

## Disclosure of Key Terms relating to the supply of goods or services to consumers

*Section 47A Fair Trading Act 1987 (NSW) ("the Act")*

Pursuant to section 47A of the Act, a supplier must, before supplying a consumer with goods or services in NSW, take reasonable steps to ensure the consumer is aware of the substance and effect of any Term or Condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.

The following contains a summary of key terms in the attached Terms and Conditions between Minley Investments Pty Ltd (ACN 001 299 529) trading as Tara Forklift Services (Tara) (**Us, We, Our**) and the hirer (**You**), which You should be made aware of as per the requirements of the Act.

Words not defined in this summary have the same meaning as set out in the Terms and Conditions:

### 1. **Clause 12.2 - Exclusion of Warranties**

This clause excludes all warranties not set out in the terms or any other warranty document (to the extent possible) and makes clear that We are not liable to compensate You for:

- (a) Any increased costs or expenses You may incur;
- (b) Any loss of profit, revenue, business, contract or anticipated savings;
- (c) Any loss or expense resulting from a claim by a third party; or
- (d) Any special, indirect or Consequential Loss or damage of any nature.

### 2. **Clause 12 – Limitation of Liability**

This clause limits the remedies available to You if the goods or services provided by Us are faulty, for example We may replace the goods or provide a refund at our election.

This clause also seeks to limit the timeframe for any claim by You relating to the short delivery of goods.

### 3. **Clause 12.7 – Indemnity**

This clause requires You to indemnify Us against any loss or damage We may suffer as a result of Your breach of our Terms and Conditions, which means You will pay Us any loss or damage We suffer.

### 4. **Clause 18 - Privacy**

This clause provides that You authorise Us to collect, retain and use any information about You for the purposes outlined in, and accordance with, our Privacy Policy and the National Privacy Principles

## Hire Agreement Terms and Conditions

### 1. HIRE AGREEMENT TERMS

These Terms and Conditions, together with:

- (a) the Quotation;
- (b) each Equipment Schedule provided to You by Us, whether signed or not; and
- (c) any special terms specific to the type of Equipment You have hired referred to in Your Equipment Schedule or Quotation,

apply (unless otherwise previously agreed in writing) to the hire of Equipment and Services performed by Us to You from time to time. Any hire of Equipment or Services performed by Us to You after the date of acceptance of the terms in this Hire Agreement is a supply pursuant to the supply agreement constituted by these terms and conditions and the relevant order accepted by Us (**'Hire Agreement'**) and any such supply does not give rise to a new or separate agreement.

By signing this Hire Agreement, You acknowledge that these Terms and Conditions are available on Our website and further acknowledge having accessed these Terms and Conditions and to have read, agreed and accepted the Terms and Conditions contained herein.

### 2. DEFINITION OF TERMS

- a) **"Additional Charge"** means \$3.85 per hour.
- b) **"Casual Hire"** means any hire of the Equipment for an indeterminate period of time or not for a fixed term.
- c) **"Consumables"** means all consumables products used by us in connection with the Services, for example (but not limited to) any brushes and squeegees used for sweepers and scrubbers.
- d) **"Equipment"** means any Unit, goods, related software and /or equipment supplied by Us from time to time, including but not limited to, any associated or attached tools, accessories and parts (i.e., chargers, batteries, gas bottles, ramps, jibs, slippers, etc) available for hire.
- e) **"Equipment Schedule"** any document/s providing further specifics of the type of Equipment hired to You and/or the Equipment the subject of the Quotation and any terms and conditions that such documents are stated as being subject to.
- f) **"Force Majeure Event"** means an event described in clause 15.1.
- g) **"Hire Agreement"** means this agreement for the hire of Equipment between Us and You subject to these Terms and Conditions and includes the Quotation.
- h) **"Hirer"** means You.
- i) **"Hire Charges"** means the hiring rate as stated on:
  - i. the Quotation; or
  - ii. in respect to Casual Hires only, as specified in any Quotation (if applicable) or as otherwise agreed in writing between the parties

and (in either case) any other fee as specified in the Equipment Schedule as payable relating to or arising from the hire of the Equipment, and any associated charges for Services (including without limitation the costs of any Consumables used by Us in connection with the Services).

- j) **"Hire Period"** means the period commencing when You take possession of the Equipment until it is returned to Our care and any extensions thereto.
- k) **"Minimum Hire Period"** has the meaning given to that term in clause 4.9.
- l) **"Permanent Hire"** means any hire of the Equipment for a fixed term Hire Period, being every hire other than a Casual Hire.
- m) **"Quotation"** means the quotation for provision of Equipment and any associated Services appended to these Terms and Conditions and any associated 'order of agreement form', Equipment Schedule, preliminary rental contract or other document or correspondence provided or sent by Us and signed or accepted by the Hirer in connection with the Quotation or Equipment or Services.
- n) **"Services"** means Services provided by or on behalf of Us to You that are in any way associated with the Equipment.
- o) **"Single Shift"** 40 hours per week consisting of a maximum of 8 hour usage periods per day per Unit.
- p) **"Tagged Out"** means the Unit has been deemed unsafe to use.
- q) **"Terms and Conditions"** means these terms and conditions of the Hire Agreement.
- r) **"Unit"** means a Gas, Electric or Diesel Forklift or any access or scissorlift equipment or any other machinery or equipment supplied by Us.
- s) **"You"** means:
  - (i) the person (s) or entity named in the Quotation as being the Hirer/ the customer and which hires the Equipment and/or may request Services from Us from time to time. If more than one is named, the conditions shall be binding on them jointly and each of them severally; or
  - (ii) if there is no Quotation, then the hirer/customer which hires the Equipment and/or may request Services from us from time to time.

### 3. INTERPRETATION

In these Terms and Conditions unless the context otherwise requires:

- 3.1 the singular includes the plural and vice versa;
- 3.2 headings are included for convenience only and do not affect interpretation.

### 4. HIRE PERIOD

- 4.1 In consideration of You agreeing to pay the Hire Charges, We agree to hire and provide any requested Equipment or Services to You, and You agree to hire the Equipment from Us and accept the requested Services for the Hire Period.
- 4.2 The Hire Period commences when, either:
  - 4.2.1 You take possession of the Equipment; or
  - 4.2.2 We deliver the Equipment to You,whichever occurs first ("**Delivery**").
- 4.3 The length of the Hire Period is for:
  - 4.3.1 the period specified in the Quotation; or

- 4.3.2 if not specified in the Quotation, or in respect to a Casual Hire, for an indefinite period and ends when the Equipment is back in Our custody and possession (subject to any Minimum Hire Period).
- 4.4 The Hire Period includes weekends and public holidays.
- 4.5 The length of the Hire Period can only be changed if You request a variation and We agree to that variation in writing.
- 4.6 Subject to clause 4.7 and 4.8, if, in the absence of an agreement, the Equipment continues to be used by You beyond the Hire Period, the same Terms and Conditions shall apply unless modified by Us or an amended agreement is agreed to between the parties and documented in writing.
- 4.7 Where the Equipment continues to be provided beyond the original Hire Period and no written agreement for extension exists, We may terminate the arrangement with 5 days written notice.
- 4.8 We reserve the right to terminate an additional Hire Period at Our sole discretion with the giving of 5 days' notice.
- 4.9 All Casual Hire of Equipment is subject to a minimum Hire Period of no less than 1 day (24 hours). A further minimum hire period in respect to Casual Hire may apply in respect of certain Equipment ("**Minimum Casual Hire Period**"). We will advise You at the time of hiring if a Minimum Casual Hire Period applies. If the Equipment is returned to Us before the expiry of the Minimum Hire Period, You will be requested and agree to pay all Hire Charges in respect of the Minimum Hire Period. For the avoidance of doubt the minimum Hire Period for any Permanent Hire is the length of the Hire Period in accordance with clause 4.3.

## 5. DELIVERY

- 5.1 It will be Your responsibility to advise Us of a suitable date and time for Equipment delivery and collection to avoid any loss to Your operation.
- 5.2 It will also be Your responsibility to secure and facilitate access for Us should there be restricted entry on the point of delivery. Any transport or delivery delays caused by restricted entry (or otherwise caused or contributed to by you) other than through the negligence of Us, shall at Our discretion, incur a surcharge payable by you for waiting time calculated at Our discretion, which may include but is not limited to any costs payable by us to third parties as a result of such delays.
- 5.3 Should there be cancellation or postponement of the hire on the date of delivery (other than any fault of Ours), You will pay for the return transport costs (in addition to any other rights or costs we may have pursuant to these Terms and Conditions or at law)
- 5.4 We take no responsibility for failure to deliver on such said date and will not incur any charges for any late delivery if the cause of the delay is a result of restriction to entry, limited access, and/or Force Majeure Event.

## 6. PAYMENT TERMS

- 6.1 Subject to any alternate payment terms set out in the Quotation or otherwise agreed between the parties, Hire Charges must be paid by You for the entire period of time the Equipment is in the care, custody or control of You until the date the Equipment is returned to or collected by Us and on the payment terms set out in this clause 6.
- 6.2 Unless stated otherwise in the Quotation or otherwise agreed in writing between the parties, all Hire Charges are to be paid monthly in advance on the first day of the month, with the first monthly payment to be paid by You prior to the date that the Equipment is delivered.

- 6.3 Unless stated otherwise in the Quotation or otherwise agreed in writing between the parties, you must fully reimburse us for the costs of all Consumables used by us in connection with any Services provided by Us within 30 days of Us issuing an invoice in respect to such Consumables or Services.
- 6.4 You must pay all other fees, charges and costs that become due and payable under this Hire Agreement within 30 days of the date of invoice.
- 6.5 If You do not pay the Hire Charges in full by the payment due date, then:
- 6.5.1 all amounts, including those not yet due, fall immediately due and are accelerated for payment to Us by You; and
- 6.5.2 You shall indemnify and keep indemnified Us from and against all recovery costs and disbursements We incur to enforce Our rights under this Hire Agreement including but not limited to legal costs on a solicitor and own client basis and any collection agency costs and such sums will be claimable as a liquidated debt from You.
- 6.6 We reserve the right to charge to You interest on any unpaid amounts due to Us and You agree to pay the interest charges to Us on invoice or demand. Interest on any such unpaid amounts will be calculated at the benchmark interest rate advertised by the Australian Taxation Office for the financial year of which this Agreement was entered into, for each month or part of a month from the due date of the unpaid amount until the date payment is received by Us.
- 6.7 We also reserve the right to terminate this Hire Agreement and demand the return of the Equipment at Your cost in the event of non-payment of our Hire Charges and engage a debt collection agency to assist Us to recover any unpaid amounts owing. If this occurs, You agree to pay all of Our costs incurred in recovering the unpaid amount upon written demand.
- 6.8 You authorise Us to perform a credit card authorisation form for payment to be authorised or processed when Your account is unpaid within the 30-day period.
- 6.9 You agree to an administration charge of \$15 which will be applicable after 21 days of hire. This is a one-off charge and is charged per Unit.
- 6.10 Payments must be made via direct debit or credit card (credit card processing fees incurred will be on-charged) or EFT (to the account details provided to You by Us). Cheque payments will not be accepted. We are not liable for any loss or damage of any kind howsoever caused which is suffered or incurred by You in connection with the use of a credit card or other debit device.
- 6.11 All amounts payable by You shall be free of set-off, counter claim, cross demands, retentions or deductions unless prior approved in writing by Us.
- 6.12 All amounts payable are GST and stamp duty exclusive.

## **7. RATES & CHARGES**

- 7.1 The Hirer must pay the Hire Charges in accordance with these Terms and Conditions and:
- (a) as specified in the Quotation; or
- (b) in respect to Casual Hires only, as specified in any Quotation (if applicable) or as otherwise agreed in writing between the parties.
- 7.2 You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You must continue to pay the Hire Charges and other charges if You have not returned the Equipment to Our premises (including where the Equipment is not returned by any agreed upon date). This obligation survives termination of the Hire Agreement.
- 7.3 Hire in excess of 40 hours per week, will incur an Additional Charge unless stated otherwise in this Hire Agreement.
- 7.4 Invoices rendered by Us for the Additional Charge must be paid within 30 days of the date of the accounts.
- 7.5 We may increase the Additional Charge at Our discretion.

- 7.6 You are responsible for all costs associated with the delivery of the Equipment and its collection at the expiration of the Hire Period (including without limitation any such costs specified in the Quotation) unless otherwise agreed in writing by Us.

## 8. OUR RESPONSIBILITIES

- 8.1 We will supply the Equipment in good working order to You.
- 8.2 In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:
- 8.2.1 immediately stop using the Equipment and notify Us;
  - 8.2.2 take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - 8.2.3 take all steps necessary to prevent any further damage to the Equipment itself; and
  - 8.2.4 not repair or attempt to repair the Equipment without Our written consent.
- 8.3 Upon receiving notice from You in accordance with clause 8.2, We will:
- 8.3.1 take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and
  - 8.3.2 not impose a Hire Charge for that portion of the Hire Period for which the Equipment was broken down or unsafe (provided that You will be liable for all Hire Charges in respect to the Hire Period of any replacement Equipment), nor the costs associated with any repair or replacement of the Equipment, unless the Equipment was damaged or otherwise broken down or unsafe due to any action by You, in which case:
    - i. you must pay all costs associated with or incurred by us in connection with the repair or replacement of the Equipment; and
    - ii. you must pay for any Hire Charges during the portion of the Hire Period for which the Equipment was broken down or unsafe, including any such period where the Equipment is being repaired.

## 9. OWNERSHIP OF UNITS

- 9.1 We retain full title to the Equipment at all times during the Hire Period. Your rights to use the Equipment are as a bailee only.
- 9.2 You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over the Equipment or permit a lien or other encumbrance to arise or be exercised over the Equipment, or otherwise deal with the Equipment in any way not permitted under this Hire Agreement.
- 9.3 You may only sub-hire the Equipment to a third party with Our prior written consent (which can be granted or withheld at our sole discretion).
- 9.4 Risk in the Equipment passes on Delivery of the Equipment to You or Your collection of the Equipment from Us (as applicable) for the Hire Period.
- 9.5 You are solely responsible for any damage to, spoilage of or theft of any contents stored in the Equipment during the Hire Period including but not limited to while the Equipment is in the possession, care, custody or control of You or where You have allowed the Equipment to be held, kept or stored at any premises.

## 10. HIRER'S RESPONSIBILITIES

- 10.1 This Hire Agreement is personal to You and so You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- 10.2 You warrant and agree that before accepting the Equipment, You:
- 10.2.1 have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use it for;
  - 10.2.2 are aware of the design and performance specifications of the Equipment prior to entering into the Hire Agreement;
  - 10.2.3 have had the opportunity to inspect the Equipment prior to entering into the Hire Agreement; and
  - 10.2.4 agree that to the extent permitted by Law We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purposes.
- 10.3 To help You stay safe during the Hire Period, You and Your employees, agents and contractors must:
- 10.3.1 Set up and operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - 10.3.2 ensure persons operating the Equipment are suitably trained on its safe and proper use, and qualified to use the Equipment; and
  - 10.3.3 ensure that no persons operating the Equipment are under the influence of drugs or alcohol.
- 10.4 It is important to take care of the Equipment during the Hire Period. You must:
- 10.4.1 Ensure you carry out any daily and other periodic checks and maintenance on the Equipment as set out in the Quotation or in any daily checklist books or other reasonable instructions provided by Us to You at Your own cost;
  - 10.4.2 not in any way alter, modify, tamper with, damage, perform any maintenance or repair the Equipment without Our prior written consent or otherwise in accordance with your obligations in these Terms and Conditions; and
  - 10.4.3 not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.
- 10.5 At all times during the Hire Period, You must:
- 10.5.1 store the Equipment safely and securely and protected from theft, seizure, loss or damage;
  - 10.5.2 insure the Equipment against theft or loss; and
  - 10.5.3 Use the Equipment in accordance with all manufacturer's guidelines and instructions and Our instructions.
- 10.6 You will allow Us to enter Your Premises on prior notice and inspect the Equipment from time to time during the Hire Period and carry out the maintenance We deem necessary on the Equipment in accordance with the manufacturer's guidelines. You can also request a joint inspection with Us at the end of the Hire Period.
- 10.7 You must not remove the Equipment from Your premises (or any premises where the Equipment was delivered/where you took possession of the Equipment) without our prior written consent, which may be granted in our sole discretion and subject to any conditions required by Us. In the event that we do consent to You moving the Equipment personally, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines in addition to any other requirements by Us, and You (or any contractor You engage) must observe any safety

directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.

- 10.8 You, upon delivery of the Equipment, assume all risks and liabilities for and in respect of the Equipment and for injuries to or death of persons and damage to property howsoever arising from the possession of use, maintenance, repair or storage of the Equipment.
- 10.9 You must carry out a daily check list to ensure that the machine is in good working order. Any fault/s must be reported to Our service department and the Unit must be Tagged Out. All service work is to be carried out by Our service department.
- 10.10 You will be liable for the costs or repairs to bring the Unit/s to a hireable condition, as supplied.
- 10.11 In respect to electric forklifts, batteries are hired out with the Units. The Hirer/Customer agrees to operate the battery in line with manufacturer guidelines and warranty statements. You agree to reimburse Us on an indemnity basis for any costs incurred by us due to any use of the batteries that is not in accordance with this clause.
- 10.12 You agree to fill the batteries with water on a weekly basis in accordance with the manufacturer's guidelines and specifications for the Hire Period. Failure to fill batteries with water will result in premature failure and any costs and damages associated with such failure will be charged to You.
- 10.13 You, at Your own expense, must at all times comply with all laws, federal and state statutes and regulations, codes, bylaws, ordinances or orders made under them and the requirements of any public, municipal or other authority as far as these affect You, Your servants or agents or their possession of or use and operation of the Equipment.
- 10.14 You shall not use or permit the Equipment to be used for any unlawful purpose or otherwise than in accordance with any legal, contractual or insurance requirements which in any way relate to You or to the Equipment.
- 10.15 You are aware and agree that when the hired Unit needs to be operated in areas that are open to the public such as (but not limited to) roadways and footpaths, the Unit will have to be road registered. Any fines incurred are to be at Your own expense, including where We are not made aware prior to the Hire Period that you intend to use the Equipment on any such areas open to the public where road registration of the Unit is required. It is also Your responsibility to inform Us prior to commencement of the Hire Period of the need to secure any conditional or other permit/s or consents in connection with your possession, use or operation of the Equipment so that We can obtain all necessary approvals permits and consents prior to the Hire Period and you must pay any fines or other costs that are incurred due to your failure to do so.
- 10.16 Any driver or operator supplied by Us to work the Equipment shall be under the direction and control of You and for all purposes related to such employment or working of the Equipment shall be regarded as the servant or agent of You which alone shall be responsible for all claims howsoever arising in connection therewith.
- 10.17 You must promptly advise Us in writing of any events which cause loss or damage to the Equipment or which could give rise to claims against You or the Equipment.
- 10.18 You must insure and keep the Equipment insured with an insurer approved by Us, in Our name and Yours for an amount equal to the full insurable value against loss or damage to the Equipment for fire, theft,



and accident or otherwise. You must provide to Us on request, a certificate of currency and policy of insurance that reflects the actual details of the Equipment hired from Us which names Us as the nominated insured.

10.19 You are responsible for any excess and any other costs associated with Your insurance and You are responsible for any shortfall in repair or replacement costs of the Equipment following payment of any amount received under Your insurance, including any loss We suffer as a result of not being able to hire the Equipment.

10.20 Notwithstanding whether or not You obtain insurance, You remain liable for all loss and damage and fair wear and tear in relation to the Equipment during the Hire Period.

10.21 You must not do any act or thing which might in any way invalidate or prejudice any such insurance or Our interest therein. You must notify Us immediately in writing of any event which leads or might lead to a claim for compensation or a claim under any insurance policy and shall comply with the instructions of Us in connection with any such claim.

## 11. DEFAULT OR BANKRUPTCY

11.1 Each of the following is an event of default ("**Event of Default**"):

11.1.1 if The Hirer defaults in payment by the due date of any amount payable to Us and fails to fully remedy that default within 7 days;

11.1.2 The Hirer breaches an essential term of this Hire Agreement that is incapable of remedy.

11.1.3 if The Hirer defaults in any other observance or performance of any of the obligations contained in the Hire Agreement on its part to be performed and such failure continues for a period of 7 days or more after notice in writing has been given by Us to You to remedy the default;

11.1.4 where The Hirer is a natural person and such person dies or commits an act of bankruptcy within the meaning of Bankruptcy Act 1966 or becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his creditors or any class of his creditors generally;

11.1.5 where the Hirer is a corporation: -

(b) any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of The Hirer;

(c) The Hirer calls any meeting of its creditors or enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally;

(d) The Hirer has a liquidator or provisional liquidator or administrator appointed to it or an official manager or receiver is appointed to, or an encumbrancer takes or proposes to take possession of, any parts of its assets; and/or

(e) The Hirer becomes insolvent as defined in the Corporations Law;

11.2 At any time upon or after the occurrence of an Event of Default (in addition to any other rights we have under this Hire Agreement and Terms and Conditions including under clause 13):

(a) We may charge interest on any sum due at the rate of 10% per annum;

(b) We may repossess/take possession of the Equipment with or without any notice to You; and/or

(c) We may by notice immediately terminate this Hire Agreement.

- 11.3 For the purposes of repossessing the Equipment, You hereby grant to Us an irrevocable licence to enter any premises occupied or controlled by You or believed by Us to be occupied or controlled by You to repossess the Equipment and You indemnify Us and shall keep Us indemnified from and against any liability to You or any other party arising from or in connection with the repossession of the Equipment.
- 11.4 If We repossess the Equipment, We may retain possession of the Equipment until:
- 11.4.1 We are satisfied that the Event of Default giving rise to such taking of possession has been remedied, or in Our opinion such default does not or would not prejudicially affect Our rights under the Hire Agreement or in any way endanger the Equipment or Our interests in it; and
- 11.4.2 There is no other Event of Default which has occurred and is continuing.
- 11.5 Prior to any redelivery of the Equipment to You, You must pay to Us any outstanding sum due to Us and interest that has accrued on such sum together with the cost of any repair and maintenance work and all charges, costs including legal costs and expenses incurred by Us in taking possession of the Equipment, storing the Equipment during the period of possession and redelivering the Equipment to You.

## **12. WARRANTIES, INDEMNITIES AND EXCLUSION OF LIABILITIES**

- 12.1 You warrant to Us as follows and acknowledge that We are relying on such warranties in carrying out any Services:
- 12.1.1 that You will only permit authorised officers who are currently employed by You at the time of issue of any order by You, to issue and/or sign such order; and
- 12.1.2 that You have the authority to consign, receive, send or otherwise deal with the Equipment including to engage Us to carry out the Services upon and subject to these Terms and Conditions;
- 12.2 Subject to clause 12.4, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 12.3 Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the consumers of goods and services in certain circumstances.
- 12.4 Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Hire Agreement, then Our liability for breach is limited to (at Our election):
- 12.4.1 in relation to goods:
- 12.4.1.1 the replacement of the goods or the supply of equivalent goods;
- 12.4.1.2 the repair of the goods;
- 12.4.1.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- 12.4.1.4 the payment of the cost of having the goods repaired.

- 12.4.2 in the case of services:
- 12.4.2.1 the supplying of the services again; or
  - 12.4.2.2 the payment of the cost of having the services supplied again.
- 12.5 Subject to Our obligations under clause 12.4 and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach under legislation.
- 12.6 Subject to clauses 12.4 and 12.5, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that You are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 12.7 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:
- 12.7.1 personal injury;
  - 12.7.2 damage to property; or
  - 12.7.3 a claim by a third party,
  - 12.7.4 in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence directly causes the liability, claims, damage, loss, costs or expenses.
- 12.8 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.
- 12.9 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and You indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

### 13. TERMINATION OF HIRE AGREEMENT

- 13.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:
- 13.1.1 that other party breaches any term of the Hire Agreement (including for breach of payment terms pursuant to clause 6) and fails to remedy the breach within 7 days of written notification of the breach; or
  - 13.1.2 that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business, subject to any rights You may have under the *Corporations Act 2001* (Cth).
- 13.2 We may terminate the Hire Agreement and any Hire Period (or additional Hire Period) for any other reason with 5 days' notice.
- 13.3 These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.
- 13.4 On the termination or expiry of the Hire Agreement, You must (in addition to and without prejudice to any other right or remedy of the Owner):
- 13.4.1 return the Equipment to Us at Our nominated premises;
  - 13.4.2 allow Us such access to the premises or otherwise at Your cost so as to allow Us to collect the Equipment;
  - 13.4.3 pay to Us the cost of repairing any damage to the Equipment other than fair wear and tear;
  - 13.4.4 Pay to Us any and all other charges outstanding or owing under this Hire Agreement (and interest on such amounts), including without limitation (provided the Hire Agreement has not been terminated due to Our default) all Hire Charges remaining under the term of the Hire Period or that would have been due had the Hire Period not been terminated early; and
  - 13.4.5 pay to us any costs involved (including without limitation any legal fees) to recover possession of the Equipment (unless the Hire Agreement has been terminated due to our default).
- 13.5 Despite any other clause of this Agreement and provided any Minimum Hire Period has or will be satisfied, either party may terminate the Hire Period of a Casual Hire upon 24hrs notice to the other party without penalty (but without prejudice to any claim either party may have against the other in respect to a breach of the terms of this Hire Agreement prior to such termination).

### 14. NOTICE

- 14.1 A notice to be given by a party to another party under the Hire Agreement must be:
- 14.1.1 in writing
  - 14.1.2 directed to the recipients address specified in this document or as varied by the written notice: and
  - 14.1.3 left at or sent by prepaid registered post, hand delivery, telex or facsimile to that address, and will be deemed to be duly given:
  - 14.1.4 on the day of delivery; or
  - 14.1.5 3 days after the date posting by prepaid registered post.
- 14.2 The provision of this clause is in addition to any other mode of service permitted by law.

**15. FORCE MAJEURE**

- 15.1 Neither party will be responsible for any delays in delivery or installation due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.
- 15.2 Nothing in clause 15.1 will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

**16. SEVERABILITY**

If any part of this Hire Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

**17. GOVERNING LAW**

The Hire Agreement is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Hire Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**18. PRIVACY**

- 18.1 You authorise Us to collect, retain and use any information about You for the purposes outlined in, and accordance with, our Privacy Policy and the National Privacy Principles.
- 18.2 You agree at all times to comply with the provisions of our Privacy Policy. You may request a copy of our Privacy Policy from Us at any time and it is also available here [www.taraforklifts.com.au/privacy-policy.html](http://www.taraforklifts.com.au/privacy-policy.html)

**19. PPSA**

- 19.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 19.2 Both parties acknowledge that this Agreement creates a Security Interest under the PPSA and also gives rise to a Purchase Money Security Interest (PMSI) in favour of Us over the Equipment supplied or to be supplied on hire to You, as Grantor, pursuant to this Agreement.
- 19.3 The Equipment supplied or to be supplied under this Hire Agreement falls within the PPSA classification of "Other Goods" and / or "Motor Vehicles" hired by You pursuant to the Hire Agreement.
- 19.4 Us and You both acknowledge that Us, as Secured Party, are entitled to register Our security interest in the Goods supplied or to be supplied to You on hire under this Hire Agreement on the PPSA Register as Collateral.
- 19.5 To the extent permissible at law, You:
- 19.5.1 waive Your right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by You, as Grantor, to Us.
- 19.5.2 agree to indemnify Us on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
- (a) registration or amendment or discharge of any Financing Statement registered by or on behalf of Us; and
- (b) enforcement or attempted enforcement of any Security Interest granted to Us by You.

- 19.6 Both parties acknowledge that for the purpose of section 109(1) of the PPSA this Hire Agreement does not secure payment or performance of an obligation. However, if Chapter 4 of the PPSA does apply to the enforcement of a security interest arising under this Agreement, You agree, to the extent permissible at law, to the following:
- 19.7 That nothing in sections 130 or 143 of the PPSA will apply to this Agreement or the Security under this Agreement;
- 19.8 to waive Your right to do any of the following under the PPSA:
  - 19.8.1 receive notice of removal of an Accession under section 95;
  - 19.8.2 receive notice of an intention to seize Collateral under section 123;
  - 19.8.3 object to the purchase of the Collateral by the Secured Party under section 129;
  - 19.8.4 receive notice of disposal of Collateral under section 130;
  - 19.8.5 receive a Statement of Account if there is no disposal under section 130(4);
  - 19.8.6 receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
  - 19.8.7 receive notice of retention of Collateral under section 135;
  - 19.8.8 redeem the Collateral under section 142; and
  - 19.8.9 reinstate the Security Agreement under section 143.
- 19.9 All payments received from You must be applied in accordance with section 14(6)(c) of the PPSA.
- 19.10 Any amendment to the PPSR for a particular Unit hired will incur an amendment charge of \$15 per Unit + GST.