

TERMS AND CONDITIONS OF HIRE

In these terms and conditions of hire: "Company" shall mean Komatsu Forklift Australia Pty Ltd (ACN 080 792 730) the owner or custodian of the equipment the subject of the hire under these terms and conditions. "Customer" shall mean the person or entity named on the front of this document as the Customer and to whom or to which the equipment is hired by Company. "Unit(s)" shall mean all the equipment, as listed on the front of this document, hired to Customer together with all attachments and ancillary items supplied with the equipment. "Agreement" shall mean this document and any other documentation issued by Company in relation to the hire, delivery, management and maintenance of the Units. Company at the request of Customer, (acknowledged by Customer's execution on the front of this document) agrees to hire the Units to Customer on and subject to these terms and conditions of hire.

1. TERM and TERMINATION

- (a) This Agreement shall take effect on and from the date and time of execution of this document by Customer.
- (b) Company will hire the Units to Customer who will take on hire each of the Units identified on and for the Term of Hire set out on the front of this document, such term to commence on and from the date of delivery of the Units at the Delivery Point, as evidenced by the delivery docket ("Commencement of this Agreement").
- (c) Customer may terminate this Agreement in respect of all or any of the Units by a minimum of one month notice in writing to Company specifying the Units to be returned together with payment to Company of 65% of the hire charge which would otherwise have been payable in respect of such Units for the balance of the Term of Hire plus the full hire charge payable in respect of such Units until and including the date of expiration of the notice.
- (d) If Customer exercises its rights under the preceding sub-paragraph it shall return (at its cost) the Units specified in the notice in good order and condition (as determined by Company) to Company at such place as Company shall direct in writing.
- (e) Company may at any time terminate this Agreement in respect of all or any of the Units by notice in writing to Customer specifying the Units to be returned and when and where Company intends to collect them.
- (f) If Company exercises its rights under the preceding sub-paragraph Company shall collect such Units from Customer which shall provide easy and immediate access to the Unit(s) and Customer shall not be required to pay hire charge in respect of the Units specified in the notice after the date on which such Units are collected by Company.

2. CHARGES

- (a) Customer will pay to Company the hire charge for the Units (plus any applicable government taxes or charges as may be payable at the Commencement of this Agreement or subsequently), in advance, at the Hire Rate set out on the front of this document or as varied by Company. The said Hire Rate is subject to the provisions for variation described in sub-paragraphs (b), (c) and (d) of this clause 2.
- (b) Services requested outside normal working hours (Mon-Fri 7am-5pm) will be charged at 1.5 times standard hourly rate. For breakdowns occurring outside normal working hours, not due to fair wear and tear, a call out fee equivalent to 3 hours at the applicable rate, will also be charged.
- (c) If in any period Customer uses any of the Units for more than the agreed number of hours allowed in the Hire Rate ("Allowed Weekly Hours") Customer shall pay (quarterly in arrears and pro-rated where necessary) the additional hire charge for each of the Units so used for each hour or part thereof during which such Units are used in excess of the Allowed Weekly Hours at the rate determined by the formula: "excess hours rate x (actual weekly hours less Allowed Weekly Hours) x number of weeks in period".
- (d) The hiring charge payable hereunder shall be reviewed on each yearly anniversary of the Commencement of this Agreement ("the Review Date") and shall be adjusted by the Company multiplying the weekly Hire Rate by the percentage increase in the CPI (All Groups – 8 capital cities) for the 12 months finishing on the Review Date, utilising the index numbers applicable for the nearest published quarters.
- (e) Company will render regular accounts to Customer for the hire charge payable pursuant to this Agreement and such accounts shall be payable by Customer within 7 days of receipt, which shall be deemed to have occurred within three days of despatch by Company to Customer. For terms of hire greater than 3 months, payment shall be effected by direct debit to the bank account of the Company, pursuant to a direct debit authority provided to the Company by the Customer.
- (f) Customer shall pay interest to Company on the amount of any overdue rental, calculated on daily balances from the date due to the date paid (inclusive), at the rate 8.75% per annum.

3. DELIVERY

Company will deliver the Units to Customer at the Delivery Point as soon as practical after the Units are available. The Delivery Point will be Company location, as listed elsewhere in this document, unless otherwise specifically stated.

4. USE

Customer shall at all times use the Units in a proper and skilful manner, only in the agreed Operating Environment and only in accordance with the manufacturer's operating instructions. Customer shall permit the Units to be used only by skilled, competent and appropriately licensed employees of Customer or by such other persons as are previously authorised by Company. Customer warrants that the Units shall not be used at any time before the daily checks (clause 7(c)) are completed nor for any purpose or use other than that for which the Units were expressly designed and hired and shall observe and comply with the provisions of all applicable laws and regulations (including occupational health and safety laws) and any directions or instructions given by Company during the hire term in relation to the use of the Units hired. Customer indemnifies Company for any cost, loss or liability whatsoever arising out of the use of any Unit or from Customer's breach of this Agreement.

5. RISK AND INSURANCE

- (a) During the course of delivery, throughout the hire period and until the Units are returned into the possession and control of Company, the Units shall be at Customer's risk in all respects.
- (b) Customer shall at all times during this Agreement indemnify Company against:
- (i) any loss or destruction of the Units or damage thereto from any cause whatsoever; and
 - (ii) any losses, expenses or lost alternate hire revenue suffered by Company as a result of loss, destruction, damage or inability to obtain access to or gainfully utilise any Unit; and
 - (iii) any loss damage or claim in respect of damage or injury to persons or property arising in any manner out of Customer's use or possession of the Units or any defect therein and all costs and expenses incurred by Company defending such claim.
- (c) Customer shall effect and maintain sufficient and suitable insurance (including public risk insurance for a minimum of \$10 million) in respect of its liability under the foregoing indemnities.

6. WARRANTY

Company warrants that when delivered the Units will be in good working order, but, subject to its obligation to maintain the Units pursuant to this Agreement and subject to Clause 20, Company gives no further warranties and makes no representations whatsoever relating to the Units their condition or quality or to their suitability or fitness for any ordinary or any special use or purpose and any warranties which would otherwise be implied by law which may be legally excluded are hereby excluded. Customer warrants and discloses to Company that Customer is relying on its own skill and judgement in assessing its requirements and hiring the Units from Company.

7. MAINTENANCE

- (a) Customer shall not permit any person other than an employee of Company, or such other persons as are previously authorised in writing by Company, to effect any adjustments or undertake any maintenance or repairs to any of the Units.
- (b) Company shall be responsible at its own expense for service, maintenance, repairs, lubrication, and parts for the Units as necessitated by the reasonable use of the Units by Customer or by fair wear and tear but all other costs and expenses of reinstatement, repair or maintenance of any Unit, arising from any other cause, are payable by Customer.
- (c) It shall be Customer's responsibility to perform a daily check of the engine oil level, the radiator water level, the battery water level before charging and the operational state of tyres prior to the commencement of each shift or days work. It shall also be the Customer's responsibility to perform periodic inspection and/or certification of ancillary equipment including fire extinguishers, battery chargers and crack testing, where required.
- (d) Customer shall pay for all fuel, lubricants and tyres required for proper operation of the Units.
- (e) Company shall have the right on reasonable notice to inspect any and all Units during normal working hours and to submit such Units to such mechanical or other tests as may be required to ensure that and to enable the Units to be properly serviced and maintained.
- (f) If any Unit shall malfunction Customer shall notify Company which shall, provided the malfunction is a direct result of normal wear and tear, as soon as practicable thereafter inspect and effect such repairs as are in Company's opinion are necessary to return the Unit to good working order.
- (g) If Company is unable to put the Unit in good working order, to Company's satisfaction, within 48 hours of its receipt of notice of malfunction, Company shall provide Customer as soon as practicable thereafter with a temporary replacement for the Unit, to be chosen by Company, pending the completion of repairs.
- (h) KOMTRAX:
If any Unit is fitted with KOMTRAX remote monitoring the Customer acknowledges and agrees to Company utilising KOMTRAX for its own internal purposes. Customer shall not be entitled to access any information collected or processed by KOMTRAX unless Company specifically provides such information, which it may refuse to do without providing reasons.

8. ALTERATIONS, ATTACHMENTS OR DEFECTION

- (a) Customer shall not make any alterations or additions to the Units or install any accessories, equipment or device thereon or therein without the prior written consent of Company (and then only in accordance with any requirements or conditions stipulated by Company) and will, immediately following a request by Company, remove any such alterations, additions, installations, accessories, equipment or devices (collectively "accessories" and each individually an "accessory"), whether or not made with Company's consent, and restore the Units to their normal working order and condition. Customer acknowledges that the property in any accessory installed on the Units, with or without Company's consent, which is not removed upon request shall pass to and vest in Company.
- (b) Customer shall not remove, interfere with, deface or cover up any marks of identification or ownership appearing on the Units.

9. CHANGE OF LOCATION

Customer shall not change the location of the Units from the location advised to Company at the Commencement of this Agreement without the prior written consent of Company, and Customer shall promptly notify Company in writing of any change of location of the Units, whether or not authorised by Company. Customer agrees to indemnify and keep indemnified Company against any costs, loss or damage suffered by Company in the event the Units are changed to a location other than that originally notified as the hire location, such new location being premises not subject to the control of Customer, and Company recovers or attempts to recover possession of those Units from that location.

10. PROPERTY IN THE UNITS

No right, property or interest in the Units shall pass to Customer which shall be a bailee thereof only. Customer shall not purport to assign any interest in the Units to any other person nor deal with the Units in any respect nor permit or suffer to be done any act, including the creation of any lien, charge, security or other encumbrance which may prejudice the rights of Company to the Units in any way whatsoever. For the purposes of section 109(1) of the PPSA it is agreed this Agreement is a Personal Property Securities Lease (PPSL) that secures payment or performance of an obligation and for the purposes of the PPSA, Company has been granted by Customer as Grantor, and holds, a Purchase Money Security Interest under the PPSL. Customer acknowledges Company is a Secured Party and entitled to register its Security Interest in the Unit(s) on the PPSA Register, as Collateral. Section 95 of the PPSA will not apply to this Agreement to the extent it requires Company, as Secured Party, to give a notice to Customer as Grantor.

11. RETURN OF THE UNITS

- (a) It is Customer's responsibility to notify Company in writing of the completion of the Term of Hire. Hire will continue beyond the Term of Hire until such written notification is received. Notwithstanding clause 2(d), Company reserves the right to increase the Hire Rate for any period extending beyond the original Term of Hire.
- (b) Upon the expiration of the Term of Hire, Customer shall ensure that the Units are available at the Delivery Point or at such other place as specified by Company for collection by Company.
- (c) All the units shall be returned to Company in good order and condition and Customer hereby indemnifies Company against any reduction in the value thereof (as to which the certificate of a licensed auctioneer or valuer shall be conclusive evidence) below the value that it would be reasonable to expect it to be, having regard to the wear and tear occurring during the Term of Hire and the condition of the Unit at the Commencement of this Agreement. Accordingly Customer shall pay to Company upon demand a sum equal to any deficiency in the amount of the value together with interest at the rate described in Clause 2(f) hereof from the date of demand to the date of payment.
- (d) If Customer does not promptly allow Company to collect the Units upon termination of the hire of the Units, the terms of clauses 12(b) and 12(c) shall apply.

12. DEFAULT

- (a) If at any time:
- (i) Customer fails to pay any hire charge or other moneys payable under the provisions of this Agreement within seven (7) days after the same has become due or fails to observe or perform any other provision or term of this Agreement, or
 - (ii) any steps or proceedings are taken or commenced to have Customer declared bankrupt or to be wound up or to appoint an External Administrator of the affairs of Customer or a receiver is appointed for the whole or any part of the undertaking or assets of Customer, or
 - (iii) a scheme of arrangement in respect of Customer is entered into or proposed, or
 - (iv) any distress or execution or other legal process is threatened or levied upon or against the Units, or the Units are claimed or seized by the landlord or owner, or any encumbrance of the land or premises on which they are kept THEN Company may, notwithstanding any delay or previous waiver of its rights to proceed pursuant to this clause and its rights under the PPSA, by notice in writing to Customer terminate the hiring of the Units and thereupon Customer shall pay Company by way of liquidated and ascertained damages
- (1) the amount of the hire charge then accrued due, and
 - (2) a sum equal to sixty five percent (65%) of the hire charge which would otherwise have been payable in respect of such Units for the balance of the Term of Hire had Company not terminated the hiring of the Units;
 - (3) any other moneys payable pursuant to this Agreement.
- (b) Upon termination of this Agreement Customer will forthwith return the Units to Company in accordance with any directions given by Company and in default thereof Company by its servants and agents may enter upon any premises where the Units are kept or where Company or its servant or agents reasonably suspect that they are kept (forcibly if necessary) and take possession of and remove the Units. Customer hereby indemnifies Company, its servants, contractors and agents against any claim or legal proceedings by any person arising in any way out of the repossession of the Units as aforesaid. This obligation shall survive termination of this Agreement.
- (c) Customer will pay on demand to Company all costs and expenses incurred by Company in exercising or attempting to exercise its rights under this Agreement.
- (d) In addition to and without limitation to all other amounts payable under this Agreement, if this Agreement is terminated by the default of Customer, as defined herein, Customer will pay Company the amount of any costs, expenses and loss of hire charges in respect of the Units incurred by Company arising out of the termination.

13. FORCE MAJEURE

Company shall not be liable for any failure or delay in performance hereunder if such failure or delay is due, in whole or in part, to any cause whatsoever beyond its reasonable control.

14. ENTIRE AGREEMENT

- (a) The entire agreement between the parties with respect to the hire and use of the Units and their delivery is contained in this Agreement and any other related documentation supplied by Company, including any special conditions ("Documents"). There are no understandings, agreements, representations or warranties, express or implied, which are not set out in the Documents.
- (b) Any purported terms and conditions in any order or other document issued by Customer relating to this Agreement or the Units shall not bind Company and shall not affect this agreement.
- (c) In the event of any inconsistencies in the Documents, any special conditions shall prevail, followed by this Agreement, unless this Agreement is a secondary to a formal written agreement between the parties."
- (d) Any variations to this Agreement must be in writing and signed by both parties. ("Variation")

15. ASSIGNMENT

- (a) Customer will not except with the prior written consent of Company assign or attempt to assign any of its rights hereunder.
- (b) Company may as it deems fit assign to any person any of the rights under this agreement or its interest (or any part thereof) in the Units, whether absolutely or by way of security, and Customer shall do everything which may be necessary on its part to give effect to any such assignment upon request from Company.

16. NOTICE

Any notice given by either party to the other shall be in writing and delivered or posted (by Registered Post) to the recipient at its address stated in this Agreement or to such other address in Australia as it may from time to time have specified as its address for service. A notice which is posted shall be deemed to be served two days after it is placed in a post box under the control of Australia Post.

17. PROPER LAW

This Agreement shall be governed and construed in accordance with the law for the time being of the State or Territory in which the Delivery Point is situated and the parties submit to the jurisdiction of the Courts of that State or Territory.

18. STAMP DUTY AND TAXES

Customer shall be responsible for and shall pay all goods and services tax, stamp duty and any other Government tax or charge (not including Income Tax) payable on or in respect of this Agreement and the hiring hereunder, at the date of this Agreement or subsequently, and shall pay Company such amount properly so payable as Company may from time to time demand.

19. INTERPRETATION

In this Agreement unless the context otherwise requires "PPSA" means Personal Property and Securities Act 2009 (Cth) and capitalised terms in clause 10 have the equivalent meanings as under the PPSA. "Operating Environment" means a normal clean environment with hard sealed surfaces in which it is agreed the Forklift is permitted to be operated excluding, unless specifically authorised by Company in writing, any environment that is corrosive or acidic, involves salt, fertiliser, brine, lead, tannery chemicals or any aspect of the operation of an abattoir

20. COMPETITION AND CONSUMER ACT 2010 (CCA)

Notwithstanding anything otherwise contained in this Agreement Company shall continue to be subject to any implied warranty provided by the CCA if and to the extent that the said Act is applicable to this contract of hire and prevents the exclusion, restriction or modification of any such warranty. The liability of Company, if any, for breach of any warranty so implied (other than where the goods or services are those of a kind ordinarily required for personal, domestic or household use or consumption) shall be limited at Company's option to the supply of the goods or services again or the payment of the cost of having the goods or services supplied again.

21. EXCLUSION OF LIABILITY

In any event and subject to Clause 20, Company shall not be responsible in tort or contract or otherwise for any loss, damage whether direct or consequential, delay or inconvenience of any kind or for any cost or expense incurred thereby whatsoever (except consequential costs where allowed under the Australian Consumer Law provisions of the CCA, when applicable), whether arising out of or relating to any breakdown or failure of the Units or otherwise for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act or default of Company or others and this Clause 21 shall apply to all such loss, damage, delay, inconvenience, cost or expense as aforesaid whether or not the same occurs in the course of the performance by or on behalf of Company of these conditions or in events which are in the contemplation of Company and/or Customer or events which are foreseen by them or either of them or in events which constitute a fundamental breach of these conditions or a breach of a fundamental term thereof.