

## MASTER LEASE AGREEMENT

AGREEMENT No: \_\_\_\_\_ DATED: \_\_\_\_\_

### PARTIES

1. **JUNGHEINRICH NEW ZEALAND LIMITED (New Zealand Business Number: 382568)** (the "Company")
2. **The Contracting Party Identified in the Offer or Quotation** (the "Lessee")

### INTRODUCTION

- A. The Company is the registered owner of a fleet of forklifts and is in the business of leasing material handling equipment, including but not limited to forklifts and/or associated equipment to organisations and individuals.
- B. The Lessee wishes to lease from the Company forklifts and/or associated equipment upon the terms and conditions of this Agreement.

### DEFINITIONS

1.1 In this Master Lease Agreement ("Agreement"):

- **Aggregate Sum** means the total aggregate Monthly Rental payable for each Equipment for the duration of the Term of that Equipment i.e. the Monthly Rental of that Equipment multiplied by the number of months in the total Term of that Equipment
- **Annual Operating Hours** means the hours per calendar year for each Equipment specified in the Schedule calculated annually on each anniversary of the Commencement Date
- **Lessee** means the person, company or the entity named on the front of this Agreement
- **Commencement Date** means the date specified in the Schedule as the commencement/delivery date for each Equipment
- **Commencement Tread Depth** means the tread depth recorded in the Schedule for each tyre on the particular Equipment at the Commencement Date
- **Fair Wear & Tear** has the meaning as defined by the Return Conditions for Rental Equipment guide to this Agreement in **Appendix B**
- **Equipment** means the forklift(s), material handling equipment, system trucks, special built trucks, and/or any associated equipment described in the Schedule including all accessories and attachments
- **Full Service** means maintenance and repair service to be provided by the Company (if applicable) as stated in the Schedule and in accordance with this Agreement;
- **Location** means the location specified in the Schedule for each Equipment
- **Monthly Rental** means the monthly rental specified in the Schedule excluding GST for each Equipment
- **Non-Jungheinrich Goods** means Equipment not manufactured by the Company
- **Proper Use** has the meaning specified in Clause 4.6 of this Agreement
- **Schedule** means the Schedule signed with this Agreement, together with all other Schedules intended by the parties to be governed by this Agreement, recording the particulars of the Equipment together with the specific terms of their respective rental
- **Specified Excess Hours Charge** means the Specified Excess Hours Hourly Rate excluding GST multiplied by the number of hours in excess of/ of that Equipment's Annual Operating Hours
- **Specified Excess Hours Hourly Rate** means the specified excess hours hourly rate excluding GST recorded in the Schedule for a particular Equipment
- **Term** means the term specified in the Schedule for each Equipment
- **Total Replacement Value** means the total replacement value recorded in the Schedule for a particular Equipment
- **Working Day** means Monday to Friday, excluding public holidays in New Zealand
- **Special Built Trucks** means Equipment that are very narrow aisle (VNA) equipment, or other bespoke order equipment
- **Software Support** means the software support services selected by the Lessee for Equipment that are System Trucks (where applicable)
- **Software Support Conditions** means the terms that apply to Software Support services for Goods that are System Trucks (where applicable)
- **System Trucks** means Goods that are any automated guided vehicle (AGV) equipment

## **COVENANTS**

### **2. *Term of Lease and Lessee's Rental***

- 2.1 The Lessee shall pay the Monthly Rental by direct debit to the Company's nominated account or in such other manner as the Company may require from time to time by equal monthly instalments on the 1st day of each month during the Term. The Lessee shall pay interest on all outstanding sums due and owing to the Company at the rate of 1.5% per month, calculated from the due date till the date of payment.
- 2.2 If the Company permits the Lessee to remain in possession of a Equipment after the expiration of the Term, such possession shall be a month to month lease only terminable by 1 months' notice in writing by either party to the other at the Monthly Rental then payable and otherwise on the same covenants and agreements (so far as applicable to a month to month lease) as expressed or implied in this Agreement.
- 2.3 The Equipment shall be at the sole risk of loss or damage or destruction of the Lessee from the moment of delivery to the Location whether on or before the date fixed for the Commencement Date until it is removed from the Location by or on behalf of the Company whether on or after the date of expiry of the period of rental or any extension thereof.

### **3. *Lessee's Obligations***

- The Lessee during the Term:
- 3.1 Shall not sell or offer for sale, assign, mortgage, pledge, sublet, lend or otherwise deal with the Equipment or any part thereof or with any interest therein or in this Agreement but shall at all times keep the Equipment in the Lessee's own possession at the Location;
- 3.2 Shall not remove the Equipment or any part thereof from the Location without the prior written consent of the Company;
- 3.3 Shall not allow any lien to be created upon the Equipment for any reason whatsoever;
- 3.4 Shall protect the Equipment against distress, execution or seizure; and
- 3.5 Shall affect all necessary registrations, obtain any necessary licenses and comply with all statutes and regulations relating to the Equipment.

### **4. *Proper Use of the Equipment***

- 4.1 The Lessee shall at all times use the Equipment in a skilful, careful and proper manner within its rated capacity, to the manufacture's guidelines and consistent with the operating conditions and running hours from time to time specified by the Company and shall restrict the use and operation of the Equipment to safe, careful and competent personnel, selected, employed, trained and controlled and authorised by the Lessee.
- 4.2 The Lessee shall at all times use the Equipment in compliance with the provisions of all statutes, rules and regulations in force relating to the Equipment and its/their use including but not limited to all Health & Safety legislation, rules and regulations in force.
- 4.3 The Equipment shall never be used in a negligent, careless, reckless, and/or dangerous manner.
- 4.4 The Lessee shall ensure the operator(s) of the Equipment hold(s) a current and valid OSH Forklift Operator's Certificate. The driver must also hold an HT Licence when operating Equipment greater the 18,000kg Gross Laden Weight (GLW)
- 4.5 Each Equipment shall be used solely at the Location.
- 4.6 The combined requirements in the above Clauses 4.1 —4.5 inclusive comprise the definition of the term "Proper Use" used in this Agreement.

### **5. *Lessee's Maintenance and Repair Costs***

- The Lessee shall at all times keep the Equipment in the same good condition and repair as at the Commencement Date (Fair Wear and Tear from Proper Use excepted) and for such purpose:
- 5.1 The Lessee shall carry out routine checks and maintenance of the Equipment in accordance with the manufacturers' specifications and the Company's requirements as per **Appendix A** attached (the Company's requirements taking precedence) and shall be responsible for the operation of the Equipment and for safe and separate storage of the Equipment and the fuel.
- 5.2 The Lessee shall not permit the making of any repairs, alterations or adjustments or carrying out of any maintenance (other than routine maintenance hereby authorised in Clause 5.1) to the Equipment unless otherwise previously authorised in writing by the Company.  
 All repairs, alterations and/or adjustments to the Equipment shall be carried out by the Company. All repairs, alterations and/or adjustments shall be at the cost of the Lessee, with the exception of the Company's maintenance at the Company's cost detailed in Clause 6.1.  
 For clarification, any damage whatsoever to the side shift hoses of the Equipment is the responsibility of the Lessee and the costs of repairs shall be charged to the Lessee.
- 5.3 The Lessee shall be responsible for the costs of supplying and fitting (and any associated costs) of all tyres requiring replacement. Punctures are the responsibility of the Lessee.
- 5.4 If the phrase *Included* is entered by the Company in the Tyres Allocation box in the Schedule in relation to a particular Equipment, then Clause 5.3 shall not apply in relation to that particular Equipment and the Company shall at the Company's cost provide up to one set of replacement tyres per annum for that particular Equipment (if in the Company's sole opinion replacement tyres are required). However, any additional tyres required over and above one set of replacement tyres per annum shall be the

Lessee's sole responsibility. Notwithstanding anything in this Clause the Lessee shall at all times remain liable for any punctures and any damage whatsoever that occurs to any of the tyres.

- 5.5 The Lessee shall pay for all electricity or liquid petroleum gas, petrol or diesel (as applicable) consumed by the Equipment and are responsible for the fueling of the Equipment.
- 5.6 The Lessee shall be responsible for the electrical safety testing and tagging of all Electrical Appliances, supplied with the Equipment.
- 5.7 The Lessee shall be responsible for the test and tagging and maintenance of all Fire and Height Safety Equipment supplied with the Equipment.

## **6. Company's Obligations**

- 6.1 Subject to the provisions of Clause 5 the Company shall during the Term at its own cost carry out routine servicing (other than the checks and maintenance detailed in Clause 5.1) and shall make any necessary repairs to the Equipment that are due to Fair Wear and Tear that has occurred to the Equipment from the Proper Use of the Equipment.

### **6.2 Full Service**

- 6.2.1 This clause 6.2 applies where the Parties have agreed that the Equipment is subject to a Full Service package. The services that the Company provide to the Lessee that are not included in the Full Service (as described in clause 6.2.8) will be charged separately or can be included as a Special Condition of the Full Service to be agreed by the Company in writing.
- 6.2.2 The Full Service (if any) will be provided to the Lessee by the Company by specifying the frequency and extent of the service visits required in respect of the Equipment in the Schedule.
- 6.2.3 The Full Service record shall be an integral part of the Agreement. The Lessee may at any time, request a copy of the Full Service record.
- 6.2.4 Any alterations or attachments to the Equipment after delivery will not be covered by the Full Service and shall be charged separately if a Full Service is required. Alternatively, it can be subsequently included in the Full Service for an additional cost.
- 6.2.7 If repair of batteries and/or chargers is required as result of the Lessee's or its personnel's negligence or damage for which the Lessee is otherwise responsible, the Lessee will be liable for any costs incurred in their repair. If a battery or charger is irreparable, the Company reserves the right to replace such battery or charger with a used battery or charger of the same voltage, capacity or features at the Lessee's cost.
- 6.2.8 The level of the Full Service is specified on the Schedule and subject to any exclusions notified to the Lessee provides the following services:

#### **6.2.8.1. Full Service Level 1**

Full Service Level 1 covers the labour costs the routine inspection, testing, minor adjustment and lubrication of the Equipment in accordance with the manufacturers' service handbook. The cost of lubricants and parts and any associated parts labour fitting cost is excluded. Parts and labour for any additional repairs required as an outcome of Preventative Maintenance are excluded. The Company will use its reasonable endeavours to get the first available engineer on Location as soon as possible.

#### **6.2.8.2. Full Service Level 2**

Full Service Level 2 will cover all services included in Full Service Level 1. Additionally, the Company shall:

- provide all parts required for preventative maintenance excluding replacement of forks, tyres, wheels, provision of fuel, fuel additives, unless otherwise specified as a Special Condition of Full Service; and
- provide a breakdown service upon receipt of the Lessee's request (the Lessee to give details of the alleged fault with the Equipment). The Company shall attend the Location within 4 working hours of receipt of such a request (with the exception of Equipment that are Non-Jungheinrich Goods unless otherwise stated in the Terms and agreed by the Company in writing) and shall use all reasonable endeavours to repair the Equipment and provide the Lessee with temporary replacement Equipment, free of charge, if the Equipment cannot be repaired within 72 working hours after the failure was reported (with the exception of where the Equipment suffered malicious or accidental damage or where the Equipment are Non-Jungheinrich Goods, System Trucks or Special Built Trucks unless where otherwise stated in the Terms and agreed by the Company in writing). The replacement Equipment shall have the same load capacity and features as the affected Equipment, with the exception of any attachment or modification.

#### **6.2.8.3. Full Service Level 3**

Full Service Level 3 will cover all services included in Full Service Level 2. In addition the Company will provide up to one set of replacement drive/load wheels or one set of rubber tyres as applicable to each of the Equipment per annum due to wear and tear where worn out through normal use. Guide wheels on rail guided equipment are not included in this service due to the nature of operation.

All other services need to be included as a Special Condition of the Full Service and agreed by the Company in writing.

The cost of repairing any damage that is deemed to have been caused accidentally, negligently or maliciously by the Lessee or any third party is not included in Full Service Level 2 and shall be charged additionally at the current prevailing rate.

- 6.3 The Company shall ensure that at the commencement of the Term, the Equipment is in good working order and properly maintained and unless notification to the contrary is received by the Owner within 48 hours of delivery to the Location, the Equipment shall be deemed to have been delivered in good working order.

## **7. Maintenance and Repair General Provisions**

- 7.1 The Lessee shall, during normal business hours, allow the Company access to the Lessee's premises to inspect the Equipment.
- 7.2 The Lessee shall immediately upon becoming aware report to the Company the existence of any defects in or failure of any component of or any damage to the Equipment arising from whatever cause and shall comply with all reasonable directions from the Company.
- 7.3 The Lessee shall immediately report to the Company when routine servicing is due for each Equipment.
- 7.4 The Lessee shall provide a suitable area, free of charge, to enable the Company to carry out, routine servicing, repairs, alterations and/or adjustments to the Equipment and for the parking of the Company's employee service vehicle(s) whilst they are on Location. This area shall meet the appropriate Health and Safety standards including in respect of lighting and ventilation. The area shall have a supply of electricity and water in reasonable proximity. The Lessee will provide any documents or information (including the care plan folder) which the Company need to diagnose and repair any fault.
- 7.5 The Company shall, if it determines that routine servicing, repairs, alterations and/or adjustments to the Equipment are required, provide a mechanic during normal business hours to the Lessee's premises to undertake the work. If the Company determines in its sole discretion that the work cannot be undertaken at the Lessee's premises then the Company can require the Equipment to be transported to the Company's premises at the Lessee's cost.
- 7.6 Afterhours call outs shall, in addition to all labour charges, materials and parts costs payable by the Lessee, incur a call out charge of \$150.00 plus GST. If the afterhours call out is due to a breach of the Proper Use of the Equipment, an additional charge being a minimum of two hours labour at \$95.00 plus GST per hour shall be charged to the Lessee's account or shall otherwise be included as a Special Condition of the Full Service and agreed by the Company in writing. The Company has the right to review charges during the Term. Statutory holidays will incur additional charges.
- 7.7 Monthly Rental will not be reduced by virtue of the Equipment undergoing routine servicing, repairs, alterations and/or adjustments. In the event that a Equipment, while undergoing routine servicing, repairs, alterations and/or adjustments pursuant to this clause, is unavailable for use by the Lessee for more than 72 working hours, a replacement Equipment will be provided by the Company at no additional cost to the Lessee, subject to the Full Service package.

## **8. Insurance, Registration and Indemnity**

- 8.1 From the time of taking possession of each Equipment and for the duration of the Lessee's possession of that Equipment or the Term (whichever is longer) the Lessee shall be solely liable and responsible for all damage to and loss of that Equipment (other than damage or loss caused by Fair Wear and Tear that has occurred to the Equipment from the Proper Use of the Equipment).  
The Lessee must prior to taking possession of each Equipment and for the duration of the Lessee's possession of that Equipment or the Term (whichever is longer) insure that Equipment for all perils cover for the Total Replacement Value of that Equipment with the Lessee and the Company being recorded in that insurance policy as the insured parties and with the Company named as the sole loss payee.  
The Lessee shall pay any excess that is required to be paid on any insurance claim in relation to any event that gives rise to an insurance claim, such event occurring to any Equipment that is in the Lessee's possession at the time of the event and/or occurring to any Equipment during the Term.
- 8.2 If the Lessee is required to insure the Equipment under the provisions of this Agreement the Lessee shall provide the Company with a copy of the insurance cover note on an annual basis recording joint cover of the Equipment together with the Company named as the sole loss payee. The insurance shall be with an insurer approved by the Company in writing.
- 8.3 If the Lessee defaults in its obligation to insure and maintain insurance cover under the provisions in this Agreement, the Company, without prejudice to its other rights and remedies under this Agreement, may effect or keep the insurance policies on foot, either in the name of the Company or in the name of the Company and the Lessee, and may pay any premium or take any other step to keep the insurance policies on foot, and the Lessee shall reimburse the Company for all money expended by the Company in effecting or maintaining on foot any such insurance policy.
- 8.4 If any money is paid to the Lessee by the insurance company pursuant to a claim or otherwise the Lessee shall immediately pay such money to the Company.
- 8.5 If damage to or loss of a Equipment occurs, and insurance money paid by the insurance company pursuant to any claim is, in the sole opinion of the Company, adequate to replace or repair the Equipment, the Company shall apply the money for this purpose, and the Lessee shall upon the demand of the Company, enter into further assurances in favour of the Company with regard to the Equipment.
- 8.6 If in the sole opinion of the Company the insurance money received pursuant to a claim is not adequate to replace or repair the Equipment then the Company may notify the Lessee of its opinion and may end the

Term without effecting the Company's rights and remedies and without releasing the Lessee from any liability in respect of any of the provisions contained or implied in this Agreement.

- 8.7 The Lessee shall immediately notify the Company of the happening of any event in relation to any Equipment. Following notification to the Company the Lessee shall forthwith notify the insurance company of the happening of any event in relation to that Equipment.
- 8.8 The Lessee appoints the Company as its attorney for the purposes of prosecuting or settling any claim for loss or damage under any insurance policy effected pursuant to the provisions of this Agreement.
- 8.9 The Lessee shall pay all annual registration charges and warrant of fitness charges in respect of the Equipment.
- 8.10 The Lessee shall indemnify the Company against all losses, damages, claims, liability, expenses, payments and proceedings of any kind whatsoever however caused or arising in respect of the use, operation and/or possession of the Equipment by the Lessee or by any other party.

## **9. Increase in Monthly Rental and Annual Usage**

- 9.1 The Monthly Rental payable by the Lessee may at the Company's option be reviewed annually from the Commencement Date.
- 9.2 In the event of the Lessee increasing the working hours of a particular Equipment in a quarterly period in excess of % of that Equipment's Annual Operating Hours, then an additional hourly rate will be payable by the Lessee at the end of the quarterly period, calculated by the following formula:  
 Additional fee payable for each hour in excess of  $\frac{1}{4}$  of that Equipment's Annual Operating Hours = 60% of the Hourly Rate  
 Hourly Rate = 
$$\frac{\text{Current Monthly Rental} \times 12}{\text{Annual Operating Hours}}$$
- 9.3 If a Specified Excess Hours Hourly Rate is entered by the Company in the Specified Excess Hours Hourly Rate box in the Schedule in relation to a particular Equipment then Clause 9.2 shall not apply in relation to that particular Equipment and in the event of the Lessee increasing the working hours of that Equipment in a quarterly period in excess of % of that Equipment's Annual Operating Hours, then the Specified Excess Hours Charge will be payable by the Lessee at the end of the quarterly period.
- 9.4 Notwithstanding the provisions set out above, where increases in costs have been incurred by the Company during the Term or any extension thereof by reason of statutory requirements, regulations or by-laws, or other official action the Monthly Rental will be adjusted accordingly.

## **10. Security (Personal Property Securities Act 1999)**

- 10.1 The Lessee acknowledges and agrees that, for the purposes of the Personal Properties Securities Act 1999 (PPSA), the Company has a security interest in the Equipment. The Lessee shall sign any documents required for the Company to perfect its security interest under the PPSA and authorises the Company to sign any such document as its attorney.
- 10.2 In relation to the registration of financing statements on the Personal Property Securities Register (PPSR), the Lessee undertakes to:
  - 10.2.1 Sign any further documents and/or provide any further information (which information the Lessee warrants is complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a financing statement or financing change statement on the PPSR;
  - 10.2.2 Not register a financing change statement or a change demand in respect of the Equipment (as those terms are defined in the PPSA) without the Company's prior written consent; and
  - 10.2.3 Give the Company not less than 10 working days prior written notice of any proposed change in the Lessee's name and/or any other change in its details (including, but not limited to, changes in its address, facsimile number, trading name or business practice).
  - 10.2.4 At the end of the Agreement term the Lessee and the Company may agree to continue the hire arrangement, pending contract renegotiation in such cases for the purposes of the PPSR the initial contract continues in succession without interruption.
- 10.3 The Lessee:
  - 10.3.1 Waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest, unless otherwise agreed to in writing by the Company;
  - 10.3.2 To the maximum extent permitted by law, waives its rights and, with the Company's agreement, contracts out of its rights under the sections referred to in section 107(2)(a) to (i) of the PPSA; and
  - 10.3.3 Agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA applies to this Agreement and, with the Company's agreement, contracts out of such sections.

## **11. Default**

- 11.1 The Lessee shall be in default if any one or more the following events occur:
  - 11.1.1 The Lessee breaches any provision of this Agreement or any provision of the Terms & Conditions of Trade entered into between the Lessee and Company;
  - 11.1.2 Non-payment by the Lessee of any sum by the due date;
  - 11.1.3 The Lessee intimates that it will not pay any sum by the due date;

- 11.1.4 The Equipment is/are seized by any other creditor of the Lessee or any other creditor intimates that it intends to seize the Equipment;
- 11.1.5 The Lessee does, causes or allows any act or thing to be done whereby the Company's rights in the Equipment are or will be prejudiced or put in jeopardy;
- 11.1.6 The Lessee is bankrupted or put into liquidation or a receiver is appointed to any of the Lessee's assets or a landlord distains against any of the Lessee's assets or the Lessee enters into any composition or arrangement with its creditors;
- 11.1.7 A court judgment is entered against the Lessee and remains unsatisfied for 7 days;
- 11.1.8 Any material adverse change occurs in the financial position of the Lessee.
- 11.2 If the Credit Contracts and Consumer Finance Act 2003 (or any Act passed in substitution thereof) applies to any transaction between the Lessee and the Company, the Lessee has the rights provided in the Act despite anything contained in this Agreement.

## **12. Breach and Termination**

- 12.1 If the Lessee is in default under this Agreement or if any damage or loss occurs to a Equipment, the Company may immediately terminate this Agreement.
- 12.2 Without in any way limiting the Company's right to terminate this Agreement in Clause 12.1, if the Lessee is in default under this Agreement or if any damage or loss occurs to a Equipment, the Company may terminate the Term of any Equipment or Equipment without terminating this Agreement.
- 12.3 The Company is not liable for any costs, expenses, loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Lessee or any other party as a result of the termination of this Agreement or the termination of any Term of any Equipment, nor liable in contract or in tort (including negligence) or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Termination of this Agreement or the termination of any Term of any Equipment shall not affect the Company's rights and remedies and shall not release the Lessee from any liability in respect of any of the provisions contained or implied in this Agreement.
- 12.4 In the event that the Company terminates this Agreement or terminates the Term of any Equipment the Lessee will immediately make the Equipment whose Terms have been terminated available for collection by the Company and gives irrevocable authority to the Company to enter any premises occupied by the Lessee or on which the Equipment is/are situated to remove and repossess the Equipment whose Terms have been terminated and any other property which has been supplied by the Company. The Company is not liable for any costs, damages, expenses or losses incurred by the Lessee or any third party as a result of this action, nor liable in contract or in tort (including negligence) or otherwise in any way whatsoever unless by statute such liability cannot be excluded. The Lessee is, amongst other things, liable for the costs of the said collection of the Equipment by the Company.
- 12.5 If the Term of any Equipment is terminated:
  - pursuant to Clause 12.1; or
  - pursuant to Clause 12.2; or
  - is terminated by the Lessee;
 prior to the Aggregate Sum being paid by the Lessee in full for that Equipment, then the Lessee shall pay the Company the difference between the total of all previously paid instalments of Monthly Rental for that Equipment and the Aggregate Sum for that Equipment, by way of compensation for loss suffered through the early termination of the Term. The parties agree that such amount represents a genuine pre-estimate of the losses which would be incurred by the Company as a result of such early termination of the Term. The Company reserves the right to negotiate how much of the Aggregate Sum is payable dependent on the condition of the Machinery.

## **13. Arbitration**

- 13.1 Any dispute, controversy or claim arising out of or in connection with this Agreement or these Terms and Conditions, including any question regarding its existence, validity, interpretation, performance, breach or termination, shall be referred to and finally resolved by arbitration administered by the New Zealand International Arbitration Centre ("NZIAC") in accordance with the NZIAC Arbitration Rules for the time being in force, which Rules are deemed to be incorporated by reference into this clause. The seat (legal place) of arbitration shall be New Zealand. The tribunal shall consist of a sole arbitrator. The language of the arbitration shall be English.

## **14. Assignment**

- 14.1 The Company may at law or in equity at any time assign either absolutely or by way of security the whole or any part of its rights, obligations, title or interest in the Equipment or in or under this Agreement.
- 14.2 The Lessee may not assign or otherwise dispose of the whole or any part of its interest in this Agreement without the prior written consent of the Company.

## **15. Entire Agreement**

- 15.1 This Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties. No modification or addition to this Agreement is effective unless approved in writing by the parties.

**16. Headings and Conflict**

- 16.1 Headings in this Agreement are for convenience only and do not affect interpretation.
- 16.2 In the event of a conflict or inconsistency between the terms of this Agreement and/or the terms of any Short Term Rental Agreement entered into between the Lessee and the Company, the terms of this Agreement shall, to the fullest extent permitted by law, prevail.
- 16.3 In the event of a conflict or inconsistency between the terms of this Agreement and the Terms & Conditions of Trade entered into between the Lessee and the Company, the Terms & Conditions of Trade shall, to the fullest extent permitted by law, prevail.

**17. Notices**

- 17.1 That any notice given under this Agreement:
- (a) shall be made in writing by letter or facsimile transmission and be signed by the person giving the notice or made by e-mail;
  - (b) shall be either handed to the recipient or sent to the recipient at the last known address or facsimile number of the recipient or e-mail address of the recipient;
  - (c) shall be deemed to be received:
    - (i) (if made by letter) when handed to the recipient or when left at the last known address of the recipient or when 5 working days after being put in the post, postage prepaid, and addressed to the recipient at that last known address; or
    - (ii) (if made by facsimile) upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the last known facsimile number of the recipient;
    - (iii) (if made by e-mail) when acknowledged by the recipient orally or by return e-mail or otherwise in writing, except that return e-mails generated automatically shall not constitute an acknowledgement.

**18. No Implied Waiver**

- 18.1 Failure by the Company to enforce any of the terms of this Agreement is not deemed to be a waiver of any of the rights or remedies the Company has under the terms of this Agreement nor a waiver of the Lessee's liability under the terms of this Agreement.

**19. Miscellaneous**

- 19.1 The Consumer Guarantees Act 1993, the Fair-Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Company which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Company liability is, where it is allowed, excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 19.2 The Company's entire liability in respect of this Agreement shall in any case be limited to the total contract net value in respect of which damages are claim.
- 19.3 Except as otherwise provided by Clause 19.1 the Company is not liable for:
- 19.3.1 Any costs, expenses, loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Lessee or other party and whether in contract or tort (including negligence) or otherwise and irrespective of whether such costs, expenses, loss or damage arises directly or indirectly from the Equipment or the Lessee's inability to use the Equipment or any other aspect of the relationship between the Company and the Lessee; and
  - 19.3.2 The Lessee indemnifies the Company against all loss, damages, claims, liability, expenses, payments and proceedings of any kind whatsoever however caused or arising and without limiting the generality of this Clause whether caused or arising as a result of the negligence of the Company or otherwise, brought by any person in connection with any matter, act, omission, or error by the Company its agents or employees in connection with the Equipment or the Lessee's inability to use the Equipment or any other aspect of the relationship between the Company and the Lessee.
- 19.4 This Agreement is governed in accordance with the laws of New Zealand. The Lessee agrees that in the event of any breach or threatened breach of the terms of this Agreement by the Lessee, the Company may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect the Company against any such breach or threatened breach.
- 19.5 If any provision of this Agreement is held to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.
- 19.6 Force Majeure  
The Company is entitled to defer the delivery of the Equipment or to reduce the number of Equipment ordered or to cancel or terminate the Agreement without being liable to the Lessee, if the Company is prevented from or delayed in the carrying on of its business due to circumstances beyond their reasonable control or by events of force majeure. Events of such force majeure shall include but not limited to acts of God, war, riot, fire, explosion, accident, flood sabotage, pandemic, lockdowns as ordered by authorities or government, inability to obtain fuel, power, raw material, labour, containers or transportation facilities,

breakage or failure of machinery or apparatus, governmental law, regulation, order or action, national defence requirements or any other event beyond the reasonable control of Company or in the event of labour disputes, strike, lockouts, or injunction, any of which events prevent the manufacture or dispatch of a shipment of the Equipment or a material which the manufacture of the Equipment is dependent. If due to such event Company is unable to supply part or all of the Equipment contracted under the Agreement, Company shall not be liable to the Lessee or be deemed to be in breach of the Agreement and shall be exempted to such extent from its obligations with respect to the particular delivery upon giving prompt notice of such event to Lessee, but the Agreement shall otherwise remain in force.

**20. Return of the Equipment**

- 20.1 When the Terms ends, other than through the Company's termination of this Agreement or the Company's termination of any Term of any Equipment (where in both cases Clause 12.4 shall apply), the Lessee shall forthwith at his own risk and cost deliver up the Equipment to the Company. If the Lessee fails to do so the Company may retake possession of the Equipment in accordance with the provisions of this Agreement relating to default and termination.
- 20.2 When the Terms ends the Equipment shall be handed over to the Company in the same good condition and repair as the Equipment was/were at the Commencement Date with an allowance for Fair Wear and Tear from Proper Use. For definitions of conditions refer to Jungheinrich guideline "Return condition for rental Equipment" as attached in **Appendix B**. If the Lessee fails to do so the Company may charge the Lessee for all reasonable labour charges, materials and parts costs required to revert the Equipment to the same good condition and repair as the Equipment was/were at the Commencement Date with an allowance for Fair Wear and Tear from Proper Use.

**21. Telematics Data (if applicable)**

- 21.1 The Company's trucks may be equipped with telematics box which collects, generates and processes operational and environmental data, including metadata, during vehicle operation ("Telematics Data"). To the extent such Telematics Data does not constitute Personal Information, the Lessee grants the Company, its affiliates, and authorised sub processors the right to process such Telematics Data for safety, maintenance, support, quality control, product and service improvement.

**22. Fleet Management Solutions (if applicable)**

- 22.1 If the Lessee subscribes to the Company's Fleet Management Solutions ("FMS"), they are required to enter into a Data Processing Agreement ("DPA"). Access is provided on a software-as-a-service basis. The Lessee authorises the Company to process Personal Information of its employees and authorised users in the course of providing the FMS services. This processing is governed by the DPA (<https://tinyurl.com/bdrp2dpd>) (NZ-DPA-V1-06/2026, Version 1, last updated: 26.06.2026), which is incorporated into these Terms and Conditions. The Lessee acknowledges that it has reviewed and understood the [DPA](#) and expressly agrees to be bound by its terms. The Lessee further expressly consents to the collection, use, processing, storage, and disclosure of Personal Information by the Company in accordance with these Terms and Conditions and the DPA. In the event of any conflict relating to data protection matters, the DPA shall prevail.
- 22.2 The Lessee is responsible for ensuring a valid legal basis for the processing of Personal Information in connection with the FMS, including obtaining all necessary consents, provide required notices, and complying with its obligations under the Privacy Act 2020, and implementing appropriate measures in its internal relationships with employees and authorised users. The Lessee warrants and confirms that any Personal Information provided to the Company has been lawfully collected and that all required consents (where applicable) are informed, voluntary, and validly obtained prior to such disclosure. The Lessee shall indemnify and hold harmless the Company, its affiliates and sub-processors against any claims, penalties or liabilities arising from the Lessee's breach of its data protection obligations or misuse of the FMS.

**23. No Re-Export to Russia Clause**

- 23.1 The Lessee shall not directly or indirectly sell, export or re-export any of the Company's products to the Russian Federation or for use in the Russian Federation. The Lessee shall maintain an appropriate monitoring mechanism and ensure all downstream parties fully comply with this clause. Any breach shall entitle the Company to terminate the Contract by written notice and to claim damages and liquidated damages of 30% of the total Contract value or the price of the exported Company's product whichever is higher. The Lessee shall promptly report any irregularities or activities that may undermine this clause and provide the requested compliance information within two weeks of the Company's request.

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN EXECUTED ON

SIGNED on behalf of  
**JUNGHEINRICH NEW ZEALAND LIMITED** by

Signature: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Date: \_\_\_\_\_

Witnessed by:

Signature:

Name:

Position:

SIGNED on behalf of the Lessee by

Authorised Signatory

Signature: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Date: \_\_\_\_\_

Witnessed by:

Signature:

Name:

Position:

## APPENDIX A

### Daily Maintenance Checklist – Lessee's Obligations

#### Internal Combustion Equipment

To be completed when machine stopped:

- Check forks and any other attachments are secure
- Check lights, lenses and mirrors are operational
- Check radiator fins are clear of debris
- Check steps and handrails safe
- Check all panels secure
- Check tyre surfaces for foreign material that could cause damage
- Check for oil leaks
- Check fluid levels and gauges:
  - o Engine oil
  - o Coolant
  - o Hydraulic oil
  - o Brake oil
- Check monitor panel operation
- Check air filter warning lamp not illuminated
- Check fuel level
- Check horn operational

Start machine to:

- Check reversing alarm
- Check service brake operation
- Check parking brake operation
- Check transmission oil level

#### Battery Electric Equipment

To be completed when machine stopped:

- Check forks and any other attachments are secure
- Check lights, lenses and mirrors are operational
- Check steps and handrails safe
- Check all panels secure
- Check tyre surfaces for foreign material that could cause damage
- Check for oil leaks
- Check Battery fluid, levels and gauges:
  - o Battery state of charge
  - o Battery water level (if lead acid wet cell)
  - o Battery cables and plugs
  - o Charger cables and plugs
  - o Battery changing equipment
- Check hydraulic oil level
- Check brake oil level
- Check monitor panel operation
- Check horn operational

Start machine to:

- Check reversing alarm
- Check service brake operation
- Check parking brake operation

## APPENDIX B



Jungheinrich NZ  
Return\_Condition\_Rer

## SCHEDULE



NZ\_Fleet Hire  
Agreement\_ Schedule