



## **Alpha Harvest Terms And Conditions:**

**Gender and Singular/Plural Terms:** References to any gender include the other genders, and, to the extent required by the context, the singular includes the plural and vice versa.

**Price / Escalation:** Equipment hired and any services provided by Apha Harvest will be charged at Apha Harvest's ruling price on the date of delivery except where otherwise specified in a written quotation from Apha Harvest or an order from the Customer. Apha Harvest may increase the hire charge in respect of any equipment which is out on hire at the time of Apha Harvest's general price increase but, in this case, Apha Harvest will give the Customer sufficient written notice of such increase to allow the Customer to cancel the hire and return the equipment before the increase takes effect.

**Specifications and Use of Equipment:** It is specifically recorded that Apha Harvest is a rental business in which equipment is hired in accordance with the customer's request. Any advice given by Apha Harvest, irrespective of the nature thereof, cannot be regarded as expert advice. The customer is responsible for ensuring that the equipment hired is suitable for the purpose for which it is used. Instructions on the use of the equipment must be strictly followed. The customer indemnifies Apha Harvest against and holds harmless from any loss or damage which may be caused to any property or person as a result of the customer's failure, or partial failure, to fulfill any responsibility or obligation of the customer in terms hereof. Only the specified fuel mixtures and additives may be used in the equipment, and oil and lubricant levels must be maintained at all times. If the incorrect fuel mixture or additives are used or if the oil and lubricant levels are not maintained, the customer will be liable for any damage caused as a result, and Apha Harvest will be entitled to claim for such damage.

**Warning:** The equipment hired predominantly comprises moving parts and of its very nature may cause serious injury or death if not correctly used. It is therefore imperative that the operation manual, specific instructions, or guide as provided for by the manufacturer or Apha Harvest be strictly followed and adhered to. It is the duty of the customer or its representative to ensure that he is in possession of the applicable instructions prior to leaving the premises and that these instructions are conveyed to the person operating the equipment. The customer indemnifies Apha Harvest against any loss, or liability which Apha Harvest may incur as a result of the customer's breach of this clause.



**Deductions / Set Off:** No amount may be deducted from any invoices without Apha Harvest's authorization. Should any deduction be agreed to by Apha Harvest, a credit note will be issued for such amount and will be proof that Apha Harvest has agreed to same. In particular, the customer may not deduct any amount due by reason of the fact that it contends it has a counterclaim of any whatsoever against Apha Harvest.

**Service Address (Domicilium Citandi Executandi) Posting and Notices:** Apha Harvest and the customer choose their addresses as stated above on this Application as the address for the purpose of serving summons and any other legal notices which require personal service levying execution arising out of this agreement (their domicilium citandi et executandi). All notices forwarded to the postal addresses stated on the face hereof shall be deemed to be received by the party concerned after the expiry of seven (7) days from the date of posting by prepaid registered post. Facsimiles or emails will be deemed to be proper service and a positive facsimile or email report will be prima facie proof of such transmission, and this will be accepted as proof in the absence of evidence that such transmission did not take place.

**Reservation of Ownership:** The ownership in the equipment hired, or if purchased not fully paid for, in terms of this agreement shall remain vested in Apha Harvest, or any cessionary to whom Apha Harvest cedes its rights, at all times. The customer undertakes at all material times to inform Apha Harvest of the address at which the equipment is to be used and stored and to inform the owner of such premises as to the ownership of the equipment. The customer undertakes to inform Apha Harvest immediately in the event of any form of attachment being exercised, or any attempt to exercise any form of attachment, against the equipment.

**Default and Return of Goods:** If the customer fails to pay any amount to Apha Harvest on the due date, or allows any judgment against it to remain unsatisfied for seven (7) days or if the customer is in breach of any term or condition of this agreement, or if the customer commits any act of insolvency or is wound up, whether provisionally or finally, Apha Harvest shall be entitled at its election and without prejudice to any other right which it may have to:

8.1 Claim immediate payment of all amounts payable in terms of this agreement whether or not such amounts are due at that stage, demand payment of deposits in respect of any equipment then out on hire and cancel all trading terms in respect of future orders; or

8.2 Immediately terminate this agreement, cease supply, retake possession of the equipment hired and claim immediate payment of all amounts payable in terms of this



agreement and in terms of any subsequent order whether or not such amounts are then due; and

8.3 Institute legal action and claim payment of all attorney and own client costs incurred, together with the collection commission and tracing charges, and interest calculated at the maximum permissible rate in terms of the National Credit Act 34 of 2005 as amended or any similar legislation which may replace the relevant provisions of the National Credit Act.

If Apha Harvest cancels the agreement in terms of 8.2 above or if Apha Harvest requires the return of the equipment for service purposes, the customer irrevocably authorizes Apha Harvest and any of its employees or representatives to enter the premises at which the equipment is stored or used, to disconnect the same if necessary, to obtain the services of a locksmith if necessary, and to take such equipment into their custody. The customer indemnifies Apha Harvest against any claims of whatsoever nature as a result of such action. Apha Harvest will provide proof of identity and authorization to such employees or representatives collecting equipment on behalf of Apha Harvest, and an employee or representative will provide a signed Off-Hire Note to the person in charge of the premises from where the equipment is collected.

**Jurisdiction:** The parties consent to the jurisdiction of the Magistrates Court having jurisdiction over the party against whom action is instituted in respect of any action which might be instituted arising from this agreement, irrespective of the amount claimed or the value of the equipment involved in such action. The party instituting action shall, however, retain the right to institute proceedings in any other court having jurisdiction in the matter.

**Sole Agreement and Non-Variation:** This is the only agreement between the parties and no addition, amendments, or consensual cancellation thereof shall be of any force or effect unless such addition, amendment, or cancellation is incorporated by reference or reduced to writing and signed by both parties. Any SMS, WhatsApp, or social media communication between Apha Harvest or its employees with the customer does not constitute an amendment of this agreement. All amendments to the terms for the hire of the equipment hired are to be made in writing on the Hire Note.

**No Relaxation:** No relaxation by Apha Harvest of the strict terms of this agreement and no indulgence, which Apha Harvest may grant to the customer in exercising any right which Apha Harvest has, shall in any way prejudice Apha Harvest's rights. If Apha Harvest



does allow any relaxation or indulgence, this will not be regarded as a waiver by Apha Harvest of any right or as a novation of the agreement.

**Terms of Payment:** Unless a trading account has been granted in respect of the hire, a deposit based upon the value of the equipment hired is payable at the same time of hire. This deposit will be set off against any amounts due on the return of the equipment. Subject to clause 13.4, where a trading account has been granted in writing, payment is to be made by the customer within a period of thirty (30) days from the date of the statement. If the account reaches the maximum purchase limit granted by Apha Harvest to the customer, the customer must immediately make a payment in order to reduce the outstanding balance to the purchase limit granted. In the event that Apha Harvest has agreed to accept payment from the customer by credit card specified in the Hire Note, the customer's signature on the Hire Note will constitute authority for Apha Harvest to obtain authorization and/or payment against for the issuer of the credit card to debit with the total amount due to Apha Harvest (including but not limited to any deposit, damages, or loss suffered by Apha Harvest). Apha Harvest is entitled to charge interest at the maximum interest rate allowed in terms of the National Credit Act, 2005, or any other applicable legislation which may replace the relevant provisions of the National Credit Act, on any amount not paid on or before the due date.

**Risk and Acceptance:** Risk in the equipment will pass to the customer when the equipment leaves Apha Harvest's premises or, if the equipment is delivered by Apha Harvest, at the place and time of delivery. The customer acknowledges that it appears to be in good condition and working order. Signature by the customer or by any representative or employee of the customer of the Coastal Hire's delivery or Hire Note and / or invoice, shall be regarded as acceptance by the customer that the equipment described in such delivery or Hire Note and / or invoice has been properly and completely delivered. Equipment will only be deemed to have been returned to Apha Harvest when Apha Harvest provides the customer's representative with a document signed with the full signature of a representative of Apha Harvest, which records the return of such equipment (signed off Hire Note, tax invoice or similar document). The customer undertakes to return the rental equipment to the Apha Harvest premises on the agreed return date as per the Hire Note. The customer acknowledges that rental charges are calculated on a 24-hour cycle and unless the equipment is returned by no later than that time at which it was hired out, the customer will be liable for a further day's rental. Where the customer has arranged that Apha Harvest will collect the equipment hired, it is specifically agreed that Apha Harvest is not in the business of transporting goods and whilst Apha Harvest is committed to collect the equipment hired as timeously as possible, Apha Harvest is not able to guarantee effective, timeous, or proper collection



of any/or such equipment hired. The customer remains obligated to ensure the safe storage of the equipment hired. All risk in and to the equipment hired will remain with the customer until Apha Harvest collects the equipment hired and the Hire Note has been signed off by a representative of Apha Harvest, pursuant to the provisions of clause 14.2 above. The customer accepts full responsibility for any loss of or damage to the equipment hired from the delivery until returned to Apha Harvest. The cost of reinstating the equipment hired to its pre-delivery condition will be for the account of the customer and will be payable upon invoice by Apha Harvest. The customer will remain liable for the agreed hire rates until the cost of reinstatement has been paid in full. If the equipment hired is damaged beyond repair or is stolen, lost, or misplaced or not returned for any reason, the customer shall be liable to compensate Apha Harvest at the full retail price for the cost of replacing such equipment. The customer shall remain liable for the payment of the agreed hire rates until such time as the customer has effected payment of the full retail price.

Protection of Personal Information Act No 4 of 2013 ("POPIA"):

14.1 The customer hereby agrees to provide Apha Harvest with the customer's personal information including but not limited to name, title, identity number, gender, birthdate, gross monthly income, net monthly income, mobile number, home telephone number, work telephone number, physical address, email address, trade references, bank account details, credit score and history, place of employment, and geolocation.

14.2 The customer acknowledges that the purpose for which this personal information is being collected is in order to allow us to (i) conduct a credit check with TransUnion (registered credit bureau) in order to determine whether we can proceed with the trading account application or whether we are to require a deposit for our anticipated costs; (ii) rent the equipment to you and ensure safe return thereto.

14.3 The consequences of failure to provide the information are that Apha Harvest will be unable to conduct a credit check and potentially offer credit or render other services to the customer.



14.4 The customer hereby agrees that Apha Harvest may transfer the personal information to any country outside of South Africa where such country's data privacy laws are equivalent to or stricter than POPIA, or where we have concluded suitable agreements with third parties which comply with the relevant provisions of POPIA allowing for the processing of personal information. Apha Harvest will be the recipient of the personal information. Apha Harvest may be required to disclose the personal information to third parties in order to provide the services. Such disclosure will only be made where it is necessary to fulfill the purpose for which you disclosed your personal information. Any other disclosure of your personal information will only be made upon your authorization to Apha Harvest to do so, or in the event that Apha Harvest is required to do so in terms of POPIA, or any other applicable legislation.

14.5 I am supplying this information voluntarily and without any undue influence from any party.

**Applicable Law:** This agreement shall be governed by the laws of the Republic of South Africa.

**Solvency Warranty:** The signatory to this agreement warrants the solvency of the customer and declares that he has personally acquainted himself as to such solvency.

**Severability:** In the event of any term or provision of this agreement being held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision. To the extent that such term is held invalid, illegal, or unenforceable, it shall be regarded as never having been contained herein.