

APPLICATION FOR ACCOUNT/LEASE FACILITIES

TYPE OF ENTITY: (PROPRIETARY) LTD CLOSE CORPORATION PARTNERSHIP
 SOLE OWNER PUBLIC COMPANY TRUST

PLEASE PRINT CLEARLY USING BLACK INK

REGISTERED NAME:

REGISTRATION NO:

TRADING NAME (if applicable):

PIN NUMBER:

VAT REGISTRATION NO:

FULL POSTAL ADDRESS:

STREET ADDRESS:

TELEPHONE NO:

E-MAIL ADDRESS:

NOTE: Where the applicant is not a natural person the applicant must provide a certificate of incorporation and memorandum and articles of association or similar documents of association.

FULL NAMES, TEL NO., ADDRESS & ID. NO. OF OWNER / DIRECTOR / PARTNER / MEMBER / TRUSTEE

NAME	IDENTITY NO	RESIDENTIAL ADDRESS	TELEPHONE NO

**EAST AFRICA TOOL HIRE LIMITED
STANDARD TERMS AND CONDITIONS OF LEASING**

1. DEFINITIONS

The following words and/or phrases contained hereafter shall bear the following meaning:

“Equipment Leased” shall include each and every component part record manual and handbook for them and all replacements renewals of additions to and substitutions for the Goods from time to time made shall form an integral part of them and shall become the property of the Lessor and subject to this Agreement

“the Lessor” shall mean East Africa Tool Hire Limited of P.O. Box [*] Nairobi which expression shall include it successors in title and assigns.

“the Lessee” shall mean the person/s natural or artificial as the case may be specified in the particulars of this Application form and shall include it successors in title and assigns.

2. TERM AND RENTALS

The Term of the Lease (“the Lease Term”) and the rentals shall be as set out in the Schedule. So long as the Lessee is neither in default in the payment of any sum of money payable nor is in breach of any of the covenants on its part to perform in this Agreement it may peaceably hold and enjoy quiet possession of the Equipment Leased for the Lease Term.

3. ESCALATION

The Lessor shall have the right to increase the rate of the Equipment Leased, from time to time, by such amounts as the Lessor in its sole discretion deems sufficient to compensate it for any increase in the cost to the Lessor from time to time. The Lessee agrees to the Lessor's ruling price at date of delivery.

4. WARRANTY

The Lessor gives no warranty, express or implied that the Equipment Leased is suitable for the purpose for whichever use. The Lessee must satisfy itself as to the suitability and specifications of the Equipment Lease for their end use, and the Lessee accepts that the Equipment is Leased “as is” in the condition found. The Lessee by his signature hereto indemnifies and holds harmless the Lessor against any claims of whatsoever nature they or any third party may have against the Lessor as regards any damages or injuries, including damages and injuries to third parties, as a result of negligence which can be attributed to the Lessor its employees and agents.

5. CLAIMS

(a) the Lessor shall not be responsible for non-delivery of Equipment Leased or part delivery thereof or delay in delivery for whatsoever reason, and time shall not be of the essence in respect of any order unless specifically agreed to the contrary and reduced to writing.

- (b) No claim of whatsoever nature shall lie against the Lessor in respect of any defective Equipment Leased including claims for consequential damages.
- (c) the Lessor shall not be responsible for any consequential loss and/or damages suffered by the Lessee arising from this Agreement irrespective of whether such loss be caused as a result of the Equipment Leased supplied being defective or unsuitable for the purpose for which used or bought, or as a result of the delay in delivery or from any cause whatsoever.

6. DEDUCTIONS/SET OFF

To pay punctually and without demand deduction counterclaim or set-off to the Lessor the rentals as set out in the Schedule and all other sums due from the Lessee to the Lessor at the times specified for payment in this Agreement and that in respect of any sums payable under this Agreement time shall be of the essence and that a condition of this Agreement is that failure to pay any sums due within 21 days after the due date shall be a repudiation of this Agreement. The Lessee hereby waives any defence of any nature whatsoever as regarding payments due to the Lessor except for payments effected to the the Lessor which claim shall be accepted against the submission of proof of such payment.

7. DOMICILIUM

The Lessee hereby nominate its street address as stated the face hereof as its registered place of business for all purposes arising out of this Agreement. All notices forwarded to such address shall be deemed to be received by the Lessee after the expiry of five (5) days from the date of posting by registered prepaid post.

8. RESERVATION OF OWNERSHIP

At all material times the ownership in the Equipment Leased in terms of this Agreement shall remain vested in the Lessor, or any assignee to whom the Lessor may cede its rights. The Lessee undertakes at all material times to inform the Lessor of the address at which the Equipment Leased is to be used and stored and to inform the owner of such premises as to the ownership of the Equipment Leased including any form of attachment exercised against the Equipment Leased.

9. DEFAULT

Should the Lessee fail to pay any amount on due date, or allow any judgement against it to remain unsatisfied for seven (7) days or should it fail to fulfil or should it in the sole discretion of the Lessor, be in breach of any term or condition of this Agreement, or should it commit any act of insolvency or should it be wound up, whether provisionally or finally, then and in any of the above events, the Lessor shall be entitled at its election and without any prejudice to any other right to:

- (a) Claim immediate payment of all amounts payable in terms hereof and in terms of a subsequent order irrespective of whether or not such amounts are due at that stage; or
- (b) immediately terminate this Agreement, cease supply, retake possession of the Equipment Leased and claim payment of any damages suffered by the Lessor which shall include loss of profit suffered as a result of the breach;
- (c) Claim payment of all attorney and own client costs incurred, together with collection commission and tracing charges, and all interest calculated at the maximum permissible finance charge rate payable in terms of the applicable laws at the relevant time.

The Lessee irrevocably authorizes the Lessor and any of its employees or representatives to enter the premises at which the Equipment Leased stored or used, to disconnect the same, to obtain the services of a locksmith if necessary, and to take such Equipment Leased in their custody and indemnifies the Lessor against any claims or whatsoever nature as result of such action.

10. JURISDICTION

The Lessee hereby consents to the jurisdiction of the Courts of Kenya having jurisdiction over his person in respect of any person which might be instituted in terms hereof, irrespective of the accounts claimed of the value of the Equipment Leased it involved in such action.

11. SOLE AGREEMENT AND NON VARIATION

This is the only Agreement between the parties and no addition hereto or amendments or consensual cancellation thereof shall be of any force or effect unless such addition, amendment or cancellation is incorporated herein by reference or reduced to writing and signed by both parties.

12. NO RELAXATION

No relaxation or indulgence, which the Lessor may grant to the Lessee, shall in any way prejudice the Lessor's rights and shall not be regarded as a waiver of such rights or as novation of this Agreement.

13. APPROPRIATION OF PAYMENTS

The Lessor at its discretion shall appropriate the payments made in terms of this Agreement, firstly to any costs then to any interest outstanding and thereafter to the capital amount outstanding from time to time, or at the Lessor's sole discretion.

14. TERMS OF PAYMENT

Payment is to be made by the Lessee, strictly cash unless credit facilities have been granted in writing unless otherwise granted within a period of thirty (30) days from the date of statement. The Lessee shall [*] at the maximum permissible finance charge rate as may be chargeable by law on any overdue balance. Credit facilities granted to the Lessee may in the sole discretion of the Lessor be suspended or revoked by written notice to the Lessee whereafter the full balance owing will immediately become due and payable. The balance

reflected on any statement shall be prima facie evidence of the amount due and any certificate issued by an authorised representative of the Lessor shall be prima facie proof of the amount due and owing for the purposes of legal proceedings against the Lessee including the obtaining of a summary judgment or otherwise and provisional sentence.

15. DELIVERY AND RETURN

Equipment Leased is ex the Lessor's premises and risk shall pass to the Lessee upon the Equipment Leased leaving the Lessor's premises. It is a term of this application that Equipment Leased will only be deemed to have been returned to the Lessor against acknowledgement of the return of the same by a duly authorised representative of the Lessor who must append his signature on the tax/rental invoice which records the return of such equipment.

16. POSTING

Should either the Lessee or the Lessor post or forward any letter or document through the Post Office or any other agent or carrier then the post office or agent or carrier as the case may be shall be deemed to be the agent of the Lessee. Facsimiles at all material times will be deemed to be proper service and a positive facsimile report generated will be prima facie proof of such transmission.

17. PROOF OF DELIVERY

Signature by the Lessee or by any representative or employee of the Lessee of the Lessor's delivery note and/or invoice, shall be regarded as acceptance by the Lessee that the Equipment Leased reflected in such delivery note and/or invoice and/or off Lease note have been properly and completely delivered.

18. APPLICABLE LAW

Regardless of the place of execution, performance or domicile of the parties, this Agreement and all modifications hereof shall be governed by and continued under and in accordance with the laws of the Republic of Kenya.

19. DEFECTIVE DELIVERY AND SOLVENCY WARRANTY

The Lessee waives any defence of whatsoever nature it may have against defective, non or short delivery and agrees to make full payment of the amount which corresponds with the Equipment Leased as reflected on the Lease note (s). Should the Lessee claim over invoicing or non delivery it shall not be used as a defence, but shall form the subject matter of a separate action against the Lessor. The Signatory to this Agreement warrants the solvency of the Lessee and declares that he has personally acquainted himself as to such solvency.

20. REPLACEMENT COSTS

The Lessee accepts full responsibility for any loss or damage to the Equipment Leased after it has been Lease from the Lessor. The reinstatement of the Equipment Leased to its pre-delivery condition including replacement in the event of theft or loss or misplacement or non return or damage beyond repair of the Equipment Leased will be for the account of the Lessee. In the event of damage beyond repair or theft or misplacement or non return of the goods the Lessee accepts and agrees to compensate the Lessor at the full retail price of such Equipment Leased and further to effect payment of the agreed Leasing rates until such time as the Lessee has effected full payment of the full retail price or has returned the Equipment Leased in a clean and perfect working condition. In the event of having to reinstate the Equipment Lease to its pre-delivery condition the Lessee will remain liable for the agreed Leasing rates until such Equipment Leased has been reinstated to its pre-delivery condition.

21. WARRANTY

The signatory warrants and declares that full proper disclosure as to the financial status of the applicant has been made.

**EAST AFRICA TOOL HIRE LIMITED
SURETYSHIP AS REQUIRED IN TERMS OF THE CREDIT APPLICATION**

PART B

TERMS OF SURETYSHIP AGREEMENT

I/We, the sureties by my/our signature/s hereto do hereby bind myself/ourselves in addition as surety/ies and as co-principal debtor/s with the Lessee referred to on the face hereof ("the debtor") for the due payment on demand by him/her/it of all monies which may now or from time to time hereinafter be owing by the debtor to the Lessor ("the creditor") from whatsoever cause arising and including, but not limited to, any claims for damages and actions against the Lessee acquired by way of cession. This suretyship agreement shall be a continuing covering guarantee/surety, which may only be cancelled in writing by the creditor. I/We agree and declare that:

- (a) All acknowledgements of indebtedness and admissions by the debtor/s shall be binding on me/us.
- (b) The creditor shall be entitled without prejudice to and with reservation of all its rights hereunder, to release any securities given to it or to extinguish or rescind the principal debt in any way or to give time to compound or make any arrangement with the debtor/s in regard to the payment of the indebtedness of the debtor/s to it which the creditor in its absolute discretion deems fit.
- (c) In the event of the insolvency, liquidation or placing under judicial management of the debtor/s or a compromise between the debtor/s and the debtor/s' creditors:
 - (i) I/We agree that any dividend received by the creditor in respect of its claim against the debtor/s shall be appropriated in the first instance to the payment of that part of the debtor/s indebtedness to the creditor which is not covered by the

- suretyship;
- (ii) I/We agree that the creditor shall be entitled without prejudice to its rights against me/us.
- (1) To prove a claim against the debtor/s' estate for the full amount of the indebtedness of the debtor/s estate for the full amount of the indebtedness of the debtor/s to the creditor;
- (2) To claim from me/us the full amount of my/our indebtedness provided that I/we pay the full indebtedness of the debtor to the creditor, the latter shall cede its claim against the debtor/s' estate of me/us.
- (d) The creditor is hereby irrevocably authorised to apply any monies received by it from me/us in terms of this Suretyship against any indebtedness to it of the debtor/s in such manner as the creditor in its discretion may deem fit.
- (e) This Suretyship shall remain in force as a continuing covering security and shall be in addition to and without prejudice to any other suretyship or securities now held or hereafter held by the creditor from or on behalf of the debtor/so
- (f) Should I/We any time in defending any action based on this suretyship allege that no money was paid over by the creditor to the debtor/s and/or there is no reason or cause for the debtor/s' obligations to the creditor, and/or errors have been made in the calculation of the amount claimed, then the onus improving such a defence would rest on me/us.
- (g) I/We choose as the address mentioned on the face of this Agreement as our/my registered address for the purpose of service.
- (h) In the event of there being one or more then the liability of such sureties shall be joint and several.
- (i) I/We hereby consent to the jurisdiction of the Kenyan Court having jurisdiction over my/our persons in respect of any action which might be instituted in terms hereof, irrespective of the amounts claimed or the value of the Equipment Leased involved in such action without prejudice to the creditor's rights to institute action in any other Court having jurisdiction.

Dated at ----- on this ----- day of ----- 20 -----

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|----|-----------------|--------------------------------|
| 1. | Signature | Full name.....
Identity No |
| 2. | Signature | Full name.....
Identity No |
| 3. | Signature | Full name.....
Identity No |
| 4. | Signature | Full name.....
Identity No |
| 1. | Witness | Full name
Identity No |
| 2. | Witness | Full name
Identity No |