

Hardware Rental Terms & Conditions

1. Centracom hereby rents to the Company which hires on the terms and conditions herein and in accordance with the provisions of Clause 19 from the commencement date specified in the Rental Agreement, the hardware described therein for the rental payable at the rental payment frequency and for the rental period stated therein. The parties agree that a breach of any one of the separate Agreements as constituted shall be deemed, at Centracom's election, to be a breach of any or all Agreements with the Centracom.
2. **COMPANY OBLIGATIONS**
 - 2.1. Company acknowledges and warrants that:
 - 2.1.1. the hardware have been or will be purchased by the Centracom at the request of the Company and solely for the purpose of renting the hardware to the Company
 - 2.1.2. the hardware has been selected by the Company;
 - 2.1.3. Centracom gives no warranties in connection with the hardware and the hardware is rented voetstoots by the Company;
 - 2.1.4. All warranties implied by common law are expressly excluded;
 - 2.1.5. No representations of any nature whatsoever in connection with the hardware are made by or on behalf of Centracom.
 - 2.1.6. Company has inspected the hardware prior to signature of this Agreement and that Company is in all respects satisfied therewith.
 - 2.2. All risks including the risk of destruction or loss of the hardware shall pass to the Company on signature of this Agreement. All costs in respect of the delivery and/or installation of the hardware shall be paid by the Company.
 - 2.3. The Company shall be obliged to take whatever steps as may be necessary to prevent the destruction or loss of the hardware. The Company shall acquaint itself with the terms and conditions of any insurance policy issued pursuant to 5.1 and undertake to do everything that may be necessary to ensure compliance with the terms and conditions of such insurance policy.
 - 2.4. Centracom shall at all times be and remain the owner of the hardware and neither the Company nor any other person on its behalf shall at any stage before or after the expiry of this Agreement or after the termination thereof acquire ownership of the hardware.
 - 2.5. The Company has no authority to order or purchase on behalf of Centracom or to act as an agent for Centracom, except that the Company shall be deemed to accept the hardware on behalf of Centracom when the hardware is delivered by the supplier to the Company and the Company acknowledges that the hardware is delivered by the supplier on behalf of Centracom.
 - 2.6. The Company is obliged to obtain the required permission for the installation of the hardware on the premises referred to in the Transaction Schedule/s and to procure such installation by the supplier of the hardware or its authorized agent.
 - 2.7. The parties hereby specifically agree that this Agreement applies only to the rentals and amounts payable in respect of the hardware as set out herein and the Transaction Schedule/s and that such rentals and amounts do not include any payments in respect of maintenance and other services of whatever nature. The parties furthermore specifically agree that the non-performance of any of the terms and conditions of any Agreement other than an Agreement specifically included herein in respect of the hardware, or its maintenance will not be raised as a defense against any claim for the payment of any amount payable in terms of this Agreement.
 - 2.8. The Company shall not be entitled to resile from this Agreement or withhold payment of any amount due hereunder by reason of the late delivery or non-delivery of the hardware or any defect therein or part thereof, nor shall the Company have any claim against Centracom for any loss or consequential damages suffered by it as a result thereof.
3. **PAYMENT**
 - 3.1. The Company shall pay to Centracom the rentals set out in the Transaction Schedule/s. All such payments or any other payments owing in terms of this Agreement shall be made without deduction of any nature.
 - 3.2. The Company shall not be entitled to withhold payment of any Rentals for any reason whatsoever or be entitled to claim any remission of rental in any circumstances.
 - 3.3. All payments in terms of this Agreement shall be made without set off or deduction or withholding of any nature, free of bank or other charges at the Centracom's address or at such other place as the Centracom or its Cessionary/ies may direct in writing.
 - 3.4. If the Company fails to effect any payment in terms of this Agreement on the due date thereof such overdue amount shall be subject to the ruling prescribed rate of interest.
 - 3.5. Centracom may appropriate any payments made by or on behalf of the Company to any indebtedness of whatsoever nature of Company to Centracom.
 - 3.6. If so required by Centracom, the Company shall complete and deliver to Centracom a banker's debit order document in such form as Centracom may require or promissory notes or such other money market instruments as called for in payment of future rentals, which shall not be construed or regarded as substituting varying, or novating the Company's obligation under the Agreement. Notwithstanding the foregoing the Company's signature hereto constitutes the Company's authority to Centracom or his Cessionary/ies to draw against the Company's bank account wherever it may be, the amounts due in terms of this Agreement. Should Centracom agree to electronic funds transfer the Company shall pay Centracom an administration fee of R45.00 per month or R135.00 per quarter.
4. **INTEREST RATES & VAT**
 - 4.1. Should the Prime Rate be increased or reduced at any time above or below (as the case may be) the Prime Rate ruling at the date of this Agreement, the Centracom shall be entitled (but not obliged), at any time thereafter to increase or reduce the rentals specified in the Transaction Schedule/s as to maintain the same margin in relation to the Prime Rate which existed at the date of signature of this Agreement. For all purposes in terms of this Agreement, "Prime Rate" shall mean the publicly quoted basic rate of interest per annum (as certified by any Manager of Centracom whose authority and/or appointment and/or qualification it shall not be necessary to prove) compounded monthly, at which Nedbank lends in South African Rand to first class corporate borrowers from time to time on overdraft.
 - 4.2. The Company acknowledges that in terms of the Value Added Tax Act ("VAT"), VAT at the prevailing rate as at date of signature hereto has been included in each rental. In the event of any change in the rate at which VAT is payable and/or in the amount of VAT payable in respect of the rental payments, the rentals which fall due on or after the date of said change shall be recalculated accordingly and the said recalculated rentals shall substitute the rentals which were calculated at the old rate.
 - 4.3. Any dispute relating to any adjustment in terms of 4.1 and/or 4.2 shall be referred to any partner of Centracom's then auditors who shall act as an expert and whose decision shall be final and binding on the parties hereto.
5. **INSURANCE**
 - 5.1. The Company is obliged to insure the hardware for not less than the replacement cost thereof against all risks including political riot cover. Company shall ensure that Centracom's interest in the hardware and this Agreement is noted by the insurer in the policy and shall produce satisfactory proof thereof to Centracom. Company hereby cedes to Centracom as security for the due performance of Company's obligations in terms of this Agreement all of Company's right, title and interest in any insurance policy effected in terms of this Agreement and undertakes to deliver such policy to Centracom on demand. If Company fails to insure the hardware, or fails to produce to Centracom written proof of such insurance within 14 (fourteen) days from date of demand, the Centracom shall be entitled to effect such insurance as it deems fit on Company's behalf, the premiums in respect of which shall be payable by Company to Centracom on demand.
 - 5.2. The Company is hereby given notice of its right of free choice in connection with its insurance obligations in terms of section 43 of the Short Term Insurance Act 53 of 1998. The Company represents and warrants that it has read, understood and is fully acquainted with the aforesaid provision. By signing this Agreement, the Company acknowledges that:
 - 5.2.1. it has been given prior written notice of its entitlement to the freedom of choice referred to in the said Act;
 - 5.2.2. it exercised that freedom of choice;
 - 5.2.3. it was not subject to any coercion or inducement as to the manner in which it exercised that freedom of choice.
 - 5.3. If the hardware or any part thereof is lost, stolen or damaged irrespective of the cause, the Company must notify in writing Centracom and insurer immediately.
 - 5.4. The Company shall be obliged to pay any excess that may be payable in terms of an insurance policy issued pursuant to 5.1.
6. **MAINTENANCE**
 - 6.1. The Company shall at all times keep the hardware in its possession and under its control and shall take reasonable care in the use of the hardware. The Company shall at its own expense maintain the hardware in proper working order and keep the hardware free from attachment hypothec, or other legal charge or process. The Company shall not sell, let, loan, pledge, transfer or otherwise encumber the hardware in any way or permit any lien to arise in respect of the hardware. The hardware shall be operated at the Company's cost and be controlled only by properly trained, licensed and qualified persons. The Company shall comply with the specifications, instructions and recommendations of the manufacturer for the operation, service, maintenance and/or repair of the hardware or part thereof.
 - 6.2. The Company may not materially alter or modify the hardware. Any part or accessory added to the hardware shall become Centracom's property without any compensation.
 - 6.3. The Company shall at all reasonable times permit Centracom or its representative to inspect hardware.
 - 6.4. The Company shall at its own expense apply for all licenses, certificates or exemptions that may be required for or in connection with the ownership or use of the hardware.
 - 6.5. The Company admits and agrees that the hardware is moveable and that the hardware is installed with the intention that the hardware shall remain moveable and that it shall under no circumstances accede to any property.
 - 6.6. The Company may not without the prior written consent of Centracom remove or keep the hardware or permit or allow it to be removed or kept outside the boundaries of the Republic of South Africa.
7. **ADDRESS**
 - 7.1. The hardware will be kept at the address/es stated in the Transaction Schedule/s and Company shall forthwith upon signature of this Agreement notify Centracom in writing of any other premises to which the hardware is moved and of the name and address of the owner of such premises. The Company shall also notify Centracom immediately of any changes that may occur from time to time in the leasehold or ownership of the premises upon which the hardware may from time to time be installed or kept.
 - 7.2. Prior to the hardware being brought onto or installed in any premises the Company shall notify the owner and/or Lessor of such premises in writing of Centracom's ownership in the hardware and the Company shall notify each new owner or Lessor of such premises in writing immediately when a change in the ownership or leasehold of the premises takes place.
8. **DEFAULTING PAYMENT**
 - 8.1. If the Company defaults in the punctual payment of any monies as it falls due in terms of this Agreement; or fails to comply with any of the terms and conditions of, or its obligations under this Agreement or commits any deed of insolvency or being a natural person, assigns surrenders or attempts to assign or surrender his estate, or allows a default judgment to remain unsatisfied for a period of seven days or be refused rescission within fourteen days of any default judgment or is sequestrated or placed under business rescue or wound up, whether provisionally or finally or abandons the hardware, or compromises with any of his creditors or endeavors or attempts to do so, or makes any incorrect or untrue statement or representation in connection with this Agreement or the Company's financial affairs or any particulars relevant there to, or breaches any warranty given in terms of this Agreement, or does or allows to be done anything that might prejudice Centracom's rights under this Agreement then and upon the occurrence of any of these events Centracom may without prejudice to any of its rights elect to:
 - 8.1.1. remotely access the hardware and limit use thereof, and
 - 8.1.2. claim immediate payment of all amounts which would have been payable in terms of this Agreement, all legal costs including legal expenses on the attorney client scale and, as agreed pre-estimated liquidated damages, the aggregate of the rentals which would have been payable had the Agreement continued until expiry by effluxion of time; or
 - 8.1.3. immediately terminate this Agreement, take possession of the hardware, retain all amounts already paid by the Company and claim all outstanding rentals, all legal costs including legal expenses on the attorney client scale and, as agreed pre-estimated liquidated damages, the aggregate of the rentals which would have been payable had the Agreement continued until expiry by effluxion of time.
9. **CESSATION**
 - 9.1. Centracom is entitled to cede without notice to the Company all or any of Centracom's rights under this Agreement including its rights of ownership in the hardware or any of them, either absolutely or as collateral security, to any other person or persons and whether such cession is made to the Cessionary/ies alone or to the Cessionary/ies jointly and severally with Centracom or any other person or persons, and if such cession occurs, the Company shall, if so required by any such Cessionary/ies, make all payments direct to such Cessionary/ies. Any reference in this Agreement to Centracom shall, unless the context indicates otherwise, be construed as referring to the Cessionary/ies. The Company hereby undertakes to accept the cession and to acknowledge the rights of the Cessionary/ies in terms of this clause and to hold the hardware on behalf of the Cessionary/ies, subject to the conditions of this Agreement.
 - 9.2. The Company agrees, that in the event of such cession, to the extent that any such Cession or delegation results in the splitting of claims the Company hereby consents in advance to such splitting of claims.
 - 9.3. This Agreement is personal to the Company and the Company shall not in any circumstances be able to make over any of his rights and/or obligations hereunder without prior written consent of Centracom.
 10. Should the Company fail to comply with any of the provisions of this Agreement, Centracom shall be entitled but not obliged to effect such compliance on behalf of the Company. All costs and expenses incurred by Centracom in effecting such compliance or otherwise in protecting its title to the hardware shall be paid by the Company to Centracom on demand.
11. **TERMINATION**
 - 11.1. Notwithstanding the provisions of this Agreement should the Company in breach of its obligations fail to return the hardware on termination of this Agreement then in addition to any other claims that Centracom may have against the Company pursuant thereto, the Company shall be liable to continue to pay rentals to Centracom as if the Agreement had not been so terminated.
 - 11.2. The Company shall, on termination of this Agreement, return the hardware in good working order, fair wear and tear permitted, together with all applicable documents to Centracom at the Company's cost and expense.
 - 11.3. Upon the return of the hardware in accordance with 11.2 Centracom may dispose of the hardware at such time and place and on such terms and conditions as Centracom may determine. The Company shall then have no further right or interest in the hardware.
 - 11.4. If any of the hardware, hired in terms of this Agreement, is lost or stolen and not recovered within a period of 21 (twenty one) days after such loss or theft or is damaged beyond repair, this Agreement shall terminate forthwith in respect of such hardware, provided that such hardware may, at Centracom's election be replaced with similar hardware, in which event this Agreement shall apply mutatis mutandis to such replacement hardware.
 - 11.5. On termination of this Agreement in pursuance of 11.4. the proceeds of any claim under and in terms of an insurance policy referred to in 5.1 shall be paid to Centracom and shall be credited against the balance of rentals that remain unpaid in respect of the hardware lost or destroyed immediately prior to termination of this Agreement as provided for in 11.4. The Company, however remains liable for any outstanding rentals and the aggregate of the rentals which would have been payable had the Agreement continued until expiry by effluxion of time that may remain unpaid after the crediting of the proceeds of the insurance claim and such outstanding rentals be paid on demand by Centracom.
 12. A certificate under the hand of any manager of Centracom, as given from time to time, in respect of the indebtedness of the Company in terms of this Agreement or in respect of any other fact shall be prima facie evidence of Company's indebtedness to Centracom and/or such other fact. It shall not be necessary to prove the appointment of the person signing such certificate.
 13. No relaxation or indulgence granted or given by Centracom to Company shall be deemed to be a waiver of any of Centracom's rights in terms of this Agreement and such relaxation or indulgence shall not be deemed to be a novation of any of the terms and conditions of this Agreement.
14. **NON VARIATION**
 - 14.1. This Agreement constitutes the sole and exclusive record of the Agreement between the parties hereto relating to the subject matter thereof, and no variation, modification, consensual cancellation, novation or waiver of any of the provisions hereof, or any consent to any departure therefrom by either party, shall be of any force or effect or create any estoppel unless the same shall be reduced to writing and signed by the parties hereto.
 - 14.2. The Company specifically records and agrees that there are no collateral terms to this Agreement which have not been recorded herein and accordingly the Company shall not be entitled to secure a rectification of any of the terms and conditions of this Agreement.
15. **COSTS**
 - 15.1. All costs and disbursements, including legal costs on the attorney client scale incurred by Centracom in recovering possession of the hardware or in tracing the Company and locating the hardware and in collecting or endeavoring to collect all or any amounts payable by the Company to Centracom in terms of this Agreement or otherwise and all collection commissions, storage charges, costs of valuation of the hardware, costs of sale including costs of restoring hardware to a saleable condition, selling commission, dismantling and removal charges and all other fees and charges shall be for the account of the Company and are payable on demand as and when incurred.
 - 15.2. All costs in respect of documentation and administration fees shall be paid by the Company.
16. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa.
17. **JURISDICTION**
 - 17.1. The Company hereby consents to the jurisdiction of the Magistrates Court having jurisdiction over its person in respect of all proceedings in connection with this Agreement.
 - 17.2. Notwithstanding the aforesaid, Centracom shall be entitled to institute any proceedings in connection with this Agreement against the Company in any division of the High Court of South Africa having jurisdiction.
18. The parties hereby respectively choose domicilium citandi et executandi for all notices and processes to be given and served in pursuance of this Agreement at their respective addresses as given on the face of this Agreement. Either party may change his domicilium by written notice delivered by hand or sent by prepaid registered post to the other party.
19. This Agreement shall continue after the rental period subject to the conditions contained herein, for an indefinite period until terminated by either of the parties giving the other 90 (ninety) days written notice of termination, provided that the notice shall not be given before expiry of the number of months reflected against Rental Period in the Rental Agreement
20. All words and phrases importing any one gender includes each of the other genders for the purposes hereof and the singular includes the plural and vice versa.
21. The Company consents to the Centracom or its Cessionary/ies making enquiries about the Company's credit record with any credit reference agency and any other party to confirm the details on this application. The Centracom or its Cessionary/ies may also provide credit reference agencies with regular updates regarding how the Company manages its account including their failure to meet agreed terms and conditions. The Company consents that credit reference agencies may, in turn, make the records and details available to other credit grantors. The Centracom or its Cessionary/ies may also give this information to any person, who, in its opinion, needs it to carry out any of the Centracom or its Cessionary/ies's rights or duties in terms of the contract or any law pertaining to the products the Company has requested.
22. The Company, if subject to the provisions of the Public Finance Management Act 1 of 1999, the Schedule/s and Regulations thereto, as amended, (the PFMA"), warrants to the Centracom that it has complied with all the provisions of the PFMA, the Schedule/s and Regulations thereto, as amended, in relation to the Agreement and any security referred to, and undertakes that it will continue to do so for the duration of the Agreement and the Company hereby indemnifies the Centracom and holds it harmless against any claim, loss or expense (including consequential damages) loss of revenue and profits, legal costs on a scale as between an attorney client, and any other costs arising out of or in connection with or which may be sustained or incurred by the Centracom as a direct or indirect consequence or any breach by the Company of provisions of the PFMA, the Schedule/s and Regulations thereto, including but not limited to any innocent or negligent misrepresentation by the Company to the Centracom. The Centracom shall be entitled to exercise its rights immediately upon there being a breach by the Company of this warranty.