

HIRE AGREEMENT TERMS AND CONDITIONS

1. **Interpretation**
The Contract between the Hirer and Waverley Forklifts comprises the hire details and conditions of hire as set out in the Hire Agreement and these Terms and Conditions:
 - (a) "Equipment" means the forklift(s) and any related equipment described in the Hire Agreement;
 - (b) "Hire Period" means the period beginning on the Start Hire Date as specified in the Hire Agreement and ending when the Hirer is given an Off-Hire Number by Waverley Forklifts or as otherwise agreed between the parties;
 - (c) "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;
 - (d) "Hirer" means the person(s) and/or entity specified in the Hire Agreement; and
 - (e) "Waverley Forklifts" means Waverley Forklifts Pty Ltd (ACN 005 659 941) or a related company.
2. **Contract**
Subject to the terms of the Contract, Waverley Forklifts hires to the Hirer the Equipment for the Hire Period.
3. **Waverley Forklifts Obligations**
Waverley Forklifts 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 Hire Agreement or otherwise agreed as reasonably practicable. Waverley Forklifts will not be liable for any loss or damage suffered by the Hirer if for any reason Waverley Forklifts 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:
 - (a) To pay to Waverley Forklifts the fee for hire of the Equipment as well as any applicable stamp duty, GST or other charges, duties and taxes, as set out in these Terms and Conditions or in the Hire Agreement or as otherwise invoiced by Waverley Forklifts. Payment to be made within fourteen (14) days of the date of the invoice;
 - (b) To pay to Waverley Forklifts immediately upon demand such additional fees and charges as invoiced to the Hirer by Waverley Forklifts from time to time. Such fees and charges to be paid by the Hirer within fourteen (14) days of the date of the invoice;
 - (c) To take proper care of the Equipment at all times until collected by Waverley Forklifts or returned to Waverley Forklifts;
 - (d) 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;
 - (e) To locate and use the Equipment only at the place of delivery outlined in the Hire Agreement or as otherwise agreed in writing by Waverley Forklifts;
 - (f) To comply strictly with all laws, rules, regulations and by-laws of any government or authority with respect to use of the Equipment;
 - (g) To only use the Equipment for the purpose for which it is intended;
 - (h) To ensure that the Equipment is only operated by persons properly qualified and licensed by the appropriate regulatory authority to do so;
 - (i) To provide a safe workplace for any employees, contractors or agents of the Hirer and Waverley Forklifts, or any other persons on site where the Equipment is being located or operated. The Hirer must immediately notify Waverley 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;
 - (j) 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 charge, any batteries on the Equipment;
 - (k) To permit Waverley Forklifts to inspect the Equipment at the location where the Equipment was delivered, or otherwise located as agreed between Waverley Forklifts and the Hirer, as often as Waverley Forklifts reasonably requires;
 - (l) Not repair or attempt to repair, alter or add to the Equipment without the prior written consent of Waverley Forklifts;
 - (m) To return the Equipment to Waverley Forklifts or to make the Equipment available for collection by Waverley Forklifts (as the case may be), in good order and condition as hired, fair wear and tear only excepted;
 - (n) To pay to Waverley Forklifts at the rate of 15% per annum, interest on any monies owing pursuant to the Contract for more than fourteen (14) days, until the outstanding amount is paid in full;
 - (o) At the conclusion of the use by the Hirer of the Equipment, to telephone Waverley Forklifts and to advise Waverley Forklifts thereof and to record the "Off-Hire Number" given by Waverley Forklifts to the Hirer in that event; and
 - (p) To not do, or permit to be done, any act which infringes the Intellectual Property Rights of Waverley Forklifts.
5. **Liability and Insurance**
 - (a) The Hirer must insure in the joint names of the Hirer and Waverley Forklifts for and against:
 - (i) 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;
 - (ii) any theft, loss or damage to, or destruction of the Equipment;
 - (iii) 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 Waverley Forklifts' absolute discretion is desirable to be insured against.
 - (b) The Hirer will provide Waverley Forklifts, 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 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 Warranty**
If the person whose signature appears overleaf is not the Hirer or a director of the Hirer, the Hirer warrants that the person whose signature appears overleaf 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(c), all warranties and conditions (whether express or implied) in relation to the Equipment are excluded from the Contract.
 - (b) Subject to clause 8(c), the Hirer agrees that Waverley Forklifts will not be liable for and the Hirer hereby releases Waverley 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 Waverley Forklifts or any of Waverley Forklifts' officers, employees, contractors or agents or otherwise, or the Hirer or any of the Hirer's officers, employees, contractors or agents or otherwise.
 - (c) 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) or any similar State or Territory legislation 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 Waverley Forklifts at all times.
 - (b) The Hirer acknowledges and agrees with Waverley Forklifts that for the purposes of the Personal Property Securities Act 2009 (C'th)("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 Waverley Forklifts in respect of the Equipment; and
 - (iii) Waverley 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 Waverley 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 Waverley Forklifts for all expenses incurred in protecting its rights in relation to the Equipment, registering a financing statement or financing change statement on the Personal Property Securities Register, 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, without the prior written consent of Waverley Forklifts;
 - (iv) give Waverley 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 (f) (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) Waverley Forklifts may terminate the Contract immediately and without any liability to the Hirer if the Hirer is in breach of any term of the Contract or becomes insolvent, goes into liquidation, enters into a scheme of arrangement or appoints an administrator.
 - (b) Upon the termination or expiration of the Contract, the Hirer must comply with all directions of Waverley Forklifts, including directions as to the return of the Equipment.
11. **No Assignment**
A party cannot assign its rights and obligations under the Contract without the prior written consent of the other party.
12. **Variation**
Waverley Forklifts may vary the terms and conditions of the Contract at any time by giving the Hirer notice in writing of the variations.
13. **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.
14. **Taxes and Duties**
The Hirer must pay or reimburse Waverley 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.
15. **Operation of This Contract**
The Contract will have precedence over all other documents, correspondence or other writing at any time passing between Waverley Forklifts and the Hirer in connection with the hire of the Equipment.