

Linde Material Handling

*Linde*

Linde MH Financial Services



**Contract Hire Terms & Conditions Booklet**

Edition July 2022

## **Linde MH UK Ltd and Linde MH Financial Services Contract Hire Terms and Conditions:**

### **Identification of Interested Parties:**

#### **Manufacturer, Supplier & Maintainer**

Linde MH UK Ltd (Companies House Registration 2791934) has its registered office is at Kingsclere Road, Basingstoke, Hampshire RG21 6XJ & is the Manufacturer, Supplier and/or Maintainer of the Equipment (hereafter “Linde”). Full contact details are shown at Section 16.

#### **‘Owner’**

Linde MH Financial Services, a trading style of KION Financial Services Limited, is the company which will buy Equipment from Linde for the purpose of leasing to the Hirer. Linde MH Financial Services is a company registered in England and Wales, company number 7776005, registered office at Kingsclere Road, Basingstoke, Hampshire RG21 6XJ.

#### **‘Hirer’**

The person or company acquiring equipment on hire from the Owner, and maintenance services from Linde,.

#### **‘Parties’ and/or ‘Party’**

In this Booklet, ‘Parties’ mean Linde, the Owner and the Hirer together, and each of them is also a ‘Party’ as the context may require.

### **Definitions**

In this Booklet, the following terms and conditions have the following meanings:

**‘Adverse Change’** has the meaning set out in clause 15.7(a)

**‘Contract Order Form and Hire Agreement’** means each written agreement setting out the terms of a specific maintenance inclusive contract hire transaction signed by the Parties incorporating the terms set out in this Booklet;

**‘Equipment’** means forklift trucks and other materials handling equipment manufactured and/or supplied by Linde;

**‘Minimum Term’** means the minimum period of hire set out in the Contract Order Form and Hire Agreement.

**‘Rental’** means the amounts specified as Rental in the Contract Order Form and Hire Agreement, or as otherwise amended in accordance with the provision of this Booklet, which includes amounts owed to the Owner attributable to the hire of the Equipment, and which may include a charge for maintenance services owed to Linde.

The expression “Hirer” as used in these terms where applicable shall include any group company and affiliated company of the Hirer (Affiliated) who intend to use or who uses the Equipment as advised to the Owner and or Linde.

### **1. Purpose.**

This Booklet sets out the general terms and conditions which will apply to the hiring of material handling equipment between the Hirer and the Owner and to the provision of maintenance services between the Hirer and Linde. To enter into a maintenance-inclusive contract hire transaction, the Hirer must agree details of the material handling equipment with Linde and the Rentals to be payable by the Hirer to the Owner. The Hirer will benefit from the discounted Rentals specified in each Contract Order Form and Hire Agreement for its full term provided that payments are made by direct debit. For the avoidance of doubt where the Equipment is intended by the Hirer to be used by an affiliated company of the Hirer (whether or not the Hirer requests and the Owner agrees that the Owner charges the Rentals to the Affiliated Company) the Hirer hereby agrees to ensure that the Affiliated Company complies in all respects with the obligations of the Hirer as set out these terms and conditions and those set out in the Hire Agreement. The Owner and Linde may enforce such terms against such Affiliated Company notwithstanding which the Hirer shall at all times remain fully responsible and liable for any breach by the affiliated company as a principal obligor and hereby guarantees the Affiliated Company’s due compliance of such terms including but not limited to the payment of all rentals and other sums due under the Hire Agreement relating to the Equipment the Affiliated Company uses. Any variation to the Terms or other arrangements made between the Owner and or Linde and the Affiliated Company shall not need the prior consent of the Hirer and shall not affect the Hirers obligations under the Guarantee.

### **2. The Contract.**

2.1 To document the arrangements described in Clause 1 in respect of the hire of Equipment, the Parties will enter into a Contract Order Form and Hire Agreement which covers:

(a) Between the Hirer and the Owner: the contract hire terms; and

(b) Between the Hirer and Linde:

(i) the agreement to the Equipment specification and the instructions to manufacture; and

(ii) the maintenance arrangements.

2.2 The terms of this Booklet will be incorporated in a Contract Order Form and Hire Agreement supplied by Linde.

2.3 By signing a Contract Order Form and Hire Agreement the Hirer will, subject to acceptance by the Owner, be bound by the terms and conditions set out in this Booklet and the Hirer will:

(a) make an offer to the Owner and be bound:

(i) to hire the Equipment from the Owner for use in its business on and subject to the terms and conditions of this Booklet and the Contract Order Form and Hire Agreement; and  
(ii) to authorise the Owner to date the Contract Order Form and Hire Agreement, and upon delivery/commissioning of the Equipment to complete the commencement date of the Minimum Term on the Contract Order Form and Hire Agreement; and

(iii) to forward the Hirer's payment instructions to the Hirer's bankers following the Owner's acceptance; and (b) Make an offer to Linde:

(i) to have the Equipment maintained at the maintenance level set out in the Contract Order Form and Hire Agreement; and  
(ii) to carry out such other repairs to the Equipment as may be required; and  
(iii) to return the Equipment at the end of the term of hire as required, all such obligations to be on the terms set out in this Booklet and the Contract Order Form and Hire Agreement.

2.4 Subject to the Owner accepting the Hirer's offer by executing the Contract Order Form and Hire Agreement, Linde will be obliged to sell the Equipment ordered and the Owner will be obliged to buy it in accordance with this Booklet and the Contract Order Form and Hire Agreement. For the avoidance of doubt, the Owner reserves the right to accept or decline at its sole discretion any Contract Order Form and Hire Agreement. If the Hirer does not wish to proceed with the hiring for any reason after the Hirer executes a Contract Order Form and Hire Agreement, but before the Owner executes the Contract Order Form and Hire Agreement (and the Owner does not acquire the Equipment), then Linde will try to find an alternative use in order to mitigate any loss, but in any event the Hirer shall pay liquidated damages to Linde up to the value of the first twenty four (24) months Rentals which would have been payable had the Hirer proceeded with the hiring. Payment of such liquidated damages will be due from the Hirer to Linde within four (4) weeks of the Hirer informing Linde and the Owner that it is not proceeding with the hiring, interest will automatically accrue on a daily basis from such 28th day until the date of payment. Interest will be charged at the Bank of England Base Rate plus five (5) per cent.

2.5 If between the placing of the order and the manufacturing of the Equipment the costs of manufacturing increases and the cost of the Equipment to the owner is also increased which in the opinion of the Owner and or Linde makes the

original quoted Rentals uneconomic to continue with the Hiring then the Owner and or Linde may terminate the hire arrangement in relation to the affected Equipment upon written notice to the Hirer and without liability to the Hirer. Linde shall in the first instance seek to reach mutual agreement with the Hirer to make an adjustment to the Rentals in order to avoid such termination.

### **3. Commissioning and Delivery Time.**

#### **3.1 Delivery and Commissioning.**

Linde will arrange to have the Equipment manufactured and delivered. If the Equipment can be used by the Hirer immediately on delivery the first day of the Minimum Term shall be the date on which it is delivered to the Hirer. If the Equipment is only available for use by the Hirer after commissioning by Linde the first day of the Minimum Term shall be the date on which commissioning is completed.

#### **3.2 Notification of Delivery and Commissioning.**

Once the Equipment has been delivered and/or commissioned, Linde shall provide the Owner with confirmation that such delivery and/or commissioning has taken place.

#### **3.3 Inspection on Delivery or Commissioning.**

The Hirer shall have up to five (5) full working days after the Minimum Term has commenced (whether on delivery or commissioning) (ending at 4.30 PM on the fifth day) to inspect the Equipment. The Hirer shall notify Linde and the Owner within the five (5) working days if there is any defect in the Equipment or non-conformity with the specification described in the Contract Order Form and Hire Agreement. Unless, within said five (5) day period, the Hirer gives notice of rejection, the Hirer shall be deemed to have accepted that the Equipment: (i) was delivered, (ii) is properly operating, and (iii) conforms with the specifications of the Contract Order Form and Hire Agreement.

3.4 Delivery dates shall be estimates only and time shall not be of the essence for delivery. Delays in the delivery of an order shall not entitle the Hirer to refuse to take delivery of an order or claim damages, or terminate the order.

3.5 Should the Hirer cancel a planned delivery of the Equipment to the Hirer within 24 hours of the agreed date for such planned delivery, the Hirer shall reimburse all costs incurred by Linde related to the cancelled planned delivery including but not limited to the transportation costs.

3.6 Should the Hirer fail to accept delivery of the Equipment or should there be an issue at the delivery location which prevents the planned delivery from taking place on the agreed delivery date or any time agreed for such planned delivery, the Hirer agrees to reimburse all costs incurred by Linde related to the aborted

or cancelled planned delivery including but not limited to the transportation costs.

3.7 Where the Hirer does not agree to take delivery of the Equipment within 5 business days from the date that the Equipment becomes available for delivery or within 5 business days from the date of any cancellation or failed delivery attempt then Linde may store the Equipment and charge the Hirer all reasonable costs of such storage. Where no revised delivery date is agreed and the Equipment is stored for a period in excess of 1 month, Linde may treat this as a cancellation of the order by the Hirer and the provisions of clause 2.4 shall apply.

#### **4. Term of Hire.**

4.1 The Minimum Term of hire shall be as set out in a Contract Order Form and Hire Agreement and shall commence on the date of delivery/commissioning. Provided that the Hirer is not in breach of the terms set out in this Booklet or the Contract Order Form and Hire Agreement, the Hirer shall be entitled to retain possession of the Equipment for the full term of hire.

4.2 The hiring of the Equipment shall, unless terminated continue beyond the Minimum Term. The hiring may be terminated at or after the end of the minimum Term. Either Party may do this by giving a minimum of three (3) months written notice to the other Parties.

4.3 If the hiring continues beyond the Minimum Term the Hirer shall extend the term of any agreement for the maintenance of the Equipment (or enter into a new agreement for such maintenance) for the duration of the extended term of hire. Unless a new agreement is entered into to cover the extended term, the rental rates for the Equipment shall, by default, be automatically increased to Linde's standard prevailing short term rental rates current at the time and these rates shall apply for the duration of the extended term.

#### **5. Respective Obligations of the Parties.**

5.1 The Owner.

The Owner's obligation to the Hirer is to provide the Equipment on hire on the basis described in this Booklet and the Contract Order Form and Hire Agreement.

5.2 Linde.

Linde's obligation to the Hirer is to provide maintenance to the level shown on the Contract Order Form and Hire Agreement and on the basis described in this Booklet and to provide such other maintenance as may be agreed separately between Linde and the Hirer.

5.3 In the event of a conflict between the terms of this Booklet and the terms of any separate maintenance agreement between the Hirer and Linde, the terms of the separate maintenance agreement shall prevail provided however that

nothing shall affect the rights and obligations agreed between the Owner and Hirer in a Contract Order Form and Hire Agreement.

#### **6. Equipment and Hirer's Responsibilities.**

6.1 Ancillary Equipment. In this Clause 6 all references to the "Equipment" are deemed to include all ancillary equipment as may be supplied by Linde.

6.2 Safety. The Hirer must ensure that the Equipment is safe to use, correctly used and kept in good condition and must arrange any maintenance that is needed. The Hirer must immediately notify Linde if any defect becomes apparent and must make the Equipment available on request to be repaired. Any replacement parts will become the property of the Owner.

6.3 Alteration. The Hirer may only alter the Equipment with Owner's prior written permission or if the law requires it to be altered. Any alteration will be at the Hirer's expense and must be completed by the Owner's authorised agent.

6.4 Third Party Claims. During the term of hire under the Contract Order Form and Hire Agreement and until the Equipment is returned by the Hirer, any damage, loss or injury caused by the Equipment or by its use to anyone or anything shall be at the Hirer's risk. Accordingly, any liabilities arising, or penalties or fines imposed in respect of its use or possession are the Hirer's responsibility.

The Hirer agrees to hold harmless and indemnify the Owner in full if any claim is made against the Owner in respect of the Equipment or the Contract Order Form and Hire Agreement. Neither the Owner nor Linde will take any responsibility for damage (including, but not limited to, damage as a result of negligence, accident, vandalism and/or wilful destruction) to or from use of the Equipment.

6.5 Possession. The Equipment must be kept in the Hirer's possession and must not be sub-let unless prior written permission is given by the Owner. The Equipment must remain at the location in the United Kingdom agreed with the Owner and Linde unless otherwise agreed in writing by the Owner and Linde.

6.6 Identification. The Hirer must allow Linde and/or the Owner access to inspect and maintain the Equipment and to mark it with any name of their choosing. The Hirer may not remove or change any Identification and/or registration marks.

6.7 Disposal. The Hirer must not agree to sell or otherwise dispose of the Equipment or any of its rights under any Contract Order Form and Hire Agreement or use them or allow them to be used as security. The Hirer must not allow the Equipment or the Owner's rights in the Equipment to be put in jeopardy.

6.8 Title. Ownership of the Equipment will not pass to the Hirer at any time. The Hirer must not claim any capital allowances in respect of the Equipment unless

the Owner is excluded from entitlement to claim capital allowances by virtue of applicable legislation.

#### **7. Maintenance and Inspection.**

7.1 Contracted Maintenance. The provisions of any separate agreement between the Hirer and Linde shall apply in respect of any maintenance to be provided by Linde to the Hirer for the term of hire (subject to clause 7.11). If no such agreement exists, the agreed maintenance is (subject to Clause 10.7) as set out in this Clause 7.

The amount payable by the Hirer to Linde for maintenance will be collected by the Owner as agent for Linde and will be included in the total sum specified as Rentals in the Contract Order and Hire Agreement, but the Owner shall have no responsibility for the provision of maintenance or Linde's quality of performance. Any additional maintenance provisions are payable directly by the Hirer to Linde. The Owner is the agent for Linde solely for purposes of collecting the servicing and/or maintenance charges, if any, included as an element of the Rentals and for no other purpose. If the hiring continues after the expiry of the Minimum Term the Hirer shall ensure that any agreement for the provision of maintenance is also extended (or a new agreement for the provision of maintenance is entered into with Linde for the term of hire) subject to clause 4.3. The Owner may at its sole discretion approve the appointment by the Hirer of a third-party maintenance provider in the event Linde fails to provide support to the Hirer under the standard maintenance conditions.

7.2 Statutory Duties. The Hirer has a statutory duty to ensure that the Equipment is safe to use and to ensure that the Equipment complies at all times with all applicable laws and regulations. In addition, the Hirer has a statutory duty to ensure that the Equipment is regularly inspected and certificated for compliance with Health and Safety standards, and that operators and persons working on or in the vicinity of the Equipment are properly trained in safety procedures.

7.3 Inspection. The Owner, Linde, or any other third party chosen by the Owner, will have the right to inspect the Equipment every six (6) months to ensure that it complies with all legal safety standards relating to that Equipment. Any repairs not included within the agreed maintenance tariff which Linde notifies to the Hirer as being necessary will be carried out by Linde at its rates prevailing at the time of repair. Any costs involved will be payable by the Hirer to Linde.

7.4 Maintenance Levels. The levels of maintenance and therefore the maintenance support are defined as "Support Level 1", "Support Level 2" and "Support Level 3". The following options A, B and C can be combined with any support level:

A: Additional maximum one set of tyres per year if worn;

B: Additional maximum one pair of forks per year if worn; and

C: Additional battery and charger maintenance, repair and replacement.

The maintenance support level selected shall be as set out on the Contract Order Form and Hire Agreement.

7.5 Support Level 1.

Linde will only be responsible for carrying out planned preventative maintenance (excluding wheels, tyres, attachments, traction batteries and chargers, fuel, battery topping and forks). All parts used to complete the planned preventative maintenance together with all repairs, including parts, materials and labour will be charged at the rates prevailing at the time of repair.

7.6 Support Level 2.

Linde will be responsible for all planned preventative maintenance (excluding wheels, tyres, attachments, traction batteries and chargers, fuel, battery topping and forks) including parts and materials. All repairs, including parts, materials and labour will be charged in addition at the rates prevailing at the time of the repair.

7.7 Support Level 3.

Linde will be responsible for all maintenance (excluding wheels, tyres, attachments, traction batteries and chargers, fuel, battery topping and forks) and for repairs including parts and materials. Repairs to or replacement of traction batteries, wheels, tyres, chargers, forks and repairs relating to accident damage and/or misuse will be charged in addition at the rates prevailing at the time of repair.

7.8 Repair or Replacement of Excluded Item(s). If Linde agrees with the Hirer to repair or replace wheels, tyres, attachments, traction batteries and chargers, fuel, battery topping and/or forks, then Linde shall be entitled to charge the Hirer in addition to the maintenance charges set out in the Contract Order Form and Hire Agreement, at the rates prevailing at the time of replacement and/or repair.

7.9 Additional Maintenance Charges. The charge over the period of a Contract Order Form and Hire Agreement for the maintenance support level chosen is included in the Rental set out on the Contract Order Form and Hire Agreement and collected by the Owner as agent for Linde. If additional work is required over and above the maintenance provided by the chosen level, then Linde shall be entitled to carry out the additional maintenance at the expense of the Hirer and charge the Hirer at the rates prevailing at the time of repair. The initial maintenance support level chosen will be based on the proposed application specified by the Hirer. If the Hirer's application differs from that proposed, then Linde shall also have the right to increase the maintenance support level (hence increasing the standard maintenance charges), or make additional charges as required at the prevailing rates. Additional maintenance charges shall be

invoiced by Linde directly to the Hirer and shall be due and payable by the Hirer on demand directly to Linde.

7.10 Excess Hours. The Hirer's usage allowance, in terms of hours, shall be as set out on the Contract Order Form and Hire Agreement. Any usage by the Hirer over this allowance will be chargeable at the surcharge rate also set out on the Contract Order Form and Hire Agreement. If the term is not a period of a complete year the usage allowance will be adjusted pro rata. Linde may, at its sole discretion estimate the hours used for any period during which the Equipment's hour meter is not functioning. Excess hour charges shall be invoiced by Linde directly to the Hirer and shall be due and payable by the Hirer on demand directly to Linde. Should the increase in usage become a permanent increase, then the allowance can be reviewed and re-set by Linde. This will in turn result in an increase in the maintenance element of the Rental that is chargeable.

7.11 The provision of the maintenance services set out in the maintenance agreement shall be for the Minimum Term provided the Equipment remains in Linde's reasonable opinion, serviceable throughout such term. If in the opinion of Linde, at any time during the Minimum Term, and from time to time thereafter including during any extension period, the Equipment, for whatever reason, becomes unserviceable or uneconomical to maintain, including due to its condition or due to excessive utilisation then Linde shall have the option to (a) review the maintenance charges and to apply a reasonable increase to such charges upon written notice to the Hirer; or (b) where in Linde's opinion any increase in charges would not resolve the issue Linde and the Owner may terminate the hiring of the Equipment upon 1 month's notice; termination in accordance with this clause shall not impose any liability upon Linde to the Hirer arising as a result of the termination.

#### **8. Damage.**

The Hirer shall be responsible to Linde and the Owner to ensure that the Equipment is always safe to use and in good condition commensurate with its age and usage (allowing for fair wear and tear). If the Equipment is not in such safe and good condition then Linde shall, at the cost of the Hirer, carry out such work at its rates prevailing at the time of the repair as is necessary to bring the Equipment back into a safe and good condition. Linde shall notify the Hirer of the cost which shall be due and payable by the Hirer directly to Linde on demand. Accident damage will be monitored on a regular basis by Linde in an attempt to prevent the level of damage due for repair at the end of the term of hire becoming excessive. The Hirer's specific attention is drawn to the Equipment's forks which can become damaged through misuse. Repairs and replacements

required on forks are very often due to damage where the operator does not lift them slightly above ground level before manoeuvring the Equipment, or the forks are damaged through impact. Such events do constitute damage and are chargeable costs.

#### **9. Risk of Loss and Insurance.**

9.1 The Hirer shall be responsible for and bear all risks of loss of or damage or destruction to each item of Equipment from every cause whatsoever as of the date of delivery of such item of Equipment (whether or not commissioned). The Hirer must keep the Equipment insured at all times and at the Hirer's sole cost and expense, against (i) all risk of loss, theft or destruction of, or damage to, the Equipment from every cause whatsoever for the Equipment's full replacement value, (ii) any liability whatsoever to any third party arising directly or indirectly from the purchase, ownership, hiring, maintenance, use, operation or return of the Equipment, naming the Owner as an additional insured, and (iii) other risks in respect of which a prudent owner or operator of equipment of the same nature as the Equipment would normally insure such equipment. Such insurance shall be in a form, amount and with providers acceptable to the Owner.

9.2 Upon the Owner's request (or the Owner's agents or representatives), the Hirer shall provide the Owner (or the Owner's agents or representatives) satisfactory evidence that the insurance required under this agreement is in place. If the Hirer does not provide the Owner satisfactory evidence of such insurance, the Owner has the right (but not the obligation) to take out insurance of the Equipment in respect of the insurance required under 9.1.(i) above as policy holder and sole beneficiary from an insurer of the Owner's choice for all or any portion of the term of hire. If the Owner does obtain such insurance, the Hirer agrees to pay the Owner a fee (the "Fee" which includes the insurer's premiums and an administrative fee on which the Owner may make a profit). The Fee shall be in addition to each Rental amount due and shall be due and payable at the same time each Rental is due and payable. Nothing in this Booklet or the Contract Order Form and Hire Agreement nor the Hirer's payment of any Fee shall (a) create an insurance relationship of any type between the Owner and the Hirer or any other person, (b) require the Owner to secure or maintain any insurance or renew or replace any insurance coverage under the same terms, amounts or conditions as any prior insurance coverage or at all or (c) create any liability on the Owner to the Hirer if the Owner terminates or allows to lapse without renewal any insurance coverage arranged by the Owner. Any insurance the Owner obtains in respect of the insurance required under 9.1.(i) above shall not limit or excuse the Hirer's obligation to provide the insurance required under 9.1 (ii) and (iii) above.

9.3 The Hirer must immediately notify the Owner if any Equipment is lost, stolen, destroyed, seized, confiscated, or damaged and of any claims the Hirer makes. The Hirer must not compromise or settle any claims without the Owner's agreement. Any insurance monies received by the Owner shall be applied, at the Owner's sole discretion, in repairing or replacing the damaged Equipment and the terms of this Booklet and the Contract Order Form and Hire Agreement shall apply to any replacement equipment, but if any of the Equipment becomes a total or constructive loss for whatever reason, the Owner may terminate the hiring thereof and the Hirer shall immediately pay to the Owner the agreed compensation amount calculated in the manner set out in Clause 10.8 below. Any insurance proceeds received by the Owner shall be applied in reducing any outstanding portion of such agreed compensation amount. Upon the Owner's receipt of the full amount of the agreed compensation and all other sums due hereunder and under the Contract Order Form and Hire Agreement, allowance shall be made to Linde for amounts owed under Clause 10.9 and then to the Hirer of any surplus proceeds (by way of rebate of Rental). S

## **10. Payments.**

### **10.1 Rental Payments.**

(a) The Rentals due by the Hirer to the Owner are as set out in the Contract Order Form and Hire Agreement and are payable on the due dates without set off, counterclaim or further demand. (b) If the first Rental is payable after the date of delivery or commissioning (as applicable) of the Equipment there shall, in addition to the first Rental, be due from the Hirer to the Owner on the date of payment of the first Rental, an interim rental for the interim period between the date of delivery or commissioning and the date of payment of the first Rental. (c) The Owner shall notify the Hirer of the amount of the interim rental, which shall be calculated on a pro rata basis over the interim period. (d) If the hiring continues beyond the expiry of the Minimum Term the Hirer shall during the extended period of hire pay further rentals at the same frequency as the prime term rentals. The rental amount in extension will not be lower than the prime term rental, but may increase as described in Clauses 4.2 & 4.3. (d) Linde and or the Owner reserves the right to adjust the Rentals and price as a result of an Adverse Change in accordance with the provisions of clause 15.7. (e) Where the Hirer makes a request to modify an order once placed and where the modification is agreed the Hirer shall pay an additional administration fee to Linde or the Owner for such change (in addition to any change to the Price as a result of the modification or cancellation fee) as follows: £300 per change for Counterbalance and bespoke VNA equipment and £100 per change for all other warehouse equipment to include any of the following modifications: i)

Modification of configuration ii) Modifications of requested delivery date or iii) Modifications of order conditions.

10.2 Change in Payment Method. Our required method of payment, unless agreed otherwise in writing, is Direct Debit. We choose this method in order to reduce administration costs. If you wish to make payment by other means (please note that we cannot accept payments by Cash, Credit Card or Standing Order), then we will need to recoup the extra costs of processing your payment by increasing the interest rate that we use to calculate your lease rate by 1% (100 basis points) if changed during the term of hire. The increase shall apply automatically from the date the change becomes operational and your period Rentals will be altered accordingly. The Owner also reserves the right to adjust the Rentals to account for any increase in the cost of financing that may result from any changes to payment terms made during the term of hire.

10.3 Time for Payment. Time is of the essence for the purposes of payment and it is vital that payments are received by the Owner in full (including any VAT) in cleared funds on the due date shown in the Contract Order Form and Hire Agreement. The Hirer agrees that this is a condition (in Scotland an essential condition) of any Contract Order Form and Hire Agreement. Any breach of this obligation may be treated by the Owner as a repudiation. An administration fee of £30 will be payable for each direct debit/cheque that is rejected.

10.4 Interest. If any sum payable by the Hirer has not been received (in cleared funds) within ten (10) days of the due date by Linde or the Owner, then interest will accrue for each day that it is unpaid at the rate of 5% per annum over the Bank of England Base Rate from the date payment was due until payment is received. Payment of interest will not affect the rights of the Owner to terminate for repudiatory fundamental breach. Any interest will be payable on demand.

### **10.5 Maintenance Element of Rental Adjustment.**

(a) Once a contract has been in force for a minimum period of 12 months, Linde shall have the right, but not the obligation to increase the maintenance element of Rentals. The annual revision date will be on the first anniversary of the start of the Contract (although for operational reasons Linde may delay the implementation of the annual increase to a set point either on or after 1<sup>st</sup> January) and annually thereafter. The rate of increase will be the percentage increase in the Retail Prices Index over the preceding twelve-month period. Linde will give written notice of the new maintenance element to the Hirer and the Owner. For the purpose of this Booklet "Retail Prices Index" means the general index of retail prices (RPO2) for all items published by the Office for National Statistics or any substituted index, or index figures, published by such office or, if

no such substituted index or index figures are published, such other index or index figures as Linde considers appropriate.

(b) If the maintenance rate needs to be changed due to the impact of an Adverse Change as covered in clause 15.7, we will contact you in advance and give you a minimum 30 days' notice of the change and how it will affect your period rental.

10.6 Excess Hour Surcharge. Linde will record the Hirer's hours usage allowance. If, at the end of any six month period of the term of hire, the actual hours usage has exceeded the maximum permitted as set out in the relevant Contract Order Form and Hire Agreement, then a surcharge per excess hour will be payable (as referred to in Clause 7.10). The agreed tariff is as set out on the Contract Order Form and Hire Agreement. Excess hour charges shall be invoiced by Linde directly to the Hirer and shall be payable on demand.

10.7 Change in Application or Support Level. If the Hirer wishes to change application or support level, the Hirer may do so only with prior agreement from Linde at six (6) monthly intervals at which stage the Rentals will be adjusted accordingly.

10.8 Hirer's Liability to the Owner on Default or Total Loss. If, in relation to any Contract Order Form and Hire Agreement, the Owner terminates the hiring of the Equipment in accordance with its rights under this Booklet or if there is a total loss of the Equipment for insurance purposes, then the Hirer shall, without prejudice to Clause 11.3, immediately pay to the Owner:

On Total Loss:

- (a) All arrears of Rentals due at the date of termination;
- (b) All Rentals (excluding any maintenance charge due to Linde) which would, but for the termination, have become due and payable from the date of termination up to the end of the Minimum Hire Period less a discount on each such Rental for accelerated payment at the rate of 3% per annum; and
- (c) A sum equal to the amount which the Owner anticipated to receive by way of net sales proceeds from selling the Equipment on expiry of the term of hire.

On Default:

- (a) All arrears of Rentals due at the date of termination; and
- (b) All Rentals (excluding any maintenance charge due to Linde) which would, but for the termination, have become due and payable from the date of termination up to the end of the Minimum Hire Period less a discount on each such Rental for accelerated payment at the rate of 3% per annum.

10.9 Hirer's Liability to Linde and/or the Linde on Default or Total Loss. On any default by the Hirer or total loss relating to maintenance or otherwise, the Hirer shall pay to Linde:

(a) any amounts to which it is entitled as a result of the premature termination of the maintenance contract between them, such damages being calculated by reference to the maintenance level payments which would have been received, had the contract ended after the full term of hire; and (if applicable)

(b) The maintenance element of all Rentals due to Linde which would, but for the termination, have become due and payable from the date of termination up to the end of the Minimum Hire Period less a discount on each such Rental for accelerated payment at the rate of 3% per annum.

#### **11. Default.**

11.1 Certain events are a default and repudiation (repudiatory breach) of each and every Contract Order Form and Hire Agreement. They are that:

- (a) The Owner does not receive any Rental owed under any Contract Order Form and Hire Agreement within ten (10) days of its due date;
- (b) The Hirer breaches any other term under any Contract Order Form and Hire Agreement and, if it can be remedied, fails to remedy the breach within ten (10) days of the Owner's notice requiring it to do so;
- (c) The Hirer breaches any term under any agreement to which the Hirer and the Owner are parties (including, without limitation, a default in timely payment or due performance of any obligations) and, if such breach can be remedied, the Hirer fails to remedy the breach within ten (10) days of the Owner's notice requiring it to do so;
- (d) If the Hirer is an individual, an application for an interim order is made or a petition for a bankruptcy order (in Scotland for sequestration) is presented;
- (e) If the Hirer is a company, trust or corporation, a receiver, administrator, administrative receiver or liquidator is appointed, or the Hirer is dissolved or otherwise wound up;
- (f) Distress (in Scotland diligence) or execution is threatened or made against the Hirer;
- (g) A meeting of the Hirer's creditors or a voluntary arrangement is proposed, or the Hirer ceases to trade or any step is taken with a view to the appointment of an administrator in relation to the Hirer;
- (h) (In Scotland) the Hirer is apparently insolvent;
- (j) Any statement by the Hirer which induced the Owner to agree to hire the Equipment to the Hirer is or becomes incorrect;
- (k) In the opinion of the Owner, a material adverse change occurs in relation to the Hirer's business;
- (l) There is a change in the direct or indirect control of the Hirer from that subsisting at the date the relevant Contract Order Form and Hire Agreement is entered into;



(m) Any event occurs or proceeding is taken with respect to the Hirer in any jurisdiction which has an effect equivalent or similar to any of the events or proceedings mentioned in this Clause 11.1 (d), (e), (f) or (g).

11.2 Each of the events listed in Clause 11.1 shall be deemed to be a repudiation (a repudiatory breach) and default of a Contract Order Form and Hire Agreement and upon the occurrence of any such event, the Owner may immediately withdraw and cancel its consent to the Hirer's possession of the Equipment under any or all Contract Order Form and Hire Agreements that the Hirer has entered into with the Owner. The Owner may then terminate the hiring, enter the Hirer's premises and take back the Equipment. Any delay in doing so shall not act as a waiver of these rights.

11.3 If the Owner terminates the hiring of Equipment under any Contract Order Form and Hire Agreement, without affecting the Owner's rights (including any right to damages, to the costs of recovering the Equipment, or to recover any costs reasonably incurred by the Owner in enforcing its rights under this booklet), the Hirer must pay the Owner and Linde the sums calculated in accordance with Clause 10.8 and 10.9 respectively. Receipt by the Owner or Linde of part payment will not affect any of their respective rights.

12. Limits of Liability – No Agency Relationship.

12.1 Neither Linde (or any employee, agent or sub-contractor of Linde) nor any person through whom the Contract Order Form and Hire Agreement was negotiated has any authority to make any representation or agreement on behalf of the Owner. For avoidance of doubt, Linde is not the agent of the Owner.

12.2 The Hirer hereby acknowledges that:

- (a) The Owner has had no involvement in the selection of the Equipment which was chosen by the Hirer from Linde using the Hirer's own skill and judgment;
- (b) The Owner has not seen the Equipment prior to delivery to the Hirer by Linde;
- (c) The Owner has no expertise in the Equipment; and
- (d) There has been no communication between the Owner and the Hirer regarding the purpose to which the Equipment will be put.

12.3 The Hirer shall be entitled, so far as the Owner is able to transfer or give the benefit of the same, to the benefit of all conditions, warranties or other terms, express or implied relating to the Equipment given to the Owner by Linde.

12.4 In view of the foregoing, the Hirer hereby acknowledges that the Owner has given no express warranty or undertaking and that it is fair and reasonable that the Owner should hereby exclude liability for any condition, warranty or term that may otherwise be implied by law as to the description, satisfactory quality or fitness of the Equipment for its purpose or any particular purpose.

12.5 The Owner is not liable for any loss or expense resulting from delay by Linde in delivering or commissioning the Equipment or the failure of Linde to perform their respective obligations in respect of any Equipment, including, without limitation, any maintenance responsibilities.

12.6 Except in the case of death or personal injury caused by the Owner's negligence, the Owner is not liable for any loss, injury or damage (including consequential or financial loss) due to any defects in the Equipment, its parts or any consumables.

12.7 Except in the case of death or personal injury caused by the Owner's negligence, under no circumstances will the Owner's liability exceed the total of the Rentals received by the Owner.

12.8 The Hirer must continue to pay all Rentals or any other monies due to the Owner, even if any Equipment fails to operate for any reason or is defective or any person or entity responsible for providing maintenance of the Equipment fails to provide such maintenance, and the Hirer shall not be entitled to any rebate, counterclaim or set off against any Rentals.

### **13. Consequential Loss.**

The remedies available to the Hirer in respect of the Equipment are as stated in this Booklet. Neither the Owner nor Linde are responsible to the Hirer for any indirect or consequential loss, or for loss of business, revenue, profit or anticipated savings however caused.

### **14. Return Condition.**

14.1 Hirer's Responsibilities the Hirer shall be responsible to:

- (a) The Owner to ensure that the Equipment is returned and when returned, is in the condition required by Linde in accordance with Clause 14.6; and
- (b) Linde to ensure that the Equipment:
  - (i) is made available to be maintained; and
  - (ii) is always safe to use and in good condition commensurate with its age and usage (allowing for fair wear and tear). If at the end of the term of hire, the Equipment is not in such safe and good condition then Linde shall, at the cost of the Hirer, carry out such work at its rates prevailing at the time of repair as is necessary to bring the Equipment back into a safe and good condition. Linde shall notify the Hirer of the cost which shall be due on demand from the Hirer to Linde.

14.2 Condition Dispute Procedure. If the Hirer does not accept the need to carry out repairs (pursuant to Clause 14.2) identified by Linde, the Hirer shall inform Linde in writing within five (5) working days of being notified of the work required. If the Hirer gives such a notice to Linde then it must set out in detail

why, in its opinion, it does not believe that the recommended repairs are necessary. Following such notice being properly served on Linde, Linde and the Hirer shall meet within five (5) days to discuss the work needed and shall use all reasonable efforts to reach an agreement as to what is needed. If, after discussion, the Hirer maintains that the recommended repairs do not need to be carried out then it may within five (5) working days of the discussion refer any matter in dispute to an expert to be agreed, or in default of a Contract Order Form and Hire Agreement, to be appointed, at the instigation of either Party, by the President for the time being of the Fork Truck Association. The appointed expert (whose decision shall be final and binding) shall act as an expert and not an arbitrator and shall decide what work is required by personal inspection and by reviewing the concise written submissions to be made to him by each Party within five (5) working days of his/her appointment. The costs of the expert shall be divided equally three ways between the Hirer, the Owner and Linde and shall be payable on appointment.

14.3 Return of Equipment. Unless otherwise agreed, the Hirer shall be responsible for returning the Equipment to any place within the United Kingdom which Linde may reasonably require upon termination of the hiring under a Contract Order Form and Hire Agreement. If the Equipment is not returned within two (2) working days of the end of the hiring then Linde shall be entitled to collect the Equipment at the expense of the Hirer.

14.4 Linde shall be entitled to enforce any provisions in this Booklet relating to maintenance, repairs and condition for itself and for the benefit of the Owner.

14.5 The Hirer shall ensure that the Equipment is returned in a state and condition which is accordance with any relevant guidelines issued by Linde to the Hirer. In the event of a manifest conflict between such guidelines and the provisions set out in clause 14.6 below, the terms of this Booklet shall prevail.

14.6 Upon the return of the Equipment:

- (a) The Hirer must return all instruction and service manuals or booklets, excise duty certificates, vehicle registration documents and other accompanying documentation that may have been provided to the Hirer;
- (b) The Equipment must be in working order and good condition (fair wear and tear excepted) commensurate with its age and use;
- (c) The Equipment must be clean and complete with all necessary parts. Any additional parts which may have been added by the Hirer must be removed. All damage repairs must be properly completed and paintwork reinstated;
- (d) Tyres shall not be more than 50% worn and shall be free from cuts, gauges, flat spots or other damage;

(e) The engine and transmission shall operate according to manufacturer's specification with no oil leaks or excessive exhaust smoke. There shall be no ingress of water into lubrication, hydraulic or electrical systems. Chains shall be free from corrosion or excessive wear and stretch and all bearings shall show no sign of damage or uneven wear;

(f) Batteries will be fully operative and capable of maintaining the required charge. There should be no leaks or cracks to the casing;

(g) Hydraulic cylinders, motors and pumps shall be in working order and shall be free from leaks, cracks or damage;

(h) All controls, switches, gauges etc should be complete and in full working order;

(i) Seats, cabs and windows shall be free from tears, deep scratches, properly functioning and undamaged;

(j) The bodywork, engine, battery, transmissions, casings, final drive casings, axle housings, hydraulics, mast, carriage, attachments, wheels and tyres, braking systems, cab and controls and electrical components shall be functional, operational and complete;

(k) Traction batteries (electric powered machines only) shall be operative and sound by industry standards and free from corrosion and filled with electrolyte solution;

(l) Battery chargers and ancillary equipment, including top up systems and rollers, must be fully operative and not subject to misuse or abuse. Any charger that is attached to a mains supply shall be removed at the Hirer's expense, placed with the relevant truck and made ready for collection;

(m) Electric motor(s) must be fully operational and complete; and

(n) Mast wear pads or slides shall be no more than 50% worn and there shall be no twisting, bending or distortion to fixed, inner or outer sections.

14.7 The rights of Linde under this Clause 14 are in addition to, and shall not replace or supersede any of, the rights of the Owner under this Booklet and the relevant Contract Order Form and Hire Agreement.

#### **15. Miscellaneous.**

15.1 This Booklet and each Contract Order Form and Hire Agreement (and any document referred to in either of them) constitute the entire agreement in relation to the hire and maintenance of the Equipment.

15.2 If any provision of this Booklet is held to be invalid, the validity of the remaining provisions shall not be affected.

15.3 No failure or delay on the part of the Owner or Linde in exercising any right, power or remedy will operate as a waiver of it nor will any single or partial

exercise of any such right, power or remedy preclude any other or further exercise of such right, power or remedy.

15.4 The Owner and Linde will be entitled to assign their rights under each Contract Order Form and Hire Agreement to any person. Linde will also be entitled to engage sub-contractors, but the Hirer will not be entitled to assign any of its rights under this Booklet or any Contract Order Form and Hire Agreement without the prior written consent of the Owner and Linde.

15.5 The contact address for each Party (other than the Hirer) is as set out a Contract Order and Hire Agreement.

15.6 VAT is payable at the rate applicable to the relevant tax point on all sums payable under the terms of this Booklet and each Contract Order Form and Hire Agreement.

15.7. Adverse Change;

15.7.1 for the purposes of this Booklet, an Adverse Change means any increase in the cost of supplying the Equipment or parts or spares or any increase in the cost of providing maintenance services (Items) which Linde incurs in relation to the supply of such Items, whether directly or indirectly arising from:

- (i) imposition of additional taxes, tariffs or any duties, levies or costs imposed on imports or exports of such Items, or
- (ii) as a consequence of any exchange rate fluctuations (with a variance of 5% or more by reference to Bank of England daily spot rate), or
- (iii) change in laws, regulations, orders, mandatory guidance or code of practice, judgment of a court of law (including in the UK or EU), or requirement of any regulatory body, whether in the UK or elsewhere, or
- (iv) any increase in component or raw material costs, energy or fuel increases, increase in interest rates or increase in shipping and transportation costs or any other increase in costs of production.

15.7.2 When any such Adverse Change occurs or is likely to occur in relation to the supply of such Items as defined in 15.7.1, where the adverse Change occurs between:

- (i) the order date or the date of the contract for such item and
- (ii) the date of delivery of that Item or the date the Hirer is entitled to call off such item or the date the Item is needed

Linde reserves the right to adjust the price it charges the Hirer (including any rental payments or maintenance charges) from the amount as set out in any quotation, Contract Order Form, rental agreement, maintenance agreement or otherwise (Original amount), by any increase charged to Linde by its suppliers or otherwise incurred by Linde as a consequence of the Adverse Change where such increase is not already included in the Original amount, and to notify the Hirer in

writing of the increase which shall be effective and payable by the Hirer via an increase in the Rentals.

15.7.3 Where there is a lead time in excess of 120 days between the placement of the Hirer's order with Linde and the planned delivery date of the Equipment, Linde and the Owner reserves the right to recalculate the Rentals due by the Hirer to the Owner where:

(i) there is a change in cost of production based on the producer price index published by the Federal Statistical Office (Destatis) ref: 61241-0006 for product group GP09-2822: Manufacture of Lifting and Handling Equipment.

The recalculation shall be performed as follows:

- At the time of the placement of the Hirer's order (month N), the Order Index will be defined and based on the published producer price index at N-2 months
- 6 weeks before date of production of the Equipment (month D), the Delivery Index will be defined and based on the published producer price index at D-2 months
- The Delivery Index and Order Index will be compared as follows to determine the Variation (V) :  $V = (\text{Delivery index}/\text{Order index}) - 1$
- In the case of Variation (V) being less than +/-3%, no price adjustment will be made
- In the case of Variation (V) being greater than or equal to +/-3%, the underlying nett capital value of the Equipment being financed shall be multiplied by  $1 + \text{Variation (V)}$
- The revised nett capital value will then be used as the basis for recalculating the applicable Rental rate

(ii) there is change in the applicable interest rate based on the SONIA 5 Year SWAP Rate.

The recalculation shall be performed as follows:

- At the time of the placement of the Hirer's order the Interest Order Index will be defined as the SONIA 5 Year SWAP Rate at that time
- 6 weeks before date of production of the Equipment, the Interest Delivery Index will be defined as the SONIA 5 Year SWAP Rate at that time.
- The Interest Delivery Index and Interest Order Index will be compared as follows to determine the Interest Variation (IV) :  $IV = \text{Interest Delivery Index} - \text{Interest Order Index}$
- In the case of Interest Variation (IV) being greater than +/- 0.25 (25 basis points) the Rental rate will be recalculated to include the change in the applicable interest rate.

(iii) there is a change in the Retail Price Index, RPI All Items Index: Jan 1987=100

The recalculation shall be performed as follows:

- At the time of the placement of the Hirer's order, the Inflation Order Index will be defined as the latest published value of the RPI All Items Index: Jan 1987=100 at that time
- 6 weeks before date of production of the Equipment, the Inflation Delivery Index will be defined and based on the latest published value of the RPI All Items Index: Jan 1987=100 at that time
- The Inflation Delivery Index and Inflation Order Index will be compared as follows to determine the Inflation Variation (INFV) :  $INFV = (\text{Inflation Delivery index} / \text{Inflation Order index}) - 1$
- In the case of Inflation Variation (INFV) being less than +/- 3%, no price adjustment will be made
- In case of Inflation Variation (INFV) being greater than or equal to +/- 3%, the maintenance element of the Rental rate shall be multiplied by  $1 + \text{Inflation Variation (INFV)}$  and the Rental rate will be recalculated to include the adjusted maintenance element

In the case that one or more of the indexation measures as defined in points (i), (ii) and (iii) above applies and a recalculation of the Rental rate is required, the Owner or Linde shall notify the Hirer of the recalculation and of the adjusted Rental rate which will apply as from the first Rental due following the point of delivery. In the event of a change or disappearance of any reference index, the Owner shall substitute the reference index for a new index that is as close as possible to the modified or disappeared index.

15.8 No terms and conditions of this Booklet or the details relating to the Hire or maintenance or other arrangements set out in the Contract Order Form or Hire Agreement may be varied or amended without the prior written consent of all Parties. Where a change is agreed the Owner reserves the right to charge, and the Hirer shall pay, an administration fee of £50 in respect of any change to any of a) the Hirer b) the Hire Period c) any partner d) the payment profile or method of payment or e) early termination of the Hire period.

15.9 Information supplied by the Hirer about itself to Linde and the Owner (or any of their respective affiliated companies) and records that the Owner obtains from searches of credit reference agencies may be used by the Owner and Linde (or any of their respective affiliated companies) for marketing, credit and/or risk assessment purposes. Such information may also be disclosed for credit scoring, administration and financing purposes and for fraud prevention. The Hirer may at any time specify to any other Party that it does not want to receive marketing or other promotional correspondence from such Party.

15.10 Any warranty issued by Linde or their authorised representatives shall be of no further effect if:

- (a) The Hirer fails to comply with the terms set out in this Booklet or any Contract Order Form and Hire Agreement;
- (b) The Hirer does not use recommended Linde authorised parts;
- (c) The Hirer does not use Linde as the repairer to carry out any repair, maintenance or other service work to any Equipment; or
- (d) The Hirer or any other party in any way carries out any repairs other than in accordance with recommended procedures and by authorised representatives.

15.11 The Parties agree at all times to comply with all applicable laws, statutes, regulations and other generally accepted rules and standard of business conduct relating to anti-bribery and anti-corruption, including, but not limited to, the Bribery Act 2010 (Anti-Bribery Requirements), and shall not engage in any activity, practice or conduct which would constitute an offence under Bribery Act 2010. The Parties shall also have in place, keep and enforce, as appropriate, throughout the term of any Contract Order and Hire Agreement their own adequate procedures, to ensure compliance with the Anti-Bribery Requirements.

15.12 This Booklet and each Contract Order Form and Hire Agreement shall be governed by and construed in accordance with the laws of England and Wales. Any dispute arising out of or in connection with this Booklet and/or any Contract Order Form and Hire Agreement will be submitted to the exclusive jurisdiction of the courts of England and Wales.

## **16. LINDE MH UK LTD – Contact Details**

**Linde MH UK Ltd**  
Kingsclere Road  
BASINGSTOKE  
Hampshire  
RG21 6XJ  
Tel: 01256 563000  
[www.linde-mh.co.uk](http://www.linde-mh.co.uk)  
Company Reg No: 2791934