

## RENTAL TERMS AND CONDITIONS OF SUPPLY

1. For any and all equipment rentals, the Supplier ( " Owner " ) agrees to rent to the Customer ( " Renter " ) and the Renter agrees to rent from the Owner on the following terms and Conditions ( to be read in conjunction with the General Terms and Conditions ):

IT IS HEREBY AGREED:-

- a. the Owner has acquired or will acquire the Equipment at the request of the Renter;
- b. the Owner may sell or assign either absolutely or by way of security its rights under this Agreement and to the Equipment to any person;
- c. the Renter has no right, property or interest in the Equipment other than as a Bailee;
- d. the Renter must take delivery of the Equipment and must at all times keep the Equipment at the Site Address (unless otherwise agreed by the Owner) at its own cost;
- e. the obligations to make rental payments, the maintenance and repair obligations, the insurance obligations, the obligations in relation to possession of the Equipment and the obligation to remain solvent are essential terms of this Agreement and the breach, non-observance or non-performance by the Renter of any one or more of those terms will be deemed to be a breach of an essential term of this Agreement by the Renter;
- f. the Renter does not have any right, obligation or option to purchase the Equipment;
- g. the Renter has satisfied itself as to the condition of the Equipment and the suitability of the Equipment for its purposes and the Renter has not relied on the Owner in deciding to enter into this Agreement;
- h. subject to 1(i) below:
  - i. all express and implied terms, conditions, guarantees and warranties (other than the ones set out in this Agreement) are excluded;
  - ii. the Owner makes no representation or warranty as to the condition, specifications, quality, fitness for purpose, suitability or safety of the Equipment or as to the taxation treatment or accounting classification of any transaction evidenced by this Agreement; and
  - iii. the Owner is not liable (and is indemnified by the Renter) for any damage, injury , death or loss suffered by any person or property arising from the possession, operation or use of the Equipment;
- i. Under the Australian Consumer Law contained in Schedule Two of the Competition and Consumer Act 2010 (Cth) (the "ACL"), a number of guarantees may apply in respect of the supply of the Equipment and provision of services under this Agreement, including guarantees that:
  - i. the Equipment will be of acceptable quality;
  - ii. the Equipment will be fit for any disclosed purpose or any purpose that the Owner represents they are fit for;
  - iii. the Owner will comply with any express warranties in respect of the Equipment;

- iv. any services will be provided with due care and skill;
  - v. any services will be fit for a particular purpose; and
  - vi. any services will be supplied within a reasonable time;
  - vii. if the Renter is a 'consumer' as defined by clause 3 of the ACL.
- j. to the extent that the ACL or any other comparable legislation applies to this Agreement and implies any condition, warranty or guarantee in relation to the supply of the Equipment or provision of any services which cannot be excluded, then to the extent permitted by law, the Owner's liability for a breach of the implied condition, warranty or guarantee will be limited, at the option and discretion of the Owner to any one or more of the following:
- i. in the case of Equipment, to the resupply of equipment on terms which are similar to the original supply of the Equipment, or the payment to the Renter for the Renter to obtain a similar supply of equivalent equipment to the Equipment; and/or
  - ii. in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again;
- k. in no event will the Owner be liable for any indirect, consequential or economic loss or damage arising under or in connection with this Agreement.

**2. The Renter agrees to pay the Owner:**

- a. the Rental Payments at the agreed rate. The Renter agrees that it may not withhold any payment, or any part of any payment due under the Agreement, or make a deduction from any such payment for any reason whatsoever;
- b. any interest payable at the Corporate Overdraft Reference Rate published by the Commonwealth Bank of Australia on the previous business day on all overdue accounts from the date that payment is due until the date of full payment;
- c. any reasonable expenses the Owner may incur in or arising out of making good failure by the Renter to comply with any obligation under this Agreement or making or attempting to retake possession of or storing the Equipment;
- d. the reasonable cost of repairing any damage caused by accidental, deliberate or negligent misuse or abuse by failure to comply with clause 3 or by any cause other than fair wear and tear as defined in the AITA Fair Wear and Tear Guide Industrial Trucks;
- e. if in the reasonable opinion of the Owner, the Equipment is lost or damaged beyond repair, the sum of an amount which would have been payable under the Agreement on an early termination of the Agreement following default which is referable to the affected Equipment plus an amount which the Owner notifies the Renter is, as the date of the Owner's notification, the gross residual value referable to the affected Equipment;
- f. any excess use charge set when the Customer uses the Equipment in excess of the number of hours agreed to;
- g. any stamp duty and any goods and services tax or other fees and imposts payable in respect of or arising out of this Agreement or any supply or transaction under this Agreement including to the extent that such duties, taxes, fees and imposts arise after the date of this Agreement as a result of any such change in legislation; and
- h. If the Renter has elected damage waiver cover, the cost of that damage waiver does not replace insurance cover and does not cover damage caused by deliberate or negligent misuse or abuse.

### **3. The Renter Agrees to:**

- a. keep the Equipment in good order, condition and repair (fair wear and tear accepted as defined in the AITA Fair Wear and Tear Guide Industrial Trucks);
- b. inspect the Equipment and comply with the daily or the regular checks specified in the manufacturer's operator manual supplied with the Equipment, arrange regular servicing of the Equipment by the Owner in accordance with the manufacturer's operator manual, ensure that the Equipment is operated only by qualified trained and licensed personnel in accordance with the manufacturer's instructions and is not subject to misuse or abuse. The Renter agrees to make the Equipment available during normal business hours or as otherwise contracted between the parties for repairs or for servicing at (or no later than 50 hours after) the proper hour meter readings, ensure that only parts approved by the Owner are used in the Equipment and provide the Owner with access to inspect the Equipment during business hours;
- c. notify the Owner immediately of any loss or damage to or malfunctioning of the Equipment which renders it liable to be unsafe or may cause further deterioration, and refrain from using the Equipment until it is repaired. The Renter agrees to comply with all acts, regulations and by-laws relating to the Equipment and the use thereof;
- d. insure and keep the Equipment insured against fire, accident and theft and such other risks as the Owner may require for an amount equal to the full insurable value of the Equipment with a reputable insurer licensed in Australia by the Australian Prudential Regulation Authority or otherwise agreed by the Owner in writing noting the interest of the Owner and its assigns and the Renter for their respective rights and interests. The Renter must maintain with insurers approved by the Owner public risk insurance in respect of the Equipment. The Renter must not enforce, conduct, settle or compromise claims under the policies of insurance required by this clause whether or not a policy also covers other property. The Owner is entitled to the proceeds of an insurance policy in connection with the Equipment and may apply them in its discretion either towards replacement or reinstatement of the Equipment or towards satisfaction of the Renter's obligations under this Agreement. The Renter must give the Owner on request a copy of any certificate of currency or renewal in relation to the Equipment;
- e. keep the equipment under the control of the Renter at the Site Address;
- f. indemnify the Owner, its agents and employees and pay the Owner for any claims whatsoever by the Renter or any other person or entity in respect of any liability, loss, injury or damage arising out of the use or operation of the Equipment or out of any defect therein or in any manner relating to the Equipment, or arising from any breach or early termination of this Agreement;
- g. deliver the Equipment in good order, repair and condition at the Renter's expense to the Owner at its address at the expiration or sooner determination of the Agreement;
- h. register the Equipment at the Renter's expense, if applicable, on any register required by the Owner;
- i. provide such financial or other information about the Renter as the Owner reasonably requires;
- j. notify the Owner in writing prior to any change in the Renter's name, address or contact details; and
- k. if the Equipment is required to be registered, keep the Equipment registered at all times.

### **4. The Renter will NOT without the prior written consent of the Owner:**

- a. alter or make any addition or repair to the Equipment, alter any identifying number or mark on the Equipment or assign this Agreement or the Renter's rights under this Agreement;
- b. attempt or purport to sell, dispose of or encumber the Equipment in any way;
- c. change the application, or environment or Site Address of the Equipment and the Renter acknowledges that the Owner, if it gives consent to any of the above, may require an appropriate variation in the Rental Payments;
- d. do or permit or suffer to be done anything which might or could prejudice any insurance; or
- e. use or install the Equipment in a manner which could cause the Equipment to become a fixture to land.

**5. An Event of Default occurs if:**

- a. the Renter fails to pay any amount payable under this Agreement, including Rental Payments and interest;
- b. the Renter is in breach of any of the terms and conditions contained in this Agreement and has failed to rectify the breach within 7 Days of written notice;
- c. a representation, warranty or statement given or repeated by the Renter is or becomes untrue, incomplete, misleading or deceptive;
- d. the Renter commits any act of bankruptcy or being a company goes into liquidation or receivership or an administrator is appointed to it, it stops payment, is unable to pay its debts when they fall due, ceases to carry on its business or a material part of it, or an order is made or a resolution is passed for an arrangement with creditors or the winding up of the Renter, or execution or distress is levied against any assets of the Renter;
- e. the Renter fails to comply with any requirement for insurance under this Agreement including if any insurance proposal made by the Renter in respect of the Equipment is declined or any insurance policy in respect of the Equipment is cancelled;
- f. this Agreement is void, voidable or otherwise unenforceable by the Owner or is claimed to be so by the Renter;
- g. any authorisation necessary to enable the Renter to comply with its obligations under this Agreement is withheld or ceases to be in full force and effect;
- h. the Renter permits a security interest to be created over the Equipment;
- i. the Equipment is abandoned or condemned or is seized or appropriated by any lawful authority and not released within 5 business days or is attached, sequestrated, impounded or restrained upon and not released within 5 business days;
- j. the Renter does or causes to be done or permits any act or thing likely to endanger life, safety or condition of the Equipment, or the Renter is convicted of an indictable offence or is sentenced to imprisonment; or
- k. the Renter defaults (however defined) under any other Agreement between the Owner and the Renter.

**6 If the Renter breaches an essential term of this Agreement, or an Event of Default under clause 5 occurs, then such breach or default will constitute a repudiation by the Renter and:**

- a. the Owner may at its absolute discretion and without prejudice to any other remedies take whatever action it considers appropriate to enforce the performance of this Agreement by the enter or accept the repudiation of this Agreement;
- b. if the Owner so elects, the Renter is obliged immediately to:
  - i. return the Equipment of the Owner to a place specified by the Owner with its certificate of registration, manuals and log book;
  - ii. pay the Owner for any loss arising by reason of the Owner's inability to obtain or reinvest the funds used to acquire the Equipment, which funds it would have received had the Agreement terminated by effluxion of time and including any loss arising from termination by the Owner of any agreement it has entered for funding or hedging its exposure under this Agreement, subject to the Owner's obligation to mitigate such loss;
  - iii. pay to the Owner all moneys then payable to the Owner under this Agreement, including all costs and expenses the Owner incurs in or arising out of the Renter's default (including and without limitation, any costs incurred for the preparation and service of any notice of default or notice of termination and any solicitors' fees on a solicitor-client basis); and
  - iv. pay the Owner the balance of the unpaid Rental Payments still to fall due discounted to its present value at a rate which is 3% below the rate implicit in calculating the Rental Payments in this agreement, costs incurred in repossessing, storing, valuing, insuring, repairing and selling the Equipment and any other amounts to compensate the Owner for the loss suffered, subject to the Owner's obligation to mitigate such loss; and

- c. subject to prior written notice, the Renter authorises the Owner to enter any premises where the Equipment may be located in order to repossess the Equipment and waives and releases the Owner from any liability for any damage or loss occasioned thereby, except to the extent caused by the Owner's negligence.

**7 It is expressly agreed as follows:**

- a. this Agreement will not be binding on the Owner until it has been executed by the Owner notwithstanding any pre-payment of money by the Renter;
- b. the Equipment provided by the Owner will be used by the Renter for business purposes only and is not for household or domestic purposes;
- c. it is acknowledged that the Rental Payments may include amounts payable for tyre replacement, damage waiver, maintenance and servicing of Equipment (the "Services"). The Owner enters into this Agreement in its own right and not on behalf of, or as agent for, any principal, in respect of any Services contained in this Agreement. For the avoidance of doubt, the Renter acknowledges that any Services fall outside the Owner's appointment as agent for any principal and any liability arising from a breach of any obligation to provide Services remains solely with the Owner in its own right;
- d. by signing this Agreement, the Renter acknowledges that, other than in respect of providing the Services, the Owner may enter into this Agreement as agent for a principal (either disclosed or undisclosed) and agrees that:
  - i. the principal may pay the Owner a commission, fee or other remuneration calculated by determining the difference between the value of the rent provided in the hire arrangement between the Owner and the principal and the rate used in calculating the Rental Payments;
  - ii. the principal may also pay the Owner a commission, fee or other remuneration calculated by reference to the total value or volume of all transactions, including this transaction, introduced to the principal by the Owner; and
  - iii. the commission, fee or other remuneration paid to the Owner by the principal may have been taken into account in calculating the Rental Payments;
- e. this Agreement binds the Renter its successors and assigns and is for the benefit of the Owner its successors and assigns;
- f. subject to clause 3a, the Owner will carry out maintenance and repairs on the Equipment throughout the term of this Agreement;
- g. any notice required to be given to the Renter under this Agreement may be sent by facsimile or post to the Renter at its last known place of business and will be deemed to have been received upon production of the transmission report or the second business day following such posting;
- h. if the Renter is required to do any matter or thing under the terms of this Agreement or by virtue of any notice served under this Agreement within a stipulated time, time will be of the essence in respect of that stipulated time;
- i. any waiver by the Owner of any default or breach or repudiation of this Agreement will not affect the rights of the Owner in respect of any further or continuing default breach or repudiation;
- j. an invoice or notice given by the Owner is prima facie evidence of the amount of moneys due, owing or recoverable from the Renter under this Agreement subject to obvious clerical error, fraud or negligence by the Owner;
- k. that in the event that any provision or part of any provision contained in this Agreement is rendered void, invalid or unenforceable then such provision or any part thereof will be severed from this Agreement without affecting the remaining provisions of this Agreement;
- l. the Renter's obligations to make payments and otherwise perform its obligations under this Agreement will continue regardless of any defect in, or lack of performance of, the Equipment and the Renter has no right to claim any set-off or to withhold any payments;

- m. that the Owner may exchange the Equipment with other Equipment of a like or better type at any time during this Agreement and the replacement will be treated as the Equipment for the purposes of this Agreement;
- n. the person signing this Agreement for the Renter is authorised to sign and deliver it on the Renter's behalf;
- o. this Agreement, together with the terms and conditions of the Commercial Credit Application, contains all the terms and conditions and, provisions and arrangements that have been agreed between the Owner and the Renter in respect of this Agreement;
- p. if the Renter fails to return the Equipment at the expiration of this Agreement then the period will be deemed extended from month to month at the rental stipulated in the Schedule for this holding over period and upon the same terms and conditions herein but so that such extended period may be determined by the Owner demanding possession at any time or by the Renter delivering the Equipment to the Owner in the manner required under clause 3g;
- q. if the Renter requests a variation of the initial term of rental or of the Equipment rented under this Agreement, the Owner may agree to such variation and forward an acknowledgement of variation to the Renter setting out details of the variation. Upon the signing of the acknowledgment of variation by the Renter the variation is binding on the Renter. The Rental Payments payable under this Agreement will be varied accordingly and in all other respects the terms and conditions of this Agreement remain unchanged. If the Owner does not receive the acknowledgement of variation duly signed by the Renter within fourteen days of sending its acknowledgment to the Renter, the Owner may elect not to be bound by such variation;
- r. the Agreement is construed in accordance with the laws of the state or territory specified in the Address by whose jurisdiction and decision the parties hereby agree to be bound; and
- s. the indemnities and releases set out in this Agreement continue in full force and effect notwithstanding the termination (however occurring) of this Agreement.

**8 The Renter acknowledges that:**

- a. this Agreement creates a security interest under the Personal Property Securities Act 2009 (Cth) (the 'PPSA') in the Equipment and any proceeds from the Equipment;
- b. it has received value as at the date of this Agreement;
- c. where the Owner has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply;
- d. the Owner is not obliged to act in any way to dispose of or to retain any Equipment which has been seized by the Owner pursuant to its rights under the PPSA; and
- e. it has not agreed to postpone the time for attachment of the security interest granted to the Owner under this Agreement.

**9 The Renter undertakes that it:**

- a. must, at the Owner's request, promptly execute any documents and do anything required to register the Owner's security interest in the Equipment under the PPSA;
- b. must indemnify, and upon demand, reimburse the Owner for all reasonable expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register but excluding any expense relating to the initial registration of a financing statement made on or about the date of this Agreement, and for the enforcement of any rights arising out of the Owner's security interest;
- c. must keep full and complete records of the Equipment;
- d. must not without the prior written consent of the Owner, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Equipment or any interest in the Equipment (or purport or attempt to purport to do such thing) or permit any lien over the Equipment;

- e. authorises the Owner to apply any money the Owner receives from the Renter towards debts, charges and expenses (including legal costs incurred by the Owner) in any priority the Owner determines in its sole discretion for whatever reason, including in order to maintain the security interest in the Equipment created by this Agreement; and
- f. must not register a financing change statement or a change demand without the prior written consent of the Owner.

**10 So far as is permitted by the PPSA, the Renter waives its right:**

- a. to receive a copy of any verification statement or financing change statement or a statement of account on sale of the Equipment;
- b. to receive any notice required under the PPSA, including a notice that the Owner intends to sell the Equipment or to retain the Equipment on enforcement of the security interest granted to the Owner;
- c. to object to a proposal by the Owner to retain the Equipment in satisfaction of any obligation owed by the Renter to the Owner;
- d. to reinstate the security agreement by payment of any amounts owing or by remedy of any default where the Owner has the right to dispose of or retain the Equipment; and
- e. where any Equipment becomes an accession as defined in the PPSA, to prevent the Owner removing the Equipment even if the removal will cause damage to the Renter's property, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession, under the PPSA..

**For the avoidance of doubt – the customer is always responsible for:**

- Insuring all rental equipment whilst on hire.
- All rental charges until the equipment is returned to the owner in pre-rent condition.
- Any Loss or damage to the equipment whilst on hire, including rims & tyres, any cracks or welding repairs, fuel & cleaning.
- Call outs and service costs outside of normal trading hours.
- Performing all daily checks and ensuring that operators are suitably qualified and using equipment, in accordance with operator handbooks.
- No stand downs will apply unless agreed prior with the owner, in writing.