

MAINTENANCE AGREEMENT (CONTRACT HIRE) - TERMS AND CONDITIONS

A

1.0 GENERAL

1.1 Definitions

- "The Dealer" means the provider of the Equipment, its sub-contractors or agents.
- "The Customer" means the legal entity accepting the Dealer's written terms and conditions for the supply of maintenance services.
- "Service" means the services to be performed by the Dealer pursuant to this Agreement.

1.2 This Agreement is made between the Dealer ("the Dealer") and the Customer ("the Customer") on the date shown and in respect of the vehicle ("the Equipment") all as described overleaf.

1.3 Where this Maintenance Agreement is made in support of a Contract Hire Agreement (or Lease Agreement), the terms and conditions of that Agreement will take precedence over this Maintenance Agreement. Unless previously terminated this Agreement will last for the period of hire referred to overleaf and the Dealer will provide the service under this Agreement without direct charge to the Customer, unless otherwise agreed and provided for.

1.4 This Agreement constitutes the entire agreement between the Dealer and the Customer and replaces all proposals or prior agreements, oral or written, and all other communications between them relating to the subject matter of this Agreement. No alteration, waiver or modification thereof shall be valid unless signed by an authorised representative of the Dealer and by a person duly authorised on behalf of the Customer.

2.0 DEALER OBLIGATIONS

Service Only

2.1 The Dealer will service the Equipment at the time and intervals referred to overleaf. "Service" includes the changing of oils and filters and the lubrication of parts as may be required but not detailed inspection or the replacement of parts.

Full Maintenance

2.2 Subject to clause 3.1, the Dealer will at its expense:-

2.2.1 Carry out routine servicing and inspection of the Equipment at such intervals as the Dealer may reasonably decide including the adjustment or replacement of any defective working parts where caused by standard operating fair wear and tear discovered during such maintenance or service work;

2.2.2 Repair or replace any parts (excluding consumables, forks, tyres, batteries and seats). Where in the Dealer's reasonable opinion the part has been worn or damaged due to the Customer failing to take reasonable care of the Equipment the cost of the repair will be charged to the Customer.

2.2.3 Use all reasonable endeavours to supply spare/replacement components (excluding consumables) required to maintain the Equipment, using such components (whether service exchange parts or new parts) as the Dealer considers necessary.

2.2.4 Undertake maintenance during normal working hours of [8.00] a.m. to [4.30] p.m. Monday to Friday (other than Bank Holidays and Public Holidays). Work requested outside these hours will be charged at the Dealer's then prevailing rates.

Availability of Equipment

2.3 The Dealer will make every effort to maintain maximum availability of the Equipment but will not be liable for any downtime, consequential damage or loss incurred by the Customer as a result of the Equipment not being available.

Replacement Equipment

2.4 If the Equipment shall become unroadworthy as a result of mechanical defects (other than as a result of unreasonable wear and tear or the Customer's negligence or abuse), for a period longer than 24 hours, the Dealer will provide substitute Equipment for a period not exceeding 28 days. In particular:-

2.4.1 Substitute Equipment will, where practicable, be of an approximately similar size and type to the Equipment initially supplied but the Dealer may, at the Dealer's discretion, substitute similar or different Equipment.

2.4.2 The Dealer will not be responsible for any fuel consumed or delivery charges.

2.4.3 The Customer will be solely responsible for insurance of the substitute Equipment.

Service Level

2.5 The Dealer acknowledges the right of the Customer to review the level of service referred to in this Agreement. Where the service is not acceptable the Customer must identify any complaint in writing and request that the performance of the service be improved. If within 3 months following any such complaint the Dealer has failed to resolve this the Customer will have the right to terminate this Agreement by giving no less than 28 days' written notice or, if there is a lease agreement, make direct representation to the Equipment lessor.

Sub Contracting

2.6 The Dealer reserves the right to sub contract all or some of the agreed maintenance if, in the Dealer's opinion, this is in the Customer's best interests.

3.0 CUSTOMER OBLIGATIONS

Extent of the Maintenance Agreement

3.1 The Customer shall be responsible for:-

3.1.1 The cost of any maintenance or servicing of the Equipment, or repair or replacement of parts necessary due to the Customer's failure to comply fully with all obligations and duties under this Agreement and as referred to in clause 3.2 or in the event of vandalism, theft, modifications or alterations to the Equipment which have not been approved by the Dealer or the operation of the Equipment outside the terms of this Agreement.

3.1.2 Ensuring that any defects resulting from such failure to comply are corrected at the Customer's expense as and when they arise.

3.1.3 Ensuring that all such repairs are only carried out by the Dealer or by others with its written consent.

The Customer's Duties

3.2 The Customer hereby irrevocably undertakes to:-

3.2.1 Let the Dealer enter the Customer's premises to inspect, maintain and repair the Equipment in a suitable working environment;

3.2.2 Carry out at the Customer's own expense routine daily maintenance of the Equipment in accordance with the manufacturer's recommendations and ensure that the Equipment is in complete repair and working condition;

3.2.3 Keep the Equipment in a clean condition and free from debris or other material likely to affect its normal operation;

3.2.4 Notify the Dealer immediately of any failure or reduction in the performance of the Equipment or any damage to it and stop using it if further damage is likely to occur;

3.2.5 Instruct the Dealer, unless otherwise agreed in writing, to repair, at the

Customer's expense, all punctures and replace damaged or worn tyres, including those that in the Dealer's opinion need to be replaced.

3.2.6 Where traction batteries are supplied, maintain at the Customer's own expense, the batteries and their chargers in accordance with the manufacturer's recommendations, including installation, connection, charging, discharging and topping up;

3.2.7 Carry out any other routine and periodical checks as specified by the manufacturer.

INCREASE IN COST OF MAINTENANCE

4.0 The Dealer reserves the right to increase payments to be made under this Agreement by an equal amount to the equivalent increase in the Index of Retail Prices (all items) since the date of this Agreement (or the date of the last increase under this clause if later) if the cost of performing its obligations has increased. This right will not be exercised more than once in each 12 month period and any such increase will be notified to the Customer in writing.

4.1 The Dealer reserves the right to increase payments to be made under this Agreement if the usage of the Equipment changes. This will include, but is not limited to, an increase in the number of hours run, a change of working environment, shift pattern, intensity of operations or a change of location.

4.2 The agreed maximum hours' usage (Section 3) and any excess hours charged (Section 4) are shown overleaf.

DEFAULT AND TERMINATION

5.0 Upon any termination under this clause the Customer shall pay to the Dealer immediately all amounts due under clause 6.

5.1 The occurrence of any of the following events shall be and is deemed to be a repudiatory breach of this Agreement by the Customer:

5.2.1 If an individual, the Customer dies or is presented with a petition for a bankruptcy order or enters into a Voluntary Arrangement;

5.2.2 If a company, the Customer has a winding up petition presented against it or is placed in liquidation or if a receiver, receiver and manager, administrator or administrative receiver is appointed over all or any part of its undertaking or assets;

5.2.3 If the Customer ceases or threatens to cease to carry on business or disposes of a substantial part thereof or of any assets (other than in the normal course of the Customer's trade) or is unable to pay debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;

5.2.4 If there is any execution or distress against the Equipment;

5.2.5 If the Customer fails to pay any payments due under this Agreement within 14 days of the due date(s) or commits any breach of any other term or condition of this Agreement and fails to remedy the same (if capable of remedy) within 7 days of notice from the Dealer.

5.2.6 If a company and in the event that the Customer's Ultimate Parent Company (the definition of ultimate parent company being the same as defined in the disclosure requirements of the Companies Act 1989, Section 6(2), Schedule 5 Part 1, subsection 12) changes from the Ultimate Parent Company disclosed in the Customer's latest audited accounts filed at Companies House prior to the date of this Agreement;

5.2.7 If in the Dealer's opinion, a material adverse change occurs in relation to the Customer's business;

5.2.8 If in the Dealer's opinion, its right to title to the Equipment is at risk.

5.2.9 The Customer agrees that this Agreement and the right to possession of the Equipment will terminate automatically upon the termination of any head lease agreement entered into between the Dealer as the owner and any Equipment lessor by reason of the Dealer's insolvency or default in the terms of such head lease.

5.3 If the Customer is treated as having repudiated this Agreement by (a) the occurrence of any one of the events referred to in clauses 5.2.2 and/or 5.2.3, this Agreement shall terminate immediately and without notice; or by (b) the occurrence of any of the events referred to in clauses 5.2.4, 5.2.5, 5.2.6, 5.2.7, 5.2.8 and/or 5.2.9 the Dealer shall be permitted to terminate this Agreement forthwith upon written notice being given.

5.4 Any termination of this Agreement or failure to pay for maintenance shall not be affected by any subsequent acceptance of any payments, and upon any such termination the Customer's rights to the possession of the Equipment shall cease and the Dealer or its agents may without notice repossess the Equipment. The Customer irrevocably agrees that the Dealer shall be entitled to enter any site or premises where the Equipment may be located.

PAYMENTS ON TERMINATION

6.0 On any termination of this Agreement the Customer shall immediately pay to the Dealer the aggregate amounts of the termination sums referred to below:-

6.1 All arrears of maintenance payments and other sums;

6.1.1 If termination takes place during the lifetime of this Agreement, by way of liquidated damages, all payments which would but for termination have become due and payable from the date of termination up to the end of the lifetime of this Agreement less a discount on each payment due for accelerated payment at the rate of 3% per annum;

6.1.2 If demanded, all costs or expenses incurred by the Dealer in repossessing, repairing, storing, insuring or selling the Equipment.

6.2 The Customer's obligations under this clause will be treated as if they had arisen immediately before termination.

DATA PROTECTION

7.0 The Dealer may disclose details of this transaction with the Customer's consent and may refuse to enter into this Agreement without stating any reason. All personal information held about the Customer (which may include information which is deemed 'sensitive' under the Data Protection Act) will be treated as confidential and will only be used and disclosed to any other parties with the Customer's consent except in circumstances notified to the Customer. The Customer has a right to see personal information which is held by the Dealer subject to payment of a charge. For more details the Customer should write to the Dealer for the attention of The Data Protection Co-ordinator.

LAW AND JURISDICTION

8.0 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

N.B. Clauses 2.1, 2.2 and 2.4 only apply if the specific boxes that apply to these clauses have been so marked in this Agreement. Not all optional services are covered by these Terms and Conditions.