

THE KEMPSTON GROUP
(Prop. Vincemus Investments (Pty) Ltd, 1969/004762/07)
STANDARD TERMS AND CONDITIONS OF HIRE

(THIS IS AN IMPORTANT DOCUMENT WHICH, TOGETHER WITH THE STANDARD TERMS OF INDEMNITY DOCUMENT, SET OUT YOUR RIGHTS AND OBLIGATIONS AND MUST BE READ CAREFULLY.)

1. DEFINITIONS

1.1. The “Lessor” means Vincemus Investments (Pty) Ltd trading as Kempston Truck Hire and/or Kempston Car Rental.

1.2. The “Hirer” means the person, natural or juristic, who hires the vehicle and/or whose name appears on the Agreement, Invoice, Delivery Note and/or Quotation (“Documentation”).

2. HIRE RATES AND CHARGES

2.1. The Hirer shall pay to the Lessor the charges for hire (the “Charges”) as reflected on the Documentation and/or the Lessor’s standard rates, as may then be applicable. Should the Hirer fail to make payment of any amount which becomes due, owing and payable to the Lessor, the full outstanding balance will immediately become due, owing and payable without notice to the Hirer.

2.2. In determining the Charges, the distance travelled by the vehicle (where required) shall be determined by reference to the odometer on the vehicle and/or tracking unit installed in the vehicle which, unless the contrary be proved, shall be deemed to be accurate.

2.3. Should the odometer cease to operate efficiently, the Hirer shall immediately notify the Lessor and furnish the Lessor with the full particulars regarding the use of the vehicle during the period of hire, the distance travelled shall be reasonably assessed by the Lessor, the decision of a Manager of the Lessor being final and binding.

2.4. The Hirer shall not be entitled to any discount or reduction in the Charges (where applicable) should any amount not be paid on its due date. The Lessor shall have the right to claim interest on any arrear Charges and/or damages, at the maximum permissible rate of interest, as determined from time to time, in terms of the provisions of the National Credit Act, No. 34 of 2005, such interest to be reckoned monthly in advance from due date to date of payment.

2.5. The Hirer shall, at its own expense, apply for and obtain any permits, licenses, certificate, permissions and/or exemptions required for and/or in connection with the entry and use of the vehicle on any site or secured premises.

2.6. The Hirer shall be responsible for the payment of all toll fees, fines and/or penalties imposed for any contravention of Legislation and/or Regulations during the period of hire in respect of the vehicle. The Lessor shall be entitled to charge the Hirer an administration fee for the processing and/or redirection of any fines, penalties and/or demerit points in terms of Legislation.

2.7. In the event of the Hirer failing to query or dispute, in writing, such Charges levied by the Lessor under this Agreement within 1 (One) calendar month from receipt of invoice, such charges levied shall be deemed to be correct, due and payable. Any certificate issued by a Director or Manager of the Lessor reflecting the amount so payable shall be sufficient and satisfactory proof for the purpose of obtaining Summary Judgment against the Hirer.

2.8. The Hirer hereby acknowledges that the Credit Limit set out in the Documentation and/or as amended from time to time, at the sole and absolute discretion of the Lessor, shall in no manner limit the Hirers liability to the Lessor. Notwithstanding any specified credit limit, the Hirer shall be liable to the Lessor for the full amount due, owing and payable.

2.9. In the event of any typographical, clerical, or computational error in the stated price, quotation, or calculation of costs, such error shall be deemed null and void and shall not be binding on the Lessor. The correct price or calculation, as set out in the Lessor’s Standard Rates, shall apply, and the Lessor reserves the right to amend the affected documentation accordingly.

2.10. The Lessor reserves the right to adjust the Charges annually on written notice to the Hirer.

2.11. Should the Hirer make application to the Lessor for a fuel card and the Lessor approve the application and provide a fuel card with the vehicle to the Hirer, the Hirer agrees that the fuel card is provided at the sole risk of the Hirer. The Hirer hereby indemnifies the Lessor against any loss, damage and/or claim, howsoever arising and whether or not it is attributable to any fault or negligence of the Hirer and/or driver, arising from the fuel card.

3. RENTAL OF VEHICLE

3.1. The Lessor rents to the Hirer, who hires the vehicle, subject to the terms and conditions set out herein, which conditions apply notwithstanding that the Lessor may not be the driver of the vehicle.

3.2. The Hirer undertakes to provide the Lessor with the full names, residential address, postal address, copy of the ID and drivers licence of the Hirer and/or the driver and furthermore undertakes that no person other than the Hirer or driver, shall drive the vehicle. Should the Lessor provide the Hirer with prior written approval to sublet the vehicle, the Hirer shall nevertheless remain responsible for the due fulfilment of each, and every condition of hire and such approval shall not absolve the Hirer of liability in terms of this Agreement.

3.3. It shall be the responsibility of the Hirer to ensure that the radiator, oil, automatic transmission fluid reservoir and fuel tank levels are maintained above the minimum levels to avoid damage to the Vehicle and/or engine. The Hirer shall be liable for any damage and/or loss caused by the Hirer’s failure to maintain the minimum levels of the radiator, oil, automatic transmission fluid reservoir and fuel tank.

3.4. The Hirer shall return the Vehicle, at the end of the hire period, to the Lessor with a full fuel tank, should it be necessary for the Lessor to refuel the Vehicle upon return thereof, the Hirer shall be liable to the Lessor for the cost of the fuel as well as a fuel surcharge fee.

3.5. The Lessor may but shall not be obligated to place another vehicle at the disposal of the Hirer in the event of the vehicle being damaged, stolen and/or rendered unfit for use.

3.6. The Hirer acknowledges and agrees that, in the event of any of the following occurrences, the Lessor shall be entitled to terminate this Agreement and to resume immediate possession of the vehicle, without prejudice to its rights to claim from the Hirer any loss of rental and/or damages: any breach by the Hirer of its obligations in terms of this Agreement, failure by the Hirer to return the vehicle to the Lessor in terms of Clause 3.5, ineffective driving by the Hirer and/or the driver of the Hirer (determined in the sole discretion of the Lessor) and/or the utilisation of the vehicle in a manner deemed by the Lessor to prejudice its rights and interests.

3.7. Notwithstanding anything to the contrary, the Lessor shall have the right, in its sole discretion, to terminate this Agreement on 24 (Twenty-Four) hours’ notice to the Hirer. Notwithstanding such termination, this Agreement shall continue in full force and effect until the vehicle is returned to the Lessor and the Hirer has complied with all its obligations and paid all amounts due to the Lessor.

4. RISK/REPAIRS/MAINTENANCE

4.1. The Hirer hereby acknowledges that the vehicle is solely at the risk of the Hirer from the moment it leaves the Lessor’s premises and/or the key/remote to the vehicle is handed to the Hirer or driver until such time as the vehicle and key/remote is returned to the Lessor. The Hirer shall be liable for any damage and/or loss sustained to the vehicle, howsoever that damage and/or loss is caused and whether or not it is attributable to any fault or negligence on the part of the Hirer and/or driver.

4.2. Without affecting any of the Lessor’s rights in terms hereof, and in circumstances where the Hirer hires a vehicle and insures same, such insurance documents shall be endorsed to record the Lessor as sole beneficiary, and the Lessor’s entitlement to all compensation thereunder. The Hirer hereby undertakes to provide a copy of the endorsed insurance documents to the Lessor, upon request.

4.3. In the event of the Hirer electing to insure the Vehicle, the Hirer shall be charged daily Vehicle Driver Indemnity until receipt by the Lessor of the confirmation of insurance coverage from the Hirer.

4.4. Should the Hirer require pre-delivery of the Vehicle, subject to approval by the Lessor, daily Vehicle Driver Indemnity will be charged by the Lessor unless the Hirer provides confirmation of insurance coverage from the date of pre-delivery of the Vehicle.

4.5. The Hirer hereby acknowledges that the Charges exclude those items listed as excluded in the quotation of the Lessor, including but not limited to Vat, Fuel, comprehensive vehicle insurance, Vehicle Damage Indemnity, cancellation fees, goods in transit insurance, call out fees, service call out fees, towing and recovery fees, tyre maintenance and/or replacements resulting from excessive damage (including but not limited to sidewall damage / tyre burst), extras, Valet Fee and/or additional charges as set out in this Agreement and these additional fees shall be recoverable from the Hirer at the Lessor’s standard rates.

4.6. Save for any damage or defect which has been recorded in writing on the initial inspection sheet and signed by both parties, the Hirer hereby acknowledges that the vehicle shall be deemed to have been handed over by the Lessor in good order and repair, with all its appurtenances in working order, in a roadworthy condition and further that the radiator, oil, automatic transmission fluid reservoir and fuel tank properly filled.

4.7. The Hirer shall return the vehicle to the Lessor for lubrications and services in accordance with the Manufacturer’s specifications, alternatively, and subject to the prior written approval of the Lessor, the Hirer shall have the vehicle lubricated and serviced in accordance with the Manufacturer’s specifications by a recognised and authorised motor vehicle workshop that has been approved by the Lessor. The Lessor shall endeavour to assist and remind the Hirer of the due dates for lubrications and services, which dates shall further be available in the Documentation and displayed in the vehicle, but the Hirer remains, given their control of the vehicle, to ensure timeous servicing and maintenance.

4.8. Should the Hirer fail to comply with Clause 4.4, the Hirer shall be liable to the Lessor, as follows:

4.8.1. failure and/or neglect to timeously return the vehicle to the Lessor for routine maintenance and lubrications and/or to have the vehicle’s routine maintenance and lubrications performed by an authorised motor dealership, the Lessor shall be entitled to recover a penalty, determined within the sole discretion of the Lessor, from the Hirer;

4.8.2. failure and/or neglect to timeously return the vehicle to the Lessor for routine maintenance and lubrications and/or to have the vehicle’s routine maintenance and lubrications performed by an authorised motor dealership, the Hirer whereby voiding the Manufacturer’s warranty on the vehicle, then in such instance the Hirer shall be liable for the estimated value of the voided warranty;

4.8.3. should any work performed on the vehicle by a workshop appointed by the Hirer result in damage to the vehicle and/or to the Lessor, or should the vehicle be damaged as a result of being driven with insufficient water, oil or automatic transmission fluid, then the Hirer shall be fully liable for the cost of repair.

4.9. The Hirer agrees that if, when the vehicle is returned to the Lessor, it is necessary to effect repairs thereto, then the Lessor shall forthwith cause the repairs to be affected, at the cost of the Hirer. The hire of the vehicle shall, however, be deemed to continue until such repairs are completed and the Hirer shall be obligated to continue to pay the monthly Charges to the Lessor. Should the vehicle be written off, damaged beyond repair, stolen and/or hijacked (and not recovered within 7 (seven) days of the said theft and/or hijacking), then the hire shall be deemed to continue and the Hirer shall be obligated to continue to pay the monthly Charges to the Lessor until payment of the full assessed value of the vehicle is received by the Lessor.

4.10. The Hirer shall not be entitled to effect any repairs to the vehicle without the prior written approval of the Lessor. Should the Hirer effect repairs to the vehicle, without the Lessor’s written approval, the cost of such repairs shall be borne by the Hirer and if the Lessor, in its sole discretion, deems it necessary to effect any further repairs and/or to rectify any defective repairs on return of the vehicle to the Lessor, then the Hirer shall be liable to the Lessor for the costs thereof.

5. INDEMNITY

5.1. Should the Hirer apply for Vehicle Damage Indemnity (“VDI”) with the Lessor and the Lessor approve VDI, prior to the Hire of the Vehicle, then the Hirer and the driver’s liability for any damage and/or loss caused to or by the hired vehicle will be reduced after the first amount payable by the Hirer, subject to the Lessor’s Standard Terms of Indemnity, including the exceptions recorded therein. The Hirer’s attention is drawn to the fact that the Hirer will be responsible for the first amount payable in respect of the damages and/or losses, as recorded on the Documentation or if not specified, R80 000.00 (Eight Thousand Rand) and that no indemnity will apply if any of the Standard Terms of Indemnity are not fully complied with. In the event of the Hirer and/or the driver being involved in more than 1 (One) incident, the Hirer’s first amount payable shall be adjusted to 1.5 (One Point Five) times the amount, as set out above. It is the responsibility of the Hirer to familiarise itself with the Standard Terms of Indemnity and the consequences of the Hirer and/or the driver’s failure to strictly comply the Standard Terms of Indemnity.

6. WAIVER OF LIABILITY

6.1. Neither the Lessor nor any of its officers, employees or agents shall be liable for any loss and/or damage (including to property left or transported in the vehicle) and/or any injury or loss of life which may be suffered by the Hirer and/or any third party and/or passenger and whether direct or indirect, consequential or otherwise, arising from the hire of the vehicle, and/or from any defect in and/or mechanical failure of the vehicle (howsoever arising) and whether such loss or damage results from breach of contract, delict and/or otherwise (including negligence, gross negligence and/or the failure of the Hirer to detect defects in or mechanical problems with the vehicle). The Hirer hereby indemnifies the Lessor and its officers, employees, and agents against any claim of any nature whatsoever and howsoever arising and for any damages or losses which might be instituted against it arising from or in connection with or pursuant to the hire or use of the vehicle by the Hirer.

6.2. The transport of goods and/or passengers shall be undertaken at the sole risk of the Hirer who shall be solely liable and responsible for any loss of life, injury, loss and/or damage to any person and/or property left on, transported in, upon or lowered by the vehicle. The Hirer hereby waives all claims and indemnifies the Lessor in respect of any claim which may be made against the Lessor for damage, loss, injury and/or loss of life arising out of the conveyance or transport of passengers, goods and/or towed by the vehicle.

6.3. The Lessor shall not be responsible, either directly or indirectly, for the loading and/or offloading of the vehicle and for any damage, loss, injury, loss of life and/or claims, including consequential damages, arising from the loading and/or offloading of the vehicle.

7. CLAIMS

7.1. The Hirer undertakes to immediately report to the Lessor any theft or hijacking of the vehicle, within 2 (Two) hours of the occurrence, and to report any accident in which it was involved and/or any serious breakdown of the vehicle and to cooperate fully with the Lessor in obtaining all the details required for the completion of the Lessor’s Standard Accident Report form, including details of the Identity and address of witnesses.

7.2. In the event of the hired vehicle being stolen or hijacked the Hirer shall be liable for the reasonable recovery costs, inclusive of a recovery fee, towing and storage costs incurred by the Lessor in

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- recovering the vehicle in addition to any other costs for which the Hirer would be liable in terms of this Agreement.
- 7.3. In all instances of a theft, hijacking, accident and/or damage to the Vehicle, the Hirer shall be liable to the Lessor for a claim administration fee.
- 7.4. The Hirer undertakes that no articles shall be carried in and/or on the vehicle which may cause damage to the vehicle and/or the upholstery.
- 8. GENERAL**
- 8.1. The Hirer shall under no circumstances drive the vehicle beyond the territorial limits of the Republic of South Africa, without the written approval of the Lessor.
- 8.2. The Parties hereby consent in terms of the Magistrates Court Act, 32 of 1944, to the Jurisdiction of the Magistrate's Court. The Hirer shall be liable for all legal costs incurred by the Lessor on the scale as between attorney and own client, including collection commission and tracing fees, where applicable.
- 8.3. The Hirer hereby warrants and represents that all statements contained in the credit application or cash ID form are true and correct and that this Agreement is entered into on the basis thereof. In the event of the Hirer being a firm, partnership, corporations, company, trust, voluntary association, or club, then the signatory hereby warrants and undertakes that he has the necessary authority to bind the Hirer to this Agreement. Should the signatory not have the requisite authority and/or the Hirer deny the authority of the signatory (whether or not such authority was in fact given), then in such instance the Lessor shall be entitled, in its sole and absolute discretion, to hold the signatory liable in his personal capacity for payment of all amounts owing in terms of this Agreement. The Hirer undertakes to notify the Lessor in writing, within 7 (Seven) days of any change in ownership of the Hirer and/or should the Hirer be a company, of any share transactions whereby the majority shareholding is affected.
- 8.4. Any relaxation, variation or failure to strictly observance the terms or conditions of this Agreement shall in no way prejudice or be construed as a waiver of any of the rights of either Party unless set out in writing and signed by the Parties.
- 8.5. Any driver, assistant driver and/or any other person supplied by the Lessor, who may drive the vehicle, assist the driver of the vehicle, assist with the loading and/or offloading of the vehicle, including the equipment operator for the vehicle, crane and/or other equipment accompanying same, shall be under the direct control of the Hirer and shall further be deemed to be an employee of the Hirer for the duration of the hire period. The Hirer hereby indemnifies the Lessor against any claims which may arise from any act, omission, negligence or otherwise, on the part of any such person/s.
- 8.6. For the duration of this Agreement and for a period of 6 (Six) months after its termination or cancellation, the Hirer undertakes that he will not, without the Lessor's consent, offer employment to and/or employ, whether directly or indirectly, through any associate, associate company, subsidiary or holding company, any employee of the Lessor who is or was employed directly or indirectly in the performance, monitoring and/or supervision of the obligations of the Lessor under this Agreement. Should the Hirer be in breach hereof, the Hirer agrees that a placement fee equivalent to 10 (Ten) percent of the gross annual wage will be payable to the Lessor.
- 8.7. The Lessor shall be entitled to amend the terms and conditions of hire, without notice to the Hirer, which the Hirer agrees to be bound by the amended terms and conditions of hire.
- 8.8. The Lessor reserves the right, from time to time, to amend, update, and/or replace these Terms and Conditions. Any such amendment shall be effective from the date of publication on the Lessor's website or as otherwise communicated to the Hirer in writing. The Hirer's continued engagement with the Lessor's goods or services after such publication shall be deemed to constitute acceptance of the amended Terms and Conditions.
- 9. OPERATOR FITNESS**
- 9.1. The Hirer warrants and undertakes that: -
- 9.1.1. He is aware of the requirements of the National Road Traffic Act 93 of 1996 (as amended) and the Administrative Adjudication of Road Traffic Offences Act 45 of 1998 (as amended) (the "Acts") and undertakes to comply with them and to ensure at all times that the driver of the vehicle complies with the requirements of the Acts.
- 9.1.2. He will ensure that the vehicle never carries a load in excess of the legal maximum permissible as per regulations 231 to 243 of the Road Traffic Act 93 of 1996 or any other Legislation or Regulation that may apply (as amended);
- 9.1.3. In the event of the vehicle becoming unroadworthy the Hirer will immediately cease using the vehicle and notify the Lessor so that the necessary repairs may be carried out. In an emergency, where it is not reasonably possible for the Hirer to notify the Lessor of the unroadworthiness of the vehicle then the Hirer, notwithstanding the provisions of clause 4 above, shall be entitled and obligated to cause the necessary repairs to be undertaken to put the vehicle in a roadworthy condition. The cost of such repairs may be set off against the cost of hire, subject to the invoice being provided to the Lessor and it being determined, in the sole discretion of the Lessor, that the repairs are necessary for the roadworthiness of the vehicle and were reasonably incurred. In the case of a dispute between the Lessor and the Hirer regarding repairs, the decision of the Lessor shall be final and binding.
- 9.2. The Hirer warrants and represents that he or the driver is properly qualified to drive the vehicle in the Republic of South Africa and undertakes to produce to the Lessor, whenever required, a copy of the Hirer or the drivers valid driver's license and valid Professional Driving Permit (whichever is applicable), such license and/or professional driving permit to be free of any endorsements.
- 9.3. The Hirer will not under any circumstances cause the vehicle to be operated in contravention of any Legislation and/or Regulations of the Republic of South Africa, including but not limited to the Explosives Act 26 of 1956 (as amended), the Fire Brigade Services Act 99 of 1987 (as amended), Municipal by-laws promulgated in pursuance thereof, the Hazardous Substances Act 15 of 1973 (as amended), the Nuclear Energy Act 131 of 1993 (as amended) and the Animal Protection Act 71 of 1962 (as amended) and undertakes to timeously notify the Lessor should the Hirer intend or contemplate using the vehicle for the purpose of transporting dangerous goods, as defined therein, to enable the Parties to ensure compliance with the relevant Legislation.
- 9.4. The Hirer shall be liable for any and all injury, loss of life, claim, loss and/or damages, including consequential loss, caused as a result of the Hirer's breach of any of the warranties and undertaking in this clause 9.
- 10. NOTICES AND DOMICILIA**
- 10.1. All notices to be given pursuant to the terms of this Agreement shall be in writing and shall be delivered by hand, sent by registered post to the physical address or sent by e-mail to the Parties chosen *domicilium citandi et executandi*:
- 10.1.1. **The Lessor:** 69 Old Transkei Road
Nahoon
East London
5241
E-mail: Legal@kempston.co.za
- 10.1.2. **The Hirer: the address/e-mail as recorded in the Credit Application/Cash Hire Application**

- Notice may be delivered by hand, postal delivery and/or e-mail, at the sole discretion of the Lessor.
- 10.2. Any notice shall, unless the contrary is proved:
- 10.2.1. If delivered by hand to an apparently responsible person at a party's chosen address be deemed to have been received on the date of delivery;
- 10.2.2. If sent by registered post, be deemed to have been received 10 (Ten) days after posting; and
- 10.2.3. If sent by e-mail, be deemed to have been received within 12 (Twelve) hours of transmission.
- 10.3. Notwithstanding the above, any notice actually received by a Party to whom it is addressed shall be adequate notice to it.
- 11. NATIONAL CREDIT ACT**
- 11.1. The Hirer hereby consents to the Lessor:
- 11.1.1. Performing a credit search of the Hirer's record with one or more registered credit bureau when assessing the Hirer's application for credit;
- 11.1.2. Monitoring the Hirer's credit record at one or more credit bureau, during the period of hire;
- 11.1.3. Using any new information and data obtained from the credit bureau in respect of the Hirer's future credit applications;
- 11.1.4. Recording the existence of the Hirer's account with any credit bureau;
- 11.1.5. Disclosing to any creditor of the Lessor and/or to one or more credit bureau any information regarding the creditworthiness of the Hirer and its Member/s, defaults in payment to the Lessor and details of how the account with Lessor is conducted.
- 12. PROTECTION OF PERSONAL INFORMATION ACT, 4 OF 2013 ("POPIA")**
- 12.1. Compliance with POPIA as well as the protection of our Clients personal information, as defined in POPIA ("Personal Information"), and right to privacy is of paramount importance to Vincemus Investment (Pty) Ltd, its affiliates, subsidiaries and holding companies (the "Kempston Group") and the Kempston Group undertakes to use reasonable efforts in order to ensure Personal Information provided to and/or collected by the Kempston Group is securely stored.
- 12.2. The Hirer hereby undertakes to provide accurate, honest and current information to the Kempston Group and to update such information timeously, as and when required.
- 12.3. The Hirer hereby consents to the processing of Personal Information by the Kempston Group and warrants by authorised signature hereof that any Personal Information supplied to the Kempston Group is done voluntarily, in terms of this consent. The Hirer's express consent constitutes an unconditional and voluntary consent which shall apply to all information supplied to and/or collected by the Kempston Group and shall ensure indefinitely and/or for the period otherwise required in terms of any applicable legislation or until such consent is withdrawn in writing by the Hirer. Upon which the Kempston Group shall destroy all Personal Information as required and or stipulated by POPIA and provide the Hirer with written confirmation of such.
- 12.4. The Kempston Group will not make the Hirers Personal Information available to any third party without the Hirers consent and the Hirer indemnifies the Kempston Group for any unintentional disclosure of Personal Information to any persons. Notwithstanding the aforementioned, the Hirer hereby consents to the disclose of the Hirer's Personal Information by the Kempston Group to any employee, consultant, contractor, agent, subsidiary, service provider of the Kempston Group and/or of any individual entity which forms part of the Kempston Group.
- 12.5. In the event of any concern related to the processing and/or disclosure of Personal Information the Hirer shall first attempt to resolve the concern with the Information Officer of the Kempston Group. Should the Hirer be unsatisfied with the process and/or outcome the Hirer has the right to lodge a complaint with the Regulator in terms of POPIA.
- 12.6. The Kempston Group's Privacy Policy is available on its website: www.kempston.co.za.

DATED AT _____ ON THE _____ OF _____ 20 _____

SIGNATURE: 1. _____ FULL NAME: _____

2. _____ FULL NAME: _____

CAPACITY IN WHICH SIGNED: 1. _____ 2. _____

DETAILS TAKEN BY: _____ WITNESS: _____

Initial: _____