

TERMS AND CONDITIONS

1. PARTIES

2. DEFINITIONS:

- 2.1 In this Agreement the following words shall have the following meanings herein ascribed to them:
- 2.1.1 **'The noise dept'** means the sole proprietor Annetae Honeybun T/A the noise dept., with premises situated at 4 Weaver Street, Cedar lakes, Cedar Avenue, Fourways;
 - 2.1.2 The **'Customer'** means the person/s or company hiring the equipment;
 - 2.1.3 The **'Agreement'** means the Agreement entered into between the noise dept. and the Customer;
 - 2.1.4 The **"effective date"** of this Agreement will be on date of signature by the Customer of this Agreement and shall remain in effect until otherwise advised by the noise dept. In writing. The Customer agrees that, notwithstanding the fact that the Customer does not have to sign the Agreement on each occasion of hiring equipment, the Customer will be bound by the terms and conditions contained in this Agreement each time it hires equipment. This Agreement shall remain in force, unless the noise dept. advises the Customer in writing of the requirement to re-sign an amended Agreement. The Agreement is deemed not to be of a restricted period, unless otherwise agreed to by the noise dept. and such limited period is reduced to writing.
 - 2.1.5 The **'Equipment'** means all articles and materials taken on hire from the noise dept. by the Customer in the course of its business, together with all packaging materials in respect thereof;
 - 2.1.6 The **'Rental'** means the charges agreed between the parties for the hire of the equipment;
 - 2.1.7 Clause headings are for reference purposes only and shall not influence its interpretation;
 - 2.1.8 All schedules and annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof.

3. ACCEPTANCE AND RESPONSIBILITY:

- 3.1 The noise dept. hereby rents to the Customer, who hereby hires, the Equipment subject to the terms and conditions contained in this Agreement.
- 3.2 The Customer accepts responsibility for the selection of all equipment.

4. RENTAL CHARGES AND CANCELLATIONS:

- 4.1 The equipment will be charged at the noise dept.'s rental rates subsisting at the date of signature of this Agreement.
 - 4.1.1 The half day rate is 70% of the day rate.
 - 4.1.2 Equipment must be returned before 11am after the last day of rental. For returns after 11am, the Customer will be held liable for an additional full days' charge.
 - 4.1.3 All rental rates are exclusive of VAT at 14%.
- 4.2 The rental shall be paid by (date) into the bank account nominated by the noise dept. on its invoice.
- 4.3 The noise dept. reserves the right to alter its rental rates for the equipment from time to time subject to giving the Customer not less than 4 weeks notice in writing of such alteration, for any equipment already on hire.
- 4.4 In the event of a customer making a rental booking and subsequently cancelling or reducing the order in any way the following rules regarding payment will apply:
 - 4.4.1 Where cancellation or alteration of the booking is made within 1 (one) full working day preceding the original hire uplift/delivery date and time, the rental will be charged in full as if it had proceeded;
 - 4.4.2 Where cancellation or alteration of the booking is made within the 2nd (second) full working day preceding the original rental uplift/delivery date and time, the rental will be charged at 50% of the original rental fee.
- 4.5 Unless a query on an invoice is made within 7 days of date of invoice, the Customer is liable for the amount quoted on the invoice.
- 4.6 Overtime will be charged at full rates, and not quoted rates.

5. RENTAL PERIOD:

- 5.1 The hire charge for the equipment commences on the day the equipment leaves the noise dept.'s premises and terminates at the end of the agreed hire period, provided that the equipment has been returned to the noise dept. in the same condition as it was in at the commencement of the hire (fair wear and tear expected).
- 5.2 If the Customer fails to return the equipment to the noise dept.'s premises on or prior to the last day of the rental referred to in the Agreement or pursuant to terms agreed between the noise dept. and the Customer, the contract shall be deemed to have been extended upon similar terms of payment to those subsisting immediately prior to its extension and the contract shall subsist until the Equipment is returned to the noise dept.'s premises, and an approval receipt given.
- 5.3 If the Customer fails to return the equipment within 24 hours of being requested to do so by the noise dept., the noise dept. may, without notice, re-take possession of the equipment and for this purpose shall be entitled without notice, to enter into any premises occupied or controlled by the Customer.
- 5.4 The rental period may be extended at any time by either party giving no less than 48 hours notice in writing;
- 5.5 The Agreement is subject to the availability of the equipment when the Customer requires it. The noise dept. shall not be liable for any loss or damage whatsoever suffered by the customer or any other person, whether direct or indirect, caused by or arising from late collection, non-collection, breakdown, failure or unsuitability of or defect in equipment during the rental and the Customer shall indemnify the noise dept. against any such loss or damage.

- 6. PAYMENT TERMS:**
- 6.1** Payment of all invoiced charges is strictly COD (cash on delivery), unless otherwise agreed to by the noize dept. and reduced to writing.
- 7. TRANSPORTATION & PACKAGING:**
- 7.1** Unless otherwise agreed in writing by the noize dept., the Customer shall at its own expense be responsible for the collection from and return of the equipment to the noize dept. If otherwise agreed, the Customer shall pay delivery and collection charges at the noize dept.'s standard transport rates from time to time to the noize dept. on demand as an extra cost.
- 7.2** Risk in the equipment shall pass to the Customer as soon as the equipment is handed to the carrier who shall be deemed the agent of the Customer. The Customer and the carrier shall at all times be responsible and liable for all damage and loss of equipment for whatsoever reason until the return thereof to the noize dept.
- 7.3** The equipment shall be at the risk of the Customer as to any loss or damage whatsoever during the period of the rental.
- 7.4** Customers are responsible for loading or unloading their vehicles, and hereby indemnify the noize dept. against any damages to vehicles whilst on the premises of the noize dept.
- 7.5** Packaging materials are chargeable in full if not returned to the noize dept. upon expiration of the Agreement.
- 8. ACCEPTANCE OF EQUIPMENT:**
- 8.1** Acceptance by the Customer of collection/delivery of the equipment shall be evidence that the equipment has been received in accordance with the Agreement.
- 8.2** If, upon collection of the equipment, the Customer discovers that the equipment is damaged or malfunctions in any way, it shall notify the noize dept. within 24 hours of discovering the same. If the Customer does not notify the noize dept. accordingly, the Customer shall not be entitled to reject the equipment and the noize dept. shall have no liability for such defect or failure and the customer shall be bound to pay the price as if the equipment had been delivered in accordance with the Agreement. The noize dept. shall endeavour to replace any faulty equipment, of which it is notified, in accordance with this clause as soon as is reasonably practicable.
- 8.3** In respect of equipment collected from the noize dept. by the Customer, responsibility for the safekeeping of the equipment passes to the Customer or his agent immediately upon the Customer or his agent signing a receipt for the equipment.
- 8.4** If the person signing the Agreement is not the Customer he/she warrants that he/she has the authority of the Customer to enter into this Agreement on the Customer's behalf and shall indemnify the noize dept. against all losses, damages, actions, proceedings, costs, claims, or demands whatsoever suffered or incurred by the noize dept. as a result of any breach of such authority.
- 9. LOSS OR DAMAGE**
- 9.1** In the event that the equipment is lost, damaged or destroyed, the period in which a rental charge shall be payable shall continue until the equipment is recovered and returned to the noize dept. or (if damaged) is repaired and available for re-hire or (if destroyed) is replaced by an equivalent or comparable item available for rental, or replacement value has been paid to the noize dept. Any such additional rental charge for lost, damaged or destroyed equipment shall not exceed an amount equal to 13 weeks' rental of that equipment.
- 10. WARRANTY**
- 10.1** The noize dept. hereby warrants to the Customer that at the commencement of the rental period the equipment complies with its manufacturer's description.
- 10.2** The benefit of this warranty may not be assigned by the Customer to any other party.
- 10.3** Any claim against the noize dept. in respect of any failure is limited to the value of the rental of the item which has malfunctioned. No other claims will be considered.
- 11. USAGE OF EQUIPMENT:**
- 11.1** The Customer will in its use of the equipment observe all the manufacturer's and where appropriate, the noize dept.'s instructions and other regulations both statutory or otherwise that may be issued or may be enforced for the proper use thereof and shall be responsible for any damage caused to the equipment through failure to observe such instructions or regulations, or failure to use the equipment in a proper manner.
- 12. LIABILITY AND INDEMNITY:**
- 12.1** The noize dept. shall not be liable to the Customer for and the Customer shall at all times and in all respects indemnify the noize dept. in respect of all actions, proceedings, costs, claims, and demands whatsoever brought by any person for the death of or injury to any person/s.
- 13. OWNERSHIP:**
- 13.1** The equipment shall remain at all times the property of the noize dept. and the Customer acknowledges that the equipment is supplied to the Customer on a rental basis only.
- 13.2** The Customer shall not:
- 13.2.1** Cede its rights or assign its obligations hereunder; or
- 13.2.2** Sublet the equipment or any part thereof.
- 14. COLLECTION DATES:**
- 14.1** Collection dates are quoted without any liability to the noize dept. and in respect of any such dates, time shall not be of essence of the Agreement, although every reasonable endeavour will be made to adhere to them. Under no circumstances will the noize dept. be liable for delay arising from any cause whatsoever.

- 15. MAINTENANCE:**
- 15.1** The noize dept. shall, at its expense, provide maintenance or and/or recalibration for the equipment and shall either repair or replace equipment, which become defective during the subsistence of the Agreement through no fault of the Customer.
- 15.2** If the equipment does not operate properly, the Customer shall notify the noize dept. and request instructions before taking any remedial action or returning the same to the noize dept.
- 15.3** In the event of the equipment requiring repair or recalibration, as a result of the Customer's negligence, misuse or abuse then the Customer shall bear the cost of any such repair and/or recalibration.
- 16. CUSTOMER'S OBLIGATION:**
- 16.1** During the subsistence of the Agreement, the Customer shall:
- 16.1.1** Keep the equipment in the Customer's possession and under the physical control of the Customer; Customer agrees that all equipment rented out will be returned to the noize dept. in the same condition that it went out, ordinary wear and tear excepted. Customer agrees to be responsible for any loss or damage to the equipment.
- 16.1.1.1** The following does not constitute fair wear and tear:
- 16.1.1.1.1** Any items missing from the equipment including accessories;
- 16.1.1.1.2** Tears, rips, cuts, burns and stains which cannot be removed by normal cleaning of equipment;
- 16.1.1.1.3** Scratches, chips or damage to glass, plastic or lenses;
- 16.1.1.1.4** Damage to equipment such as dents and scratches.
- 16.1.1.2** The noize dept. will then have two working days to inspect the equipment and notify the Customer of any missing items or work required to repair/restore the equipment and the cost thereof, which will be charged to the Customer.
- 16.1.2** Not, without prior written consent of the noize dept., allow the equipment to be removed outside South Africa or to be used in any abnormal or hazardous assignment;
- 16.1.3** Not keep the equipment at any other address, other than specified in the rental contract, or move the equipment in any manner except as authorised in writing by the noize dept., and if so authorised, shall forthwith give written notification of the change of address or relocation to the noize dept.;
- 16.1.4** Permit the noize dept. and its authorised agents at all reasonable times to enter upon any premises (or vehicle) where equipment may be located for the purpose of inspecting, maintaining, repairing or testing the same;
- 16.1.5** Preserve the noize dept.'s and/or manufacturer's identification number and/or mark and/or name plate affixed to the equipment either by the noize dept. and/or Manufacturer.
- 17. PAYMENT GUARANTEE:**
- 17.1** The Customer must provide the noize dept. with a completed credit card/guarantee form unless a credit account has been approved in advance of the rental or a valid form is already in the possession of the noize dept. The guarantee may be used by the noize dept. to ensure payment against the Customer's obligation for rental payments and the cost of goods purchased, and for any other amounts due to the noize dept. for rental, supply, late return, damage to or loss to any equipment or service supplied.
- 18. INSURANCE**
- 18.1** The Customer shall contribute 10% of the total rental value, to the noize dept., for the cost of insurance indemnifying the noize dept. and the Customer against physical loss or damage of the equipment during the rental on terms which are available from the noize dept. upon request.
- 18.2** In the event that the Customer elects to utilize their own insurance, they shall effect the insurances stated herein and the insurance levy will not be charged on condition that a signed copy of the insurance indemnity form is received from the Customer, prior to the commencement of the rental.
- 18.3** The equipment is NOT insured for the following:
- 18.3.1** Negligent use and use of equipment under hazardous conditions, including exposing the equipment to extreme changes in temperature;
- 18.3.2** Underwater photography;
- 18.3.3** Theft from an unattended (unguarded) vehicle while equipment is in possession of the Customer;
- 18.3.4** Absconsion and confiscation.
- 18.3.5** Damage and/or loss arising from any of the above activities, without the required permission, will be entirely for the Customer's account.
- 18.4** If the Customer does not have its own insurance cover, or its cover is not acceptable to the noize dept., it will pay the noize dept. the relevant insurance levy and any excess in case of a claim.
- 18.5** The Customer shall effect the following insurances:
- 18.5.1** An all-risks insurance policy on all items of the equipment for their full replacement value(including without limitation cover against loss, theft or damage to the equipment);
- 18.5.2** A third party liability insurance policy covering the liability of the Customer and of the noize dept. for death, injury and damage to or loss of property arising directly or indirectly out of the use or possession of the equipment and shall at the commencement of the rental period give notice in writing to the insurer of the noize dept.'s interest in such policy.
- 18.6** The policy in respect of such insurance and evidence of payment or premiums shall, when requested by the noize dept., be produced to the noize dept. for inspection.

- 18.7 The Customer shall give written notice to the noize dept. of any occurrence which will or may rise to a claim being made on any insurance pursuant to this clause and such notice shall be given within 24 hours of the occurrence being first known to the Customer.
- 18.8 The Customer shall, at its own cost, assist the noize dept. in securing the settlement of any claim and the payment to the noize dept. of the value of such claim so far as it relates to the equipment or the liability of the noize dept. to any third party.

19. BREACH

- 19.1 The rental may be ended forthwith by the noize dept. by notice in writing at any time to the Customer upon any breach of the terms of the Agreement by the Customer.
- 19.2 If the Customer defaults in making any payment in terms of this Agreement, then, without prejudice to any other rights in law and/or in terms of this Agreement which the noize dept. may have, the noize dept. shall be entitled to charge interest on the outstanding amount from the date of invoice to the date of payment thereof at the rate of prime plus 5%, prime being the prime overdraft rate as quoted by First National Bank calculated daily and capitalized monthly in arrear with effect from date of invoice to date of payment thereof.
- 19.3 Failure by the Customer to make payment of any fees owed within 30 days after the date of collection of the equipment will result in legal action.
- 19.4 In the event of the Noize Dept. having to institute legal action against the Customer for any reason whatsoever, the Customer agrees and undertakes to effect payment of all legal expenses as incurred by the noize dept. in regards thereto, and to refund the noize dept. for the full amount of such expenses incurred on the attorney and own client scale, irrespective of both the Magistrate and High Court tariffs.
- 19.5 The parties agree to the jurisdiction of the Magistrate's Court in connection with any action or suit arising from this Agreement.

20. DOMICILIUM CITANDI AND EXECUTANDI

- 20.1 The Customer chooses as its domicilium citandi and executandi for the service of all legal process, the following address, at which the Customer shall accept service of all legal process.
- 20.2 Any notice required to be given in accordance with these conditions shall be deemed to be properly given if delivered by hand or sent by prepaid post or telex or facsimile or email to the party concerned at the address, telex , facsimile number or email address as set out in this clause. Notices sent by prepaid post shall be deemed to have been received three working days after the date of posting. Notices delivered by hand or sent by facsimile or email shall be deemed to have been received on the first working day following the date of delivery or sending as the case may be.

21. ENTIRE AGREEMENT

- 21.1 The content of this Agreement constitutes the entire agreement between the parties, and no variations or waivers of this Agreement shall be enforceable, unless and until reduced to writing and signed by both parties in respect thereof.
- 21.2 This Agreement shall be duly concluded upon signature hereof by the Customer and the noize dept.