

# Terms and Conditions

## WAVERLEY FORKLIFTS SALES PTY LTD (ACN 097 548 957) MASTER EQUIPMENT HIRE AGREEMENT

### 1. INTERPRETATION

In the Master Equipment Hire Agreement, including these terms and conditions:

- "Equipment" means the forklift(s) and any other equipment hired to the Hirer by Waverley Forklifts Sales from time to time and described in one or more Schedules; "Hire Period" means unless otherwise agreed, in relation to particular Equipment the period beginning on the Start Hire Date as specified in the relevant Schedule and ending when the Hirer is given an Off Hire Number by Waverley Forklifts Sales;
- "Hirer" means the person(s) and/or entity named in the details section on the cover of the Master Equipment Hire Agreement and in one or more Schedules;
- "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;
- "Master Equipment Hire Agreement" means this document comprising the details of the Hire and Waverley Forklifts Sales on the cover page and these terms and conditions, together with each Schedule in relation to the hire of Equipment by the Hirer, and the hire details and any additional or special conditions described in a Schedule;
- "Schedule" means a Master Equipment Hire Agreement Schedule, or a delivery or hire docket or other similar document, whether or not signed by the Hirer, in relation to the hire of Equipment by Waverley Forklifts Sales to the Hirer, and which may include details of the Equipment hired, the Hire Period, hire rates and other applicable charges and other relevant information relating to a hire; and
- "Waverley Forklifts Sales" means Waverley Forklifts Sales Pty Ltd (ACN 097 548 957) or a related body corporate.

### 2. CONTRACT TERMS AND HIRE OF EQUIPMENT

Subject to the terms of the Master Equipment Hire Agreement, Waverley Forklifts Sales agrees to hire to the Hirer the Equipment as detailed in a Schedule, for the Hire Period specified in that Schedule. Each Schedule and the hire of Equipment to which it relates, is not a separate contract but is subject to and forms part of the Master Equipment Hire Agreement. Nothing requires Waverley Forklifts Sales to agree to hire any Equipment to the Hirer, and Waverley Forklifts Sales may decline to hire Equipment at any time.

### 3. WAVERLEY FORKLIFTS SALES OBLIGATIONS

Waverley Forklifts Sales will deliver the Equipment to the Hirer, or have the Equipment ready (if the Hirer is to collect), as close to the date and time as outlined in the relevant Schedule or otherwise agreed, as reasonably practicable. Waverley Forklifts Sales will not be liable for any loss or damage suffered by the Hirer if for any reason Waverley Forklifts Sales fails to deliver or have the Equipment, ready by that time.

### 4. HIRER'S OBLIGATIONS GENERAL

The Hirer agrees to comply with the following obligations:

- To pay to Waverley Forklifts Sales the fees for hire of the Equipment as well as any applicable stamp duty, GST or other charges, duties and taxes, as set out in the Master Equipment Hire Agreement, the relevant Schedule, or otherwise invoiced by Waverley Forklifts Sales. Payment to be made within thirty (30) days of the date of the relevant invoice;
- To pay to Waverley Forklifts Sales immediately upon demand such additional fees and charges as invoiced to the Hirer by Waverley Forklifts Sales from time to time. Such fees and charges to be paid by the Hirer within thirty (30) days of the date of the relevant invoice;
- To take proper care of the Equipment, and keep the Equipment safe and secure, at all times until collected by Waverley Forklifts Sales or returned to Waverley Forklifts Sales;
- To use the Equipment only within its rated capacity and in accordance with manufacturers' or any other instructions, and to keep the Equipment in good and safe working condition;
- To locate and use the Equipment only at the place of delivery outlined in the relevant Schedule or as otherwise agreed in writing by Waverley Forklifts Sales;
- To comply strictly with all laws, rules, regulations and by laws of any government or authority with respect to use of the Equipment;
- To only use the Equipment for the purpose for which it is intended;
- To ensure that the Equipment is only operated by persons properly qualified and licensed by the appropriate regulatory authority to do so;
- To provide a safe workplace for any employees, contractors or agents of the Hirer and Waverley Forklifts Sales, or any other persons on the site where the Equipment is being located or operated. The Hirer must immediately notify Waverley Forklifts Sales 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;
- To 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 change, any batteries on the Equipment;
- To permit Waverley Forklifts Sales to inspect the Equipment at the location where the Equipment was delivered, or otherwise located as agreed in writing between Waverley Forklifts Sales and the Hirer, as often as Waverley Forklifts Sales reasonably requires;
- To allow Waverley Forklifts Sales upon giving reasonable notice to the Hirer, to enter the site where the Equipment is located:
  - for the purpose of inspecting the Equipment or carrying out any necessary repairs to or maintenance of the Equipment;
  - to enable Waverley Forklifts Sales to collect or remove the Equipment upon termination of the Master Equipment Hire Agreement; or
  - to enable Waverley Forklifts Sales to recover the Equipment, if at any time Waverley Forklifts Sales reasonably considers it necessary to recover the Equipment in order to protect it from loss or damage or to protect the rights of Waverley Forklifts Sales or any other person in relation to the Equipment;
- To immediately notify Waverley Forklifts Sales of any loss or damage to the Equipment, or if the Equipment is not working properly;
- Not repair or attempt to repair, alter or add to the Equipment without the prior written consent of Waverley Forklifts Sales;
- Not to damage, alter, or remove any plates, numbers, identifying marks, notices or safety information, that is fixed to the Equipment;
- Not to allow any sub hire or other arrangement with respect to the use of the Equipment by any other person, without the prior written approval of Waverley Forklifts Sales, and if that approval is granted, to ensure that any sub hire or other arrangement is at all times subject to the rights of Waverley Forklifts Sales under the Master Equipment Hire Agreement;
- To return the Equipment to Waverley Forklifts Sales or to make the Equipment available for collection by Waverley Forklifts Sales (as the case may be), in a clean state and in good order and condition as hired, fair wear and tear only excepted;
- To pay to Waverley Forklifts Sales at the rate of 15% per annum, interest on any monies owing pursuant to the Master Equipment Hire Agreement for more than thirty (30) days after the due date, until the outstanding amount is paid in full;
- At the conclusion of the use by the Hirer of the Equipment, to telephone Waverley Forklifts Sales and to advise Waverley Forklifts Sales thereof and to record the "Off Hire Number" given by Waverley Forklifts Sales to the Hirer in that event;
- To not do, or permit to be done, any act which infringes the Intellectual Property Rights of Waverley Forklifts Sales; and
- To obtain any necessary consents or authorisations that are required in order to enable Waverley Forklifts Sales to exercise its rights under the Master Equipment Hire Agreement, including the consent of the owner or occupier of any site where the Equipment is located to Waverley Forklifts Sales entering that site in order to exercise its rights.

### 5. LIABILITY AND INSURANCE

(a) The Hirer must insure in the joint names of the Hirer and Waverley Forklifts Sales for and against:

- Public liability for loss, injury (including illness), damage or death to any person or property arising out of the hire 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;
- any theft, loss or damage to, or destruction of the Equipment;
- any injury, illness or death to the Hirer, its officers, employees, contractors or agents or any other user of the Equipment;
- worker's compensation insurance in respect of the Hirer, its officers, employees, contractors or agents or any other user of the Equipment; and
- any other matter which in Waverley Forklifts Sales' absolute discretion is desirable to be insured against.

(b) The Hirer will provide Waverley Forklifts Sales, on demand, with all 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 Waverley Forklifts Sales from and against all claims, damages, liabilities, losses, demands, actions, costs and other expenses of whatever nature arising directly or indirectly from:

- any breach of the Master Equipment Hire Agreement by the Hirer;
- any act or omission of the Hirer, its officers, employees, contractors or agents or any other user of the Equipment; ;
- any negligent or wilful act or omission of the Hirer, or the Hirer's officers, employees, contractors or agents, or any other user of the Equipment, in relation to the hire of the Equipment;

- (d) the possession, operation or use of the Equipment by the Hirer or any other person who may be in possession of the Equipment, whether or not as a result of any sub hire or other arrangement;
- (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 or any other person who may be in possession of the Equipment, whether or not as a result of any sub hire or other arrangement;
- (f) any theft, loss or damage to, or destruction of the Equipment while the Equipment is hired by the Hirer;
- (g) any loss or damage arising out of the failure by the Hirer to take out insurance as required by this Contract; and
- (h) any sub hire or other arrangement entered into by the Hirer with any person with respect to the use or possession of the Equipment, regardless of whether or not that sub hire or other arrangement is approved by Waverley Forklifts Sales. This indemnity shall be a continuing indemnity.

#### **7. HIRER'S WARRANTY**

If the person whose signature appears on the Master Equipment Hire Agreement or any Schedule for the Hirer, is not the Hirer or a director of the Hirer, the Hirer warrants that the person who signed for the Hirer has the proper authority to enter into the Master Equipment Hire Agreement or any Schedule on behalf of the Hirer, and that the Hirer will be bound by the Master Equipment Hire Agreement and the requirements of the Schedule.

#### **8. OWNER NOT LIABLE**

- (a) Subject to clause 8(c), all warranties and conditions (whether express or implied) in relation to the Equipment are excluded from the Master Equipment Hire Agreement.
- (b) Subject to clause 8(c), the Hirer agrees that Waverley Forklifts Sales will not be liable for and the Hirer hereby releases Waverley Forklifts Sales 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 or any other user of the Equipment arising out of or in connection with the Master Equipment Hire Agreement, whether caused by any negligent act or omission of Waverley Forklifts Sales or any of Waverley Forklifts Sales' officers, employees, contractors or agents or otherwise, or by any negligent act or omission of the Hirer or any of the Hirer's officers, employees, contractors or agents or otherwise.
- (c) No term of the Master Equipment Hire Agreement is intended to exclude, restrict or modify any non-excludable terms and warranties implied under the Competition and Consumer Act 2010 (Cth) or any similar State or Territory legislation and the terms of the Master Equipment Hire Agreement 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 (C' TH) 2009**

- (a) The Equipment will at all times remain the property of Waverley Forklifts Sales or any person that has leased or supplied the Equipment to Waverley Forklifts Sales in connection with the conduct of the business of Waverley Forklifts Sales. The Hirer is not entitled to sell, offer for sale, charge, mortgage, pledge, encumber or grant any security interest in relation to the Equipment.
- (b) The Hirer acknowledges and agrees with Waverley Forklifts Sales that to the extent to which the Master Equipment Hire Agreement, or any hire of Equipment pursuant to the Master Equipment Hire Agreement, gives rise to or may give rise to a security interest for the purposes of the Personal Property Securities Act 2009 (C' th) ("PPSA"), and any regulations made under the PPSA, then:
  - (i) The Master Equipment Hire Agreement or the relevant hire constitutes a security agreement;
  - (ii) the relevant collateral is the Equipment;
  - (iii) a security interest and if applicable a purchase money security interest (PMSI), is taken by Waverley Forklifts Sales in respect of the relevant Equipment and any proceeds from any dealings with the Equipment; and
  - (iv) Waverley Forklifts Sales 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 Waverley Forklifts Sales may reasonably require to protect its rights in relation to the Equipment and any proceeds from any dealings with the Equipment, to register a financing statement or a financing change statement on the Personal Property Securities Register established under the PPSA, or to register or maintain any registration of any security interest including any PMSI;
  - (ii) indemnify and upon demand reimburse Waverley Forklifts Sales for all expenses incurred in protecting its rights in relation to the Equipment and any proceeds from any dealings with the Equipment, registering a financing statement or financing change statement on the Personal Property Securities Register, maintaining any registration or releasing any property security;
  - (iii) not register a financing statement or financing change statement in relation to any security interest or any PMSI, without the prior written consent of Waverley Forklifts Sales;
  - (iv) give Waverley Forklifts Sales 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.
- (e) The Hirer agrees that if any sub hire or other arrangement entered into by the Hirer with any person with respect to the use or possession of the Equipment, gives rise to any security interest for the purposes of the PPSA, then regardless of whether or not that sub hire or other arrangement is approved by Waverley Forklifts Sales, the Hirer will take all necessary steps to protect its rights and the rights of Waverley Forklifts Sales in relation to the Equipment and any proceeds from any dealings with the Equipment, including registration of a financing statement or a financing change statement on the Personal Property Securities Register.

#### **10. TERMINATION**

- (a) Waverley Forklifts Sales may terminate the Master Equipment Hire Agreement immediately and without any liability to the Hirer if the Hirer is in breach of any provision of the Master Equipment Hire Agreement or becomes insolvent, goes into liquidation, enters into a scheme of arrangement or appoints an administrator.
- (b) Waverley Forklifts Sales may also terminate the Master Equipment Hire Agreement at any time at its discretion by giving notice in writing to the Hirer.
- (c) Upon the termination or expiration of the Master Equipment Hire Agreement, the Hirer must comply with all directions of Waverley Forklifts Sales, including directions as to the return of Equipment by the Hirer or collection of the Equipment by Waverley Forklifts Sales. Termination or expiration does not affect the obligations of the Hirer under the Master Equipment Hire Agreement, including with respect to return or collection of the Equipment, access to any site where the Equipment is located, the condition of the Equipment, any payments due to Waverley Forklifts Sales or the indemnity in clause 6.

#### **11. NO ASSIGNMENT**

The Hirer cannot assign its rights and obligations under the Master Equipment Hire Agreement without the prior written consent of Waverley Forklifts Sales. If the Hirer is a company other than a listed public company, it must immediately notify Waverley Forklifts Sales of any event resulting in a change in the persons who control a majority of the shares in the company or a majority of the positions on the board of directors of the company.

#### **12. VARIATION**

Waverley Forklifts Sales may vary any provisions of the Master Equipment Hire Agreement, and its fees and charges, at any time by giving the Hirer notice in writing of the variations.

#### **13. GOVERNING LAW AND JURISDICTION**

The Master Equipment Hire Agreement is governed by the law in force in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory.

#### **14. TAXES AND DUTIES**

The Hirer must pay or reimburse Waverley Forklifts Sales 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 any Equipment.

#### **15. ENTIRE AGREEMENT**

The Master Equipment Hire Agreement is the entire agreement in relation to the hire of the Equipment, and will have precedence over all other documents, correspondence or other writing at any time passing between Waverley Forklifts Sales and the Hirer in connection with the hire of any Equipment. The Hirer will be deemed to have accepted and agreed to be bound by the Master Equipment Hire Agreement if the Hirer proceeds to hire any Equipment from Waverley Forklifts Sales at any time after being provided with a copy of the Master Equipment Hire Agreement and a Schedule relating to the Equipment, regardless of whether or not the Hirer has signed either document.

#### **16. FURTHER ASSURANCE**

The Hirer agrees to do all things reasonably required by Waverley Forklifts Sales to give effect to the terms of the Master Equipment Hire Agreement, including the execution of all necessary documents.

#### **17. AFTER HOURS CALLOUT COSTS**

Waverley Forklifts Sales reserves the right to charge the Hirer a minimum callout fee and any other reasonable costs incurred by Waverley Forklifts Sales, where any repairs or other servicing of the Equipment is carried out by Waverley Forklifts Sales at the request of the Hirer outside of normal business hours. For the purposes of this clause normal business hours are between 7.00 am and 5.00 pm Monday to Friday, but not including any public holiday.

#### **18. INTERPRETATION**

In the Master Equipment Hire Agreement:

- (a) the singular includes the plural and vice versa; and
- (b) a reference to a person includes a corporation, firm or body of persons recognised by law and that person's legal personal representatives.