

Terms & Conditions

Waco Africa (Proprietary) Limited (Registration Number: 2005/038286/07) t/a Sanitech

Website: www.sanitech.co.za

1 INTERPRETATION

1.1 In these terms and conditions the following words have the following meanings:

“Contract” means a contract which incorporates these terms and conditions and made between the Customer and the Supplier for the hire of Hire Goods;

“Customer” means the person, firm, company or other organization hiring Hire Goods;

“Deposit” means any advance payment required by the Supplier in relation to the Hire Goods which is to be held as security by the Supplier;

“Force Majeure” means any event outside a party’s reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events;

“Hire Goods” means the mobile toilets together with any accessories thereto specified in a Contract which are hired to the Customer;

“Hire Period” means the period commencing when the Customer holds the Hire Goods on hire and ending upon the happening of any of the following events: (i) the physical return of the Hire Goods by the Customer into the Supplier’s possession; or (ii) the physical repossession or collection of Hire Goods by the Supplier;

“Liability” means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;

“Rental” means the Supplier’s charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period;

“Supplier” means Waco Africa (Proprietary) Limited t/a Sanitech and will include its employees, servants, agents and/or duly authorized representatives;

“Services” means the services and/or work (if any) to be performed by the Supplier for the Customer in conjunction with the hire of Hire Goods including any delivery and/or collection service for the Hire Goods and the servicing of the mobile toilets.

2 BASIS OF CONTRACT

Hire Goods are hired subject to them being available for hire to the Customer at the time required by the Customer. The Supplier will not be liable for any loss suffered by the Customer as a result of the Hire Goods being unavailable for hire where the Hire Goods are unavailable due to circumstances beyond the Supplier’s control.

3 PAYMENT

3.1 The amount of any Deposit, Rental and/or charges for any Services shall be as quoted to the Customer or otherwise as shown in the Supplier’s current price list from time to time. Where a Deposit is required for the Hire Goods it must be paid in advance of the Customer hiring the Hire Goods. The Supplier may also require an initial payment on account of the Rental in advance of the Customer hiring the Hire Goods, alternatively, the Supplier in its sole discretion may require payment in full of the entire Rental in advance of the Customer hiring the Goods.

3.2 The Customer shall pay the Rental, charges for any Services and/or any other sums payable under the contract to the Supplier at the time and in the manner agreed. The Supplier’s prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable.

3.3 Payments by the Customer on time under the Contract are an essential condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash or cleared funds in respect of the full amount outstanding.

3.4 If the Customer fails to make any payment in full on the due date the Supplier may charge the Customer interest (both before and after judgment) on the amount unpaid at the rate of 4% above the prime rate from time to time of the Supplier’s bank. Such interest shall be compounded monthly.

3.5 The Customer shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

3.6 The Supplier may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend the Contract for hire of the Hire Goods and/or the provision of Services if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.

4 RISK OWNERSHIP AND INSURANCE

4.1 Risk in the Hire Goods and any Products will pass immediately to the Customer when they leave the physical possession or control of the Supplier.

4.2 Risk in the Hire Goods will not pass back to the Supplier from the Customer until the Hire Goods are back in the physical possession of the Supplier. This shall apply even if the Supplier has agreed to cease charging the Rental.

4.3 Ownership of the Hire Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer.

4.4 The Customer must not deal with the ownership or any interest in the Hire Goods. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending. 4.5 The Supplier may provide reasonably priced insurance in respect of the Hire Goods at additional cost to the Rental. Alternatively the Supplier may require the Customer to insure the Hire Goods on such reasonable terms and for such reasonable risks as the Supplier may specify. The proceeds of any such insurance shall be held by the Customer in trust for the Supplier and be paid to the Supplier on demand. The Customer must not compromise any claim in respect of the Hire Goods and/or any associated insurance without the Supplier's written consent.

5 DELIVERY, COLLECTION AND SERVICES

5.1 If the Supplier delivers or collects the Hire Goods to and/or from the Customer it will do so at its standard delivery cost and such delivery and/or collection will form part of the Services.

5.2 Where the Supplier provides Services the persons performing the Services are servants of the Customer and once the Customer instructs such person they are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice except to the extent that the persons performing the Services are negligent.

5.3 The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to power supplies and utilities for the Supplier's employees, subcontractors and/or agents to allow them to carry out the Services. The Customer will ensure that the site where the Services are to be performed is where necessary, cleared and prepared before the Services are due to commence.

5.4 If any Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation except where the Customer is acting as a consumer and the delay is due to a Force Majeure event.

6 CARE OF HIRE GOODS

6.1 The Customer shall:-

6.1.1 not remove any labels from and/or interfere with the Hire Goods, their working mechanisms or any other parts of them and take reasonable care of the Hire Goods and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer;

6.1.2 notify the Supplier immediately after any breakdown, loss and/or damage to the Hire Goods;

6.1.3 take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;

6.1.4 notify the Supplier of any change of its address and upon the Supplier's request provide details of the location of the Hire Goods; 6.1.5 permit the Supplier at all reasonable times to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated; 6.1.6 keep the Hire Goods at all times in its possession and control and not to remove the Hire Goods from the site without the prior written consent of the Supplier;

6.1.7 not do or omit to do any thing which will or may be deemed to invalidate any policy of insurance related to the Hire Goods which is notified to the Customer;

6.1.8 not continue to use Hire Goods where they have been damaged and will notify the Supplier immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person; and

6.2 The Hire Goods must be returned by the Customer in good working order and condition (fair wear and tear excepted) and in a clean condition.

7 BREAKDOWN

7.1 Allowance will be made in relation to the Rental to the Customer for any nonuse of the Hire Goods due to breakdown caused by the development of an inherent fault and/or fair wear and tear on condition that the Customer informs the Supplier in writing as soon as practicable of the breakdown.

7.2 The Customer shall be responsible for all expenses, loss (including loss of Rental) and/or damage suffered by the Supplier arising from any breakdown of the Hire Goods due to the Customer's negligence, misdirection, misuse of the Hire Goods and/or as a result of the Customer failing to comply with any of its obligations in terms of these terms and conditions.

7.3 The Supplier will at its own cost carry out all routine maintenance and repairs to the Hire Goods during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Hire Goods. The Customer will be responsible for the cost of all repairs necessary to Hire Goods during the Hire Period which arise otherwise than as a result of fair wear and tear, an inherent fault and/or the negligence of the Supplier while carrying out routine maintenance

and/or repairs.

7.4 The Customer must not repair or attempt to repair the Hire Goods unless authorised to do so in writing by the Supplier.

8 LOSS OR DAMAGE TO THE HIRE GOODS

8.1 If the Hire Goods are returned in damaged, unclean and/or defective state except where due to an inherent fault in the Hire Goods the Customer shall be liable to pay the Supplier for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire and to pay the Rental, in accordance with the provisions of clause 8.3, until such repairs and/or cleaning have been completed.

8.2 The Customer will pay to the Supplier the replacement cost of any Hire Goods which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to the Supplier under any policy of insurance taken out in accordance with these conditions.

8.3 The Customer shall pay the Rental for the Hire Goods up to and including the date it notifies the Supplier that the Hire Goods have been lost, stolen and/or damaged beyond economic repair. From that date until the Supplier has replaced such Hire Goods the Customer shall pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages being equal to two thirds of the Rental that would have applied for such Hire Goods for that period. The Supplier shall use its reasonable commercial endeavours to purchase replacements for such Hire Goods as quickly as possible using the monies paid under clause 8.2 above.

8.4 Notwithstanding the above, the Customer shall not be liable for any cost of cleaning or repair due to fair wear and tear, in the event that the Customer has paid the "Damage Waiver" fee. The Customer shall however remain liable for any other damages as set out above.

9 TERMINATION BY NOTICE

9.1 If the Hire Period has a fixed duration, subject to the provisions of Section 10 neither the Customer nor the Supplier shall be entitled to terminate the Contract before the expiry of that fixed period unless agreed with the other party in writing.

9.2 If the Hire Period does not have a fixed duration either of the Customer or the Supplier is entitled to terminate the Contract upon giving to the other party any agreed period of notice.

9.3 If no period of notice has been agreed or specified in writing the Customer may terminate the Hire Period by the physical return of the Hire Goods to the Supplier and the Supplier shall be entitled to terminate the hire of the Hire Goods by giving not less than 14 days' notice to the Customer.

10 DEFAULT

10.1 If the Customer:-

10.1.1 fails to make any payment to the Supplier when due;

10.1.2 breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

10.1.3 persistently breaches the terms of the Contract;

10.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

10.1.5 pledges, charges or creates any form of security over any Hire Goods, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;

10.1.6 being a company, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, any attachment order is made against the Customer, any distress, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;

10.1.7 appears reasonably to the Supplier due to the Customer's credit rating to be financially unable to meet its obligations under the Contract; and/or

10.1.8 appears reasonably to the Supplier to be about to suffer any of the above events; then the Supplier shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 10.2 below.

10.2 If any of the events set out in clause 10.1 above occurs in relation to the Customer then:-

10.2.1 the Supplier may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Hire Goods owned by the Supplier may be and repossess any Hire Goods;

10.2.2 the Supplier may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with the Customer;

10.2.3 the Supplier may immediately cancel, terminate and/or suspend the Contract and/or any other contract with the Customer; and/or

10.2.4 all monies owed by the Customer to the Supplier shall immediately become due and payable.

10.3 Any repossession of the Hire Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach which occurred prior to repossession of the Hire Goods.

10.4 Upon termination of the Contract the Customer shall immediately:

10.4.1 return the Hire Goods to the Supplier or make the Hire Goods available for collection by the Supplier as requested by the Supplier; and

10.4.2 pay to the Supplier all arrear Rentals, Charges for any Services and/or any other sums payable under the Contract.

Gauteng

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11 LIMITATIONS OF LIABILITY

11.1 All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.

11.2 If the Supplier is found to be liable in respect of any loss or damage to the Customer's property the extent of the Supplier's Liability will be limited to the retail cost of replacement of the damaged property.

11.3 Any defective Hire Goods must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any Liability for defective Hire Goods.

11.4 The Supplier shall have no Liability to the Customer if any monies due in respect of the Hire Goods and/or the Services has not been paid in full by the due date for payment.

11.5 The Supplier shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Hire Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.

11.6 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer.

11.7 The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.

11.8 The Supplier shall have no Liability to the Customer for any:-

11.8.1 consequential losses (including loss of profits and/or damage to goodwill);

11.8.2 economic and/or other similar losses;

11.8.3 special damages and indirect losses; and/or

11.8.4 business interruption, loss of business, contracts and/or opportunity.

11.9 The Supplier's total Liability to the Customer under and/or arising in relation to any Contract shall not exceed 2 times the amount of the Rental and charges for Services (if any) under that Contract or the sum of R10,000.00 (ten thousand Rand) whichever is the higher. To the extent that any Liability of the Supplier to the Customer would be met by any insurance of the Supplier then the Liability of the Supplier shall be reduced to the extent that such Liability is met by such insurance.

11.10 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

11.10.1 Liability for breach of contract;

11.10.2 Liability in delict (including negligence); and

11.10.3 Liability for breach of statutory and/or common law duty; except clause 11.9 above which shall apply once only in respect of all the said types of Liability.

12 GENERAL

12.1 Upon termination of the Contract the provisions of clauses 3.2, 3.4, 3.5, 8.1, 8.2, 8.3 and Section 6 shall continue in full force and effect.

12.2 Each hire of an item of Hire Goods shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Goods.

12.3 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.

12.4 The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Supplier and arising from or due to any breach of contract, any negligent or wrongful act and/or omission and/or any breach of statutory duty by the Customer.

12.5 No waiver by the Supplier of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

12.6 The Supplier shall have no Liability to the Customer for any delay and/or non performance of a Contract to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

12.7 All third party rights are excluded and no third parties shall have any rights to enforce the Contract. This Contract is governed by and interpreted in accordance with South African law and the parties agree to submit to the non-exclusive jurisdiction of the South African courts.

The undersigned.....(full names) Gauteng
of.....(address) Unit 9
.....(tel.), hereby binds him/herself as surety for and co-principal debtor in solidum with the Customer New Business Park
unto and in favour of the Supplier for the due fulfillment by the Customer of all of its obligations in terms of the Contract; Jet Park, 1469
renounces all benefits from the legal exceptions in connection with suretyship, the meaning and effect which are fully Halfway House, 1685
understood; warrants that he/she is authorised to legally bind the person he/she purports to present. Tel: 011 823 6060
Fax: 011 823 6066\64

Signed at..... on this day of 20____.
..... Please print initials and surname.

for :
Customer

Surety