

Hire Agreement Terms and Conditions

This Hire Agreement is entered into by The Hirer/Customer (the company whose name is stated in the Hire Agreement) and the Owner, Minley Investments PTY LTD trading as TARA FORKLIFT SERVICES.

Whereas The Hirer/Customer accepts and acknowledge that Minley Investments PTY LTD trading as TARA FORKLIFT SERVICES has the sole ownership of the material handling equipment detailed in the equipment schedule of the hire agreement.

By signing this agreement, the Hirer acknowledges that these terms and conditions are available on the Owner's website and are the Hirer further acknowledges having accessed these terms and conditions and to have read, agreed and accepted the Terms and Conditions contained herein.

I. DEFINITION OF TERMS:

1. **"Conditions"** means the terms and conditions stated hereunder and the Hire Agreement.
2. **"Equipment"** means *the material handling equipment hired its accessories &/or attachments (i.e., chargers, batteries, gas bottles, ramps, jibs, slippers, etc) described the Hire Agreement in the Equipment Schedule (together with each and every replacement part or addition thereto).*
3. **"Hire Agreement"** means an agreement for the hire of equipment between The Owner / TARA FORKLIFTS and The Hirer/Customer subject to the conditions.
4. **"Hirer"** means the Company, person or persons named the Hire Agreement as being The Hirer/Customer of the Equipment. If more than one is named, the conditions shall be binding on them jointly and each of them severally;
5. **"Hiring charges"** means the hiring rate as stated on the agreement Hire Agreement;
6. **"Hiring period"** means the start & end date of the hire and any extensions thereto;
7. **"Owner"** means Minley Investments Pty Ltd, trading as TARA FORKLIFT SERVICES (ACN 001 299 529 / ABN 23 001 299 529)
8. **"Prescribed Terms"** means terms, conditions and warranties applied by statute or law into contracts for the supply of goods and/or services which cannot be excluded restricted or modified by agreement;
9. **"Services"** means services provided by The Owner / TARA FORKLIFTS to The Hirer/Customer.
10. **"Customer"** means the Hirer.
11. **"C.O.D."** means Cash on Delivery.
12. **"Excess Hourly Rate"** means \$3.85 per hour.
13. **"Tagged Out"** means the unit has been deemed unsafe to use.

II. GENERAL PROVISIONS:

1. Ownership of The Unit

Throughout the hiring period, **the Equipment remains the sole property of The Owner / TARA FORKLIFTS i.e., MINLEY INVESTMENTS PTY LTD t/a TARA FORKLIFTS SERVICES** and The Hirer/Customer is a Bailee only. *(See item VI)*

2. Hiring Period

The hiring period is that which is stated in the document named 'Hire Agreement' which is annexed hereto. The hiring period may be extended for an additional period upon such terms as are agreed between the parties. The extended hire period is that which goes beyond the last date stated in the original Hire Agreement. If, in the absence of an agreement, the Equipment continues to be provided by The Owner/TARA FORKLIFTS beyond the hiring period, the same terms and conditions shall apply unless modified by The Owner/TARA FORKLIFTS or an amended agreement is agreed to between the parties and documented in writing. Where the Equipment continues to be provided beyond the original hiring period and no written agreement for extension exists, either party may terminate the arrangement with 30 days written notice. The Owner/TARA FORKLIFTS reserves the right to terminate an additional hiring period at its sole discretion with the giving of five (5) days' notice.

3. Stamp, Registration & All Other Duties

The Owner / TARA FORKLIFTS may stamp and register the Hire Agreement in any state or Territory in which The Owner / TARA FORKLIFTS considers it appropriate to do so for the protection of its interests.

The Hirer/Customer must pay to The Owner/TARA FORKLIFTS all the charges and expenses reasonably incurred by The Owner/TARA FORKLIFTS in connection with such stamping and registration and also the amount or amounts of stamp duties and other imposts which are or may at any time in the future be imposed, charged or payable on or in respect of the Hire Agreement or the payment of hiring charges.

The Hirer/Customer is responsible for the costs associated with the delivery of the Equipment and its collection at the expiry of the hiring period. Where the hiring period is less than 12 months or where the Hire Agreement is prematurely determined, The Hirer/Customer shall pay all such transport costs.

4. Delivery Date

It will be the Hirer/Customer's responsibility to advise The Owner/TARA FORKLIFTS of a suitable delivery time/date.

It will be The Hirer/Customer's responsibility to advise The Owner/TARA FORKLIFTS the suitable date and/or time of delivery and collection such that there is no loss to The Hirer/Customer's operation. It will also be The Hirer/Customer's responsibility to secure and/or facilitate the necessary pass/s should there be restricted entry on the point of delivery. Should there be delays in the delivery caused by restricted entries; waiting period/time will be billed to The Hirer/Customer. *And should there be cancellation of the hire on the date of delivery, the Hirer/Customer will pay for the return transport costs as per hire agreement.*

The Owner/TARA FORKLIFTS will 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 the like, and/or force majeure.

5. Delivery & Acceptance of Unit/Units on Hire

Upon Acceptance of the unit/s hirer accepts delivery of the equipment, The Hirer/Customer is deemed to have inspected the Equipment and been satisfied as to its condition and suitability and fitness for the purposes of The Hirer/Customer.

6. Payment Terms

The Hirer/Customer agrees to pay the rental COD / 1 month or week rental upon delivery either by EFT / cheque or credit card facility. *Unless prior arrangement for payments have been agreed to.*

The Hirer/Customer agrees to accomplish a credit card authorization form for payment to be authorised or processed when account is unpaid within the 30-day period.

7. Rates & Charges

- 7.1 The rates and charges are as specified in the Hire Agreement;
- 7.2 Hire is based on a single shift **40HRS PER WEEK** for a Gas-Electric-Diesel Forklifts. Hire in excess of 40HRS PER WEEK, will incur an additional charge of **\$3.85 PER HR applies** or part thereof to all forklifts unless stated otherwise in the Hire Agreement;
- 7.3 During the currency of the Hire Agreement, hiring charges must be paid by The Hirer/Customer monthly in advance for the period from the time the equipment is in the care, custody or control of The Hirer/Customer until the date the Equipment is collected by the Owner;
- 7.4 The first payment shall be made upon delivery of the Equipment.
- 7.5 The Hirer/Customer acknowledges that The Owner/TARA FORKLIFTS has fixed the hiring rate stated on the hire agreement on the basis of a certain period of hire and an agreed number of hours of usage per week.
- 7.6 Should the yearly hours of usage or in the case of a Hire Agreement for a period less than a year, the hours of usage for the stated hiring period, exceed the agreed number of hours (as evidence by the hour meter on the equipment) The Owner/TARA FORKLIFTS may charge The Hirer/Customer an additional charge.
- 7.7 Invoices rendered by The Owner/TARA FORKLIFTS for the additional charge must be paid within 30 days of the date of the accounts.
- 7.8 The Owner may increase the Excess Hours rate in proportion to any increase during the currency of the Hire Agreement of the All Groups Consumer Price Index Number Eight Capital Cities published by the Australian Bureau of Statistics. In calculating any increase, The Owner/TARA FORKLIFTS shall have regard to the Index for the quarter in which the Hire Agreement commenced and the Index for each June quarter thereafter.

III. OWNER'S RESPONSIBILITIES

The Owner / TARA FORKLIFTS will supply equipment in good working order as required by the HIRER. In the event of a fault or breakdown of the Equipment which cannot be repaired within 24 hours on site, the Owner/TARA FORKLIFTS, conditional upon the Hirer/Customer complying with Clause IV, will provide a replacement unit subject to availability at The Owner's expense.

IV. OWNERSHIP OF UNITS

The Hirer/Customer acknowledges that the unit/units on hire is/are owned by TARA FORKLIFTS; should unit/s be sub-hired for the hirer/customer, the hirer/customer agrees that, unit/s are merely on hire and will have no claim over the unit/s i.e., in the unlikely event of bankruptcy and/or liquidation, the hirer/customer will return the hired unit/s to TARA Forklifts.

The Hirer/Customer, at all times remains the Bailee only and will have no property interest nor assign and interest to any third party in the unit/s specifically liquidators and/or administrators, in the unit/s hired.

V. HIRER'S RESPONSIBILITIES

1. Terms of Payment

The Hirer/Customer, shall pay the weekly rate agreed either by EFT or cheque payment.

- 1.1 For new customers, the Hirer/Customer will submit a credit application form in the form annexed herewith and shall pay the initial hire by EFT, cheque or credit card payment on COD terms. Subsequent invoices will be on 30-day term credit.

- 1.2 In the event of NO PAYMENT from Hirer/Customer, in the absolute discretion of The Owner, the hire **may be terminated** and Equipment will be returned to The Owner at the Hirer/Customer's sole cost.
 - 1.3 that the agreed terms of payment are 30 days unless other terms are agreed; payments are made either by EFT, credit card or cheque payment 30 days after the invoice is issued;
 - 1.4 non-payment within the agreed terms may result to debt collection procedures where legal and service fees as well as commissions will be on the account of the Hirer/Customer;
2. The Hirer/Customer, upon delivery of the equipment, assumes 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. Notwithstanding whether or not The Hirer/Customer has effected insurance in respect thereof, The Hirer/Customer indemnifies the Owner/TARA FORKLIFTS against the loss of or damage to the Equipment whether by fire, theft, accident, seizure, confiscation or otherwise and further indemnifies The Owner/TARA FORKLIFTS and relieves the Owner / TARA FORKLIFTS from and against all other losses, damages, claims, actions, liabilities, expenses and costs (including legal costs on a solicitor/own client bases) howsoever arising as a result of or in connection with the Equipment or the possession, use, maintenance, repair or storage of the Equipment or the seizure or taking of possession of the Equipment by the Owner. The Hirer/Customer must promptly advise The Owner/TARA FORKLIFTS in writing of any events which cause loss or damage to the Equipment or which could give rise to claims against The Hirer/Customer or the Equipment.
3. The Hirer/Customer must insure and keep the Equipment insured with an Insurer approved by The Owner / TARA FORKLIFTS in the names of The Owner/TARA FORKLIFTS and The Hirer/Customer for an amount equal to the full insurable value against loss or damage to the Equipment for fire, theft, and accident or otherwise. The Hirer/Customer must promptly pay all premiums and stamp duty which are necessary for effecting the keeping such insurance in force. The Hirer/Customer must on demand produce to The Owner/TARA FORKLIFTS the policy for such insurance and evidence to the Owner's satisfaction that the current insurance premiums have been paid and that the insurance hereunder is in force. The Hirer/Customer must not do any act or thing which might in any way invalidate or prejudice any such insurance or the Owner's interest therein. The Hirer/Customer must notify The Owner/TARA FORKLIFTS 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 The Owner/TARA FORKLIFTS in connection with any such claim.
4. The Hire Agreement and the hiring thereby created is personal to The Hirer/Customer. The Hirer/Customer has no interest assignable at law or in equity in the Hire Agreement or in the Equipment and will not agree attempt offer or purport to pledge sell assign mortgage sub-hire charge lend hire or otherwise dispose of or deal with, or permit to exist any lien or other encumbrance over, the Equipment or any part thereof or any of The Hirer/Customer's rights to the Equipment or any part thereof or any of the rights of The Hirer/Customer under the Hire Agreement and shall keep the Equipment free from any distress, execution or other legal process. Except with the consent of the Owner, The Hirer/Customer will not move the Equipment from the place of use specified the Hire Agreement.
5. The Hirer/Customer must ensure the Equipment is used at all times in a skilful and proper manner by suitably qualified and competent persons who are in possession of all relevant certificates permits and licences.
6. The Hirer/Customer must at its own expense keep the Equipment clean and in proper working order and condition employing properly qualified and competent persons to do so. The Hirer/Customer, its employees and agents must operate maintain and store the Equipment with due care and diligence and in accordance with the instructions and recommendations of The Owner/TARA FORKLIFTS and/or manufacturer of the Equipment as to operation, maintenance and storage thereof.

7. The Hirer/Customer must carry out a daily check list to ensure that the machine is in good working order. Any fault/s must be reported to The Owner's service department and the unit must be TAGGED OUT. All service work is to be carried out by The Owner's service department. Misuse, overloading, external contamination, or corrosion to the paint work, The Hirer/Customer will be liable for the costs of repairs to bring the unit/s as to a hireable condition as supplied.
8. Batteries are hired out with the Forklift on a basis that the unit is only operating a single shift **8HR duration**. The Hirer/Customer agrees to one charge per 24HRS and Battery shall not be discharged to less than 20% capacity and shall not be used more than **25 HRS PER WEEK as per battery manufacturer's handbook**.
 - 8.1 Battery Maintenance: The Hirer/Customer will fill water on a weekly basis for the contracted hire of the unit. Failure to fill batteries with water will result in premature failure and will be charged to the customer.
9. The Hirer/Customer will permit The Owner/TARA FORKLIFTS to carry out routine maintenance and service work as deemed necessary to keep the unit in good working order. TARA FORKLIFTS will carry out manufacturer's recommended service schedules in a timely manner (as per service maintenance schedule). Any customer damage or repair works, including damaged parts caused by misuse, abuse or improper use of the equipment by The Hirer/Customer, its servants, agents or contractors or any breach of the hire conditions, is chargeable to The Hirer/Customer / Customer. The Owner/TARA FORKLIFTS will invoice The Hirer/Customer within 30 days for any damage caused to the machine.
10. The Hirer/Customer, at its 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 The Hirer/Customer, its servants or agents or their possession of or use and operation of the Equipment.

The Hirer/Customer 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 The Hirer/Customer or to the Equipment.

The Hirer/Customer is aware and agrees that when the hired unit needs to be operated in areas that are open to the public such as roadways and footpaths (generally, anywhere beyond front driveway or the hire's complex), the forklift will have to be road registered. Fines to be incurred are at the Hirer/Customer's account if TARA FORKLIFTS is not made aware. It shall be The Hirer/Customer's responsibility to inform the Owner/TARA FORKLIFTS PRIOR TO commencement of the hire, of the need to secure conditional permit/s so that the Owner/TARA FORKLIFTS can obtain all necessary approvals permits and consents related to the possession use or operation of the Equipment, *e.g. Road Registration*.

11. Any driver or operator supplied by The Owner / TARA FORKLIFTS to work the Equipment shall be under the direction and control of The Hirer/Customer and for all purposes related to such employment or working of the Equipment shall be regarded as the servant or agent of The Hirer/Customer which alone shall be responsible for all claims howsoever arising in connection therewith.

VI. IN CASE THE HIRER/CUSTOMER IS IN DEFAULT OR FILES FOR BANKRUPTCY

In the event of default, The Hirer/Customer agrees for The Owner/TARA FORKLIFTS may collect / re-possess the Equipment on hire as stated in the hire agreement. It is The Hirer/Customer's obligation to inform The Owner/TARA FORKLIFTS of any default/bankruptcy situations, to with:

(1) each of the following is an event of default:

- (a) if The Hirer/Customer defaults in payment by the due date of any amount payable to The Owner / TARA FORKLIFTS under the Hire Agreement; **the agreed terms of payment is 30 days;**
- (b) if The Hirer/Customer defaults in the 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 The Owner / TARA FORKLIFTS requiring The Hirer/Customer to remedy the default;
- (c) if The Hirer/Customer fails to perform or observe any other covenant, condition or obligation to be performed or observed by The Hirer/Customer, expressed or implied in any other agreement with the Owner;
 - (d) where The Hirer/Customer 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;
 - (e) where the Borrower is a corporation: -
 - i. 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/Customer;
 - ii. The Hirer/Customer 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;
 - iii. The Hirer/Customer 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;
 - iv. The Hirer/Customer becomes insolvent as defined in section 95A(2) of the Corporations Law;
 - (f) Any warrant, distress or execution is issued against The Hirer/Customer.
 - (g) Any of the obligations expressed, as being assumed by The Hirer/Customer under this Hiring Agreement ceases to be valid, legal, binding and enforceable against the Borrower;
 - (h) there is a material adverse change in the business or financial condition of The Hirer/Customer which could adversely affect the ability of The Hirer/Customer to meet its obligations under a Hire Agreement.
- (2) At any time upon or after the occurrence of an Event of Default:
- (a) The Owner/TARA FORKLIFTS may charge interest on any sum due or which by virtue of this clause may become due at the prevailing rate pursuant to Section 100 of the *Civil Procedure Act 2005* (NSW), plus 2 per cent from the due date until the date of payment in full;
 - (b) The Owner/TARA FORKLIFTS may take possession of the Equipment with or without any notice to The Hirer/Customer;
 - (c) The Owner/TARA FORKLIFTS may by notice in writing to The Hirer/Customer terminate the Hire Agreement hereunder and take possession of the Equipment;
- (3) For the purposes of repossessing the Equipment, The Hirer/Customer hereby grants to The Owner / TARA FORKLIFTS an irrevocable licence to enter any premises occupied or controlled by The Hirer/Customer or believed by The Owner / TARA FORKLIFTS to be occupied or controlled by The Hirer/Customer to repossess the Equipment using such reasonable force as is necessary and The Hirer/Customer indemnifies The Owner/TARA FORKLIFTS and shall keep **the owner indemnified** from and against any liability to The Hirer/Customer or any other party arising from or in connection with the repossession of the Equipment;
- (4) If The Owner/TARA FORKLIFTS takes possession of the Equipment, The Owner / TARA FORKLIFTS may retain possession of the Equipment until:
- (a) The Owner/TARA FORKLIFTS is satisfied that the event of Default giving rise to such taking of possession has been remedied, or in the Owner's opinion such Event of Default does not or would not prejudicially affect the Owner's rights under the Hire Agreement or in any way endanger the Equipment or the Owner's interests in it;

- (b) There is no other Event of Default which has occurred and is continuing.
- The Hire Agreement continues during the period of possession by The Owner/TARA FORKLIFTS and the hiring charges are payable by The Hirer/Customer as if the Equipment remained with The Hirer/Customer or under The Hirer/Customer's control. As a condition precedent to any redelivery of the Equipment to The Hirer/Customer, The Hirer/Customer, on demand from the Owner, must pay to The Owner/TARA FORKLIFTS any outstanding sum due to The Owner / TARA FORKLIFTS 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 (on a solicitor/own client basis) and expenses incurred by The Owner / TARA FORKLIFTS in taking possession of the Equipment, storing the Equipment during the period of possession and redelivering the Equipment to The Hirer/Customer.

Upon the termination of the Hire Agreement for any reason whatsoever, The Hirer/Customer must pay to the Owner, by way of liquidated damages, in addition to and without prejudice to any other right or remedy of the Owner

Herein contained or implied or at general law the total of:

- (a) the aggregate sum of all hiring charge instalments, together with an amount equal to any stamp duty or financial institutions duty payable in respect of such future hiring charge instalments less the costs that would have been incurred by The Owner/TARA FORKLIFTS in relation to the Equipment or the Hiring Agreement;
- (b) the amounts of any hiring charges or other moneys in arrears;
- (c) Interest payable on any such outstanding sums;
- (d) the costs (including legal costs on a solicitor/own client basis) and expenses incurred by The Owner/TARA FORKLIFTS in repossessing, storing and insuring and registering the Equipment;
- (e) The costs and expenses incurred in performing any necessary repair and maintenance work.

VII. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA) / PERSONAL PROPERTY SECURITIES REGISTRY

1. The Hirer/Customer acknowledges that the unit/units on hire is covered by the **PERSONAL PROPERTY SECURITIES ACT 2009) PPSA;**
2. The Hirer/Customer will, at the request of the owner, execute documents and do such further acts as may be required for The Owner/TARA FORKLIFTS to register the security interest granted by The Hirer/Customer under the PPSA.
3. The Hirer/Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this agreement or any other address later notified to The Owner/TARA FORKLIFTS by The Hirer/Customer or The Hirer/Customers authorised representative.
4. The Hirer/Customer further agrees where that The Owner/TARA FORKLIFTS has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
5. The Hirer/Customer irrevocably grants to The Owner/TARA FORKLIFTS the right to enter upon The Hirer/Customers property or premises, without notice, and without being in any way liable to The Hirer/Customer or to any third party, if The Owner/TARA FORKLIFTS has cause to exercise any of its right under sections 123 and/or 128 of the PPSA, The Hirer/Customer shall indemnify The Owner/TARA FORKLIFTS from any claims made by any third party as a result of such exercise.
6. The Hirer/Customer hereby consents to The Owner/TARA FORKLIFTS recording the details of this agreement on the PPSR register and agrees to all things necessary and reasonably required by The Owner/TARA FORKLIFTS to effect such registration.
7. The Hirer/Customer waives any right or entitlement to receive notice of the registration of any security interests created by this instrument on the PPSA register.
8. There will be an administration charge of \$15 + GST which will be applicable after 90 days of hire. This is a one-off charge and is charged per unit.
9. Any amendment to the PPSR for a particular unit hired will incur an amendment charge of \$15 per unit + GST. In case of ABN change or company name change.

VIII. OTHER PROVISIONS

1. The Hire Agreement is the entire agreement between The Owner/TARA FORKLIFTS and The Hirer/Customer. It overrides any previous written or oral agreement, arrangement or correspondence between them.
2. A variation to or amendment of the Hire Agreement must be in writing and signed by both parties.
3. If any provision or part of a provision of the conditions should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable or invalid shall be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down it shall be severed from the remainder of the Conditions which shall not be affected by such severance.
4. The terms and any contract to which they apply shall be governed by the Laws of New South Wales and The Hirer expressly agrees to submit itself to the jurisdiction of the Courts of any other State or Territory within Australia that The Owner, in its sole and absolute discretion may select to commence proceedings in respect to any matter arising hereunder. The Hirer expressly acknowledges that such discretion as to jurisdiction is agreed to and is an Essential Term of the contract and material and fundamental to The Owner's decision to provide credit to The Hirer.
5. The failure of The Owner to enforce any right or part thereof under these Terms and Conditions shall not be considered as a waiver of that right and shall not prevent The Owner from later enforcing that right or any other right.
6. The Hirer shall insure the Equipment in a policy of insurance with such policy of insurance naming the Owner as an interested party. A copy of the Certificate of Insurance shall be provided to the Owner on demand.