Terms and Conditions of Hire

1. Delivery and Removal of Equipment

The Hirer authorises the Owner to bring its vehicle onto his property to deliver and to recover the equipment at the end of hire. The Owner shall not be responsible to the Hirer or any third parties for any damage that may be done to driveways or underground services by any reason of the weight of the vehicle. Requests for collection must be made by telephone when the Hirer has finished with the equipment and not by prior arrangement. Always ask for a pick-up number. All cartage charges are to be paid by the Hirer. Equipment must be packed up, ready for loading and assistance rendered to the Owner's driver if more than one person is required to load it.

2. Hire Period

Hiring commences at the time shown on the face of this form which is the time the equipment leaves the Owner's store. The hiring shall terminate at the time stated by the Hirer on the face of this form. By that time the equipment is to be delivered back into the Owner's store either by the Hirer or following collection by the Owner's vehicle at the Hirer's request.

3. Owners Right to Hire

(a) The owner may terminate the hire at any time without reason by giving the Hirer 48 hours written notice. Such notice may be given either by personal delivery or by post to either the job address or any other address of the Hirer specified on the face of this agreement. In the case of notices posted to the Hirer the period of notice shall commence to run from the time at which the notice would have been delivered in the ordinary course of the post. The Owner will not be responsible to the Hirer for any loss arising as a result of such termination.

(b) Not withstanding termination of the hiring the Hirer shall be obliged to pay the Owner a sum equivalent to hire fees at the rate specified herein in respect of any period from the date of termination of the hiring until the equipment is actually returned to the Owner's store.

4. Hiring Charges

In the absence of any special arrangements to the contrary equipment is hired on a daily rate, Saturday, Sunday and public holidays included. The hire period is based on the time the equipment is uplifted until the time the equipment is returned or advised for pickup, not the time the equipment is used for.

5. Payment

(a) Unless the Hirer operates a credit account with the Owner a bond is required before hiring commences which will exceed the estimated total charges and an appropriate refund will be made to the Hirer on return of the equipment in good order and condition. Should total charges exceed the amount of the bond the balance is payable by the Hirer promptly on return.

(b) The Hirer by accepting the goods or services agrees to the terms and conditions as laid down by the Owner and agrees to pay any costs of collection and all legal fees incurred by the Owner in the event of legal action becoming necessary.

(c) Where the Hirer operates a credit account with the Owner payment is due on the twentieth day of the month following the date of invoice. Where payment is not made by the due date the Owner reserves the right to charge default interest at the rate of 2% above the Hirer's overdraft rate as it may apply.

(d) If the Hirer does not require the Owner to waive the Hirer's responsibility for loss or damage to equipment under Condition 11 then the Hirer must make alternative arrangements in writing with the Owner through the Owner's credit department.

6. Care of Equipment and Breakdowns

(a) The Hirer shall not use the equipment in a manner or to an extent which is inconsistent with the manner or extent of use that a reasonable hirer would expect to obtain from the equipment and any express instructions given by the Owner either directly or accompanying the equipment in writing shall be taken as prima facie evidence of the manner or extent of the use to which the equipment shall be put.

(b) The Hirer shall take proper care of the equipment. In the event of the equipment being damaged the Hirer shall pay the Owner a sum equivalent to the cost of making good said damage. In the event of the equipment being lost on hire to the Hirer then the Hirer shall pay to the Owner a sum equivalent to the cost of replacing the equipment as lost, this obligation subject to Condition 11 as applicable.

(c) The Hirer warrants that he is competent and qualified to use the equipment in the way or for which it is designed.

(d) Breakdown resulting from misuse shall not in any circumstances shorten the period of hire.

(e) The equipment does not purport to be new stock or equal to new, but when sent out all items are understood to be in good condition and fit for normal use.

7.

(a) Where this hire agreement would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 and where the hire is a hire for business purposes as recorded on the fact hereof, then the Hirer agrees that the equipment hired is a supply to the Hirer for business purposes in terms of Sections 2 and 43 of that Act and the provisions of that Act shall not apply to this hire.

(b) Where this hire agreement is not subject to the provisions of the Consumer Guarantees Act 1993 as provided in Clause 7(a) hereof, or where the Hirer is a person who is not a consumer in the said Act, then:

(i) The Hirer takes the equipment hired on the express condition that the owner gives no warranty, undertaking or promise of any kind whatsoever as to the condition, state of repair or fitness of the equipment hired, nor as to the suitability of the equipment hired for the work to be undertaken with it by the Hirer and the hirer shall use the equipment hired entirely at his own risk. The Hirer shall consequently have no claim of whatsoever nature or kind against the Owner by reason of this condition or of the operation of the equipment hired whether correctly or incorrectly or otherwise howsoever arising and the Hirer shall hold the Owner safe, harmless and indemnified against claims actions and proceedings on account or touching or concerning any of the aforesaid matters and against all costs.

(ii) All representations or warranties whether expressed or implied by the owner, its employee or employees, agent or agents whether made before or after the execution of these conditions by the Hirer shall be null and void and of no effect except as the same are included in these conditions and the Hirer hereby acknowledges that these conditions cover the whole terms of hire of the equipment hired by him from the owner. Any liability attributed to the owner shall be limited to the value of the hire charges charged.

8. Injury or Damage to Hirer or Third Persons or Property

The hirer shall not have any claim against the Owner for loss or damage suffered by the Hirer as a result of the Hirer's use of the equipment and further the Hirer will indemnify the Owner against any claim by a third person in respect of any loss, injury or liability arising from this hiring or arising out of the use of the equipment by the Hirer.

9. No Assignment of Hire Agreement

This agreement is personal to the Hirer and is not capable of assignment by him, and the Hirer shall not sublet the equipment to any other person, but this shall not prevent employees of the Hirer using the equipment in conformity with this agreement. The Hirer will not sell, offer for sale, assign, mortgage, pledge, charge or otherwise encumber or deal with or part with possession of the equipment hired on any part or parts thereof other than to the Owner.

10. No Warranties by Owner

The Owner makes no warranty or representation as to the state, quality or fitness of the equipment for any purpose and no such warranty shall be implied by the description of the equipment on the face of this form. All implied warranties and conditions as to the state, quality or fitness of the equipment for any purpose are hereby excluded.

11. Limitation of Hirer's Responsibility for Loss of or Damage to Equipment

Provided that the Hirer has obtained and paid for damage waiver cover with the owner, then this clause 11 will apply, but not otherwise.

If the Hirer has:

1. Delivered to the Owner within 24 hours of the time when the Hirer first became aware of the loss of or damage to the equipment, a complete and correct written report of the circumstances of such loss of or damage to the equipment; and

2. If required by the Owner, lodged a written report in respect of any such loss or damage to the equipment with the police; and

3. Rendered such assistance and done such other things as the Owner shall have reasonably required for the purposes of enabling the Owner to exercise such legal remedies as the Owner may have for the recovery of such loss or damage of the equipment;

The Owner will limit the liability of the Hirer for loss of or damage to the equipment caused by fire, storm, collision, accident, or theft provided however that the Owner will not waive the Hirer's liability for:

(a) One half of the cost of the purchase of new equipment to replace the equipment lost or damaged (if the damage is such as to render the equipment irreparable), or if the cost of repairing it exceeds the cost of replacement or is impracticable in the Owner's reasonable opinion, to a limit of $1,000.00.

(b) One half of the cost of repairing equipment damaged through accident where that damage is not due to misuse, abuse or overloading of the equipment or failure to take reasonable care of it subject to Clause 11 (a) above.

(c) Unjustifiable loss of the equipment.

(d) Loss or damage of the equipment arising from a breach by the Hirer of the conditions of this agreement.

(e) Loss or damage from misuse of the equipment in violation of any statute, regulation or by-law.

(f) Damage caused by tyres and tubes by blow-out, bruises, cuts or other causes arising from misuse of the equipment.

(g) Loss or damage resulting from lack of lubrication or other normal servicing of the equipment.

(h) Loss or damage to motors or other electrical appliances or devices caused by overloading.

(i) Theft arising from circumstances where the Hirer has failed to secure the property against theft.

12. The person signing this document for and on behalf of the Hirer (if not personally the Hirer) warrants that he has the authority of the Hirer to make this contract on the Hirer's behalf and that he is empowered by the Hirer to bind the Hirer to this agreement. The person so signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person so signing the agreement failing to have such power of authority.

13. The Hirer shall forthwith on request by the Owner advise the Owner of the whereabouts of the equipment and allow the Owner or its agent or servants reasonable time to inspect and test the equipment and for such purposes the Hirer hereby gives irrevocable leave and licence to the Owner its servants and agents to take possession of the equipment remove and same and to enter upon any premises of the Hirer and as the act of the Hirer enter upon any premises where the equipment or any of the same or any part thereof may be.

14. In the case of a person entering into this contract in a private capacity as Hirer, the Hirer by entering into this contract hereby authorises the disclosure of personal information which may be used by the Owner to advise the Hirer of the Owners other goods and services The Hirer has rights of access to and correction of personal information contained in this contract, subject to the provisions of the privacy Act 1993