

**1. Definitions**

- 1.1 "ALF" means Kretchmer Enterprises Pty Limited T/A All Lift Forklifts, its successors and assigns or any person acting on behalf of and with the authority of Kretchmer Enterprises Pty Limited T/A All Lift Forklifts.
- 1.2 "Hiree" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Hiree is a reference to each Hiree jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by ALF to the Hiree at the Hiree's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment (including, but not limited to, any plant, tools, (or any accessories thereto)) which is supplied on hire by ALF to the Hiree (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by ALF to the Hiree.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by ALF to the Hiree.
- 1.6 "Price" means the Price payable for the Goods/Equipment hire as agreed between ALF and the Hiree in accordance with clause 12 below.

**Terms & Conditions Applicable to Equipment Hire**

**2. Hire Period**

- 2.1 Hire charges shall commence from the time the Equipment is collected by the Hiree from ALF's premises and will continue until the return of the Equipment to ALF's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 2.2 If ALF agrees with the Hiree to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves ALF's premises and continue until the Hiree notifies ALF that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 2.3 The date upon which the Hiree advises of termination shall in all cases be treated as a full day's hire. Providing the Hiree notifies ALF immediately of any Equipment breakdown, hiring charges will not be made payable during the time the Equipment is not working, unless such condition is due to negligence or misuse on the part of, or attributed to, the Hiree. Such notification does not absolve the Hiree from its requirements to safeguard the Equipment and, in the event of a breakdown the Hiree shall not repair, or attempt to repair the Equipment without the prior consent of ALF. There is no liability for any expenditure, damage, loss, or inconvenience caused by the Hiree arising out of any breakdown of the Equipment other than arising as a direct result of negligence of ALF.

**3. Access for Delivery or Collection**

- 3.1 The Hiree shall ensure that ALF has free and clear access to the worksite at which the Equipment is to be, or is, located. If there are any delays due to free and clear access not being available then the Hiree shall be responsible for (and shall reimburse) ALF for all additional costs incurred by ALF in gaining suitable access to the worksite and/or ALF's Equipment.

**4. Risk to Equipment**

- 4.1 ALF retains property in the Equipment nonetheless all risk for the Equipment passes to the Hiree on delivery.
- 4.2 The Hiree accepts full responsibility for the safekeeping of the Equipment and indemnifies ALF for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Hiree.
- 4.3 The Hiree accepts full responsibility for and shall keep ALF indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Hiree or any other persons.

**5. Insurance**

- 5.1 The Hiree **must** insure, or self-insure, ALF's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Hiree will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 5.2 Where any claim is declined, or where it is found that the Hiree is in default of clause 5.1, the Hiree shall be liable for the full replacement or repair cost on the loss, theft or damage of any Equipment, and such sum shall include additional charges hereunder (including, but not limited to, clauses 7.2 and 20), until the sum is paid.

**6. Title to Equipment**

- 6.1 The Equipment is and will at all times remain the absolute property of ALF.
- 6.2 If the Hiree fails to return the Equipment to ALF then ALF or ALF's agent may (as the invitee of the Hiree) enter upon and into land and premises owned, occupied or used by the Hiree, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 6.3 The Hiree is not authorised to pledge ALF's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

**7. Hiree's Responsibilities**

- 7.1 The Hiree shall:
  - (a) check the equipment daily for oil, grease, water and battery levels and any sign of looseness or wear and shall at the Hiree's own cost maintain the Equipment as is required by ALF (including, but not limited to, maintaining (where applicable) water, battery, grease, oil and other fluid levels (using only products approved by ALF), and tyre pressures) except for prearranged major servicing which will be carried out by ALF during normal working hours;
  - (b) accept full responsibility for all punctured, deflated or damaged tyres;
  - (c) agree when hiring a Battery Electric Forklift (Equipment) to charge and top up the battery with distilled water on a daily basis;

- (d) supply diesel units with full tank of fuel on return of Equipment, diesel charged at two dollars fifty (\$2.50) per litre;
- (e) notify ALF immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Hiree is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (f) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (g) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by ALF or posted on the Equipment;
- (h) ensure that all persons driving and/or operating Equipment are suitably instructed in the Equipment's safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to ALF upon request;
- (i) ensure that all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked, securely stored, and protected against acts of theft or vandalism when not in use;
- (j) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (k) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to ALF. At ALF's sole discretion a fee of up to ninety five dollars (\$95) per man hour may be charged for any additional cleaning required and performed by ALF or its representatives;
- (l) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
- (m) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (n) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (o) not exceed the recommended or legal load and capacity limits of the Equipment;
- (p) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (q) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;

**7.2** Immediately on request by ALF the Hiree will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to ALF;
- (b) all costs incurred in cleaning the Equipment;
- (c) any costs incurred by the Owner in picking up and returning the Equipment to the Owners premises if the Hirer does not return the Equipment to the Owners premises or any pre-agreed pickup location when it was originally agreed that the Hirer would do so.
- (d) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- (e) the cost of repairing any damage to the Equipment caused by a negligent act, omission, or wilful action of the Hiree, their employees, sub-contractors or agents;
- (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in ALF's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hiree.
- (g) any insurance excess payable in relation to a claim made by either the Hiree or ALF in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Hiree and irrespective of whether charged by the Hiree's insurers or ALF's.

**8. Loss, Theft, and Damage (LTD) Waiver**

- 8.1** The Hiree acknowledges that the LTD Waiver is **not** insurance, but is an agreement by ALF to **limit** your liability in certain circumstances for the loss, theft, or damage of the Equipment, and even where the Hiree has paid the LTD Waiver fee, it shall not be a waiver of ALF's rights to claim against the Hiree for loss, theft or damage to the Equipment, including (but not limited to) where:
- (a) the Equipment is lost or stolen;
  - (b) the Hiree is in breach this hire agreement, including the Hiree's obligations under clause 7;
  - (c) damage is to tyres.
- 8.2** Subject to clause 8.3, a LTD Waiver fee (being an additional ten percent (10%) of the Owner's dry hire rates) shall be payable for all dry hire of Equipment.
- 8.3** ALF may (at their sole discretion, waive the charge, but only where the Hiree produces a certificate of currency (COC) for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the hire period for an amount not less than the full new replacement value of the Equipment. The COC must be provided to ALF prior to the supply of Equipment by ALF.

**9. Wet Hire**

- 9.1** "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of ALF, who will operate the Equipment in accordance with the Hiree's instructions. ALF shall not be liable for any actions of the operator in following the Hiree's instructions, nor responsible for the safety and/or insurance of goods being handled, or property.

**General Terms and Conditions**

**10. Acceptance**

- 10.1** The Hiree is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Hiree places an order for or accepts delivery of the Goods/Equipment.
- 10.2** These terms and conditions may only be amended with ALF's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Hiree and ALF.
- 10.3** ALF reserves the right to review (or to withdraw) any credit facility offered to the Hiree without any requirement to give prior notice of the same. If we withdraw a credit facility the Hiree shall have the right to terminate this agreement without notice provided that the Hiree;
- (a) pays all amounts owing under the revoked credit facility in accordance with the terms upon which that credit facility was granted; and
  - (b) pays all other monies due under this agreement (for the hire of Equipment hire charges shall remain payable by the Hiree until such time as all Equipment hired by the Hiree has been returned to ALF).

10.4 Certain conditions and warranties may be implied into the hire agreement by the Federal and State Legislation and these conditions are to be read subject to such legislation but no other conditions or warranties shall be implied in these terms and conditions of trade and hire. However, ALF and Hiree agree that in the event of the Hiree suffering any loss, damage or claim howsoever arising as a result of hiring the Equipment, including without limitation in respect of delay or inconvenience arising out of any break down, failure or defect in the Equipment, the liability of ALF is limited to the repair or replacement of the Equipment and is not to include economic or consequential damages of any nature whatsoever.

**11. Change in Control**

11.1 The Hiree shall give ALF not less than fourteen (14) days prior written notice of any proposed change of ownership of the Hiree and/or any other change in the Hiree's details (including but not limited to, changes in the Hiree's name, address, contact phone or fax number/s, or business practice). The Hiree shall be liable for any loss incurred by ALF as a result of the Hiree's failure to comply with this clause.

**12. Price and Payment**

12.1 At ALF's sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by ALF to the Hiree; or
- (b) ALF's quoted price (subject to clause 12.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

12.2 ALF reserves the right to change the Price if a variation to ALF's quotation is requested.

12.3 At ALF's sole discretion a non-refundable deposit may be required.

12.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Hiree on the date/s determined by ALF, which may be:

- (a) on delivery of the Goods/Equipment;
- (b) the date which is fourteen (14) days following the date of any invoice given to the Hiree by ALF.
- (c) by way of instalments/progress payments in accordance with ALF's payment schedule;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Hiree by ALF.

12.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Hiree and ALF.

12.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Hiree must pay to ALF an amount equal to any GST ALF must pay for any supply by ALF under this or any other agreement for the sale of the Goods/hire of the Equipment. The Hiree must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Hiree pays the Price. In addition the Hiree must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**13. Delivery of Goods/Equipment**

13.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:

- (a) the Hiree or the Hiree's nominated carrier takes possession of the Goods/Equipment at ALF's address; or
- (b) ALF (or ALF's nominated carrier) delivers the Goods/Equipment to the Hiree's nominated address even if the Hiree is not present at the address.

13.2 At ALF's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

13.3 The Hiree must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Hiree is unable to take delivery of the Goods/Equipment as arranged then ALF shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

13.4 ALF may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

13.5 Any time or date given by ALF to the Hiree is an estimate only. The Hiree must still accept delivery of the Goods/Equipment even if late and ALF will not be liable for any loss or damage incurred by the Hiree as a result of the delivery being late.

**14. Risk to Goods**

14.1 Risk of damage to or loss of the Goods passes to the Hiree on Delivery and the Hiree must insure the Goods on or before Delivery.

14.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Hiree, ALF is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ALF is sufficient evidence of ALF's rights to receive the insurance proceeds without the need for any person dealing with ALF to make further enquiries.

14.3 If the Hiree requests ALF to leave Goods outside ALF's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Hiree's sole risk.

14.4 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, ALF reserves the right to vary the Price with alternative Goods as per clause 4.2. ALF also reserves the right to halt all Services until such time as ALF and the Customer agree to such changes.

**15. Title to Goods**

15.1 ALF and the Hiree agree that ownership of the Goods shall not pass until:

- (a) the Hiree has paid ALF all amounts owing to ALF; and
- (b) the Hiree has met all of its other obligations to ALF.

15.2 Receipt by ALF of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

15.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Hiree in accordance with clause 15.1 that the Hiree is only a bailee of the Goods and must return the Goods to ALF on request.
- (b) the Hiree holds the benefit of the Hiree's insurance of the Goods on trust for ALF and must pay to ALF the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Hiree must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Hiree sells, disposes or parts with possession of the Goods then the Hiree must hold the proceeds of any such act on trust for ALF and must pay or deliver the proceeds to ALF on demand.
- (d) the Hiree should not convert or process the Goods or intermix them with other goods but if the Hiree does so then the Hiree holds the resulting product on trust for the benefit of ALF and must sell, dispose of or return the resulting product to ALF as it so directs.
- (e) the Hiree irrevocably authorises ALF to enter any premises where ALF believes the Goods are kept and recover possession of the Goods.
- (f) ALF may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Hiree shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of ALF.
- (h) ALF may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Hiree.

## **16. Personal Property Securities Act 2009 ("PPSA")**

- 16.1 In this clause financing statement, the Hiree change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 Upon assenting to these terms and conditions in writing the Hiree acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by ALF to the Hiree.
- 16.3 The Hiree undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ALF may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 16.3(a)(i) or 16.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, ALF for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of ALF;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of ALF;
  - (e) immediately advise ALF of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 16.4 ALF and the Hiree agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 16.5 The Hiree waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Hiree waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by ALF, the Hiree waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Hiree must unconditionally ratify any actions taken by ALF under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **17. Security and Charge**

- 17.1 In consideration of ALF agreeing to supply the Goods/Equipment, the Hiree charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Hiree either now or in the future, to secure the performance by the Hiree of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Hiree indemnifies ALF from and against all ALF's costs and disbursements including legal costs on a solicitor and own Hiree basis incurred in exercising ALF's rights under this clause.
- 17.3 The Hiree irrevocably appoints ALF and each director of ALF as the Hiree's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Hiree's behalf.

## **18. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 18.1 The Hiree must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify ALF in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Hiree must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Hiree must allow ALF to inspect the Goods/Equipment.
- 18.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 18.3 ALF acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, ALF makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. ALF's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Hiree is a consumer within the meaning of the CCA, ALF's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If ALF is required to replace the Goods under this clause or the CCA, but is unable to do so, ALF may refund any money the Hiree has paid for the Goods.
- 18.7 If the Hiree is not a consumer within the meaning of the CCA, ALF's liability for any defect or damage in the Goods is:
- limited to the value of any express warranty or warranty card provided to the Hiree by ALF at ALF's sole discretion;
  - limited to any warranty to which ALF is entitled, if ALF did not manufacture the Goods;
  - otherwise negated absolutely.
- 18.8 Subject to this clause 18, returns will only be accepted provided that:
- the Hiree has complied with the provisions of clause 18.1; and
  - ALF has agreed that the Goods are defective; and
  - the Goods are returned within a reasonable time at the Hiree's cost (if that cost is not significant); and
  - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, ALF shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Hiree failing to properly maintain or store any Goods/Equipment;
  - the Hiree using the Goods/Equipment for any purpose other than that for which they were designed;
  - the Hiree continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - the Hiree failing to follow any instructions or guidelines provided by ALF;
  - fair wear and tear, any accident, or act of God.
- 18.10 In the case of second hand Goods, unless the Hiree is a consumer under the CCA, the Hiree acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by ALF as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Hiree acknowledges and agrees that ALF has agreed to provide the Hiree with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 18.10.
- 18.11 Notwithstanding anything contained in this clause if ALF is required by a law to accept a return then ALF will only accept a return on the conditions imposed by that law.

## **19. Intellectual Property**

- 19.1 Where ALF has designed, drawn or developed Goods/Equipment for the Hiree, then the copyright in any designs and drawings and documents shall remain the property of ALF.
- 19.2 The Hiree warrants that all designs, specifications or instructions given to ALF will not cause ALF to infringe any patent, registered design or trademark in the execution of the Hiree's order and the Hiree agrees to indemnify ALF against any action taken by a third party against ALF in respect of any such infringement.
- 19.3 The Hiree agrees that ALF may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which ALF has created for the Hiree.

## **20. Default and Consequences of Default**

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at ALF's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Hiree owes ALF any money the Hiree shall indemnify ALF from and against all costs and disbursements incurred by ALF in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Hiree basis, ALF's contract default fees, and bank dishonour fees).
- 20.3 Without prejudice to any other remedies ALF may have, if at any time the Hiree is in breach of any obligation (including those relating to payment) under these terms and conditions ALF may suspend or terminate the supply of Goods/Equipment to the Hiree. ALF will not be liable to the Hiree for any loss or damage the Hiree suffers because ALF has exercised its rights under this clause.
- 20.4 Without prejudice to ALF's other remedies at law ALF shall be entitled to cancel all or any part of any order of the Hiree which remains unfulfilled and all amounts owing to ALF shall, whether or not due for payment, become immediately payable if:
- any money payable to ALF becomes overdue, or in ALF's opinion the Hiree will be unable to make a payment when it falls due;
  - the Hiree becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hiree or any asset of the Hiree.

## **21. Compliance with Laws**

- 21.1 The Hiree and ALF shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 21.2 The Hiree shall obtain (at the expense of the Hiree) all licenses and approvals that may be required for the Works.
- 21.3 The Hiree agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## **22. Dispute Resolution**

- 22.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least

once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

**23. Cancellation**

- 23.1 ALF may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Hiree. On giving such notice ALF shall repay to the Hiree any money paid by the Hiree for the Goods/Equipment. ALF shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.2 For Equipment hire where the term of this agreement is not for a fixed period or becomes for an indefinite period then this agreement may be terminated by the Hiree giving ALF not less than twenty-four (24) hours written notice by either fax or email that they are terminating the agreement.
- 23.3 In the event that the Hiree cancels delivery of Goods/Equipment the Hiree shall be liable for any and all loss incurred (whether direct or indirect) by ALF as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.4 Cancellation of orders for Goods/Equipment made to the Hiree's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**24. Privacy Act 1988**

- 24.1 The Hiree agrees for ALF to obtain from a credit reporting agency a credit report containing personal credit information about the Hiree in relation to credit provided by ALF.
- 24.2 The Hiree agrees that ALF may exchange information about the Hiree with those credit providers either named as trade referees by the Hiree or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by the Hiree; and/or
  - (b) to notify other credit providers of a default by the Hiree; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Hiree is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Hiree.

The Hiree understands that the information exchanged can include anything about the Hiree's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 24.3 The Hiree consents to ALF being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 24.4 The Hiree agrees that personal credit information provided may be used and retained by ALF for the following purposes (and for other purposes as shall be agreed between the Hiree and ALF or required by law from time to time):
  - (a) the provision of Goods/Equipment; and/or
  - (b) the marketing of Goods/Equipment by ALF, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Hiree's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Hiree; and/or
  - (e) enabling the daily operation of Hiree's account and/or the collection of amounts outstanding in the Hiree's account in relation to the Goods.
- 24.5 ALF may give information about the Hiree to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Hiree;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Hiree.
- 24.6 The information given to the credit reporting agency may include:
  - (a) personal particulars (the Hiree's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Hiree's application for credit or commercial credit and the amount requested;
  - (c) advice that ALF is a current credit provider to the Hiree;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Hiree's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of ALF, the Hiree has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Hiree's credit obligations);
  - (g) advice that cheques drawn by the Hiree for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Hiree by ALF has been paid or otherwise discharged.

**25. General**

- 25.1 The failure by ALF to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ALF's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales in which ALF has its principal place of business, and are subject to the jurisdiction of the courts of Sydney in that state.
- 25.3 Subject to clause 18 ALF shall be under no liability whatsoever to the Hiree for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hiree arising out of a breach by ALF of these terms and conditions (alternatively ALF's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 25.4 The Hiree shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Hiree by ALF nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5 ALF may license or sub-contract all or any part of its rights and obligations without the Hiree's consent.

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**All Lift Forklifts – Terms & Conditions of Trade**

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- 25.6 The Hiree agrees that ALF may amend these terms and conditions at any time. If ALF makes a change to these terms and conditions, then that change will take effect from the date on which ALF notifies the Hiree of such change. The Hiree will be taken to have accepted such changes if the Hiree makes a further request for ALF to provide Goods/Equipment to the Hiree.
- 25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.8 The Hiree warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.