Terms and Conditions – Rental and Maintenance Agreement

APROLIS UK LIMITED AND ALL ITS SUBSIDUARIES
REG OFFICE: CITADEL HOUSE, 58 HIGH STREET, HULL, HU1 1QE REG NO 02550150
Revised June 23

Definitions

- "Agreed Use Level" means the average number of hours use per week when calculated over a period of 12 months set out on the rental and maintenance agreement
- "Goods", "Delivery Address", "Hire Rate" and "Minimum Hire Period" each has the respective meaning indicated overleaf
- "Party" means company named in box at top of rental and maintenance agreement ("we", "our" or "us") or the hirer of the goods whose details are set out overleaf ("you")
- "Proper Use" means use in accordance with such instructions as may be provided by the manufacturer in relation to the Goods and in accordance with the proper use identified in the Site Survey and Specification Form and any instructions or advice given to you by us
- "Site Survey and Specification Form" means the site survey carried out by us and specification of equipment attached to this agreement
- “Specialist Equipment” means equipment purchased by us that is unique for the application on the site survey and specification form
- “we” / “us” / “our” means Impact Fork Trucks Limited and/or all or any of its subsidiaries
- “you” / “your” means the person(s) noted as the customer overleaf
- “Directors” means any person listed as a Director or Company Secretary at Companies House

In these terms and conditions, unless it is inconsistent with the context, headings are for convenience only and shall not affect their interpretation; any reference to any provision of a statute or statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time; words denoting the singular include the plural and vice versa; words denoting one gender include all genders; "including" shall be construed so as not to limit the generality of any words or expressions in connection with which it is used; and a reference to a “working day” means Monday to Friday, excluding days on which banks in the City of London are generally not open for business.

1. Hire Period and Return of Goods

1.1 We agree to hire and you agree to take on hire the Goods described overleaf subject to these Conditions

1.2 The hiring will commence on either the delivery date specified or 14 days from the date that the goods were available to be delivered and will continue for the Minimum Hire Period specified overleaf and thereafter unless or until terminated (subject to clause 9 and 10) by either of us giving to the other at least three months' written notice of termination.

1.3 You will not become owner of Goods and on termination of the hiring you must arrange

immediate return of the Goods to us at our Premises in good condition and full working order (fair wear and tear excepted) unless agreed otherwise in writing.

1.4 This contract shall be formed on the date of receipt by us of the signed acceptance by you of the offer laid out in our order acknowledgement form.

2. Delivery of Goods

2.1 We will deliver the Goods to the Delivery Address specified overleaf at the commencement of hire ("Delivery") and you must arrange immediate return of the Goods to us at the end of hire (unless agreed otherwise in writing). We will charge you the reasonable costs for such delivery and collection service at our standard rates prevailing from time to time. If we tender delivery or attempt to collect the Goods at a time agreed with you and you are not able to accept such delivery or make the Goods available for collection, we may charge you the full costs incurred in arranging re-delivery or collection as the case may be.

2.2 Subject to payment of all charges by you and the terms and conditions of this agreement, you will have quiet enjoyment of the Goods during the term of the agreement.

2.3 We will use all reasonable endeavours to deliver the Goods on the date advised but will not be liable to you in the event of any delay in delivery.

3. Inspection

3.1 You must inspect the Goods on delivery and notify us in writing within three working days of any defects in the Goods. In the absence of notification, the Goods will be deemed to be free of defects and in full working order on delivery except for any defect which is inherent or not ascertainable by inspection.

4. Your responsibilities

4.1 You must:

4.1.1 take all reasonable and proper care of the Goods and keep the Goods in good condition and full working order (fair wear and tear in line with the UK Fork Truck association guidelines);

4.1.2 indemnify us against loss of or damage to the Goods however caused;

4.1.3 at your expense arrange inspection of the Goods as required pursuant to the Lifting Operations and Lifting Equipment Regulations 1998.

4.1.4 if you have not specified overleaf that you require us to perform maintenance services, you must at your own expense, ensure that the Goods are routinely serviced in accordance with the service requirements of the manufacturer of the Goods or as we advise;

4.1.5 at your own expense carry out all routine checks recommended by the manufacturer of the Goods including checking and topping up as necessary levels of engine,

transmission, and hydraulic oils, coolant, brake fluid and battery electrolyte in accordance with the manufacturer's instructions or as we advise:

4.1.6 at your own expense repair all punctures and replace all worn tyres and forks;

4.1.7 not move the Goods from the Delivery Address and keep the Goods in your possession and control at the Delivery Address, unless we have agreed in writing to you moving or keeping them elsewhere;

4.1.8 allow us to inspect the Goods and to enter any premises where they are kept;

4.1.9 use the Goods only for the purposes of your own business;

4.1.10 use the Goods only in accordance with their Proper Use and for purposes described in the Site Survey and Specification Form (a copy of which is attached to this agreement) and in accordance with their operating instructions and all relevant laws;

4.1.11 permit the Goods to be used only by suitably skilled and trained operatives;

4.1.12 ensure that all investigations into the safe operation of the Goods, breakdowns, accidents, and incidents causing an actual or potential risk to the health and safety of any person involving the Goods are reported to us as soon as possible;

4.1.13 not remove from the Goods any plates or other markings showing our ownership of the Goods and, if requested by us at any time, confirm our ownership of the Goods;

4.1.14 not alter, modify or add anything to the Goods or permit any third party to do the same without first obtaining our written consent;

4.1.15 not by any act or default render the Goods liable to any distress, execution or other legal process or suffer the appointment or the presentation of a petition for the appointment of an administrator under the provisions of Part II of the Insolvency Act 1986;

4.1.16 not lend out the Goods nor sell, offer for sale, assign charge or create any sub-lease over or otherwise dispose of or abandon the Goods or otherwise not allow any third party to obtain any rights in respect of the Goods nor allow the Goods to be or become affixed to any land or building unless agreed in advance in writing;

4.1.17 not claim capital allowances in respect of the Goods and inform us promptly of any event which may effect our right to claim writing down allowances in respect of the Goods and provide such cooperation (including without limitation, by signing any necessary elections, waivers or confirmations) as may reasonably be required by us for the purpose of enabling us to claim the benefit of tax allowances that may be available in respect of the Goods; and

4.1.18 ensure that the Goods are used only for a purpose in the requisite period enabling us to claim the benefit of any allowances available under the Capital Allowances Act 2001.

5. Payment

5.1 We will invoice from the either the delivery date specified or 14 days from the date that the goods were available to be delivered for the advanced hire rate, as well as the first months hire rate as stated on the rental and maintenance agreement and thereafter monthly on the anniversary of the delivery or nearest date to cover shorter months.

5.2 Hire charges shall be payable in advance at the Hire Rate specified overleaf, unless otherwise agreed in writing, or at such other rate as may become applicable under clause 6.

5.3 Unless we agree to payment against our invoices you must pay all hire charges by direct debit.

5.4 Any direct debit payment which is returned unpaid will be subject to a £50 administration charge per unpaid direct debit claim and will continue to be charged monthly until the direct debit is reinstated

5.5 Where we have agreed to the contractual invoices being paid by any other means than direct debit, you must pay the invoiced amount within 30 days of the invoice date.

5.6 Punctual payment is of the essence and we will be entitled to charge you interest in respect of any overdue sums at the rate in force from time to time under the Late Payment of Commercial Debts (Interest) Act 1998.

5.7 You must pay all undisputed sums due to us in full without deduction, set-off or counterclaim.

5.8 The hire charges will continue to be payable by you at the Hire Rate:

5.8.1 during any period where the Goods are unusable for any reason including breakdown, theft, damage or scheduled maintenance or otherwise (save that we may in our sole discretion give a credit against the hire charges where the breakdown occurs or the repair is necessitated as a result of an inherent defect in the Goods); and

5.8.2 following expiry or termination of this agreement until the Goods are returned to us if they are not returned within 48 hours of expiry or termination.

6. Changes to Hire Rate

6.1 Subject always to clause 6.3, the Hire Rate has been calculated on the assumption that the Goods will not be used for more than the Agreed Use Level specified overleaf. Hours usage shall be reviewed periodically by us and if any such review shows that you use the Goods for more than the hours specified then we shall be entitled, at our discretion either to revise the Hire Rate in accordance with the applicable rate calculated by reference to our standard tariff of charges in force from time (which is available on request) to reflect the increased usage or to charge for those hours used in excess of the contractual allowance. Alternatively, where we elect to charge you for excess hours usage, the charge will be calculated by multiplying those

excess hours by the hourly rate applicable to the hire of the Goods, such rate being calculated on a pro rata basis of the Hire Rate. On extension of the contract after the minimum hire period referred to overleaf has passed, rates may increase in line with our standard tariff of charges or a sum equal to the percentage increase in the Retail Prices Index (published by the Office for national Statistics) in the preceding twelve months (or if clause 6.3 has been removed over the period of fixed term) at end of minimum term and annually thereafter.

6.2 Subject always to clause 6.3, the Hire Rate has been calculated to provide us with a minimum rate of return from the hire of the Goods. If at any time:

6.2. 1 there is a change in the nature, method or basis of taxation in the United Kingdom (including a change in group relief); or

6.2.2 there is a change in the rates of capital allowances available to us in the United Kingdom in respect of our expenditure incurred in purchasing the Goods or those capital allowances are fully or partially refused, withdrawn, postponed, disputed or otherwise cease to be available or we become subject to recovery of excess relief or a balancing charge; or

6.2.3 we become subject to any other tax, duty, levy or similar item in respect of the Goods; or

6.2.4 you change the application in which the Goods operate from that set out in the Site Survey and Specification document completed prior to the commencement of hire;

we shall, in addition to the rights at clause 6.3, be entitled to vary all future hire charges and those you have already paid by such amount as we consider appropriate to preserve our rate of return (after taxation) of hiring the Goods to you. We will notify you in writing of the amount of any change to the Hire Rate and you agree to pay us the amount stated in the notice which will be deemed to be final and binding on you.

6.3 We may increase the Hire Rate at the beginning of each anniversary of this Agreement by the greater of:

6.3.1 a sum equal to 2.5% of the then current Hire Rate; or

6.3.2 a sum equal to the percentage increase in the Retail Prices Index (published by the Office for national Statistics) in the preceding twelve months.

7. Insurance

7.1 Risk in the Goods passes on (as the case may be) Delivery, when we tender delivery or collection by you, from which time you are liable for loss or damage to the Goods. You must insure the Goods to the full amount of their full new replacement value against all usual risks of loss or damage and third party claims and for all purposes for which the Goods are used. You will notify the insurers that the Goods are on hire from us and ensure that the insurers note our interest on the policy naming us as loss payee.

7.2 We shall be entitled to approve the insurance and you agree to provide us with such information as we may require about the insurance.

7.3 If you do not obtain or maintain in force such insurance, without limiting any of our other rights, we may obtain such insurance on your behalf and charge the premiums to you which you agree to pay to us on demand.

7.4 You must notify us and the insurers immediately if the Goods are lost or damaged and:

7.4.1 if the Goods are capable of economic repair, you will pay us at our standard rates for carrying out such repair; or

7.4.2 if the Goods are lost, stolen or declared a write-off by the insurers you must pay us an amount equal to our net book value of the Goods on the day immediately prior to the loss or the open market value of the Goods on that day, whichever is greater ("the Replacement Value").

7.5 You must continue to pay the hire charges if the Goods are lost or damaged, until such times as we have received from you the Replacement Value. Where such Replacement Value has been paid to us and you have paid applicable hire charges, we shall then have an obligation to supply you with Goods in accordance with the applicable Site Survey and Specification Form and to honour the unexpired term of hire. Should you not accept such similar Goods then the provisions of Clause 10.1.5 below shall apply in respect of the unexpired hire term.

8. Liability

8.1 You acknowledge that the Goods have been selected as suitable for your purpose in accordance with the Site Survey and Specification Form. Except where the party have recommended the Goods in a Site Survey and Specification Form we do not hire the Goods subject to any condition or warranty, express, implied or statutory in connection with the condition, performance or fitness for any purpose of the Goods and any condition or warranties are excluded to the fullest extent permitted by law.

8.2 Where a warranty has been given under this agreement, our liability is limited (at our option) to the cost of repair or replacement with Goods which comply with the requirements set out in the Site Survey and Specification Form.

8.3 We will not be liable for any loss, damage, costs or expenses caused directly or indirectly by the Goods, or if they become unusable for any period. This exclusion of liability includes downtime, loss of profits or business and any type of consequential loss or damage. Furthermore, we shall not be so liable where:

8.3.1 the Goods are used other than in accordance with Proper Use;

8.3.2 due to your acts or omissions, we are prevented from undertaking a proper investigation to establish the cause of any alleged defect or deficiency in the Goods;

8.3.3 you have failed to maintain the Goods as required by this agreement; or

8.3.4 any alleged defect in the Goods arises from use other than Proper Use, wilful damage, unreported accidents, use in abnormal working conditions, or alterations, adjustments or repairs to the Goods are undertaken by any person other than us. You indemnify us in respect of any losses, claims, costs or other damages we may suffer as a result of any circumstance set out in these clauses 8.3.1- 8.3.4.

8.4 If any exclusion of liability in this agreement is held by any court or competent authority to be invalid our maximum liability in contract, tort or otherwise shall not exceed a sum equal to the aggregate amount of hire charges payable by you under this agreement.

8.5 Nothing in this agreement shall be construed to exclude or limit our liability for death or personal injury to the extent caused by our negligence.

8.6 You shall be solely responsible for and keep us indemnified against all demands, claims, liabilities, losses, damages, costs and expenses which we suffer or incur as a result of any accident involving the Goods or breach by you of any of your obligations in this agreement.

8.7 Whilst we will make every reasonable effort to carry out our obligations under the contract, we shall not be held to be in breach of this agreement for failure to do so caused by events beyond our control.

9. Early Termination

9.1 We may immediately terminate this agreement or the hiring of the Goods to you by giving you written notice where:

9.1.1 the payment of any sum due to us becomes overdue;

9.1.2 you are in breach of any of your other obligations in this agreement;

9.1.3 you are an individual and you die or have a petition for a bankruptcy order made against you or enter into a voluntary arrangement;

9.1.4 you are a company and you have a winding up petition made or presented against you and do not make an application to set aside the same within 7 days or you enter into liquidation whether compulsorily or voluntarily (unless as part of a bona fide scheme for amalgamation or reconstruction first approved in writing by us), have an administrator or receiver or administrative receiver appointed over or encumbrancer take possession of the whole or any part of your assets (or an application for the same is made), compounds with your creditors or any class of the same, or becomes unable to pay your debts within the meaning of s.123 of the Insolvency Act 1986;

9. 1.5 you cease or threaten to cease to carry on business:

9. 1.6 you are a company and there is a change in ownership or control (direct or indirect) of

you except where the change is due to a group re-organisation and not as a result of an arm's length sale to a third party;

9. 1.7 in our sole opinion the Goods or future hire charges are at risk.

9.2 Should any assignee (as defined in clause 11.11) wish to enforce any rights it has over or in the Goods or this agreement, the hiring of the Goods may be terminated on the assignee's instruction. Should the hiring of the Goods be terminated at the assignee's instruction, you will return the Goods to the location in the United Kingdom nominated by the assignee and otherwise in accordance with the terms of this agreement. You shall still remain liable to us in respect of any hire charges or other sums due to us up until the point of such termination, but no payment under clause 10.1.5 shall be due. If you wish to continue hiring the Goods, you should contact the assignee to discuss this

10. Effect of Termination

10.1 On the termination for any reason of this agreement you must immediately:

10.1.1 pay to us any arrears of hire charges, interest and other sums which you should have paid to us before termination of the agreement;

10.1.2 provide us with a right of entry onto any premises where the Goods are located in order to recover the Goods (and where such premises are under the ownership or control of a third party, provide us with an indemnity in respect of access by us to such premises) and return to us the Goods in good condition and full working order (fair wear and tear excepted);

10.1.3 pay to us our costs and expenses of repossessing the Goods and in enforcing our other rights in this agreement if you do not return the Goods within 48 hours of expiry or termination; we will charge you for the full costs incurred in arranging such collection as the case may be

10.1.4 pay to us our costs and expenses of repairing or restoring the Goods to good condition and full working order (fair wear and tear excepted) if you have failed to comply with your obligations in this agreement;

10.1.5 if termination occurs during the Minimum Hire Period, pay to us as liquidated damages the aggregate of all remaining hire charges that would have become payable from the date of termination until the earliest date on which the hire would have lawfully terminated by the effluxion of time, less a sum equal to 10% of those hire charges which sum takes into account both maintenance costs and loss of receipts on the one hand and makes an allowance for accelerated receipt of payment on the other. The discounted termination charge of 10% only applies if the rental agreement remaining exceeds 12 months.

10.1.6 pay to us any other sums which are/or become due to us including any damages we are or become entitled to as compensation as a result of your breach of any of your obligations in this agreement or its early termination.

10.1.7 for avoidance of doubt the period used in the calculation for the outstanding rentals due under termination is the difference of the period that the truck was received on the site and the number of periods for which a physical transfer of funds has taken place.

11. General

11.1 You warrant that all information you provide to us including the information overleaf, including without limitation the information in the Site Survey and Specification Form, is true and you agree that we may disclose information about you and this Agreement as we consider reasonable and necessary.

11.2 If you are a partnership references in this agreement to "you" and similar words include each partner as well as all of them and each partner is jointly and severally liab1e for performance of your obligations in this agreement.

11.3 All of your obligations in this agreement are conditions. If you are in breach of any of your obligations, we shall be entitled to treat the breach as repudiation by you of this agreement.

11.4 Our rights under this agreement will not be affected generally if on any occasion we allow you additional time to perform your obligations or choose not to enforce our rights.

11.5 We may transfer, novate and/or assign (including by way of security) this agreement or any of our rights or obligations under or in this agreement to a third party without your consent

11.6 You may not assign this agreement or any of your rights or obligations without our prior written consent.

11.7 This agreement (together with the documents referred to in these terms and conditions) and the information overleaf is the entire agreement between us relating to the hire of the Goods and requires a signature from one of our directors. Its terms may not be changed without our prior written consent. No amendments to or variation of these terms and conditions shall have any effect unless recorded in writing and signed by one of our directors.

11.8 The headings in this agreement are for ease of reference only.

11.9 Notices given in this agreement must be in writing and delivered by hand, electronic means or sent by first class post. Notices delivered by hand or electronic means will be deemed served on receipt; notices sent by first class post will be deemed served 48 hours after posting. You must send notices to us at our address specified overleaf or emailed to creditc@impact-handling.com or such other address we notify you in writing. We may send notices to you at your last known business address.

11.10 This agreement shall be subject to and interpreted in accordance with English Law. The Parties shall submit to the non-exclusive jurisdiction of the English courts.

11.11 Any person who is not a party to this contract (except any assignee, transferee or other party

referred to at clause 11.5 (an "assignee")) shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms and conditions.

12. Maintenance

These maintenance conditions shall apply in accordance with the maintenance option you have indicated overleaf that you wish to select:

12.1 Routine Maintenance: If you have indicated overleaf that you require Routine Maintenance we will perform all routine servicing of the Goods in accordance with the service requirements of the manufacturer of the Goods (excludes 3rd party software support) inclusive of the costs of materials, labour and travel to the Delivery Address. Routine Maintenance is periodic preventative maintenance services based on use. It excludes repairs to the Goods required as a result of component failure or normal wear and tear.

12.2 Comprehensive Maintenance: If you have indicated overleaf that you require Comprehensive Maintenance we will perform Routine Maintenance (see above) and all repairs to the Goods (excludes 3rd party software support) required as a result of component failure or normal wear and tear inclusive of the cost of materials, labour and travel to the Delivery Address. Normal wear and tear shall exclude tyres and forks unless specified overleaf.

12.3 Neither Routine Maintenance nor Comprehensive Maintenance includes repairs or replacement components required in our sole opinion as a result of accidental damage or misuse of the Goods.

12.4 For the avoidance of doubt, all maintenance of and repairs to the Goods must be carried out by us.

12.5 We will normally perform the maintenance services at the Delivery Address between the hours of 8.00 a.m. and 5.00 p.m. Monday to Friday excluding public holidays. There may be occasions where we need to perform maintenance services at our own premises and you agree to us removing the Goods to our premises for this purpose.

12.6 We may provide emergency maintenance services outside our normal business hours. You agree to pay our then prevailing charges for any emergency maintenance services you request. Nothing in this agreement shall oblige us to provide emergency maintenance services.

12.7 We will perform the maintenance services with reasonable care and skill. All conditions, warranties and other terms, express or implied by statute or otherwise are excluded to the fullest extent permitted by law.

12.8 We will not be liable for any loss, damage, costs or expenses caused directly or indirectly as a result of our failure to maintain or repair the Goods due to causes beyond our control. This exclusion of liability includes downtime, loss of profits or business and any type of consequential loss or damage.

12.9 If you are late in paying the hire charges, we will be entitled to suspend performance of our

maintenance obligations until payment is made in full.

12.10 Save in respect of Specialist Equipment (which is dealt with at clause 12.11, below), if the Goods have a fault and are not able to perform a material function required of them and set out in the Site Survey and Specification Form or have become unsafe due to such fault (a "Fault") and we have been unable to undertake a repair within 24 of your contracted hours we shall replace the Goods with similar or identical goods which comply with the requirements of the relevant Site Survey and Specification Form within 2 (two) Working Days without further charge except where such Fault is caused by driver error or failure to comply with the terms of use set out in this Agreement, in which case the cost of such replacement will be borne by you.

12.11 If the Specialist Equipment has a fault and is unable to perform a material function required of it as set out in the Site Survey and Specification Form or has become unsafe due to such fault (a "Fault"), we will use our reasonable endeavours to repair the Specialist Equipment within 24 of your contracted hours following notification by you of the Fault to us and, in addition, we will credit back to you the relevant charges for the hire of the relevant Specialist Equipment during any period of downtime which is not caused by a breach by you of these terms and conditions and/or the Agreement generally.

13. Data Protection

13.1 Each Party shall comply with Data Protection as specified on our website https://aprolisuk.co.uk/gdpr-statement/