

## MAINTENANCE AGREEMENT

### 1 DEFINITIONS

For the purpose of this Agreement the following words and phrases have the meanings detailed below:

**Agent** : the authorised Scania dealer or other approved service provider as appointed by the Company

**Agreement** ; these terms and conditions described as the "Maintenance Agreement" and the Schedule to these terms and conditions.

**Company**:

Scania (Great Britain) Limited whose registered office is at Delaware Drive, Tongwell, Milton Keynes, Bucks MK15 8HB (Registered in England No. 831017)

**Commencement Date**: The date stated in the Schedule and on which this Agreement will commence.

**Monthly Charge** : The amount referred to in the Schedule as the "Amount of Each Subsequent Payment"

**Operator**: The Operator named in the Schedule. A reference to the Operator includes a reference to its drivers, employees and agents.

**Repairs**: Any work and parts (not being Routine Maintenance ) necessary to remedy any defects to the Vehicle.

**Routine Maintenance**: The services carried out at intervals specified by the manufacturer and the inspections carried out at intervals set out in the Schedule referred to as "Insepection Intervals" including any adjustments excluding any Repairs.

**Termination Date** : the date specified as such set out in the Schedule.

**VED**: Vehicle excise duty as may be levied on Vehicles at such rate as may apply from time to time

**Vehicle**: The truck, full details of which are set out in the Schedule to this Agreement, save for the Excluded Items.

### 2. OBLIGATIONS OF THE COMPANY

- 2.1 **Maintenance**: To arrange to have carried out in a proper manner Routine Maintenance of the Vehicle.
- 2.2 **Parts**: To use manufacturer authorised parts unless the Operator shall have given consent in writing for the use of substitutes.

### 3 OBLIGATIONS OF THE OPERATOR

- 3.1 **Availability of the Vehicle for Maintenance**: To make the Vehicle available to the Company at the proper times for Routine Maintenance, inspection and the annual Ministry of Transport (MOT) test. Failure to provide the Vehicle for Routine Maintenance may result in the termination of this Agreement.
- 3.2 **Repairs**: To arrange to have carried out in a proper manner Repairs to the Vehicle.
- 3.3 **Operator Delay**: In the event of any delay between the giving of advice by the Company that Routine Maintenance should be carried out and the availability of the Vehicle for the Routine Maintenance, the Operator must not use the Vehicle in any way in which, in the opinion of the Company, would be detrimental to the
- 3.4 **Work Authority**: To only have Routine Maintenance carried out by the authorised Agents of the Company unless otherwise agreed by the Company.
- 3.5 **Defect Reporting**: To comply with any defect reporting procedure which may be carried out by the Company.
- 3.6 **Change of Location**: To advise the Company of any change of location of the Vehicle.
- 3.7 **Delivery/Collection**: The Operator must ensure that he delivers the Vehicle to and collects the Vehicle from the Scania workshop location specified in the Schedule to this Agreement (the maintaining Dealer address) where the Routine Maintenance is to be carried out.

### 4 PAYMENT SCHEME

- 4.1 **In consideration of the obligations of the Company set out in this Agreement, the Operator will:**
  - 4.1.1 **Annual Mileage**: At the inception of this Agreement use its best endeavours to accurately estimate the annual mileage of the Vehicle.
  - 4.1.2 **Payment**: The Operator will pay to the Company by Direct Debit on the same day in the payment period set out in the Schedule the Monthly Charge, VED or other service charges or fees due from time to time as specified in the Schedule. The first payment is to be paid on the signing of the Agreement. In the event that the Operator's Direct Debit payment fails, the Company reserves the right to charge an administration fee of £25.00 for every occasion on which the Company is unsuccessful in a reasonable attempt to collect payment from the Operator.
- 4.2 **Interest on Late Payment**: Interest will be charged on any amount outstanding from 7 days after the date the same becomes due until payment at the rate of 4% per annum above Barclays Bank Plc's lending rate and such interest shall be due and recoverable from the Operator.
- 4.3 **Substantial Error in Annual Mileage Estimate**: In the event that the estimated annual mileage is found to be in error by more than 10% the Company may forthwith terminate this Agreement or adjust the annual cost to take account of the changed operating conditions.

### 5 GENERAL TERMS

- 5.1 **Term of Agreement**: This Agreement shall be for the term specified in the Schedule, commencing on the Commencement Date.
- 5.2 **When Routine Maintenance is to be Done**: All Routine Maintenance will be carried out during the Agent's normal working hours unless otherwise specified in the Schedule. Dates for Routine Maintenance are specified by the Agent but may vary with prior approval of the Company and the Operator. No priority is given to the Operator in respect of Routine Maintenance. Any costs incurred as a result of the Operator's failure to keep to an appointment in respect of Routine Maintenance, or to deliver the Vehicle to the Agent to carry out the Routine Maintenance, or as a result of a request that the Routine Maintenance be done urgently, are not covered by the Agreement and shall be a direct charge by the Agent to the Operator. In the event that the Company should pay those costs, the Operator shall reimburse the Company immediately.
- 5.4 **Indemnity**: The Operator agrees to indemnify the Company against all claims, demands, action proceedings, costs, damages, and liabilities arising in or out of failure by the Operator to instruct any authorised Agent to carry out any Work (whether or not the same falls within the terms of this Agreement) recommended by the Company in respect of any defects caused by or resulting from accident damage or negligence of the Operator, or any third party.

## **6 LIABILITY OF THE COMPANY**

- 6.1** The total liability of the Company for any loss of the Operator or a third party arising in any year of this Agreement in respect of any one event or series of connected events shall not exceed the Monthly Charges payable for that year. In this clause, "loss" includes any loss, damages, costs or other compensation and expenses incurred by the Operator as a result of any act or omission of the Company and shall exclude any consequential losses including loss of profit .
- 6.2** Clause 6.1 shall not apply to any loss, injury or damage resulting from death or personal injury caused by the Company's negligence, but in no circumstances will the Company be responsible for loss of profit or any other consequential loss.
- 6.3** If the Operator becomes aware of any default in performance of this Agreement by the Company it shall firstly notify the Company of the default and give the Company a reasonable opportunity to remedy the default. If the Company remedies the default, the Operator shall not have any claim against the Company for the consequences of the default.

## **7 TERMINATION**

- 7.1** If:
- 7.1.1** the Vehicle becomes a total loss either through failure, damage or theft; or
- 7.1.2** the Operator has a petition presented against it for its winding-up, administration or bankruptcy, proposes a voluntary arrangement, enters into a Deed of Arrangement, has a Receiver or Administrative Receiver appointed, passes a resolution for voluntary winding-up, or convenes a meeting of or comes to any arrangement with its creditors;  
then this Agreement shall forthwith and without any notice terminate.
- 7.2** If the Operator:
- 7.2.1** fails punctually to make payment of any sum which may from time to time become due under this Agreement, whether legally demanded or not; or
- 7.2.2** fails to comply with any other term or condition of this Agreement and then fails to remedy such failure within 7 days notice of such breach;  
such failure shall be a repudiatory breach of contract and the Company may forthwith terminate this Agreement by giving notice in writing to the Operator.
- 7.3** Any termination under 7.1 or 7.2 shall be without prejudice to any claim which the Company may have against the Operator for sums payable under or damages for breach of this Agreement, including any claim for interest.
- 7.4** The Operator may terminate this Agreement by giving to the Company 90 days' notice in writing.
- 7.5** If the Company's obligations under this Agreement become impractical to perform owing to an event of force majeure which continues for a period in excess of 3 months (and for the purposes of this clause "force majeure" means any act or event beyond the reasonable control of the Company) then either party may terminate the Agreement by giving written notice to the other without liability to the other.
- 7.6** On any termination of this Agreement the Operator shall pay to the Company:
- 7.6.1** all arrears of Monthly Charges, administration fees or other charges, including interest in respect of such arrears;
- 7.6.2** an apportioned Monthly Charge for any broken monthly period, such apportionment to be computed on a monthly basis up to the date of termination;
- 7.6.3** such other sums as may be due and unpaid under this Agreement together with interest; and
- 7.6.4** a sum by way of agreed compensation for early termination being either:
- 7.6.4.1** the difference between the amount expended by the Company on Work to the Vehicle to the date of termination and the total amount received from the Operator in Monthly Charges; or
- 7.6.4.2** the balance of the Monthly Charges remaining to the original expiry date of the Agreement whichever is the lesser, provided always that this shall not result in there being a balance due to the Operator.

## **8 NOTICES**

- 8.1** Any notice to be given or required or permitted to be given by either party under this Agreement shall be in writing and shall be deemed to be duly given if sent or delivered to the party concerned at its registered office or such other address as that party may from time to time notify in writing.
- 8.2** Any demand, notice or communication shall be deemed to have been fully served:
- 8.2.1** if delivered by hand, when left at the proper address for service;
- 8.2.2** if made by prepaid first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays);

## **9 RELATIONSHIP OF PARTIES**

Each of the parties hereto is an independent contractor and nothing in this Agreement shall be construed to imply that there is any relationship between the parties of partnership, or of principal and agent, or of employer and employee, nor are the parties hereby engaging in a joint venture and accordingly neither of the parties shall have any right or authority to act on behalf of the other nor to bind the other by contract or otherwise, unless expressly permitted by the terms of this Agreement.

## **10 GENERAL**

- 10.1** Any failure or delay by either party in exercising its rights under this Agreement shall not be construed as a waiver of such rights and the obligations of the other party shall continue.
- 10.2** If any provision of this Agreement or these terms shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement or these terms as applicable.
- 10.3** This Agreement shall supersede all previous agreements between the parties and represents the entire agreement between the parties.
- 10.4** The Operator and its employees, contractors, advisors and agents will not engage in any conduct which could contravene the Bribery Act 2010 and shall maintain adequate procedures to prevent any such conduct.
- 10.5** This Agreement and any information provided in relation to it are confidential. Neither party shall disclose any such information to an unauthorised third party.
- 10.6** No variation of any term of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by or on behalf of each party.
- 10.7** Except where specifically stated otherwise, all the costs and charges set out in this Agreement exclude VAT which will be charged at the applicable rate.

- 10.8** A person who is not a party to this Agreement has not rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement or these terms but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.9** The Operator may not assign, subcontract, delegate or sub-licence this Agreement or any of its rights or obligations under this Agreement without the Company's prior consent in writing. The Company may assign, subcontract, delegate or sublicense part or the whole of this Agreement to any group company or member of the Company's dealer network.
- 10.10** Irrespective of where the services are provided, the validity construction and performance of the Agreement shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

These terms and conditions including any revisions are available on our website,  
[www.scania.co.uk/legal/business-with-scania](http://www.scania.co.uk/legal/business-with-scania)

May-14