

**RENTAL AGREEMENT**

4. **ESCALATION**
- 4.1 The Renter acknowledges that the rental charge is based on the prime interest rate as at the commencement date. Should the prime interest rate increase or decrease at any time during the term of this agreement, Masslift shall with effect from the first day of the month after such increase or decrease, have the right without notice to the Renter, to increase or decrease the rental charge by the same points in percentage as the change in the prime interest rate. The prime interest rate at the commencement date was 10.5%
- 4.2 The maintenance charge and insurance charge shall escalate annually on the anniversary of the commencement date by 10%. Masslift shall have the right, in the event of the Rand/Yen exchange rate deteriorating by more than 10% below that ruling on commencement date, or in the event of the price of imported components increasing by more than 10% per annum based on the price at commencement date, to increase the maintenance charge to take account of such deterioration above 10% and such increase in cost of imported components above 10% per annum. This escalation shall also apply to the excess hour rate stipulated in clause 3.1 above.
5. **MAINTENANCE CHARGE**
- 5.1 The maintenance charge shall include the costs of all lubricants, filters, parts, cleaning materials, travelling and labour required for the service and maintenance of the Forklift. The maintenance charge excludes the cost of replacing batteries and chargers, tyres, forks and fuel or any damage caused to the Forklift as a result of any collision, impact, misuse thereof by any person, mal-operation, the negligence of the Renter of the Forklift or any intentional or wilful act of any person or any other cause other than normal wear and tear, or the costs of any statutory licences or inspections that may be required.
- 5.2 It is a requirement of the Occupational Health & Safety Act, Act 85 of 1993, Driven Machinery Regulations 18 (5) that all forklifts are load tested on an annual basis as prescribed. Masslift will procure that the required load tests are carried out and the Renter will pay the costs of such test to Masslift upon receipt of Masslift's invoice.
- 5.3 Drivers of the Forklift and their wages shall be the responsibility of the Renter.
- 5.4 The maintenance charge is based on the location of the Forklift at the Renter's address to which the Forklift was delivered at the commencement date. Should the Renter move the Forklift to another site, then Masslift shall have the right to increase the maintenance charge to cover any of its increased costs occasioned thereby.
6. **USE AND MAINTENANCE**
- 6.1 The Renter undertakes to carry out a daily check of the Forklift covering every item listed in the Daily Checklist, to complete same daily and to file and retain such records throughout the duration of this agreement. A copy of the Daily Checklist is annexed hereto as Annexure "1". The Renter shall promptly report all leaks, malfunctions and/or damage to the Forklift to Masslift. The Renter shall not continue to use the Forklift, where to do so would or may possibly result in damage or further damage to the Forklift and should the Renter continue to use the Forklift under such conditions, it shall bear the cost of repairing such damage as determined by Masslift in its sole discretion.
- 6.2 The Renter undertakes to use the Forklift within its specified capacity and for the purpose for which it was designed. If in the opinion of Masslift the Forklift is used in a negligent manner or is abused, this shall constitute a breach of this agreement and Masslift may, at its option, immediately terminate this agreement and exercise such rights as it may have under clause 10 of this agreement.
- 6.3 The Renter shall not at any time lease, lend, sell, pledge or otherwise alienate or encumber the Forklift or any of Masslift's rights under this Agreement or allow the Forklift to become subject to any landlord's hypothec, and the Renter warrants having duly notified the Landlord in writing that Masslift is the owner of the Forklift and that the Forklift is not subject to the Landlord's hypothec.
- 6.4 The Renter shall not permit the Forklift to be taken beyond the borders of the Republic of South Africa without prior written consent of Masslift. Furthermore the Renter undertakes not to move the Forklift from the address that it was delivered to without obtaining Masslift's prior written consent.
- 6.5 The Renter shall itself at all times itself retain possession and control of the Forklift and give Masslift direct, full and immediate access to the Forklift for the purpose of, inter alia, checking the meter readings, inspecting, servicing and maintaining the Forklift, and/or disabling the Forklift in the event that the Renter is in breach of any material obligation, (as set out in clause 6.6 below). The Renter is obliged to immediately report any evidence of tampering with or malfunction in the hour meter at the time of first use of the Forklift after any such tampering or malfunction has taken place and failure to do so shall constitute a breach of this agreement. The Renter shall not permit the Forklift to be serviced or worked on by anyone other than a representative of Masslift.
- 6.6 In the event of a breach of the agreement or a cancellation of the agreement in accordance with clause 10, the Renter hereby agrees to allow a representative of Masslift to disable the Forklift so as to ensure that the Renter is unable to utilise the Forklift in any manner. In the event that the Renter fails to allow Masslift access to the premises, Masslift shall be entitled to recover a penalty charge, (in addition to any other monies owed by the Renter), from the Renter which shall be calculated as 3 months rental as calculated in terms of clause 3, as set out above plus interest thereon calculated in accordance with clause 11.
- 6.7 Should the Forklift be damaged in terms of 5.1 the Renter agrees to effect payment of the costs of such repairs as determined by Masslift within its sole discretion and payment shall be effected immediately upon presentation of Masslift's invoice. There shall be no rebate for downtime as a result of maintenance and servicing the Forklift by Masslift in terms of this Agreement, however Masslift shall at all times endeavour to minimise such downtime.
- 6.8 The Renter is required to advise Masslift of the Forklift hour meter reading by no later than the last working day of each month, failing which Masslift will have the right to estimate this reading and calculate the additional charges in terms of clause 3.2 based on such estimate.
7. **INSURANCE**
- 7.1 The Renter accepts all risks in and to the Forklift, including the risk of destruction or loss of the Forklift, from the date of Masslift delivering the Forklift to the Renter or its nominee.
- 7.1.1 Renter shall comprehensively insure the Forklift to the full retail value thereof from time to time plus VAT and maintain such insurance for the rental term. Should Masslift demand proof of such insurance policy, the Renter shall be obliged to furnish Masslift with a copy of the insurance copy.
- 7.2 The Renter shall itself and at its own cost take out and maintain public liability insurance commensurate with such risks as may reasonably be incurred from time to time due to the use or non-use of the Forklift and Masslift shall have the right to demand proof of same. The Renter's failure to take out public liability insurance shall not vitiate its own liability in the event that property is damaged or persons are injured as a result of the use or non-use of the Forklift.
- 7.3 In the event that the Forklift is irreparably damaged, lost or stolen, the Renter shall immediately notify Masslift and the insurer in writing of such event and Masslift shall be entitled to terminate this Agreement at any time thereafter.
- 7.4 The Renter shall have no claim or defence against Masslift if all costs in respect of the replacement of the Forklift are not recovered in full or at all from the insurer. The Renter shall pay any excess that may be payable in terms of an insurance policy issued pursuant to clause 7. The Renter acknowledges that in the event of damage to or the complete loss of the forklift and irrespective of whether a valid insurance policy is in place, it shall be liable for the full repair or replacement cost which shall be payable by the Renter to Masslift upon demand.
8. **INDEMNITY AND LIMITATION OF DAMAGES**
- The Renter acknowledges:-
- 8.1 that it has chosen and inspected the Forklift and it is suitable for the Renter's needs and that Masslift gives no warranties as to the suitability of the Forklift for the Renter's needs;
- 8.2 that it shall allow only trained and licensed personnel to operate the Forklift;
- 8.3 that it assumes full responsibility for all loss or damage to any goods or property transported or left in or upon the Forklift; or damages to property or injuries resulting from the use or non-use of the Forklift; The Renter hereby indemnifies and holds Masslift, its employees, directors and agents harmless against all claims of whatever nature, (including but not limited to, consequential damages or loss, either physical or economical) arising from the use or non-use of the Forklift.
9. **CESSION**
- The Renter shall not cede, sublet or assign its rights or obligations in terms hereof to any party without the prior written consent of Masslift. Masslift shall be entitled at any time and without notice to the Renter, to cede any or all of its rights in terms of this Agreement, to any party.
10. **CANCELLATION**
- 10.1 Should the Renter commit any breach of this agreement or in any way commit any act or suffer anything which may prejudice the rights of Masslift or commit any act of insolvency, Masslift shall be entitled, in its sole discretion and without prejudice to any other rights to:
- 10.1.1 claim the immediate and accelerated payment of the balance of the monthly rental charges for the unexpired portion of the rental term together with all further outstanding monies which will be deemed to be due and payable notwithstanding the fact that such amounts may not be due and payable in the ordinary course, and immediately obtain possession of the Forklift and hold it as security for any amounts which may be due in terms of this agreement; or
- 10.1.2 Immediately cancel the agreement obtain possession of the Forklift, recover all outstanding monies from the Renter and claim payment of any damages.
- 10.2 Should Masslift cancel this agreement, and the Renter dispute such cancellation and refuse to return the forklift to Masslift, then, in addition, and without prejudice to any other claims that Masslift may have against the Renter in terms hereof, the Renter shall be liable to continue paying the agreed monthly rental charge to Masslift, pending the resolution of the dispute between the parties in respect of the validity of Masslift's cancellation of the agreement. All payments made by the Renter during such holding over period, shall not be deemed rental, but rather a contribution by the Renter toward Masslift's damages suffered as a consequence of the Renter's holding over and refusal to accept Masslift's cancellation.
- 10.3 Should Masslift take any legal action against the Renter, the Renter shall be liable for all legal costs incurred on an attorney and own client scale including collection commission, counsel fees and tracing fees.
11. **ARREAR INTEREST**
- All rentals or other outstanding monies payable to Masslift shall be subject to arrear interest at the maximum rate permissible from time to time in terms of the National Credit Act, No. 34 of 2005, as amended, compounded monthly, regardless of whether that Act is applicable to this Agreement.
12. **CERTIFICATE**
- A certificate signed by any manager or director of Masslift (whose identity and appointment as such need not be proved) as to any amount due and/or owing by the Renter and/or any damages payable by the Renter, in terms of or arising out of this Agreement shall be prima facie proof of such amount for all purposes including but not limited to pleadings, any judgment and provisional sentence.
13. **TERMINATION**
- The Renter undertakes to deliver the Forklift to Masslift together with any documentation relating thereto on termination of the rental period term.
14. **GENERAL**
- 14.1 No warranty, representation or undertaking other than as set out herein shall be binding on the parties, and there shall be no variation of the terms hereof nor any waiver of rights nor any consensual cancellation hereof save should same be reduced to writing and duly signed on behalf of both parties. No alterations to this Agreement will be binding on Masslift unless accepted and signed by a director of Masslift.
- 14.2 The person entering into this Agreement on behalf of the Renter warrants that he is authorised to do so and if this warranty is breached, such person shall, at the election of Masslift, be deemed to be entering this Agreement in his personal capacity. Furthermore the Renter hereby warrants that the signatory to any tax invoice, delivery note or other documentation of Masslift made out in the name of or to the Renter, is duly authorised to bind the Renter in respect of the relevant transaction.
- 14.3 The expiration or cancellation of this Agreement shall not affect the provisions of this Agreement as expressly provide that they will operate after any such expiration or cancellation or which of necessity must continue to have effect after such expiration or cancellation.
- 14.4 If any part of this Agreement is found to be unenforceable for whatever reason, then such part shall be deemed to be severable from the remainder of the Agreement.
- 14.5 Masslift shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought by it exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such court and that this clause constitutes any consent which may be required in terms of Section 45 of the Magistrates' Court Act, Act 32 of 1944. This does, however, not prohibit Masslift from instituting action in any High Court, which may have jurisdiction.
- 14.6 The rule of construction that the Agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.
- 14.7 The rental payable by the Renter to Masslift shall be paid monthly in advance without any set-off or deduction irrespective of the fact that Masslift may be in breach of this agreement.
- 14.8 The Renter shall be liable to effect payment of all banking and administrative charges incurred by Masslift as a result of the unlawful cancellation of the debit order (referred to in clause 3), by the Renter and/or the re-instatement thereof.
15. **DOMICILIUM**
- The Renter accepts, as its domicilium citandi et executandi, its address for all notices as set out in the heading hereof.
16. **DELIVERY ADDRESS**
- The Renter advises the delivery address for the purpose of this agreement to be .....

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