

## GENERAL TERMS & CONDITIONS OF AFTER SALES

### 1. Definitions

- 1.1 Jungheinrich Lift Truck Malaysia Sdn. Bhd. is hereinafter referred to as the "Contractor" which expression shall include its successors in title.
- 1.2 The person or entity whose order for work and services (as defined in clause 1.4 below) is accepted by the Contractor is hereinafter referred to as the "Customer" whether or not expressly referred to in other documents of sales, purchase invoices or delivery notes issued by Customer or Contractor.
- 1.3 "Contract" means the agreement made between the Customer and the Contractor and referred to in clause 2.1 herein, for work and services, including consultancy services and other contractual services comprising the terms set out in the Contractor's offer and these Terms and Conditions.
- 1.4 Full Service Agreement: A service product that covers fixed cost repairs and maintenance solution customised to Customer's requirements.
- 1.5 Preventive Maintenance Agreement: A service product that provides scheduled maintenance solution customised to Customer's requirements.
- 1.6 Normal working hours: Monday to Friday 0830 to 1730 hours, excluding weekend and public holiday.
- 1.7 "Equipment" shall include any goods, equipment, machine or part thereof and any attachments or fittings or replacements or any other things object of the works and services under this Contract.
- 1.8 "Rules and Regulations" means any written laws, legislation, regulation, by-law or other similar instrument, including any amendment thereto or re-enactment or replacement thereof.
- 1.9 "Terms & Conditions" means these General Terms & Conditions of After Sales.

### 2. Binding Contract

- 2.1 The signed offer by the Customer or the order, whether by letter, attached to an electronic mail, facsimile or other forms of communication for the work and services in the Equipment shall be construed and deemed as an express acceptance of these Terms and Conditions and together shall be known as the "Contract" and in so far as any provision of the Customer's said order be inconsistent therewith these Terms and Conditions shall be deemed to prevail. These Terms and Conditions likewise apply to all future transactions with the Customer regarding the products listed in the Contractor's offer and signed by the Customer, and shall always prevail over any differing or additional terms and conditions proposed or included by the Customer and not contained in the Contract including, without limitation, those contained in Customer's order, acknowledgment of invoice, additional or any other documents.
- 2.2 Any variations or purported variations of these Terms and Conditions shall be deemed to be of no effect unless otherwise agreed in writing in an amendment contract and signed by an Authorised Manager or Director of the Contractor. All other terms shall remain in force and the Contract shall be deemed amended accordingly.
- 2.3 In case individual terms of the Contract should become partly or wholly invalid due to governmental law, regulation, order or action, Contractor and Customer shall forthwith try to find a mutually acceptable replacement for the term thus invalidated. If no mutual agreement concerning such replacement can be reached, Contractor shall have the option to either accept the invalidation thereof and keep the remainder terms of the Contract in force or be entitled to terminate the Contract by written notice to the Customer.

### 3. Price Revision

The Service rates may be reviewed maximum once in a calendar year following good faith negotiations between the Parties if there are any material changes in circumstances, including but not limited to the leasing volume, service package, inflation, significant fluctuations in raw material prices, transport cost etc. Any changes in service rates must be mutually agreed in writing by the Parties.

### 4. Scope of Servicing

- 4.1 During the scheduled preventive maintenance, the Contractor's staff will carry out inspections and make adjustment based on each Equipment's factory-recommended maintenance checklist.
- 4.2 Lubricants and cleaning material will be provided free-of-charge by the Contractor.
- 4.3 Hydraulic fluid(s) and other consumable items will be replenished as necessary during maintenance and charged to the Customer accordingly.
- 4.4 Repair of existing or new Equipment defects or malfunctions will not be carried out during maintenance.
  - 4.4.1 Any defective parts or malfunctions found during servicing will be reported to the Customer, a repair quotation for parts and labour will be provided.
  - 4.4.2 Due to the Service Engineer's prior commitments, a separate appointment may need to be scheduled to carry out any agreed repair works. This shall not exceed later than 2 working days.

### 5. Repairs

- 5.1 The Labour rates that apply to repairs carried out either at the Customer's worksite or at the Contractor's workshop shall be stipulated in the Contractor's offer.
- 5.2 The minimum charge for repair work is charged in blocks of half an hour.
- 5.3 Where the Customer's Equipment must be repaired in the Contractor's workshop, the Customer shall bear all transport-related costs.
- 5.4 The Contractor reserves the right to engage third-party service providers to carry out repairs on the Customer's Equipment.
- 5.5 For Full Service Agreement, the prices in the Contractor's offer are to attend unlimited on call repair at normal working hours during the contract period and must not exceed the operating hours per annum stated in the Contractor's offer. The prices are only applicable for maintenance and repair carried out during normal working hours.

## 6. Exclusions

The following listed items are excluded from all Full Service and Preventive Maintenance Agreements but can be provided as additional services on customer owned trucks:

- a) The cost of repairing any fault or damage deemed to have been caused accidentally, negligently or maliciously
- b) The overhaul or replacement of chassis or mast assemblies
- c) The overhaul or replacement of engines or transmissions
- d) The maintenance, repair or replacement of traction batteries or chargers
- e) The repair of faults attributed to faulty or end of life traction batteries
- f) The maintenance or repair of Jungheinrich supplied attachments or accessories as defined by both parties
- g) The repair or replacement of forks including stainless steel cladding
- h) The provision of replacement trucks or Equipment
- i) Replacement or repair of the escape harness system (VNA trucks)
- j) The repair or replacement of display terminals

## 7. Terms of Payment

- 7.1. The Customer shall make the payment within the credit terms specified in the Contractor's offer from the date of the Contractor's invoice. The Contractor may, at its sole discretion and based on the Customer's credit report from a credit agency, set, vary or withdraw the Customer's credit limit at any time. Unless otherwise provided in the Contractor's offer, if the Customer fails to make full payment on the due date, or if the Customer's outstanding balance (including undue invoiced amounts) exceeds or would exceed its credit limit if the Contractor proceeds with the supply, the Contractor may, without prejudice to any other right or remedy available to it, be entitled to:
  - 7.1.1 Cancel the Contract or suspend any further works or services to the Customer and the Customer agrees that no further claim shall be made against the Contractor arising from these actions;
  - 7.1.2 Appropriate any payment made by the Customer to such services (or Equipment supplied or sold under any other contract between the Contractor and the Customer) as the Contractor may consider fit (notwithstanding any purported appropriation by the Customer); and
  - 7.1.3 Charge the Customer interest (before and after any judgment) on the amount unpaid, at the rate of 1.5% per month of the unpaid portion of the Contract price, until payment in full is made.
- 7.2. Contractor reserves the right, among other remedies, either to terminate the Contract or to suspend further services under it in the event and for such time as Customer fails to pay for any goods when payment is due.
- 7.3. Where the agreed maximum annual working hours for the use of the Equipment provided for and set out in the Contractor's offer is exceeded, the Customer shall pay for all such excess hours based on the following rate:  
Excess Hour(s) X  $\frac{\text{Yearly Rate}}{\text{Annual Working Hours}}$

## 8. Committed Service Response Lead Time

- 8.1. Response and cut off time shall be stated in the Contractor's offer. Priority based dispatch system according to severity/urgency of breakdown will be assessed and response time for urgent cases will be faster as agreed by both parties.
- 8.2. All repairs will have to be attended within 2 working days upon breakdown call being placed. Unless if breakdown required extended repair, then the repair will have to be completed within a period of no more than 7 working days. (Repairs due to accidents, damages due mishandling, misused or negligence on the machine are not falling under this scope).
- 8.3. Contractor is entitled to invoice separately for the costs of wasted travel time or unreasonable waiting times on site, according to the current after sales service price list.
- 8.4. Should the Customer agree on performance times outside of regular working hours, the Customer shall bear the additional costs.
- 8.5. In the event of unforeseen operational disabilities, such as strikes, work absences due to the short-term illness of specialist employees, delay in delivery or performance by suppliers, government intervention, the action of force majeure, in the event of industrial disputes as well as the occurrence of circumstances for which Contractor is not responsible, the period of performance (response times, appointment) shall be extended by a reasonable time; this shall also apply if such circumstances occur after Contractor is in default.

## 9. Liability and Risk

- 9.1. Preventative maintenance servicing does not eliminate the possibility of Equipment failures occurring, nor does scheduled servicing by the Contractor substitute regular maintenance by the Customer. The maintenance tasks, for which the Customer is responsible, can be found in the relevant Equipment user manual or maintenance checklist.
- 9.2. This Contract does not constitute a warranty – either expressed or implied. The Contractor will not be liable to the Customer for any indirect, special, consequential, incidental or other damages even if such damages are foreseeable (whether for loss of profit or otherwise), loss, cost, expenses or other claims that arise out of or in connection with preventive maintenance servicing, repairs, breakdowns or use of the Equipment by the Customer during and after the period of this Contract. The Contractor's entire liability in respect of the services and/or parts supplied under the Contract shall in any case be limited to the total value of the Contract in respect of which damages are claimed.

## 10. Termination Clause

- 10.1. Preventive Maintenance Agreements may be terminated by either party prior to expiry of its initial terms or any renewal thereof by providing written notice 30 days to the other party, except in the case of an insolvency event as described in Clause 10.3.
- 10.2. Under Full Service agreement and further agreement types, if the Customer elects to terminate the Contract for whatever reason and / or before the expiration of the Contract and / or during the Contract period, the Customer shall forthwith upon written demand by the Contractor pay to the Contractor the following amount:
  - 10.2.1. Agreement/Contract amount due or owing, if any, at the time of such termination.
  - 10.2.2. 75% of the residual Contract value if terminated.
  - 10.2.3. Any other outstanding sums due & unpaid at time of termination.

- 10.3 In the event the Customer undergoes an insolvency event, including but not limited to liquidation, receivership, or failure to pay debts, the Contractor may terminate this Contract immediately with written notice. The Customer remains liable for all outstanding payments for services rendered up to the termination date, and the Contractor may seek compensation for any resulting damages or losses, without prejudice to any other rights or remedies available under this Contract, at law, or in equity.

## **11. Entire Agreement**

- 11.1. The entire agreement between the parties with respect to the servicing and/or repair of the Equipment is contained in the Contract and all previous understandings, agreements, representations or warranties, expressed or implied which are not expressly contained in the Contract are superseded.
- 11.2. Any purported terms and conditions made referenced to or incorporated or alluded to within any purchase order or other document issued by the Customer relating to this Contract or the servicing and/or repair of the Equipment shall have no effect and shall not bind the Contractor.

## **12. Governing Laws**

The Contract shall be governed by and construed in accordance with the laws of the Malaysia ("Law"), excluding any conflict of laws principle that would refer to the laws of another jurisdiction.

## **13. Arbitration**

Any dispute arising out of or in connection with the Contract or these Terms & Conditions or any matters described hereunder, including any question regarding its existence, validity, interpretation or termination, whether or not during the term of this Contract or thereafter and whether before or after any termination of the Contract, shall be referred to and finally resolved by arbitration in Kuala Lumpur, Malaysia in accordance with the Arbitration Rules of the Asian International Arbitration Centre (the "AIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference to this clause. The tribunal shall consist of a sole arbitrator and the language of the arbitration shall be in English.

## **14. Taxes**

Service Rates are exclusive of Sales and Services Tax, Goods and Services Tax, Value Added Taxes, or similar taxes ("Taxes") now or hereafter imposed. Taxes shall be charged separately and paid by the Customer upon receipt of a valid tax invoice, in accordance with applicable Law. Failure to pay shall constitute a material breach, and the Customer shall indemnify the Contractor against all resulting liabilities.