

1. DEFINITIONS

In these terms and conditions each of the words mentioned herein shall have the meaning respectively set opposite the same, namely:

- 1.1 SQMH PTY LTD' shall mean and include CALAIS PARK INVESTMENTS Pty. Ltd. ATF THE BALLARD FAMILY TRUST trading as 'SQMH PTY LTD' its successors or assigns its servants and agent and hereinafter referred to as SQMH.
- 1.2 'CLIENT' shall mean and include any persons, form or corporation to whom or to which EQUIPMENT as herein defined is sold, hired or serviced by SQMH.
- 1.3 'INDEMNITY' whenever hereinafter it is provided that the CLIENT shall indemnify SQMH then the indemnity to be provided shall be a full and complete indemnity form and against liability in respect of the particular claim or demand referred to and from and against costs and other expenses incurred in prosecuting the same.
- 1.4 'EQUIPMENT' shall mean and include any machine or vehicle with all accessories and other equipment attached hereto or used in connection therewith hired out of any time to a CLIENT.
- 1.5 PPSA Law means:
 - (a) the Personal Properties Securities Act 2009 (Cth);
 - (b) any regulation made under the *Personal Properties Securities Act 2009 (Cth)*; and
 - (c) any amendment from time to time made to any other legislation or regulation as a consequence of the *Personal Properties Securities Act 2009 (Cth)*

2. PURPOSE OF HIRE

The CLIENT shall be responsible for damage to hired EQUIPMENT if it is used for any purpose other than that for which it was expressly hired or if it is employed to lift any load which is beyond its rated lifting capacity.

3. INDEMNITY

- 3.1 The CLIENT shall indemnify SQMH and the employees of SQMH from and against all claims which may be made against either of them for damages or otherwise, in respect of any losses, damage, death or injury caused by or in the course of or arising out of the use of the EQUIPMENT is on hire to, or in the custody of the CLIENT, his agent or any other person acting on behalf of the CLIENT.
- 3.2 The CLIENT is responsible for loss of and/or damage to the EQUIPMENT whilst it is on hire, fair wear and tear only accepted by SQMH unless otherwise detailed in the hire agreement.

4. COMMENCEMENT OF CHARGES

The liability of the CLIENT for the hire charges payable hereunder at the rate specified on the front hereof shall commence:

- 4.1 in the case where the CLIENT takes possession of the EQUIPMENT at any depot of SQMH then immediately possession thereof is taken by the CLIENT; or

- 4.2 in the case where the CLIENT requires that the equipment delivered by SQMH to a place nominated by the CLIENT then immediately SQMH leaves its depot with the EQUIPMENT for the purpose of delivering the same to the place nominated by the CLIENT.

5. HIRE RATE AND CHARGES

- 5.1 the hire rate is as set out on the face hereof, provided however that SQMH may from time to time, during the hiring consequent upon any variation in the costs prevailing at the date of the contract, vary such rate by giving not less than seven (7) days notice in writing;
 - (a) daily hire: the minimum charge for any hire is a full day, eight (8) hours hire in respect of that day. If the EQUIPMENT is used in excess of eight (8) hours of any one day, all such hours it is used must be paid for at an agreed hourly rate
 - (b) weekly hire: the hire rate is for the use of the EQUIPMENT for not more than thirty (30) hours in any one week. If the EQUIPMENT is used for more than forty (40) hours in any one week, an additional charge, equal to one-fortieth of the said hire charge shall be made for any hour or part of an hour the equipment is so used in excess of forty (40) hours, and if the EQUIPMENT is hired with operator a further additional penalty surcharge shall be payable
 - (c) where SQMH operator also is supplied hire charges are based on a normal eight (8) hour day between the hours of 8:00am and 4.30pm, Monday to Friday. A penalty surcharge shall be payable for work outside or in excess of these hours or on weekends
 - (d) in addition to the payment for hire, a further charge will be made to cover delivery from and to the SQMH depot and unless the transport of the EQUIPMENT is undertaken by SQMH, the CLIENT is responsible for any damage thereto in the course of transport.

6. PAYMENT

- 6.1 The CLIENT shall pay all charges due upon receipt of invoice from SQMH unless other arrangements have been made.
- 6.2 All invoices are due and payable in full on the twentieth (20th) of the month following the month of invoice, provided however that if any invoice or invoices remain unpaid after the due date all invoices whether due for payment or not shall be deemed to be overdue and shall become payable on demand.
- 6.3 Should the CLIENT fail to pay the invoices by the due date then:
 - (a) SQMH may require the CLIENT to compensate us by making payment to us on demand of interest on the amount due from the due date until the date of payment at a rate of one and a half percent (1.5%) per month calculated on a daily basis
 - (b) The CLIENT shall pay all our costs and expenses whatsoever (including legal costs determined between solicitor/own client and collection agent fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from you.

7. PRICES AND DELIVERY

- 7.1 Our prices are subject to change without notice.
- 7.2 The CLIENT will be invoiced for goods at prices current at the date of despatch. No credit will be given on purchase of forklifts
- 7.3 Unless specified on our invoice, all process are exclusive of Goods and Services Tax, freight costs and insurance charges all of which the CLIENT must pay. Any error or omission on our part does not waive your liability.
- 7.4 Whilst SQMH shall use all reasonable endeavours to comply with your particular delivery requirements and order specifications, the CLIENT will not be entitled to cancel the while or part of your order or to claim compensation by reason of our failure to comply with your delivery requirements or minor variations of the goods as a result of changes to the manufacturing processes or specifications.

8. RESERVATION OF TITLE

- 8.1 The CLIENT acknowledge that the ownership of goods delivered by us to the CLIENT ('the goods') is only transferred to the CLIENT when the CLIENT have paid all sums owing to us on any account whatsoever and until such time SQMH have the right to call for or recover the goods at our option (for which purpose our employees or agents may enter any premises) and the CLIENT is obliged to deliver up the goods if so directed by us.
- 8.2 The CLIENT agree to keep the goods in a fiduciary capacity for us until such time as ownership is transferred to you.
- 8.3 Notwithstanding the foregoing, the CLIENT may sell the goods to a third party in the ordinary course of business, but title remains ours pursuant to these provisions.

9. WITHHOLDING SUPPLY

- 9.1 SQMH reserves the right, irrespective of whether or not an order has been accepted, and without notice to you, to withhold supply and SQMH will not be liable for loss or damage resulting directly or indirectly from such action where:
 - (a) SQMH have insufficient goods to fulfil the order;
 - (b) the goods ordered have been discontinued; or
 - (c) SQMH have determined, in our absolute discretion that credit should no longer be extended to you.

10. CLERICAL ERRORS

SQMH reserve the right to correct clerical errors without notification.

11. OPERATIONAL COMPLIANCE

During the period of hire the CLIENT shall observe and comply with the provisions of all Statutes Act and Ordinances and Regulations made there under in force in relation to the work on which the EQUIPMENT shall be employed and the manner of performance of such work in relation to premises in or on or about which such work is being performed and shall indemnify SQMH from and against all claims for damages or otherwise whenever the EQUIPMENT is used in breach thereof.

SQMH shall have the right to determine the type of operation on or in which the EQUIPMENT may reasonably be employed and the

suitability of the EQUIPMENT for the work to be done and to terminate the hire at any time.

12. DAMAGES

The CLIENT shall not be entitled to damages or compensation from SQMH for any loss suffered by reason of late delivery or breakdown of the EQUIPMENT or if SQMH should terminate hiring.

13. RETURN OF EQUIPMENT

At the expiration of the period of hire or if sooner terminated by SQMH whichever first happens the CLIENT at its own expense shall forthwith return the EQUIPMENT to SQMH at the place of business of SQMH from which such EQUIPMENT was hired.

14. LEND/RE-HIRE OF EQUIPMENT

The CLIENT must not lend, re-hire, sublet or part with possession of the EQUIPMENT to any third party without the prior written consent of SQMH. If SQMH consents in writing to the lend, re-hire, sublet or parting without possession then the CLIENT shall remain bound by these terms and conditions and must ensure that any third party who takes possession of the EQUIPMENT pursuant to the lend, re-hire, sublet or parting with possession complies with these terms.

15. DEFAULT AND TERMINATION

15.1 An Event of Default occurs if:

- (a) any money payable under this agreement is not paid on the due date for payment;
- (b) the CLIENT fails to observe and perform and the CLIENT's covenants, other than failure to pay money, and such failure continues for more than three (3) days after SQMH has given the CLIENT notice requiring the CLIENT to remedy the breach;
- (c) SQMH ascertains that any warranty, representation or statement made by the CLIENT under or in connection with this Agreement has been false in any respect;
- (d) the CLIENT, 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 CLIENT;
- (f) a mortgagee takes possession of any property of the CLIENT;
- (g) any execution or similar process is made against the property of the CLIENT;
- (h) an application is made, a resolution is passed or a meeting is convened for the purpose of considering a resolution for the CLIENT 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 CLIENT and its creditors;
- (j) a resolution is passed, or a meeting is convened for the purpose of considering a resolution for the CLIENT to be placed under official management;
- (k) the CLIENT admits in writing its inability to pay its debts;

- (l) an application is made to a court for an order summoning a meeting of any class of creditors of the CLIENT;
- (m) an application is made or notice is given or other procedure commenced for the dissolution or cancellation of the registration of the CLIENT 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 CLIENT.

15.2 On the occurrence of an Event of Default, SQMH may terminate this Agreement and take possession of the EQUIPMENT with or without notice to the CLIENT, and the CLIENT must, at the CLIENT's expense immediately on demand deliver the EQUIPMENT in good order and repair in accordance with the directions of SQMH, and in default, the CLIENT irrevocably authorises SQMH to enter the premises occupied or controlled or believed by SQMH to be occupied or controlled by the CLIENT 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 CLIENT indemnifies SQMH in respect of any loss arising from any act done under or by virtue of this subclause.

15.3 On termination of this Agreement following the occurrence of an Event of Default, the CLIENT must pay to SQMH by way of liquidated damages, in addition to and without prejudice to any other right or remedy of SQMH, an amount equal to the total of:

- (a) the unpaid balance of the fee for the term which would have been payable until the expiration of the term of the Agreement not been terminated;
- (b) SQMH costs and expenses incurred in the repossessing and storing, insuring and registering the EQUIPMENT and in entering on and removing the EQUIPMENT from land or premise on which the EQUIPMENT was situated, and make good any injury or damage caused to the land or premises;
- (c) SQMH's costs and expenses of repairs reasonably necessary to bring the EQUIPMENT to a saleable condition and;
- (d) interest at the rate of ten percent (10%).

16. LOSS/DAMAGE

In the event that during the period of hire the EQUIPMENT or a part or parts thereof is or are lost or destroyed the following provisions shall apply:

- 16.1 the CLIENT shall forthwith give SQMH notice in writing thereof to be served in a manner hereinafter provided with full details of such loss or destruction;
- 16.2 the CLIENT shall pay SQMH as compensation for the EQUIPMENT or for such part or parts thereof that is or are lost or destroyed as the case may be an amount equal to the replacement value of the EQUIPMENT or of a like part or like parts thereof as the case may be together with the associated labour costs incurred by SQMH;
- 16.3 until the CLIENT has paid SQMH the compensation therefore as so determined the CLIENT shall continue to be liable for

the hire charges at the rate specified on the front hereof or as the same thereafter may have been increased; as the case may be.

17. SAFE OPERATION

The CLIENT shall be responsible for daily checks and topping up of all oils, coolants, etc., tyre pressures, etc., to ensure safe operation of EQUIPMENT.

18. EXCLUDING MAINTENANCE CHARGES

If SQMH has quoted hire charges excluding maintenance charges then during the period of the hire the CLIENT at its own expense shall carry out all running repairs and regular servicing so as to keep the equipment at all times in good working order.

19. INCLUDING MAINTENANCE CHARGES

If SQMH has quoted hire charges including maintenance a twenty-four (24) hour a day, seven (7) day a week service is available. Our business hours are 8:00am to 4:30pm, therefore an after hours call out rate of two hundred and ten dollars (\$210.00) per hour with a minimum of four (4) hours will be chargeable outside these hours.

20. MAJOR BREAKDOWN

Should the EQUIPMENT hired suffer major breakdown while on hire due to fair wear and tear the CLIENT shall immediately notify SQMH of such breakdown. No action shall be taken by the CLIENT to effect repairs in relation to such breakdown until approval has been given by SQMH to the carrying out of the necessary repairs.

21. SECURITY INTEREST

The CLIENT acknowledges that this contract creates a security interest in all equipment supplied now or in the future by SQMH to the CLIENT.

The CLIENT agrees that:

21.1 it will do anything reasonably necessary or advisable (including obtaining consents, providing all information, making amendments to deeds or executing a new document) for the purposes of -

- (a) ensuring that any security interest created under or provided by this Agreement -
 - (i) attaches to the collateral that is intended to be covered by that security interest;
 - (ii) is enforceable, perfected, maintained and otherwise effective; and
 - (iii) any security interest created under or provided by this Agreement has the priority contemplated by this Agreement;
- (b) enabling SQMH to prepare and register a Financing Statement or a Financing Change Statement; or
- (c) enabling SQMH to exercise any of its powers in connection with any security interest created under or provided for by this Agreement; and
- (d) providing any information requested by SQMH in connection with this Agreement and necessary or advisable to enable it to exercise any of its powers or perform any of its obligations under the PPS Law;

- (e) it waives its right to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the security interest created by this Agreement; and
- (f) it will pay SQMH costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement.

22. PPSA APPLICATION

- 22.1 To the maximum extent permitted by law, the CLIENT agrees that the following sections of the PPSA will not apply:
- (a) section 130;
 - (b) section 142; and
 - (c) section 143.
- 22.2 To the maximum extent permitted by law, the CLIENT waives any rights it may have pursuant to and hereby contracts out the following sections of the PPSA:
- (a) section 95;
 - (b) section 123;
 - (c) section 125;
 - (d) section 129(2);
 - (e) section 132 (3)(d);
 - (f) section 134(1); and
 - (g) section 135.
- 22.3 Unless otherwise defined in these terms and conditions, the terms and conditions used in this clause have the meanings given to them in the PPSA.

23. INSURANCE

The CLIENT must effect insurance and maintain any such insurance with an insurer approved by in the names of and the CLIENT for their respective rights and interests whilst the EQUIPMENT is the possession of the CLIENT in respect of the following:

- 23.1 the EQUIPMENT for the full insurable value against such risks as SQMH may nominate or, in the absence of such nomination, against loss or damage by fire, theft, accident and such other risks as are insured against by prudent persons engaged in a similar business to that of the CLIENT excluding liability for claims being the subject of compulsory third party bodily insurance on vehicles registered by the CLIENT;
- 23.2 a policy of employers' indemnity insurance including workers' compensation insurance in respect of all employees of the CLIENT in respect of damage or loss cause by the use, maintenance, repair or storage of the EQUIPMENT; and
- 23.3 public risk liability and product defect liability, for the amount of ten million dollars (\$10,000,000.00) per occurrence and unlimited as to the number of occurrences any other such insurance in support of the indemnities contained in this Agreement;
- 23.4 and must in respect of any such policy of insurance, deliver to SQMH a copy of the policy and promptly pay all premiums and stamp duty payable in respect of the policy.

24. Waiver

Failure to exercise or delay in exercising any right, power or privilege in this Agreement by a party does not operate as a waiver of that right, power or privilege.

25. EXERCISE OF RIGHTS

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege, or the exercise of any other right, power or privilege.