

# TERMS & CONDITIONS OF HIRE AGREEMENT



1. This Hire Agreement shall begin on the commencement date and shall terminate on the earlier of:
  - (a) The expiry date, or
  - (b) The date IFE Forklifts notifies the Hirer upon the Equipment being stolen or damaged that IFE Forklifts in its absolute discretion does not intend to replace or repair the Equipment; or
  - (c) The date upon IFE Forklifts notifies the Hirer that it has terminated this Hire Agreement,
2. IFE Forklifts may terminate this Hire Agreement in the event of the Hirer doing any of the following:
  - (a) Not rectifying any breach of this Hire Agreement capable of rectification within a reasonable time of receiving notice to rectify from IFE Forklifts; or
  - (b) Committing an act of Bankruptcy; or
  - (c) Being a Company having either a Liquidator, Administrator or Manager or Receiver appointed over any part of its assets or undertaking.
3. Hire charges shall commence at the time the Equipment is dispatched from the depot of IFE Forklifts for delivery to the Hirer and shall continue until the Equipment is returned to the depot of IFE Forklifts or IFE Forklifts receives payment in full of the value of the Equipment.
4. The Hirer agrees to pay IFE Forklifts;
  - (a) The hire charges in the amounts and at the times and places specified overleaf; and
  - (b) All stamp duty and other duties and taxes that may now or hereinafter be incurred in respect of this Hire Agreement; and
  - (c) All transportation charges reasonably incurred in making the Equipment available to the Hirer at the delivery point; and
  - (d) All costs and expenses incurred by IFE Forklifts in repossessing the Equipment; and
  - (e) Interest at a rate of 14% per annum on any money owing under this Hire Agreement from the due date of payment until the actual date of payment.
5. On each anniversary of the commencement date the Hire charges shall be increased in proportion to the percentage increase in the preceding year of the Consumer Price Index (All groups) Sydney or such other index as may then have superseded that index.
6. The Hirer agrees at the expense of the Hirer to do the following;
  - (a) to insure the Equipment against fire and general damage and accident and theft and all other usual risks for its insurable value in the names of IFE Forklifts and the Hirer as to their respective interests.
  - (b) to keep the Equipment in good repair and to carry out all maintenance checks and to make good any damage to equipment or any part thereof except to the extent that such damage or maintenance is due to wear and tear,
  - (c) to repair punctures and to replace worn tyres except to the extent that the wear is caused by wear and tear,
  - (d) to charge and top up with distilled water all batteries being part of the Equipment and to keep a daily log thereof,
  - (e) to use in connection with the Equipment only the best procurable fuels and lubricants of a type in accordance with the
  - (f) not to re-locate the Equipment without the permission of IFE Forklifts,
  - (g) not to do or omit to do any act or thing likely to endanger the safety or condition of the Equipment,
  - (h) to comply with all relevant Acts, Regulations and By-laws relating to the Equipment and its use,
  - (i) to maintain a log book recording the days and hours during which the Equipment was used and to make such log book available for inspection and copying by IFE Forklifts and its representatives,

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- (j) to allow the authorised representative of IFE Forklifts to enter upon any premises on which the Equipment is located for the purpose of inspecting and testing the Equipment or taking back the equipment on the expiry date or termination of this Hire Agreement.
- (k) to make the Equipment available for service and repair during normal working hours or to pay an additional charge if IFE Forklifts is required to service or repair the Equipment outside of normal working hours.
- (l) At no time to use or drive the equipment on a public road or in a public place,
- (m) Not to make any additions or alterations to the Equipment without written consent of IFE Forklifts
- (n) Not to remove obscure or deface any identifying mark label or device on the Equipment or any part thereof,
- (o) Not to part with possession of the Equipment or sell lease or give the Equipment as security for any loan or transfer or assign the Hirer's interest in the Equipment or under this Hire Agreement.

7. Any additions by the Hirer made to the Equipment whether by replacement substitution or otherwise shall form part of the Equipment and immediately become the property of IFE Forklifts.

## 8. PPS Law

8.1 This clause applies to the extent that this Contract provides for a 'security interest' for the purpose of the Personal Property Securities Act 2009 (Cth) ("PPS LAW"). References to PPS Law in this agreement include references to amend, replacement and successor provision or legislation.

8.2 If IFE Forklifts does not have at Commencement a PPS Law registration ensuring a perfected first priority security interest in the Equipment, the Hire Period (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not despite anything else in this document or any Hire Schedule be longer than:

- (a) 90 days in the case of Equipment which may or must be described by serial number in PPS Law registration; or
- (b) a year in any case.

8.3 IFE Forklifts may register its security interest. The customer must do anything (such as obtaining consents and signing documents) which IFE Forklifts requires for the purpose of:

- (a) ensuring that IFE Forklift's security interest is enforceable, perfected and otherwise effective under PPS Law;
- (b) enabling IFE Forklifts to gain first property (or any other priority agreed to by IFE Forklifts in writing) for its security interest; and
- (c) enabling IFE Forklifts to exercise rights in connection with the security interest.

8.4 The rights of IFE Forklifts under this document are in addition to and not in substitution for IFE Forklift's rights under other law (including the PPS Law) and IFE Forklifts may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it IFE Forklifts security interest will attach to proceeds.

8.5 To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires IFE Forklifts to give a notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires IFE Forklifts to give a notice to the Customer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section

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135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

8.6 The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on IFE Forklifts. Customer agrees that in addition to those rights, IFE Forklifts shall, if there is default by Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that IFE Forklifts may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

8.7 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

8.8 IFE Forklifts and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to IFE Forklifts the benefit of section 275 (6)(a) and IFE Forklifts shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

8.9 Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of IFE Forklifts.

8.10 Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless IFE Forklifts (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to IFE Forklifts and must be expressed to be subject to the rights of IFE Forklifts under this agreement. Customer may not vary a sub-hire without the prior written consent of IFE Forklifts (which may be withheld in its absolute discretion).

8.11 Customer must ensure that IFE Forklifts is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

8.12 Customer must take all steps including registration under PPS Law as may be required to:

- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling the Customer to gain (subject always to the rights of IFE Forklifts) first priority (or any other priority agreed to by IFE Forklifts in writing) for the security interest; and
- (c) enabling IFE Forklifts and the Customer to exercise their respective rights in connection with the security interest.

8.13 To assure performance of its obligations under this agreement, the Customer hereby gives IFE Forklifts an irrevocable power of attorney to do anything IFE Forklifts considers the Customer should do under this agreement. IFE Forklifts may recover from Customer the cost of doing anything under this clause 5, including registration fees.

9. If the Equipment breaks down due to wear and tear IFE Forklifts may at its election either terminate this Hire Agreement or repair or replace the Equipment with similar type. Equipment in satisfaction of any liability it may have to the Hirer and in these circumstances the Hirer shall have no liability to pay Hire charges during the time the Hirer does not have use of the Equipment for more than one day IFE

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Forklifts will not be liable for any compensation to the Hirer for delayed delivery or repair of the Equipment or any consequential or economic loss or damage caused or contributed to by the Equipment not being in proper working order.

10. The Hirer agrees to indemnify and hold IFE Forklifts harmless from all claims costs and damages that IFE Forklifts may suffer in respect of injury to person or property arising out of the Hirers use and custody of the Equipment.
11. Upon termination of the Hire Agreement the Hirer shall promptly return the Equipment to IFE Forklifts at its principal place of business in the condition it was in at the commencement of this Hire Agreement subject to reasonable wear and tear and pay IFE Forklifts all money payable under this Hire Agreement.
12. If the Hirer does not return the Equipment to IFE Forklifts upon the termination of the Hire Agreement in addition to its other remedies IFE Forklifts may elect not to recover the Equipment from the Hirer in which event the Hirer shall pay IFE Forklifts upon demand the current market value of the Equipment as determined by a valuer appointed by IFE Forklifts and upon such payment being made the ownership of the Equipment will then pass to the Hirer.
13. If the Equipment is stolen the Hirer shall pay to IFE Forklifts the current market value of the Equipment as determined by a valuer appointed by IFE Forklifts less the amount IFE Forklifts may receive from any insurance claim for the stolen Equipment. The Hirer will continue to pay the Hire charges up until the time IFE Forklifts receives payment in full of the market value of the Equipment.
14. If the Hirer elects to pay insurance fee, IFE Forklifts agrees to deduct this amount from any excess sum equal to not less than 10% of the list price of the equipment for any loss or damage which is caused by Fire, Storm, Earthquake, Collision, Accident or Burglary, provided in the case of burglary the hirer has supplied to IFE Forklifts satisfactory evidence that he/she has promptly reported the burglary to the Police. This insurance fee shall not apply to loss or damage to/in equipment in the following circumstances:
  - (a) Loss or damage resulting from overloading, misuse, abuse or improper servicing of the equipment,
  - (b) Loss or damage to mysterious disappearance of the equipment,
  - (c) Loss or damage caused by the use or operation in contravention of any of the conditions of the agreement
  - (d) Insurance waiver fee is acknowledged as accepted unless written authority is received by IFE Forklifts, that he/she has adequate coverage of insurance to cover all loss or damage to equipment so loss or damage whilst hiring charges are applicable to this hiring.
15. IFE Forklifts may pay any amount or do any work which by this Hire Agreement the Hirer should do if the Hirer fails to do this in which event the Hirer will pay IFE Forklifts upon demand the amount it has paid in this regard.
16. In addition to the usual methods of service Notices may be served by prepaid ordinary postage addressed to the address of the party appearing overleaf or by personal delivery to that address.
17. The certificate of the Secretary of IFE Forklifts shall be conclusive (in the absence of manifest error) evidence of any amounts due owing or recoverable under this Hire Agreement.
18. The Hire of the Equipment and this Hire Agreement shall be governed by the laws of New South Wales.

**Any of the above conditions which are inconsistent with any condition overleaf shall not apply and be deemed deleted.**