

# Lambson's Standard Terms and Conditions

1. **HIRE OF EQUIPMENT**  
Lambson's Hire and Sales (Pty) Limited ("Lambson's") hires the equipment described in the hire contract ("the hire equipment") to the person described in the hire contract ("the customer"), subject to the following terms and conditions.
2. **PERIOD:**
  - 2.1 The hire period commences when the hire equipment is delivered to, or collected by, the customer.
  - 2.2 The hire period shall terminate upon the earlier of the following:
    - 2.2.1 the date upon which Lambson's accepts the return of the hire equipment; or
    - 2.2.2 the date upon which Lambson's is notified by the customer, in writing, that the equipment has been lost or destroyed; and/or
    - 2.2.3 the date upon which Lambson's establishes that the hire equipment has been lost or destroyed.
  - 2.3 If the parties agree on a time for delivery or collection of the hire equipment, Lambson's shall use reasonable endeavours to ensure that the hire equipment is delivered or available for collection at the agreed time, but shall not be liable for damages howsoever arising of whatsoever nature, should the hire equipment not be delivered or be available at such time.
  - 2.4 Notwithstanding the foregoing, Lambson's is entitled to terminate this agreement at any time without notice and to demand immediate return of the hire equipment.
3. **DEPOSIT AND HIRE CHARGES**
  - 3.1 The deposit stated in the hire contract is payable to Lambson's on delivery of the hire equipment to the customer, unless otherwise agreed in writing. Lambson's shall be entitled to utilise the deposit as payment of any amounts due to it by the customer and the balance (if any) after deduction of such due amounts, will be refunded to the customer within a reasonable period after the return to, or collection by, Lambson's of the hire equipment.
  - 3.2 The hire charges are calculated on the daily rates mentioned in the hire contract in respect of each item of the hire equipment and shall be payable for every day that the hire equipment is in the possession of the customer inclusive of the day of delivery thereof to the customer and the day of return to Lambson's.
  - 3.3 Hire charges are for "time out" and not for "time used", i.e. hire charges are payable for the period that the equipment is in the customer's possession. Hire charges shall be due and payable in advance, unless the parties have agreed otherwise, but shall in any event be due and payable upon the return of the hire equipment.
  - 3.4 The customer shall be deemed to have accepted the correctness of any statement of account addressed to it by Lambson's unless Lambson's is notified in writing of any queries or discrepancies within 5 (five) days of such account.
4. **HIRE EQUIPMENT**
  - 4.1 The hire equipment shall be deemed to be of the description stated in the hire contract and shall be deemed to be in good order and repair and fit for the purpose for which it is intended when delivered to the customer, unless the customer notifies Lambson's in writing forthwith on delivery of any deficiency in quantity, or any defective or incorrectly delivered hire equipment.
  - 4.2 Upon receipt of a notice as mentioned in clause 4.1 above, Lambson's shall, in its sole discretion, be entitled either to terminate this agreement and refund the deposit (if any) and any hire charges paid, or to replace the defective or incorrectly delivered hire equipment or remedy any defects in the delivered hire equipment.
  - 4.3 The hire equipment shall at all times remain the property of Lambson's.
5. **BREAKDOWN AND REPAIRS**
  - 5.1 While the hire equipment is in the possession of the customer, the customer shall at its own cost, service and maintain the hire equipment in good running order and repair to the standards required by Lambson's until the hire equipment is returned to Lambson's.
  - 5.2 The customer shall immediately notify Lambson's of any breakdown in the hire equipment, in which event Lambson's shall be entitled to repair or replace the hire equipment or in its discretion to terminate this agreement.
  - 5.3 During the hire period the customer shall be responsible for all loss or damage to the hire equipment howsoever arising and of whatsoever nature.
  - 5.4 In the event of the hire equipment being lost or destroyed or damaged beyond economical repair during the hire period, the customer shall be liable to Lambson's for the cost of the replacement of the hire equipment. The cost of replacement of the hire equipment shall be equivalent to the cost of a new piece of equipment, identical, or similar, to the hire equipment, to be determined in Lambson's sole and absolute discretion. A certificate signed by a manager of Lambson's certifying the replacement cost of the hire equipment shall be prima facie evidence of such replacement cost.
  - 5.5 In the event of the equipment being damaged prior to its return to Lambson's, the customer shall be liable to Lambson's for the cost of the repair of the equipment. A certificate signed by a manager of Lambson's certifying the repair cost of the hire equipment shall be prima facie evidence of such repair cost.
  - 5.6 The customer shall not be entitled to substitute any other equipment for the hire equipment.
  - 5.7 At the option and at the expense of the customer, the customer may take out and maintain appropriate risk insurance in respect of the hire equipment, in which event the customer shall immediately notify Lambson's of such insurance policy and hereby cedes such insurance policy in favour of Lambson's. The customer shall however remain liable for any excess amounts payable in terms of such policy and also for the balance of Lambson's loss should the proceeds of the insurance policy be inadequate to cover the full replacement or repair cost of the lost, destroyed or damaged hire equipment.
6. **RESPONSIBILITY OF CUSTOMER / LOADING AND UNLOADING**
  - 6.1 In the event of the customer collecting the hire equipment, the customer shall be responsible for loading, unloading, securing and transporting the hire equipment. Any person/s provided by Lambson's to assist the customer in loading/unloading or securing the hire equipment shall be deemed to be employed by the customer for such purpose.
  - 6.2 In the event that Lambson's delivers the hire equipment to the customer, the customer shall be solely responsible for unloading and in the event that an employee of Lambson's assists the customer in loading or unloading the hire equipment at any time, such person is deemed to be an employee of the customer at such time.
7. **USE OF THE EQUIPMENT**

The customer:

  - 7.1 acknowledges that it is aware of the purpose for which the hire equipment is intended and shall use the hire equipment for such purpose;
  - 7.2 shall use the hire equipment at its own risk, and indemnifies Lambson's against any claim of any nature brought against Lambson's by the customer's employees, agents, representatives, or any other third parties arising out of the use, loading, unloading, or transporting of the hire equipment by the customer or while in the possession of the customer, or any other cause and indemnifies Lambson's against all costs and expenses incurred by Lambson's on an attorney and own client scale in defending or settling such proceedings; shall have no claims of any nature against the owner for any loss suffered or damages sustained by the customer arising from any cause including without limitation, the demonstration, use or malfunction of the hire equipment or the provisions of these terms and conditions other than the specific remedies provided for.
  - 7.3
8. **DELIVERY**

Time shall not be the essence of the hire contract and delivery dates must be treated as approximate only. Under no circumstances shall the customer be entitled to withdraw from or terminate the hire contract on account of any delay in delivery or have a claim of any nature against Lambson's arising from any late delivery.
9. **NO WARRANTIES**

Lambson's furnishes no warranties and makes no representations other than those contained herein. The provisions of these terms and conditions shall govern the relationship between the parties to the exclusion of all other conditions whether implied by law or stipulated by the customer, unless accepted by Lambson's in writing.
10. **ACCESS**

Lambson's shall at all reasonable times be entitled to access to any premises of the customer for the purposes of inspecting or repairing the hire equipment.
11. **SALES**

The sale of all consumables and other goods by Lambson's to the customer shall be strictly cash on delivery. All goods sold and delivered by Lambson's to the customer shall be "voetstoots" without warranties, express or implied.
12. **INFORMATION SHARING**

By entering into this hire contract, the customer acknowledges and agrees that Lambson's may obtain from and provide the following to any credit bureau:

  - 12.1.1 details provided by the customer in any account application and in this agreement; and/or
  - 12.1.2 details of the conduct of the customer's account; and/or
  - 12.1.3 details of any adverse information; and/or
  - 12.1.4 any other details as may be required by applicable law; and
  - 12.1.5 any information relating to the customer's credit records.
13. **ACCOUNTS**

In those instances where the customer is granted an account by Lambson's, Lambson's and the customer hereby agree that in respect of each and every individual item of hire equipment hired by the customer from Lambson's, a separate and distinct agreement shall be deemed to have been concluded between them in respect of that specific item of hire equipment, subject to these terms and conditions.
14. **BREACH**
  - 14.1 Should the customer:
    - 14.1.1 fail to comply with any obligation imposed upon it in terms hereof, all of which are deemed to be material, on due date; or
    - 14.1.2 omit any act of insolvency, or be placed in liquidation or sequestration, whether provisional or final, or be placed under judicial management, then and in that event Lambson's shall be entitled to forthwith cancel the hire contract and to enter any premises of the customer and retake possession of the hire equipment.
  - 14.2 The specific remedies which Lambson's has against the customer pursuant to these terms and conditions are without prejudice to any other remedies which Lambson's may have including the right to claim all such consequential and other damages from the customer as Lambson's may have suffered as a result of the breach by the customer of its obligations.
15. **DOMICILIUM / NOTICES**
  - 15.1 For the purposes of these terms and conditions, the customer chooses as its domicilium citandi et executandi the physical address stated in the hire contract or in the account application, as the case may be.
  - 15.2 Any notice to be given pursuant to these terms and conditions shall be given in writing and shall be deemed to have been received by the addressee:
    - 15.2.1 within 7(seven) days after it is posted, if posted by registered or ordinary mail; or
    - 15.2.2 upon the day of receipt, if hand delivered during office hours; or
    - 15.2.3 on the day of transmission, if sent by way of telefax or e-mail, provided proof of transmission is provided.
  - 15.3 The customer may change its domicilium address to any other address in the Republic of South Africa by way of written notice sent by registered post to Lambson's at Private Bag X 3, Jeppestown, 2043.
16. **MISCELLANEOUS**
  - 16.1 Any action or proceedings which Lambson's may institute against the customer may at the sole option of Lambson's be instituted against the customer in any Magistrate's court having jurisdiction over the customer, notwithstanding the subject matter of such action or proceedings being beyond the ordinary jurisdiction of such court.
  - 16.2 Lambson's may, however, disregard the foregoing consent to jurisdiction and shall have the option to institute such action in any other competent court having jurisdiction.
  - 16.3 The customer will be liable for Lambson's costs on an attorney and own client scale should Lambson's institute legal proceedings against the customer arising out of the provisions of these terms and conditions, or arising out of the customer's use or possession of the hire equipment.
  - 16.4 Lambson's shall be entitled to apply any amount received from the customer to the liquidation, in whole or part, of any obligation whether arising out of these terms and conditions or otherwise owed by the customer to Lambson's, irrespective of whether the final amount of the obligation has been determined.
  - 16.5 No relaxation, extension of time or indulgence granted by Lambson's to the customer shall be deemed to affect, prejudice or abrogate or be a waiver of any of Lambson's rights in terms hereof, nor shall any such relaxation, giving of time, indulgence or judgment taken be deemed to be a novation of any of the terms and conditions hereof.
  - 16.6 Any amendment or variation of these terms and conditions shall be in writing and signed by both parties.
  - 16.7 The customer shall not have any claims of any nature whatsoever against Lambson's for any failure by Lambson's to carry out any of its obligations under the contract as a result of causa fortuita, viz major, including but without being limited to, any strike, lockout, shortage of labour, shortage of materials, breakdown of machinery, delays in transport, accidents of any kind or any delay by any sub-contractor or supplier of Lambson's, riot, political or civil disturbance, the elements, any act of any state or government or any authority or any other cause whatsoever beyond Lambson's control.
  - 16.8 The customer shall comply with all laws, including all statutes, ordinances, by-laws, proclamations, regulations and other enactments, which are required to be complied with by the customer or Lambson's for the purposes of the contract and the customer hereby indemnifies Lambson's against any loss, damage, costs or other liabilities incurred by Lambson's as a result of the customer failing to comply with any such laws.
17. **CREDIT/DEBIT CARD AUTHORITY**

In the event that the customer agrees to payment of the hire charges and/or deposits required by Lambson's in terms of the hire contract, from time to time, by way of a credit and/or debit card, the customer's signature below shall constitute authority for the issuer of the cards to debit the customer with the total amount due in respect of hire charges and/or deposits, inclusive of all costs, charges and damages of whatsoever nature arising out of the hire contract.
18. **SURETYSHIP**

The person signing these terms and conditions hereby binds himself as surety and co-principal debtor, jointly and severally with the customer, for the due performance of the customer's obligations pursuant to these terms and conditions. The aforesaid party hereby specifically renounces the benefits of excussion as well as all other legal exceptions available to him in law.