

# Forklifts Australia Pty Ltd

PO Box 1659, Canning Vale, WA 6970

Accounts Phone: 13 80 00

accounts@forkliftsaustralia.net.au

## Trading Account Application Form

(Incorporating Standard Terms and Conditions of Hire)

Details of Applicant					
<b>Please tick appropriate boxes:</b> <input type="checkbox"/> Company <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Individual Trader <input type="checkbox"/> Government <input type="checkbox"/> Other: Specify: _____					
<b>Applicant's Legal Name ("Customer") or ("Hirer")</b>					
<b>Trust Details (if any)</b>					
<b>ABN:</b>			<b>ACN (If a company):</b>		
<b>Trading Name:</b>					
<b>Trading Address:</b>					
<b>Suburb:</b>		<b>State:</b>		<b>Post Code:</b>	
<b>Tel:</b>		<b>Fax:</b>		<b>Email:</b>	
Accounts Payable Contact Details					
<b>Contact Name:</b>			<b>Contact Phone:</b>		
<b>Contact Address:</b>					
<b>Email For Invoices:</b>					
Directors Details (complete for all directors / proprietors / owners)					
Full Name	Date of Birth	Residential Address			
1.					
2.					
3.					
By signing this Application for Trading Account (on your own behalf and where applicable on behalf of the Applicant / Hirer); you warrant the accuracy of the information set out above. You bind the Applicant/Hirer to the Terms and Conditions of Hire attached to this Application for Trading Account ( <b>Terms and Conditions</b> ). You warrant having read, understood and agreed to the Terms and Conditions. You acknowledge that the Terms and Conditions apply every time the Applicant/Hirer hires equipment from any Access Entity.					
_____ Sole Trader / Partner / Director Signature		_____ Position / Title		_____ Date	

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## Terms and Conditions of Hire

### 1. Definitions and Interpretation

1.1. In these Terms and Conditions of Hire, unless specified to the contrary, the following words and phrases have the meanings given to them:

**"Forklifts Australia"** means Forklifts Australia Pty Ltd (ACN 159 286 496) or the other Access Entity from which the Hirer hires equipment (as applicable).

**"Access Entity"** means Access Group Australia Pty Ltd (ACN 096 170 071) or any of its related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth)) as appropriate including (but not limited to); Access Rentals Australia Pty Ltd (ACN 104 523 088); Access Equipment Hire Australia Pty Ltd (ACN 131 094 874); Access Hire Australia Pty Ltd (ACN 131 094 874); Access Hire Kalgoorlie Pty Ltd (ACN 639 267 799); Access Hire South Australia Pty Ltd (ACN 111 648 189); Tilt Trays Australia Pty Ltd (ACN 101 325 302); Low Loaders Australia Pty Ltd (ACN 134 989 718); Lighting Towers Australia Pty Ltd (ACN 112 110 022), Generators Australia Pty Ltd (ACN 114 816 465) and Access Hire New South Wales Pty Ltd (ACN 121 860 955).

**"Claim"** means in relation to a person, corporation or other legal entity, a claim, demand, remedy, suit, injury, damage, loss, cost of liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred or to be made or recovered by or against such person, corporation or other legal entity however arising and whether ascertained or unascertained.

**"Credit Application"** means the Hirer's signed application for credit accommodation by Forklifts Australia in respect of Equipment hire and in respect of which a copy of these Terms and Conditions is attached.

**"Equipment"** means any machine hired by Forklifts Australia to the Hirer and includes all tools, accessories, parts, item of equipment and devices affixed thereto or supplied therewith.

**"Environmental Disposal Levy"** has the meaning given in clause 4.6.

**"Environmental Laws"** means any statute, policy directions or regulations made or issued by a regulatory body or government body relating to the environment including (without limitation) the protection of the environment.

**"Guarantors"** means the Guarantors listed in item 2 of the schedule to the Deed of Guarantee and Indemnity.

**"Hire Agreement"** means every agreement between Forklifts Australia and the Hirer for the hire of Equipment (whether signed or not) including a Hire Docket, all of which will be deemed to include:

- (a) the Credit Application (or other order documentation approved by Forklifts Australia in respect of the Equipment); and
- (b) these Terms and Conditions of Hire.

**"Hire Docket"** means each docket (if any) issued by Forklifts Australia identifying, amongst other things, the Equipment, the Hire Period and the hire rate that will be charged under clause 3.4 hereof.

**"Hire Period"** has the meaning given in clause 3.

**"Hirer"** means the person, firm or corporation to whom the Equipment is hired by Forklifts Australia (including the party named and described in the Credit Application as the "Hirer") and includes any contractor, employee, servant, agent or other person claiming through, under or in trust for any such person, firm or corporation.

**"Location"** means the place where the Hirer will use the Equipment.

**"Rental Levy"** has the meaning given in clause 4.15.

1.2. In the interpretation of these Terms and Conditions of Hire, unless specified to the contrary:

- (a) words importing the singular include the plural and *vice versa*;
- (b) words importing any gender includes both genders;
- (c) a reference to any matter or thing includes the whole and each part of it separately;
- (d) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (e) a reference to a natural person includes a company or other corporate body or *vice versa*;
- (f) a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;
- (g) the obligations imposed by these Terms and Conditions of Hire on or in favour of a party who is a natural person includes his heirs, executors, administrators and assigns;
- (h) the obligations imposed by these Terms and Conditions of Hire on or in favour of a party which is a company or other corporate body includes its successors and assigns;
- (i) time will be of the essence; and use of the word **"including"** is to be read and construed without limitation.

### 2. Title to Equipment

2.1. The Hirer acknowledges that in all circumstances Forklifts Australia (or, if the Equipment is owned by another Access Entity, then that Access Entity) retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will it be deemed to be a fixture. The rights of the Hirer to use the Equipment are as a bailee only.

2.2. Except in the circumstances set out in clause 10, the Hirer must not offer, sell, assign, sub-let, charge, mortgage, pledge, create any form of security interest or otherwise deal with the Equipment in any way which is inconsistent with the rights of Forklifts Australia as owner.

2.3. All risk in the Equipment passes to the Hirer upon delivery to the Hirer or collection of the Equipment by the Hirer, continues during the entirety of the Hire Period and only ceases when Forklifts Australia acknowledges that the Equipment has been returned to Forklifts Australia (or when the Equipment is collected by Forklifts Australia if agreed).

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**3. Hire Period**

- 3.1. Subject to clause 3.3, the period of hire commences when the Hirer takes possession of the Equipment or when Forklifts Australia delivers the Equipment in accordance with the Hirer's instructions and the period of hire ends when the Equipment is back in the possession of Forklifts Australia (in total, the "Hire Period"). The Hire Period includes weekends and public holidays and is irrespective of the time the Equipment is being used.
- 3.2. The Hirer will be entitled to use the Equipment for the Hire Period on the express understanding that it will be charged for such use in accordance with the Hire Agreement.
- 3.3. Should Forklifts Australia agree with the Hirer that Forklifts Australia will deliver and collect the Equipment, hire charges will commence from the time the Equipment leaves Forklifts Australia premises and continue until the date that the Equipment is available for collection from the Location ("Off-Hire Date"). The Hirer must notify Forklifts Australia of that date in advance and Forklifts Australia may give the Hirer a number as verification that such notification has been received ("Off-Hire Number").  
The notification will be given by the Hirer with sufficient time in advance (prior to 3pm of the day of the off-hire) for the Equipment to be picked up and returned to Forklifts Australia's premises within Forklifts Australia's normal business hours by the Off-Hire Date. If Forklifts Australia considers that insufficient notice has been given, the Hirer will be charged for such additional period of time as Forklifts Australia considers is necessary to arrange collection or delivery of the Equipment, but in any case no less than an extra days hire. Any hire period specified on the Hire Agreement will not be deemed notice to Forklifts Australia that the Equipment is available for collection. Where Forklifts Australia agrees to collect the Equipment, the Hirer remains responsible for theft, loss or damage to the Equipment until the Equipment is collected by Forklifts Australia.
- 3.4. The Hire Agreement will specify the type of rate that will apply. Equipment hired for at least 5 days in a seven day period, will be charged at the weekly rate.
- 3.5. Forklifts Australia reserves the right to charge a minimum period of hire for certain types of Equipment. The minimum period of hire may not be varied except if agreed in writing by Forklifts Australia.
- 3.6. The Hire Period will not be subject to stand down or adjustment for any reason whatsoever unless agreed to by Forklifts Australia in writing.

**4. Hire Charges and Other Charges**

- 4.1. **Hire:** Subject to clause 4.10, the Hirer will pay Forklifts Australia the hire charges set out in the Hire Agreement, as well as other levies or charges that may be applicable. The Hirer is not entitled to any discount or rebate if the Equipment is not used by the Hirer for any part of the Hire Period. If the Equipment is used for more than eight hours on any given day Forklifts Australia may charge a double shift rate calculated as the hire rate x 2.
- 4.2. **Pricing Confidentiality:** The Hirer acknowledges that all pricing quoted by Forklifts Australia is for the Hirer only and must be kept confidential at all times.
- 4.3. **Other Services:** Forklifts Australia will, if requested by the Hirer, and only if personnel are available, attend the site and instruct the Hirer in the operation of the Equipment. The Hirer will in addition to the hire charges pay Forklifts Australia for such services at the scheduled rate per hour or part thereof including travelling time plus any associated travel and accommodation costs incurred by Forklifts Australia.
- 4.4. **Consumables and Trade Materials:** The Hirer will be liable for charges made for consumables and trade materials used at the scheduled rate.
- 4.5. **Tax and Government Charges:** The Hirer will be liable for stamp duty, GST and all other applicable taxes, duties, levies, penalties and any other government charges imposed on the Hire Agreement or in respect of the Hire Period. If the Hirer wishes to claim exemption from duty or tax, the Hirer must furnish appropriate exemption certificates to Forklifts Australia. Unless otherwise expressly agreed in writing by Forklifts Australia, any quarantine costs payable in respect of the Equipment (including without limitation the costs of any necessary disassembly, reassembly and cleaning of the Equipment) is payable by the Hirer, and the Hirer must also pay the hire charges during the period of such disassembly, reassembly and cleaning of the Equipment.
- 4.6. **Environmental Disposal Levy:** The Hirer will pay the amount specified by Forklifts Australia in the Hire Agreement in consideration of any oil, grease or other environmental contaminants used, applied or discarded in connection with the Equipment.
- 4.7. **Credit Card Payments:** The Hirer acknowledges that Forklifts Australia may impose a charge for accepting payments by credit card in the amount of 1.5% of the total charges that would otherwise apply.
- 4.8. **Delivery:** If the Hirer requires Forklifts Australia to deliver, collect or install the Equipment, the Hirer will be liable for the cost of delivery, collection or installation. Forklifts Australia will not be responsible for any loss or damage whatsoever caused by delays in delivery or installation or failure to deliver for any reason whatsoever, including negligence on the part of Forklifts Australia or its agents or employees. Forklifts Australia shall have the right to charge the Hirer for an additional delivery or collection fee for each occasion where the Equipment was not able to be delivered and or collected at the agreed times and location. Forklifts Australia is not a common carrier and does not accept the obligation or liability of common carriers. Forklifts Australia may refuse the handling, lifting and/or carriage of Equipment for any person in its discretion and without being bound to give reason for such refusal.
- 4.9. **Return of Equipment:** The Customer will remain liable to be charged for the Equipment until it is returned to Forklifts Australia (if Forklifts Australia agrees to collect the Equipment then clause 3.3 applies.). The Hirer will be charged a full day hire for the day on which the Equipment is returned by the Hirer (or collected by Forklifts Australia) irrespective of the time at which the Equipment is returned (or collected by Forklifts Australia).
- 4.10. **Early Return of Equipment:** If the Hirer returns the Equipment before the expiry of the minimum period of hire mentioned in clause 3.5 (if any), the Hirer will remain liable for all hire and other charges payable to Forklifts Australia for the minimum period of hire.
- 4.11. **Payment Due Date:** The Hirer is required to pay all fees, charges and costs that may become due and payable under the Hire Agreement within 30 days of the invoice date.
- 4.12. **Late Payment:** Invoices sent to the Hirer's email address by Forklifts Australia will be deemed to have been received by the Hirer on the date that the email is sent. If a Hirer does not pay the amount of the Hire Agreement invoice by the payment due date, a late payment fee of 4% per month, compounding monthly, may be imposed. In addition, without limiting clause 9.4, the Hirer will be liable to indemnify Forklifts Australia for all expenses incurred by Forklifts Australia in recovering any amounts which the Hirer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agents and legal costs). Where an invoice remains overdue for 3 days or longer, the Hirer's trading account will be placed on stop credit. Where an invoice remains overdue for 15 days or longer, Forklifts Australia reserves the right for all equipment to be off-hired and removed and transported back to Forklifts Australia at the Hirer's cost.

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- 4.13. **Set-off and application of funds:** Forklifts Australia may set-off against any credit owed to the Hirer any amount owing by the Hirer to Forklifts Australia. Any claims for credit by the Hirer shall be made within fourteen days of receiving Forklifts Australia's invoice. The Hirer must not withhold or make any deduction from any payment by way of set-off. The Hirer acknowledges and agrees that any payment made by the Hirer pursuant to this Agreement may be applied by Forklifts Australia to such outstanding moneys due to Forklifts Australia, as Forklifts Australia determines in its sole discretion and notwithstanding any direction given by the Hirer at the time of payment.
- 4.14. **Return time:** For the sake of certainty the Hirer may only return the Equipment to Forklifts Australia's premises during normal business hours.
- 4.15. **Rental Levy:** The Hirer will pay a 12.5% Rental Levy on all Hire Agreements in addition to Forklifts Australia's hire charges for the purpose of covering aesthetic and incidental wear and tear, servicing, break downs and costs associated with the hire and off-hire of Equipment in accordance with the manufacturers guidelines, all relevant Australian Standards and all recommendations published by the Elevating Work Platform Association. If the hirer refuses to pay the rental levy then all costs associated with aesthetic and incidental wear and tear, servicing, break downs and costs associated with the hire and off-hire of Equipment, will be on-charged to the Hirer. The rental levy does not constitute consideration for (and the Hirer remains responsible for) loss or damage occasioned by any one or more of the following:
- (a) damage due to misuse, abuse or overloading of the Equipment or any components thereof;
  - (b) wrongful conversion of the Equipment or any components thereof;
  - (c) loss or damage suffered due to a contravention by the Hirer of the Hire Agreement;
  - (d) loss or damage arising from use in violation of any statutory laws and regulations;
  - (e) damage caused to tyres and tube by blowout, bruises, cuts or other causes inherent in the use of the Equipment;
  - (f) glass breakage or graffiti;
  - (g) loss or damage relating to lack of lubrication or other normal servicing of Equipment or due to a failure to comply with the cleaning and servicing instructions given by Forklifts Australia;
  - (h) loss or damage to the Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
  - (i) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
  - (j) damage caused by exposure to any corrosive or caustic substance, such as (without limitation) cyanide, salt, water and acid;
  - (k) theft of the Equipment or any deliberate damage of any type caused to the Equipment (whether caused by the Hirer or any third party whatsoever);
  - (l) loss or damage to Equipment during transport, except where transported by Forklifts Australia;
  - (m) loss or damage caused by the negligence of the Hirer and damage caused by paint, texture, coat, overspray, concrete, grinding, welding, gas, cutting, collision, dropping and/or impact.

Payment of the rental levy entitles the Hirer to one set of tyres per year. If the hirer refuses payment of rental levy then tyre wear will be charged on a usage basis. Tyre wear will be determined by a measurement taken at the start and completion of the hire period.

- 4.16. **Extreme Worksite Levy:** The Hirer will pay a 20% Extreme Worksite Levy on all Hire Agreements in addition to Forklifts Australia's hire charge if Equipment is used off-shore, over water or down in under-ground mines. The Hirer must advise Forklifts Australia in writing if the Equipment is proposed to be used off-shore, over water or down in under-ground mines and must produce evidence that they have taken out suitable insurance cover for these items of Equipment, with such insurance cover to include Forklifts Australia as an insured and cover Forklifts Australia's ability as a principal in connection with the performance of the Hire Agreement and contain provisions whereby all rights subrogation or action against any of the persons comprising the insured are waived; the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any insurance policy.
- 4.17. **After Hours Servicing and Break-downs:** Forklifts Australia will provide on-site servicing and break-down assistance during standard working hours. If attendance to site is required after hours or on weekends, this will be charged at after-hour rates. A minimum call out charge of 3 hours will be applicable.
- 4.18. **Non-Potable Water:** Where the use of non-potable water for dust suppression causes corrosion to equipment, the Hirer will be charged for refurbishment of the equipment.
- 4.19. **Cleaning:** The Hirer is responsible for all costs associated with any cleaning, painting, replacement of decals, repairs and refuelling of equipment returned to Forklifts Australia in an unsatisfactory condition as determined by Forklifts Australia. If the Equipment was in any way exposed to asbestos or asbestos containing materials during the period of Hire, the Hirer must ensure that the Equipment is decontaminated (including cleaned, washed and vacuumed) by a licensed asbestos removalist prior to return to Forklifts Australia. The Hirer must pay for all costs associated with this decontamination and provide evidence from a licensed asbestos removalist that this has been carried out.

## 5. Hirer's Hire Obligations

- 5.1. **Possession and Use by Hirer:** The Hire Agreement is personal to the Hirer and the Hirer will not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time during the Hire Period.
- 5.2. **Suitability:** The Hirer agrees that the use of the Equipment is deemed acceptance it has satisfied itself as to the suitability, condition and fitness for purposes of the Equipment. Forklifts Australia gives no warranty that the Equipment is suitable for the Hirer's purpose.
- 5.3. **Operation of Equipment:** The Hirer warrants that at all times it will:
- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - (b) ensure persons operating or erecting the Equipment are suitably instructed/trained in its safe and proper use and where necessary hold a current Certificate of Competency and be licensed to use it;
  - (c) return the Equipment to Forklifts Australia in the same good and clean condition it was in when the Hirer received it, ordinary fair wear and tear excluded. If the Hirer fails to clean the Equipment, Forklifts Australia will charge the cleaning cost to the Hirer.

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- (d) display, maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by the operator of the Equipment;
- (e) ensure all persons operating the Equipment wear suitable clothing and protective equipment as required or recommended by the manufacturer or by Forklifts Australia;
- (f) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
- (g) conduct a job safety analysis prior to using the Equipment at a site;
- (h) accept responsibility for the safe-keeping of and insuring the Equipment during the Hire Period;
- (i) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
- (j) comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.

5.4. **Cleaning and Maintenance:** The Hirer must:

- (a) carry out daily checks, clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the manufacturer's and Forklifts Australia's instructions at the Hirer's cost; and
- (b) not in any way alter, modify, tamper with, damage or repair the Equipment without Forklifts Australia's written consent.

5.5. **Safekeeping:** The Hirer must ensure that during the Hire Period the Equipment is stored safely and securely and is protected from theft, seizure, damage or vandalism.

5.6. **Alteration and Identifying Marks:** The Hirer must not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Equipment.

5.7. **Inspections:** The Hirer consents to Forklifts Australia inspecting the Equipment from time to time during the Hire Period. The Hirer must provide Forklifts Australia to the Equipment and a safe place of work at the Location for Forklifts Australia to carry out any inspection, including as required under the Australian Standards. In addition, the Hirer may arrange a joint inspection with Forklifts Australia at the end of the Hire Period.

5.8. **Safe Loading and Transport:** The Hirer will ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. The Hirer and any transporting contractor must observe any safety directions advised by Forklifts Australia and/or manufacturer of the Equipment for its loading and safe handling.

5.9. **Location:** The Hirer must not remove the Equipment from the Location without first obtaining Forklifts Australia's written consent, which consent can be given or withheld at Forklifts Australia's absolute discretion. The Equipment must be returned to Forklifts Australia's premises where the Equipment was collected from by the Hirer or delivered from Forklifts Australia (during normal business hours).

5.10. **Electrical Equipment testing and tagging:** The Hirer is responsible for arranging at the Hirer's cost the testing and tagging of all electrical equipment forming part of the Equipment by the relevant manufacturer's agent in accordance with the manufacturer's instructions and the applicable Australian Standard/s and Regulatory Authority requirements. Forklifts Australia is able to arrange, at the Hirer's cost, for such testing and tagging of the relevant electrical equipment. Any damage caused to the Equipment resulting from incorrect testing will be at the Hirer's cost.

## 6. Equipment Breakdown

6.1. **Obligations of Hirer:** In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period, the Hirer must:

- (a) immediately stop using the Equipment and notify Forklifts Australia;
- (b) immediately take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- (c) immediately take all steps necessary to prevent any further damage to the Equipment; and
- (d) not repair or attempt to repair the Equipment without Forklifts Australia's written consent.

6.2. **Obligations of Forklifts Australia:** In the event that the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Hirer or any third party who gains Forklifts Australia to the Equipment at the Location, Forklifts Australia will:

- (a) take all steps necessary to repair the Equipment soon as reasonably possible after being notified by the Hirer;
- (b) not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor, subject to clause 13.5, the costs associated with any repair or replacement of the Equipment; and
- (c) not be liable for any expenditure, damages, loss or inconvenience incurred by the Hirer or any Claim made against the Hirer arising from or in any way connected with a breakdown of or a malfunction in the Equipment, no matter the cause of the breakdown or malfunction.

## 7. Lost, Stolen or Damaged Equipment

7.1. The Hirer is at all times responsible for the Equipment and its attached tools during the Hire Period.

7.2. If the Equipment is lost, stolen or damaged during the Hire Period, or if the Hirer fails to return the Equipment to Forklifts Australia within agreed timeframes, the Hirer will be liable for:

- (a) any costs incurred by Forklifts Australia in repairing the Equipment or for the new replacement cost of the Equipment if it cannot be economically repaired; and
- (b) any other costs whatsoever incurred by Forklifts Australia as a result of the loss, theft or damage to the Equipment (including the full hire charges as set out in the Hire Agreement until the Equipment stated in clause 7.2(a) is again available for use by Forklifts Australia).

## 8. Supply Documents

8.1. Upon request by Forklifts Australia the Hirer must supply Forklifts Australia with full copies of any document relating to the Equipment in any way including any police report regarding any damage caused to the Equipment by any person.

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**9. Indemnities and Exclusions of Liabilities**

- 9.1. Subject to clause 9.2 and except as expressly provided to the contrary in the Hire Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to Forklifts Australia's obligations under the Hire Agreement are excluded from the Hire Agreement to the extent permissible by law.
- 9.2. Where any Act of Parliament implies a term, condition or warranty in this Hire Agreement and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty will be deemed to be included in this Hire Agreement to the minimum extent permissible. The Hirer hereby warrants and agrees with Forklifts Australia that any damages suffered by it as a result of any breach by Forklifts Australia of this Hire Agreement or any breach of any applicable legislation will not exceed and otherwise be capped at the lesser of the actual charges payable pursuant to the Hire Agreement or four months hire charges.
- 9.3. Subject to clause 9.2, Forklifts Australia will not be under any liability to the Hirer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or this Hire Agreement.
- 9.4. The Hirer is liable for and indemnifies Forklifts Australia against all liability, claims, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against Forklifts Australia and any environmental loss, cost, damage or expense) arising from or incurred in connection with the Hirer's hire and use of the Equipment or its breach of the Hire Agreement.
- 9.5. 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 expenses or make any payment before enforcing a right of indemnity conferred by this Hire Agreement. The Hirer must pay on demand any amount it must pay under an indemnity in this Hire Agreement.
- 9.6. For the purposes of clauses 9.3 to 9.5, use of Equipment operated by a person supplied by Forklifts Australia will be use of the Equipment by the Hirer.

**10. PPS Law**

- 10.1. For the purposes of this clause, "PPS Law" means the Personal Property Securities Act 2009 (Cth) and Regulations and any other associated or consequential Act or Regulation, as amended. A term defined in the PPS Law has the same meaning when used in this clause.
- 10.2. The Hirer acknowledges that this Hire Agreement is a security agreement and a PPS Lease for the purposes of the PPS Law and creates a security interest in all Equipment rented to the Hirer, as security for the Hirer's obligations to Forklifts Australia under this Hire Agreement.
- 10.3. The Hirer agrees to indemnify Forklifts Australia for any costs, commissions, fees and expenses, including legal expenses, in relation to the registration, maintenance, enforcement or discharge of a security interest.
- 10.4. The Hirer agrees to do all such things, sign and/or provide all such documents and/or provide any further information as necessary and required to enable Forklifts Australia to acquire a perfected security interest in all Equipment supplied by Forklifts Australia to the Hirer and, if applicable, a Purchase Money Security Interest.
- 10.5. The Hirer agrees to contract out of, waive or exclude such sections of the PPS Law as Forklifts Australia may require, to the extent that those sections are able to be excluded under the PPS law. The Hirer expressly agrees to:
  - (a) contract out of the enforcement provisions referred to in Articles 115(1)(f) to 115(1)(h), 115(1)(l) to 115(1)(n), 115(1)(p), 115(1)(q) and 115(1)(r) of the PPS Law;
  - (b) waive their right to receive a copy of any notice or statement under Articles 157 and 175 of the PPS Law in respect of the security interest created by this Contract;
  - (c) not sell or grant any other security interest in the Equipment rented, and
  - (d) not change or attempt to change any document or registration made or required under the PPS Law in relation to the security interest created by this Contract without the prior written consent of Forklifts Australia.
- 10.6. If:
  - (a) a PPS Law applies or commences to apply to this Hire Agreement or any transaction contemplated by it, or Forklifts Australia determines based on legal advice that this is the case; and
  - (b) in the opinion of Forklifts Australia, the PPS Law:
    - (i) does or will adversely affect its security position or obligations; or
    - (ii) enables or would enable its security position to be improved without materially adversely affecting the Hirer,
 Forklifts Australia may give notice to the Hirer to do anything (including amending this Hire Agreement or executing a new document) that in Forklifts Australia's reasonable opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in subclause 10.6(b)(i) above and/or improve the security position as contemplated in subclause 10.6(b)(ii) above. The Hirer must comply with the requirements of that notice within the time specified in the notice.
- 10.7. The Hirer will not lease, hire, bail or otherwise deal with ('sub-hire') the Equipment unless Forklifts Australia gives its prior written consent. Any such sub-hire must be in writing in a form acceptable to Forklifts Australia and must be expressed to be subject to Forklifts Australia's rights under this Hire Agreement. Hirer may not vary a sub-hire without the prior written consent of Forklifts Australia.
- 10.8. The Hirer must ensure Forklifts Australia is provided with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- 10.9. The Hirer must take all steps including registration on the PPS register as may be required to:
  - (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPSA;
  - (b) enable the Hirer to gain (subject always to the rights of Forklifts Australia and its related entities) first priority (or any other priority Forklifts Australia agrees to writing) for the security interest; and
  - (c) enable the parties to exercise their respective rights in connection with the security interest.

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- 10.10. If having completed everything reasonably practicable as required under the above clause, in the reasonable opinion of Forklifts Australia its security position or obligations under or in connection with this Hire Agreement have been or will be materially adversely affected, Forklifts Australia may by further notice to the Hirer terminate this Hire Agreement, in which case:
- (a) this Hire Agreement will be terminated with effect from the date or time specified in the notice; and
  - (b) the Hirer must pay to Forklifts Australia all monies owing to it within 30 days of that termination.

#### 11. Termination

- 11.1. Forklifts Australia may terminate the Hire Agreement immediately by notice to the Hirer, if:
- (a) the Hirer breaches any term of the Hire Agreement; or
  - (b) the Hirer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, comes under external administration, goes into receivership or ceases to carry on business.
- 11.2. Forklifts Australia may terminate the Hire Agreement for any other reason by giving the Hirer 2 hours' notice.
- 11.3. The right of termination is in addition to any other rights under the Hire Agreement and does not exclude any right or remedy under law or equity and the terms of this Hire Agreement (including in respect of payment of the hire charges) continue to apply until the return of the Equipment to Forklifts Australia (or collection by Forklifts Australia if agreed).

#### 12. Recovery of Equipment

- 12.1. If the Hirer is in breach of the Hire Agreement or if Forklifts Australia has terminated this Hire Agreement, Forklifts Australia may take all steps necessary (including legal action) to recover the Equipment, including entering the Hirer's premises to do so and the Hirer hereby authorises Forklifts Australia to do so.

#### 13. Remote Area Hire Conditions

- 13.1. **Definitions:**
- "Remote Area" is a location in excess of 50km from nearest Forklifts Australia branch.
- "PMP" is the electronically managed preventive maintenance programme operated by Forklifts Australia (or its agent) for all Equipment. The PMP involves regular attendance on site by Forklifts Australia's service personnel to conduct routine 3 monthly Equipment servicing and general maintenance requirements.
- 13.2. Unless otherwise specified in the Hire Agreement the PMP for all Equipment operating in a Remote Area will be subject to a per km charge both to and from the site at the scheduled rate per kilometre plus labour costs at the scheduled rate, per person per hour (including travelling time) plus any other direct travelling costs including airfares and accommodation (**Remote Area Travelling Charges**).
- 13.3. Multiple items of Equipment hired by the same Hirer on the one site will only be charged as "one call out".
- 13.4. The Hirer remains responsible for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels etc), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- 13.5. If the Equipment breaks down in a Remote Area, the Hirer must also pay Forklifts Australia the Remote Area Travelling Charges relating to any attendance to the location concerned.
- 13.6. It is the responsibility of the Hirer to provide Forklifts Australia to site. Refusal to allow Forklifts Australia to equipment at the specified intervals will incur charges. Equipment will be placed out of service at full charge until Forklifts Australia is given for servicing to be completed.
- 13.7. If the Hirer requires Equipment to be serviced at intervals other than the pre-determined PMP service cycle (to align service cycles with site requirements), then the Hirer must pay all charges relating to attendance to site by a technician to complete the additional service.
- 13.8. It is the responsibility of the Hirer to provide accommodation for Remote Areas if no accommodation is available within 20 kilometres of that location.

#### 14. Miscellaneous

- 14.1. **Severability:** If any part of the Hire Agreement (including these Terms and Conditions) 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.
- 14.2. **Governing Law and Default Recovery:** The Hire Agreement is governed by the laws of Western Australia and each party submits to the exclusive jurisdiction of the courts of that State.
- 14.3. **Security of Obligations:** As security for the obligations and liabilities of the Hirer and Guarantors under the Hire Agreement, the Hirer and Guarantors hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any way in any real property. Without limiting the generality of the charge in this clause, the Hirer and Guarantors agree, on request by Forklifts Australia, to execute any documents and do all things necessary required by Forklifts Australia to register a mortgage security over any real property in which the Hirer and Guarantors have an interest (whether legal, equitable, present or future). The Hirer and Guarantors will indemnify Forklifts Australia on an indemnity basis against all costs and expenses incurred by Forklifts Australia in connection with the preparation and registration of any mortgage documents. The Hirer and Guarantors also consent unconditionally to Forklifts Australia lodging a caveat or caveats noting its interest in any real property in which the Hirer and Guarantors have an interest (whether legal, equitable, present or future).
- 14.4. **Entire Agreement:** The Hire Agreement, including these Terms and Conditions of Hire and the relevant credit application and Hire Docket (or other order documentation approved by Forklifts Australia in respect of the Equipment), comprises the entire agreement between the parties. No additional terms and conditions proposed by the Hirer (including any terms contained in any hire order provided by the Hirer) apply to the hire of the Equipment unless agreed to in writing by Forklifts Australia.
- 14.5. **No Reliance:** The Hirer acknowledges that neither Forklifts Australia nor any other person acting on Forklifts Australia's behalf has made any representation or other inducement to it to enter into the Hire Agreement and that it has not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained herein.
- 14.6. **Variation:** Forklifts Australia may at any time vary the Hire Agreement, including these Terms and Conditions of Hire, by giving the Hirer 14 days' written notice of its intention to do so. If the Hirer is materially prejudiced by the variation, it may terminate the Hire Agreement by returning the Equipment to

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Forklifts Australia (or, if agreed, arranging collection by Forklifts Australia, in which case the Hire Agreement terminates upon collection by Forklifts Australia).

- 14.7. **GST:** All prices quoted are GST-exclusive and net of all taxes (whether in Australia or otherwise), unless otherwise expressly stated. Forklifts Australia will provide a tax invoice to the Hirer where applicable. All GST, customs duties, Government taxes, import / export permits and documentation fees levied or pertaining to Equipment during the period of rental are payable by the Hirer and the Hirer indemnifies Forklifts Australia to the extent it becomes liable for payment of such a tax or has paid such tax and is unable to recover it from the relevant authority.
- 14.8. **Privacy:**
- (a) Forklifts Australia may collect personal information about the Hirer. Forklifts Australia may use the Hirer's personal information to provide services to the Hirer, to fulfil administrative functions associated with these services, to enter into contracts with the Hirer or third parties, and for marketing and client relationship purposes. Generally, the Hirer has a right to Forklifts Australia personal information Forklifts Australia holds about the Hirer.
  - (b) The Hirer consents to and authorises Forklifts Australia to use and disclose the Hirer's personal information in accordance with clause 14.8(a).
  - (c) Forklifts Australia will only disclose information that we have about you:
    - (i) to the extent specifically required by law;
    - (ii) where there is a duty to the public to disclose that information; or
    - (iii) where the interests of Forklifts Australia require disclosure.
  - (d) The Hirer irrevocably authorises Forklifts Australia to make such enquiries as it deems necessary to investigate the credit worthiness of the Hirer and any guarantors from credit reporting agencies. Forklifts Australia may obtain personal and commercial credit information regarding the hirer from a credit reporting agency.
- 14.9. **Notice to Hirer:** Any document which by the Hire Agreement may be given by Forklifts Australia may be served or rendered by leaving it at or posting it to the address of the Hirer as stated in the Hire Agreement or at an address in Western Australia last notified by the Hirer in writing to Forklifts Australia and will be deemed to have been serviced or rendered at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by an officer, manager or solicitor of Forklifts Australia.
- 14.10. **No Waiver:** No delay or omission to exercise any right, power or remedy accruing to Forklifts Australia upon any continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of Forklifts Australia to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.
- 14.11. **Withdrawal of Credit Accommodation:** Any credit accommodation and/or credit limit granted by Access to the Hirer may be reviewed at any time without notice. Where a credit limit is set by Access and the Hirer exceeds this credit limit, the Hirer's trading account will be placed on stop credit. Credit may be withdrawn for Hirers failing to make payments or use the Equipment in accordance with these Terms and Conditions of Hire and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.
- 14.12. **Authority of Hirer:** The person signing the Hire Agreement (including the Credit Application) for and on behalf of the Hirer hereby covenants with Forklifts Australia that he or she has the authority of the Hirer to make the Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to the Agreement and hereby indemnifies Forklifts Australia against all losses, costs and claims incurred by Forklifts Australia arising out of the person so signing the Agreement not in fact having such power and/or authority.
- 14.13. **Previous Editions:** This edition of the Terms and Conditions of Hire replaces and supersedes all of Forklifts Australia's previously issued Terms and Conditions of Hire.
- 14.14. **Time of the Essence:** Time is to be of the essence of all obligations of the Hirer in the Hire Agreement.
- 14.15. **Right of Refusal to Hire:** Forklifts Australia is in no way obliged to hire any Equipment to the Hirer and may refuse to hire Equipment to a Hirer at its absolute discretion.

## 15. Insurance

- 15.1. The Hirer shall effect and maintain at its expense the policies of insurance specified in subclauses (a) and (b) providing cover for the whole of the period of hire including any extension or continuation.
- (a) A policy providing indemnity for physical loss, including theft and/or damage to the Equipment for the replacement value of each item of Equipment, including whilst in transit; and
  - (b) A public liability policy in the usual terms which provides indemnity with respect to the operation of the Equipment to a limit of indemnity of at least \$20,000,000.
- 15.2. The Hirer shall ensure that each policy of insurance names Forklifts Australia as a named insured as owner of the Equipment.
- 15.3. The Hirer shall provide Forklifts Australia with evidence of the insurance effected in compliance with clauses 15.1(a) and 15.1(b) immediately upon demand by Forklifts Australia.
- 15.4. The Hirer warrants that it shall not do any of the following:
- (a) do anything, or fail to do anything, which would allow an insurer to refuse or reduce a claim;
  - (b) vary the insurance required by this clause in any way without the written consent of Forklifts Australia; or
  - (c) Enforce, conduct, settle or compromise a claim without the consent of Forklifts Australia.

## 16. Rental Levy and Environmental Disposal Levy

- 16.1. The Rental Levy and Environmental Disposal Levy specified in the Delivery Docket are payable by the Hirer in addition to the other hire charges stated in the Hire Agreement. If no Rental Levy or Environmental Disposal Levy is referred to in the Delivery Docket, the Hirer acknowledges and agrees that it will be charged for and it will pay to Forklifts Australia the costs specific to repainting, tyre wear, description, new decals, new stickers, off-hire costs, onsite servicing, inspections, break downs, repairs, oils filters, oil disposal, all accommodation, air fares, travel per km, inductions, training and chargeable time, to be billed separately to the Hirer.

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## GUARANTEE AND INDEMNITY

**THIS DEED OF GUARANTEE AND INDEMNITY** is given on the date set out in Item 1 of the Schedule

**BY THE PERSONS** named and described in Item 2 of the Schedule (the “**Guarantors**”)

**IN FAVOUR OF:**

Forklifts Australia Pty Ltd (ACN 159 286 496) of 22 Enterprise Court, Canning Vale WA (called “**Forklifts Australia**”).

**ON BEHALF OF THE COMPANY** named and described in Item 3 of the Schedule (the “**Hirer**”)

### **RECITALS**

- A. Forklifts Australia, at the request of the Hirer and the Guarantor, has agreed to grant credit accommodation to the Hirer on the terms and conditions comprised in the Credit Application Form (incorporating Terms and Conditions of Hire) to which this Deed is attached (collectively called the “**Hire Agreement**”).
- B. The Guarantors comprise the Hirer’s Directors.

### **OPERATIVE PART**

#### **DEFINITIONS**

- 1.1. In this Deed, unless specified to the contrary, the following words and phrases either:
- 1.2. have the expressed meaning given to them; OR
- 1.3. have the meaning given to them in the Recital or clause set out opposite them:
  - “**Business Day**” means any day other than a Saturday, Sunday or a gazetted Western Australian Public Holiday;
  - “**Electronic Communication**” means a communication of information in the form of data, text or images of guided and/or unguided electromagnetic energy (including via email);
  - “**Hire Agreement**” – Recital A, and includes the elaborated definition appearing in the Terms and Conditions of Hire referred to in Recital A;
  - “*inter alia*” is the legal phrase, in Latin, meaning “*amongst other things*”; and
  - “*mutatis mutandis*” is the legal phrase, in Latin, meaning “*with the necessary changes being made*”.

#### **GUARANTEE AND INDEMNITY**

- 1.4. The Guarantors, in consideration of Forklifts Australia at their request entering into the Hire Agreement which constitutes valuable consideration to the Guarantors:
  - 1.4.1. unconditionally and irrevocably guarantee to Forklifts Australia that the Hirer will perform all of its obligations under the Hire Agreement; and
  - 1.4.2. indemnify Forklifts Australia against all losses, costs, charges and expenses whatsoever which Forklifts Australia may incur by reason of any default by the Hirer under the Hire Agreement;with effect from the date of this Deed.
- 1.5. If the Hirer defaults in the payment of money under the Hire Agreement, the Guarantors must on demand immediately pay the outstanding amount to Forklifts Australia.
- 1.6. If the Hirer fails to perform or observe any of its obligations under the Hire Agreement (other than an obligation concerning the payment of money), the Guarantors must on demand immediately compensate Forklifts Australia for that failure.
- 1.7. The Guarantors acknowledge that:
  - 1.7.1. the guarantee and indemnity constituted by this Deed is a continuing one which will not be affected by part payment or part performance by the Hirer; and

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- 1.7.2. their liability to Forklifts Australia under this Deed will not be affected by:
- (a) Forklifts Australia granting to the Hirer or the Guarantors any time or other indulgence;
  - (b) Forklifts Australia agreeing not to sue the Hirer or the Guarantors; and/or
  - (c) the failure of any of the Guarantors to sign this Deed.
- 1.8. The Guarantors hereby charges all of their respective estate, title and interest in all land and other property which the Guarantors may now have or at any time in the future acquire including (without limitation) the land and other property described (if any) in the schedule (together “**property**”) with repayment of any moneys payable under the Hire Agreement and consent to Forklifts Australia registering a caveat over the property as further security for the performance of the Guarantors respective obligations under this Deed and the Hire Agreement.
- 1.9. If the Hirer goes into liquidation:
- 1.9.1. Forklifts Australia may retain all money received from the Hirer’s liquidated estate and not allow the Guarantors a reduction in their liability under this Deed (other than to the extent of the amount received) until such time as the Hirer’s indebtedness to Forklifts Australia is paid in full;
  - 1.9.2. the Guarantors may not and must not seek to recover any money from the Hirer so as to reimburse them for payments made to Forklifts Australia under this Deed until Forklifts Australia have been paid and/or compensated in full;
  - 1.9.3. the Guarantors may not and must not prove a claim in the insolvency of the Hirer in competition with Forklifts Australia, whether in respect of an amount paid by the Guarantors under this Deed or otherwise for any amount which Forklifts Australia has demanded from them under this Deed;
  - 1.9.4. the Guarantors must pay to Forklifts Australia all money which Forklifts Australia may be obliged to refund to the Hirer’s liquidator as preferential payments received from the Hirer; and
  - 1.9.5. the Guarantors must not raise against Forklifts Australia a defence, set-off or counter-claim available to themselves, the Hirer or any other Guarantor, or claim a set-off or make a counter-claim against Forklifts Australia, in reduction of the Guarantor’s liability under this Deed.
- 1.10. If any of the obligations on the part of the Hirer under the Hire Agreement are unenforceable or invalid, then this and the five (5) previous clauses are to operate as a separate indemnity with the result that:
- 1.10.1. the Guarantors indemnify Forklifts Australia against all loss resulting from Forklifts Australia’s inability to enforce performance of such obligations; and
  - 1.10.2. the Guarantors must on demand pay to Forklifts Australia the aggregate of the monetary quantification of all such losses arising out of such inability to enforce performance of such obligations.
- 1.11. The Guarantors (testified by their execution of this Deed) represent and warrant to Forklifts Australia that:
- 1.11.1. prior to their executing this Deed, each of them either:
    - (a) received competent and independent legal advice in connection with the full purport and effect of this Deed, or
    - (b) although having had the opportunity of doing so, he has not obtained independent legal advice in connection with the full purport and effect of this Deed for the very reason that he is fully cognizant of such purport and effect; and
  - 1.11.2. they have executed this Deed freely, voluntarily and without any duress on the part of Forklifts Australia.

## NOTICE

- 1.12. Any demand, notice or document under this Deed may be made or given by Forklifts Australia, or its solicitor, and will be sufficiently served or delivered on the Guarantors:
- 1.12.1. if served or delivered personally;

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- 1.12.2. if posted by pre-paid post addressed to the Guarantors at their respective addresses appearing in this Deed;
  - 1.12.3. if sent by facsimile transmission to the party to be served or to that party's solicitor;
  - 1.12.4. if sent by Electronic Communication to the party to be served or to that party's solicitor; or
  - 1.12.5. if served or delivered in any other manner authorised by the Supreme Court Rules of the State for service of documents on parties or their solicitors.
- 1.13. Service or delivery by pre-paid post will be deemed to have been made or given at 12.00 noon on the Business Day following posting.
- 1.14. Service or delivery:
- 1.14.1. by facsimile transmission will be deemed to have been made or given at the moment the sender's facsimile machine confirms transmission to the recipient's machine, subject to the production of a transmission report to that effect, and
  - 1.14.2. by Electronic Communication will be deemed to have been made or given at the time of receipt under the *Electronic Transactions Act 1999* (Cth).

## GENERAL CONDITIONS

### 1.15. Further Assurances

The Guarantors must sign such documents and do anything else which may be necessary or desirable to give full effect to this Deed.

### 1.16. Waiver

A waiver by Forklifts Australia of a default by the Guarantors under this Deed will not constitute a release of the Guarantors' obligation to observe and perform all of their obligations under this Deed in the future.

### 1.17. Counterparts

This Deed may be executed in two or more counterparts each of which will be deemed an original, but all of which will constitute one and the same document.

### 1.18. Jurisdiction

This Deed is to be governed by and construed in accordance with the law of Western Australia (the "**State of Jurisdiction**").

## INTERPRETATION

1.19. In the interpretation of this Deed, unless specified to the contrary:

- 1.19.1. words importing the plural include the singular and *vice versa*;
  - 1.19.2. words importing any gender includes both genders;
  - 1.19.3. a reference to any matter or thing includes the whole and each part of it separately;
  - 1.19.4. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
  - 1.19.5. the obligations imposed by this Deed in favour of Forklifts Australia includes his heirs, executors, administrators and assigns;
  - 1.19.6. the obligations imposed by this Deed on or in favour of a party which is a company or other corporate body includes its successors and assigns; and
  - 1.19.7. use of the word "**including**" is to be read and construed without limitation.
- 1.20. In the interpretation of this Deed, time will be of the essence. However, if something must be done on or by a specified day which is not a Business Day, it is to be done instead on or by the next Business Day.

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- 1.21. This Deed is to be interpreted so that it complies with the law of the State of Jurisdiction, although if any provision does not comply, then that provision is to be read down so as to give it as much effect as possible. However, if it is not possible to give the provision concerned any effect at all, then it is to be severed from this Deed, in which case the remainder of this Deed will continue to have full force and effect.
- 1.22. Any obligation imposed by this Deed on two or more persons binds them jointly and each of them severally.
- 1.23. The legal doctrine of *contra proferentem* does not apply to this Deed, which means that a provision in this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed and/or the inclusion of the provision concerned.
- 1.24. The clause headings are for ease of reference only and are not intended to affect the construction or interpretation of this Deed.

**EXECUTED BY THE GUARANTORS AS A DEED** in the following manner:

**SIGNED** by: \_\_\_\_\_  
**FIRST NAMED GUARANTOR** Signature

in the presence of: \_\_\_\_\_  
 Name of Witness (block letters) Signature

**SIGNED** by: \_\_\_\_\_  
**SECOND NAMED GUARANTOR** Signature

in the presence of: \_\_\_\_\_  
 Name of Witness (block letters) Signature

**SIGNED** by: \_\_\_\_\_  
**THIRD NAMED GUARANTOR** Signature

in the presence of: \_\_\_\_\_  
 Name of Witness (block letters) Signature

**SCHEDULE**

**1. Date of this Deed:** The \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**2. The Guarantors:**

First Named Guarantor Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

Second Named Guarantor Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

Third Named Guarantor Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

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