

TR 033/



# RENTAL AGREEMENT

## ENTERED INTO BETWEEN

<p><i>Stellenbosch Municipality</i></p> <p>REG. NO. _____ the 'Renter'</p>	<p>and CAPE OFFICE MACHINES (PTY) LTD. Reg. No. 92/03621/07</p> <p>George Blake Avenue Plankenbrug Stellenbosch 7600</p> <p>'COM'</p>
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<p>1. Equipment Installation Address</p> <p><i>Plain Street Library Plain Street - Stellenbosch</i></p>	<p>2. Invoicing Address (P.O. Box No.)</p> <p><i>PO Box 17 Stellenbosch</i></p>
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<p>For the rental of equipment</p> <p><i>EROX 5915</i></p>	<p>Serial No.</p> <p><i>350123224</i></p>	<p>Installation date</p> <p><i>— Am —</i></p>
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- COM agrees to supply, install and let to the Renter and the Renter agrees to rent the above machine subject to the terms and conditions contained herein.
- It is recorded by the parties that this is a Rental Agreement and the Renter shall at no stage acquire ownership of the equipment. No act shall be done or permitted by the Renter to cause the machine to become immovable property, or to become affixed to other movable property in such manner or with the intention that the goods accede thereto. Renter hereby waives and undertakes to procure and furnish COM with a written waiver of any right of accession by any other persons as COM may from time to time direct.
- Irrespective of the date hereof this Agreement shall endure for a minimum period of *60* months commencing from the installation date of the equipment ("initial period"). Renter shall not be entitled to terminate this Agreement prior to the expiry of the minimum period of the Agreement without COM's prior written approval which, if given, may be made subject to such conditions and the payment of such settlement amounts as COM may require. After the initial period, this Agreement shall continue indefinitely until either party gives 90 days written notice of termination. Such notice shall only be given to expire on expiry of the initial period or on any subsequent anniversary of the date on which the initial period expires. Each such notice of termination shall be sent by prepaid registered post to the other party at the domicilium citandi et executandi and/or address as set out above.
- The monthly rental of R *587.10* (inclusive of Vat) shall be paid monthly in arrears on the anniversary of the date of installation of the equipment until expiry of the initial period. Such rentals shall be payable free of any deductions whatsoever, at such place as COM or its cessionary of this Agreement may from time to time direct. The Renter shall not be entitled to set off against such rentals any present or future claims which the Renter may have against COM from whatsoever cause arising nor shall the Renter be entitled to withhold or defer payment of or avoid judgement for any such Rentals by reason of any such present or future claims.
- The Renter shall use and keep the equipment in careful and proper manner and not abuse it, nor use it or permit it to be used for any purpose other than that for which it is intended and insured and shall keep it free of all liens, hypothecs, pledges and other encumbrances. From the date of installation of the equipment and until the return of the equipment to COM the risk in and to the equipment shall remain with Renter who shall be responsible for any damage to or loss or destruction of the equipment arising from any cause whatsoever. Any such loss, damage or destruction of the equipment shall in no way affect or vitiate the Renters liability to COM hereunder. Renter shall procure, at its own expense, that all requirements of law relating to the rental agreement, possession, operation, insurance and/or use of the machine are complied with.
- Maintenance of the equipment does not form part of this agreement but shall be covered by a separate maintenance agreement. The Renter agrees and undertakes that he will not attempt to carry out any repairs or maintenance of whatever nature to the equipment other than the maintenance and adjustments specified in the Manufacturer's Operational Reference Book supplied with the equipment.

In the event of the Renter being in default of punctual payment of any amount payable in terms of this Agreement, or committing a breach of any of the terms and conditions of this Agreement, or failing to satisfy any judgement granted against it within a period of seven (7) days, or committing any act of insolvency or being placed in liquidation, or compromise or defer payment of any debt owing by renter to any or all of its creditors generally, or being a natural person, dies, or being a partnership, is dissolved, or being a private company sustains a change of shareholding, or generally does or omits to do anything which may prejudice COM's rights in terms of this agreement of cause COM to suffer any loss or damage, or if the machine is damaged, destroyed or lost and COM in its sole discretion determines that the machine is incapable of economic repair, then and in any such event COM shall be entitled, without notice to Renter, either:

- To terminate this agreement, take possession of the equipment and to recover from the Renter payment of all rentals which are in arrears at the date of cancellation and/or any other monies which may then be owing by the Renter in terms of this agreement, and/or any amount disbursed by COM in order to place the equipment in good proper state of repair, together with, as liquidated damages, the future rentals and other payments which would have fallen due in terms of this agreement from the date of cancellation until the date of expiry of the initial period thereof, less the money value of the equipment at the time of recovery of possession thereof by COM, provided that in the event of COM being unable to recover possession of the equipment then the money value thereof shall be deemed to be nil, and/or
- To claim from the Renter payment of all amounts in terms of this agreement whether due for payment or not, upon payment of which amounts Renter shall be entitled to the use of the equipment for the unexpired period of the agreement. If Renter defaults in any way in terms of this agreement, or is in breach of the same, COM shall be entitled to recover costs from Renter on the scale as between an attorney and his client (which costs shall not be restricted to any Magistrate's Court scale).

- The Renter shall not be entitled to cede, assign or transfer any of his rights or obligations under this Agreement without the prior written consent of COM being had and obtained, nor shall it sell the equipment, nor part with possession of nor abandon same, nor offer nor attempt to do any of the foregoing.
- The Renter acknowledges that upon installation of the equipment, this agreement shall be ceded by COM to a Registered Finance Company and agrees to hold the equipment on behalf of the cessionary. The Renter shall be obliged, if requested by COM, to advise COM of the Landlord of the premises of which the equipment is in store and the owner shall be entitled to advise the Landlord of its ownership of the said equipment. The Renter undertakes not to remove the equipment from the above premises without the written consent of COM first being obtained, which consent shall not be unreasonable withheld.
- Any relaxation of indulgence which may be granted by COM to the Renter following any breach by the Renter of any of the terms and conditions of this Agreement shall not be deemed to be a condonation by COM of any such breach and the Renter shall not be deemed to have waived any of his rights in terms hereof, nor shall any such relaxation or indulgence be deemed to be novation of any of the terms and conditions of this agreement.
- The Agreement constitutes the whole agreement between the parties and terms, conditions, representations or warranties not contained herein shall not have force or effect. No variation of the amendments of this Agreement shall be of any force or effect, unless reduced to writing and signed by both parties.
- Renter consents to the jurisdiction of the Magistrate's Court having personal jurisdiction irrespective of the amount in dispute, but COM shall not be obliged to institute action in the Magistrate's Court. If Renter defaults in the due fulfillment of any obligation, COM shall be entitled to recover costs from Renter on the scale as between an attorney and his own client (which costs shall not be restricted to any Magistrate's Court scale). Where for any purpose the value of the machine is required to be determined, that value shall be deemed to be net of all costs of transportation, storage, vaultage and refurbishing for purposes of resale. Should it be necessary for the machine to be valued, then, subject to the foregoing, such valuation shall be deemed to be the amount realised by COM in disposing of the machine, either by tender or by public auction (as COM may determine), such disposal to be made by COM as soon as possible after the recovery of the machine. This agreement shall in all respects be governed and constructed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters in connection herewith shall be determined in accordance with such laws.

- 13 COM may at any time, before or after termination of this agreement, appropriate or re-appropriate, and in its discretion apply any monies received from Renter either towards the reduction of any liability of Renter to COM in terms of this agreement or to any other indebtedness of Renter to COM and Renter hereby waives the right to name the debt to which any payment made to COM shall be applied. In the event of appropriation by COM, Renter shall immediately make good any shortfall in payables due in terms of this Agreement.
14. Renter chooses domicilium citandi et executandi ("domicilium") for all purposes at Renter's abovementioned address. Renter may change its domicilium by written notice delivered by hand or sent by registered post to COM. Any notice addressed and sent by prepaid registered post to Renter's domicilium shall be conclusively deemed to have been received by Renter on the third day after the date of posting or, if delivered by hand, on the date of delivery.
15. The rentals payable under this agreement shall be increased by 10% per annum.
- 16 A certificate under the hand of any director or any manager for the time being of COM (whose appointment as such need not be proved by COM) as to any amount due and/or owing by Renter to COM or to any other third party in terms of this agreement shall constitute prima facie proof of the matters therein stated for all purposes including pleadings, any judgement and provisional sentence.
- 17 Should any provision of this agreement be or be retrospectively rendered unlawful then that unlawful provision only shall be deemed to be modified to the extent and in the manner necessary to render it consistent with the enactment rendering it unlawful, or, if such modification is impossible, be deemed to be severable from the remaining provisions hereof and pro-non scripto. In either such event, notwithstanding anything to the contrary in this agreement contained. Renter and COM shall have all the rights conferred on them by the law rendering such provision unlawful.
- 18 All stamp duties, VAT and other taxes and fiscal charges payable in respect of this agreement and the transactions referred to herein and in respect of any security given in connection with this agreement shall be borne and paid by the Renter.
- 19 Renter shall immediately ensure the machine with a registered insurer or through an intermediary, both of Renter's own choice, and at all times keep the machine fully insured for the full amount of the market value of the machine from time to time, under a separate insurance policy against such risks of loss, damage or destruction as property of the nature of the machine is ordinarily insured. The respective rights and interests of COM and the Renter shall be noted on the said policy. Renter shall punctually pay all insurance premiums the machine is insured. The respective rights and interests of COM and the Renter shall be noted on the said policy. Renter shall comply with all the and shall, on demand, produce proof to COM that the machine is insured and that all premiums due in terms of the policy have been timeously paid. Renter shall comply with all the terms, conditions and warranties of every insurance policy effected in terms of this agreement. Renter hereby cedes to COM as security for the due performance of Renter's obligations in terms of this agreement all of Renter's right, title and interest in any insurance policy effected in terms of this agreement and undertakes to deliver such policy to COM on demand. Where, if Renter dies, his estate is entitled to the benefit of automatic settlement of indebtedness to COM in respect of this Agreement the parties hereby record that entitlement to this benefit is an ordinary condition of this agreement. COM shall be entitled but not obliged to pay the insurance premiums and/or other monies which may become due on the said policy on behalf of Renter, which premiums or other monies shall be repayable to COM by Renter on demand. COM shall be entitled but not obliged in the event of the policy becoming of no force or effect or in the event of Renter failing to produce proof that the equipment is insured, to insure the equipment as contemplated above and to pay the premiums and/or other monies due thereon on Renter's behalf, which monies and/or premiums shall be repayable by Renter to COM on demand.
- 20 Upon termination of this agreement by effluxion of time, Renter shall forthwith return the equipment to COM at Renter's own expense and in good working order and condition, fair wear and tear only excepted. Renter shall have no further rights to or interest in the equipment.
- 21 Renter shall pay to COM penalty interest on any amounts (including damages as finally liquidated) due in terms hereof by Hirer to Renter and unpaid. Such penalty interest shall accrue from day to day from the due date for payment (or date accrual) of COM's right to claim, in the case of damages) to the date of receipt of payment by COM. The said penalty interest shall be levied at the rate of 3% per month.
- 22 Delivery  
The parties record that Renter has selected the equipment from the supplier thereof and in so doing, Renter has relied entirely on his own judgement. COM has no knowledge of the purposes for which the equipment is required and does not warrant that the equipment is fit for the purpose for which it is intended. Renter shall at its own cost procure and take delivery of the equipment from COM or supplier and delivery or tender of delivery by COM/Supplier to Renter within thirty days of the commencement hereof shall be deemed to be delivery of the equipment by COM, and Renter shall take delivery also on COM behalf so that ownership of the equipment shall pass to COM.
- 23 Subject to clause 7 if the equipment is damaged, destroyed or lost, Renter shall:  
23.1 Immediately notify COM in writing  
23.2 properly and timeously do everything necessary to procure payment to COM of compensation under any insurance policy; and  
23.3 if so required by COM, repair and reinstate the equipment at Renter's cost; and  
23.4 continue to discharge all obligations on due date
- 24 Prime Rate and Variable Rentals  
24.1 For the purpose of this agreement "the prime rate" shall mean the publicity quoted basic rate of interest per annum (as certified by any Manager by the Standard Bank of South Africa Limited, whose appointment as such it shall not be necessary to prove) at which the said Bank will lend overdraft.  
24.2 If the prime rate changes during this agreement, COM shall on or as soon as possible after the date of such change, adjust the rentals which fall due on or after the date of the change, so that COM maintains the internal rate of return it enjoyed immediately prior to the said change.
25. The Renter hereby warrants that all rentals due in terms of this agreement are wholly or partly deductible from his income under Part I of Chapter II of the Income Tax Act 58 of 1962, as amended.
26. Debit Order Authorisation  
COM or its Cessionary shall be entitled to originate debits to the Renter's current account at the bank, branch and account number set out below, or any other branch or bank to which the Renter may subsequently transfer its account, with all amounts due or which might at any time become due by the Renter in respect of its obligations under this agreement. This authority shall in no way be construed as substituting, varying or novating the Renter's obligations under this agreement. Renter shall be obliged to notify COM of any variations to the bank, branch and/or account number details furnished below, within 10 days of such variation.
27. In terms of the Value Added Tax Act, value added tax (VAT) at the prevailing rate as at date of signature hereto has been included in each rental. If there is 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 the said change shall be recalculated accordingly and the said recalculated rentals shall substitute the rentals which were calculated at the old rate.
28. Renter acknowledges that COM shall not be liable for the costs of any necessary repairs and/or modifications to the goods in rendering same to be Year 2000 compliant, and Renter shall not hold COM liable for and indemnifies COM against any loss sustained by the Renter and/or any third party respectively, arising from any failure/dysfunction of the goods attributable to the goods or any component thereof not being Year 2000 compliant/compatible. This clause shall in no way detract from COM's rights and/or Renter's obligations in terms of this agreement.

BANK \_\_\_\_\_

BRANCH \_\_\_\_\_

A/C No. \_\_\_\_\_

Signed on behalf of and warranting his authority.

Company STELLENBOSCH MUNICIPALITYName K. A. FORDSignature [Signature]Title DIRECTOR: COMMUNITY SERVICESDate 25 MARCH 2004Witness [Signature]

Signed on behalf of Cape Office Machines.

Name EDGAR ORTEGASignature [Signature]Title MANAGING DIRECTORDate 25-03-04Witness [Signature]