

ASSET TECHNOLOGIES PTY LTD TRADING AS ALL FORKLIFTS & EQUIPMENT – RENTAL AGREEMENT



Company details		Client details	
Name	Asset Technologies Pty Ltd trading as All Forklifts & Equipment	Customer name	
ACN	617 573 770	ACN	
Address	61-67 Welshpool Road Welshpool WA 6162	Address	
Contact		Contact	
Phone	6246 0233	Phone	
Email	toby@allforklifts.com.au	Email	
		Purchase order number & Site	

Equipment								
Asset Number	Model	Serial Number	Rate	Rate unit (day/week/month)	On-hire date	Location	Freight (to)	Freight (from)
Special conditions								
Minimum Rental Period	Other							

Signed for and on behalf of the parties as follows:

Company	Asset Technologies Pty Ltd trading as All Forklifts & Equipment: 617 573 770	Client	
Name		Name	
Signed		Signed	
Date		Date	

ASSET TECHNOLOGIES PTY LTD TRADING AS ALL FORKLIFTS & EQUIPMENT – TERMS AND CONDITIONS OF RENT

All orders are accepted and Hire made subject only to the Terms and Conditions of Hire hereinafter stipulated. The placing of or proceeding in any manner with any order by the Client shall be deemed acceptance by the Client of such Terms and Conditions of Hire.

1 DEFINITIONS

- 1.1 "Agreement" means this agreement, comprising:
- the Order; and
 - these Terms and Conditions of Hire.
- 1.2 "Agreement Price" means the Rates and other sums payable by the Client, in accordance with the Agreement, which is exclusive of GST.
- 1.3 "Australian Consumer Law" and "ACL" means Schedules 1 and 2 of the Competition and Consumer Act 2010 (Cth) and any other relevant provisions contained in that Act.
- 1.4 "Company" means Asset Technologies Pty Ltd trading as All Forklifts & Equipment (ACN 617 573 770) and includes any subsidiary of the Company by which the Goods are hired and successors in title and permitted assigns or any person acting on behalf of the Company.
- 1.5 "Client" means the person, business or company described (or any person acting on behalf of and with authority of the Client) in this Agreement or on the order given by the Client to the Company in respect of Equipment, or to which an order relates.
- 1.6 "Commencement Date" means the date of this Agreement or otherwise a date agreed in writing by the parties.
- 1.7 "Consumer" means:
- a natural person ("Individual") hiring Equipment for personal, domestic or household use or consumption;
 - an Individual or a corporation ("Person") hiring Equipment at a price not exceeding \$40,000; or
 - a Person hiring Equipment of a kind ordinarily acquired for personal, domestic or household use or consumption,
- but excludes a Person hiring Equipment, or holding himself or herself out as hiring Equipment, for the purpose of:
- resupply; or
 - using them up or transforming them, in trade or commerce in the course of a production or manufacture, or in the course of repairing or treating other goods or fixtures on land.
- 1.8 "End Date" means the date specified in the Agreement by the Client as the date on which the Hire shall terminate.
- 1.9 "Equipment" means the equipment set out in the Order Form.
- 1.10 "GST" has the meaning given to it under A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.11 "Hire" means the hire of Equipment in accordance with these Terms and Conditions of Hire and includes any variations to such hire.
- 1.12 "Order" means the document entitled "Order Form" attached to these Terms and Conditions of Hire or otherwise as agreed by the parties.
- 1.13 "Rates" means the rates payable by the Client during the Term as set out in the Form or otherwise as agreed by the parties.
- 1.14 "Security Agreement" means the security agreement under the Personal Property Securities Act 2009 (Cth) ("PPSA") created between the Company and the Client by the Agreement and the following words have the meaning given to them by the PPSA:
- "Security Interest";
 - "Purchase Money Security Interest";
 - "Financing Statement";
 - "Financing Change Statement";
 - "Proceeds";
 - "Accessions";
 - "Verification Statement"; and
 - "Register".
- 1.15 "Site" means the place designated in the Agreement for the delivery of the Equipment, and where the Client will use the Equipment during the Term.
- 1.16 "Term" means the period of Hire that commences on the Commencement Date and terminates on the End Date unless extended in writing by the Company at its absolute discretion.
- 1.17 "Terms and Conditions of Hire" means these standard terms and conditions of hire.

2 GENERAL

- 2.1 The Client agrees that these Terms and Conditions of Hire are incorporated in any Agreement made between the Client and the Company relative to the goods and services described in the Agreement.

3 COMPETITION AND CONSUMER ACT 2010 ("CCA")

- 3.1 If the Client is not a Consumer, then to the extent permitted by law, all conditions, warranties and liabilities, implied, statutory or otherwise not contained in these Terms and Conditions of Hire or in any written warranty statement provided by the Company with the Goods ("Company Warranty"), are excluded.
- 3.2 If the Client is not a Consumer, then to the extent permitted by law the Company is not liable to the Client for any loss, however caused (including by negligence of the

Company), suffered or incurred by the Client in relation to any defect or deficiency in the Equipment (other than as set out in any Company Warranty).

- 3.3 This clause does not limit the Company's liability to a Client who is a Consumer.
- 3.4 If the Client is a Consumer, nothing in these Terms and Conditions of Hire excludes, restricts or modifies its rights or remedies against the Company for failure to comply with a guarantee under the ACL, however and subject to section 64A(3) of the ACL, to the extent that the Equipment the subject of the Hire is not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Company limits its liability for failure to comply with a guarantee under the ACL (other than a guarantee under section 51, 52 or 53 of the ACL) at the Company's option to provide replacement Equipment for Hire.
- 3.5 If clause 3.4 does not apply, then other than as stated in these Terms and Conditions of Hire, the Company is not liable to the Client in any way arising under or in connection with the Hire to the Client or to any other person or entity.
- 3.6 Nothing in this clause 3 is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the Hire which cannot be excluded, restricted or modified.
- 3.7 Subject to clause 3.1, the Company shall not be liable to the Client its servants or agents or contractors for any direct, indirect, incidental, consequential or punitive or special losses, expenses or damages of any nature howsoever caused (whether based on tort or contract or otherwise) suffered by the Client or any other persons or entity howsoever caused including but not limited to loss of turnover, loss of profits, loss of production, loss of sales opportunity or business reputation or goodwill, direct or indirect labour costs and overhead expenses and damage to equipment or property, or any liability to any other person or entity or any other claim whatsoever arising directly or indirectly out of or in any way attributable to the sale of goods or performance of services, except to the extent of any liability imposed by the ACL.

4 ORDERS

- 4.1 No order accepted by the Company may be altered without the Company's express written consent.
- 4.2 If the Client cancels an order, other than in accordance with these Terms and Conditions of Hire, the Client shall pay the Company any and all loss, damage and expense incurred by the Company in relation to the Hire, including the total amount that would have been payable for the Term of the Agreement in the event that the order had not been cancelled.

5 DESCRIPTION

- 5.1 Any description of Equipment is given by way of identification only and use of such description shall not constitute and shall not be construed as constituting a sale by description.

6 FITNESS FOR PURPOSE

- 6.1 Subject to clause 3 hereof, the Client acknowledges that neither the Company nor any person acting or purporting to act on its behalf has made representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Equipment for any particular purpose or any other matter.
- 6.2 The Client acknowledges and warrants that it has relied on its own skill and judgement or alternatively on the skill and judgement of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Equipment for specific purposes and procedures and in this respect shall hold the company harmless and indemnified from and against any suit claim, demand, or compensation which but for these Terms and Conditions of Hire the Client may have had against the Company.

7 QUOTATION AND PRICE

- 7.1 GST and other taxes, levies and duties that may be applicable shall be added to the Agreement Price, except when they are expressly included.

8 TITLE AND RISK

- 8.1 Nothing contained in this Agreement will confer on the Client any right or property or security interest in the Equipment other than the rights specified in this Agreement or by law as hirer of the Equipment.
- 8.2 Risk in the Equipment passes to the Client at the time the Equipment is delivered to the Site or collected by the Client.
- 8.3 Risk in the Equipment shall revert to the Company at the time the Company takes possession of the Equipment and is accepted by the Company.
- 8.4 If the Client defaults any term of these Terms and Conditions of Hire, the Company may take possession of the Equipment wherever the Equipment is located and the Client agrees that representatives of the Company may ingress and egress the Site or the Client's premises (without notice as invitee of the Client) owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment.
- 8.5 The Client covenants with the Company not to charge, pledge, mortgage or otherwise encumber the Equipment in any way or grant nor otherwise give any Security Interest in the Equipment and the Equipment shall remain the property of the Company at all times.

9 DELIVERY

- 9.1 Any times quoted for delivery of Equipment and/or the performance of services are estimates only and the Company shall not be responsible nor liable for any loss, damage, claim or demand howsoever arising as a result of or consequent upon any failure to deliver Equipment or perform services or for any delay in delivery of Equipment or performance of services, by either act or omission, including without limitation, the Force Majeure events identified in clause 12. The Client shall not be relieved of any obligation to accept or pay for Equipment by reason of any delay in delivery, dispatch or performance.

10 LICENSES

- 10.1 All Equipment is Hired by the Company on the basis that all licenses and permits under all relevant statutes, ordinances, rules and regulations have been obtained

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by or complied with by the Client and the Client shall hold the Company indemnified from and against any action, claim, demand suit or proceeding by any relevant authority with respect to the Hire of any Equipment.

11 DEFAULT

11.1 The Client will be in default if:

- (a) the Client breaches any Terms and Conditions of Hire; or
- (b) payment for the Equipment has not been received by the Company by the due date of payment; or
- (c) the Client being an individual commits an act of bankruptcy or becomes an insolvent under administration; or
- (d) the Client being a body corporate becomes an externally-administered body corporate or has an application for winding up filed against it; or
- (e) the Company forms the opinion that the Client's credit worthiness or credit standing alters from that indicated in its credit application.

11.2 If one of the events described in clause 11.1 occurs, the Company may without prejudice to any other rights and without notice to the Client do any one or more of the following:

- (a) treat the whole of the Agreement and any other agreement with the Client as repudiated and sue for breach of contract;
- (b) refuse to hire any Equipment to the Client;
- (c) claim the return of any Equipment in the Client's possession, power, authority, custody or control; and
- (d) make all monies owing by the Client to the Company on any account immediately due and payable.

11.3 In addition to any lien which the Company may by statute or otherwise be entitled, the Company shall, in the event of the Client's insolvency, bankruptcy or winding up, be entitled to a general lien on all property or goods belonging to the Client, for the unpaid price of any other Equipment hired to the Client under this or any other agreement.

12 FORCE MAJEURE

12.1 Should the Company's performance hereunder be affected by war, terrorism, riot, flood, subsidence, inundation, storm, fire, lightning, tempest, strike, lock-out, industrial action, labour dispute action or shortage, raw material shortage, breakdown of plant, transport or equipment, restrictions of Government or other statutory authorities, epidemics, failure or fluctuation in any electrical power supply, earthquake, accident, the change or introduction of any law or regulation or an act or omission of a supplier to the Company, act of god, other force majeure event or similar disturbance the Company may, at its option may cancel this Agreement.

13 WAIVER

13.1 Any failure by the Company to insist upon strict performance of any clause contained in the Agreement shall not be deemed a waiver thereof of any right that the Company may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

14 RETURN OF GOODS

14.1 Subject to Clause 3, Equipment will not be accepted for return for reasons other than defects without the prior agreement of the Company.

15 SUB-CONTRACTING

15.1 The Company reserves the right to sub-contract the hire of the Equipment or any part thereof.

16 PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

16.1 The Client acknowledges and agrees that this Agreement (including the credit application form):

- (a) constitutes a Security Agreement for the purposes of the PPSA; and
- (b) creates a Security Interest in all Equipment (including but not limited to all Accessions and serial numbered goods) and their Proceeds to secure the obligations of the Client to the Company under this Agreement.

16.2 The Client irrevocably consents to the Company at any time affecting and maintaining a registration on the Register (in any manner the Company considers appropriate) in relation to any Security Interest (including any Purchase Money Security Interest) contemplated or constituted by this Agreement in the Goods, any Accession and the Proceeds.

16.3 The Client undertakes to:

- (a) promptly and at its own expense do all things and sign any further documents and/or provide any further assistance and/or provide any further relevant information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
 - (i) obtain and/or register and/or maintain and/or perfect a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Securities Register and/or enforce the Company's Security Interest in respect of the Equipment Hired in accordance with the PPSA;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 1.4.1(a) or 1.4.1(b).
- (b) indemnify, and upon demand reimburse, the Company for all expenses howsoever incurred in registering a Financing Statement or Financing Change Statement on the Register or releasing any Equipment charged;

(c) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement;

(d) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of the Equipment or a Security Interest in favour of a third party;

(e) not to change its name and or its details (including, but not limited to, changes in the Client's registered office address, facsimile number, trading name or business practice); without first notifying the Company of the new name or change in details not less than 14 days before the change takes effect; and

(f) immediately advise the Company of any material change in its business practices which would result in a change in the nature of the Hire of the Equipment;

16.4 The Company and the Client agree to contract-out of the PPSA in accordance with Section 115 to the extent that Section 115 applies for the benefit of, and does not impose a burden on the Company.

16.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

16.6 To the fullest extent permissible by law the Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

16.7 The Client warrants that the Equipment is of a commercial nature and is not Hired for use primarily for personal, domestic or household purposes.

16.8 Unless otherwise expressly agreed to in writing by the Company, the Client waives its right to receive a Verification Statement in accordance with section 157(3)(b) of the PPSA.

16.9 Unless otherwise expressly agreed to in writing by the Company, the Client must not disclose any information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person required by an interested person.

16.10 The Client shall not sell or grant a Security Interest in the Equipment.

16.11 The Client shall unconditionally ratify any actions taken by the Company under this clause.

17 CREDIT

17.1 The Company may, in its sole discretion, grant the Client credit for the hire of the Equipment.

17.2 Until the Company grants the Client credit by express notice in writing, the Company will only Hire to the Client on the basis of cash on delivery for the agreed Term.

17.3 The granting of credit does not oblige the Company to extend any particular amount of credit to the Client.

17.4 The Client must immediately notify the Company in writing if there is any change in the Control (as defined by Section 50AA of the Corporations Act 2001), shareholding or ownership of the Client or any material change in the Client's financial position.

17.5 In the event of the Company granting the Client credit, unless otherwise expressly agreed by the Company in writing, terms of payment for the Hire shall be net thirty (30) days from the date of invoice.

18 ASSIGNMENT

18.1 None of the rights or obligations of the Client under the Agreement may be novated, assigned or transferred in whole or in part without the prior express written consent of the Company.

19 APPLICABLE LAW

19.1 The Agreement (and any proceedings whereby one party might be entitled to join the other as a third party) shall in all respects be governed by and construed in accordance with Western Australian law and the parties hereby submit to the non-exclusive jurisdiction of the Western Australian courts

20 INSURANCE

20.1 Unless otherwise agreed to by the Company, the Client is responsible for insuring the Equipment ex the Company's works.

20.2 The Client must maintain with a reputable insurer:

(a) an insurance policy covering the full replacement value of the Equipment in the event of total or partial loss or theft, noting the Company as an insured party; and

(b) public liability insurance in the amount of not less than \$20 million for each occurrence and unlimited in the aggregate arising out of the use of the Equipment, noting the Company as an insured party.

20.3 The Company shall not be liable for any insurance excess payments or damage waiver fees (or similar) unless such has been agreed to in writing by an authorised representative of the Company and is listed on the Agreement.

20.4 The Client must provide a certificate of currency for any insurance policy required to be effected pursuant to clause 20.2, upon request by the Company.

20.5 In the event that the Client fails to provide a certificate of currency to the Company within 5 business days of being requested pursuant to clause 20.4, the Rates shall be subject to 6.5% surcharge until the date on which the Client provides a certificate of currency.

21 ENTIRE AGREEMENT

21.1 These Terms and Conditions of Hire represent the entire Agreement between the Company and the Client with respect to the Hire or the performance of services produced. These Terms and Conditions of Hire may not be varied, modified, amended or altered without the express written consent of the Company.

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21.2 The Client hereby acknowledges that any terms and conditions attached to any order made by the Client shall not form part of the Agreement and such order shall be deemed to be an acceptance of these Terms and Conditions of Hire and shall not constitute a counter-offer to the Company.

21.3 These Terms and Conditions of Hire apply to all future contracts entered into between the Company and the Client unless otherwise agreed to by the Company in writing.

21.4 If a provision of these Terms and Conditions of Hire can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any provision or part of these Terms and Conditions of Hire is illegal, unenforceable or invalid, that provision or part is to be treated as removed from this document, but the rest of this document is not affected.

22 HIRE AND ACCESS

22.1 The Client upon request must grant the Company access (or procure that the Company is granted access) for the purpose of inspection, servicing or, following termination or expiry of the Agreement, repossessing the Company's Equipment.

23 RATES AND CHARGES

23.1 The Client must pay the Company the Rates in accordance with the Agreement for the duration of the Term.

23.2 The Client acknowledges and agrees that the Rates will be subject to a 3.5% increase on the first day of each calendar year.

24 EQUIPMENT CONDITION

24.1 Condition of the Equipment

- (a) The Company must ensure that at the time of delivery of the Equipment by the Company to the Site (as applicable), the Equipment is as described in the Agreement.
- (b) Without limiting the Company's obligations in clause 24.1(a), the Client acknowledges that the Company gives no warranty that the Equipment:
 - (i) is fit for the specific use intended by the Client;
 - (ii) as designed, manufactured and supplied complies with all laws and applicable codes and standards; and
 - (iii) is free from any charges or encumbrances.

24.2 Pre-Delivery / Return Inspection

- (a) At the time of delivering the Equipment to the Site, the parties must undertake a joint inspection of the Equipment (**Pre-delivery Inspection**) and a written report that records the condition of the Equipment shall be created and signed by each party (**Pre-delivery Inspection Report**).
- (b) At the time the Company collects the Equipment from the Site, the parties must undertake a joint inspection of the Equipment (**Return Inspection**).
- (c) If the Return Inspection discloses that the Equipment is not in the same condition as that evidenced in the Pre-delivery Inspection Report (fair wear and tear and any other exceptions noted in the Agreement excepted), then the Company may invoice the Client for all direct and indirect costs incurred by the Company in effecting repairs to the Equipment and necessary for returning it to that evidenced in the Pre-delivery Inspection Report (fair wear and tear and any other exceptions noted in the Agreement excepted) and that the Client must continue to pay the Rates until such time that the Equipment is returned to the condition evidenced in the Pre-delivery Inspection Report.

25 REPAIR, MAINTENANCE & SERVICING

25.1 Breakdown of Equipment

- (a) Subject to clause 25.1(b), if the Equipment is rendered non-operational or cannot be used or operated for its intended purpose, the Company may in its sole discretion:
 - (i) repair the Equipment;
 - (ii) supply replacement equipment that is capable of satisfying the requirements of this Agreement in which case the Company must supply the replacement equipment at its cost as soon as practicable and the Client shall continue to pay to the Company the Rates; or
 - (iii) terminate the Agreement with immediate effect in which case the Company must arrange for the collection of the Equipment at its cost.
- (b) In the event that the Equipment is rendered non-operational or cannot be used or operated for its intended purpose by virtue of any act or omission of the Client or a third party, or by the use of the Equipment not in accordance with industry best practice, the Company may in its sole discretion elect to give a written notice to the Client:
 - (i) requiring the Client to repair the Equipment in which case the Client must immediately and at its own cost repair the Equipment; or
 - (ii) terminating the Agreement with immediate effect in which case the Company shall collect the Equipment and the Client shall be liable for all direct and indirect costs incurred by the Company in effecting the necessary repairs to the Equipment as well as for payment of the Rates until the Equipment is repaired.

26 EXCLUSIVITY FOR GAS REFILL

26.1 The Client warrants that it will not refill the Equipment with liquefied petroleum obtained from a third party and agrees that the refill services shall be provided exclusively by the Company.

27 OTHER OBLIGATIONS OF THE CLIENT

27.1 The Client must provide written notice requesting the Company to collect the Equipment from the Site at least 7 days prior to the requested date of collection.

27.2 The Client must not, without the prior written consent of the Company:

- (a) alter or dismantle or make any additions to the Equipment including defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (b) permit any person other than its personnel to use or otherwise possess the Equipment;
- (c) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold property;
- (d) use the Equipment other than in the ordinary course of its business;
- (e) assign, dispose of, or permit any person to acquire, any of the Company's rights or interest under this Agreement or in respect of the Equipment; or
- (f) sell, transfer, assign, sub-lease or otherwise dispose of the Equipment or permit the Equipment to be temporarily or permanently removed from the Site other than for the purposes of repair or servicing in accordance with this Agreement.

28 LOST OR DAMAGED EQUIPMENT

If any items of the Equipment are lost, damaged beyond reasonable repair or destroyed for any reason including as a result of any act or omission of the Client during the Term, the Client shall be liable to the Company for:

- (a) all direct and indirect costs incurred by the Company in replacing the relevant item of Equipment with equipment of the same or similar nature, age and condition; or
- (b) at the Company's sole and absolute discretion, the Company may direct the Client to replace the relevant item of Equipment with equipment of the same or similar nature, age and condition, at the Client's sole cost.

29 INDEMNITY

The Client will indemnify the Company and keep the Company indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses in respect of:

- (a) injury to (including illness or disability), or death, of any persons; and
- (b) loss or destruction of or damage to or loss of use of any property,

caused or contributed to by any act or omission of the Client or its directors, officers, employees, agents or contractors or by any breach of this Agreement by the Client.

30 PERMITS AND LICENCES

30.1 The Client shall obtain and bear the costs of any permits and/or licences required by law or any Government Authority in connection with the use and operation of the Equipment at the site.

31 TERMINATION

31.1 The Company may for any reason and at any time in its absolute discretion, terminate this Agreement upon written notice to the Company of not less than 48 hours.

31.2 Other than for termination in accordance with clauses 25.1(a) or 31.1, in the event that the Agreement is terminated for any reason whatsoever, the Client shall pay the Company any and all loss, damage and expense incurred by the Company in relation to the Hire, including any amount that would have been payable for the Term of the Agreement in the event that the Agreement had not been terminated.

32 LIMITATION OF LIABILITY

32.1 Notwithstanding any other provision of the Agreement, but subject to clause 32.2, and to the maximum extent permitted by law, the Company's overall liability:

- (a) under, or arising out of, or in connection with the Agreement;
- (b) otherwise at law or in equity, including by statute, to the extent permitted by law:
 - i. in tort for negligence or otherwise;
 - ii. on any other basis whatsoever,

shall not exceed ten per cent (10%) of the Agreement Price.

32.2 The limitation of liability referred to in clause 32.1 does not apply to liability for direct loss arising from liability which, by law, the Company cannot contract out of.