



## Terms & Conditions of Hire

1. **Agreement:** SmartForks Pty Ltd T/A Suncoast Forklifts (known as the '*Hiree*') hereby agree to hire to You (known as the '*Hirer*'), subject to the following conditions, whether signed or not, the use of the Machine and or Equipment (known as the '*Equipment*') for the **rental** (the cost to hire) payable by the *Hirer to the Hiree* in an amount as agreed between both parties
2. **Rental Charges:**
  - a) Rental charges begin from agreed date of delivery of the machine.
  - b) Rental charges are subject to review & CPI increases.
  - c) Rental charges may vary from time to time and charged as agreed upon by both parties.
  - d) **Security Deposits:** for Long Term Hire (and Casual Hire with a term exceeding One (1) month) a security deposit equal to four (4) weekly payments. Casual Hire (less than one (1) month hire) a security deposit equal to a minimum hire charge plus pickup and delivery charges to the hire point. For both Long Term and Casual Hire Security Deposit Payments will be held by the *Hiree* and refunded at the end of the hire term. This deposit can be utilised by the *Hiree* to cover or partially cover any unpaid Fees or charges should the *Hirer* fail to meet its commitments under this agreement. If these funds are utilised by the *Hiree*, it in no way diminishes the outstanding amount owed other than by reducing the amount owed by the amount utilised.
  - e) For any hire that exceeds four (4) weeks, the hire rates agreed are based on the hire type and term specified in this agreement and schedule of *Equipment*. For any hire that does not meet the minimum hire period will be subject to a recharge of the applicable hire rate for the period taken.
3. **Other Fees:**
  - a) Debt collection and or legal fees may apply to accounts exceeding the *Hiree* agreed terms and conditions and payable by you.
  - b) Late Fee: The *Hiree* reserves the right to charge an administration fee for late payments equal to the prevailing overdraft rate as advertised by the Commonwealth Bank of Australia on all amounts outstanding or in arrears and is calculated on compounding daily balances.
  - c) Administration Fuel Fee: The *Hiree* reserves the right to charge an administration fee for the activity of filling up or topping up the fuel tank of the *Equipment* should the *Hirer* fail to do so in terms of clause 4 [e] below.
  - d) Penalty fees apply for exceeding any specified weekly hour limits.
4. **Your Risk:**
  - a) The *Hirer* shall at all times bear the risk of loss, theft or damage to the *Equipment* and shall bear the costs of replacing or repairing any such theft, loss or damage to the equipment regardless of who it was caused by during the hire period except where any such loss, theft or damage was caused by the *Hirees* actions. The assessment value of such damage or loss is at the sole discretion of the *Hiree*
  - b) **The Cost to Insure**– Prior to delivery, the *Hirer* shall arrange for the insurance of the *Equipment* and the cover provided shall cover fire, theft and damage associated with the operation of the *Equipment*. The *Hirer* agrees to provide the *Hiree* details of such insurance when requested.
  - c) **High Risk Licence** - It is the *Hirer's* responsibility to ensure that all operators hold a current valid licence and are competent to operate machinery.
  - d) **Maintenance:** The *Hiree* will be responsible for the maintenance and service of the *Equipment* for the term of the hire (excluding misuse, damage, abuse and beyond normal wear and tear). The *Hirer* shall within reason make the *Equipment* available for scheduled servicing during the *Hiree's* normal operating hours. A suitable location at the *Hirer's* place of business shall be made available for scheduled servicing to be carried out. Unless otherwise agreed, repairs or breakdowns reported will be carried out at the earliest possible convenience of the *Hiree* during the *Hiree's* normal hours of operation.



It is the *Hirer's* responsibility to ensure that daily checks are made on the *Equipment* as to battery, radiator, water, oils and safety working checks as per the *Safety Check List* provided and notify the *Hiree* immediately of any defects identified.

The *Safety Check Lists* must be provided for inspection to the *Hirees' Staff* at the time of the maintenance and service of the *Equipment*.

All repair work must be authorised by the Hiree

Excessively soiled *Equipment* will incur a cleaning fee.

- e) **Fuel [Diesel/Petrol]:** Fuel is charged at the rate present at the time of re-filling per litre used or tank or part thereof at the Fuel Bowser rate at the time of filling up or topping up the tank. All fuel used will be charged out to the *Hirer* plus any administration fee if applicable.
- f) **LPG GAS:** Gas is charged out per tank or part thereof at the rate present at the time of re-filling.
- g) **Tyres:** All punctures replacements due to damage from the *Hirers* use will be the *Hirer's* responsibility.

**Long Term Hire only:** The Hire Agreement allows for one (1) set of tyres per year.

#### 5. You agree that:

- a) **Delivery and Location of Equipment:** Delivery shall be the date set out in the Hire Agreement. The *Hirer* shall at all times use the *Equipment* only at the site address specified on the Hire Agreement.

The *Hirer* shall at no time remove the machine or *Equipment* from its location or make available or lend such *Equipment* to other business or persons unless prior written consent is obtained from the *Hiree*. The *Hiree* reserves the right to have reasonable access to *Equipment* for maintenance & reserve the right to remove *Equipment* from site and the *Hirer* agrees that it has no right or title over any *Equipment* lent or hired to them by the *Hiree*.

The *Hirer* further agrees that it will ensure the safe keeping of the machine and *Equipment*.

- b) **Replacement of Equipment:** In the event of a major breakdown, the *Hiree* will use its best endeavours to supply replacement *Equipment* to the *Hirer* but makes no guarantees that it can. The selection of this *Equipment* shall at all times be at the sole discretion of the *Hiree*.
- c) **Safety:** The *Hirer* agrees and ensure that others under their care do the same, to use, operate the Machine and *Equipment* in a safe and careful manner as set out in the Workplace Health & Safety Act 2011 and any other associated codes of practice and in accordance with any Council, State and Federal Government Laws and ordinances and to ensure that all operators are competent to be able to use such machinery or *Equipment*.
- d) **Accidents and Incidents:** The *Hirer* agrees that in the event of any accident or incident or notifiable accident or incident as defined by the Workplace Health & Safety Act 2011 and/or and any other associated codes of practice and in accordance with any Council, State and Federal Government Laws and ordinances, where either the forklift on hire, the *Hirer's* person or property or a third party person or property is damaged, the *Hirer* will be responsible for all damage costs, insurance cover and excess charges related to the said accident. The *Hirer* further agrees that they will notify the *Hiree*, in writing and within 24 hours of the accident/incident of the details relating to the accident/incident.
- e) **Liability:** The *Hirees'* liability hereunder or in connection with the *Equipment* for damages whether in contract, tort or otherwise shall not exceed or go beyond the obligation to replace, repair or correct the *Equipment*. The *Hirees'* shall not be liable for damages or amenable to claims except to the extent expressly stated herein and in no event shall the *Hiree* be liable for any special, consequential or incidental damages relating to the *Equipment*, its use, non-use or any other materials or advice relating to the *Equipment*.
- f) **Indemnity:** The *Hirer* shall indemnify and hold indemnified the *Hiree* and their staff from any and against every action, claim, demand, loss, damage, cost and expense which the *Hirer* may sustain or incur or for which the *Hirer* may be or become liable in respect of loss or damage of whatsoever nature and howsoever sustained which is caused by or arises out of or which is incidental to the exercise by the *Hirer* or its employees or agents of the *Equipment* or the failure of the *Hirer* to observe or perform a provision of the Agreement and for the failure to safely use the *Equipment* in terms of the manufactures specification and safe work practices as defined by the Queensland Workplace Health & Safety Act 2011.



g) **Roll over of Contract:** This Agreement shall remain in force for the entire term and unless notified in writing at least one [1] month before the expiry of its term, the agreement shall roll over for a subsequent term equal to the original term and continue at such frequencies until termination is reached.

h) **Termination, Breach or cancellation of Contract:**

- The *Hiree* may terminate this Contract without notice if at any time, you are in default of any of your obligations under this Contract and in our opinion the default is capable of remedy, but remains un-remedied, or you become insolvent or are placed in administration or have any receiver appointed.
- If either party fails to provide adequate notice, the other party may take breach action by notifying the other party that they are in breach of the agreement and take action to the fullest extent that the law provides for recovery of any financial loss.
- **Injunctive Relief:** The *Hirer* acknowledges that the *Hiree* may obtain injunctive relief against it to restrain any breach of this Agreement or prevent any anticipated breach of this Contract (where the *Hirer* has by its words or conduct indicated an intent to breach its terms) and that such remedy shall be in addition to any award or damages which may be made in favour of the *Hiree*.
- **Warranties:** There are no warranties made by the *Hiree* express or implied which extend beyond the description of the machine and /or *Equipment* in Schedule A of this Contract.

6. **Dispute Resolution:** In the event of any dispute arising between the *Hiree* and the *Hirer* in respect of or connection with this Agreement (including validity breach or termination of it) the parties will, without prejudice to any other right or entitlement they may have pursuant to this Contract or otherwise use their best endeavours to resolve that dispute using informal dispute resolution technique such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique.

The rules governing any such technique adopted shall be as agreed between the parties or as recommended by the Queensland Court system. If the dispute is not resolved by such agreement within thirty (30) days of written notice of the dispute being given by any party to the dispute to the other (or within such further period as is agreed in writing between them), either of the parties to the dispute may seek a resolution of the dispute before a Court.

7. **Interpretation:** For the purpose of this Agreement and unless the context otherwise admits, words importing the singular include the plural and vice versa; words of the masculine gender include the feminine and vice versa.

Also for the purpose of this Agreement, the *Hiree* includes all successors, assignees and transmitter of the business of the *Hiree*.

8. **Notices:** Any notices hereunder by one party may be sent either by personal delivery or by pre-paid mail to the last known address of the other. Notices sent by mail are deemed to be received when delivered in the ordinary course of the post.

9. **Non-Assignability of Agreement:** The *Hirer* shall not transfer or assign, whether in whole or part, the benefit of this Agreement or any rights or obligations hereunder without the prior written consent of the *Hiree*.

10. **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Queensland and both parties submit to the non-exclusive jurisdiction of the courts of Queensland.

The headings used in this Agreement are intended only for convenience and shall not be considered in construing this agreement.

This Agreement can be modified amended or any of its terms waived only by a written notice signed by both parties.

If any provision of this Agreement shall be held invalid, illegal or unenforceable the remaining provisions of the Agreement shall remain in full force and effect and the invalid, illegal or unenforceable provision shall be limited or eliminated only to the extent necessary to remove such invalidity, illegality or unenforceability in accordance with the applicable law at that time.



No remedy made available to the *Hiree* by any of the provisions of this Agreement is intended to be exclusive of any other remedy. Each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder as well as those remedies existing at law in equity by statute or otherwise.

#### 11. Personal Property Security Interest.

- a) The *Hiree* may register any actual or impending security interest in relation to any security interest contemplated or constituted by this Hire Agreement in the *Equipment* and the proceeds arising in respect of any dealing in the *Equipment*.
- b) The *Hirer* will undertake to do anything that is required by the *Hiree* so that the *Hiree* may acquire and maintain one or more perfected security interests under the PPSA in respect of the *Equipment* and its proceeds.
- c) The *Hirer* must not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without the *Hirees* prior written consent
- d) The *Hirer* must not create or purport to create any security interest in the *Equipment*, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the *Equipment* in favour of a third party without The *Hirees* written consent.
- e) The *Hirer* waives their right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Hire Agreement.
- f) The *Hirer* agrees to notify the *Hiree* in writing of any changes to the *Hirers* details set out on the Hire Agreement within 5 days from the date of any change.