



# CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Customer's Details: <input type="radio"/> Individual <input type="radio"/> Sole Trader <input type="radio"/> Trust <input type="radio"/> Partnership <input type="radio"/> Company <input type="radio"/> Other:			
Full or Legal Name:			
Trading Name (if different from above):			
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:	Fax No:	Mobile No:	
Personal Details: <i>(please complete if you are an Individual)</i>			
D.O.B.:		Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>			
ABN:	ACN:	Date Established <i>(current owners)</i> :	
Nature of Business:			
Paid Up Capital: \$	Estimated Monthly Purchases: \$	Credit Limit Required: \$	
Principal Place of Business is: <input type="radio"/> Rented <input type="radio"/> Owned <input type="radio"/> Mortgaged <i>(to whom)</i> :			
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>			
(1) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
(2) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
Account Terms: <input type="radio"/> 30 Days <input type="radio"/> COD <input type="radio"/> Other:			
Purchase Order Required? <input type="radio"/> YES <input type="radio"/> NO		Accounts to be emailed? <input type="radio"/> YES <input type="radio"/> NO	
Accounts Email Address:			
Accounts Contact:		Phone No:	
Bank and Branch:		Account No:	
Trade References: <i>(please provide companies that are willing to do trade references)</i>			
Name:	Address:	Phone / Fax / Email:	
1.			
2.			
3.			

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Statewide Forklifts Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CUSTOMER): \_\_\_\_\_ SIGNED (SWF): \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

# Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Statewide Forklifts Pty Ltd and its successors and assigns ("SWF")

at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

\_\_\_\_\_

("the Customer") [Insert Company Name In Box Provided]

**I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:**

- 1. GUARANTEE** the due and punctual payment to SWF of all monies which are now owing to SWF by the Customer and all further sums of money from time to time owing to SWF by the Customer in respect of goods and services supplied or to be supplied by SWF to the Customer or any other liability of the Customer to SWF, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with SWF, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to SWF the Guarantor will immediately on demand pay the relevant amount to SWF. In consideration of SWF agreeing to supply the goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to SWF registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints SWF and each director of SWF as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which SWF may reasonably require to:
  - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - register any other document required to be registered by the PPSA or any other law; or
  - correct a defect in a statement referred to in clause 1(a) or 1(b).
- 2. HOLD HARMLESS AND INDEMNIFY** SWF on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, SWF in connection with:
  - the supply of goods and/or services to the Customer; or
  - the recovery of monies owing to SWF by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to SWF's nominees contract default fee and legal costs; or
  - monies paid by SWF with the Customer's consent in settlement of a dispute that arises or results from a dispute between, SWF, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by SWF to the Customer.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

- 3. I/We have received, read and understood SWF's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- 4.** This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to SWF by the Customer and all obligations herein have been fully paid satisfied and performed.
- 5.** No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on SWF's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to SWF, each Guarantor shall be a principal debtor and liable to SWF accordingly.
- 6.** If any payment received or recovered by SWF is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and SWF shall each be restored to the position in which they would have been had no such payment been made.
- 7.** The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
- 8. I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to SWF.**
- 9.** I/we irrevocably authorise SWF to obtain from any person or company any information which SWF may require for credit reference purposes. I/We further irrevocably authorise SWF to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with SWF as a result of this Guarantee and Indemnity being actioned by SWF.
- 10.** The above information is to be used by SWF for all purposes in connection with SWF considering this Guarantee and Indemnity and the subsequent enforcement of the same.

**GUARANTOR-1**  
 SIGNED: \_\_\_\_\_  
 FULL NAME: \_\_\_\_\_  
 HOME ADDRESS: \_\_\_\_\_  
 DATE OF BIRTH: \_\_\_\_\_  
 SIGNATURE OF WITNESS: \_\_\_\_\_  
 NAME OF WITNESS: \_\_\_\_\_  
 OCCUPATION: \_\_\_\_\_  
 PRESENT ADDRESS: \_\_\_\_\_  
 EXECUTED as a Deed this            day of            20\_\_\_\_

**GUARANTOR-2**  
 SIGNED: \_\_\_\_\_  
 FULL NAME: \_\_\_\_\_  
 HOME ADDRESS: \_\_\_\_\_  
 DATE OF BIRTH: \_\_\_\_\_  
 SIGNATURE OF WITNESS: \_\_\_\_\_  
 NAME OF WITNESS: \_\_\_\_\_  
 OCCUPATION: \_\_\_\_\_  
 PRESENT ADDRESS: \_\_\_\_\_  
 EXECUTED as a Deed this            day of            20\_\_\_\_

Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

## Statewide Forklifts Pty Ltd - Terms & Conditions of Hire

### 1. Definitions

- 1.1 "SWF" means Statewide Forklifts Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Statewide Forklifts Pty Ltd.
- 1.2 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting SWF to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Equipment" means all Equipment (including any accessories) supplied on hire by SWF to the Customer (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by SWF to the Customer.
- 1.4 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by SWF to the Customer.
- 1.5 "Price" means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between SWF and the Customer subject to clause 5 of this contract.
- 1.6 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts delivery of, the Equipment.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and SWF.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that SWF shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by SWF in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by SWF in respect of the Equipment hire and/or services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of SWF; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1 The Customer shall give SWF not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by SWF as a result of the Customer's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At SWF's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by SWF to the Customer in respect of Equipment supplied on hire; or
  - (b) SWF's quoted Price (subject to clause 5.2) which shall be binding upon SWF provided that the Customer shall accept in writing SWF's quotation within thirty (30) days.
- 5.2 SWF reserves the right to change the Price in the event of a variation to SWF's quotation. Any variations (including as a result of the availability of specific Equipment) will be charged for on the basis of SWF's quotation, and will be detailed in writing, and shown as variations on SWF's invoice. The Customer shall be required to respond to any variation submitted by SWF within ten (10) working days. Failure to do so will entitle SWF to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At SWF's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this contract, which shall be refunded to the Customer by within thirty (30) days of the return of the Equipment, provided that the Customer has complied with their obligations hereunder. The deposit may be used to offset any applicable charges payable by the Customer under clause 13.2, and any outstanding balance thereof shall be due as per clause 5.4.
- 5.4 Time for payment for the Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by SWF, which may be:
- (a) on delivery of the Equipment; or
  - (b) before delivery of the Equipment; or
  - (c) by way of instalments/progress payments in accordance with SWF's payment schedule;
  - (d) for certain approved Customers, thirty (30) days following the date of invoice;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by SWF.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), BPay, or by any other method as agreed to between the Customer and SWF.
- 5.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by SWF nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to SWF an amount equal to any GST SWF must pay for any supply by SWF under this or any other contract for the hire of the Equipment. The Customer must pay GST, without

## Statewide Forklifts Pty Ltd - Terms & Conditions of Hire

deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5.8 Receipt by SWF of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

### 6. Hire Period

6.1 Hire charges shall commence from the time the Equipment departs from SWF's premises and will continue until the return of the Equipment to SWF's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

6.2 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.

6.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless SWF confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies SWF immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

6.4 Off-hire receipts will only be issued when the Equipment has been either collected by SWF, or returned to SWF's premises.

### 7. Delivery

7.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that:

(a) the Customer or the Customer's nominated carrier takes possession of the Equipment at SWF's premises; or

(b) SWF (or SWF's nominated carrier) delivers the Equipment to the Customer's nominated address even if the Customer is not present at the address.

7.2 At SWF's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

7.3 SWF may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

7.4 Any time specified by SWF for delivery of the Equipment is an estimate only and SWF will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that SWF is unable to supply the Equipment as agreed solely due to any action or inaction of the Customer, then SWF shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

### 8. Risk

8.1 SWF retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on Delivery.

8.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies SWF for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.

8.3 The Customer will insure, or self-insure, SWF's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

8.4 The Customer accepts full responsibility for and shall keep SWF indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

### 9. Title

9.1 The Equipment is and will at all times remain the absolute property of SWF, and the Customer must return the Equipment to SWF upon request to do so.

9.2 If the Customer fails to return the Equipment to SWF as is required under this contract or when requested to do so, then SWF or SWF's agent may (as the invitee of the Customer) enter upon and into any land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by SWF as a result of SWF so repossessing the Equipment shall be charged to the Customer.

9.3 The Customer is not authorised to pledge SWF's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

### 10. Personal Property Securities Act 2009 ("PPSA")

10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by SWF to the Customer.

10.3 The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SWF may reasonably require to:

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);

(b) indemnify, and upon demand reimburse, SWF for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;

## Statewide Forklifts Pty Ltd - Terms & Conditions of Hire

- (c) not register a financing change statement in respect of a security interest without the prior written consent of SWF;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of SWF.
- 10.4 SWF and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by SWF, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by SWF under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 11. Security and Charge**
- 11.1 In consideration of SWF agreeing to supply Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies SWF from and against all SWF's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising SWF's rights under this clause.
- 11.3 The Customer irrevocably appoints SWF and each director of SWF as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
- 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1 The Customer must inspect the Equipment on delivery and must within forty-eight (48) hours of delivery notify SWF in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow SWF to inspect the Equipment.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 12.3 SWF acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SWF makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. SWF's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, SWF's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If SWF is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then SWF may refund any money the Customer has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Customer which were not defective.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, SWF's liability for any defect or damage in the services or Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by SWF at SWF's sole discretion;
  - (b) limited to any warranty to which SWF is entitled, if SWF did not manufacture the Equipment;
  - (c) otherwise negated absolutely.
- 12.8 Notwithstanding clauses 12.1 to 12.7 but subject to the CCA, SWF shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Customer failing to properly maintain or store any Equipment;
  - (b) the Customer interfering with the Equipment in any way without SWF's written approval to do so;
  - (c) the Customer using the Equipment for any purpose other than that for which it was designed;
  - (d) the Customer continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (e) the Customer failing to follow any instructions or guidelines provided by SWF;
  - (f) fair wear and tear, any accident, or act of God.
- 13. Customer's Responsibilities**
- 13.1 The Customer shall:
- (a) ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
  - (b) ensure that all persons driving and/or operating Equipment are suitably instructed in the Equipment's safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to SWF upon request;
  - (c) maintain the Equipment as is required by SWF (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
  - (d) ensure that all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use;
  - (e) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or SWF relating to any such matters or occurrences;
  - (f) not carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of SWF;

## Statewide Forklifts Pty Ltd - Terms & Conditions of Hire

- (g) not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
- (h) refuel the Equipment prior to its return from Hire. In the event the Equipment needs to be refuelled upon its return from Hire then the costs of refuelling shall be charged to the Customer in addition to the costs of the Equipment hire;
- (i) notify SWF immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (j) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (k) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by SWF or posted on the Equipment;
- (l) comply with all work health and safety laws relating to the Equipment and its operation;
- (m) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to SWF (or SWF's designated employee);
- (n) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;
- (o) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (p) use the Equipment solely for the Customer's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other work.

### 13.2 Immediately on request by SWF the Customer will pay:

- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to SWF;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by the ordinary use of the Equipment;
- (d) the cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Customer or the Customer's employees;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in SWF's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
- (f) the cost of fuels and consumables provided by SWF and used by the Customer;
- (g) any costs incurred by SWF in picking up and returning the Equipment to the Owners premises if the Customer does not return the Equipment to the Owners premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so.
- (h) any lost hire fees SWF would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
- (i) any insurance excess payable in relation to a claim made by either the Customer or SWF in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or SWF's.

## 14. Default and Consequences of Default

### 14.1 An event of default ("Default Event") occurs if:

- (a) any money payable under this contract is not paid before or on the due date for payment;
- (b) the Customer fails to observe and perform any of the Customer's covenants, other than the failure to pay money, and such failure continues for more than seven (7) days after SWF had given the Customer notice requiring the Customer to remedy the breach;
- (c) SWF ascertains that any warranty, representation or statement made by the Customer under or in connection with this Contract has been false in any material respect;
- (d) the Customer, being an individual, commits an act of bankruptcy, is declared mentally ill or is convicted of a criminal offence or dies;
- (e) a receiver, or an agent in possession for a mortgagee is appointed in respect of any property of the Customer;
- (f) a mortgagee takes possession of any property of the Customer;
- (g) any execution or similar process is made against the property of the Customer;
- (h) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the Customer to be wound up, unless the winding up is for the purpose of reconstruction or amalgamation;
- (i) a compromise or arrangement is made between the Customer and its creditors;
- (j) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the Customer to be placed under official management;
- (k) the Customer admits in writing its inability to pay its debts;
- (l) an application is made to a court for an ordering summoning a meeting of any class or creditors of the Customer;
- (m) an application is made or notice given or other procedure commenced for the dissolution or cancellation of the registration of the Customer under the Corporations Act or any similar process; or
- (n) an investigation is commenced under Section 13 of the Australian Securities Commission Act to investigate the affairs of the Customer.

### 14.2 On the occurrence of a Default Event:

- (a) SWF may:
  - (i) take possession of the Equipment with or without notice to the Customer, and the Customer must (at the Customer's expense) immediately on demand, deliver up the Equipment in good order and repair in accordance with the directions of SWF, and in default the Customer irrevocably authorises SWF to enter any premises occupied or controlled or believed by SWF to be occupied or controlled by the Customer and repossess the Equipment, and for such purposes break open any gate or lock and dismantle the Equipment from any part of the premises to which they may be affixed, and the Customer indemnifies SWF in respect of any loss arising from any act done under or by virtue of this clause;
  - (ii) charge interest on overdue invoices, which shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at SWF's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;

## Statewide Forklifts Pty Ltd - Terms & Conditions of Hire

- (b) if the Customer owes SWF any money, the Customer shall indemnify SWF from and against all costs and disbursements incurred by SWF in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SWF's contract default fee, and bank dishonour fees);
- (c) further to any other rights or remedies SWF may have under this Contract, if the Customer has made payment to SWF and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by SWF under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract;
- (d) without prejudice to SWF's other remedies at law, SWF shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies SWF may have and all amounts owing to SWF shall, whether or not due for payment, become immediately payable.
- 14.3 The Customer must pay to SWF on demand all money which SWF pays or is liable to pay to make good any failure by the Customer to comply with any obligation under this Contract and all other costs and expenses including legal costs and expenses that SWF may incur in the enforcement or protection or attempted enforcement protection of SWF's rights under this Contract, or in the Equipment, including money paid by SWF in releasing any lien or other encumbrance claimed on the Equipment, and in dismantling and removing the Equipment from any premises.
15. **Cancellation/Termination**
- 15.1 SWF may terminate this contract, or cancel Delivery, at any time before the Equipment is delivered by giving written notice to the Customer. On giving such notice SWF shall repay to the Customer any sums paid in respect of the Price. SWF shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer terminates this Contract, or otherwise cancels Delivery, the Customer:
- (a) must provide notice of such to SWF at least twenty-four (24) hours prior to the specified date of Delivery; and
- (b) the Customer shall be liable for any and all loss incurred (whether direct or indirect) by SWF as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 On termination, the Customer must deliver up to SWF the Equipment (together with all parts and accessories) within forty-eight (48) hours, in clean and good order as delivered (with allowance for fair wear and tear).
- 15.4 Upon termination of this contract following the occurrence of a Default Event, the Customer must pay to SWF by way of liquidated damages, in addition to and without prejudice to any other right or remedy of SWF, an amount equal to the total of:
- (a) the unpaid balance of the Price for the Hire Period which would have been payable until the expiration of the Hire Period had the Contract not been terminated;
- (b) SWF's costs and expenses incurred in repossessing and storing, insuring and registering the Equipment and in entering on and removing the Equipment from land or premises on which the Equipment was situated, and make good any injury or damage caused to the land or premises;
- (c) SWF's costs and expenses of repairs reasonably necessary to bring the Equipment to an operational/useable condition;
- (d) interest calculated in accordance with clause 14.2(a)(ii) of this contract.
- 15.5 On, or before, termination of this contract, the Customer shall return the Equipment to SWF's premises and the Customer acknowledges and agrees that the Price is payable:
- (a) until such time as the Equipment is returned to SWF's premises and returned to its condition as specified in the on-hire inspection, normal wear and tear excepted; and
- (b) for the entirety of the Hire Period, notwithstanding that the Equipment may be returned to SWF prior to termination.
16. **Privacy Policy**
- 16.1 All emails, documents, images or other recorded information held or used by SWF is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. SWF acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). SWF acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by SWF that may result in serious harm to the Customer, SWF will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to SWF in respect of Cookies where the Customer utilises SWF's website to make enquiries. SWF agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to SWF when SWF sends an email to the Customer, so SWF may collect and review that information ("collectively Personal Information")
- If the Customer consents to SWF's use of Cookies on SWF's website and later wishes to withdraw that consent, the Customer may manage and control SWF's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 16.3 The Customer agrees that SWF may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or

---

## Statewide Forklifts Pty Ltd - Terms & Conditions of Hire

---

- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.4 The Customer consents to SWF being given a consumer credit report to collect overdue payment on commercial credit.
- 16.5 The Customer agrees that personal credit information provided may be used and retained by SWF for the following purposes (and for other agreed purposes or required by):
- (a) the provision of hire of the Equipment; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Equipment; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 16.6 SWF may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
  - (b) name of the credit provider and that SWF is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults (provided SWF is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and SWF has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of SWF, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.8 The Customer shall have the right to request (by e-mail) from SWF:
- (a) a copy of the Personal Information about the Customer retained by SWF and the right to request that SWF correct any incorrect Personal Information; and
  - (b) that SWF does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 16.9 SWF will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 16.10 The Customer can make a privacy complaint by contacting SWF via e-mail. SWF will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 17. Service of Notices**
- 17.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 17.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 18. Trusts**
- 18.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any Trust ("Trust") then whether or not SWF may have notice of the Trust, the Customer covenants with SWF as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the Customer will not without consent in writing of SWF (SWF will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 19. General**
- 19.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which SWF has its principal place of business, and are subject to the jurisdiction of the Penrith Courts in New South Wales.



---

## Statewide Forklifts Pty Ltd - Terms & Conditions of Hire

---

- 19.3 Subject to clause 12, SWF shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by SWF of these terms and conditions (alternatively SWF's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 19.4 SWF may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 19.5 The Customer cannot assign or licence without the written approval of SWF.
- 19.6 SWF may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of SWF's sub-contractors without the authority of SWF.
- 19.7 The Customer agrees that SWF may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for SWF to provide Equipment to the Customer.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 19.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.