

**Toyota Material Handling UK Ltd Terms and Conditions of Long Term Hire – 1<sup>st</sup> February 2026****1. Definitions and Interpretation**

In this Hire Agreement, the specified expressions will have the following meanings:

**“Activity Level” or “Clock Hours per Annum (Max)”** means the anticipated maximum annual hours of usage of the Hired Equipment defined in the Schedule(s).

**“Application”** shall mean the combination of Site conditions, both **Floor** and **Environment**, in which it is intended that the Hired Equipment will be operated and is defined for each individual item of Hired Equipment in the Schedule(s).

**“Business Day”** means a day (other than a Saturday, Sunday or public holiday) when banks in the UK are open for business.

**“Conditions”** means the conditions included under the Terms and Conditions of the Hire Agreement.

**“Contract Term”** means the term of the Hire Agreement commencing from the delivery date of the Hired Equipment, unless otherwise agreed between the parties in writing.

**“Cooling Off Period”** has the meaning given to it under Clauses 12(a) and 12(b).

**“Data”** means Machine Data and/or Personal Data.

**“DPA”** means a Data Processing Agreement, which constitutes, when signed, the Hirer’s approval to allow the Supplier to use both Personal Data (governed by GDPR) and Machine Data created on the Hired Equipment.

**“Delivery Date”** means the estimated delivery date in accordance with Clause 13(b) herein.

**“Fair Wear and Tear”** means fair wear and tear in accordance with the Toyota Guide to Fair Wear and Tear and Damage from time to time.

**“Full Service Maintenance Agreement”** means a Maintenance Agreement that, during the Supplier’s Business Day, will include, unless separately agreed in writing: scheduled routine Service visits for preventive maintenance, breakdown repairs and all labour, call-out, transport and parts costs in respect of such routine servicing and breakdown repairs, including associated consumables, but excluding the items listed under clause 16(b). A Full Service Maintenance Agreement has the Performance Guarantees listed under clause 24 and the Supplier’s Nightcare ‘out of hours’ service is available, although extra charges will apply.

**“Funder”** means any finance provider to whom ownership in the Hired Equipment may be assigned by the Supplier.

**“GDPR”** means General Data Protection Regulation as defined by the European Union regulation 2016/679, and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) as supplemented and modified by the Data Protection Act 2018, and to the extent that the GDPR does not apply to processing of personal data by either of the parties, any applicable GDPR Replacement Legislation. “GDPR Replacement Legislation” means any legislation relating to the processing of personal data effective in the United Kingdom which is intended to replicate or maintain some or all of the provisions, rights and obligations set out in the GDPR in circumstances where the GDPR is no longer applicable in the UK because the United Kingdom is no longer a member of the European Union (and where appropriate, references to “Article” or “Chapter” in this Agreement shall be to the equivalent provision of the GDPR Replacement Legislation).

**“Hire Agreement”** means this agreement for the hiring of the Hired Equipment entered into between the Supplier and the Hirer, the terms of which are set out in these Terms and Conditions.

**“Hire Fees”** means all weekly or monthly hire and maintenance rates, fees and other additional charges payable by or on behalf of the Hirer for the hire and use of the Hired Equipment under this Hire Agreement and under the Maintenance Agreement as set out in the relevant Schedule(s), including charges arising from any changes in taxation, interest rates, duties or tariffs that may be applicable to the Hired Equipment from the date of delivery of the Hired Equipment, or any other date as may be agreed between the parties.

**“Hired Equipment”** shall include any machine, or part thereof and any attachments fittings, batteries and battery chargers and any other associated equipment, the particulars of which are set out in the relevant Schedule. In addition, this includes any machine and/or attachment rented to or loaned to the Hirer for the fulfilment of the Supplier’s obligations under this Hire Agreement.

**“Hire Period”** means the period of hire as specified under Clause 15 which shall include the **“Minimum Hire Period”** as set out in Clause 15(a) and the relevant Schedule.

**“Hirer”** is the party identified in the Schedule to whom the Supplier is supplying Hired Equipment and associated services and parts on hire and includes a **person** (i.e. a natural living person, in accordance with the GDPR definition), a corporate or unincorporated body (whether or not having separate legal personality) and a reference to a **company** shall include any company, corporation or other body corporate, incorporated or established in the UK and any designated successors.

**“Hour Meter Reading”** means the record of the operational usage of the Hired Equipment and for battery powered Hired Equipment this means the “motor run time” as recorded by the B clock. In the case of internal combustion engine powered Hired Equipment, this means the “engine run time” as recorded by the Hour Meter.

**“I\_Site”** means the proprietary Toyota integrated telematics system, where applicable and as described under Clause (8), which may be used to collect and transmit Machine Data and/or Personal Data from the Hired Equipment.

**“KYC Process”** means Know Your Customer, a mandatory verification process where businesses, especially financial institutions, confirm a client’s identity and assess their legitimacy to prevent fraud, money laundering and terrorist financing.

**“Machine Data”** means any information, but specifically excluding Personal Data, that is collected by the Supplier and transmitted from the Hired Equipment for the purposes of gathering operational data on truck usage for measuring performance and the continuous improvement of products and services.

**“Maintenance Agreement”** means the agreement between the parties to provide and receive maintenance, either Full Service or Preventive Maintenance, the terms of which are set out herein.

**“Personal Data”** means any information of a personal nature which is created as a part of the Hire Agreement.

**“Portal”** means any in-house or third-party on-line system operated by, or on behalf of the Hirer and which is intended to manage its external business transactions, including, but not limited to: purchase order and/or service order documentation creation and storage, invoice generation and general Supplier interface and management.

**“Preventive Maintenance Agreement”** means a Rental Lite Maintenance Agreement that, during the Supplier's Business Day includes: scheduled service visits to manufacturer's specification, inclusive of associated labour, but excluding the items listed under clause 16(c). Warranty may apply in accordance with manufacturer's terms and conditions.

**“Regulation”** means any applicable UK laws, statutes, subordinate legislation, bye-laws, or common law.

**“Repudiatory Breach”** means a breach of the Hire Agreement which is regarded as sufficiently serious to justify termination of the Hire Agreement.

**“Schedule”** refers to the Hire Agreement Schedule, which contains details of the Hired Equipment, Maintenance Agreement, Site, Fees, Hire Period, Activity Level and Application.

**“Site”** means the Hirer's location where the Hired Equipment is intended to operate.

**“Site Survey”** means the survey undertaken by the Supplier and agreed by the Hirer in writing and which forms the basis whereby the Hired Equipment is specified and then supplied.

**“Supplier”** means Toyota Material Handling UK Ltd (UK company registration no: 00699993, EORI: GB669284289000), the party supplying the Hired Equipment, services and parts to the Hirer.

**“Terms”** means the terms included under the Terms and Conditions of the Hire Agreement.

**“Thorough Examination”** means the inspection of Hired Equipment as required under the Provision and Use of Work Equipment Regulations 1998 (known as PUWER 98) and the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER).

**“Wrongful cancellation”** means any purported cancellation of the order by the Hirer before delivery other than in accordance with Clause 12(a) herein.

## **2. Application of Terms**

- (a) This Hire Agreement is personal to the Hirer, and the Hirer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Hire Agreement without the prior written consent of an authorised officer of the Supplier.
- (b) This Hire Agreement and appended schedules constitutes the entire Hire Agreement and understanding between the parties as to its subject matter and no other terms or conditions shall apply.
- (c) References to 'Clauses' are references to Clauses of these Terms and Clause and Schedule headings shall not affect the interpretation of these Terms.
- (d) Unless the context otherwise requires, words in the singular shall include the plural and vice versa, and a reference to one gender shall include a reference to the other genders.
- (e) A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- (f) A reference to writing or written includes formal emails issued by an authorised officer of either party.
- (g) Any words following the terms 'including' or 'include' in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (h) No variation of these Terms shall be binding unless made in writing specifying both which Clause is to be varied and full details of such variation and signed by an authorised officer of both parties.
- (i) If for any reason any term or condition of the Hire Agreement shall be held to be invalid or unenforceable for any reason, the remaining Terms shall continue to have full force and effect and be binding upon the parties. If any such change substantially affects or alters the commercial basis of the Hire Agreement, the parties shall negotiate to amend and modify the provisions and terms as necessary to give effect so far as possible to their original intent.
- (j) Any time or other indulgence granted by either party shall not affect that party's strict rights under these Terms.
- (k) No failure or delay by a party to exercise any right or remedy provided under these Terms 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.
- (l) Except as provided by this Clause, a person who is not a party to this Hire Agreement shall not have a right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of the Hire Agreement. Notwithstanding the foregoing, the Supplier [and any Funder] shall be entitled to enforce the Terms of the Hire Agreement.
- (m) There shall be no binding contract until both parties have signed the Hire Agreement, however by signing the Hire Agreement the Hirer accepts to hire the Hired Equipment on the Terms set out herein.

- (n) These Terms, the Hire Agreement, and any dispute or claim arising out of or in connection with them or their subject matter (of both a contractual or non-contractual nature) shall be governed by and construed in accordance with English law, and the parties hereby submit to the exclusive jurisdiction of the English Courts.
- (o) By signing these Terms the Hirer agrees to allow the Supplier to collect Machine Data from the Hired Equipment for business purposes.
- (p) It is expressly agreed that any other terms and conditions contained in any acknowledgements, confirmations, standard forms (including back of order terms and conditions), or other similar documents issued by the Hirer shall not apply, unless agreed in writing in advance by the Supplier.
- (q) In the event of any conflict between the Terms and Conditions of this Agreement and Compliance clause 19, the latter shall prevail.

### **3. Authority and Representations**

- (a) The Hirer warrants, represents and undertakes that:
  - (i) it has full capacity and authority to enter into and to perform the Hire Agreement;
  - (ii) the Hire Agreement is executed by a duly authorised representative of the Hirer and upon such execution will constitute the legal, valid and binding obligations of both parties.

The Supplier's employees or agents are not authorised to make any representations concerning the Hired Equipment or its Hiring or Service or Maintenance unless confirmed by an authorised officer of the Supplier in writing. The Hirer acknowledges that it does not rely on and waives any claim in respect of any such representations which are not so confirmed.
- (b) Any advice or recommendation given by the Supplier or its employees or agents to the Hirer or its employees or agents as to the storage, application or use of the Hired Equipment, which is not confirmed in writing by the Supplier, is followed or acted upon entirely at the Hirer's own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

### **4. Notices**

- (a) Any notice such as change requests, cancellation requests, or other communication required to be given to a party under or in connection with these Terms shall be in writing and shall be delivered to the other party personally, by email to: [LTR@uk.toyota-industries.eu](mailto:LTR@uk.toyota-industries.eu), or sent by prepaid first-class post, recorded delivery or by commercial courier, to the other party's registered office (if a company) or (in any other case) to its principal place of business.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressee, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, by return email from the other party issued at the latest on the next Business Day after transmission.

### **5. Title and Risk**

- (a) Title to the Hired Equipment is retained by the Supplier or its Funder and the Hirer shall have no right, title, or interest in or to the Hired Equipment (save the right to possession and use of the Hired Equipment, subject to the Terms of the Hire Agreement).
- (b) Risk in the Hired Equipment supplied under the Hire Agreement shall pass to the Hirer upon delivery to the Site and shall continue until such time as the Hired Equipment is returned to the possession of the Supplier. Accordingly, the Hirer shall be responsible for insuring the Hired Equipment in accordance with Clause 6(a)(i).

### **6. Insurance**

- (a) During the Rental Period, the Hirer shall, at its own expense, effect and maintain adequate cover with a reputable insurer in respect of its liabilities under the Hire Agreement, to include the following insurances:
  - (i) Insurance of the Hired Equipment to a value not less than the insurance value specified on the Schedule providing comprehensive cover against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
  - (ii) insurance for such amounts as a prudent owner or operator of the Hired Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Hired Equipment; and
  - (iii) insurance against such other or further risks relating to the Hired Equipment as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Hirer.
- (b) The Hirer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Hired Equipment or arising out of or in connection with the Hirer's possession or use of the Hired Equipment.
- (c) The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.
- (d) The Supplier reciprocally undertakes to maintain adequate insurance cover for its contractual obligations in respect of the Hired Equipment under its respective insurance policies.

**7. Confidentiality and GDPR Compliance**

- (a) Each party undertakes to the other to treat as confidential and not to make use of any information relating to the business of the other which comes to its knowledge as a result of this Hire Agreement and its performance and to exercise proper commercial prudence in preserving such confidentiality.
- (b) Each party shall on demand and on termination of these Terms surrender to the other party all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.
- (c) Under GDPR regulations, as an 'Employer' each party is responsible for the security and protection of the personal data of their Employees and where personal data is collected and/or exchanged between the parties for business reasons and/or held on its computer systems for operational purposes (eg. I- Site integrated telematics system), it is hereby acknowledged that the use or processing of any personal data is to be managed with the appropriate security and only in connection with mutual and legitimate business interests.

**8. Collection and Use of Hired Equipment Data via I-Site (where applicable)**

- (a) The Hirer hereby acknowledges that the Supplier and its affiliates shall have the right to collect, use, modify, copy and store Machine Data from the Hired Equipment in order to continuously improve both its products and services. All such Machine Data is transmitted to and processed by the Supplier, subject to compliance with all applicable laws and without prejudice to the Hirer's intellectual property rights, or any other regulations involving Personal Data.
- (b) In the event that the Hirer does not wish the Supplier to collect Machine Data, then the Hirer must sign a DPA opt-out document to be returned to the Supplier.

**9. Force Majeure**

The Supplier reserves the right to defer the date of delivery of the Hired Equipment or to amend or cancel the performance of the contract due to circumstances beyond its reasonable control arising from and including without limitation: natural disasters, acts or omissions of government, national emergency, acts of terrorism, etc. (excluding strikes, lockouts or other labour disputes). For the avoidance of doubt, Force Majeure shall not excuse non-compliance with Compliance clause 19.

**10. VAT**

Payments requested as due from the Hirer are calculated before VAT has been added and VAT will be levied in addition to the payment requested according to the taxable value of the supply.

**11. Specification**

- (a) Hired Equipment supplied by the Supplier under the Hire Agreement will comply with the manufacturer's published specifications and all current Regulations regarding the construction and servicing of the Hired Equipment, as well as conforming with the Site Survey report agreed and signed by the Hirer. Unless the Hirer notifies the Supplier of any defects or non-conformity within 7 (seven) days of the delivery to Site of the Hired Equipment, the Hired Equipment shall be deemed to have been delivered in good working order and suitable for the specified Application.
- (b) The Supplier reserves the right to alter or amend the specification for the Hired Equipment provided that such alteration or amendment will not substantially change the nature or the operation of the Hired Equipment which the Hirer has agreed to hire pursuant to the Hire Agreement. For the avoidance of doubt, illustrations and advertising literature are by way of general description only and do not form part of the Hire Agreement.

**12. Pre-Delivery Cancellation**

- (a) The Hirer shall be entitled to cancel the order for the Hired Equipment and terminate the Hire Agreement within 7 (seven) days of both parties having signed the Hire Agreement (the "Cooling Off Period") by giving written notice to the Supplier within the 7 (seven) day period.
- (b) In the event of any purported errors or omissions in the executed Hire Agreement, the Hirer must notify the Supplier in writing of such purported errors or omissions within the Cooling Off Period. Following the Cooling Off Period, any cancellation or alteration of the Hire Agreement by the Hirer may only be made with the Supplier's prior written agreement or in accordance with the provisions of Clause 22.
- (c) In cases where the Hired Equipment is cancelled after the Cooling Off Period and before the delivery date, a cancellation charge shall apply which shall be calculated by the Supplier as a true and genuine estimate of the directly attributable losses in respect of the cancelled Hire Agreement.
- (d) In cases where the Hired Equipment is specialised and/or has been customised to the Hirer's requirements and is cancelled after the Cooling Off Period and before the delivery the cancellation charge may be calculated as being 100% of the total Hire Fees for the Hired Equipment over the minimum agreed hire period plus all other directly attributable losses incurred.

**13. Delivery**

- (a) Delivery forecasts are given in good faith but the Supplier will not accept any liability if for any reason delivery is delayed beyond the date given in any delivery forecast.
- (b) Any date specified for delivery is intended to be an estimate only and time for delivery shall not be made of the essence by notice.
- (c) The Supplier may deliver any part of the Hired Equipment in instalments and shall be entitled to invoice the Hirer separately for each instalment delivery.

- (d) The Hirer shall procure that their duly authorised representative shall be present at the delivery of the Hired Equipment. Acceptance of delivery by such representative shall constitute conclusive evidence that the Hirer has examined the Hired Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection).
- (e) If for any reason the Hirer is unable or fails to accept delivery of any of the Hired Equipment or if the Supplier is unable to deliver the Hired Equipment because inadequate information has been provided, the Supplier reserves the right to:
  - (i) Pass the risk in the Hired Equipment to the Hirer;
  - (ii) Deem the Hired Equipment to have been delivered;
  - (iii) Store the Hired Equipment until delivery can be completed during which time the Hirer shall be liable for all associated costs, losses and expenses including, but without limitation, all storage, administration and insurance costs.

**14. Location and Use of Hired Equipment**

- (a) During the continuance of the Hire Agreement the Hirer will be responsible to the Supplier for the Hired Equipment and will only use the same for purposes and in places for which it is suitable. The Hired Equipment will be used for the business of the Hirer and at the Site only and in a skilful, safe and proper manner. The Hirer shall procure that each item of Hired Equipment is at all times validly licensed and insured as required by law, has a valid Thorough Examination and/or current Department of Transport test certificate where required, complies with all other requirements as for the time being required by law and is driven by properly qualified and experienced personnel.
- (b) The Hirer shall promptly pay or procure the payment of all taxes, license fees, or other outgoings in respect of the Hired Equipment and shall indemnify and keep the Supplier indemnified against any taxes, duties, tariffs, assessments, demands, charges or fines levied against or payable by the Supplier on account of its ownership of the Hired Equipment or the leasing, use or operation thereof.
- (c) The Hirer shall not and will not purport to part with control of (including for the purposes of repair or maintenance), sell, transfer, lease, sub-let, cross-hire, lend or otherwise dispose of the Hired Equipment, which is contracted for operational use by, or on behalf of the Hirer, at the Hirer's designated Site. Nor shall the Hirer mortgage, charge or allow the creation of any mortgage, charge, lien or other security interest in respect of or otherwise encumber the Hired Equipment or the buildings or land in or on which the Hired Equipment is kept nor agree to do any such thing nor agree to create any floating charge, unless the Hirer has prior to such event obtained waivers satisfactory to the Supplier excluding the Hired Equipment from its effect unless any such act does not affect the Hired Equipment in any way and is subject to the right of the Supplier to repossess the Hired Equipment at any time and for that purpose to enter such land or building.
- (d) The Hirer shall not suffer or permit the Hired Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Hired Equipment is so confiscated, seized or taken, the Hirer shall notify the Supplier and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Hired Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation.
- (e) The Hirer shall not use the Hired Equipment for any unlawful purpose.
- (f) Plates and/or labels indicating that the Hired Equipment is on hire from the Supplier may be fixed to the Hired Equipment, and such plates and/or labels shall not be removed, mutilated or obliterated by the Hirer.
- (g) In the event of a change in the Hirer's operation and subject to the Supplier's agreement, Hired Equipment of the Supplier's manufacture may be exchanged for alternative, suitable equipment from the Supplier's existing rental fleet subject to availability, after a minimum hire period of 12 months have elapsed. Any Hire Fees adjustments and any costs associated with such an exchange, including, but not limited to damage costs, will be agreed in advance between the parties and confirmed by a formal written addendum to the Hire Agreement.

**15. Hire Period**

- (a) The Minimum Hire Period shall commence on the date the Hired Equipment is delivered to Site, or as otherwise agreed in writing between the parties and shall continue for the period set out in the Schedule.
- (b) On completion of the Minimum Hire Period the Supplier will increase the Hire Fees, unless otherwise agreed in advance.
- (c) If the Hirer wishes to terminate the Hire Agreement at the end of the Minimum Hire Period, the Hirer shall notify the Supplier in writing 90 days prior to the end of the Minimum Hire Period, otherwise the Hire Agreement shall continue beyond the Minimum Hire Period, unless:
  - (i) a formal addendum to extend the Hire Period has been mutually agreed or
  - (ii) until the Hire Agreement is terminated by either party giving 90 days written notice to the other.

**16. Maintenance Agreements and Hire Fees - Full-Service Maintenance and Preventive Maintenance Agreements**

- (a) Subject to Clause 13 the Hirer shall pay the Supplier the Hire Fees in respect of the Hired Equipment which shall accrue from the Delivery Date.
- (b) The Hire Fees for a **Full Service Maintenance Agreement**, unless specified otherwise in writing, do **not** include:
  - (i) Hirer requested modifications, or the cost of breakdowns, or repairs, which result from accident, abuse or misuse of the Hired Equipment;



- (ii) the cost of service work undertaken that is not covered by the Maintenance Agreement;
  - (iii) environmental waste disposal and sundry costs associated with non-contract work;
  - (iv) the cost of replacement forks and legislative chain replacements in accordance with HSE legislation and BITA Guidance Notes;
  - (v) the cost of replacement wheels, tyres, associated labour and call out, unless stated in the Maintenance Agreement;
  - (vi) Thorough Examinations (LOLER 98 & PUWER 98) Certification, unless stated in the Maintenance Agreement;
  - (vii) cost of relocation of Hired Equipment and/or any applicable cost of Hired Equipment decommissioning or re-commissioning including crane costs;
  - (viii) cost of repair or replacement of any traction battery (of whichever type) which has not been used, cycled and topped in accordance with the battery manufacturer's guidelines;
  - (ix) the cost of battery topping, and/or charger cleaning, unless otherwise agreed in writing between the parties;
  - (x) the repair or replacement of escape harness systems;
  - (xi) the cost of breakdowns, repairs, or parts' replacements which result from using incorrect or contaminated fuel, or the cost of draining and flushing Counterbalance diesel fuel tanks of red diesel and replacing the filters;
  - (xii) the supply of fuel additives;
  - (xiii) The cost of providing any Hired Equipment condition, inspection, incident, or accident reports that may be required by either the Hirer or Supplier from time to time.
- (c) The Hire Fees for a **Preventive Maintenance Agreement**, unless specified otherwise in writing, do **not** include:
- (i) the cost of breakdowns, repairs, or parts' replacement which result from accident, abuse, misuse, vandalism or operator damage to the Hired Equipment;
  - (ii) the cost-of-service work, repairs, breakdowns, parts' replacement, associated labour, call outs or any other Hirer requested work;
  - (iii) the cost of breakdowns, repairs, or parts' replacements which result from using incorrect or contaminated fuel, or the cost of draining and flushing Counterbalance diesel fuel tanks of red diesel and replacing the filters;
  - (iv) the cost of major adjustments and lubrications;
  - (v) environmental waste disposal and sundry costs associated with service work and maintenance;
  - (vi) the cost of replacement forks and legislative chain replacements in accordance with HSE legislation and BITA Guidance Notes;
  - (vii) the cost of replacement wheels, tyres, associated labour and call out;
  - (viii) Thorough Examinations (LOLER 98 & PUWER 98) Certification;
  - (ix) Batteries, chargers and the topping and cleaning of batteries and chargers;
  - (x) the provision of temporary replacement equipment and the cost of relocation of Hired Equipment;
  - (xi) the repair or replacement of escape harness systems;
  - (xii) the supply of fuel additives, oils and filters;
  - (xiii) The cost of providing any Hired Equipment condition, inspection, incident or accident reports that may be required by either the Hirer or Supplier from time to time.
- (d) The Hire Fees are calculated based on the Application as defined in the Schedule and, subject to the provisions of Clause 16, may be fixed for the Minimum Hire Period or index linked from the date of delivery of the Hired Equipment, or any other date as may be agreed between the parties.
- (i) if the Hire Fees are stated to be 'fixed' in the Schedule, the Supplier may vary the Hire Fees in accordance with Clause 16(i), or to take account of changes in Application, Activity level or other factors as under Clauses 16(e) and/or 14(b) above.
  - (ii) if the Hire Fees are index linked, the Supplier may increase the Hire Fees payable by the Hirer as in 16(c)(i) above and/or on the first and each subsequent anniversary of commencement of the Hire Agreement by the proportional difference between the Retail Price Index (all items) most recently published by the Office for National Statistics at the date the Hire Agreement commences and the Retail Price Index (all items) published annually thereafter.
- (e) The Hirer is responsible to notify the Supplier of any increase in the Activity Level and/or change in the Application.
- (f) Where the Hour Meter Reading indicates that the Hired Equipment is operating in excess of the described Application and if such excess is considered to be a Health and Safety risk, a review of the Application and/or Activity Level will be undertaken with the Hirer, which may lead to an appropriate adjustment of the Hire Fees to be agreed between the parties and will be formally confirmed by a mutually signed addendum.
- (g) Hired Equipment operating in excess of the Activity Level during the Hire Period which has not been increased by mutual consent will be subject to an excess hours charge, which will be calculated according to the following formula: the weekly fee multiplied by 52, divided by the annual contracted hours per machine, multiplied by the excess hours.
- (h) The Hirer shall pay for the cost of breakdowns or repairs which result from accidents, abuse or misuse of the Hired Equipment during the Hire Period. Such repairs shall be carried out as soon as is reasonably practicable once a purchase order for such repairs has been issued by the Hirer, which authorisation by the Hirer should not be unreasonably withheld or delayed.

- (i) The Hire Fee shown on the Hire Agreement Schedule is calculated using an interest rate set on the date of contract/order conclusion. This interest rate is benchmarked to the currency-related Interest Rate Swap (IRS) 5Y on that date ("Benchmark Date"). The value of the IRS Swap 5Y is obtained from the Bloomberg dashboard with the corresponding ticker code: BPSWS5. If the IRS 5Y has changed by more than 50 basis points between the Benchmark Date and the delivery date, the Supplier shall have the right to adjust the interest rate used (up or down – as applicable) by the difference between 50 basis points and the actual rate at that time, which may result in a change in the Hire Fee, which will then be fixed for the term of the Hire, unless it has been previously agreed between the parties that the Hire Fee should be Index-linked.

#### **17. Payment**

- (a) Unless otherwise agreed in writing, the Hire Fees will be paid quarterly in advance by direct debit with the respective invoice issued by the Supplier in either paper or electronic format, or as otherwise agreed between the parties. Hire Fees shall be payable regardless of whether an invoice has been received or not by the Hirer. Time shall be of the essence for payment of the Hire Fees.
- (b) If the Hirer's corporate policy is to issue purchase orders covering the Hire Fees, then the Supplier will require purchase orders to be issued in advance, which cover the Minimum Hire Period and any extension to the Minimum Hire Period. Failure to supply such purchase orders in advance will not alleviate the Hirer's obligation to pay the Hire Fees on time.
- (c) Unless otherwise agreed in writing, payment of any ad hoc charges other than Hire Fees which may be chargeable to the Hirer by the Supplier in accordance with this Hire Agreement shall be due in 28 days from date of the Supplier's invoice.
- (d) All payments shall be made free and clear of any deductions, setoffs or withholdings of any description (save where the Hirer disputes any part of the invoice as set out below in condition 17(d), unless such deductions are required by law, in which case the Hirer shall be liable to ensure that the Supplier receives the full amount due and shall indemnify the Supplier in respect of any deducted amounts.
- (e) If the Hirer wishes to dispute the whole or any part of any payment due to the Supplier, then provided that it notifies the disputed amount and the nature of the dispute to the Supplier in writing prior to the due date for payment of the relevant invoice, it may withhold payment of the sum in dispute, but must pay the undisputed sum within the agreed payment terms.
- (f) If upon investigation by the Supplier and the Hirer, both parties agree that such disputed amount (or part thereof) is properly due to the Supplier the Hirer shall pay such amount within 14 days of the date of resolution.
- (g) In the event of late payment by the Hirer of any sum due to the Supplier, the Hirer shall forthwith (without prejudice to any other remedy the Supplier may have) pay to the Supplier any sums overdue on demand and the Supplier may exercise its statutory right to claim interest and compensation for the cost of recovering the debt under the Late Payment of Commercial Debts Regulations 2002 or otherwise.
- (h) In the event that the Hirer, either at the time of entering into this Hire Agreement, or at any time thereafter, requires the Supplier to transact via a Portal for the purpose of transacting business pertaining to this Hire Agreement, including, but not limited to: the issuing of purchase orders and/or the receipt/payment of invoices, it shall notify the Supplier officially in writing with at least 60 days' notice. The Supplier may, at its sole discretion, agree to operate via such a Portal, subject to the following conditions:
  - (i) Any subscription or associated costs incurred by the Supplier in relation to its use of the Portal will be met by the Hirer.
  - (ii) The Supplier reserves the right to charge a reasonable Fee to cover its overheads in relation to the ongoing additional administration resulting from the use and operation of the Portal.

#### **18. Liability and Indemnity**

- (a) From the delivery of any Hired Equipment until its return to the Supplier, subject to 18(b), the Hirer shall bear the entire risk of and be solely liable for any loss, damage, transport fines, applicable taxes, duties, injury to people or property, theft or destruction arising out of the possession and use of the Hired Equipment and hence shall indemnify the Supplier against any taxes, licence fees and any duties, fines, liabilities, claims and expenses, including any legal fees that may arise.
- (b) Nothing in this Hire Agreement shall exclude or in any way limit the liability of either party for:
  - (i) Death or personal injury caused by the negligence of its employees or agents
  - (ii) Fraud or fraudulent misrepresentation;
  - (iii) Any infringement of Intellectual Property Rights; or
  - (iv) Any breach of the terms implied by Section (8) of the Supply of Goods (Implied Terms) Act 1973 or any other liability which cannot be excluded by law.
- (c) Subject to 18(b) the refund of Hire Fees payable in respect of any period of non-availability as set out in Clause 23 shall be the full extent of the liability of the Supplier to the Hirer (whether in contract, tort (including negligence), misrepresentation, or otherwise, and including any liability for the acts or omissions of its employees, agents and subcontractors) for all expenses, liabilities, costs, losses or other claims of the Hirer incurred by reason of any failure or breach by the Supplier of its obligations under the Hire Agreement and the Hirer shall not be entitled to recover from the Supplier any other damages whatsoever.
- (d) In the case of a total loss or theft of the Hired Equipment, whether or not covered by insurance, the Hirer shall fully indemnify the Supplier for a sum equal to its replacement value.

- (e) The Hirer will be solely responsible for (and so hold the Supplier fully indemnified against) any loss, damage or injury to people or property caused by the possession of or use of or breakdown or defect in the Hired Equipment, parts or services supplied except to the extent such loss, damage or injury is caused by a proven manufacturing defect.
- (f) Without prejudice to 18(a) neither party shall be liable to the other for loss of profits, loss of revenue, loss of contracts, loss of goodwill or loss of business or consequential loss or damage, in each case whether direct or indirect and howsoever caused, even if foreseeable.
- (g) The Supplier shall not be held liable as a result of an action brought by a third party, whether arising from negligence, breach of contract or otherwise resulting from the supply of, possession of or use of or any breakdown or defect in the Hired Equipment howsoever caused.
- (h) For the avoidance of doubt, any liability arising from a breach of Compliance clause 19 below shall not be subject to any limitation of liability or exclusion of indirect damages under this Agreement. The Hirer shall indemnify and hold harmless the Supplier from any losses, damages, or costs arising from the Hirer's breach of trade compliance obligations. This indemnity shall apply without limitation and shall not be subject to any liability cap or exclusion set forth elsewhere in this Agreement.

**19. Compliance**

- (a) **Responsible Business Conduct** - the Hirer shall operate in a socially and environmentally responsible manner and use reasonable efforts to ensure its operations and supply chain adhere to internationally recognised principles on human rights, labour standards, environmental protection and anti-corruption, including the UN Global Compact principles and other relevant international frameworks applicable to the Hirer's operations. Upon request, the Hirer shall provide information required by Supplier to verify compliance.
- (b) **General Compliance** – the Hirer warrants that it and any party acting on its behalf shall comply with all applicable laws and regulations, including those relating to export, taxation, anti-corruption, antitrust, anti-money laundering and criminal law.
- (c) **Export Control and Sanctions:**
  - (i) Export Laws means all applicable trade and economic sanctions and export control laws, regulations, rules and licenses, including those of the EU, U.S., UK and UN, as amended from time to time.
  - (ii) For the duration of this Agreement, the Hirer warrants that:
    - It shall comply with all Export Laws and ensure its affiliates, associates and customers do the same.
    - Neither the Hirer, nor its directors or management are sanctioned or listed on any Prohibited Party List, meaning any list of sanctioned or restricted parties issued by the EU, U.S., UK, UN, or other relevant authorities.
    - The Hired Equipment shall not be re-transferred or otherwise made available to any party on such lists.
    - It shall not sell, re-hire, transfer, export, re-export, or otherwise dispose of the Hired Equipment to any sanctioned country, person, or prohibited end-use in violation of Export Laws (including without limitation to circumvent such Export Laws).
    - The Hirer is not directly or indirectly owned (whether by majority or minority shareholding) or controlled by, or acting on behalf of, or for the benefit of, directly or indirectly, any party listed on a Prohibited Party List.
    - Any information provided in any KYC process initiated by Supplier is true, complete and not misleading.
  - (iii) **Russia/Belarus Prohibition** – the Hirer shall not sell, re-hire, license, transfer, export, or re-export, directly or indirectly the Hired Equipment for use in Russia or Belarus and shall take necessary measures to prevent its partners, affiliates, or customers from doing so.
  - (iv) **Material Breach** – any breach of clauses 19(a), (b), and (c) shall be deemed a material and irremediable breach of this Agreement and the Supplier may terminate the Agreement with immediate effect.
  - (v) **Co-operation** – the Hirer shall promptly provide all information requested by the Supplier to verify compliance with this clause 19 and shall immediately notify the Supplier of any actual or suspected breach. In such cases the Hirer shall fully co-operate with the Supplier's investigation, including granting reasonable access to relevant records.

**20. Notification of Agency Assignment**

- (a) The Supplier shall be entitled to assign either for funding purposes or otherwise, in whole or in part, its rights and obligations under the Hire Agreement to another entity within its group of companies, or to a third party without the prior consent of the Hirer.
- (b) The Hirer shall remain fully obliged under the provisions of this Hire Agreement towards any assignee or successor of the Supplier.

**21. Repudiatory Breach**

- (a) If the Hirer commits a Repudiatory Breach during the Hire Period, the Supplier shall notify the Hirer in writing accordingly and shall reserve the right to initiate legal action to remedy the breach. Following such notification of a Repudiatory Breach the Supplier shall terminate the Hire Agreement and seize and remove any Hired Equipment and/or spare parts for which purpose it shall be lawful for the Supplier to enter into or upon any premises where the Hired Equipment may be.
- (b) Without prejudice to the generality of the above Clause 20(a) should the Hirer or a duly authorised representative of the Hirer:-



- (i) withhold payment of Hire Fees or other amounts due for fourteen days after the due date of payment thereof; or
  - (ii) refuse to accept delivery of the Hired Equipment without a valid justification; or
  - (iii) having examined the Hired Equipment and found it to be in good condition, nevertheless refuses to accept the Hired Equipment at the point of delivery without valid justification; or
  - (iv) fail to observe and perform any of the terms and conditions of this Hire Agreement (or wishes to terminate the Hire Agreement for convenience) and in the case of any breach capable of being remedied shall fail to remedy such breach within (14) fourteen days after being required by the Supplier in writing so to do; or
  - (v) to do or cause to be done or permit or suffer anything to be done whereby the rights of the Supplier in or over the Hired Equipment are prejudiced or put into jeopardy; or
  - (vi) convene any meeting of creditors or make a Deed of Assignment or Arrangement for the benefit of its creditors or shall be subject to a change of ultimate parent company ownership or shall cease or threaten to cease to carry on business or shall be unable to pay its debts as they mature or shall convene a meeting to consider a resolution for winding up or present or have a petition for winding up presented against it or have a Receiver or Administrator appointed over the whole or any parts of its undertakings or assets or the ownership of the Hire changes; or
  - (vii) suffer any distress or execution upon its property;
  - (viii) abuse, threaten or assault any member of the Supplier's staff in circumstances relating to their work including verbal or racial abuse or threats as well as physical attacks or the use of inappropriate words or behaviour causing distress and/or constituting harassment;
- The aforesaid shall be considered a repudiatory breach of the Hire Agreement and immediately upon termination in the event of a repudiatory breach;
- (c) the Supplier will immediately cease to provide maintenance and breakdown cover and accepts no liability for any damage or loss to person or property as a result of the continued use of the Hired Equipment;
  - (d) the Supplier's consent to the Hirer's possession of the Hired Equipment shall terminate and the Supplier may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Hired Equipment and for this purpose may enter the Site or any premises at where Hired Equipment is located.
  - (e) Without prejudice to the Supplier's other rights or remedies, the Hirer shall pay to the Supplier a termination sum being the aggregate of:-
    - (i) all arrears of Hire Fees and other monies payable hereunder up to the time of such termination; and
    - (ii) All other costs (including legal costs) incurred by the Supplier as a result of obtaining the fulfilment of any obligation of the Hirer hereunder or the termination of this Hire Agreement; and
    - (iii) all outstanding Hire Fees up to the originally contracted end date, all residual excess hours' charges and all damage costs calculated in accordance with the Supplier's Fair Wear and Tear Guide.

## **22. Termination**

- (a) When the Hire Agreement is terminated by either party, the cost of the return transport collection from site will be chargeable to the Hirer, together with any de-commissioning costs that may apply and the cost for any work required to rectify or compensate the Supplier for the loss or damage caused due to accident, abuse or misuse of the Hired Equipment or any part thereof. Any such remedial work will be assessed by the Supplier with reference to the Supplier's "Guide to Fair Wear and Tear and Damage".
- (b) In the event that the Hire Agreement is terminated by the Hirer during the Minimum Hire Period the Hirer shall formally notify the Supplier by email at: [LTR@uk.toyota-industries.eu](mailto:LTR@uk.toyota-industries.eu) and upon email acknowledgement by the Supplier, shall pay to the Supplier a termination sum being the aggregate of:-
  - (i) all arrears of Hire Fees and other monies payable hereunder up to the time of such termination; and
  - (ii) all other costs (including legal costs) incurred by the Supplier as a result of obtaining the fulfilment of any obligation of the Hirer hereunder or the termination of this Hire Agreement; and
  - (iii) all outstanding Hire Fees up to the originally contracted end date, all residual excess hours' charges and all damage costs calculated in accordance with the Supplier's Fair Wear and Tear Guide.
- (c) When the Hire Agreement is terminated for whatever reason, the Hirer is responsible for prior decommissioning of the Hired Equipment and to provide unconditional and timely access to the Supplier to collect the Hired Equipment. If the Hired Equipment is not made available to the Supplier on the agreed date of collection the Hirer shall be liable for any associated costs (including failed collection costs, chargeable at prevailing transport rates) and continue to accept full responsibility and liability as set out in this Hire Agreement until it is so collected.

## **23. The Supplier's Obligations**

- (a) During the term of the Hire Agreement and in consideration of the Hire Fees paid by the Hirer, the Supplier will maintain and repair the Hired Equipment under the terms of the respective Maintenance Agreement.
- (b) Unless otherwise agreed routine maintenance, servicing and repair to the Hired Equipment will be available during the Supplier's normal business hours of 8.00am to 5.00pm, Monday to Friday excluding statutory holidays.
- (c) Routine maintenance of the Hired Equipment shall be carried out by the Supplier at the Site at such times as may be agreed in advance between the Hirer and the Supplier from time to time.
- (d) The Supplier shall provide to the Hirer the services as described in the Schedule to include:

- (i) routine maintenance of the Hired Equipment at such intervals as the Supplier may reasonably determine to be necessary in order to keep the Hired Equipment in good working order; and
- (ii) the repair of any defect in or malfunction of the Hired Equipment which is discovered by the Supplier's representatives during the course of routine maintenance checks or is reported to the Supplier by the Hirer from time to time.
- (e) The Supplier shall procure that when its personnel are present at the Hirer's Site they shall obey all reasonable instructions of the Hirer in respect of such presence and comply with any reasonable Site rules laid down from time to time by the Hirer.
- (f) The Supplier or its representatives shall create and maintain a record of the maintenance undertaken to the Hired Equipment in accordance with the Schedule.
- (g) The Supplier warrants and undertakes that maintenance, service and repair performed by its representatives pursuant to the respective Maintenance Agreement shall comply with all Regulations relating to health and safety and shall be carried out with reasonable skill, care and diligence and be undertaken in a professional manner by suitably trained and qualified personnel.
- (h) The Hirer shall be liable for the Hire Fees in respect of any period after the termination of the Hire Agreement during which the Hired Equipment or any part thereof cannot be removed from the Site to the Supplier's premises owing to an industrial dispute (including but not limited to strikes or lockouts) affecting the Hirer or the Site.

**24. Performance Guarantees - Hired Equipment of Toyota/BT manufacture under a Full Service Maintenance Agreement only**

- (a) Hire Fees shall continue despite any stoppage in the use of the Hired Equipment, whether or not it is returned to the Supplier's premises and whether or not a replacement for the Hired Equipment is available to be supplied for the period of the stoppage, save where otherwise agreed in writing with the Hirer, or otherwise expressly provided for herein.
- (b) The Supplier shall use its best endeavours to provide a replacement for the Hired Equipment and if it cannot do so, save as may be agreed in writing at the Hirer's request, the refund of Hire Fees payable in respect of the period of non-availability shall be the full extent of the Supplier's liability.
- (c) In the event that a replacement truck has either not been requested by the Hirer, or cannot be supplied due to non-availability, stoppages due to a breakdown of the Hired Equipment exceeding 1 day and caused by a proven fault agreed by the Supplier in accordance with the Hirer's obligations under this Hire Agreement will attract a refund of Fees equivalent to the period of non-availability of the Hired Equipment.
- (d) Non-availability which results from customer requested work, modifications, damage, abuse or misuse of the Hired Equipment, will not attract any refund of Fees.
- (e) The Supplier will refund 4 days Hire Fees in the form of a credit note for the following reasons:
  - (i) Save for any mitigating circumstances, in the event the Supplier's technician fails to arrive at the Site within 4 working hours and the recorded breakdown request being received by the Supplier's Service Call Centre during normal hours (8.00am to 5.00pm Monday to Friday), or if:
  - (ii) the Supplier fails to carry out a Preventative Maintenance visit due under the terms of the Hire Agreement.
- (f) All credit requests must be made within 3 months of the incident and any such requests made after this time shall not be honoured

**25. Hirer's Obligations**

- (a) Unless otherwise agreed formally in writing, the Hirer shall be responsible for all the infrastructural aspects of the Site where the Hired Equipment is to be used which includes, but shall not be limited to:
  - (i) Adequate power supply for all charging equipment and its secure wiring installation
  - (ii) The floor condition being compliant with manufacturer's requirements and/or industry regulations in respect of the Hired Equipment supplied and in addition:
  - (iii) The Hirer shall be responsible for ensuring the Hired Equipment is subject to regular Thorough Examination certification in line with current regulations.
- (b) The Hirer shall at all reasonable times allow the Supplier or its representatives to have all necessary access to the Hired Equipment and a single point of contact for the purpose of providing the services under the Hire Agreement.
- (c) The Hirer shall be responsible for carrying out daily checks on the Hired Equipment in accordance with the manufacturer's recommendations and/or the Supplier's Fair Wear and Tear Guide.
- (d) The Hirer shall provide adequate welfare facilities and a cordoned off traffic free work area suitable for the safe working of the Supplier's personnel in conformity with all Health and Safety Regulations.
- (e) The Hirer shall notify the Supplier or its representatives as soon as possible if any unit of Hired Equipment breaks down, fails to operate properly or if any repairs or replacements (other than those required as part of routine Maintenance) are necessary.
- (f) In the case of Counterbalance diesel trucks, the fuel tank will contain white diesel and the Hirer shall be solely responsible for using the approved diesel for their application, in accordance with the latest amendments to the Hydrocarbon Oil Duties Act 1979 (HODA). At the end of the contracted Hire, the fuel tank of the Counterbalance truck must be returned containing white diesel only and failure to comply will result in the Hirer being charged in accordance with Clause 16(b)(vii).
- (g) The Hirer shall be responsible to the Supplier to ensure that the Hired Equipment is always kept in a safe and good operational condition whilst the Hire Agreement remains in force. If at any time the Hired Equipment is found not to be in

- such safe and good operational condition (Fair Wear and Tear excepted) then the Supplier shall, at the cost of the Hirer, undertake such work at its prevailing rates to return the Hired Equipment to a safe and good operational condition.
- (h) The Hirer shall not repair the Hired Equipment or make replacements or alterations to the Hired Equipment unless authorised to do so in advance in writing by an authorised representative of the Supplier. The Hired Equipment must not be used to lift loads in excess of its rated capacity shown on the Hired Equipment or for any purpose for which it is not designed or tested.
  - (i) The Hirer agrees that all necessary Hired Equipment repairs and replacements (including damaged tyres), whether carried out by the Supplier, or any third party authorised by the Supplier, will be undertaken using only genuine manufacturer's parts available from the Supplier.
  - (j) The Hirer shall take steps to ensure the protection of Hired Equipment from any weather damage, including where necessary the maintaining of correct coolant levels as specified by the manufacturer of the Hired Equipment.
  - (k) The Hirer shall observe the Supplier's and/or battery manufacturer's recommendations for the charging, discharging and routine inspection of all batteries, whether lead acid or lithium ion. Unless agreed in writing, the topping of lead acid batteries shall be the responsibility of the Hirer.
  - (l) Failure by the Hirer to observe the above checks or charging recommendations may result in serious damage to the Hired Equipment and the cost of any repair or reinstatement arising from such failure will be charged to the Hirer. If the Hired Equipment is not working due to Hirer damage, Fees due under the Hire Agreement are still payable.
  - (m) The Hirer accepts full responsibility to the Supplier for loss or damage to or destruction of the Hired Equipment suffered during the Hire Period from whatever cause the same may arise (fair wear and tear or the Supplier's negligence excepted) and is fully responsible to the Supplier for the safekeeping of the Hired Equipment in accordance with Clause (24) and its return in equal order to the Supplier at the end of the Hire Period (fair wear and tear excepted).
  - (n) The Hirer shall not move nor permit the Hired Equipment to be moved from the Site without the prior written consent of the Supplier, such permission will not be unreasonably withheld.
  - (o) Where Hired Equipment includes I\_Site, the Hirer is responsible to ensure that adequately trained personnel are always available to operate the system and the Supplier accepts no liability for any loss arising from any failure on the part of the Hirer in this regard.
  - (p) The Hirer shall without delay notify the Supplier if it becomes insolvent or any petition is issued with respect to its administration or winding-up or that of any of its subsidiary companies or customers, which has possession of the Equipment. The parties undertake not to change this stipulation without the prior written consent of the Supplier.

Signed on behalf of the Hirer:

**Hirer Company Name:**

\_\_\_\_\_

Signed:

\_\_\_\_\_

Print name:

\_\_\_\_\_

Job title:

\_\_\_\_\_

Date:

\_\_\_\_\_