

QUEENSLAND FORKLIFTS PTY LTD (ACN 116 459 173)
HIRE AGREEMENT TERMS AND CONDITIONS

1. Interpretation

These Terms and Conditions (**Terms**), together with the Hire Agreement, form a binding contract (**Contract**) between the Hirer and Queensland Forklifts.

In these Terms:

- (a) **Business Day** means a day other than a Saturday, Sunday, public holiday or bank holiday in the state or territory where the Equipment is hired.
- (b) **Equipment** means the forklift(s) and any related equipment described in the Hire Agreement, and any additional future equipment hired by the Hirer from Queensland Forklifts;
- (c) **Hirer** means the person(s) and/or entity specified in the Hire Agreement;
- (d) **Intellectual Property Rights** means statutory and other proprietary rights in respect of, but not limited to, trademarks, patents, copyright and all other rights with respect to intellectual property;
- (e) **Queensland Forklifts** means Queensland Forklifts Pty Ltd (ACN 116 459 173) or a related company;
- (f) **Term** means the period beginning on the date of delivery or collection of the Equipment, and ending on the final day of the Hire Period as specified in the Hire Agreement, or such earlier date that the Contract is terminated in accordance with its terms, or if no Hire Period is specified or the Hirer enters a holding over period, ending on the date the Equipment comes back into Queensland Forklifts' possession; and
- (g) Other capitalised terms have the meanings ascribed to them in the Hire Agreement.

2. Queensland Forklifts' Obligations

- (a) Queensland Forklifts will deliver the Equipment to the Hirer at the Hirer's cost, or have the Equipment ready (if the Hirer is to collect), on or as close to the date and time as outlined in the Hire Agreement as reasonably practicable. Queensland Forklifts will not be liable for any loss or damage suffered by the Hirer if for any reason Queensland Forklifts fails to deliver or have the Equipment ready by that time, however the Rental Rates will only be payable from the date of delivery or collection of the Equipment.
- (b) Queensland Forklifts will maintain the Equipment, at its cost, and will ensure that all Equipment is serviced as per the manufacturers' specifications and is in safe working order. The Hirer acknowledges that this may result in the Equipment being unavailable for use during a period of the Term to the extent necessary for such maintenance to occur.

3. Hirer's Obligations

The Hirer must:

- (a) pay to Queensland Forklifts without set-off or deduction the Rental Rates under the Hire Agreement from the date of delivery or collection of the Equipment, as well as any applicable stamp duty, GST, duties and taxes. Payment is to be made within 30 days of the date of the invoice;
- (b) pay to Queensland Forklifts within 30 days of invoice additional charges relating directly to the hire of the Equipment, including delivery, call-out, collection and fuel;
- (c) pay to Queensland Forklifts on demand all costs and expenses, including legal expenses, incurred by Queensland Forklifts in exercising any of its rights under the Contract, including any amount paid to release any security interest over the Equipment or to remedy any breach by the Hirer (including, but not limited to, costs of repairing or replacing Equipment that is damaged, destroyed or lost while under hire to the Hirer);
- (d) take proper care of the Equipment at all times during the Term until collected by Queensland Forklifts or returned to Queensland Forklifts;
- (e) use the Equipment only within its rated capacity and in accordance with manufacturers' and Queensland Forklifts' instructions and to keep the Equipment in good and safe working condition;
- (f) keep the Equipment secure from theft or damage;
- (g) notify Queensland Forklifts immediately of any loss or damage to the Equipment, however caused;
- (h) keep and use the Equipment only at the Delivery Address outlined in the Hire Agreement or at such other place agreed by Queensland Forklifts in writing;
- (i) comply strictly with all laws, rules, regulations and by-laws of any government or authority with respect to use of the Equipment;
- (j) only use the Equipment for the purpose for which it is intended;
- (k) ensure that the Equipment is only operated by persons properly qualified and licensed by the appropriate regulatory authority to do so;
- (l) provide a safe workplace for any employees, contractors or agents of the Hirer and Queensland Forklifts, or any other persons on site where the Equipment is being located or operated;
- (m) immediately notify Queensland Forklifts if any of the Hirer's employees, contractors or agents or any other person on the site is involved in any incident involving the Equipment;
- (n) check as often as is reasonably required but in any event not less than once per day, the operation of the Equipment and the Equipment consumables, including but not limited to, fuel, oil, grease and coolant, and to maintain them at their proper level and to check, and if necessary charge, any batteries on the Equipment;
- (o) permit Queensland Forklifts to enter the location where the Equipment is located:
 - (i) as often as Queensland Forklifts reasonably requires, and on reasonable notice, for the purposes of examining the state of repair of the Equipment, undertaking tests and repairs, removing any item of Equipment that requires off-site maintenance and carrying out any requirement of the Hirer under the Contract that has not been complied with; and

- (ii) if, at the end of the Term, the Hirer fails to comply with clause 3(q), to retake possession of the Equipment;
- (p) pay to Queensland Forklifts at the rate of 15% per annum (calculated daily), interest on any monies overdue pursuant to the Contract, until the outstanding amount is paid in full;
- (q) without limiting any of Queensland Forklifts' rights under these Terms, at the conclusion of the use by the Hirer of the Equipment (whether by expiry of the Term or earlier termination of the Contract for any reason):
 - (i) telephone Queensland Forklifts and to advise Queensland Forklifts thereof and to record the "Off-Hire Number" given by Queensland Forklifts to the Hirer in that event; and
 - (ii) return the Equipment at the Hirer's cost to Queensland Forklifts or to make the Equipment available for collection by Queensland Forklifts, in good order and condition as hired, fair wear and tear only excepted.

4. Hirer Restrictions

The Hirer must not:

- (a) sell the Equipment or otherwise do anything that prejudices Queensland Forklifts' ownership of the Equipment;
- (b) do, or permit to be done, any act which infringes the Intellectual Property Rights of Queensland Forklifts;
- (c) deface, modify or mark the Equipment in any way;
- (d) remove or alter any attachments, labels or markings on the Equipment except for the purposes of checking the Equipment in compliance with clause 3;
- (e) repair or attempt to repair, alter or add to the Equipment without the prior written consent of Queensland Forklifts; or
- (f) allow the Equipment to be subject to any mortgage, charge, lien or other security.

5. Title, Risk, Liability and Insurance

- (a) The Hirer does not receive any right, title or interest in the Equipment except as lessee with the right to possess and use the Equipment in accordance with the terms of the Contract. Nothing in the Contract grants to the Hirer an option to purchase any item of Equipment either during or after the conclusion of the Term.
- (b) The Equipment is at the Hirer's risk:
 - (i) during transit to the Delivery Address specified in the Hire Agreement;
 - (ii) while the Equipment is in the possession of the Hirer; and
 - (iii) during transit to Queensland Forklifts at the conclusion of the Term.
- (c) The Hirer must hold the following insurances in the joint names of the Hirer and Queensland Forklifts, at all times set out in clause 5(b):
 - (i) Public liability for loss, injury (including illness), damage or death to any person or property arising out of the hire or use of the Equipment or any act or omission by the Hirer or any other user of the Equipment for an amount of \$10,000,000.00 for any one claim;
 - (ii) Insurance for and against any theft, loss or damage to, or destruction of the Equipment, for an amount equal to the market value of the Equipment;
 - (iii) Insurance for and against any injury, illness or death to the Hirer, its officers, employees, contractors or agents or any other user of the Equipment;
 - (iv) worker's compensation insurance in respect of the Hirer, its officers, employees, contractors or agents or any other user of the Equipment; and
 - (v) any other matter which in Queensland Forklifts' reasonable opinion is desirable to be insured against and which it notifies to the Hirer in writing.
- (d) The Hirer will provide Queensland Forklifts, on demand, with all required Certificates of Currency of Insurance and will not do or permit to be done anything which would render any insurance void or voidable.

6. Indemnity

The Hirer agrees to indemnify, keep indemnified and hold harmless Queensland Forklifts from and against all claims, damages, liabilities, losses, demands, actions, costs and other expenses of whatever nature arising directly or indirectly from:

- (a) any breach of the Contract by the Hirer;
- (b) any act or omission of the Hirer, its officers, employees, contractors or agents or any user of the Equipment;
- (c) any negligent or wilful act or omission of the Hirer, or the Hirer's officers, employees, contractors or agents in relation to the Contract;
- (d) the possession, operation or use of the Equipment by the Hirer however arising;
- (e) any personal injury or death of any person or damage or destruction of any property arising from the use of the Equipment by the Hirer, or the Hirer's officers, employees, contractors or agents;
- (f) any theft, loss or damage to, or destruction of the Equipment while the Equipment is rented to the Hirer; and
- (g) any loss or damage arising out of the failure by the Hirer to take out insurance as required by this Contract.

This indemnity shall be a continuing indemnity.

7. **Hirer's Warranties and Representations**

The Hirer represents and warrants to Queensland Forklifts that:

- (a) it possesses and uses the Equipment at its own risk and releases and discharges Queensland Forklifts from any liability arising out of the use, possession or operation of the Equipment, including liability for property damage, personal injury or death;
- (b) it has inspected the Equipment and satisfied itself as to its condition, quality, safety, fitness for purpose and compliance with description; and
- (c) if the person whose signature appears on the Hire Agreement is not the Hirer, the person whose signature appears on the Hire Agreement has the proper authority to enter into the Contract on behalf of the Hirer, and that the Hirer will be bound by the Contract.

8. **Owner Not Liable**

- (a) Subject to clause 8(d), all warranties and conditions (whether express or implied) in relation to the Equipment are excluded from the Contract.
- (b) The Hirer acknowledges that it has had the opportunity to inspect the Equipment prior to taking the Equipment on hire, and is satisfied that it is in good and safe working condition.
- (c) Subject to clause 8(d), the Hirer agrees that Queensland Forklifts will not be liable for and the Hirer hereby releases Queensland Forklifts from all liability for any direct, indirect or consequential loss or damage suffered or incurred or which may be suffered or incurred by the Hirer or any of the Hirer's officers, employees, contractors or agents arising out of or in connection with the Contract, whether caused by any negligent act or omission of Queensland Forklifts or any of Queensland Forklifts' officers, employees, contractors or agents or otherwise, or the Hirer or any of the Hirer's officers, employees, contractors or agents or otherwise.
- (d) No term of the Contract is intended to exclude, restrict or modify any non-excludable terms and warranties implied under the Competition and Consumer Act 2010(Cth), any similar State or Territory legislation, or any other non-excludable implied warranties, and the terms of the Contract are to be read down to the extent that they would be inconsistent with a non-excludable term or warranty implied by law.

9. **Personal Property Securities Act 2009**

- (a) The Equipment will remain the property of Queensland Forklifts at all times.
- (b) The Hirer acknowledges and agrees with Queensland Forklifts that for the purposes of the Personal Property Securities Act 2009 (Cth) (**PPSA**), and all regulations made under the PPSA:
 - (i) the Contract constitutes a security agreement;
 - (ii) a security interest and if applicable a purchase money security interest (PMSI), is taken by Queensland Forklifts in respect of the Equipment, and is registrable on the Personal Property Securities Register (**PPSR**); and
 - (iii) Queensland Forklifts may at its discretion register a financing statement or financing change statement in respect of its security interest (including any PMSI).
- (c) The Hirer undertakes to:
 - (i) sign any and all further documents and provide any and all further information, which Queensland Forklifts may reasonably require to protect its rights in relation to the Equipment, to register a financing statement or a financing change statement on the Personal Property Securities Register established under the PPSA, or to maintain any registration of any security interest including any PMSI;
 - (ii) indemnify and upon demand reimburse Queensland Forklifts for all expenses incurred in protecting its rights in relation to the Equipment, registering a security interest, PMSI, financing statement or financing change statement on the PPSR, maintaining any registration or releasing any property secured;
 - (iii) not register a financing statement or financing change statement in relation to any security interest or any PMSI registered over the Hirer, without the prior written consent of Queensland Forklifts;
 - (iv) give Queensland Forklifts not less than fourteen (14) days prior written notice of any proposed changes in the Hirer's name or any other change in the Hirer's structure, operations, management or other details that may affect any registration of any security interest including any PMSI.
- (d) The Hirer agrees that to the extent mentioned in section 115(1)(a) to (r) (inclusive) of the PPSA, the parties contract out of each of the provisions of the PPSA mentioned in that section. The Hirer also waives its right to receive a copy of any financing statement, financing change statement or verification statement.

10. **Termination**

- (a) Queensland Forklifts may terminate the Contract immediately and without any liability to the Hirer if:
 - (i) the Hirer fails to pay an instalment of Rental Rates when due;
 - (ii) the Hirer breaches clause 4;
 - (iii) any item of Equipment is, as a result of the Hirer's action or inaction, lost, destroyed or damaged to the extent that repair is not economical (in Queensland Forklifts' reasonable opinion);
 - (iv) the Hirer is in breach of any other term of the Contract and fails to remedy the breach to Queensland Forklifts' reasonable satisfaction within five Business Days of Queensland Forklifts notifying the Hirer of the breach; or

- (v) the Hirer becomes insolvent, goes into liquidation, enters into a scheme of arrangement or appoints an administrator, or if the holder of any security over the Hirer or its assets becomes entitled to exercise any powers arising on default pursuant to that security or takes any action to enforce that security.
 - (b) If the Hirer terminates the Contract prior to the end of the Hire Period set out in the Hire Agreement, the Hirer must pay all of Queensland Forklifts' reasonable costs and expenses related to the early termination, including in respect of any equipment financing put in place by Queensland Forklifts in order to hire the Equipment to the Hirer.
 - (c) Upon the termination or expiration of the Contract for any reason, the Hirer must comply with all directions of Queensland Forklifts, including directions as to the return of the Equipment.
 - (d) Where the Hirer terminates under clause 10(a)(iii), the Hirer must pay to Queensland Forklifts, in addition to all other amounts payable under the Contract, the market value of the relevant Equipment.
 - (e) Nothing in this clause precludes Queensland Forklifts from taking action to enforce performance of the Contract by the Hirer, or to recover damages.
11. **After Hours Servicing and Repairs**
Where the Hirer requests Queensland Forklifts to attend to any servicing or repairs of the Equipment other than between 7.00am and 5.00pm on a Business Day, Queensland Forklifts may charge a reasonable call-out fee and may recover from the Hirer any other reasonable and related costs incurred by Queensland Forklifts.
12. **Holding Over**
If the Hirer remains in possession of the Equipment (with consent of Queensland Forklifts) after the end of the Hire Period set out in the Hire Agreement, it will be deemed to hold over on a monthly basis (and the Term will continue) on the same terms and conditions as in the Contract, and the Hirer must continue to pay the Rental Rates for the Equipment.
13. **No Assignment**
The Hirer cannot assign its rights and obligations under the Contract without the prior written consent of Queensland Forklifts. The Hirer is not permitted to sub-lease the Equipment to a third party without the prior written consent of Queensland Forklifts. Queensland Forklifts may assign its rights at any time.
14. **Variation**
Queensland Forklifts may vary these terms and conditions at any time by giving the Hirer notice in writing of the variations and the variation will apply to any Equipment hired after the date of such notification.
15. **Waiver**
The failure or delay in exercising a right does not constitute a waiver or affect that party's future ability to exercise that right.
16. **Governing Law and Jurisdiction**
The Contract is governed by the law in force in the place where the Equipment was hired and the parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory.
17. **Taxes and Duties**
The Hirer must pay or reimburse Queensland Forklifts for all taxes, charges and duties (including any Goods and Services Tax) due or payable to any governmental or statutory authority in connection with the hire of the Equipment.
18. **Operation of This Contract**
 - (a) The Contract will have precedence over all other documents, correspondence or other writing at any time passing between Queensland Forklifts and the Hirer in connection with the hire of the Equipment.
 - (b) Where there is any inconsistency between the Hire Agreement and these Terms, the Hire Agreement will prevail to the extent of the inconsistency.