



## JC PAYNE SPECIALIST SERVICES LIMITED

### TERMS AND CONDITIONS FOR SERVICE

#### (1) DEFINITIONS

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

**"Agreement"** means these terms and conditions together with the Schedule.

**"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 the customer in the Schedule. A reference to the Customer includes a reference to its drivers, employees and agents.

**"Monthly Charge"** means the payment total per month as shown in the Schedule.

**"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 servicing of the Body / Ancillary Equipment at the frequency and periods set out in the Schedule. Service Maintenance excludes all Repairs.

**"Termination Date"** means the date specified as such in the Schedule.

**"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) SERVICES

In consideration for payment of the amounts set out in the Schedule, the Company shall:

- (a) carry out Service Maintenance to the Body / Ancillary Equipment in accordance with the periods set out in the Schedule;
- (b) use reasonable endeavours to use genuine parts of the Body / Ancillary Equipment when carrying out Repairs or Service Maintenance, unless otherwise agreed with the Customer.

#### (3) CUSTOMER COVENANTS

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

- (a) Availability of Body / Ancillary Equipment



The Customer shall make the Body / Ancillary Equipment available to the Company at the agreed times with the Company's administration staff for the carrying out of the Service Maintenance.

(b) Work Authority

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

(c) 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.

(d) 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.

(e) Delay or Failure to Carry Out Repairs

Should any Repairs be necessary to rectify a defect, the Customer shall ensure that such Repairs are completed as soon as reasonably practicable (whether by the Company following authorisation or otherwise) and must ensure that the Body / Ancillary Equipment is not be used (and if the Company recommends, the Vehicle) until those Repairs are completed.

(f) 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.

(g) 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) 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 breachthe 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**

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.