

Reconomy (UK) Ltd: General Terms and Conditions for the Short Term Hire of Fork Lift Trucks Not Regulated by The Consumer Credit Act 1974

1. TERM OF HIRE

The Owner (**Reconomy (UK) Ltd**) agrees to let on hire and the Hirer agrees to take on hire from the Owner the machine for a term commencing on the date on which the Machine is/was delivered to the Delivery Address (hereinafter called "the Site") specified in the Special Terms and Conditions and being determinable no later than the date shown under the fixed term heading in the Special Terms and Conditions or if no such date is shown then determinable by three working days notice given in writing by either party to the other provided that such notice can also be given orally by telephone by the Hirer in confirmation of which the Owner will issue a termination reference number accompanied by the agreed date and time of termination. Unless termination notice is given by the Hirer in one of these forms the hire (and rent) will continue until the Machine is returned to the Owner's premises by whatever means.

Notwithstanding notice given and accepted risk (and appropriate insurance cover) remains the Hirer's responsibility at all times whilst the Machine is upon any of the Hirer's premises and/or under the Hirer's control.

The Owner shall not agree to termination unless the Machine is able to be returned to the Owner in the same condition as it was at the commencement of the hire save for fair wear and tear.

2. RENT AND OTHER CHARGES

- (a) Rent shall be due from the Hirer in advance at the daily or weekly or monthly rate specified in the Special Terms and Conditions. The Owner shall render invoices for such rent upon receipt of which the Hirer shall make immediate payment. Failure of the Owner to render such invoice shall not prevent the rent being due as aforesaid. The Owner may at its discretion invoice rent in one, two, three or four weekly periods. The date of delivery to the Site and the date of return from the Site shall be counted as whole days for the purpose of this clause. The Owner shall have the right to demand a cash deposit from the Hirer before or upon delivery of the Machine, such deposit shall be credited against the first invoice for rent or other charges. Without prejudice to the Hirer's rights and obligations hereunder and for the avoidance of doubt the Hirer's liability to pay rent hereunder shall continue until the Machine is returned to the Owner.
- (b) Following the first six months of continuous hire and every subsequent six months the rental charge will be increased by an amount equal to the increase in the RPI (the latest index figure available at that date).
- (c) The Hirer shall pay the Owner's transport charges specified in the Special terms to transport the Machine to and from Site immediately upon receipt of the Owner's invoice for this service.
- (d) All sums payable by the Hirer to the Owner under or by virtue of this Agreement shall bear interest at the annual rate of 3% over Finance Houses Association Base Rate from the day on which the same became due until payment.
- (e) Unless the Hirer shall advise the Owner to the contrary within 3 days of the Machine on Site the Machine will be deemed to contain an Operators Manual in the pocket provided for such document and an ignition key. The Hirer shall under the provisions of Health and Safety at Work Act be responsible for the safe keeping of the Manual and ensure it is available to all drivers/operators for reference. The Hirer shall pay to the Owner a sum of 35 Pounds Sterling plus VAT for the replacement of any Manual and/or 10 Pounds Sterling plus VAT for the replacement of any ignition key found to be missing upon return of the Machine to the Owner. The Owner shall if considered necessary be entitled to charge a deposit against these sums at the commencement of hire.
- (f) The number of LPG fuel cylinders (if appropriate) supplied at commencement of hire is stated in the Special Terms and Conditions. If, at completion of hire, the Hirer fails to return these fuel cylinders together with any additional fuel cylinders supplied during the period of hire, each missing cylinder shall be charged to the Hirer at 45 Pounds Sterling plus VAT (this charge is subject to LPG manufacturer's increases from time to time). Cylinders of a manufacturer other than those of the cylinders supplied by the Owner are not acceptable for return.

3. DELIVERY OF MACHINE

- (a) Acceptance of the Machine on site shall be deemed to imply the Hirer's unqualified acceptance of both the Special and General Terms and Conditions of Hire whether or not the Hirer has returned the acknowledgement slip to the Owner
- (b) The Owner shall arrange for the delivery of the Machine to the Site as soon as such Machine is available and shall have the Machine off-loaded (to the ground) whereupon the Hirer shall become responsible for the Machine thereafter until such time as it is returned to the Owner's premises. Unless written notification to the contrary is received by the Owner within three days of delivery of the Machine to site the Hirer shall be deemed to have accepted that the Machine is in good and working order and repair
- (c) In the event of an agreed hire being cancelled within 24 hours of the planned time of delivery a cancellation fee of £100 will be charged

4. OWNERSHIP OF MACHINE

- (a) The Machine is and shall at all times remain the property of the Owner. Throughout this Contract the word "Owner" shall be deemed to include the Owner in its capacity as ostensible Owner for others.
- (b) The Hirer shall not do or omit or suffer to be done or omitted any act or thing whereby the Machine may be seized or taken in execution under legal process and shall not without the previous written consent of the Owner permit the Machine to pass out of the Hirer's agents or servants, personal custody and control at the site.

5. SERVICING AND BREAKDOWNS

During the continuance of the Agreement

- (a) The Owner will at its own expense carry out all servicing maintenance and repairs to the Machine subject as hereinafter mentioned.
- (b) Where the Machine breaks down for reasons other than development of an inherent fault or fair wear and tear the Hirer hereby agrees to be responsible for the costs of repairing the Machine and any replacement spare parts.
- (c) Where the Machine breaks down by reason of the development of an inherent fault or fair wear and tear upon notification by the Hirer of such breakdown the Owner shall either
 - (i) as soon as reasonably practicable repair the Machine; or

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- (ii) if in the Owner's opinion it is impracticable to repair the Machine the Owner shall within a reasonable time substitute a similar Machine, in which case all the terms and conditions of this Agreement shall apply to the substitute machine as if it were the Machine; or
- (iii) if (ii) is also impracticable, the Owner shall terminate the hire forthwith, cease rental charges and return the Machine to the Owner's premises as soon as possible.
- (d) In the event of any repair or maintenance being carried out at the Hirer's specific request at any time outside of the Owner's regular hours of business the Hirer shall reimburse the Owner with a sum incorporating an overtime premium enhancement of the charge payable had the repairs been carried out during the Owner's regular hours of business and in addition the Owner's standard out of hours call-out charge and travel charges.
- (e) The Hirer shall permit the Owner or its employees or agents at all reasonable times to enter upon the Site and inspect the Machine and carry out any of its obligations hereunder.
- (f) The Hirer shall provide without charge to the Owner a suitable well lighted, heated and ventilated area of space either at the Hirer's premises or the Site where the Owner's employees or agents may service the Machine.

6. HIRER'S OBLIGATIONS

During the continuance of this Agreement the Hirer agrees:

- (a) Not to permit the Machine to be overloaded above its indicated lifting capacity or used for any purpose or any manner for which it is not designed and to use the same in skilful and proper manner and shall cause the Machine to be driven and operated by trained competent employees only. The Hirer shall not permit the machine to be put into jeopardy from the effects of fire, excessive heat, corrosion, radiation, water, unsuitable floor or ground conditions or any other foreseeable risk. The onus of proof shall rest with the Hirer to show that any loss or damage was accidental and not due to the neglect of the Hirer, his servants or employees or otherwise coming within the scope of the foregoing;
- (b) To keep the Machine secure at all times against theft and vandalism.
- (c) Daily -
 - (i) to make a general routine check of the Machine and report to the Owner immediately any faults likely to affect the safe use of the Machine and if any such faults exist not to permit the use of the Machine until such faults have been rectified by the Owner, and
 - (ii) to check and maintain oil levels, electrolyte levels in batteries and coolant in the cooling system of the Machine for the proper operation thereof, and
 - (iii) where the Machine is battery electric powered to maintain acid levels in the batteries and to recharge the same in accordance with the recommendations of the battery and the charger manufacturers; and
 - (iv) to check and maintain the manufacturer's recommended air pressure in any pneumatic tyres fitted to the Machine; and
 - (v) to ensure the Owners and Operators Guide (or other titled users' instruction book) is carried on the Machine and has been read by the Hirer's operator; and
 - (vi) to carry out daily adjustments recommended in the Owner and Operator's Guide.
- (d) To be responsible for the cost of all lubricants, oils, greases, fuel, acids and electrolyte;
- (e) To properly repair any punctures or other fractures to tyres fitted to the Machine;
- (f) To be responsible for the costs of replacing those tyres damaged by the Hirer or his employees or agents otherwise than by fair wear and tear;
- (g) To pay all licence duties fees and registration charges (if any) payable in respect of the Machine and to refund to the Owner on demand all such duties and charges which may be paid by the Owner;
- (h) To observe and perform the provisions of all statutes statutory instruments regulating the Machine or the use thereof including (but not limited to) the Health and Safety at Work Act 1974 and all regulations relating to the storage or use of any fuel used in the Machine;
- (i) Not to sell, assign, sub-let, transfer charge, pledge or create a lien over the Machine or any part thereof or of this Agreement or any interest therein; not without the previous written consent of the Owner -
 - (i) to make any alteration or addition to or (except in relation to the said pneumatic tyres) repair or attempt to repair the Machine and in particular shall not remove or deface the Owner's identification plate affixed to the Machine or any trade marks, fleet numbers or other marks thereon;
 - (ii) to remove the Machine from Site or use the Machine on a public highway. If the Owner does consent to the Hirer using the Machine on a public highway the Hirer shall pay for the costs of equipping and registering the Machine to conform to statutory regulations and shall at the Hirer's expense provide third party insurance in accordance with the Road Traffic Act;
 - (iii) to permit the Machine to be lifted by a crane;
 - (iv) to permit the Machine to be taken out of Great Britain.

7. EXCLUSION OF CONDITIONS

The Hirer agrees that no condition or warranty of any kind (except such as may have been given in writing) has been or is given by the Owner in respect of the Machine and all conditions and Warranties implied or statutory as to the state quality description or otherwise of the Machine or as to its fitness for any particular purpose are hereby expressly excluded. In particular, but without prejudice to the generality of the foregoing the Hirer shall not be entitled to any rebate of rent in respect of any period during which the Machine for any reason whatsoever is unserviceable or out of order or unusable. The Owner shall not be liable for any consequential loss whatsoever suffered by the Hirer as a result of the Machine or any part thereof being unusable out of order or unserviceable.

8. HIRER'S INDEMNITY

The Hirer shall indemnify and hold harmless the Owner from and against all liability losses and claims made or incurred by third parties arising directly or indirectly out of the Hirer's use of the Machine including abnormal or unauthorised use failure to comply with accepted Codes of Practice concerning the safe and proper use of the Machine in an altered or damaged condition which shall include unauthorised repair or tampering with the Machine, incorrect storage of the Machine or fuel used therein.

In the event that an accident occurs which involves personal injury or damage to property of the Machine the Hirer undertakes to inform the Owner by telephone and within 7 days in writing of such accident giving full details thereof.

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9. LOSS OF OR DAMAGE TO MACHINE

The Hirer shall bear all risks of loss and/or damage to the Machine howsoever arising including but without prejudice to the generality of the foregoing theft and fire (whether from sources internal or external to the Machine) whilst in the Hirer's custody control or possession and in the event that the Hirer parts with possession of the Machine without the Owner's written consent under Clause 4 above the Hirer shall be deemed to have retained possession thereof for the purpose of this clause. This Agreement shall not be terminated nor shall the obligations of the Hirer under this Agreement or any of such obligations be diminished by reason only of any total or partial loss of or damage to the Machine. In the event that the Machine is stolen or otherwise lost the Hirer shall be responsible for all consequential loss including rent for the period until the Machine is recovered and put into a safe and usable state or until the Owner is reimbursed the value thereof under Clause 10 thereof.

In the event that the Machine is returned to the Owner in a condition other than that in which it was delivered fair wear and tear excepted the Hirer's obligations under this Agreement shall continue and rent shall be payable to the Owner until such time as the Hirer makes good all damage occasioned whether by repairing and replacing the Machine or by reimbursing the Owner for all expenses incurred by the Owner in reinstating the Machine or in replacing the Machine.

10. INSURANCE OF THE MACHINE

- (a) Without prejudice to the provisions of Clause 9 hereof the Hirer shall at all times insure the Machine until the same is returned to the Owner's premises as herein provided against all risks of loss or damage howsoever arising including but without prejudice to the generality of the foregoing theft and fire (whether from sources internal or external to the Machine) to the full replacement as new value thereof (specified in the Special Terms and Conditions) (without excess) and shall exhibit to the Owner at any time on request the receipt for payment of the current premium for such insurance within 7 days of such request failing which the Owner reserves the right to terminate the Agreement which right shall not prejudice the Owner's right to claim damages for breach of Agreement and the Hirer's obligations and indemnity under the Agreement shall continue until such time as the Machine has been inspected and collected from the Site by the Owner. All monies received by virtue of such insurance shall be applied by the Hirer towards repair of renewal of the Machine or towards implementing the other obligations of the Hirer under the terms of this Agreement.
- (b) The Hirer may fulfil his obligations in sub clause (a) of this clause by taking up the Owner's offer of Accidental Loss and Accidental Damage Waiver upon payment of the appropriate charge at the commencement of hire.

Such requirement must be specifically indicated in the Special Terms and Conditions. Separate details of the Owner's Waiver Plan including its conditions and exclusions are available and the Hirer shall be deemed to have accepted these in taking up this option. The Waiver does not include the first 1500 Pounds Sterling of each and every claim for loss or damage which remains the Hirer's liability under Clause 9 hereof.

11. OWNER'S RIGHTS

All or any of the rights, benefits and liabilities of the Owner under this Agreement and/or the property in the Machine may be assigned, transferred, charged, pledged or otherwise disposed of either in whole or in part by the Owner without the consent of the Hirer.

12. TERMINATION OF HIRE

If the Hirer shall allow any payment of rent or other sum due hereunder to be in arrears for more than 14 days after the same shall have become due or shall fail to observe and perform any of the obligations under this Agreement and shall not have remedied such breach within 14 days of the Owner requiring in writing the Hirer so to do (which request shall not prejudice the Owner's right to claim damages for such breach) or shall commit any act of bankruptcy or make any arrangement or composition with his Creditors or shall have a Receiver appointed or call a meeting of Creditors or go into liquidation whether compulsory or voluntary (except for the purposes of reconstruction or amalgamation) or shall suffer any distress or execution upon his undertaking property or assets or shall do or cause or permit to be done any act or thing whereby the Owner's rights in the Machine are or may be prejudiced or jeopardised then the Owner may at its option by notice in writing or otherwise forthwith or at any time thereafter terminate this Agreement and recover the Machine for which purpose the Owner shall have full power and right to enter upon the Site or any property in the occupation or under the control of the Hirer and if reasonably necessary to open locked premises all without liability for loss or damage thereby occasioned.

13. HIRER'S OBLIGATIONS ON TERMINATION

On the termination of this Agreement the Hirer shall make the Machine available for inspection and collection from the Site by the Owner and the Machine must be complete to the specification as at the date on which the Machine was delivered to the Site (all fair wear and tear excepted).

14. WAIVER OF BREACH BY OWNER

The rights of the Owner under this Agreement shall not be prejudiced by any neglect indulgence or forbearance of the Owner in enforcing any of its terms and no waiver by the Owner of any default by the Hirer shall operate as a waiver of any subsequent default by the Hirer.

15. VARIATION OF TERMS

No variation of the Agreement shall have any effect unless confirmed in writing by the Owner and the Hirer.

16. ENTIRE AGREEMENT

- 16.1 These Conditions, together with the Company's quotation and any other specific terms set out in the Company's Sales Order Confirmation, constitute the entire agreement between the parties and supersede any previous agreement or understanding between the parties and no variation to these conditions is valid or binding unless approved in writing by the Authorised Representative of the Company. All other terms and conditions expressed or implied, by statute, or otherwise, are excluded to the fullest extent permitted by law

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17. NOTICES

Any notice required to be given by one party to the other hereunder shall be given by sending the same by pre-paid first class letter post to the respective address specified in the said Special Terms and Conditions or by leaving the same at that address and any notice so posted shall be deemed to have been given on the day following the day of posting and in proving such service it shall be sufficient to prove that the envelope containing that notice was properly addressed and posted except in the case of a notice of breakdown due to the development of an inherent fault or fair wear and tear to be given by the Hirer to the Owner under the provisions of Clause 5 hereof.

18. DISPUTES AND REFERENCE TO REFEREE

In the event of any difference or dispute arising between the parties hereto in connection with the provision of the Agreement then such differences or dispute shall be referred to an independent referee or arbitrator to be appointed (in default of agreement between the parties hereto) by the president for the time being of the Construction Plant Hire Association whose decision shall be binding. **IMPORTANT:** This clause will not be applicable to disputes arising from non or late payment of the Owners invoices and the Owner reserves the right to seek the jurisdiction of the English Courts in such matters.

19. SUB-HEADINGS

The sub-headings shall not affect the validity construction or interpretation of these conditions.

20. SPECIAL TERMS AND CONDITIONS

Reference in these General Terms and Conditions of Short Term Hire to the Special Terms and Conditions shall mean the Special Terms and Conditions detailed in the Owners quotation, Sales Order Confirmation or printed in a separate document attached hereto in which the Owner agrees to put on Hire and the Hirer agrees to take on hire the subject Machine. Such Special Terms and Conditions shall contain details of the Owner, the Hirer, the Machine and all other relevant details including the special terms and conditions applicable to the specific hire.

21. SEVERABILITY

21.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected

22. LAW

22.1 English law shall apply to the Contract, and the parties agree to submit to the exclusive jurisdiction of the English courts