

MILDURA HYDRAULICS PTY LTD ACN 075 688 916 ("Mildura Forklifts")
HIRE AGREEMENT TERMS AND CONDITIONS

1. Interpretation

- 1.1 These Terms and Conditions (**Terms**), together with the Long Term Rental Agreement, form a binding contract (Contract) between the Hirer and Mildura Forklifts.
- 1.2 In these Terms:
- (a) **Business Day** means a day other than a Saturday, Sunday, public holiday or bank holiday in the state or territory where the Equipment is hired.
 - (b) **Commencement Date** means the date specified as the from date in item 6 of the Long Term Rental Agreement
 - (c) **End Date** means the date specified as the to date in item 6 of the Long Term Rental Agreement
 - (d) **Equipment** means the forklift(s) and any related equipment or any other equipment described in the Long Term Rental Agreement, and any additional future equipment hired by the Hirer from Mildura Forklifts;
 - (e) **Guarantor** means the Guarantor named in the Long Term Rental Agreement;
 - (f) **Hirer** means the person(s) and/or entity specified in the Long Term Rental Agreement;
 - (g) **Intellectual Property Rights** means statutory and other proprietary rights in respect of, but not limited to, trademarks, patents, copyright and all other rights with respect to intellectual property;
 - (h) **Maximum Hours** means the number of hours specified in Item 3 of the Rental Agreement
 - (i) **Mildura Forklifts** means Mildura Hydraulics Pty Ltd ACN 075 688 916
 - (j) **Site Address** means the address in item 2 of the Long Term Rental Agreement
 - (k) **Site Description** means the presence or absence of any factor set out in item 4 of the Long Term Rental Agreement
 - (l) **Standard Hours** means the hours described in Item 5 of the Long Term Rental Agreement.
 - (m) **Term** means the period beginning on the Commencement Date and ending on the End Date or the day on which possession of the equipment is returned to Mildura Forklifts, whichever is later.
 - (n) **Transport Charges** means the amount set out in Item 2.1 of the Long Term Rental Agreement or if no amount is specified a fair and reasonable charge.
 - (o) **Use Loading** for any week during the Term means the amount calculated using the formula $A \times B = C$ where: A is the number of hours the Equipment is used in that week less the Maximum Hours; B is the charge set out in Item 3 of the Rental Agreement; and C is the Use Loading.
 - (p) Other capitalised terms have the meanings ascribed to them in the Long Term Rental Agreement.

2. Mildura Forklifts' Obligations

- 2.1 Mildura Forklifts will deliver the Equipment to the Hirer at the Hirer's cost, or have the Equipment available for collection, on or as close to the date and time as outlined in the Hire Agreement as reasonably practicable.
- 2.2 Mildura Forklifts will not be liable for any loss or damage suffered by the Hirer if for any reason Mildura Forklifts fails to deliver or have the Equipment ready by that time, however the Rental Rates will only be payable from the date of delivery or availability of the Equipment.
- 2.3 Mildura Forklifts will maintain the Equipment, at its cost, and will ensure that all Equipment is serviced as per the manufacturers' specifications and is in safe working order. The Hirer acknowledges that this may result in the Equipment being unavailable for use during a period of the Term to the extent necessary for such maintenance to occur.
- 2.4 Mildura Forklifts will not be obliged to perform any work or maintenance to repair damages arising out of the misuse of the Equipment or the negligence of any other party.

3. Hirer's Obligations

3.1 The Hirer must:

- (a) Pay to Mildura Forklifts, in full without set-off, deduction, or counterclaim, the Rental Payments for the duration of the term;
- (b) Payment is to be made in advance on or before the Commencement Date and monthly thereafter the and the Hirer's liability to make payment is not dependent on the making of any demand or issuing of an invoice;
- (c) If the Equipment is used for more than the Maximum Hours in any week pay to Mildura Forklifts the Use Loading;

- (d) Pay to Mildura Forklifts the Transport Charges in connection with any transport of the Equipment and make payment of those amounts in advance of the transport occurring if Mildura Forklifts so requests;
- (e) take proper care of the Equipment at all times during the Term;
- (f) use the Equipment only within its rated capacity and in accordance with manufacturers' and Mildura Forklifts' instructions;
- (g) keep the Equipment in good and safe working condition;
- (h) keep the Equipment secure from theft or damage;
- (i) notify Mildura Forklifts immediately of any loss or damage to the Equipment, however caused;
- (j) keep and use the Equipment only at the Site Address outlined in the Hire Agreement or at such other place agreed by Mildura Forklifts in writing;
- (k) not use the Equipment at any location or on any site which does not conform to the Site Description;
- (l) comply strictly with all laws, rules, regulations and by-laws of any government or authority with respect to use of the Equipment;
- (m) only use the Equipment for the purpose for which it is intended;
- (n) ensure that the Equipment is only operated by persons properly qualified and licensed to do so;
- (o) provide a safe workplace for any employees, contractors or agents of the Hirer and Mildura Forklifts, or any other persons on site where the Equipment is located or operated;
- (p) immediately notify Mildura Forklifts if any of the Hirer's employees, contractors or agents or any other person on the site is involved in any incident involving the Equipment;
- (q) check as often as is reasonably required but in any event not less than once per day, the operation of the Equipment and the Equipment consumables, including but not limited to, fuel, oil, grease and coolant, and to maintain them at their proper level and to check, and if necessary charge, any batteries on the Equipment;
- (r) permit Mildura Forklifts to enter the location where the Equipment is located as often as Mildura Forklifts reasonably requires, and on reasonable notice, for the purposes of examining the state of repair of the Equipment, undertaking tests and repairs, removing any item of Equipment that requires off-site maintenance and carrying out any requirement of the Hirer under the Contract that has not been complied with; and
- (s) Return the Equipment to Mildura Forklifts in the same condition as at the Commencement Date, fair wear and tear excepted, on or before the End Date.
- (t) Pay to Mildura Forklifts an amount equivalent to, and indemnify Mildura Forklifts from and against, any cost or expense incurred in cleaning, repairing or restoring the Equipment to its condition as at the Commencement Date excepting fair wear and tear and any service or maintenance which is the obligation of Mildura Forklifts under this Contract.
- (u) Pay to Mildura Forklifts interest at a rate that is 2% higher than the rate fixed from time to time pursuant to the *Penalty Interest Rates Act 1983* compounding monthly on any amount owed to Mildura Forklifts which is not paid by the date on which it fails due.
- (v) Pay to Mildura Forklifts an amount equivalent to, and indemnify and keep indemnified Mildura Forklifts from and against, any cost or expense including legal costs or expenses incurred in connection with the recovery of the Equipment arising out of a breach of this agreement by the Hirer or arising out of the recovery of any monies owed to Mildura Forklifts by the Hirer.
- (w) Fair Wear and Tear does not include wear and tear to fork tines and all wear to fork tines must be repaired, restored, remediated, replaced or made good by the Hirer.

4. Hirer Restrictions

4.1 The Hirer must not:

- (a) Sell, dispose, alienate, encumber or part with possession of the Equipment or do any act which, in the reasonable opinion of Mildura Forklifts, may impair Mildura Forklifts' title to or ability to recover possession of the Equipment.
- (b) Hold out or represent itself as being an agent, partner, joint venturer, endorsed by or otherwise in business with Mildura Forklifts or make use of Mildura Forklifts' name or intellectual property;
- (c) deface, modify or mark the Equipment in any way;

- (d) remove or alter any attachments, labels or markings on the Equipment;
 - (e) repair or attempt to repair, alter or add to the Equipment without the prior written consent of Mildura Forklifts; or
 - (f) allow the Equipment to be subject to any mortgage, charge, lien or other security.
- 5. Title, Risk, Liability and Insurance**
- 5.1** The Hirer does not receive any right, title or interest in the Equipment except as lessee with the right to possess and use the Equipment in accordance with the terms of the Contract.
- 5.2** Nothing in the Contract grants to the Hirer an option to purchase any item of Equipment either during or after the conclusion of the Term.
- 5.3** The Equipment is at the Hirer's risk:
 - (a) during transit to the Delivery Address specified in the Hire Agreement;
 - (b) while the Equipment is in the possession of the Hirer; and
 - (c) during transit to Mildura Forklifts at the conclusion of the Term.
- 5.4** The Hirer must hold the following insurances in the joint names of the Hirer and Mildura Forklifts or nominate Mildura Forklifts as an interested party in relation to any insurance policy, at all times:
 - (a) Public liability for loss, injury (including illness), damage or death to any person or property arising out of the hire or use of the Equipment or any act or omission by the Hirer or any other user of the Equipment for an amount of \$10,000,000.00 for any one claim;
 - (b) Insurance for and against any theft, loss or damage to, or destruction of the Equipment, for an amount equal to the market value of the Equipment;
 - (c) Insurance for and against any injury, illness or death to the Hirer, its officers, employees, contractors or agents or any other user of the Equipment; worker's compensation insurance in respect of the Hirer, its officers, employees, contractors or agents or any other user of the Equipment.
- 5.5** The Hirer will provide Mildura Forklifts, on demand, with all required Certificates of Currency of Insurance and will not do or permit to be done anything which would render any insurance void or voidable.
- 6. Indemnity**
- 6.1** The Hirer hereby agrees to indemnify, keep indemnified and hold harmless Mildura Forklifts from and against all claims, damages, liabilities, losses, demands, causes of action, costs and other expenses of whatever nature including legal costs and expenses arising directly or indirectly from:
 - (a) any breach of the Contract by the Hirer;
 - (b) any act or omission of the Hirer, its officers, employees, contractors or agents or any user of the Equipment;
 - (c) any negligent or wilful act or omission of the Hirer, or the Hirer's officers, employees, contractors or agents in relation to the Contract;
 - (d) the possession, operation or use of the Equipment by the Hirer however arising;
 - (e) any personal injury or death of any person or damage or destruction of any property arising from the use of the Equipment by the Hirer, or the Hirer's officers, employees, contractors or agents;
 - (f) any theft, loss or damage to, or destruction of the Equipment while the Equipment is rented to the Hirer;
 - (g) any loss or damage arising out of the failure by the Hirer to take out insurance as required by this Contract.
- 6.2** This indemnity shall be a continuing indemnity.
- 7. Hirer's Warranties and Representations**
- 7.1** The Hirer represents and warrants to Mildura Forklifts that:
 - (a) it possesses and uses the Equipment at its own risk and releases and discharges Mildura Forklifts from any liability arising out of the use, possession or operation of the Equipment, including liability for property damage, personal injury or death;
 - (b) it has inspected the Equipment and satisfied itself as to its condition, quality, safety, fitness for purpose and compliance with description; and
 - (c) if the person whose signature appears on the Hire Agreement is not the Hirer, the person whose signature appears on the Hire Agreement has the proper authority to enter into the Contract on behalf of the Hirer, and that the Hirer will be bound by the Contract.
- 8. Owner Not Liable**
- 8.1** Subject to clause 8(d), all warranties and conditions (whether express or implied) in relation to the Equipment are excluded from the Contract.
- 8.2** The Hirer acknowledges that it has had the opportunity to inspect the Equipment prior to taking the Equipment on hire, and is satisfied that it is in good and safe working condition.
- 8.3** Subject to clause 8.4 the Hirer agrees that Mildura Forklifts will not be liable for and the Hirer hereby releases Mildura Forklifts from all liability for any direct, indirect or consequential loss or damage suffered or incurred or which may be suffered or incurred by the Hirer or any of the Hirer's officers, employees, contractors or agents arising out of or in connection with the Contract, whether caused by any negligent act or omission of Mildura Forklifts or any of Mildura Forklifts' officers, employees, contractors or agents or otherwise, or the Hirer or any of the Hirer's officers, employees, contractors or agents or otherwise.
- 8.4** No term of the Contract is intended to exclude, restrict or modify any non-excludable terms and warranties implied under the Competition and Consumer Act 2010(Cth), any similar State or Territory legislation, or any other non-excludable implied warranties, and the terms of the Contract are to be read down to the extent that they would be inconsistent with a non-excludable term or warranty implied by law.
- 8.5** The Rental Payments have been calculated having regard to the operation of clause 8.3 and Mildura Forklifts has no means of knowing the extent (if any) of any consequential loss such that the risk under the contract would be disproportionate to the benefit derived but for the operation of clause 8.3.
- 8.6** Mildura Forklifts' liability in connection with any claim, demand or cause of action arising out of this Contract or the Equipment is limited to any amount equal to the cost of replacing the Equipment, the cost of obtaining goods equivalent to the Equipment or the cost of repairing the equipment, whatever is the lowest amount.
- 9. Personal Property Securities Act 2009**
- 9.1** The Equipment will remain the property of Mildura Forklifts at all times.
- 9.2** The Hirer acknowledges and agrees with Mildura Forklifts that for the purposes of the Personal Property Securities Act 2009 (Cth) (PPSA), and all regulations made under the PPSA:
 - (a) the Contract constitutes a security agreement;
 - (b) a security interest and if applicable a purchase money security interest (PMSI), is taken by Mildura Forklifts in respect of the Equipment, and is registrable on the Personal Property Securities Register (PPSR); and
 - (c) Mildura Forklifts may at its discretion register a financing statement or financing change statement in respect of its security interest (including any PMSI).
- 9.3** The Hirer undertakes to:
 - (a) sign any and all further documents and provide any and all further information, which Mildura Forklifts may reasonably require to protect its rights in relation to the Equipment, to register a financing statement or a financing change statement on the Personal Property Securities Register established under the PPSA, or to maintain any registration of any security interest including any PMSI;
 - (b) indemnify and upon demand reimburse Mildura Forklifts for all expenses incurred in protecting its rights in relation to the Equipment, registering a security interest, PMSI, financing statement or financing change statement on the PPSR, maintaining any registration or releasing any property secured;
 - (c) not register a financing statement or financing change statement in relation to any security interest or any PMSI registered over the Hirer, without the prior written consent of Mildura Forklifts;
 - (d) give Mildura Forklifts not less than fourteen (14) days prior written notice of any proposed changes in the Hirer's name or any other change in the Hirer's structure, operations, management or other details that may affect any registration of any security interest including any PMSI.
- 9.4** The Hirer agrees that to the extent mentioned in section 115(1)(a) to (r) (inclusive) of the PPSA, the parties contract out of each of the provisions of the PPSA mentioned in that section. The Hirer also waives its right to receive a copy of any financing statement, financing change statement or verification statement.
- 10. Termination**
- 10.1** Mildura Forklifts may terminate the Contract immediately and without any liability to the Hirer if:
 - (a) the Hirer fails to pay an instalment of Rental Rates within 7 days of a written demand having been made by Mildura Forklifts;

- (b) the Hirer breaches clause 4;
 - (c) the Equipment is lost, destroyed or damaged to the extent that, in the reasonable opinion of Mildura Forklifts, it is not feasible or economical to be repaired;
 - (d) the Hirer is in breach of any other term of the Contract and the breach is not remedied to the reasonable satisfaction of Mildura Forklifts within 7 days of Mildura Forklifts demanding that the breach be remedied;
- 10.2 If the Contract is terminated pursuant to clause 10.1(a), (b) or (d) or in the case of clause 10.1(c) where the loss, damage or destruction of the Equipment was caused by the act or omission of the Hirer or a breach of this agreement on the part of the Hirer then the Hirer must pay to Mildura Forklifts on demand:
- (a) An amount equivalent to the cost and expenses, including legal cost and expenses, incurred by Mildura Forklifts in connection with the termination of the Contract;
 - (b) The Rental Payments until the Equipment is returned to the possession of Mildura Forklifts and an amount equivalent to six times the Rental Payments, or the Rental Payments which would have fallen due during the balance of the Term, whichever is less.
- 10.3 Upon the termination or expiration of the Contract for any reason, the Hirer must comply with all directions of Mildura Forklifts, including directions as to the return of the Equipment.
- 10.4 Nothing in this clause detracts from or prejudices any other remedy available to a party pursuant to this Contract.
- 11. After Hours Servicing and Repairs**
- 11.1 Where the Hirer requests Mildura Forklifts to attend to any servicing or repairs of the Equipment outside of the Standard Hours then Mildura Forklifts may charge a reasonable call-out fee and may recover from the Hirer any other reasonable and related costs incurred by Mildura Forklifts.
- 12. Holding Over**
- 12.1 If the Hirer remains in possession of the Equipment after the End Date the terms of this Contract shall continue to apply save that Mildura Forklifts may, but is not obliged to, retake possession of the Equipment at any time.
- 12.2 After the End Date the Hirer must continue to pay the Rental Payments or a fair and reasonable amount for the use of the Equipment, whichever is greater.
- 13. No Assignment**
- 13.1 The Hirer cannot assign its rights and obligations under the Contract without the prior written consent of Mildura Forklifts. The Hirer is not permitted to sub-lease the Equipment to a third party without the prior written consent of Mildura Forklifts. Mildura Forklifts may assign its rights at any time.
- 14. Waiver**
- 14.1 The failure or delay in exercising a right does not constitute a waiver or affect that party's future ability to exercise that right.
- 15. Governing Law and Jurisdiction**
- 15.1 The Contract is governed by the law of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.
- 16. Taxes and Duties**
- 16.1 The Hirer must pay or reimburse Mildura Forklifts for all taxes, charges and duties (including any Goods and Services Tax) due or payable to any governmental or statutory authority in connection with the hire of the Equipment.
- 17. Privacy Disclosure**
- 17.1 The Hirer authorizes Mildura Forklifts to provide certain personal information about the Hirer to a Credit Reporting Body (CRB) for the purposes of managing credit and reporting defaults.
- 17.2 Pursuant to the *Privacy Act 1988* (Cth), the information disclosed to a CRB may include, but is not limited to (where applicable): Identity particulars (name, address, date of birth, and driver's license number); The fact that the Hirer has applied for credit and the amount; The fact that Mildura Forklifts is a current credit provider to the Hirer; Payments which are overdue by more than sixty (60) days and for which debt collection action has started; Advice that payments are no longer overdue in respect of any default that has been listed; Information that, in the opinion of Mildura Forklifts, the Hirer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with their credit obligations); and; Dishonoured cheques or credit card payments drawn by the Hirer for an amount of \$150 or more.
- 17.3 The Hirer acknowledges that this information may be used by the CRB to create or maintain a credit information file containing information about the Hirer's creditworthiness. This information may be shared by

- the CRB with other credit providers for the purpose of assessing applications for credit or for debt collection purposes.
- 17.4 The Hirer may access, update, or seek correction of the credit information held by Mildura Forklifts or the CRB by contacting Mildura Forklifts.
- 18. Guarantor**
- 18.1 In consideration of Mildura Forklifts entering into this Contract at the request of the Guarantor, or continuing to provide the Equipment to the Hirer, the Guarantor unconditionally and irrevocably guarantees to Mildura Forklifts the due and punctual performance of all obligations of the Hirer under this lease, including the payment of all rental and other amounts as and when they fall due. If the Hirer fails to perform any obligation under this lease, the Guarantor must perform that obligation or pay that amount on demand from Mildura Forklifts without requiring Mildura Forklifts to first take any action against the Hirer or enforce any other right or security.
- 18.2 As a separate and continuing obligation, the Guarantor indemnifies Mildura Forklifts from and against any loss, damage, cause of action, claim, demand, cost, or expense including legal costs or expenses suffered or incurred by Mildura Forklifts arising from any failure by the Hirer to perform its obligations under this lease, including any loss arising from this lease being void, voidable, or unenforceable against the Hirer for any reason.
- 18.3 This guarantee and indemnity is a continuing security, is not discharged by any variation of this lease, any grant of time or indulgence to the Hirer, or any other act or omission that might otherwise release a guarantor at law, and binds the Guarantor's heirs, executors, and permitted assigns.
- 19. CPI Increase**
- 19.1 The Rental Payments under this lease will be reviewed annually on each anniversary of the Commencement Date (Review Date). On each Review Date, the rental will be adjusted by the percentage change in the Consumer Price Index (All Groups, Melbourne) as published by the Australian Bureau of Statistics for the 12-month period ending on the last day of the quarter immediately preceding that Review Date, provided that the rental will not decrease below the amount payable immediately prior to the Review Date. Where the relevant CPI figure is unavailable on the Review Date, the existing rental will continue until the figure is published, at which point any adjustment takes effect and any resulting underpayment becomes immediately due.
- 20. NOTICES**
- 20.1 Any notice, document or thing (**Notice**) required to be given or served pursuant to or in connection with this Contract may be given or served (without limiting any other way in which a notice may be given or served) by:
- a. Posting it to the address of the party specified in the Long Term Rental Agreement; or
 - b. Emailing it to the email address of the party specified in the Long Term Rental Agreement.
- 20.2 In the case of a notice given or served by post it shall be taken to have been received or served on the fourth business day after it is posted.
- 20.3 In the case of a notice given or served by email it shall be taken to have been received or served on the next business day after it is sent.
- 20.4 Business Day means a day that is not a public holiday in Victoria.