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1995 REVISED GUIDELINES IN THE LEASE AND RENTAL OF EQUIPMENT AND AMENDING PMO MEMO CIRCULAR NOS. 09-92 AND 08-93

PMO MEMORANDUM CIRCULAR NO. 13-95, August 20, 1995

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Pursuant to Section 142, Article XIII of PPA Administrative Order No. 13-77, and in order to rationalize the PMO's equipment leasing policies, systems and operational procedures and to make the equipment operations more effective and viable, it was found necessary in the interest of all concerned to amend PMO Memorandum Circular Nos. 09-92 and 08-93

As an integral part of the equipment management system, the equipment leasing operation of the PMO necessitates the charging of rental for the use of the existing PPA equipment and those which may hereinafter be acquired to generate income as a source of fund to sustain equipment maintenance and the recovery of capital investment.

For the guidance of all concerned, the following guidelines shall be the basis in the leasing, use and billing of such equipment.

A. Basic Policies

- These equipment shall be rented or leased preferably in support of port cargo handling services and activities or port-related physical improvements.

- When equipment is on lease, it shall not be sub-leased, pledged, encumbered, alienated or transferred to the possession of, location and/or of any other person, except that in the latter case, only to the lessor's authorized representative or employee.

- The choice of operators, shall be at the option of the lessee and their competence and skill to handle and operate the equipment are subject to the approval of the Port Engineer. Should the lessee prefer his own operator, it shall be under the supervision of PPA personnel.

- When not in use inside port areas and on reasonable cases, notwithstanding Section A (1) hereof, the equipment may be rented outside port area and for such duration that it will not hamper the port's equipment needs. In exceptional case, wherein the equipment has to be rented outside Puerto Princesa City the lessee will be required a waiver.

B. Responsibilities/Supervision

The use of equipment shall be the joint responsibility of the Permits and Licensing Office and the Engineering Section. While the PLO prepares the documentation and authority to use, the Engineering Section is responsible for the operations and supervision of personnel who operate these equipment. In addition, the Port Engineer (PE) shall certify the availability of the equipment and request needed parts and repair when necessary. Both shall see to it that the use of equipment are properly authorized, monitored, recorded, billed and paid in coordination with the Finance Section. In case either of them is absent, the Port Manager or Incharge of Office shall appoint a

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temporary incharge.

The maintenance of these equipment shall be the responsibility of the Port Engineer, hence, he shall supervise maintenance personnel and the care of tools and gears and the necessary parts.

All permits/lease contracts issued shall be subject to the approval of the Port Manager.

C. Documentation

Prior to its use, these equipment shall always be covered by proper documents and authorization.

- The lessee shall initially apply with the Permits and Licensing Officer (PLO) by filing the ERRO. The PLO shall check the reasonableness of use of the equipment and its availability. Lessee shall be informed of the amount of the deposit which includes rental of equipment, operator's fee, maintenance and VAT charges. These are presented in the Estimated Computation of Equipment Rental.

- When equipment shall be rented, the PLO shall prepare the Equipment Lease Agreement (ELA) herein attached as Annex "B". The Equipment Lease Agreement is prepared in six (6) copies initialed by the Port Engineer, and signed by the Port Manager and the lessee in conforme. For rentals exceeding one week, ELA shall be prepared in seven (7) copies. This document shall be properly notarized, as witnessed by the Permits and Licensing Officer and the Port Engineer.

- The Port Engineer shall issue approved dispatch (indicating the condition of the equipment) every time equipment is rented out.

- The original copy of the ERRO is retained by the PLO, afterwards, copies are furnished the PE, Finance Section and COA and the last copy retained by the Applicant.

- Should the lessee opt to discontinue (terminate) the use of equipment before the termination of contract period, he/she shall formally notify PPA by filing with the PLO the Notice to Terminate Rental Equipment (NTRE), herein marked as Annex "C" at least one (1) day, in case of long-term rental (one month) or two (2) hours in case of short-term rental before the date/time of termination. Otherwise, he shall be billed correspondingly.

- Should the lessee desire to extend the use of the equipment, he/she must file with the PLO in six (6) copies two (2) hours before the start of the extension time the Notice to Extend Use (NEU) herein marked as Annex "D". The NEU shall be approved by the Port Manager/Incharge of Office before the expiration of contract provided current rental is fully paid, the time of extension does not exceed the original time frame approved and provided further, that the corresponding amount to cover the rental of extended utilization is paid in advance.

- During the period of use of the equipment, the PE shall keep record of the actual operating time and idle time which shall not be less than one (1) hour. Interruption of less than one (1) hour shall not stop the running of the rental time. Upon the termination of ELA, the Port Engineer shall prepare and submit to the Port Manager the Equipment Utilization Report (EUR) herein attached as Annex "E" in five (5) copies. After noting the report, the Port Engineer shall forward the same to the Finance Section for billing and collection, copy furnished the PLO, COA, and lessee.

- The Port Engineer shall ensure that he has on file complete records of all equipment leased and report of utilization; the Permits and Licensing Officer, the complete file of the contracts. The Port Engineer shall submit a summary report of such rentals to the Port Manager at the end of each month indicating therein the names of lessees and hours/ days of utilization.

D. Payment and Rental Rates

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1. Rental Rates - The rental stipulated in Annex "F" hereof which is made an integral part of this guidelines shall be the basis of rental.

2. Period of Payment/Billing -

a. Generally, for rentals not exceeding one day, payment shall be made in advance. These are rentals covered by ELA. If however, the period of lease exceeds one week (7 days) or up to one (1) month duration, the lessee may be given the option to pay the full rental in advance or only 50% as initial payment before the withdrawal of equipment and the other 50% upon return of equipment. Rentals of one month shall be covered by lease agreement.

b. The minimum period of rental is four (4) hours actual service time. Should equipment be used for less than four (4) hours, lessee shall likewise pay equipment rental of four (4) hours. Period in excess of four (4) hours shall be correspondingly billed on an hourly basis, or fraction thereof.

c. If equipment is to be rented on a monthly or long term basis, it is understood to be twenty-eight (28) days of eight (8) hours per day excluding overtime minus the rental time suspensions authorized while the equipment is with the lessee. However, period of use may be considered cumulatively, that is during a particular month the number of hours of use exceeds 28 days and 8 hours a day, the excess shall be considered as overtime. Overtimes shall be indicated separately in the bill. The excluded two (2) days shall be used for servicing the equipment. If during the month there are several idle times not on account of mechanical breakdown or lessor's fault that when summed the actual working days will be less than twenty (20) days, lessee shall be billed at the minimum of twenty (20) days,

d. On rental of long duration, idle time of less than one (1) hour shall not be deductible. When the equipment is in the custody of the lessee, rental shall be charged whether the equipment is operated or idle except when the equipment is turned-over to the Port Engineer or his duly authorized representative.

e. As stated in PPA Memorandum Circular No. 13-88, the lessee shall pay the 10% Value Added Tax.

f. Payment shall be made preferably in cash, manager's check, cashier's check or demand draft. No account shall be allowed except when expressly authorized by the Port Manager pursuant to PPA MC No. 06-89.

E. Terms and Conditions of Use of Equipment

- The leasing of equipment through ELA shall be governed by the provisions of the lease agreement to be executed incident hereto, the equipment shall be released to the lessee only after said agreement has been signed by the both parties.

- The term of lease shall commence when the equipment leaves the PMO Equipment Pool and shall terminate on the date when the equipment is returned to the PMO Equipment Pool. The lessee shall pay costs to bring said equipment from the equipment pool to the location of its use and its return to the pool.

- While in his custody, the lessee shall be responsible for the security, safety and preservation of the leased equipment in the same condition he received from PPA. The lessee shall be required to post security bond in case of leases of one (1) month or more which shall be equivalent to 10% of the contract. PPA reserves the right to inspect and appraise the equipment upon return by the lessee to determine its condition. The lessee shall be held liable for damages the equipment has sustained, except those attributable to normal wear and tear which include tire, repair kit, tire stub, brake shoe, rubber cap, oil filter, fuel filter, air filter, oil seal, motor and hydraulic oil, bulb, and cable.

- When rented on a long term basis, the lessee shall bear expenses for fuel, operator's fee, replacement of damages. Charge for regular maintenance shall be equivalent to 16% of the rental based on the equipment's actual

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utilization. This covers the expenses on lubricants and repairs based on normal wear and tear which is inclusive of the equipment's tires, repair kit, tire stubs, brake shoes, rubber caps, oil filter, fuel filter, air filter, oil seal, motor and hydraulic oil, bulbs, and cable. Besides the regular maintenance of the equipment, servicing and periodic inspection, the lessee shall thoroughly clean and wash the equipment of mud, rubbish, spilled oil, dirt and dust every week or oftener, and shall spray the chassis, cab and other parts with suitable oil after the cleaning, and if washing is done outside the port, the Port Engineer or his assistant shall be notified.

- When equipment is under his custody, lessee shall not remove or alter any parts, accessories, attachments, letterings or trademarks on the equipment and shall not after or construct any attachment parts or accessories on said equipment unless specifically authorized by the Port Manager. Welding of bolts, attachments, parts or assemblies, or cutting parts to facilitate removal of same are not allowed.

- That the lessee shall bear all expenses for spare parts purchased in case of breakdown of equipment due to lessee's fault or negligence, and if the lessee cannot supply the spare parts, PPA will do the necessary replacement to be charged to the lessee.

- That if the equipment is idle due to lack of fuel and lubricants supposed to be supplied by the lessee, a minimum of eight (8) hours per day rental shall be charged provided that the equipment is in operating condition.

- That the equipment shall not be operated on unsafe working platforms or ground and shall not be operated or parked where it will be subject to possible damages during operations, fire or rain; That after the day's operation, the equipment should be parked away from places where it may be subject to the elements or in a manner which may cause undue wear and tear to the leased equipment. The lessee shall be liable for damages or for the cost of damages if he fail to exercise due diligence and precautionary measures or if he fails to comply with the stipulated terms and conditions.

- When equipment is on lease outside port premises or in case of non-usage of the equipment due to standby or waiting time, the lessee shall pay to PPA the stipulated minimum daily or monthly rental. However, in case of unworkable conditions not due to fault of lessee, such as rain, the lessee shall pay one (1) hour per unit per day rental. Such inability to work must be communicated within twenty-four (24) hours after such occurrence to the Port Engineer. However, if the inability to work is due to fault of lessee, he will be billed continuously at eight (8) hours a day as if there was no break in the use.

- In case of immobility and/or equipment stuck-up due to lessee's fault, the payment of rentals shall continue during the period of immobilization at the minimum of eight (8) hours per day. However, if the lessee can show that damage was due to normal wear and tear, the billing shall be immediately stopped.

- The Port Manager shall have the right to terminate the contract upon three (3) days advance notice to the lessee in case of long-term lease and two (2) hours in case of short-term lease, for the following reasons:

> a. If, in the Port Manager's opinion, the continued operation will result in accelerated damage to the equipment, and
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> b. If the lessee has violated any provisions of the lease contract and/or defaulted in the payment of the agreed rental fees, and when the contract period may have been extended not at PPA's option.

- When equipment is on lease outside the port premises on non-cargohandling-related activities, and there is an urgent and immediate need for the equipment for cargo handling-related activities, the period of lease may be temporarily suspended and the equipment may be used to meet the need of the latter. The inclusive suspended time shall be deducted from payment.

- During the period of lease, the lessee shall take full responsibility in the operation of the equipment freeing PPA from any liability in case of accidents, damage to life and property that may result from the operation of equipment. That should there be third party claim later, this responsibility shall be borne solely by the lessee.

- In case of damage to equipment, accidents involving third persons or properties, the lessee shall immediately notify the Port Engineer within one (1) hour after occurrence of incident. The Port Engineer shall immediately conduct an investigation which will contain the nature and cause of accident, the persons responsible, victims (if any), extent and cost of damage, and submit to the Port Manager, report of investigation copy furnished the PLO and Port Police within forty-eight (48) hours after the incident, in the absence of the Port Engineer, the PLO shall assume this responsibility.

F. Maintenance/Service Days - The Port Engineer shall set within the month a strict schedule of compulsory service days for the equipment. When on lease, these service days shall be deducted from billing.

G. Legal Issues, Claims and Costs

- Should there be an appeal in the billing or the use of equipment, lessee shall file his appeal in writing to the Port Manager within forty-eight (48) hours upon receipt of the Notice of Collection. Otherwise, his right to appeal should have been deemed waived.

- If the lessee is not satisfied with the decision, he can file an appeal with the Port District Manager within fifteen (15) days from receipt of the Port Manager's decision, if the decision of the District Manager is adverse to the lessee, the latter can still elevate his appeal to the General Manager within fifteen (15) days from receipt of the decision of the District Manager.

- In case of lawsuits arising from the lease of the equipment, the PPA and the lessee agree that the venue of any action shall be exclusively laid in the competent courts of Puerto Princesa City.

- In the preparation of the lease agreement, the cost of notarial services shall be borne by the lessee

H. Repeating Clause - All PMO orders, rules and regulations or guidelines inconsistent with or contrary to any of the herein provisions of this circular are hereby repealed/amended/ modified accordingly.

I. Effectivity - This Circular shall take effect immediately.

Adopted: 20 Aug. 1995

(SGD.) BUENAVENTURA ROBLES
Port Manager

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