise by the Parties, terminate the Agreement as read with these Conditions in full by giving 48 (forty eight) hours written notice of termination, one Party to the other Party.

28.3 Notwithstanding the termination of the Agreement for any reason whatsoever, but save as may be stipulated otherwise in the Agreement, the Parties agree that any outstanding obligations in terms hereof shall survive any termination as contemplated in this agreement and that the Parties shall continue to be bound by the terms of these Conditions until all the obligations have been fulfilled.

**28.4 Valuation at date of termination**

As soon as practicable after a notice of termination has taken effect, the Parties shall either agree with the value of the Contracted Services or determine the value of the Contracted Services itself and any other sums that may be due to the other Party for work executed in terms of the Agreement.

**28.5 Procedure and Rights upon Termination**

In the event of termination of the Agreement, the Client shall no later than the termination date, or by a date suitable to the Company (where applicable):

- 28.5.1 return the Plant and Equipment to SPH;
- 28.5.2 return any documentation provided by SPH;
- 28.5.3 pay all arrears sum of money to SPH under the Agreement and all other sums accrued and unpaid at the date of termination;
- 28.5.4 pay to SPH the cost of all repairs to the Hired Plant and Equipment required as at the Date of Return (other than those for which SPH has assumed responsibility; and
- 28.5.5 pay any other sums which are or become due to SPH or to which SPH is entitled by way of damages;
- 28.6 Without prejudice to the Client's obligations herein, or to SPH's claim for any arrears of charges or damages for any breach by the Client of the Agreement or any other rights hereunder, SPH or its authorised representatives may at any time after such termination or expiry of the Agreement without notice retake possession of the Hired Plant and Equipment and for such purposes enter upon the Site or any premises belonging to or in the occupation or control of the Client and the Client shall be responsible for all costs charges and expenses so incurred in retaking possession of the Hired Plant and Equipment as aforesaid. The Client shall also bear the reasonable costs incurred by SPH at any time in ascertaining the whereabouts of the Hired Plant and Equipment.
- 28.7 Any termination of this Agreement for whatever cause shall be without prejudice to any rights which SPH may have against the Client whether for damages pursuant to a breach of any of the terms hereof or otherwise.
- 28.8 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 for this.

## 29 LIMITATION OF LIABILITY

- 29.1 Notwithstanding anything to the contrary contained in these Conditions, neither SPH, its personnel and /or its contracted sub-contractors shall in any way, be liable to the Client for any claim, loss, damage or expense resulting from, relating to, or arising out of :
  - 29.1.1 SPH's performance of the Contracted Services; or
  - 29.1.2 the hire of the Plant and Equipment to the Client;

or

- 29.1.3 the use of the Plant and Equipment by the Client; save as arises from a breach, negligent or wilful misconduct of / by SPH, its personnel and/or contracted sub-contractors.
- 29.2 To the extent that SPH is liable to the Client for any claim, loss, damage or expense, the extent of such a claim by the Client against SPH, its personnel and /or contracted sub-contractors, shall be limited to the amount invoiced by SPH to the Client in the month in which the claim, loss, damage or expense occurred.
- 29.3 Notwithstanding anything to the contrary contained in these Conditions and/or the Quotation/Proposal, and in addition to the limitation of liability contained in this **Clause 29**, SPH shall not be liable to the Client for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever.
- 29.4 The limitation contemplated in this **Clause 29**, shall apply even where such a loss was reasonably foreseeable by SPH, its personnel and /or contracted sub-contractors.
- 29.5 Without prejudice to any rights and obligations the Client may have in terms of these Conditions or the Quotation/Proposal, the Client shall indemnify and keep SPH its personnel and /or contracted sub-contractors indemnified against all claims, (of whatsoever nature which may or may not result in any loss or damages being suffered by SPH its personnel and/or contracted sub-contractors) or prosecutions which may be brought against the Client or in which SPH, its personnel and /or sub-contractors may be involved as a consequence of or relating to the provision of the Contracted Services, unless the said claims or prosecutions are as a consequence of the negligent and/or wilful acts of SPH. This indemnity will include (but not be restricted to) all costs, (including legal costs on the scale as between attorney and own Client), damages and other expenses incurred by SPH, its personnel and/or contracted sub-contractors in contesting such claim or prosecution brought against the Client and/or SPH, its personnel and/or contracted sub-contractors.

## 30 INSURANCE

### 30.1 INSURANCE CARRIED BY SPH

- 30.1.1 SPH has and will keep the Hired Plant and Equipment insured. The Client will however be responsible for the safekeeping of the Plant and Equipment whilst in its care and possession and undertakes to exercise adequate security and care in respect of the Plant and Equipment.

30.1.2 The Client shall not allow to be done, any act or thing to the Plant and Equipment whereby SPH's insurance may be invalidated. The Client shall indemnify SPH against all loss or damage to the Plant and Equipment not recoverable under SPH's policy of insurance.

30.1.3 The Client shall be responsible for the excess fee of any claim lodged by SPH for the Hired Plant and Equipment, except where such loss or damage was as a result of SPH's negligence or wilful acts.

30.1.4 If any of the Hired Plant and Equipment is declared by SPH (in its reasonable opinion) to be a total loss, SPH may at its absolute discretion :-

30.1.4.1 terminate the Agreement in relation to the affected item of Hired Plant and Equipment with immediate effect by giving written notice to the Client; or

30.1.4.2 replace the affected item of Hired Plant and Equipment for the remainder of the Hire Period, subject to these Conditions.

30.1.5 In the event that SPH terminates the Agreement under **Clause 30.1.4.1**, the Client shall pay SPH all Hire charges that would have become payable by the Client to SPH in respect of that item of Hired Plant and Equipment under the Agreement had the Agreement not been terminated.

## 30.2 **INSURANCE TO BE TAKEN OUT BY THE CLIENT**

30.2.1 Where the Client and/or its transporter delivers the Plant and Equipment in terms of the Agreement, the Client shall effect and maintain the necessary insurance for protection against as much of the Contractor's liability arising from or in consequence of the transportation of the Plant and Equipment, unless detailed otherwise in the Agreement.

30.2.2 The Client shall in addition to clause 30.2.1 ensure that the Plant and Equipment is adequately insured for a sum equal to the new replacement value thereof.

30.2.3 The Client shall indemnify SPH against all loss or damage to the Hired Plant and Equipment, including all loss or damage not recoverable under the policy of insurance.

## 31 **ASSIGNMENT AND CESSION**

31.1 The Parties shall not cede, assign or transfer its rights and obligations in terms of these Conditions or in terms of the Quotation/Proposal (or any part thereof or any benefits or obligations thereof) to any other person except with the prior written consent of the other Party.

## 32 **FORCE MAJEURE**

32.1 Save as otherwise provided for herein **and specifically Clause 26.4**, the Parties shall be discharged from obligations in terms of the

Quotation/Proposal as read with these Conditions and released from all liability in respect thereof whether for damages or otherwise during such time that SPH are prevented from fulfilling their obligations in terms of the resultant agreement as a consequence of an event of force majeure.

32.2 For purposes of the interpretation of these Conditions, save where the contrary is specified in these Conditions, an event of force majeure shall include but not be limited to, Acts of God, strikes, riots, civil unrest, floods, interference by civil or military authorities, compliance with Governmental, Provincial or Municipal laws, regulations, requests or policies, inability to secure Governmental, Provincial or Municipal permission, or any other event or circumstance beyond the reasonable control of SPH and/or the Client but shall specifically exclude Inclement Weather.

32.3 It shall be incumbent upon the Party so affected, to immediately notify the other in writing of any inability to fulfil contractual obligations contemplated by the Quotation/Proposal as read with these Conditions as a consequence of an event of force majeure.

32.4 Notwithstanding anything to the contrary contained in this **Clause 32**, if SPH are willing and able to continue providing the Contracted Services during an event of force majeure as contemplated in **Clause 32.2** above, the Client shall use its best commercial endeavours to assist and enable SPH to provide such Contracted Services.

32.5 Subject to the provisions of **Clause 32.4** above, or as may be specifically negotiated between the Parties, if by virtue of the provisions hereof, either Party is excused from the performance of its obligations under the contract for a continuous period of three (3) months, then either Party may, at any time after the expiry of the three (3) month period and provided such performance is still excused, terminate the Contracted Services by notice in writing to the other Party.

32.6 In the event of the termination of these Conditions in accordance with the provisions of **Clause 32.5** above, the provisions of **Clause 28.3** above shall apply.

## 33 **DISPUTES**

33.1 Any dispute of whatsoever nature which arises out of or in connection with this Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this agreement and/or as to the Parties' rights and/or obligations in terms of this agreement ("Dispute"), shall, if so required by either Party by giving written notice to the other,



be submitted and (referred by no later than 3 [three] business days after the Dispute has arisen) to the respective Chief Executive Officers or their nominees (who must be an Executive Director) of the Parties, for their consideration, discussion and resolution.

33.2 Should the Chief Executive Officers of the Parties fail to resolve such Dispute or, should either Party dispute the resolution of the Dispute reached by the Chief Executive Officers (which notification shall be given by the disagreeing Party by no later than 3 (three) business days after such Dispute has been resolved), such Dispute shall be submitted and referred to Arbitration in terms of clause 29 for resolution.

33.3 Failing resolution in terms of this **Clause 33**, either of the Parties may submit, by written notice to the other Party, the Dispute for arbitration to AFSA in terms of AFSA's arbitration rules then in place, it being recorded that the Parties request AFSA to appoint a retired Judge of the High Court of South Africa as the arbitrator.

#### **34 NOTICES, DOMICILIA CITANDI ET EXECUTANDI**

34.1 All notices, consents, demands or communications intended for SPH or the Client, as the case may be, shall be made or given at such Party's Domicilium Citandi Executandi as detailed hereunder:

34.1.1 In terms of SPH – the address as indicated on the Quotation/Proposal.

34.1.2 In terms of the Client - the address to which the accounts are usually sent or to which any Quotation/Proposal is sent.

34.2 Any notice or other communication under these Conditions shall only be valid and effective if in writing. Handwritten or typewritten fax and e-mail messages are permitted. Nothing in this clause shall affect the right of any Party to serve process in any manner permitted or required by law.

34.3 A Party may by notice to the other Party change its notice details set out in the Quotation/Proposal, provided that such change in details is in writing, serviced on the other Party who shall acknowledge receipt thereof by signing such notice amending its notice details.

#### **35 GENERAL**

35.1 These Conditions and the Quotation/Proposal constitute the whole and only agreement between the Parties relating to the subject matter in question.

35.2 No amendment, variation or consensual cancellation of these Conditions and/or the Quotation/Proposal, including an amendment to this **Clause 35.2** and no settlement of any disputes

arising under these Conditions, shall be binding unless recorded in writing and signed by the Parties.

35.3 No extension of time or waiver or relaxation of any of the provisions of these Conditions shall operate as an estoppel against any Party in respect of its rights under these Conditions, nor shall it operate to preclude such Party from exercising its rights strictly in accordance with these Conditions.

35.4 In the event that any of the terms of these Conditions and/or the Quotation/Proposal are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms of these Conditions and/or the Quotation/Proposal, which will continue to be valid and enforceable.

35.5 Any legal proceedings arising out of the resultant agreement will be governed by the law of the Republic of South Africa and adjudged in the relevant South African Court, but should the Parties agree, the relevant Magistrates Court will have jurisdiction. Either Party will be entitled to recover from the other all legal costs arising from such legal proceedings, including, but not limited to, collection commission, tracing charges and legal fees on an attorney and own Client basis.

35.6 These Conditions shall be governed, construed and interpreted in accordance with the laws of the Republic of South Africa.

#### **36 ARBITRATION**

36.1 Any dispute arising from or in connection with this agreement (with the exception of urgent relief claimed from a court of competent jurisdiction) shall be finally resolved in accordance with the rules of the Arbitration Foundation of South Africa ("**AFSA**") by an arbitrator appointed by AFSA.

#### **37 CONFIDENTIALITY**

37.1 Each Party agrees to keep in the strictest confidence the terms and conditions of this agreement and all information relating to or acquired by it as a consequence of this agreement, in particular financial information and information relating to Rates.

37.2 Each Party agrees that it will not publish, communicate, divulge, disclose or use any information contemplated in **Clause 37.1** above, without the prior written consent of the other Party, except as expressly provided herein or in an agreement provided for herein or any disclosure which is required to be made by law.

----- X -----