



JC PAYNE SPECIALIST SERVICES LIMITED

TERMS AND CONDITIONS FOR REPAIR AND MAINTENANCE

(1) DEFINITIONS

(a) In this Agreement the following expressions have the following meanings:

"Body / Ancillary Equipment" means the body, shutter, tail lift, crane, trailer deck, hookloader, passenger lift or any other item of equipment, full details of which are set out in the Schedule.

"Commencement Date" means the date stated in the Schedule and on which this Agreement will commence.

"Company" means JC Payne Specialist Services Limited registered in England and Wales with company number 09004222.

"Customer" means the entity named as such in the Schedule. A reference to the Customer includes a reference to its drivers, employees and agents.

"Excluded Work" means the following:

1. Original equipment from the chassis manufacturer unless such items are repaired, refurbished or replaced for the purposes of carrying our repair and maintenance to one of the items covered by this Agreement;
2. Tyres, paintwork and glassware, unless specified in the Schedule;
3. Repair of damage caused by an accident or by acts or omissions of any third party or of the Customer, or any repair required as a result of any pre-existing condition known to but not disclosed by the Customer or of any unauthorised modification;
4. Repair of damage resulting from faults in, or incorrect fitting of, (i) the original chassis and (ii) any part of the body and/or any other ancillary equipment not specified in the Schedule;
5. Any repair or maintenance of equipment that becomes a legal requirement after the date of the Agreement, including the retro fitting of such items;
6. Repair and maintenance required as a direct or indirect result of Customer abuse or a breach of any of the Customer's obligations under this Agreement;
7. Structural repairs or repairs to the Body / Ancillary Equipment as a result of misuse, overloading or off-road use;
8. Any damage or loss of performance caused as a result of tampering with ancillary equipment electrics or electronic control devices;

"Repairs" means all work and parts (not being Service Maintenance or adjustment work) necessary to remedy any defects to the Body / Ancillary Equipment.

"Service Maintenance" means all work or adjustments (not being Repairs and not being Excluded Works) required to maintain or put the Body / Ancillary Equipment in working order including where appropriate the replacement of any parts deemed by the Company in its absolute discretion to be reasonably necessary whether the same be defective or not. All Service Maintenance must be carried out in the UK.

"Vehicle" means the vehicle to which the Body / Ancillary Equipment is annexed to.

"Work" means Service Maintenance, adjustments, Repairs, inspections and test inspections to the Body / Ancillary Equipment.

(2) REPAIR AND MAINTENANCE

The Company shall:

- (a) carry out Service Maintenance and inspections to the Body / Ancillary Equipment at the intervals and in the manner prescribed by the manufacturer or at such intervals as may be required by law;
- (b) have carried out Repairs to the Body / Ancillary Equipment where the requirement for same has been notified to the Company or which has been identified by the Company during the course of Service Maintenance;
- (c) use reasonable endeavours to use genuine parts of the Body / Ancillary Equipment when carrying out Repairs or Service Maintenance, however the Company reserves the right to use alternative parts where available.

(3) CUSTOMER COVENANTS

The Customer covenants that during the term of the Agreement, it shall:

- (a) Availability of Body / Ancillary Equipment for Repairs

The Customer shall make the Body / Ancillary Equipment available to the Company as soon as possible once the need for Repairs or adjustments has been identified during daily checks, inspections or Service Maintenance, whilst in service or after a defect has been reported.

- (b) Scheduling

The Company shall be responsible for the scheduling of Service Maintenance and inspections on the Body / Ancillary Equipment (unless otherwise specified in the Schedule) at the intervals and in the manner prescribed by the Company or its Agent or at such intervals as may be required by regulations made under any Act of Parliament existing at the date hereof or which come into effect. Should the number of inspections during the contract period increase the Customer shall bear the consequential costs. Failure to present the vehicle for Service Maintenance could result in termination of the agreement.

- (c) Work Authority

The Customer shall ensure that any Work is effected only by the Company (or one of the Company's approved agents).

- (d) Company Administrative Procedures

The Customer shall comply with the Company's procedures for the reporting of any damage, defects or other issues with the Body / Ancillary Equipment including as a result of any regulations made under any change in legislation. The Customer shall also advise the Company as soon as possible should the base location of the Body / Ancillary Equipment change.

- (e) Alterations, Modifications and Abuse

The Customer shall not make any alterations or modifications to the Body / Ancillary Equipment and shall not use the Body / Ancillary Equipment in any other way than that for which it was originally designed. The Customer shall take proper care of the Vehicle and shall use all reasonable endeavours to keep the Body / Ancillary Equipment in good condition.

- (f) Delay or Failure to Carry Out Repairs

Should any Repairs be necessary to rectify a defect which may, if not rectified, cause consequential damage to the Body / Ancillary Equipment, the Body / Ancillary Equipment (and if the Company recommends, the Vehicle) must not be used until those Repairs are completed. If the Body / Ancillary Equipment Vehicle is used and consequential damage caused which necessitates further Repairs, the cost of repairing that damage will be the responsibility of the Customer.

(g) Daily Checks

The Customer shall carry out all daily maintenance and checks to the Body / Ancillary equipment as specified and in accordance with the manufacturer's instructions.

(h) Appropriate Personnel

The Customer shall ensure that the Body / Ancillary Equipment is operated only by authorised, qualified and competent personnel.

(4) GENERAL

(a) Term of Agreement

This Agreement shall be for the term specified in the Schedule, commencing on the Commencement Date.

(b) Company Discretion

The Company shall arrange to have carried out any Work to the Vehicle at its absolute discretion. If the Company considers that any Work is necessary then it shall carry out such Work whether or not the same causes delay to the Customer.

(c) Carrying Out of Work and Default of Customer

If in the sole opinion of the Company any Work has been necessitated or contributed to by any act or default of the Customer or is in respect of an Excluded Work then the Company may in its discretion refuse to carry out all or any part of such Work. If the Company does arrange for all or part of such Work to be carried out it may charge the Customer for that Work.

(d) When Work is to be Done

All Work will be carried out during the Company's normal working hours unless otherwise specified in the Schedule and subject to additional costs. The Customer shall not receive any priority over any other customer of the Company in respect of Work. Should the Customer fail to make available the Body / Ancillary Equipment for any appointment, all costs incurred as a result shall be directly charged by the Company to the Customer, and in this regard, the Customer agrees to indemnify the Company for all losses and costs howsoever arising.

(5) PAYMENT

(a) The Customer shall pay for the services provided under this Agreement against invoices raised by the Company in accordance with the payment method set out in the Schedule. The payment terms for the invoices shall be 30 days from date of invoice.

(b) If the Customer fails to make any payment due under this agreement within 7 days of the due date for payment, the Company may charge interest on the unpaid amount which shall accrue daily, from the date of non-payment to the date of actual payment, at 2% above National Westminster Bank's lending rate.

- (c) Except where specifically stated otherwise, all the costs and charges set out in this Agreement exclude VAT which will be charged at the applicable rate.

(6) ADJUSTMENT OF CHARGES

- (a) Unless stated otherwise in the Schedule, all prices contained in this Agreement are subject to an annual increase of the higher of 3% or the retail price index.
- (b) The Company will notify the Customer of the amount of the adjustment and the date on which such adjustment is to take effect and the Customer shall pay the adjusted rate from such date.
- (c) The Company also reserves the right at any time prior to performance of the Services (or any instalment), to increase the price to take into account of:
- i) any factor beyond the Company's control, including, without limitation, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, parts, materials and other manufacturing costs;
 - ii) any request by the Company to change the delivery date(s), quantities or types of services required; or
 - iii) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- (d) Adjustment in contractual rates will also be made to reflect government legislation, including changes in taxation enacted after the contract start date.

(7) TERMINATION

- (a) If the Customer
- i) fails to pay any amount falling due under this agreement; or
 - ii) fails to remedy any breach of this Agreement within 7 days of notice of such breach, the Company shall be entitled by notice in writing to treat the Agreement as repudiated or to terminate the Agreement.
- (b) If:
- i) the Customer becomes subject to insolvency proceedings, ceases or threatens to cease to carry on its business (including proposing a voluntary arrangement, appointing a Receiver or Administrative Receiver or convening a meeting of its creditors) or is the subject of any enforcement action by a creditor (including the presentation of a petition for bankruptcy), or the Company reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly; or
 - ii) the Body / Ancillary Equipment becomes a total loss either through damage, theft or failure,
- then, without limiting any other right or remedy available to the Company, the Company may terminate all services under this Agreement without incurring any liability to the Customer, and all outstanding sums in respect of services provided to the Customer, together with any outstanding invoices, shall become immediately due and payable.
- (c) Without prejudice to clause (7)(a)ii) above, the Company shall be entitled to immediately suspend the performance of the Agreement upon any breach of the Agreement by the Customer until such breach is remedied to the satisfaction of the Company (acting reasonably).

Any termination under this clause shall be without prejudice to any claim which the Company may have against the Customer for sums payable under or damages for breach of this Agreement, including any claim for interest.

- (d) The Customer may terminate this Agreement by giving to the Company 90 days' notice in writing (unless stated otherwise in the Schedule).
- (e) If the Company's obligations under this Agreement become impractical to perform owing to an event of force majeure which continues for a period in excess of 3 months (and for the purposes of this clause "force majeure" means any act or event beyond the reasonable control of the Company) then either party may terminate the Agreement by giving written notice to the other.
- (f) On any termination of this Agreement the Customer shall pay to the Company all amounts that are due and payable (together with interest) and any arrears under the Agreement and shall also pay a pro rata amount calculated with respect to the period of a month that has been completed at the termination date.
- (g) Should the Customer terminate the Agreement in accordance with Clause (7)(d), the Customer shall also pay a sum by way of agreed compensation for early termination being either:
 - i) the difference between the amount expended by the Company on Work to the Body / Ancillary Equipment to the date of termination and the total amount received from the Customer in Monthly Charges; or
 - ii) the balance of any monthly charges remaining to the original expiry date of the Agreement whichever is the lesser, provided always that this shall not result in there being a balance due to the Customer.

(8) LIMITATION OF LIABILITY

- (a) Nothing in the Terms shall limit or exclude the Company's liability for:
 - i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - ii) fraud or fraudulent misrepresentation; or
 - iii) any other matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- (b) Subject to clause (8)(a):
 - i) the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Agreement; and
 - ii) the Company's total liability to the Customer in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the charges payable for that year.
- (c) If the Customer becomes aware of any default in performance of this Agreement by the Company it shall firstly notify the Company of the default and give the Company a reasonable opportunity to remedy the default. If the Company remedies the default, the Customer shall not have any claim against the Company for the consequences of the default.

(9) INDEMNITY

- (a) The Customer shall indemnify the Company against all claims, damages and liabilities arising from any failure by the Customer to authorise the Company to carry out any Work (whether or not the same falls



within the terms of the Agreement) recommended by the Company as a result of any defect caused by or resulting from accident damage, negligence of the Customer, any Third Party or any of the Excluded Works.

- (b) The Customer shall be responsible for and shall indemnify the Company against any fine, penalty or cost, including legal costs, which the Company may incur as a result of any failure by the Customer to comply with civil or criminal legislation or the terms of this agreement.
- (c) The Customer shall keep the Company indemnified against all liabilities, expenses, costs, claims, damages and losses suffered or incurred by the Company arising out of or in connection with any failure by the Customer to instruct any authorised Agent to carry out any Work (whether or not the same falls within the terms of this Agreement) recommended by the Company in respect of any defects caused by or resulting from accident damage or negligence of the Customer, or any third party.

(10) NOTICES

Any notice to be given by either party to the other under the Agreement or these terms shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its registered office or such other address as that party may from time to time notify in writing.

(11) RELATIONSHIP OF PARTIES

Each of the parties hereto is an independent contractor and nothing in this Agreement shall be construed to imply that there is any relationship between the parties of partnership, or of principal and agent, or of employer and employee, nor are the parties hereby engaging in a joint venture and accordingly neither of the parties shall have any right or authority to act on behalf of the other nor to bind the other by contract or otherwise, unless expressly permitted by the terms of this Agreement.

(12) COUNTERPARTS

This Agreement may be entered into in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original, but all counterparts shall together constitute one and the same instrument.

(13) WAIVER

A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(14) VARIATION

Except as set out in these Terms, any variation to the Agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Company.

(15) GOVERNING LAW

The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in



accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.