

TOPSHELL (PTY) LTD Rental Agreement: Mobile Container Offices, Container Store Rooms and Life Units (28/6/12 Webpage)

1. This agreement governs the lease of mobile office(s), store(s) and Life Units, **(the Goods)** as part of **Lessee's site establishment**. Reference to **Goods** may be to all, or part of the goods as described above. Reference to Topshell may include reference to its agent.
2. The Goods, Rental payable, initial lease period **(the initial period)**, transport costs, the physical address of the site **(the site)** and **domicilium citandi et executandi** of Topshell and Lessee for all notices, are as referred to and described by Topshell in the **pro forma invoice (the invoice)** to the lessee, which, together with **these terms and conditions and the delivery note (if any)**, constitute **the whole of the agreement** between the parties. This agreement will be valid and binding between the parties for the initial and any further consecutive periods of lease. This agreement will be valid even though no delivery note is signed by Lessee.
3. **Transport costs** means costs of **delivery** to and **recovery** from the site only, and where applicable, for the **initial period** only. Recovery from any other site will be for cost of Lessee in addition to the amount quoted.

SIGNATURE AND SURETY

4. Signature by Lessee of the invoice and/or delivery note shall include signature by Lessee, its employee or agent, and it shall not be necessary for Topshell to request identification of the person signing nor proof of authority to sign.
5. The person signing the pro forma invoice and/or the delivery note, whether duly authorized or not, agrees fully and absolutely to stand **surety jointly and severally** with Lessee for proper fulfillment by Lessee of all its obligations in terms of this agreement, and the signatory renounce the benefits of excussion, division and cession of action, non causa debiti, errore calculi, revision of accounts, no value received and also the benefit non numeratae pecuniae, the full force, meaning and effect of which he/she declares her/himself to be fully acquainted, and accepts Lessee's domicilium citandi et executandi as his/her domicilium citandi et executandi.
6. If Surety is not signed the Lessee will not be entitled to a 30day account, all invoices must be paid strictly in advance.

RENTAL

7. Rental for the 1st month of the lease and transport costs are payable in advance before delivery of the goods (initial payment). Date of this first payment is the **commencement date** of this lease agreement. Payment of the initial payment constitutes acceptance by Lessee of these terms and conditions. Lessee shall be obliged to provide proof of payment before Topshell shall be obliged to act. Topshell shall be entitled to wait for clearance of funds, in which case the commencement date is date of clearance of funds.
8. One month's rental shall, for the initial and any further periods, i.e. the full duration of the agreement as it may be extended, be payable in advance before or on the last day of the month preceding the month for which payment is due.
9. **Should any amount due in terms hereof remain unpaid for a period of 60 (sixty) days or more, Topshell shall be entitled to appoint a collection agent to recover such amounts, in which case the Lessee shall be liable for the costs thereof, which costs are 25% (twenty-five per cent) of the amount collected. By signature of this agreement the Lessee acknowledges and agrees to pay such costs.**
10. Topshell reserves the right to increase rental at a rate which shall be determined by the increase in the PPI, with notice of one calendar month to the Lessee.

TERMINATION

11. Should Lessee fail to pay rental as agreed, this agreement may be cancelled by Topshell with immediate effect without notice to Lessee. This agreement may be terminated by either party with one calendar month's written notice. Upon termination, Topshell shall have the right to immediately assume control over and take possession of the goods, and remove the goods from the site without the necessity of a Court Application/Action, and shall be entitled to enter the site and the goods to acquire possession of the goods.
12. Lessee's possession of the goods, if any, will terminate immediately. There shall be no obligation on Topshell to remove the contents of the goods before removal of the goods from the site. The contents will be available to be collected at Topshell's depot at the cost of Lessee, during business hours. The contents will be stored at the depot for a period of one month at the risk of Lessee, after which Topshell shall be entitled to have it removed or sold. Lessee indemnifies Topshell against any claims which may result from loss of, removal of, or sale of such contents, as well as any claims resulting from removal of the goods from the site.
13. Any court action or application with regard to or touching upon recovery of goods will be paid for by lessee on an attorney and client scale. Lessee shall be liable for the lease amounts until the goods are in possession of Topshell.

RIGHTS AND DUTIES; RISK

14. **Topshell's ownership rights with regard to the goods will not cease under any circumstances.** Lessee's possession of the goods will be determined by this agreement. Topshell shall always have, and be entitled to, unrestricted access to any site where the goods are placed, which right is guaranteed by Lessee, in particular against any owner of the site. No pledge will be constituted between Topshell and Lessee; Lessee shall not be entitled to pledge the goods, or to give it as security, or to give cession or delegation of its rights and duties respectively, or to sub-lease, or on-lease the goods, and Lessee and the owner of the site shall not acquire any rights of retention or lien with regard to the goods, nor any ownership rights.
15. **Lease of the goods and use thereof will be at lessee's sole an absolute risk. Transfer of risk happens upon entry of the delivery vehicle onto the site.**
16. Lessee may make no modification to the goods or part of it, may not attach anything to the goods, nor paint it, nor attach any logo or name to it and may not remove, replace any part of the goods, or any sign attached to the goods by Topshell. Lessee may not remove from the goods the name of Topshell, its address, telephone or any sign or logo attached to it or painted on it by Topshell, and may not do anything which may detrimentally affect Topshell's corporate identity in any manner.
17. Lessee may under no circumstances remove the goods from its position, and may not lift the goods.
18. Topshell will not be liable for theft or loss of the contents of goods, whatever the reason for the loss.
19. Lessee indemnifies Topshell unconditionally and absolutely against any claims which may arise as a result of lease of the goods, specifically but not exclusively claims arising from theft or loss of the contents of the goods, injury to any person of any nature, or death of any person, in or in the vicinity of a goods whether stationary or through movement of the goods, whether through removal or placement thereof. Lessee indemnifies Topshell against any damage of any nature as a result of any actions, whether negligently or intentionally by Lessee, its employees, visitors, contractors, sub-contractors, the owner of the site, its visitors, family, or any person obtaining authorised or unauthorised entry to the site.
20. The Lessee is responsible to lock or unlock goods, more specifically stores, safety gates to offices, and to provide locks to stores, safety gates to offices.
21. Lessee is responsible for any damage to goods whilst on site. It is Lessee's responsibility to point out any damage to goods before or during delivery to the site and to note such damage on the delivery note under signature of Lessee or the Agent of Lessee.
22. **Should goods be damaged on the site or be lost or removed from the site, Lessee shall be responsible for replacement and repair costs, which costs will be determined by Topshell's depot manager whose valuation will be final and binding, and Lessee will be liable to pay these costs within 30 days from receipt by Topshell of a note setting out the costs.** Lessee is responsible for cleaning the goods but not for normal maintenance.
23. **The Lessee is responsible to insure all goods on site should any damage or loss take place on site, Topshell does not insure goods on the Lessee's site.**

DELIVERY

24. Delivery of the goods at the site will take place as soon as possible after the commencement date. Lessee shall have no claim against Topshell as a result of late delivery no delivery of the goods. Topshell may appoint an agent to undertake delivery of the goods on behalf of Topshell.
25. Topshell shall as far as is possible endeavor to place the goods on the site according to the lessee's or its representative's request and deliver the goods according to the standard safety procedure.
26. It is Lessee's responsibility at its own cost to ensure that the delivery vehicle will be able to enter onto and to exit the site. Should Topshell be entitled to take possession of the goods, and entry and exit is not possible for the transport vehicle for whatever reason, Topshell shall be entitled, at Lessee's cost, to clear the site and entrance to the site so that exit and entry is ensured, and the lessee indemnifies Topshell against any claims which may arise in this regard.
27. Lessee shall be responsible at own cost to prepare the site for placement of the goods and to ensure that the site is clean, horizontal, compacted, stable and of such nature as to carry the weight of the goods. The operator of the crane or driver of the delivery vehicle may refuse to place the goods as requested by the lessee should he in his sole discretion deem the site or location on the site to be unsafe for the vehicle or any person.

Lessee signature:

- 28. **Should the Topshell delivery vehicle arrive at the site and Lessee or a representative of Lessee is not available to indicate where the goods must be placed, the driver of the vehicle / agent of Topshell will place the goods as he may deem fit in his sole discretion and Topshell will not be liable for any damages in this regard.**
- 29. Lessee or his representative will sign a **delivery note** as an acknowledgment of receipt of the goods.

GENERAL

- 30. No guarantee or representation has been made by any person who is not contained herein. This agreement may only be amended in writing. No relaxation or indulgence granted by Topshell to the Lessee from time to time shall be deemed to be a waiver of rights in terms hereof nor a novation or waiver of the terms and conditions of this agreement. The parties agree that this agreement comes into affect within the **jurisdiction of the magistrate's court, Stellenbosch** and that this court shall have jurisdiction in all matters pertaining to this agreement.
- 31. I/We consent to Topshell making enquiries about my/our credit record with any registered credit bureaux to confirm information provided to Topshell and to assist Topshell to conduct an assessment concerning the my/our financial affairs.

Lessee signature:

Date of signature:

The signed copy of this document must be sent to the Topshell offices by one of the following means:

- Fax: 086 216 3413
- e-Mail: rental@topshell.co.za
- Hand deliver: Topshell
Topshell Park
Baden Powell road (R310)
Lynedoch
Stellenbosch

Topshell office contact telephone number: 021 881 3666

