

OUTSIDE IN TERMS OF TRADE (“CONDITIONS”)

1 DEFINED TERMS:

In this agreement:

Purchaser means the person purchasing or hiring the product

Supplier means Outside In (NZ) Ltd trading as Outside In or its successor or assignee

Conditions means this document

Contract means the accepted quote and these Conditions

Schedule means the schedule stating the key terms including but not limited to the Product, Purchaser and Supplier

Product means any goods sold or hired by the Supplier

Hired Product means goods rented by the Supplier to the Purchaser

Purchased Product means goods sold by the Supplier to the Purchaser

Hire Period means the period of time that the product described in the Schedule will be hired by the Purchaser

Hire Term means the length of time the Purchaser has agreed to hire the product being the Initial Hire Term in the Schedule or any subsequent renewal of the Hire Term

PPSA means the Personal Property Securities Act 1999.

Regulations means any Act of Parliament, regulation, bylaw or other similar instrument whether national or local, including any amendment thereto or re-enactment or replacement thereof

2 ACCEPTANCE

- 2.1 The Purchaser's order or signed quote acceptance, whether oral or in writing, for the supply of product shall be construed as an expression of acceptance of these Conditions and so far as any provision of the Purchaser's said order be inconsistent therewith these Conditions shall be deemed to prevail.
- 2.2 Any variation or purported variation of these Conditions shall be deemed to be of no effect unless otherwise agreed in writing signed by a Director of the Supplier.
- 2.3 The Purchaser hereby acknowledges that no representations have been made to him/her by the Supplier, its servants or agents, save where such representations (if any) have been notified in writing to the Supplier before the making of this Contract.
- 2.4 The person signing on behalf of the Purchaser warrants that they have the authority of the Purchaser
- 2.5 These Conditions shall apply and are incorporated into any Contract for the sale and/or hire of product between the Supplier and the Purchaser.

3 SUPPLY OF GOODS AND SERVICE

- 3.1 The Supplier will provide Product as agreed in the Schedule to the Purchaser's premises.
- 3.2 The Supplier will visit the Purchaser's premises on a regular basis to undertake maintenance of all Hired Product.
- 3.3 Maintenance is watering, pruning, feeding, pest and disease management.
- 3.4 Plants that are deemed no longer of an acceptable quality by the Supplier will be replaced by the Supplier at no charge.
 - 3.4.1 However damage that is a result of the Purchaser breaching their obligations under this agreement will be charged for at a cost determined by the Supplier.
 - 3.4.2 In some cases the type of plant may be changed where the Supplier determines an alternative will better suit the location.

4 CHARGES

- 4.1 For Purchased Product the charge is set out in the Schedule
- 4.2 For Hired Product the rental charge is set out in the Schedule.
 - 4.2.1 The rental charge will be invoiced monthly in advance with payment due on the 20th of the month of the invoice.
 - 4.2.2 The Supplier may at their sole discretion increase the rental charge from time to time over the hire period to account for inflation.
 - 4.2.3 The Purchaser shall pay as invoiced during the Hire Period for all delivery/removal costs, excess use charges, any damage to or loss of the product, cleaning costs (if any), cost recovery and default interest for late payment
- 4.3 The Supplier reserves the right to implement a surcharge for any alterations after the order has been placed by the Purchaser.

5 PAYMENT AND DEFAULT INTEREST

- 5.1 All charges are exclusive of GST unless otherwise indicated and the Purchaser shall pay the charges plus GST where indicated.
- 5.2 For Purchased Product:
 - 5.2.1 Purchaser will pay the Supplier the agreed price.
 - 5.2.2 Risk passes to the Purchaser on delivery of the product.
 - 5.2.3 payment shall be direct credit, or by any other method as agreed to between the Purchaser and the Supplier.
- 5.3 For Hired Product the Purchaser:
 - 5.3.1 will take all reasonable steps to promptly complete the Supplier's direct debit authority

- 5.3.2 ensure that there are sufficient funds available in their bank account on the appropriate date so that the direct debit is able to process correctly.
- 5.4 Time for payment for the products and/or services shall be of the essence and will be stated on the invoice, quotation or Schedule. If no time is stated then payment shall be due on delivery of any product.
- 5.5 The Supplier reserves the right to apply payments received in any manner the Supplier determines.
- 5.6 Without prejudice to the Supplier's other remedies under these Conditions, at law or otherwise, the Purchaser will pay default interest at the rate of 2% per calendar month on all outstanding amounts from the due date of invoice until all monies have been paid in full.
- 5.7 The Purchaser must make all payments due under the Contract (time being of the essence) without set-off or deduction of any kind.
- 5.8 The Purchaser's obligations to pay charges and any other sums to the Supplier shall continue despite any mechanical defect in or breakdown of, theft of, or accident or damage caused to the product.

6 DELIVERY AND REMOVAL

- 6.1 Delivery, installation, and removal charges are payable by the Purchaser on a time and materials basis and are in addition to the purchase and hire costs.
- 6.2 Installation outside the hours of 8am to 5:00 PM incurs a 50% surcharge to all installation and delivery charges
- 6.3 If applicable, product must be packed up, ready for loading, and assistance rendered for loading of product for removal.
- 6.4 The Purchaser grants to the Supplier, or will procure that the Supplier is granted, an irrevocable right and authority to enter, and for the Supplier to bring the Supplier's vehicle at any time onto, the place where the product is to be used or is located to, deliver, maintain and remove the product either on termination of the Contract pursuant to clause 8.

7 HIRE PERIOD

- 7.1 The Hire Period begins from the time the Hire Product is delivered to the Purchaser's Premises and runs until the Contract is terminated pursuant to clause 8.
- 7.2 The Initial Hire Term in is set out on the Schedule
- 7.3 The Hire Term will begin once all the Product specified in the Schedule is delivered to the Purchaser's premises. Partial installs will be charged on a prorate basis but do not begin the Hire Term.
- 7.4 The Hire Term will continue to renew automatically at the end of each term for an additional term that is 12 months unless it is terminated pursuant to clause 8.

8 RIGHT TO TERMINATE

- 8.1 The Supplier may terminate the Contract by notice with immediate effect if:
 - 8.1.1 the Purchaser fails to comply with any term of the Contract or any other agreement with the Supplier;
 - 8.1.2 the Supplier believes the product may be at risk for any reason whatsoever, including the Purchaser being unable to, or might be unable to, pay any charge, cost, purchase price or fee in connection with the product under these Conditions; or
 - 8.1.3 any step is taken to appoint a receiver, manager, trustee in administration, liquidator, provisional liquidator, statutory manager, administrator or other like person of the whole or any part of the Purchaser's assets or business.
- 8.2 The Purchaser indemnifies the Supplier against, and shall pay to the Supplier upon demand, any cost (including legal costs), claim, damage, expense or liability suffered or incurred by the Supplier whether arising directly or indirectly from the Supplier acting to recover any Hired Product or monies payable by the Purchaser pursuant to the Contract, or otherwise in connection with the exercise or attempted exercise of any of its rights or remedies under the Contract.
- 8.3 Upon termination of this Contract under clauses 8.1 the Purchaser shall forthwith deliver up the Hired Product to the Supplier and shall pay to the Supplier:
 - 8.3.1 all rental and other moneys due to the Supplier at the date of termination; and
 - 8.3.2 the balance of all rental yet to accrue from the date of termination to the expiry of the current Hire Term of the Contract discounted for early payment by 35%.
- 8.4 The Purchaser acknowledges that the remedies in clause 8.3 are reasonable as the length of the Hire Term is of the essence to the Supplier.
- 8.5 If the Supplier terminates the contract pursuant to clause 8.1 the Supplier shall be entitled to cancel all or any part of any order of the Purchaser that remains unperformed in addition to, and without prejudice to any other remedies
- 8.6 Notwithstanding clause 8.1, the Supplier may terminate the hire at any time without reason by giving the Purchaser 48 hours' written notice.
- 8.7 Termination of the Contract by the Supplier is without prejudice to any rights that the Supplier may have under this Contract.

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- 8.8 The parties acknowledge that other than the provisions of the Contractual Remedies Act 1979, or as provided in clause 8.9 the Purchaser shall not be entitled to cancel or otherwise terminate the Contract.
- 8.9 The Purchaser may terminate the Contract by giving notice in writing that they will terminate the Contract at the end of the Hire Term
- 9 ASSIGNMENT**
- 9.1 The Purchaser shall not assign, sublet, charge, pledge or part with possession of the Hire Product or any part of it or the Contract.
- 9.2 The Supplier may at any time assign its rights or interests, or any part thereof, (whether absolutely, or by way of security) or transfer its obligations or any part thereof, to any person.
- 10 PURCHASER'S OBLIGATIONS**
- 10.1 The Purchaser shall:
- 10.1.1 satisfy itself that the Product is suitable for the Purchaser's intended use; use the Product in a lawful manner with due regard to all laws and regulations pertaining to the use of such product;
- 10.1.2 except as permitted by the Consumer Guarantees Act 1993, not bring or threaten to bring any claim against the Supplier for loss or damage incurred or threatened against the Purchaser or arising directly or indirectly from the Purchaser's use of the Product;
- 10.1.3 In regard to Hired Product the Purchaser shall:
- 10.2.1 if the Hired Product is intended to be used in a location or manner which is outside its usual or ordinary use, advise the Supplier of the intended location and/or nature of use at the time of hiring the Hired Product; take proper and reasonable care of the Hired Product, subject to the Suppliers obligation to maintain per this Contract, and , if the product is hired, return it to the Supplier at the end of the hire period (to the Suppliers place of business, unless otherwise specified in the Contract) in the same order and condition as at the commencement of the hire (fair wear and tear excepted);
- 10.2.2 notify the Supplier immediately if the Hired Product is lost, stolen or damaged and shall follow all reasonable instructions of the Supplier; be responsible, and indemnify the Supplier, for any loss, theft or damage to the Hired Product that occurs from the time the Purchaser takes possession of the Hired Product until it is returned to the Supplier's possession including:
- 10.2.3 in the case of damage, the full cost of all repairs to restore the Hired Product to the condition it was in at the time of hire;
- 10.2.4 in the case of loss, theft or irreparable damage to the product however caused, the full cost to the Supplier of replacing the Hired Product; and in addition to the costs set out in clause 10.2.4, be responsible for and indemnify the Supplier for any loss of revenue suffered by the Supplier due to the unavailability of the Hired Product for hire due to loss, theft or damage; and
- 10.2.5 not remove, deface or obscure any marks of identification or Ownership or registration on the Hired Product.
- 10.2.6 not move or permit the Hired Product to be moved from the Purchaser's premises specified on the Schedule without the Suppliers prior consent in writing. Any consent given by the Supplier is without prejudice to all the other obligations of the Purchaser under this Contract.
- 10.2.7 The Purchaser shall, upon request by the Supplier, advise the Supplier of the whereabouts of the Hired Product and allow the Supplier reasonable time to inspect and test the product and for such purposes the Purchaser gives irrevocable leave and licence to the Supplier to take possession of and/or remove the Hired Product, and to enter any premises where the Hired Product or any part of the Hired Product may be.
- 10.3 The Purchaser hires or purchases the Product at the Purchaser's own risk and indemnifies the Supplier against any and all loss in respect of any loss of or damage to the Hired Product including any consequential loss
- 10.4 The Purchaser warrants that all persons who use the Product shall use the Product in the manner it was designed to be used, and follow any directions from the Supplier, local authorities, codes of practice and/or the manufacturer of the Product relating to the use and safety of the Product and shall comply with all obligations in relation to the use and control of the Product and person using said product in accordance with the Health and Safety at Work Act 2015 and all other relevant legislation.
- 10.5 If the Purchaser is not an individual, the person who signs the Contract on behalf of the Purchaser warrants that they have authority to bind the Purchaser and will, in any event, be personally liable for the performance of the obligations on the Purchaser. The person signing hereby indemnifies the Supplier against all losses and costs that may be incurred by the Supplier arising out of the person signing the Contract failing to have such power or authority.
- 11 PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**
- 11.1 As further consideration for the Supplier entering into the Contract, the Purchaser hereby irrevocably grants the Supplier a security interest in all products sold, supplied, hired, leased or otherwise provided by the Supplier to the Purchaser (and all proceeds of those products) and the Purchaser agrees that:
- 11.1.1 The Supplier will retain ownership of, and title in, products sold to the Purchaser by the Supplier until:
- 11.1.1.1 The Purchaser has paid all amounts owed to the Supplier pursuant to this Contract (including, but not limited to, amounts owed to the Supplier in respect of products sold to the Purchaser by the Supplier); and
- 11.1.1.2 The Purchaser is not in default under this Contract.
- 11.1.2 Except as provided for in clause 11.1.1 the Supplier will at all times retain ownership of, and title in, all products sold, supplied, hired, leased or otherwise provided by the Supplier to the Purchaser.
- 11.2 On the request of the Supplier, the Purchaser shall promptly execute any documents, provide all necessary information and do anything else required by the Supplier to ensure that each security interest created under the Contract constitutes a perfected security interest in the products (and all proceeds of those products) which has priority over all other security interests in the products.
- 11.3 In respect of any security interest granted pursuant to this Contract or otherwise associated with the products, the Purchaser hereby:
- 11.3.1 Waives its rights under sections 116, 120(2), 121, 125 to 127, 129 and 131 of the PPSA;
- 11.3.2 Agrees with the Supplier that sections 114(1)(a), 120(1), 122, 133 and 134 of the PPSA do not apply; and
- 11.3.3 Waives its right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement.
- 11.4 Unless otherwise agreed in writing by the Supplier, the Purchaser will pay to the Supplier all fees and expenses incurred by the Supplier in relation to the registration of a financing statement or financing change statement in connection with the Contract.
- 11.5 The terms "security interest", "financing statement" and "financing change statement" have the meaning given to those terms in the PPSA.
- 12 LIMITATION OF LIABILITY, INJURY OR DAMAGE TO PURCHASER, THIRD PERSON OR PROPERTY**
- 12.1 In entering into the Contract, the Purchaser acknowledges the Supplier shall not be liable for any loss of any kind whatsoever suffered by the Purchaser as a result of any breach of any of the Purchaser's obligations under the contract, including any cancellation of the contract or any negligence on the part of the Supplier, its servants, agents or contractors, nor shall the Supplier be liable for any loss, damage or injury caused to the Purchaser's servants, agents, contractors, Purchasers, visitors, tenants, trespassers or other persons. The Purchaser shall indemnify the Supplier against any claim by any such person.
- 12.2 Subject to the exclusion of liability in clause 12.1 above, the maximum aggregate liability of the Supplier for all claims made by the Purchaser, whether as a result of any breach of the Contract or on any other ground or terms whatsoever (including liability as a result of tort, including negligence) will not exceed:
- 12.2.1 in the case of Purchased Product, an amount of \$2,500; and
- 12.2.2 in the case of any Hired Product, the lesser of the hire charges paid by the Purchaser to the Supplier pursuant to the Contract and three months' hire charges paid by the Purchaser to the Supplier pursuant to the Contract.
- 12.3 The Purchaser will indemnify the Supplier against any liability, losses, damages or expenses incurred or suffered by the Supplier as a result of any claim made by a third person against the Supplier in respect of any loss or liability arising from the Contract or arising out of the use of the Hired Product or Purchased Product by the Purchaser.
- 12.4 Nothing in the Contract affects the Purchaser's rights under the Consumer Guarantees Act 1993 except that if the Purchaser is acquiring or hiring the Product for the purposes of a business, the provisions of the Consumer Guarantees Act 1993 do not apply.
- 12.5 If the Purchaser is purchasing Product, then except as prohibited by law, all guarantees in respect of the Product, whether express or implied, are excluded subject to clause 12.6.
- 12.6 Unless specifically made in writing, the Supplier makes no warranty or representations as to the state, quality or fitness of the Product for any purpose and no such warranty shall be implied. For the avoidance of doubt, no warranty shall be implied by the description of the Product on the face of this form, the contract, or by the provision of information relating to the proper operation and maintenance of the Product.

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13 PRIVACY ACT 2020

- 13.1 If the Purchaser is an individual, this clause 13.1 applies. The Supplier requires personal information and will collect and hold personal information about the Purchaser, principally for the purpose of evaluating the hire of product by the Purchaser. The Purchaser’s application to hire product may be declined or the hire terminated if the Purchaser fails to provide requested personal information. The Purchaser can access and seek correction of any personal information by contacting the Supplier. The Purchaser agrees that its personal information may be used by the Supplier to advise the Purchaser of the Supplier’s other goods and services. The Purchaser authorises the disclosure of personal information held by any other party regarding any previous hire Contracts entered into by the Purchaser. The Purchaser agrees to the Supplier releasing to other parties information regarding the Contract if the Purchaser does not comply with its obligations.
- 13.2 The Purchaser, its officers and directors and each person who signs the Contract authorises the Supplier:
- 13.2.1 to collect, retain and use information about the Purchaser or such other signatory from any person for the purpose of assessing the Purchaser’s or such other signatory’s, director’s, or officer’s creditworthiness.
- 13.2.2 to disclose information about the Purchaser or such other signatory:
- 13.2.2.1 to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Purchaser’s obligations to the Supplier; and/or
- 13.2.2.2 to such persons as may be necessary or desirable to enable the Supplier to exercise any rights under the Contract.

14 CONFIDENTIALITY

- 14.1 In consideration of the disclosure of Confidential Information by the Supplier to the Purchaser, the Purchaser agrees and undertakes to the Supplier it:
- 14.1.1 will treat as confidential all Confidential Information which may be made or become available to the Purchaser;
- 14.1.2 will not disclose any Confidential Information to any of the Purchaser’s Affiliates (as defined hereinbelow), to any competitor of the Supplier or to any other person for any purpose without the prior written consent of the Supplier;
- 14.1.3 will not use, exploit, market, sell, transfer or assign, nor attempt to use, exploit, market, sell, transfer or assign any Confidential Information for any purpose whatsoever (whether such purpose is for business, commercial, charitable, personal or other use);
- 14.1.4 will limit disclosure of Confidential Information to only those of the Purchaser’s Affiliates or any other third party with the absolute “need to know” such information and only to those of the Purchaser’s Affiliates or any other third party who have been made aware of the Purchaser’s obligations under these Conditions and who have agreed in writing to maintain the confidentiality of all such Confidential Information in accordance with these Conditions (which written agreement shall be in form satisfactory to the Supplier, in the Supplier’s sole and absolute discretion and shall be delivered by the Purchaser to the Supplier prior to the Purchaser’s disclosure of any Confidential Information to any Affiliate);
- 14.1.5 will not make photocopies or other copies or other representations of any written documentation (including, without limitation, memoranda, quotes, notes, invoices, records, referred to collectively as “Documentation”) containing, relating to or referring to, directly or indirectly, any Confidential Information, whether or not such Documentation was provided by the Supplier to the Purchaser or obtained by the Purchaser from any other source; and
- 14.1.6 will prevent disclosure of any Confidential Information by any Affiliate of the Purchaser to others and assume liability for any breach of these Conditions and for any disclosure or use of Confidential Information by any Affiliate of the Purchaser. The obligation of the Purchaser and the Purchaser’s Affiliates to maintain the confidentiality of and not wrongfully use the Confidential Information is unconditional, shall survive the expiration or termination of this Agreement and/or the Purchaser’s relationship with the Supplier, and shall not be excused whether or not the Purchaser creates, maintains or continues the Purchaser’s relationship with the Supplier. (As used herein, “Affiliate” shall mean any partner, officer, manager, director, shareholder, member, equity Supplier, employee, agent, representative, independent contractor, assign, heir, parent and/or subsidiary of any party.)

- 14.2 For purposes of this agreement Confidential Information is any and all information, knowledge and know-how relating to the Supplier and the Supplier’s business, including, without limitation, materials, data, documentation, methods, procedures, specifications, techniques, financial information and all data processing related materials or information, or any other matter regarding any of the foregoing discussed between the parties pursuant to their relationship, except information which the Purchaser can demonstrate came to the Purchaser’s attention prior to disclosure thereof by the Supplier, or which, at the time of disclosure to the Purchaser, had become a part of the public domain, through publication or communication by others, or which after disclosure to the Purchaser, becomes a part of the public domain, through publication or communication by others.

15 FORCE MAJEURE

If the Supplier is wholly or partially precluded from performing the services in clause 3 or otherwise complying with its obligations under these Conditions by anything outside the Supplier’s reasonable control (the “Force Majeure Event”), then the Supplier’s obligation to perform its obligations under these Conditions will be suspended for the duration of the delay arising out of the Force Majeure Event.

16 NOTICES

Notices shall be properly served on a person if delivered by, hand or left at or posted in any prepaid letter addressed to that person at their address specified on the face of this Contract, or previously or subsequently provided, including email address. Service by post shall be deemed to be effected on the third working day after the day on which the notice was posted.

17 GENERAL

- 17.1 Interpretation
- In these Conditions headings are for convenience only and do not affect the interpretation of these Conditions and, unless the contrary intention appears:
- 17.1.1 words importing the singular only will also include the plural, and vice versa and words importing any gender will also include all other genders;
- 17.1.2 a reference to any instrument (such as an agreement or document) is to that instrument (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time and from time to time;
- 17.1.3 a reference to a party is a reference to a party to these Conditions and includes that party’s executors, administrators, successors and permitted assigns; and
- 17.1.4 the term “person” includes an individual, firm, company, corporation, unincorporated body, organisation constituted or established by statute, undertaking, government, state or agency of a state, or any association or partnership (whether or not having separate legal personality)
- 17.1.5 A reference to a clause or sub clause is a reference to a clause or sub clause hereof.
- 17.1.6 The word “including” do not imply limitation.
- 17.2 If at any time any provision of the Contract or these Conditions is or becomes illegal, invalid or unenforceable in any respect under the law of New Zealand, that will not affect or impair the legality, validity or enforceability of any other provision of the Contract or these Conditions.
- 17.3 These Conditions and the Contract are governed by the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 17.4 Any time or other indulgence granted by the Supplier shall not affect the strict rights of the Supplier under the Contract or these Conditions.
- 17.5 A provision of or right under the Contract or these Conditions in favour of the Supplier may not be waived or varied except in writing signed by a director of the Supplier.
- 17.6 The Supplier will endeavour to resolve any dispute between the Purchaser and itself without the need for Court proceedings. Any such attempt is without legal prejudice.
- 17.7 The Contract and these Conditions constitute the entire agreement between the parties with respect to this arrangement.
- 17.8 The Supplier reserves the right to change these Conditions.
- 17.8.1 Any amended Conditions will be placed on the Supplier’s website (www.outsidein.net.nz) and shall apply with effect from the date they are placed on the website unless the amended Conditions specify a later date from which they are to apply.
- 17.8.2 Where the changes materially increase the obligation of a Purchaser’s existing hire contract, written notice will be provided to the Purchaser. The Purchaser has 10 working days from the date of notice to opt out of the amended Conditions and maintain the existing Conditions for that contract.