

Maintenance Agreement

This Agreement is made between **A M FORKTRUCKS LTD** ("The Maintenance Provider")
 UNITS 1 – 4 RIVERSIDE IND EST, 27 THAMES ROAD, BARKING, ESSEX, IG11 0ND and: ("The Customer")

Name & Address:

Postcode:

Full Maintenance Included in Rental

Periodic Maintenance Included in Rental

Periodic MaintenanceService visits per annum are included

This Maintenance Contract is based upon Average Annual Utilisation of:Hours.

Utilisation in excess of the contracted hours will be charged at: £ /Hour

Additional Provisions:.....

Equipment:..... Confirmed by You:.....

SIGNED for and on behalf of ("the Maintenance Provider")

SIGNED for and on behalf of ("the Customer")

Authorised Signatory.....

Authorised Signatory

Full Name

Full Name

Position

Position

Date

Date

1 Interpretation

- 1) In this Agreement unless the context otherwise requires:
 "The Contract Hire Agreement" means the Contract Hire Agreement in respect of the Equipment a copy of which is attached to this Agreement;
 "Equipment" means the Equipment the description and location of which are shown in the Particulars;
 "Force Majeure" means in relation to either party any circumstances beyond the reasonable control of that party (including without limitation any strike, lock out or other industrial action);
 "Index Figure" means the monthly figure given by the Retail Prices Index;
 "Location" means the location of the Equipment shown in the Particulars or any other location agreed from time to time between the parties;
 "Loss" means in relation to the Customer any loss (whether loss of profit or otherwise), damages, costs or other compensation and any legal or other expenses which is or are awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer however the same may arise and whether occasioned by the negligence of the Maintenance Provider, its employees or agents or otherwise;
 "Maintenance" means the repair and maintenance service to be provided pursuant to this Agreement and being either the Full Maintenance Contract or the Periodic Maintenance Contract as specified in the Particulars;
 "Maintenance Charge" means the charges payable by the Customer for the Maintenance as referred to in the Particulars;
 "Particulars" means the particulars and details under this Agreement and the Contract Hire Agreement attached to this Agreement;
 "Retail Prices Index" means the General Index of Retail Prices which is Table 18.1 in the Monthly Digest of Statistics published in the United Kingdom by the Central Statistical Office;
- 2) The headings in this Agreement are for convenience only and shall not affect its interpretation.

2 Full Maintenance

- 1) If the Particulars indicate that this shall be a Full Maintenance Contract then the Maintenance Provider shall in respect of the Equipment in Normal Working Hours;
- carry out all servicing and Periodic Maintenance tasks (as defined in Clause 3 below)
 - carry out all emergency repairs and all normal repairs and replacement caused by standard operating fair wear and tear;
 - provide at no extra cost to the Customer all materials and labour and meet its own travelling costs involved in carrying out the above tasks.

3 Periodic Maintenance

- If the Particulars indicate that this shall be a Periodic Maintenance Contract then the Maintenance Provider shall in Normal Working Hours carry out periodic maintenance at the intervals specified in the Particulars.
- The Maintenance Provider shall not be responsible for costs of repair work or for any servicing other than listed in Clause 3.1.
- If the agreed interval is not in line with the manufacturer's recommendation it is the Customer's obligation to arrange additional maintenance to meet these recommendations.

4 Maintenance Not Included/Additional Work

- 1) Neither the Full Maintenance or Periodic Maintenance shall include:
- any replacement or repair of tyres, forks, seats, cab & cab equipment, lights, alarms, attachments, or additional equipment.
 - any repairs and replacements necessary due to accidental damage, act of god or abusive operating;
 - the remedy of any design defect in the Equipment, or any defect or malfunction which is due to faulty materials or workmanship in manufacture, or which in the Maintenance Provider's final and binding opinion has arisen as a result of:
 - electrical work external to the Equipment;
 - transportation of the Equipment not performed by or on behalf of the Maintenance Provider, or any modification, adjustment or repair to the Equipment third party without the written consent of the Maintenance Provider;

- the subjection of the Equipment by the Customer to unusual physical or electrical stress, the neglect or misuse of the Equipment by any failure or fluctuation of electrical power, air conditions, humidity control or other environmental controls; or

- any other cause (except fair wear and tear) which is not due to the neglect or default of the Maintenance Provider;

- unless specifically so stated in the Particulars the maintenance upkeep and replacement of the battery.

2) The Maintenance Provider will report to the Customer any additional maintenance and repair work (not included in the Full Maintenance or Periodic Maintenance contract) which it considers necessary or desirable to be carried out and shall if the Customer requests and at the cost of the Customer carry out such additional maintenance and repair work at such time and at such place as the Customer shall agree ("Additional Work").

3) If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through the Maintenance Provider's fault (as to whether either of which events has occurred the Maintenance Provider's decision shall be final and binding on the Customer) the Maintenance Provider reserves the right to terminate this Agreement forthwith, by giving written notice to the Customer, in respect of the whole or any part of the Equipment which can no longer be maintained, in which case the Maintenance Provider shall repay to the Customer a fair proportion of any charges for the Maintenance Provider's services which have been paid in advance by the Customer.

4) If the Equipment is damaged otherwise than by fair wear and tear or the Equipment requires a spare part or replacement component (as to whether either of which events has occurred the Maintenance Provider's decision shall be final and binding on the Customer) the Maintenance Provider reserves the right to charge the Customer for supplying the same. All spare parts and replacement components supplied by the Maintenance Provider shall become part of the Equipment and any parts and components removed from them shall become the Maintenance Provider's property, unless otherwise agreed in writing between the parties.

5 Equipment Availability

1) The dates or intervals set out in the Particulars on which the Maintenance is due or the periods stipulated between the Maintenance in this Agreement are approximate only and the Maintenance Provider shall be entitled to carry out the Maintenance on any day notified in writing to the Customer in accordance with this Clause which taking into account the Maintenance Provider's working schedules is as near to the date appointed in this Agreement as is reasonable and practicable under the circumstances.

2) On prior Notification in Writing by the Maintenance Provider of the actual date on which the Maintenance Provider intends to carry out the Maintenance the Customer shall on the date notified (or upon such alternative date as the Maintenance Provider and the Customer shall then agree in writing) make the Equipment available to the Maintenance Provider's servant, agent or specialist sub-contractors at the Location for service and repairs within the Normal Working Hours. The Customer shall ensure that the place where the Equipment is made available for Maintenance or any other work carried out under this Agreement shall be under cover, well lit and provided with main electric power and generally suitable for the Maintenance Provider to carry out the Maintenance in an efficient manner and without the risk to the health of the persons carrying out the work.

6 Normal Working Hours

Normal Working Hours are the hours of 08.00am to 16.30pm from Monday to Friday excluding Bank and Public Holidays.

7 Service Out of Business Hours

The Customer shall pay additional charges at the prevailing rate of the Maintenance Provider for call-outs requested outside Normal Working Hours. Whilst the Maintenance Provider will attempt to provide a service during such hours it shall not be under obligation to do so.

8 Sub-Contractors

The Maintenance Provider reserves the right to employ specialist sub-contractors in respect of such parts of its obligations under this Agreement as it thinks fit and/or assign its rights and obligations under this Agreement.

9 Customer's Obligation

- 1) The Customer shall:
 - i) at all times keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment;
 - ii) not move the Equipment from the Location without obtaining the prior written consent of the Maintenance Provider, which consent shall not be unreasonably withheld;
 - iii) use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in writing by the Maintenance Provider.
- 2) The Customer will keep and produce to the Maintenance Provider accurate records of all Equipment operational hours.
- 3) The Customer shall immediately notify the Company if the Equipment breaks down or fails to work properly, or if any repairs or replacements are necessary.
- 4) The Customer will carry out all daily checks on the Equipment in accordance with the manufacturer's recommendations to ensure the Equipment is in a safe and operational condition prior to work commencing.
- 5) The Customer shall be liable for the repair of all punctures and replacement of tyres.
- 6) The Customer will check, in the case of electrically powered Equipment, the battery electrolyte levels daily and top up as necessary and charge the battery strictly in accordance with the battery manufacturer's instructions and guarantee.
- 7) The Customer shall ensure that the Equipment is operated properly and safely by operators who are competent and properly trained in the use of the Equipment.
- 8) The Customer shall ensure that the Equipment is maintained in a clean condition free from swarf, oil, grease and dirt and shall supply any oil and grease that may be required to maintain satisfactory function of the Equipment.
- 9) The Customer shall comply in all respects with the provisions of the Safety, Health and Welfare at Work Act 2005 and Factories Act 1961 as amended or any statutory modification or re-enactment and shall indemnify the Maintenance Provider against any breach thereof.
- 10) The Customer shall pay the Maintenance Provider for any repair work done to rectify damage caused by misuse that affects the safe working of the Equipment eg. structural damage to the chassis, counterweight, traction battery or engine, mast and axles ("Repair Works").
- 11) The Customer can not carry out or cause to have carried out any work what so ever on the Equipment other than by the Maintenance Provider unless first obtaining written consent, and shall ensure that all replacement parts used in such work are original parts recommended by the manufacturer.

10 Payment

- 1) The Customer acknowledges that the Maintenance Charge is based upon the average operational hours for the Equipment shown in the Particulars. Should the Equipment be used for more than the average operational hours then the Customer shall pay to the Maintenance Provider "excess hours" at the rate specified in the Particulars.
- 2) The Customer shall in addition to these charges pay for materials and labour and travelling time in connection with any carried out "Additional" or "Repair Works" at the prices and the rates of the Maintenance Provider prevailing for the time being but shall in that case be entitled to request the Maintenance Provider to submit a prior written estimate of the approximate costs of such works.

All payments in respect of "Repair Works" or "Additional Works" are due to the Maintenance Provider within 30 days.

11 Increased Payments

- 1) The charges for the Full Maintenance or Periodic Maintenance under this Agreement shall be reviewed upon each anniversary of the date of this Agreement and if upon any such review the Index Figure last published before that date shows an increase or decrease in relation to the Index Figure first published before the date of this Agreement the said charges shall be increased in the same proportion.
- 2) The increase in the Full Maintenance or Periodic Maintenance shall be collected by A.M. Forktrucks Ltd or their agent under the standing order mandate.

12 Liabilities

- 1) The Maintenance Provider shall have no liability to the Customer for any consequential Loss of the Customer arising out of or in connection with the provision of any goods or service pursuant to this Agreement (except in respect of death or personal injury resulting from the Maintenance Provider's negligence).
- 2) Subject to Clause 12(1) above and without prejudice to any manufacturer's liability, the Maintenance Provider shall not be under any duty to search for, identify, or advise upon any defect in the Equipment or work required thereon which would not become apparent in the course of the proper performance by the Maintenance Provider of the Maintenance and the Maintenance Provider shall not be liable for any failure to search for, identify or advise upon any such defect or work required thereon.
- 3) Subject to Clause 12(1) above, the Maintenance Provider accepts no liability nor responsibility for any consequential Loss arising directly or indirectly from any defect in any spare part or materials supplied or fitted by the Maintenance Provider save where the defect would have been apparent upon reasonable inspection at the time that the Maintenance Provider fitted or supplied the spare parts or materials concerned.
- 4) The Maintenance Provider will make every reasonable effort to maintain maximum availability of the Equipment but will not be liable for any downtime or consequential damage or loss incurred by the Customer.
- 5) The total liability of the Maintenance Provider for any Loss of the Customer hereunder in respect of any one event or series of collective events shall not exceed the Maintenance Charge payable by the Customer for that year.

13 Default

If the Customer shall be in default with respect to any of its obligations under this Agreement and such default continues for 30 days after

written notice thereof by the Maintenance Provider to the Customer then the Maintenance Provider may without prejudice to its other rights hereunder terminate this Agreement by written notice to the Customer. Such termination shall not affect the Contract Hire Agreement save that the Regular Rentals shall thereafter be reduced by the Maintenance charge.

14 Force Majeure

- 1) If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.
- 2) Notwithstanding any other provision of this Agreement neither party shall be deemed to be in breach of this Agreement or otherwise be liable to the other for any delay in the performance or the non-performance of any of its obligations under this Agreement, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended according.
- 3) If at any time the Maintenance Provider claims Force Majeure in respect of its obligations under this Agreement with regard to the supply of the Maintenance, the Customer shall be entitled to obtain from any other person such Maintenance as the Maintenance Provider is unable to supply.

15 Termination

- 1) If the Equipment is declared a total loss or if the Customer's right to possession thereof is terminated for any reason this Agreement shall terminate without prejudice to any pre-existing liabilities of the parties.
- 2) This Agreement shall, subject to the rights to terminate set out herein, continue in force for the period stated in the Particulars and thereafter unless or until terminated by either party giving to the other at any time not less than one month prior written notice of termination expiring at the end of that initial period or at the end of any subsequent consecutive period of 12 months.
- 3) The Maintenance Provider shall be entitled to terminate this Agreement:
 - a) In the circumstances and to the extent referred to in Clause 4(4); or
 - b) forthwith by giving written notice to the Customer if any sum payable under this Agreement is not paid on the due date.
- 4) The Maintenance Provider shall be entitled forthwith to terminate this Agreement by written notice to the Customer if:
 - a) an encumbrancer takes possession of or a Receiver is appointed over any of the property or assets of the Customer;
 - b) the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order;
 - c) the Customer goes into liquidation (except for the purposes of an amalgamation, reconstruction or other re-organisation and in such manner that the Company resulting from the re-organisation effectively agrees to be bound by or to assume the obligations imposed on the Customer under this Agreement); or
 - d) the Customer ceases or threatens to cease to carry on business.
- 5) Any waiver by either party of a breach of any provisions of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision.
- 6) Upon the termination of this Agreement for any reason, subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

16 Entire Agreement/Nature of Agreement

1) This Agreement constitutes the entire Agreement between the Maintenance Provider and the Customer and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. No alteration, waiver or modification of this Agreement shall be valid unless agreed in writing by a Director of the Maintenance Provider and by a person duly authorised on behalf of the Customer.

2) Nothing in this Agreement shall create or be deemed to create a partnership between the parties.

3) If any provision of this Agreement is held by any Court or other competent authority to be void or unenforceable in whole or part, the other provisions of this Agreement and the remainder of the affected provisions shall continue to be valid.

4) This Agreement shall be governed by and construed in all respects in accordance with the laws of England and the Customer agrees to submit to the non-exclusive jurisdiction of the English Courts.

17 Notices and Service

- 1) Any notice or other information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent (by First class pre-paid post, telex, cable, facsimile transmission or comparable means of communication) to the other party at the address referred to in the Particulars.
- 2) Any notice or other information given by post under Clause 17(1) which is not returned to the sender as undelivered shall be deemed to have been given on the 5th day after the envelope containing the same was so posted; and proof that the envelope containing any such notice or information was properly addressed and sent by First class pre-paid post and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.
- 3) Any notice or other information sent by telex, cable, facsimile transmission or comparable means of communication shall be deemed to have been duly sent on the date of transmission, provided that a confirming copy thereof is sent by First class pre-paid post to the other party at the address referred to in the Particulars within 24 hours after transmission.
- 4) Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the Company Secretary of the party to be served at its registered office, or to such other address as may be notified by the party concerned in writing from time to time.

18 Arbitration

Any dispute arising under or in connection with this Agreement shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party of the President for the time being of the Law Society of England and Wales in accordance with the provision of Arbitration Act 1996 but where the Customer is domiciled in Scotland, or otherwise subject to the jurisdiction of the Scottish Courts then any dispute arising under or in connection with this Agreement shall be referred pursuant to the Arbitration (Scotland) Act 1894 as the case may be or any statutory modification thereof to a sole arbitrator to be agreed upon by the Maintenance Provider and the Customer and failing agreement to be appointed at the request of either party by the President for the time being of the Law Society of Scotland.