

## OUTSIDE IN TERMS OF TRADE ("CONDITIONS")

### 1 DEFINED TERMS:

In this agreement:

**Hirer** means the person hiring or purchasing the product

**Conditions** means this document

**Contract** means the Hire Schedule and these Conditions

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

**Hire Schedule** means the schedule stating the key terms including but not limited to the Product, Hirer and Owner

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

**Owner** means Smart Environments (NZ) Ltd trading as Outside In or its successor or assignee

**Product** means any goods sold or hired by the Owner

**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 Hirer's order, 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 Hirer'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 Owner.

2.3 The Hirer hereby acknowledges that no representations have been made to him/her by the Owner, its servants or agents, save where such representations (if any) have been notified in writing to the Owner before the making of this Contract.

2.4 The person signing on behalf of the Hirer warrants that they have the authority of the Hirer

2.5 These Conditions shall apply and are incorporated into any Contract for the hire and/or sale of product between the Owner and the Hirer.

### 3 HIRE SERVICE

3.1 The Owner will provide Product as agreed in the Hire Schedule to the Hirer's premises.

3.2 The Owner will visit the Hirer's premises on a regular basis to undertake maintenance of all product hired from the Owner.

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 Owner will be replaced by the Owner at no charge.

3.4.1 However damage that is a result of the Hirer breaching their obligations under this agreement will be charged for at a cost determined by the Owner.

3.4.2 In some cases the type of plant may be changed where the Owner determines an alternative will better suit the location.

### 4 CHARGES

4.1 The rental charge is set out in the Hire Schedule.

4.2 The rental charge will be invoiced monthly in advance with payment due on the 15<sup>th</sup> of the month of the invoice.

4.3 The Owner may at their sole discretion increase the rental charge from time to time over the hire period to account for inflation and reasonable cost increases.

4.4 The Owner reserves the right to implement a surcharge for any alterations after the order has been placed by the Hirer.

4.5 The Hirer 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.

### 5 PAYMENT AND DEFAULT INTEREST

5.1 All charges are exclusive of GST unless otherwise indicated and the Hirer shall pay the charges plus GST where indicated.

5.2 Hire payment is monthly by direct debit

5.3 For hire of product the Hirer:

5.3.1 will take all reasonable steps to promptly complete the Owners 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 For the purchase of product payment shall be direct credit, or by any other method as agreed to between the Hirer and the Owner.

5.5 For purchase of product, the Hirer will pay the Owner the agreed price. Risk passes to the Hirer on delivery of the product.

5.6 Time for payment for the products and/or services shall be of the essence and will be stated on the invoice, quotation or Hire Schedule. If no time is stated then payment shall be due on delivery of any product.

5.7 The Owner reserves the right to apply payments received in any manner the Owner determines.

5.8 Without prejudice to the Owner's other remedies under these Conditions, at law or otherwise, the Hirer will pay default interest at the rate of 2% above the Owner's overdraft rate a calendar month on all outstanding amounts from the due date of invoice until all monies have been paid in full.

5.9 The Hirer must make all payments due under the Contract (time being of the essence) without set-off or deduction of any kind.

5.10 The Hirer's obligations to pay charges and any other sums to the Owner 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 and removal charges are payable by the Hirer and are in addition to the hire/purchase costs.

6.2 If applicable, product must be packed up, ready for loading, and assistance rendered for loading of product for removal.

6.3 The Hirer grants to the Owner, or will procure that the Owner is granted, an irrevocable right and authority to enter, and for the Owner to bring the Owner'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 7.

### 7 HIRE PERIOD

7.1 The Hire Period begins from the time the product is delivered to the Hirer's Premises and runs until the Contract is terminated pursuant to clause 7.

7.2 The Initial Hire Term in is set out on the Hire Schedule

7.3 The Hire Term will continue to renew automatically at the end of each term for an additional term that is the same length of time as the previous term unless it is terminated pursuant to clause 8:

### 8 RIGHT TO TERMINATE

8.1 The Owner may terminate the Contract by notice with immediate effect if:

8.1.1 the Hirer fails to comply with any term of the Contract or any other agreement with the Owner;

8.1.2 the Owner believes the product may be at risk for any reason whatsoever, including the Hirer 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 Hirer's assets or business.

8.2 The Hirer indemnifies the Owner against, and shall pay to the Owner upon demand, any cost (including legal costs), claim, damage, expense or liability suffered or incurred by the Owner whether arising directly or indirectly from the Owner acting to recover any product hired or monies payable by the Hirer 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 Hirer shall forthwith deliver up the product to the Owner and shall pay to the Owner:

8.3.1 all rental and other moneys due to the Owner 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 in such amount as the Owner at its sole discretion allows.

8.4 The Hirer acknowledges that the remedies in clause 8.3 are reasonable as the length of the Hire Term is of the essence to the Owner.

8.5 If the Owner terminates the contract pursuant to clause 8.1 the Owner shall be entitled to cancel all or any part of any order of the Hirer that remains unperformed in addition to, and without prejudice to any other remedies

8.6 Notwithstanding clause 8.1, the Owner may terminate the hire at any time without reason by giving the Hirer 48 hours' written notice.

8.7 Termination of the Contract by the Owner is without prejudice to any rights that the Owner may have under this Contract.

8.8 The parties acknowledge that other than the provisions of the Contractual Remedies Act 1979, or as provided in clause 8.9 the Hirer shall not be entitled to cancel or otherwise terminate the Contract.

8.9 The Hirer may terminate the Contract by:

8.9.1 giving notice in writing that they will terminate the Contract at the end of the Hire Term

8.9.2 and that notice is sent by the Hirer and received by the Owner between 90 and 45 days before the end of that Hire Term.

### 9 ASSIGNMENT

9.1 The Hirer shall not assign, sublet, charge, pledge or part with possession of the product or any part of it or the Contract.

9.2 The Owner 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 HIRER'S OBLIGATIONS

10.1 The Hirer shall:

10.1.1 if the product is intended to be used in a location or manner which is outside its usual or ordinary use, advise the Owner of the intended location and/or nature of use at the time of hiring the product;

10.1.2 take proper and reasonable care of the product, subject to the Owners obligation to maintain per this Contract, and , if the product is hired, return it to the Owner at the end of the hire period (to the owners 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);

10.1.3 satisfy itself that the product is suitable for the Hirer's intended use;

10.1.4 use the product in a lawful manner with due regard to all laws and regulations pertaining to the use of such product;

10.1.5 except as permitted by the Consumer Guarantees Act 1993, not bring or threaten to bring any claim against the Owner for loss or damage incurred or threatened against the Hirer or arising directly or indirectly from the Hirer's use of the product;

10.1.6 notify the Owner immediately if the hired product is lost, stolen or damaged and shall follow all reasonable instructions of the Owner;

10.1.7 be responsible, and indemnify the Owner, for any loss, theft or damage to the product that occurs from the time the Hirer takes possession of the product until it is returned to the Owner's possession including:

10.1.7.1 in the case of damage, the full cost of all repairs to restore the product to the condition it was in at the time of hire;

10.1.7.2 in the case of loss, theft or irreparable damage to the product however caused, the full cost to the Owner of replacing the product; and

10.1.8 in addition to the costs set out in clause 10.1.7, be responsible for and indemnify the Owner for any loss of revenue suffered by the Owner due to the unavailability of the product for hire due to loss, theft or damage; and

10.1.9 not remove, deface or obscure any marks of identification or ownership or registration on the product.

10.1.10 not move or permit the product to be moved from the Hirer's premises specified on the Hire Schedule without the Owners prior consent in writing. Any consent given by the Owner is without prejudice to all the other obligations of the Hirer under this Contract.

10.2 The Hirer hires or purchases the product at the Hirer's own risk and indemnifies the Owner against any and all loss in respect of any loss of or damage to the product including any consequential loss

- 10.3 The Hirer 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 Owner, 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 in Employment Act 1992 and all other relevant legislation.
- 10.4 If the Hirer is not an individual, the person who signs the Contract on behalf of the Hirer warrants that they have authority to bind the Hirer and will, in any event, be personally liable for the performance of the obligations on the Hirer. The person signing hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner arising out of the person signing the Contract failing to have such power or authority.
- 10.5 The Hirer shall, upon request by the Owner, advise the Owner of the whereabouts of the product and allow the Owner reasonable time to inspect and test the product and for such purposes the Hirer gives irrevocable leave and licence to the Owner to take possession of and/or remove the product, and to enter any premises where the product or any part of the product may be.
- 11 PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**
- 11.1 The Hirer acknowledges that title to hired product remains with the Owner at all times. Product purchased from the Owner remains the property of the Owner until paid for in full.
- 11.2 Hire or acquisition of the product may create a security interest in the product. If so, this document constitutes a security agreement for the purposes of the PPSA and the provisions of this clause 11 apply. All terms in this clause 11 have the meaning given in the PPSA and section references are sections to sections of the PPSA.
- 11.3 On the request of the Owner, the Hirer shall promptly execute any documents, provide all necessary information and do anything else required by the Owner to ensure that the security interest created under the Contract (including these Conditions) constitutes a perfected security interest in the product and their proceeds which will have priority over all other security interests in the product.
- 11.4 The Hirer will pay to the Owner all fees and expenses incurred by the Owner in relation to the filing of a financing statement in connection with the Contract.
- 11.5 The Hirer waives its rights under sections 114(1) (a), 116, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 148 of the PPSA.
- 12 LIMITATION OF LIABILITY, INJURY OR DAMAGE TO HIRER, THIRD PERSON OR PROPERTY**
- 12.1 In entering into the Contract, the Hirer acknowledges the Owner shall not be liable for any loss of any kind whatsoever suffered by the Hirer as a result of any breach of any of the Hirer's obligations under the contract, including any cancellation of the contract or any negligence on the part of the Owner, its servants, agents or contractors, nor shall the Owner be liable for any loss, damage or injury caused to the Hirer's servants, agents, contractors, Hirers, visitors, tenants, trespassers or other persons. The Hirer shall indemnify the Owner 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 Owner for all claims made by the Hirer, 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 any product purchased by the Hirer, an amount of \$2,500; and
- 12.2.2 in the case of any product hired, the lesser of the hire charges paid by the Hirer to the Owner pursuant to the Contract and three months' hire charges paid by the Hirer to the Owner pursuant to the Contract.
- 12.3 The Hirer will indemnify the Owner against any liability, losses, damages or expenses incurred or suffered by the Owner as a result of any claim made by a third person against the Owner in respect of any loss or liability arising from the Contract or arising out of the use of the product hired or purchased by the Hirer.
- 12.4 Nothing in the Contract affects the Hirer's rights under the Consumer Guarantees Act 1993 except that if the Hirer 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 Hirer is purchasing product, then except as prohibited by law, all guarantees in respect of the product, whether express or implied, are excluded.
- 12.6 The Owner 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.
- 13 PRIVACY ACT 1993**
- 13.1 If the Hirer is an individual, this clause 13.1 applies. The Owner requires personal information and will collect and hold personal information about the Hirer, principally for the purpose of evaluating the hire of product by the Hirer. The Hirer's application to hire product may be declined or the hire terminated if the Hirer fails to provide requested personal information. The Hirer can access and seek correction of any personal information by contacting the Owner. The Hirer agrees that its personal information may be used by the Owner to advise the Hirer of the Owner's other goods and services. The Hirer authorises the disclosure of personal information held by any other party regarding any previous hire Contracts entered into by the Hirer. The Hirer agrees to the Owner releasing to other parties information regarding the Contract if the Hirer does not comply with its obligations.
- 13.2 The Hirer and each person who signs the Contract authorises the Owner:
- 13.2.1 to collect, retain and use information about the Hirer or such other signatory from any person for the purpose of assessing the Hirer's or such other signatory's creditworthiness;
- 13.2.2 to disclose information about the Hirer 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 Hirer's obligations to the Owner; and/or
- 13.2.2.2 to such persons as may be necessary or desirable to enable the Owner to exercise any rights under the Contract.
- 14 CONFIDENTIALITY**
- 14.1 In consideration of the disclosure of Confidential Information by the Owner to the Hirer, the Hirer agrees and undertakes to the Owner it:
- 14.1.1 will treat as confidential all Confidential Information which may be made or become available to the Hirer;
- 14.1.2 will not disclose any Confidential Information to any of the Hirer's Affiliates (as defined hereinbelow), to any competitor of the Owner or to any other person for any purpose without the prior written consent of the Owner;
- 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 Hirer's Affiliates or any other third party with the absolute "need to know" such information and only to those of the Hirer's Affiliates or any other third party who have been made aware of the Hirer'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 Owner, in the Owner's sole and absolute discretion and shall be delivered by the Hirer to the Owner prior to the Hirer'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 Owner to the Hirer or obtained by the Hirer from any other source; and
- 14.1.6 will prevent disclosure of any Confidential Information by any Affiliate of the Hirer 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 Hirer. The obligation of the Hirer and the Hirer'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 Hirer's relationship with the Owner, and shall not be excused whether or not the Hirer creates, maintains or continues the Hirer's relationship with the Owner. (As used herein, "Affiliate" shall mean any partner, officer, manager, director, shareholder, member, equity owner, 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 Owner and the Owner'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 Hirer can demonstrate came to the Hirer's attention prior to disclosure thereof by the Owner, or which, at the time of disclosure to the Hirer, had become a part of the public domain, through publication or communication by others, or which after disclosure to the Hirer, becomes a part of the public domain, through publication or communication by others.
- 15 FORCE MAJEURE**
- If the Owner 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 Owner's reasonable control (the "Force Majeure Event"), then the Owner'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 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 Owner shall not affect the strict rights of the Owner under the Contract or these Conditions.
- 17.5 A provision of or right under the Contract or these Conditions in favour of the Owner may not be waived or varied expect in writing signed by a director of the Owner.
- 17.6 The Owner will endeavour to resolve any dispute between the Hirer 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 Owner reserves the right to change these Conditions.
- 17.8.1 Any amended Conditions will be placed on the owners 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 Hirer's existing hire contract, written notice will be provided to the Hirer. The Hirer has 10 working days from the date of notice to opt out of the amended Conditions and maintain the existing Conditions for that contract.