

GENERAL TERMS AND CONDITIONS OF CONTRACT LAYHER (PTY) LTD

IN THIS AGREEMENT THERE ARE CERTAIN CLAUSES OF SIMILAR FONT TO THIS TEXT WHICH CONTAIN PROVISIONS THAT MAY HAVE THE EFFECT OF (I) LIMITING THE RISK OR LIABILITY OF LAYHER OR OF ANY OTHER PERSON AND/OR (II) MAY CONSTITUTE AN ASSUMPTION OF RISK OR LIABILITY BY YOU AND/OR (III) MAY IMPOSE AN OBLIGATION ON YOU TO INDEMNIFY LAYHER OR ANY OTHER PERSON FOR ANY CAUSE AND/OR (IV) MAY BE AN ACKNOWLEDGEMENT OF ANY FACT BY YOU. THESE PROVISIONS ARE VERY IMPORTANT AND YOU MUST ENSURE THAT YOU READ THEM CAREFULLY AND THAT YOU UNDERSTAND THEM CLEARLY.

1. GENERAL
 - 1.1 All agreements are exclusively subject to LAYHER'S terms and conditions of contract; LAYHER rejects any terms and conditions of the customer to the contrary or deviating from LAYHER'S terms and conditions unless it has expressly consented to their validity in writing.
 - 1.2 It is the CUSTOMER'S responsibility to draw LAYHER'S attention to the provisions of any relevant contract or specification by which the CUSTOMER is bound failing which LAYHER will accept no liability there from, and no acceptance shall be valid unless reduced to writing and signed.
 - 1.3 These terms and conditions, as re-issued or revised by LAYHER from time to time, apply to all orders placed with LAYHER and such orders are subject to acceptance by LAYHER and shall be deemed to be made subject to these terms and conditions.
 - 1.4 No qualification or condition contained in any order form, acknowledgement of order or otherwise, shall form part of the contract of sale or override these terms unless expressly agreed to in writing by the Managing Director of LAYHER. No employee or agent of LAYHER shall have the authority or the ability to change these terms in any manner whatsoever, save the Managing Director of LAYHER.
 - 1.5 LAYHER reserves the right to refuse an order and acceptance of all orders shall occur upon issue of LAYHER'S order confirmation. Unless otherwise provided, LAYHER'S order confirmation shall prevail concerning the scope of GOODS to be delivered and services to be provided.
 - 1.6 The prices stated in LAYHER'S price lists shall be deemed to be customary in the location and reasonable.
 - 1.7 By signing this agreement the CUSTOMER agrees to be bound by the terms and conditions contained herein, and acknowledges that its attention has been drawn to the INSTRUCTIONS contained in clause 9 of these CONDITIONS and agrees to comply with the relevant Safety Guidelines.
 - 1.8 The CUSTOMER may use the LAYHER name, logo, byline and other brand related items in its advertising and marketing materials or similar but only in strict accordance with LAYHER'S and/or the manufacturers guidelines. This usage is valid so long as LAYHER supplies the CUSTOMER. Should LAYHER cease to supply the CUSTOMER, this right ceases automatically, and the CUSTOMER must immediately cease and usage of the LAYHER name, logo, byline and other brand related items in all of its advertising and marketing materials or similar.
 - 1.9 The CUSTOMER will treat as confidential and will not use or disclose to any person any information relating to quantities, price, or availability of any GOODS provided by LAYHER to the CUSTOMER and these obligations shall survive any termination of the obligations contained in these CONDITIONS or any other contractual arrangement entered into between the CUSTOMER and LAYHER.
2. DEFINITIONS & INTERPRETATION

Unless such meaning is inconsistent with the context, the following terms shall, throughout this agreement, have the meanings respectively ascribed to them, namely:

 - 2.1 'CONDITIONS' means these General Terms and Conditions of Contract;
 - 2.2 'CONTRACT PRICE' – means the price of the GOODS as set out in the invoice;
 - 2.3 'CONTRACT SPECIFICATION' – means the specification or other description of the GOODS on the invoice;
 - 2.4 'CUSTOMER' – means the person or legal entity with whom an agreement is entered into for the sale of the GOODS;
 - 2.5 'DESIGNATED PURPOSE' – means the purpose for which the GOODS are generally intended;
 - 2.6 'DURATION' – means the period agreed to in the agreement, and it shall begin on the day of delivery to the CUSTOMER;
 - 2.7 'GOODS' – means the goods and/or services as described more specifically in the invoice;
 - 2.8 'LAYHER' – means either of LAYHER (PTY) LTD (Registration Number: 2011/000962/07);
 - 2.9 'PUBLIC ROAD' – means that portion of a public road normally used by motor vehicles and shall exclude sidewalks, footpaths, manholes and covers, kerbing and channelling.

In this agreement unless the context otherwise requires –

 - 2.10 The singular shall import and include the plural and vice versa;
 - 2.11 Words indicating natural persons shall import and include juristic persons;
 - 2.12 Where any number of days is prescribed in this agreement, they shall be calculated exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday. In such day the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
 - 2.13 The rule of construction that this agreement shall be interpreted against the party responsible for the drafting or preparation of this agreement shall not apply. The same applies to the schedules or annexures.
3. CONTRACT PRICE
 - 3.1 Price lists issued by LAYHER from time to time, are for information purposes only and do not constitute offers for sale or rent.
 - 3.2 Due to variables such as quantity, size, packaging, marketing etc., invoiced prices may differ marginally from advertised prices.
 - 3.3 Save insofar as may be otherwise specifically agreed in writing to the contrary by LAYHER, orders are accepted only at prices and transport tariffs ruling on that date of dispatch.
 - 3.4 Unless otherwise agreed in writing, the CONTRACT PRICE shall, *inter alia*, be deemed to include charges for landing costs, packing and storage.
 - 3.5 LAYHER shall retain the title to and copyrights in all offer documents; these may not be made available to third parties without our express written consent.
 - 3.6 The CONTRACT PRICE shall specifically exclude Value Added Tax (VAT) and any other taxes that may be levied in respect of the GOODS. LAYHER reserves its rights to effect price increases from time to time without notification to the CUSTOMER. The onus shall be on the CUSTOMER to remain informed of the prices of LAYHER. No LAYHER employee, official, agent or nominee shall have the authority to effect or authorise any discounting of the CONTRACT PRICE of the GOODS save the Managing Director of LAYHER.
 - 3.7 Notwithstanding the stated price on the INVOICE, the CONTRACT PRICE shall, at all material times, be subject to any increase of duties, levies, taxes, transport, storage and packing costs and LAYHER shall endeavour, where reasonably possible, to inform the CUSTOMER in advance of any anticipated increases of the aforesaid.
 - 3.8 LAYHER reserves its right to add a reasonable charge for storage on any items which have not been collected or could not be delivered within fourteen (14) days of the date on which they were available for delivery or collection, as the case may be, and in the event that this is as a result of the CUSTOMER'S conduct.
 - 3.9 The CONTRACT PRICE is strictly net and not subject to any discounts unless otherwise agreed in writing and signed by an authorised representative of LAYHER.
 - 3.10 If any discount is agreed to as required in 3.8 above, it shall only be allowed if payment is received by LAYHER on or before the due date and shall apply to the actual price of the GOODS themselves.
4. TERMS OF PAYMENT
 - 4.1 Should the CUSTOMER require credit facilities from LAYHER, section 21 above shall be completed in full by the CUSTOMER. The acceptance of the credit application shall be subject by the approval of LAYHER.
 - 4.2 The approval from LAYHER, if granted, shall be recorded therein and communicated to the CUSTOMER in writing, should the credit application be refused the CUSTOMER shall have the option to purchase/rent the GOODS on terms as stipulated by LAYHER, and should the CUSTOMER accept such terms, such agreement will continue to subject to these terms and conditions.
 - 4.3 The CUSTOMER declares whilst completing this credit application:-
 - 4.3.1 that it grants permission to LAYHER to make contact with any of the references provided in this application for the purpose of assessing this application for credit facilities. Further, the CUSTOMER grants permission for the references to supply the information requested;
 - 4.3.2 that it accepts that LAYHER will assess the creditworthiness of the CUSTOMER within the accepted practices of LAYHER, the outcome of the assessment being at the sole discretion of LAYHER;
 - 4.3.3 that it authorises LAYHER to conduct an investigation into the credit worthiness of the CUSTOMER. Such consent and authorisation is given with respect to any and all persons who may conduct an investigation of the CUSTOMER'S credit worthiness on behalf of LAYHER, including independent contractors and credit agencies retained by LAYHER for such purpose. The CUSTOMER grants such consent and authorization to LAYHER as of the date of this application. The CUSTOMER acknowledges that LAYHER may conduct a credit investigation of the CUSTOMER at any time from the date hereof. The CUSTOMER hereby waives any and all claims, past, present or future, which it may have against LAYHER by reason of any credit investigation made pursuant to the CUSTOMER'S consent and authorisation herein.
- 4.4 Should the CUSTOMER be in default of any payment on the due date, the CUSTOMER shall pay interest on the remaining balance outstanding at the rate as per the Prescribed Rate of Interest Act 55 of 1975 (as amended) or the National Credit Act 34 of 2005 (as amended), whichever is applicable.
- 4.5 LAYHER shall be entitled to refuse sale or rental of the GOODS to any CUSTOMER in the event of overdue amounts owing by the CUSTOMER to LAYHER or in the event that a CUSTOMER is not able to obtain/provide satisfactory guarantees/suretyships. It is specifically recorded and agreed that any late payments by a CUSTOMER shall constitute an automatic breach of the agreement entered into between LAYHER and the CUSTOMER and provided to the CUSTOMER by LAYHER and accordingly, LAYHER reserves the right at any time to refuse any further sale or rental of GOODS to the CUSTOMER on any basis until all outstanding amounts including any accrued interest on such outstanding amounts have been settled in full by such CUSTOMER.
- 4.6 IT IS SPECIFICALLY RECORDED AND AGREED THAT THE CUSTOMER WAIVES ALL CLAIMS AGAINST LAYHER FOR ANY DAMAGES OR LOSSES THAT IT MAY SUFFER AS A RESULT OF THE REFUSAL OF LAYHER TO SELL OR RENT GOODS TO THE CUSTOMER IN THE EVENT OF AN OVERDUE AMOUNTS, OR IN CONNECTION WITH ANY OTHER DISPUTE WHATSOEVER ARISING OUT OF PAYMENT FOR GOODS.
5. DELIVERY
 - 5.1 Time of delivery shall not be of the essence in this agreement.
 - 5.2 WHILST EVERY EFFORT WILL BE MADE TO DISPATCH AND DELIVER THE GOODS WITHIN THE TIME QUOTED, LAYHER DOES NOT GUARANTEE DISPATCH AND/OR DELIVERY ON ANY SPECIFIC DATE AND SHALL NOT BE LIABLE FOR ANY DAMAGES INCLUDING CONSEQUENTIAL DAMAGES THAT MAY BE SUFFERED BY THE CUSTOMER AS A RESULT OF ANY DELAYS IN THE DELIVERY OF THE GOODS THAT MAY OCCUR, SAVE TO THE EXTENT THAT LAYHER MAY BE LIABLE FOR ANY LOSSES IN TERMS OF SECTION 47 OF THE CONSUMER PROTECTION ACT 68 OF 2008 AS AMENDED.
 - 5.3 THE CUSTOMER MUST SATISFY ITSELF THAT THE DESCRIPTION OF THE GOODS SHOWN ON THE DELIVERY NOTE ARE IN FACT THE GOODS ORDERED. IF THE CUSTOMER ACCEPTS SUCH GOODS WHETHER OR NOT THEY ARE THE GOODS ORDERED, THE CUSTOMER SHALL BE LIABLE TO PAY FOR THEM AND WILL HAVE NO CLAIM AGAINST LAYHER.
 - 5.4 IT IS THE CUSTOMER'S RESPONSIBILITY TO ENSURE THAT THERE IS SAFE AND PROPER ACCESS BETWEEN THE POINT OF ENTRY AT WHICH IT IS NECESSARY FOR THE DELIVERY VEHICLE TO LEAVE A PUBLIC ROAD AND THE POINT ON THE JOB-SITE AT WHICH THE LOAD IS TO BE DISCHARGED. THE DRIVER OF LAYHER'S VEHICLE WILL BE ENTITLED TO REFUSE TO PROCEED IF, IN HIS DISCRETION, HE CONSIDERS THAT THERE IS A RISK OF DAMAGE TO THE DELIVERY VEHICLE OR OF INJURY TO HIMSELF OR ANY OTHER PERSON. IN ADDITION, THE CUSTOMER INDEMNIFIES LAYHER AGAINST LOSS OR DAMAGE AND ANY CLAIM FOR DAMAGES RESULTING FROM ANY INJURY TO ANY PERSON OR PROPERTY, HOWEVER ARISING, FROM THE TIME THE DELIVERY VEHICLE LEAVES THE ROAD UNTIL IT RETURNS TO THE PUBLIC ROAD.
 - 5.5 The day on and the time at which the delivery is to be made and at the rate required are to be mutually agreed upon in advance. Should adverse weather or other site problems necessitate a change in the agreed program, LAYHER shall advise the CUSTOMER thereof as soon as reasonably possible. The CUSTOMER shall be liable for the cost of any GOODS already dispatched prior to notification.
 - 5.6 The CUSTOMER shall not be entitled to cancel or repudiate any order or refuse delivery by reason of such delay.
 - 5.7 LAYHER reserves the right to refuse an order after, seven (7) days of being lodged, where costs have escalated due to any contingencies or circumstances not within LAYHER'S control or where the CUSTOMER'S account is overdue for payment or LAYHER considers the CUSTOMER'S credit to be unsatisfactory.
 - 5.8 Should the dispatch of the GOODS be delayed for reasons due to the CUSTOMER'S fault, the CUSTOMER shall be charged the expenses arising from such delay.
 - 5.9 Should delivery be delayed due to *Force Majeure*, or any cause whatsoever beyond the control of LAYHER, the delivery period shall be reasonably extended. LAYHER shall notify the CUSTOMER in due time about the commencement and the end of such circumstances.
 - 5.10 Should LAYHER be prevented from the performance of any of its obligations as a result of *Force Majeure*, or any cause whatsoever beyond the control of LAYHER, LAYHER shall be entitled at its option to cancel the agreement or to suspend performance of its obligations there under and shall not be liable whatsoever for any loss or damage consequential or otherwise resulting from such inability to perform its obligations, cancellation or suspension.
 - 5.11 Unless otherwise agreed in writing, delivery and passing of the risk of the GOODS shall be deemed to have taken place when the GOODS have left the premises of LAYHER. This shall also apply to partial deliveries or if LAYHER has agreed to provide other services, e.g. payment of the transportation costs, delivery of the GOODS.
 - 5.12 Should dispatch be delayed or not be effected at all due to circumstances for which LAYHER is not responsible, risk shall pass to the CUSTOMER on the date on which the CUSTOMER receives advice of dispatch. LAYHER undertakes to take out any insurance the CUSTOMER may request against advance payment and at the CUSTOMER'S expense.
 - 5.13 Partial deliveries shall be permissible to the extent acceptable to the CUSTOMER.
 - 5.14 Prior to taking delivery of the GOODS in terms of a rental transaction, or in terms of a sale transaction where the GOODS are delivered prior to the CUSTOMER having paid LAYHER the CONTRACT PRICE in full, the CUSTOMER must, at its own cost, arrange insurance cover with a reputable insurer which provides for the full replacement value of the GOODS. If requested by LAYHER, the CUSTOMER shall immediately provide evidence of the existence of such insurance.
6. RETURN OF GOODS
 - 6.1 A PRECONDITION OF THE WARRANTY RIGHTS (CLAIMS BASED ON DEFECTS) OF THE CUSTOMER IN TERMS OF THE AGREEMENT IS THAT THE CUSTOMER INSPECTS THE GOODS UPON RECEIPT WITHOUT UNDUE DELAY AND GIVES WRITTEN NOTICE OF ANY VISIBLE DEFECTS AFTER THE INSPECTION OR OF HIDDEN DEFECTS AFTER THEIR DISCOVERY, SPECIFYING THE DEFECT. THIS SHALL ALSO APPLY TO WRONG DELIVERIES OR ITEMS IN INSUFFICIENT QUANTITIES BEING DELIVERED. NOTIFICATION MUST BE GIVEN WITHIN A PERIOD OF 14 (FOURTEEN) DAYS.
 - 6.2 If the CUSTOMER notifies LAYHER as such. All those parts shall - at LAYHER'S choice - be reworked or replaced by LAYHER which turn out to be defective due to a circumstance occurring prior to the passing of risk. Should the CUSTOMER detect any such defects, the CUSTOMER shall notify LAYHER immediately. LAYHER shall acquire ownership of any replaced parts.
 - 6.3 To enable LAYHER to perform all rework and replace all parts LAYHER deems necessary, the CUSTOMER, upon consultation with LAYHER, shall allow enough time and afford sufficient opportunity to LAYHER to remedy the defects. SHOULD THE CUSTOMER FAIL TO DO SO, LAYHER SHALL BE RELEASED FROM ANY LIABILITY OR CONSEQUENCES ARISING THERE FROM. Only in urgent cases involving endangering of the operational safety and/or to prevent unreasonably serious damage - in which case the CUSTOMER shall notify LAYHER immediately - shall the CUSTOMER be entitled to either remedy the defect itself or have such defect remedied by third parties and to demand compensation from LAYHER for the expenses incurred.
 - 6.4 In the event that LAYHER receives notification in terms of clause 6.1 above and it is satisfied that the GOODS are defective or do not conform to CONTRACT SPECIFICATION, then LAYHER will, at the CUSTOMER'S election, replace such quantity of GOODS with an equal quantity of GOODS or refund the applicable portion of the purchase price to the CUSTOMER against return of the defective portion of the GOODS (the return to be made at LAYHER'S risk and expense).
 - 6.5 SHOULD THERE BE AN ALLEGATION THAT ANY GOODS ARE UNSAFE, INSUFFICIENT AND/OR DEFECTIVE LAYHER SHALL NOT BE LIABLE FOR ANY HARM CAUSED WHERE SUCH ALLEGED UNSAFE CHARACTERISTIC, FAILURE, DEFECT OR HAZARD DID NOT EXIST IN THE GOODS AT THE TIME AT WHICH THEY WERE SUPPLIED TO THE CUSTOMER BY LAYHER. THEREFORE IF NO SUCH NOTIFICATION IS RECEIVED IN TERMS OF CLAUSE 6.1 ABOVE, IT WILL BE REGARDED AS *PRIMA FACIE* PROOF THAT NO DEFECTS WERE PRESENT AT THE TIME OF DELIVERY AND THAT THE GOODS WERE DELIVERED IN ACCORDANCE WITH THE AGREEMENT.
 - 6.6 The CUSTOMER may not however return to LAYHER any GOODS for any reason whatsoever unless:-
 - 6.6.1 the PARTIES have agreed in writing to such return and to the conditions of such return;
 - 6.6.2 the GOODS are being returned in accordance with the provisions of clauses 6.1 and 6.4 above;
 - 6.6.3 the GOODS were intended to satisfy a particular purpose communicated to LAYHER prior to the PURCHASE thereof and have been found not to satisfy the purpose for which they were intended, within 10 (ten) business days of delivery and LAYHER has been notified of this within that time period.
 - 6.6.4 the CUSTOMER was not permitted to inspect the GOODS upon delivery thereof;
 - 6.6.5 the CUSTOMER is exercising its right to cool-off in terms of section 16 of the Consumer Protection Act 68 of 2008 as amended.
 7. RESERVATION OF OWNERSHIP
 - 7.1 LAYHER reserves the right of ownership, copyright and exploitation rights for all estimates, and other documents and information in physical and non-physical form, in particular in digital form, provided to the CUSTOMER. Documents of a confidential nature must not be made available to third parties without LAYHER'S prior written consent. Should the CUSTOMER not place an order with LAYHER or cancel this agreement, the CUSTOMER shall return the documents immediately upon LAYHER'S request. Information provided in non-physical form – in particular digital form - shall be deleted by the CUSTOMER and their deletion shall be confirmed in writing to LAYHER.
 - 7.2 LAYHER shall retain title to the GOODS (GOODS supplied under reservation of ownership) until full payment of all amounts owed for whatever legal reason including future amounts owed or contingent amounts owed, also from contracts concluded at the same time or at a later point of time. This shall also apply in case payments are made for specifically denominated amounts owed.
 - 7.3 LAYHER may elect without detracting from other remedies which may be available to it, to continue with the agreement or to cancel it and cancel the sale of any further GOODS to the CUSTOMER and to rely on the provisions of this clause to repossess those GOODS sold and delivered by LAYHER to the CUSTOMER or to claim specific performance of all the

CUSTOMER'S obligations whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to LAYHER'S rights to claim damages.

7.4 In the event that the CUSTOMER acts contrary to the terms of the CONTRACT in any way or defaults in payment, the CUSTOMER shall deliver the GOODS to LAYHER upon receipt of notice by the CUSTOMER from LAYHER, without undue delay.

8. REPRESENTATION AND WARRANTIES

8.1 LAYHER warrants that the GOODS supplied in terms of the agreement shall be of LAYHER'S standard quality and are reasonably suitable for the purposes for which they are generally intended. In the event that defects are discovered in the GOODS supplied that were present at the time of DELIVERY, LAYHER shall within its own discretion either remedy the defect or supply defect free replacement GOODS.

8.2 The CUSTOMER bears the burden of proof that such defects in clause 8.1 above were in fact present at the time of DELIVERY. In this regard the notification in clause 6.1 above shall be *prima facie* proof as to whether the GOODS were defective at the time of DELIVERY.

8.3 Should defects be found without notification in terms of clause 6.1 above, the CUSTOMER shall bear the burden of proof to show that the defects were caused as a result of use for the DESIGNATED PURPOSE and that the GOODS were used according to the instructions by a technically qualified person, that any prescribed maintenance work and tests have been carried out and that the technical regulations for scaffolding have been complied with or adhered to, including, without limitation, for erection, planning and all relevant technical, official and/or statutory requirements for the DESIGNATED PURPOSE have been followed.

8.4 LAYHER makes no other warranty of any kind, express or implied, including without limitation, any warranty of merchantability, or non-infringement. LAYHER specifically makes no warranties as to any services or as to compliance with laws, regulations, standards and/or conventions including any related to the environment or to the packaging, labelling and/or transport of hazardous GOODS. No warranty shall apply to shipping damage, damage caused by improper installation or improper wiring, including incorrect electrical voltage, GOODS that have been modified or altered in any way, damage caused by corrosion, abrasion, or severe temperatures, or GOODS that have been subjected to improper maintenance, abuse, misuse, abnormal usage, or accident.

8.5 THE CUSTOMER WARRANTS THAT IT SHALL FULLY COMPLY WITH ALL LABEL DIRECTIONS FOR THE HANDLING, STORAGE, POSSESSION OR USE OF THE GOODS SOLD HEREUNDER AND THE CUSTOMER AGREES THAT IT SHALL INDEMNIFY AND HOLD LAYHER HARMLESS FROM ALL CLAIMS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) OF PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ANY NEGLIGENCE, RECKLESSNESS OR WILFUL MISCONDUCT ON THE PART OF THE CUSTOMER OR FROM ANY FAILURE OF CUSTOMER TO COMPLY WITH THE TERMS OF THIS WARRANTY.

8.6 Specifications, illustrations and the like remain the property of LAYHER and may only be used for the purpose specified in the agreement and must be returned upon the request of LAYHER.

8.7 WHILST LAYHER SHALL TAKE ALL REASONABLE STEPS TO ENSURE THAT THE GOODS TO BE SOLD AND DELIVERED TO THE CUSTOMER IN TERMS HEREOF ARE MANUFACTURED IN ACCORDANCE WITH THE CUSTOMER'S SPECIFICATIONS, LAYHER DOES NOT WARRANT THAT THE GOODS WILL BE FIT FOR THE SPECIFIC PURPOSE FOR WHICH THE CUSTOMER INTENDS TO USE THE GOODS, AND THE CUSTOMER ACCORDINGLY ABSOLVES LAYHER FROM ANY LIABILITY WHATSOEVER AS A RESULT OF THE SAID GOODS NOT BEING FIT FOR THE PURPOSE FOR WHICH THE CUSTOMER INTENDS TO USE THE GOODS, UNLESS THE CUSTOMER HAS SPECIFICALLY INFORMED LAYHER IN WRITING OF THE PARTICULAR PURPOSE FOR WHICH THE CUSTOMER WISHES TO ACQUIRE ANY GOODS OR THE USE TO WHICH THE CUSTOMER INTENDS TO APPLY THOSE GOODS AND LAYHER AGREES TO SUPPLY SUCH GOODS.

8.8 NO LIABILITY FOR DAMAGES WILL BE ATTRIBUTED TO LAYHER RESULTING FROM UNSUITABLE OR IMPROPER USE, IMPROPER ASSEMBLY AND IMPROPER COMMISSIONING OR HANDLING BY THE CUSTOMER OR BY THIRD PARTIES, NORMAL WEAR AND TEAR OR PREMATURE EROSION DUE TO THE NATURE OF THE MATERIAL OR THE KIND OF ITS USE, IMPROPER OR NEGLIGENT HANDLING OR STORAGE, IMPROPER MAINTENANCE, DEFECTIVE CONSTRUCTION WORKS, UNSUITABLE BUILDING GROUND, CHEMICAL, ELECTRO-CHEMICAL OR ELECTRICAL INFLUENCES UNLESS LAYHER IS RESPONSIBLE FOR SUCH INFLUENCES.

8.9 LAYHER SELLS/RENTS GOODS TO THE CUSTOMER AS IS, AND LAYHER IS NOT INVOLVED IN THE ERECTION, MODIFICATION, DISMANTLING AND/OR STABILITY OF THE GOODS IN CASE OF IMPROPER ERECTION, MODIFICATION, DISMANTLING AND/OR STABILITY PERFORMED BY THE CUSTOMER OR BY THIRD PARTIES. LAYHER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGE ARISING THERE FROM. THE SAME SHALL APPLY IN CASE THE CUSTOMER MODIFIES THE GOODS SUPPLIED WITHOUT LAYHER'S PRIOR WRITTEN CONSENT.

9. SAFETY GUIDELINES AND INSTRUCTION FOR ASSEMBLY AND USE

9.1 Copies of LAYHER'S instructions for assembly and use ("INSTRUCTIONS") are provided to the CUSTOMER with these CONDITIONS. THE INSTRUCTIONS are also available free of charge from LAYHER.

9.2 THE CUSTOMER acknowledges that it has been advised by LAYHER to refer to the INSTRUCTIONS before undertaking erection, dismantling and use of the GOODS. The INSTRUCTIONS are intended as a guide only and LAYHER does not accept any responsibility for any loss or damage that may occur in relation to the erection, dismantling and use of the GOODS at any site.

9.3 By signing these CONDITIONS the CUSTOMER acknowledges that it has been referred to the INSTRUCTIONS and agrees to comply with their contents together with all other legal requirements relating to the safe erection, dismantling and use of the GOODS.

9.4 All details or representations made in the INSTRUCTIONS or other publications shall only apply to the sole use of original LAYHER Equipment. The GOODS are designed, produced and configured for use with other original LAYHER products only and not for use with products of other manufacturers. Original LAYHER products differ in their structural design, material and production processes from the products of other manufacturers (including imitation products) and LAYHER accepts no liability for any loss, or damage suffered by the CUSTOMER in the event that the CUSTOMER chooses to mix original LAYHER products with those of other manufacturers.

9.5 THE CUSTOMER must always erect, dismantle and use the GOODS in compliance with specific structural requirements, local circumstances and the specific requirements of public authorities or the law. It is the duty of the CUSTOMER to keep informed about all technical and statutory requirements for the structural design, structural stability, application or use of the GOODS.

9.6 THE CUSTOMER is responsible for the safe erection, modification, dismantling and stability of the GOODS, the selection, type, implementation and testing of the tying materials, compliance with the technical standards and technical regulations for scaffolding, the generally accepted engineering principles for the planning, erection and dismantling of scaffolding, and for compliance with all public authority regulations and statutory provisions.

10. BREACH

10.1 In the event that the CUSTOMER:

10.1.1 Breaches any condition contained in these conditions and failing to pay any amount due and payable on due date, and having failed to rectify such breach or outstanding payment within 10 (ten) days of having been requested to do so in writing by LAYHER;

10.1.2 Suffering any civil judgment to be taken, or any attachment of a debt, seizure or detriment by third parties or entered against it, causing a notice of surrender of its estate to be published in terms of the Insolvency Act of 1936 (as amended);

10.1.3 The CUSTOMER dying or ceasing to exist;

10.1.4 The CUSTOMER'S estate being placed under an Order of provisional or final winding up, or provisional or final judicial management as the case may be, then, and in that event, LAYHER shall, without retracting from other remedies which may be available to it, be entitled to cancel this agreement and cancel the sale of any GOODS to the CUSTOMER without notice to the CUSTOMER and to rely on the provisions of this clause to repossess those GOODS sold and delivered by LAYHER to the CUSTOMER or to claim specific performance of all the CUSTOMER'S obligations whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to LAYHER'S rights to claim damages.

10.2 Then LAYHER shall be entitled to withdraw from the contract in case of any of clauses 10.1.1 to 10.1.4 occurring and to request the immediate return of the GOODS delivered pursuant to clause 5 herein.

10.3 The CUSTOMER shall notify LAYHER immediately in case of any of clauses 10.1.1 to 10.1.4 occurring and shall provide LAYHER with all information and documents required for LAYHER'S assertion of its rights. The CUSTOMER shall be liable to LAYHER for the judicial and extra-judicial costs of any necessary action pursuant to third-party action against execution.

11. REMEDIES

The CUSTOMER'S exclusive remedy for shortage of the GOODS, damaged or defective GOODS (whether or not occurring as a result of LAYHER'S alleged negligence) or any other cause of action arising out of the contract, including breach of warranty, is expressly limited to replacement of nonconforming GOODS or payment of an amount not to exceed the purchase price of the GOODS for which damages are claimed, at LAYHER'S option. The CUSTOMER shall have no right to setoff, to withhold payment or to make a reduction in price. The CUSTOMER'S remedy of replacement or refund is available only if non-conformance was not caused by the CUSTOMER or by accident, fire or other hazard.

12. LIMITATION OF LIABILITY

12.1 IN NO EVENT SHALL LAYHER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING PUNITIVE DAMAGES OR ATTORNEYS' FEES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF THE CUSTOMER OR ITS CLIENTS OR THE CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF BUSINESS, GOODWILL, PROFITS, LOSS OF MONEY OR USE OF GOODS OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, IN DELICT OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THE CONTRACT, EXCEPT IN THE CASE OF PERSONAL INJURY OR PROPERTY DAMAGE WHERE AND ONLY TO THE EXTENT THAT APPLICABLE

LAW REQUIRES SUCH LIABILITY. TO THE EXTENT THE CUSTOMER INCORPORATES OR CAUSES OTHERS TO INCORPORATE THE GOODS IN ITS OWN GOODS OR THE GOODS OF ANY THIRD PARTY, LAYHER SHALL NOT BE LIABLE FOR THIRD PARTY CLAIMS FOR INFRINGEMENT OF LETTERS PATENT, REGISTERED DESIGN, TRADEMARK OR COPYRIGHT RESULTING FROM SUCH INCORPORATION AND BASED UPON THE USE OF THE GOODS OR THE MANUFACTURE, USE, SALE OR OFFER FOR SALE OF ANY GOODS CONTAINING SUCH GOODS, EXCEPT AS SUCH LIABILITY FOR THIRD PARTY CLAIMS FOR INFRINGEMENT IS EXPRESSLY REQUIRED BY APPLICABLE LAW AND NOT WAIVABLE BY THE CUSTOMER. THE CUSTOMER ASSUMES RESPONSIBILITY FOR ALL PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM HANDLING, POSSESSION, USE, RESALE OR DISPOSAL OF THE GOODS.

12.2 ANY ACTION BY THE CUSTOMER FOR BREACH OF THE CONTRACT BY LAYHER OR ANY OTHER CAUSES OF ACTION OF THE CUSTOMER EXPRESSLY ALLOWED UNDER THE CONTRACT MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

13. INDEMNITY

13.1 THE CUSTOMER INDEMNIFIES AND HOLDS HARMLESS AND DEFENDS LAYHER AND LAYHER'S DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, AND THE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF ANY LAYHER'S PARENT, SUBSIDIARY OR RELATED COMPANY (THE "LAYHER INDEMNITIES") FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, DAMAGES, COSTS, FEES AND EXPENSES ARISING OUT OF THE DEATH OR INJURY TO PERSON OR DAMAGE TO PROPERTY RESULTING FROM THE SALE, MARKETING OR USE OF THE GOODS BY THE CUSTOMER, EXCEPT THAT SUCH CLAIMS, SUITS, LOSSES, DAMAGES, COSTS, FEES OR EXPENSES ARISE OR RESULT FROM ANY NEGLIGENT OR WRONGFUL ACT OR OMISSION OF LAYHER.

13.2 THE CUSTOMER INDEMNIFIES AND HOLDS HARMLESS AND DEFENDS LAYHER AGAINST ANY LIABILITY WHICH RESULTS FROM THE USE OF ANY MIXED GOODS.

13.3 THE CUSTOMER INDEMNIFIES AND HOLDS HARMLESS AND DEFENDS LAYHER IN THE EVENT THAT THE GOODS ARE NOT ERECTED AND DISMANTLED IN A PROPER MANNER AND NOT BY THOSE PERSONS HAVING THE APPROPRIATE QUALIFICATIONS AND EXPERIENCE TO ERECT AND DISMANTLE THE GOODS AND IN ACCORDANCE WITH ANY INSTRUCTIONS GIVEN OUT BY LAYHER

14. SURETY

The person who signs this AGREEMENT ("the signatory") does hereby interpose and bind himself in favour of LAYHER, as surety for and co-principal debtor in whole with the CUSTOMER, for the due payment over every sum of money, which the CUSTOMER owes to LAYHER in respect of this AGREEMENT. The signatory hereby renounces the benefits of the legal exceptions of excussion, division, cession of account, no value received, and revision of accounts, the meaning whereof the signatory declares himself to be fully acquainted.

15. CERTIFICATE OF INDEBTEDNESS

A certificate under the hand of the Managing Director of LAYHER as to the existence and the amount of the CUSTOMER'S indebtedness to LAYHER, as well as the amount of interest accrued thereon, and as to any other fact, matter or thing relating to the CUSTOMER'S indebtedness to LAYHER, shall be accepted as sufficient (*prima facie*) proof of the contents and correctness thereof and of the amount of the CUSTOMER'S indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings against the CUSTOMER in any competent Court and shall be valid and constitute a liquid document for such purposes. Furthermore, it shall not be necessary to prove the appointment of the person signing such a certificate and it shall be deemed to be sufficient particularly for the purpose of any action or any other proceeding instituted by LAYHER against the CUSTOMER.

16. JURISDICTION & LEGAL ACTION

16.1 The parties do hereby consent that the Magistrate's Court shall have jurisdiction to determine any action or proceedings which may arise under or in connection with this agreement.

16.2 This agreement, as well as the relationship between LAYHER and the CUSTOMER is governed by the Law of the Republic of South Africa.

16.3 In the event of LAYHER instructing attorneys in regard to any breach of the CUSTOMER, of the conditions of this agreement, then the CUSTOMER shall pay all the costs on the scale between Attorney and Client, including any costs incidental to such action instituted against the CUSTOMER.

17. NOTICE AND DOMICILIA

17.1 Any notices to be given to the parties in terms of this agreement shall be in writing and delivered by hand during ordinary business hours or posted by pre-paid registered post to the addresses mentioned hereunder, which addresses the parties choose as their *domicilium citandi et executandi* for all purposes arising out of this agreement. Either party may choose by written notice to the other.

17.2 LAYHER: 122 Koornhof Road, Meadowdale, Germiston, 1609.

17.3 THE CUSTOMER: The address as reflected in paragraph 12 of the particulars of the CUSTOMER to which these terms and conditions are attached.

18. NON VARIATION & SEVERABILITY

18.1 This agreement constitutes the entire agreement between the parties and no representation by either of the parties or their agents, whether made prior or subsequent to the signing of this agreement, shall be binding on either of the parties unless done in writing and signed by both parties hereto.

18.2 If any of the provisions of this agreement are held to be invalid, the validity of the remainder of this agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this agreement did not contain the invalid term and to that end the provisions of this agreement and the application thereof are hereby declared to be severable.

18.3 No variation, alteration or consensual cancellation of this agreement, or any of the terms thereof, shall be of any force or effect, unless done in writing and signed by the parties hereto.

18.4 No waiver or abandonment by either party of any of its rights in terms of this agreement shall be binding on that party, unless such waiver or abandonment is in writing and signed by the waiving party.

18.5 No indulgence, extension of time, relaxation or latitude which any party may show, grant or allow to another shall constitute a waiver by a party of any such party's rights and such party shall not hereby be prejudiced or estopped from exercising any of its rights against any party which may have arisen in the past or which might arise in the future. Unless the context indicates otherwise, the rights and obligations of any party arising from this agreement shall devolve upon and bind its successors-in-title.

18.6 The parties agree that they will do all things and sign all documents necessary to give effect to the terms of this agreement and to all transactions deriving there from.

**SPECIFIC TERMS AND CONDITIONS OF SALE AND DELIVERY OF
LAYHER (PTY) LTD**

What follows herein is the specific terms and conditions of sale and delivery of LAYHER (PTY) LTD. Where conflict arises between the content of these terms and conditions and the CONDITIONS, these terms and conditions shall prevail.

1. TERMS OF CONTRACT

- 1.1 All amounts due in terms of this agreement shall be payable by the CUSTOMER to LAYHER within 30 days from the date of statement and unless otherwise agreed, payment shall be made in full without deduction or set off in respect of GOODS sold in terms of the agreement.
- 1.2 LAYHER reserves the right to extend credit facilities to CUSTOMERS from time to time without any obligation to do so notwithstanding having extended such facilities in the past to the CUSTOMER, and may require any security it deems necessary prior to the granting or reinstatement of any credit facility.
- 1.3 Where LAYHER has agreed to supply GOODS on credit, payment in full shall be due within 30 (thirty) days from date of delivery to the CUSTOMER.
- 1.4 Credit facilities shall only be afforded to CUSTOMERS after completion of the necessary documents required by LAYHER and having provided LAYHER with the required guarantees/suretyships.
- 1.5 LAYHER reserves its right to, at any time and after having provided the CUSTOMER with reasonable notice, and reasonable notice to be deemed to be 30 (Thirty) days, advise that credit facilities to a CUSTOMER by LAYHER will be terminated, and LAYHER will be under no obligation whatsoever to provide any reasons for such termination.
- 1.6 It is specifically agreed and recorded that at all material times, it shall be the sole prerogative of LAYHER to decide to which CUSTOMERS it would be willing to extend credit facilities, it specifically being understood by CUSTOMERS that any differentiation shall not be deemed to be discriminatory, but shall be deemed to form part of LAYHER'S internal credit risk limitation policy.

2. RESERVATION OF OWNERSHIP

- 2.1 GOODS sold and delivered are subject to reservation of ownership pursuant to clause 7.1 of the CONDITIONS. When the GOODS delivered are processed, combined or mixed with other GOODS by the CUSTOMER, LAYHER shall have co-ownership of the new GOODS thus created at the invoiced value of the GOODS delivered by LAYHER and processed in proportion to the invoiced value of the other GOODS processed by the CUSTOMER. If LAYHER'S ownership becomes extinct due to combination or mixing, the CUSTOMER hereby transfers its rights of ownership of the new stock or GOODS to LAYHER in the amount of the invoiced value of the GOODS subject to reservation of ownership and shall store such GOODS free of charge for LAYHER. The right of ownership arising thereafter shall be deemed GOODS subject to reservation of ownership pursuant to clause 7.1 of the CONDITIONS above.
- 2.2 The CUSTOMER shall be entitled to sell the GOODS supplied only in the ordinary course of business, subject to its standard terms and conditions and as long as the CUSTOMER has not fallen into arrears, provided that the amounts owed from the resale of the GOODS pursuant to clauses 2.2 to 2.4 herein devolve on LAYHER. The CUSTOMER shall not be entitled to dispose of the GOODS subject to ownership in any other way.
- 2.3 The CUSTOMER herewith assigns the amounts owed to it from the resale of the GOODS subject to reservation of ownership to LAYHER. Such amounts owed shall serve LAYHER as a security to the same extent as the GOODS under reservation of ownership. If the CUSTOMER sells the GOODS subject to reservation of ownership together with other GOODS not sold to it by LAYHER, the CUSTOMER shall assign the amounts owed to it from the resale, to LAYHER only in such amount as corresponds to the resale value of the GOODS delivered by LAYHER. When the CUSTOMER sells GOODS in which LAYHER has co-ownership pursuant to clause 2.1 herein, the amounts owed to it shall be assigned in the amount of LAYHER'S proportion of co-ownership.
- 2.4 If the CUSTOMER includes the amounts owed to it from the resale of the GOODS under reservation of ownership into a current account relationship with its own customer, the full amount of the current account of the amounts owed to it shall be assigned to LAYHER. After balancing of the account, the confirmed balance shall replace such amounts owed by it and this balance shall be deemed assigned up to the amount of the original current account amounts owed by it.
- 2.5 The CUSTOMER shall be entitled to collect the amounts due to it from the resale of the GOODS until revoked by LAYHER. LAYHER may revoke such entitlement at any time. The CUSTOMER shall not assign the amounts owed to it - this shall also apply to the sale of accounts receivable to factoring banks - without LAYHER'S prior written permission. Upon LAYHER'S request, the CUSTOMER shall be obliged to notify its own customers of such assignment, unless LAYHER itself decides to do so, and to provide the information and documents required for collection to LAYHER.
- 2.6 In case of payment by cheque, the ownership of the cheque shall pass to LAYHER as soon as the CUSTOMER acquires ownership of the cheque. In case of payment by bill of exchange, the CUSTOMER shall assign its rights arising there from in advance to LAYHER. The handing over of such documents shall be replaced by the CUSTOMER'S keeping them in safe custody for LAYHER or, in case the CUSTOMER does not obtain immediate possession of such documents, by the CUSTOMER'S hereby assigning its claim for return against third parties in advance to LAYHER. The CUSTOMER shall hand over such documents bearing the CUSTOMER'S endorsement immediately to LAYHER.

**SPECIFIC TERMS AND CONDITIONS OF RENT OF
LAYHER (PTY) LTD**

What follows herein is the specific terms and conditions of rent of LAYHER (PTY) LTD. Where conflict arises between the content of these terms and conditions and the CONDITIONS, these terms and conditions shall prevail.

1. TERMS OF CONTRACT

- 1.1 This rental contract grants to the CUSTOMER the right to use the GOODS rented from LAYHER for the DURATION for the DESIGNATED PURPOSE in the Republic of South Africa.
- 1.2 Rental offers are subject to change and are not binding on LAYHER. They are subject to the proviso that the corresponding GOODS are available for the DESIGNATED PURPOSE in the Republic of South Africa.
- 1.3 Unless there is any agreement or confirmation to the contrary, rental contracts are concluded for a minimum period of 20 weeks and LAYHER'S rental prices refer to a rental period of 4 weeks. Any 4 week period or part thereof shall be charged in full.
- 1.4 The rental prices shall be calculated from the date of delivery or collection and the day of return of the GOODS. There will be no reduction on the rental prices for Weekends, Public Holidays, inclement weather or for any other reason beyond LAYHER'S control including (without limitation) strikes, lockouts, cessation of labour, transport delays and Government interference or control.
- 1.5 All subsequent rental periods shall be invoiced in advance for period 4 weeks. Rental invoices shall be payable within 10 days from the date of invoice.
- 1.6 Rental is payable monthly in arrears. For this purpose the CUSTOMER shall complete the credit application contained in section 21 above for which the provisions of clause 4 of the CONDITIONS shall apply.
- 1.7 Our rental prices are valid for the DURATION, which shall apply and be subject to value-added tax at the applicable statutory rate.
- 1.8 The CUSTOMER shall bear the costs of transport, packaging and insurance (in terms of clause 5.14) of the GOODS and other goods to the place of DELIVERY.

2. CUSTOMER'S DUTIES

- 2.1 The CUSTOMER shall be obliged to carry out acceptance of the GOODS. The CUSTOMER shall confirm to LAYHER in writing that the CUSTOMER has taken over the GOODS properly and that they are fully functional without restriction, e.g. on a delivery note, consignment note or confirmation of receipt. The GOODS shall be inspected in terms of clause 6.1 of the CONDITIONS above and the any attempted return of the GOODS or claims for defects shall be governed by that clause.
- 2.2 The CUSTOMER shall be obliged to comply with the INSTRUCTIONS as set out in clause 9 of the CONDITIONS in respect of the GOODS rented from LAYHER and to carry out any necessary registration or obtain any approvals for the use of the GOODS.
- 2.3 In addition to clause 9 of the CONDITIONS the CUSTOMER will at all times during the period of hire:
 - 2.3.1 keep the GOODS in its custody and control;
 - 2.3.2 ensure that the GOODS are erected and dismantled in a proper manner and only by those persons having the appropriate qualifications and experience to erect and dismantle the GOODS and in accordance with any instructions given out by LAYHER;

- 2.3.3 ensure that the GOODS are used ONLY within its designed load limits and other requirements. The CUSTOMER warrants that he is aware of all such limits and requirements;
- 2.3.4 take proper care of the GOODS and ensure that they are stored safely and properly;
- 2.3.5 retain possession and control of the GOODS at all times and not sell, loan, encumber or part with possession of it.
- 2.4 A CUSTOMER who has hired the GOODS from LAYHER shall be permitted to hire or lease those GOODS to a third party provided it first obtains the prior written consent of LAYHER. In the event that the GOODS are hired or leased to a third party, or the GOODS are moved to site which is not under the control of the CUSTOMER, the CUSTOMER must, on demand, notify LAYHER of the location and place of usage of the GOODS and the contact of the site manager. In such cases, the CUSTOMER shall also, if demanded by LAYHER, obtain express written confirmation from the site manager that LAYHER is permitted to enter the premises for the purposes of inspection and/or repossession of the GOODS in the event of non-payment by the CUSTOMER or any other breach of these terms and conditions and must ensure that LAYHER has unimpeded access to any such site at any time on reasonable notice.

3. WARRANTY

In the event of any defects in the GOODS at the time of handover, LAYHER shall provide warranty for material deficiencies by either repairing the defects or supplying defect-free replacement GOODS. The CUSTOMER shall be entitled to a proportionate reduction in the rental price if after two attempts at repairing the defects or supplying replacement GOODS fails. LAYHER shall be entitled to supply technically and economically equivalent replacement GOODS to the CUSTOMER.

4. RIGHTS TO RETURN GOODS, REMEDIATION OF DEFECTS

- 4.1 Upon the termination of the contract for whatever reason, the CUSTOMER shall be obliged to return the GOODS, during LAYHER'S normal working hours, to its address stipulated in the CONDITIONS, in full, free from any contamination, insured and at the CUSTOMER'S own cost and risk.
- 4.2 The CUSTOMER undertakes to return all GOODS with a delivery note quoting LAYHER'S delivery data. The CUSTOMER shall return the GOODS in such a way that they can be unloaded by LAYHER by a fork-lift truck without any additional work and/or expense and/or transport on LAYHER premises. If this is not done, the CUSTOMER shall reimburse LAYHER for the additional work and/or expense and/or transport. The CUSTOMER shall be entitled to prove to LAYHER that LAYHER has not incurred any such extra expense, or that any extra expense was less than the amount charged by LAYHER.
- 4.3 Any deterioration of the GOODS at the end of the rental period, or any deviation from the condition when delivered, shall be at the CUSTOMER'S expense unless they are due to the DESIGNATED PURPOSE or would have occurred through the DESIGNATED PURPOSE. The CUSTOMER shall bear any costs of cleaning or repair. Insofar as LAYHER considers that parts cannot be repaired or the repair cost exceeds the net list price, LAYHER shall be entitled to refuse to accept the return of damaged GOODS, and instead to demand compensation for the amount of the net list price. The CUSTOMER shall be entitled to prove to LAYHER that LAYHER has not incurred any such loss, or that any loss was less than the amount charged. This shall also apply if the CUSTOMER has made technical changes to the GOODS.
- 4.4 If any GOODS no longer exist at the time when they are to be returned or taken back, or if they are defective as defined in clause 4.3, LAYHER shall invoice the CUSTOMER for these GOODS at the respective net list price. The CUSTOMER shall be entitled to prove to LAYHER that LAYHER has not incurred any such loss, or that any loss was less than the amount charged.
- 4.5 Any necessary cleaning or repair costs shall be charged to the CUSTOMER at reasonable and customary costs.
- 4.6 LAYHER shall only take back the GOODS which were provided to the CUSTOMER under the respective rental contract.
- 4.7 If the CUSTOMER, as the renting party, does not return the GOODS which are the subject of the contract after the expiry or termination of the rental period, or if the CUSTOMER does so late, LAYHER shall be entitled to demand a usage charge equivalent to the agreed rental price as compensation for the time for which LAYHER is deprived of the GOODS. The right to claim compensation for further damage or loss is reserved.
- 4.8 Any continued use of the GOODS shall not lead to an extension of the rental contract. LAYHER herewith objects in advance to any implicit extension of the rental contract. For the duration of any continued use, the valid rental price shall be charged as compensation for use. This stipulation of compensation for use is customary in the location and reasonable.

5. PREMATURE TERMINATION

- 5.1 In the event of an increase in the rental prices in terms of clause 1.6 above, the CUSTOMER shall be entitled to an extraordinary right of termination in writing without delay.
- 5.2 Should the CUSTOMER be more than 7 days in arrears with its payment obligations, LAYHER shall be entitled to revoke all rental contracts with the CUSTOMER immediately on notice and to enforce the immediate handover of all GOODS to LAYHER. In this case the CUSTOMER shall not be entitled to any right of retention.
- 5.3 If the CUSTOMER fails to comply with obligations or does not do so in time or in full, LAYHER shall be entitled to terminate the contract on notice. Without prejudice to any further claims, the CUSTOMER shall remain obliged to pay the rental price for the remaining term of the rental contract or until the next possible termination date.
- 5.4 If the CUSTOMER elects to terminate the agreement of rent in accordance with this clause it will be required to perform its obligations regarding the return of the GOODS as contained in clause 7 below.

6. RETURN OF RENTAL GOODS

- 6.1 The CUSTOMER will be responsible for returning of all GOODS to LAYHER, and for providing LAYHER with a delivery note in which all the GOODS returned are itemised.
- 6.2 Returns of the GOODS must be made during LAYHER'S normal business hours and to LAYHER'S depot in 122 Koornhof Road, Meadowdale, Germiston, 1609 unless prior arrangements have been agreed in writing with LAYHER. The CUSTOMER must return the GOODS in a clean and usable condition.
- 6.3 LAYHER shall be entitled to take immediate possession of and collect the GOODS rented by the CUSTOMER either in whole or in part at LAYHER'S discretion. In addition to that in this case, either LAYHER or any third parties commissioned by LAYHER shall be entitled to enter the CUSTOMER'S property or its business premises in order to collect the GOODS rented by the CUSTOMER. The same shall apply if the GOODS need to be collected from the CUSTOMER'S customers.
- 6.4 Upon return of the GOODS, whether by collection by LAYHER or delivery of the GOODS by the CUSTOMER to the premises of LAYHER, LAYHER will check the quantity and condition of the GOODS at it premises. If LAYHER finds any discrepancy with the quantity and condition of the GOODS advised by the CUSTOMER when returning the GOODS, it will arrange for an independent party to check the quantity and condition of the GOODS. The independent party's assessment of the GOODS returned and its condition at the time of return.
- 6.5 When the CUSTOMER returns the GOODS in a worse condition than can be accounted for by fair wear and tear, LAYHER may charge the CUSTOMER for cleaning, reconditioning, renewing or replacing the GOODS as it considers necessary in its sole discretion.
- 6.6 If the CUSTOMER fails to return the GOODS to LAYHER in accordance with this clause, or LAYHER receives notice that the GOODS has been lost, of the CUSTOMER is unable to produce any item after reasonable notice from LAYHER, the GOODS will be treated as "LOST GOODS". LAYHER may, at its sole discretion invoice the CUSTOMER for the LOST GOODS for a sum equal to the standard sale price of the LOST GOODS at the time that of the preparation of the invoice for the LOST GOODS. The rental charge for the LOST GOODS will continue to until the CUSTOMER pays the charge for the LOST GOODS.

7. PURCHASE

- 7.1 If the CUSTOMER decides to purchase the GOODS when the rental contract ends, the CUSTOMER shall be granted a discount on the purchase price in keeping with customary market practices. The obligations arising from the rental contract shall remain in force until the purchase price of the GOOD S has been paid in full.
- 7.2 If at the end of the rental period, the sale invoice is not paid within the period stipulated by LAYHER, then after the expiry of this period, the period of rental will be deemed to continue.