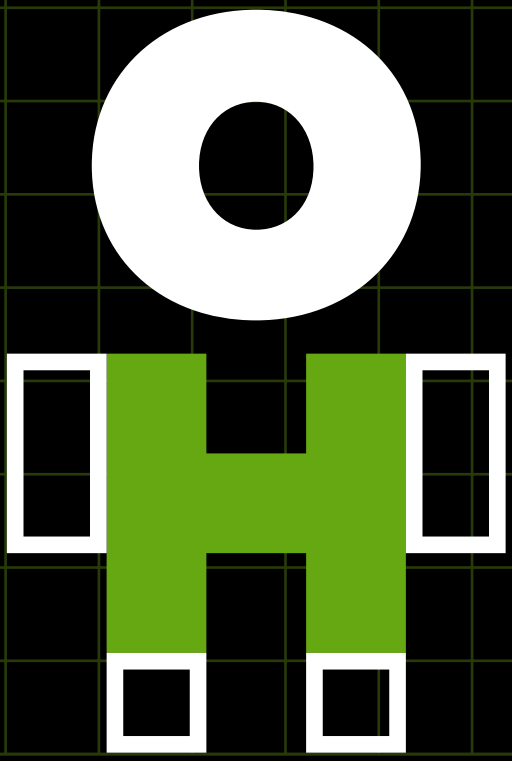
OPT HIRE



TERMS OF TRADE AND HIRE

28/05/2025

OPT Hire Pty Ltd - Terms of Trade and Hire ("Terms")

1 Application of Terms

1.1 These Terms govern our hire of Equipment and our supply of Goods and Services to you, including supplies on a cash basis.

1.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.

1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.

1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order.

2 Quotations

2.1 Each quotation that we issue:

(a) is an estimate only;

(b) is not an offer or obligation to hire any Equipment or supply any Goods or to perform any Services;

(c) is exclusive of GST;

(d) does not include the costs of delivering Equipment or Goods;

(e) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn by us before a contract for supply or hire is formed; and

(f) contains a price on the basis that all Services are performed, and all Equipment and Goods delivered, during Business Hours,

unless the quotation states otherwise.

2.2 Quotations provided orally are subject to written confirmation.

2.3 A quotation may include additional terms or conditions, which will supplement these Terms.

2.4 Should you wish to have Services performed or Equipment and Goods delivered outside Business Hours please let us know as additional charges may apply.

3 Formation of contract

3.1 If you request to hire Equipment from us (whether or not we have issued you a quotation), we may issue you a Hire Schedule. The Hire Schedule contains details of the hire and may include additional terms and conditions which will supplement these Hire Terms.

3.2 We are not obliged to hire any Equipment, supply any Goods or provide Services until after a contract for supply is formed.

3.3 A contract for supply is formed, and you have accepted these Terms, when:

(a) you have placed an Order with us; and

(b) we have received any deposit we have required from you in respect of the Order before progressing it; or

(c) you sign the Hire Schedule and return it to us; and

either we have:

(d) accepted your Order in writing; or

(e) supplied you with any Equipment or Goods, or performed any Services following receipt of your Order.

3.4 If you revoke an Order:

(a) prior to the formation of a contract for supply then:

(i) we will refund you any deposit you have paid in respect of that Order; and

(ii) you will not be required to pay any fee for the cancellation of the Order; or alternatively

(b) after the formation of a contract for supply then unless we are in breach of the contract for supply:

(i) you must pay all our reasonable costs associated with fulfilment of your Order; and

(ii) we may apply any deposit you have paid towards those costs.

4 Price (Supply of Goods and Services)

4.1 The price payable for the Goods or Services will be:

(a) the price agreed in writing; or alternatively

(b) the price by our prevailing price list/rates as when you place your Order.

4.2 We may vary our price or rates by notice to you if you request:

(a) the Goods or Services be rendered outside Business Hours;

(b) different Goods or Services to be supplied to the contract for supply; or

(c) that we delay provision of the Goods or Services for sixty (60) days or more.

4.3 Where we vary the price or rates payable for the Goods or Services pursuant to clause 4.2, we will notify you of the new price/rates. Thereafter you may reject the new price/rates within seven (7) days and terminate the contract for supply without any cost or penalty to you, otherwise you agree that the price/rates will apply to the contract.

5 Delivery and risk

5.1 We will use reasonable endeavours to deliver the Equipment or Goods at the time and place agreed for delivery. You will make arrangements necessary to take delivery of the Equipment or Goods.

5.2 You are responsible for:

(a) arranging the collection or delivery of the Equipment or Goods; and

(b) the costs of collecting or delivering the Equipment or Goods, unless the Hire Schedule states otherwise or otherwise agreed.

5.3 You acknowledge and agree that:

(a) time in respect of delivery is not of the essence; and

(b) any timeframe or date for delivery is an estimate only and is not a contractual commitment, unless the contract for supply or Hire Schedule states otherwise.

5.4 Risk of loss, damage, or deterioration to the Equipment or Goods passes to you, and delivery is deemed to occur, at the time:

(a) (where you collect the Equipment or Goods):

(i) you or any third party on your behalf collects the Equipment or Goods from us; or

(ii) your nominated carrier takes possession of the Equipment or Goods; or

(b) (where we deliver the Equipment or Goods) we or our nominated carrier delivers the Equipment or Goods to the Site (or to such other location as agreed in writing).

5.5 Risk in the Equipment remains with you until such time as:

(a) you return the Equipment to us or our nominated carrier; or

(b) we repossess the Equipment, (Risk Period).

5.6 You must inspect the Equipment or Goods on delivery for any damage and you must satisfy yourself that:

(a) you have received the Equipment or Goods in good order and condition and in accordance with the contract for supply or On-Hire Report (where provided);

(b) you, and any of your Personnel operating the Equipment, understand its safe and proper operation; and

(c) the Equipment or Goods are fit for the purpose for which you require it.

5.7 You must notify us within twenty-four (24) hours if you are not so satisfied. Failing such notification, you will be deemed to have accepted the Equipment or Goods in the condition in which it was delivered and as fit for the purpose for which you require it.

6 Hire Period

6.1 The Hire Period will commence:

(a) (where you collect the Equipment):

(i) the On-Hire Date; or alternatively

(ii) if the Equipment is collected after the On-Hire Date, when the Equipment leaves the point of hire; or

(b) (where we deliver the Equipment) the date we or our nominated carrier deliver the Equipment to the Site (or to such other location as agreed in writing).

6.2 On or before the On-Hire Date, we may provide you with an On-Hire Report. The On-Hire Report will include:

(a) a genuine indication of the state of the Equipment, including major componentry and sub-components;

(b) the utilisation hours recorded by the Equipment's SMU (where applicable);

(c) whether the Equipment is in a clean and serviceable condition;

(d) any known faults; and

(e) a list of any attachments or tools (including GETs), accessories, spares, and supporting documentation.

6.3 If a Minimum Hire Period applies, you agree to:

(a) hire the Equipment for the Minimum Hire Period; and

(b) pay us the full Hire Rate for the Minimum Hire Period.

6.4 For the removal of doubt, you must pay the full Hire Rate for the Minimum Hire Period, together with all other fees and charges stated in the Hire Schedule (or where no Hire Schedule has been issued, as advised by us), even if you return the Equipment, or arrange for us to collect the Equipment, prior to the expiry of the Minimum Hire Period.

7 End of Hire Period

7.1 Unless the Hire Schedule provides we are to collect the Equipment, you must return the Equipment during Business Hours to the point of hire or to such other location advised by us (acting reasonably):

(a) on the Off-Hire Date (or such other date as agreed between the parties); or otherwise

(b) as soon as possible if the hire contract is terminated.

7.2 Subject to clauses 6.3 and 6.4, you may terminate a hire contract early by:

(a) returning the Equipment to us at the point of hire (during Business Hours); or

(b) notifying us the Equipment is ready for collection (in which case you must obtain from us an 'Off-Hire Number', failing which you will not be deemed to have notified us the Equipment is ready for collection).

7.3 Where you notify us the Equipment is ready for collection pursuant to clause 7.2(b), you must do so prior to 10:00am on the day the Equipment is to be off-hired, failing which we may charge you the applicable Hire Rate for that day.

7.4 You must return the Equipment to us:

(a) in the same state of cleanliness and in substantially similar condition that the Equipment was in when you took possession of it (Fair Wear and Tear excepted);

(b) with a full tank of fuel which conforms with the Equipment manufacturer's specifications;

(c) with all oil and lubricant reservoirs full with oil and lubricants which conform with the Equipment manufacturer's specifications; and

(d) (where the Equipment is Weed and Seed Equipment) cleaned to an industry weed and seed standard.

7.5 If:

(a) the hire contract expires or is terminated; and

(b) you fail to comply with clause 7.1,

then you:

(c) permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to repossess the Equipment; and

(d) authorise us to disconnect, dismantle, and remove the Equipment (whether or not it is affixed to the Site).

7.6 Where the Equipment is not returned to the original point of hire by the Off-Hire Date, we are entitled to charge you, and you agree to pay to us additional hire charges at our then applicable daily rate for each day until the Equipment is back in our custody and possession.

8 Hire Rate and other charges

8.1 In consideration of us hiring the Equipment to you, you agree to pay us:

(a) the Hire Rate;

(b) the Damage Waiver (subject to clause 15.2);

(c) mobilisation and demobilisation costs;

(d) an environmental fee;

(e) all other amounts, charges, levies, and fees stated in the Hire Schedule;

(f) cleanings costs (if the Equipment is returned to us in an unclean state);

(g) top up charges, if the Equipment is returned with oil, lubricant, or fuel not at the same level as the On-Hire Date;

(h) decontamination costs (if the Equipment is contaminated with any hazardous substance, such as asbestos);

(i) charges at our then prevailing rates where you require induction or training in relation to the operation of the Equipment; and

(j) any tolls, levies, fines, or penalties we incur arising out of or in connection with your use or operation of the Equipment,

unless the Hire Schedule states otherwise (or where no Hire Schedule has been issued, unless otherwise agreed).

8.2 Where the Hire Schedule provides for a flat rate (or where no Hire Schedule has been issued, if we have advised you the hire is for a flat rate), the flat rate will be the Hire Rate and will be charged weekly in advance.

8.3 Where the Equipment is hired for a flat rate, we will not be required to adjust the Hire Rate based on the hours recorded by the Equipment's SMU or the number of days the Equipment is in operation.

8.4 When a management rate and usage rate is charged, the management rate will be charged weekly in advance and the usage rate will be charged weekly in arrears. #[instructions required]

8.5 We may charge you reasonable additional charges if you exceed the maximum usage for the Equipment (either in terms of days or operational hours) at any point in time during the Hire Period. For clarity, unless otherwise agreed in writing the maximum usage will be eight (8) hours on any given day or forty (40) hours in any given week.

8.6 Any excess usage of the Equipment will be calculated and charged on a pro-rated basis of the Hire Rate.

8.7 If we incur any cost on your behalf or associated with your failure to perform your obligations under the hire contract such as where:

(a) you fail to return the Equipment and we collect the Equipment;

(b) you return the equipment in an unclean state; or

(c) we incur demurrage costs associated with the delivery or collection of the Equipment,

then you agree to pay us those costs plus an uplift of 10% as a management and administration charge.

9 Payment terms

9.1 Unless you have a Credit Facility with us which is not in default:

(a) deposits we have requested must be paid before we hire any Equipment or commence providing Goods and Services;

(b) you must pay:

(i) us the Hire Rate, together with any other amounts, fees, and charges, on or before the On-Hire Date; or

(ii) for all Goods before they are despatched (in cash or cleared funds); and

(iii) for all Services on a progressive hourly basis as performed.

9.2 Payment may be made by cash, cheque, electronic funds transfer, Visa, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.

9.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.

9.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.

9.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

10 Hirer's obligations

10.1 You must:

(a) comply with all laws relating to the transportation, storage, and operation of the Equipment;

(b) protect the Equipment from loss or damage, and store the Equipment safely and securely;

(c) observe warranties and guidelines given by the manufacturer of the Equipment;

(d) keep the Equipment in good working order and condition and provide us with reports on the condition of the Equipment whenever reasonably requested to do so;

(e) where applicable, each day:

(i) complete the pre-start safety checklist and logbook provided with the Equipment; and

(ii) check the Equipment for oil, lubricants, coolant, battery levels, any sign of looseness or wear, and anything else required by the pre-start safety checklist or logbook;

(f) ensure that any Personnel operating the Equipment are lawfully authorised to do so and are suitability instructed in the safe and proper operation of the Equipment;

(g) ensure any Personnel operating the Equipment do so:

(h) properly and skilfully in accordance with the manufacturer of the Equipment's manuals and guidelines and our directions;

(i) in accordance with any workplace health and safety laws;

(ii) under competent supervision; and

(iii) in a manner which will minimise damage to the Equipment;

(i) ensure any Personnel operating the Equipment are not affected or impaired by alcohol or drugs (prescribed or non-prescribed);

(j) allow us to affix labels, decals, and/or plates to the Equipment stating that the Equipment is our property (and you must not alter, remove, deface, or cover up such labels, decals, and/or plates);

(k) use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances;

(l) ensure that no Personnel carry illegal or dangerous substances in or on the Equipment;

(m) allow our Personnel to at all reasonable times to enter upon the Site or any other premises you occupy to inspect the Equipment, and otherwise enforce our rights and carry out our obligations under the hire contract;

(n) immediately give us any notice or order received from any government authority about the operation or condition of the Equipment; and

(o) (on reasonable request by us) within five (5) Business Days from the end of each calendar month, provide to us the actual machine hours reported by the Equipment's SMU (where equipped),

unless the Hire Schedule states otherwise (or where no Hire Schedule has been issued, unless otherwise agreed).

10.2 You must not, without our prior written and fully informed consent:

(a) remove the Equipment from the Site;

(b) move the Equipment over any body of water;

(c) use the Equipment in conjunction with any forestry activity, underground mining or drilling activity, or for any purpose other than what the Equipment is designed or commonly used for;

(d) use the Equipment in an area where asbestos is present;

(e) use the Equipment in or around caustic or corrosive substances such as salt water, acid, or fertiliser;

(f) use the Equipment to carry or transport animals;

(g) make any replacements, modifications, alterations, additions, or improvements to the Equipment;

(h) exceed the recommended or legal load and capacity limits of the Equipment;

(i) place any identifying mark on the Equipment or allow it to become an accession (within the meaning of the PPS Act);

(j) lease, sublease, licence, or lend the Equipment to any other person (or otherwise deal with the Equipment in a manner inconsistent with our rights and interest in the Equipment); or

(k) do or allow to be done any act, matter, or thing which may invalidate or prejudice any:

(i) insurance policy effected and maintained by us or you;

(ii) defence or prosecution of any Claim; or

(iii) Claim or right we may have against any person.

11 Servicing, maintenance, and repairs

11.1 For the purposes of this clause 11 and the Hire Schedule:

(a) Minor Repair means a repair to the Equipment of the kind described in the Hire Schedule as a minor repair; and

(b) Major Repair means a repair to the Equipment of the kind described in the Hire Schedule as a major repair.

11.2 During the Hire Period we will carry out, at our own expense:

(a) any repair which is necessary to rectify any damage to, or malfunction of, the Equipment to the extent that such damage or malfunction was caused by any act or omission of ours or that of our Personnel;

(b) any Major Repair which is necessary to rectify any damage to, or malfunction of, the Equipment caused by Fair Wear and Tear where the damage or malfunction renders the Equipment unsafe or unsuitable for normal use or operation; and

(c) any service, maintenance, or repair items described in the Hire Schedule which are noted to be our responsibility.

11.3 Where we are responsible for carrying out any repairs to the Equipment:

(a) we will do so as soon as possible after being notified by you of the damage or malfunction, and if it is necessary for the Equipment to be returned to our premises for repairs, then we will collect the Equipment from you and will re-deliver the repaired Equipment or a suitable replacement as soon as reasonably practicable; and

(b) you must not carry out any repairs on our behalf without our prior written and fully informed consent. If you carry out repairs without first obtaining our consent, we will not be liable for the cost of those repairs.

11.4 You acknowledge that we may carry out pre-arranged repairs or servicing during Business Hours.

(a) Notwithstanding clauses 11.2 and 11.3, you are otherwise responsible for cleaning the Equipment at your own expense and must perform such work in accordance with any manuals and/or guidelines provided by the manufacturer of the Equipment; or alternatively

(b) customer service documentation pre-approved by us.

11.5 You are responsible for supplying at your own expense all fuel, oil, hydraulic fluid, and other consumable items required for the proper operation of the Equipment. If levels are not returned at the same level at the of the Hire Period, additional charges will apply.

12 Wear and tear

12.1 We accept liability for the Fair Wear and Tear of major and minor components of the Equipment.

12.2 Physical harm to the Equipment and major components that fail prematurely (i.e. they fail outside of the manufacturer of the Equipment's expected life cycle) will be considered to be damage caused to the Equipment if we can prove, on the balance of probabilities, that the damage was caused by the wilful neglect, negligence, or the improper operation of the Equipment by you, your Personnel, or any other third party during the Risk Period.

12.3 You are responsible for all wear to tyres, tracks, GETs, trays, and undercarriages (Wear Items).

12.4 Before the Equipment is mobilised, we will measure the amount of wear in respect of each of the Wear Items. When the Equipment is returned to the original point of hire, we will take these measurements again.

12.5 Usage of each of the Wear Items will be measured by comparing the percentage of use at the On-Hire Date with the percentage of use at the end of the Hire Period.

12.6 We will advise you in writing of the amount of wear incurred to the Wear Items during the Hire Period.

12.7 You agree to pay for any wear incurred to the Wear Items, calculated on a pro rata basis as a percentage increase in wear multiplied by the cost of a new Wear Item of the same or substantially similar type and quality.

13 Damage, loss, and theft

13.1 You are strictly liable for any damage, loss, or theft to the Equipment that occurs during the Risk Period.

13.2 If the Equipment breaks down, is damaged, or otherwise becomes inoperable (for whatever reason, including due to it being deemed unsafe to operate), you must promptly:

(a) notify us by telephone and in writing; and

(b) take all reasonable steps to secure and safeguard the Equipment from any potential damage or injury to any person or property (including further damage to the Equipment); and

(c) not attempt to make any repairs to the Equipment.

13.3 Upon receipt of your notice under clause 13.2(a):

(a) the Hire Rate will be suspended until such time as the Equipment is repaired or we have provided you with a suitable replacement (unless you or your Personnel have caused the damage); and

(b) we will take all reasonable steps to repair the Equipment or provide you with a suitable replacement as soon as reasonably practicable.

13.4 If the Equipment breaks down, is damaged, needs to be recovered (due to it being bogged or stuck), or otherwise becomes inoperable due to any act or omission of yours, your Personnel, or any third party, you agree to:

(a) pay us any costs we incur to repair or recover the Equipment (as the case may be); and

(b) continue to pay us the Hire Rate during the period in which we are recovering or repairing the Equipment or procuring a suitable replacement.

13.5 If the Equipment is unable to be returned to us (for example, if it is lost, stolen, damaged beyond economic repair, or if title to the Equipment is lost) then you must pay us the aggregate of the following:

(a) all money past due but not yet paid under the hire contract;

(b) any salvage costs we incur in salvaging the Equipment; and

(c) the replacement cost of the Equipment (calculated in accordance with then prevailing market value of the Equipment).

13.6 If the Equipment is stolen during the Risk Period, you must promptly (and in any event within forty-eight (48) hours of the date the Equipment was stolen) provide us with a copy of a police report explaining the circumstances of the theft.

14 Stand downs

14.1 Subject to clause 13.3, you acknowledge and agree you are not entitled to any discount or rebate for any period in which the Equipment:

(a) is not in use by you; or

(b) is stood down by you.

14.2 We may (but are not obliged to) grant you a discount or rebate in circumstances where you cannot operate the Equipment (for example, due to adverse weather conditions).

14.3 Subject to clause 13.3, a 50% stand down discount may apply to daily or weekly hires where you have a Credit Facility with us, subject to you notifying us of your intention to stand down the Equipment before 09:00am on the day you wish to stand down the Equipment.

15 Damage Waiver

15.1 Subject to clause 16.2, as a condition of hire, you must pay us the Damage Waiver. The Damage Waiver:

(a) is not insurance and is not a substitute for insurance;

(b) will automatically be charged to you (in addition to the Hire Rate); and

(c) must be paid to us on or before the On-Hire Date.

15.2 You do not have to pay us the Damage Waiver if you:

(a) insure the Equipment on or before the On-Hire Date for an amount not less than the Insured Value in accordance with clause 16.1(a); and

(b) provide us with a certificate of currency or such other evidence we may reasonably require evidencing the insurance contemplated by clause 16.1(a).

15.3 Upon payment of the Damage Waiver, we will be responsible for the cost of any damage, loss, of theft to the Equipment during the Hire Period, except for:

(a) any excess payable by us to our insurer; and

(b) any shortfall between the sum insured and the cost of replacing the Equipment (calculated in accordance with then prevailing market value of the Equipment),

which you will be liable and will be required to pay us within seven (7) days of our written demand.

15.4 We will not waive our rights to Claim against you for any damage, loss, of theft of the Equipment and the Damage Waiver will not apply to damage, loss, of theft to the Equipment arising out of or in connection with:

(a) your negligence;

(b) your unlawful use of the Equipment;

(c) burglary, theft, or vandalism of the Equipment (where you have failed to properly secure the Equipment);

(d) theft of any components, replacement parts, tools, or accessories supplied with the Equipment;

(e) use of the Equipment in any forestry activity, underground mining or drilling activity, or for any purpose other than what the Equipment is designed or commonly used for (unless pre-approved by us);

(f) caustic or corrosive substances such as salt water, acid, or fertiliser;

(g) any misuse, abuse, wilful or malicious acts or omissions, or reckless use (including exceeding the legal load and capacity limits of the Equipment);

(h) lack of lubrication or improper lubrication or your failure to otherwise adhere to your repair and maintenance responsibilities;

(i) any unexplained disappearance of the Equipment;

(j) any lifting of the Equipment;

(k) damage caused by an overhead collision due to insufficient clearance;

(l) damage to tyres (including punctures, cuts, and abrasions) and other Wear Items, glass, or instrumentation;

(m) use of the Equipment in or over water (including damage caused by partial or total submersion); or

(n) damage to the interior of the Equipment.

15.5 The Damage Waiver will not continue to operate after the Hire Period expires unless otherwise agreed in writing.

15.6 This clause 15 in no way entitles you to, nor implies the availability of, compensation from us for any liability incurred by you in relation to your use or operation of the Equipment.

16 Insurance

16.1 You must for the duration of the Risk Period effect and maintain, at your own expense:

(a) a policy of plant insurance and must keep the Equipment insured for no less than the Insured Value (with our interest as owner of the Equipment noted on the policy), against fire, theft, and damage and the other usual risks which a prudent owner or hirer would insure and any other risks specified by us, acting reasonably; and

(b) a policy of public liability insurance to cover your liability for loss or damage to property and the death of or injury to any person (other than liability which applicable law requires to be covered under a workers compensation policy) for no less than $20,000,000 in respect of any one occurrence, unless the Hire Schedule states otherwise (or where no Hire Schedule has been issued, unless otherwise agreed).

16.2 You must ensure that each insurance you are required to effect and maintain under clause 16.1 is:

(a) effected with an insurer with a financial security rating equal to or better than Standard and Poor's A minus rating or the equivalent rating with another recognised agency; and

(b) on terms and conditions usual to that class of insurance.

16.3 You must, in respect of each insurance required by clause 16.1:

(a) when requested by us, promptly satisfy us that each insurance is current by providing us with certificates of currency or such other evidence we may reasonably require;

(b) pay each insurance premium before the due date and, upon request, produce receipts for the payment;

(c) bear the cost of any excesses and deductibles;

(d) not do, omit to do, or permit anything which prejudices the insurances;

(e) not, without our prior written and fully informed consent:

(i) insure the Equipment only in your name; or

(ii) vary, cancel, or allow to lapse any insurance;

(f) immediately rectify anything which might prejudice the insurances and reinstate any insurance if it lapses; and

(g) notify us immediately when an event occurs which gives rise or might give rise to a Claim under any of the insurances.

17 Claims

17.1 Clauses 17.2 to 17.4 only apply if the contract for supply is not a Consumer Contract and not a Small Business Contract.

17.2 You must, within seven (7) days of the date of delivery:

(a) give us notice in writing, with particulars, of any Claim that the Goods delivered are not in accordance with the contract for supply (including any Claim for shortfall, incorrect supply, or damage to the Goods); and

(b) at our request, provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.

17.3 You must notify us in writing of any Claim for non-delivery within seven (7) days of the date of the invoice which relates to the Goods the subject of your Claim.

17.4 If you fail to notify us in accordance with clause 17.2 and17.3, then, to the extent permitted by law, the Goods are deemed to have been delivered in good condition and in accordance with the contract for supply.

18 Returns (Goods and Services only)

18.1 We will accept the return of any Goods if:

(a) the Goods supplied do not conform with the contract for supply;

(b) the Goods are defective; or

(c) we are required by law to accept the return of the Goods.

18.2 At our discretion, we may accept the return of Goods if you change your mind if:

(a) you agree to:

(i) pay the lesser of a handling and administration charge of 25% of the purchase price of the returned Goods or $200; and

(ii) reimburse us for all costs we incur in connection with the return of those Goods (except for Goods we have incorrectly supplied or we agree are defective);

(b) the Goods are in substantially the same condition to the condition in which they were delivered; and

(c) the Goods were not specifically produced or procured at your request.

18.3 You indemnify and release us from any damage that occurs to any Goods in return transit. You should ensure that any returned Goods are insured against such damage.

19 Retention of title

19.1 Until such time as you have made payment in full (in cash or cleared funds) for any Goods we have supplied:

(a) title in the Goods does not pass to you and we retain the legal and equitable title in the Goods;

(b) you will hold the Goods as fiduciary and bailee for us and agree to store the Goods in such a manner as to enable them to be readily identifiable as our property;

(c) you undertake to not mix the Goods with similar goods;

(d) unless and until we notify you to the contrary, you will be entitled to sell the Goods in the ordinary course of your business (provided any such sale is at arm's length and on market terms) and will sell the Goods as our agent and bailee; and

(e) you undertake to hold any proceeds derived from the sale of the Goods on trust for us absolutely.

19.2 While title in the Goods remains with us, you permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to inspect the Goods and, when you are in default of payment of any invoice, to repossess any Goods in your possession, custody, or control.

19.3 Where we exercise our right of entry pursuant to clause 19.2, you agree that us doing so will not give rise to any Claim for trespass or similar action against us or our officers, employees, and agents.

19.4 Where we have retaken Goods into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.

19.5 You acknowledge and agree that we are the owner of the Equipment and retain title to the Equipment in all circumstances. Your right under the hire contract to possess the Equipment is as a bailee only.

19.6 For the removal of doubt:

(a) you acknowledge and agree that we are the owner of the Equipment and retain title to the Equipment in all circumstances. Your right under the hire contract to possess the Equipment is as a bailee only; and

(b) our interest under this clause 19 constitutes a purchase money security interest for the purposes of the PPS Act.

20 Security interest

20.1 Unless you have obtained our prior written and fully informed consent, you undertake not to:

(a) register a financing change statement in respect of a security interest in our favour; or

(b) create, or purport to create, any security interest in the Equipment or Goods (or specifically related to Goods, any proceeds derived from the sale of such Goods), nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Equipment or Goods in favour of any third party.

20.2 You:

(a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and

(b) agree that, to the extent permitted by the PPS Act:

(i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and

(ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.

20.3 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.

20.4 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

21 Description of Goods

If you require any Goods for a particular purpose, you must advise us of that purpose prior to placing your Order and must obtain a written assurance from us that the Goods will meet your requirements. If you do not advise us of your requirements and we do not expressly warrant in writing that the Goods will be fit for your particular purpose, then you agree that you did not rely upon our skill or judgment in relation to the suitability of the Goods for that purpose.

22 Default

22.1 Clauses 22.2 to 22.4 apply if you fail to pay sums to us when they fall due.

22.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 10% per annum.

22.3 We may suspend or cease the hire of Equipment or supply of any further Goods or Services to you.

22.4 We may require pre-payment in full for any hire of Equipment or Goods or Services which have not yet been supplied.

23 Indemnity

23.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:

(a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and

(b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and

(c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.

23.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.

23.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract or Hire Schedule of which these Terms form part.

24 Limitation of liability

24.1 No party is liable to the other party for any Consequential Loss, including under clause23, however caused arising out of or in connection with any contract for supply of which these Terms form part.

24.2 While we will take reasonable endeavours to meet any estimated delivery date or estimated time for Goods and Services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.

24.3 If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:

(a) (in the case of the hire of Equipment):

(i) us repairing the Equipment or providing a suitable replacement; or

(ii) us paying you the cost of having the Equipment repaired or procuring a suitable replacement.

(b) (in the case of a supply of Goods):

(i) us repairing or replacing the Goods; or

(ii) us paying you the cost of having the Goods repaired or replaced.

(c) (in the case of a supply of Services):

(i) us supplying the Services again; or

(ii) us paying you the cost of having equivalent Services supplied.

25 Termination

A party may, with immediate effect, terminate any contract for supply or hire of which these Terms form part by notice in writing, if the other party:

(a) commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or

(b) has failed to pay sums due to the party within seven (7) days; or

(c) has indicated that it is, or may become, insolvent; or

(d) ceases to carry on business; or

(e) comprises an entity which is the subject of the appointment of receivers or managers; or

(f) comprises a natural person who:

(i) has committed an act of bankruptcy; or

(ii) has been made bankrupt;

(g) comprises a corporation which:

(i) enters into voluntary administration;

(ii) is subject to a deed of company arrangement; or

(iii) is subject to the appointment of liquidators or provisional liquidators.

26 Trustees

26.1 If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:

(a) you enter into the contract for supply in both your capacity as trustee and in your personal capacity;

(b) you have the right to be reasonably indemnified out of trust assets;

(c) you have the power under the trust deed to enter into the contract for supply; and

(d) you will not retire as trustee of the trust nor appoint any new or additional trustee without first notifying us in writing and having the new or additional trustee sign an agreement on terms substantially the same as those governing your Credit Facility (where applicable).

26.2 You must give us a true and complete copy of the trust deed upon request.

27 Variation

We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

28 Assignment

A party may only assign its rights under the contract for supply with the written consent of the other party.

29 Subcontracting

We reserve the right to subcontract any part of our obligations under the Terms, including, for example, our obligation to repair the Equipment, however, any subcontracting of our obligations will not relieve us of any of our obligations to you under the hire contract.

30 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

(a) any additional terms or conditions contained in our quotation applicable to the supply of Goods or Services;

(b) any terms governing your Credit Facility; and

(c) these Terms.

31 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

32 Governing law and jurisdiction

32.1 Our relationship is governed by and must be construed according to the law applying in the State of Victoria.

32.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Victoria with respect to any proceedings that may be brought at any time relating to our relationship.

33 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

33.1 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.

33.2 **Business Hours** means between 07:00am to 4:00pm on a day that is not a Saturday, Sunday, or gazetted public holiday in the place where the Goods or Services are, or are to be, supplied.

33.3 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.

33.4 **Consequential Loss** includes any:

(a) consequential loss;

(b) loss of anticipated or actual profits or revenue;

(c) loss of production or use;

(d) financial or holding costs;

(e) loss or failure to realise any anticipated savings;

(f) loss or denial of business or commercial opportunity;

(g) loss of or damage to goodwill, business reputation, future reputation, or publicity;

(h) loss or corruption of data;

(i) downtime costs or wasted overheads; or

(j) special, punitive, or exemplary damages.

33.5 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.

33.6 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for the hire of Equipment and our Goods and Services and associated charges.

33.7 **Customer**, **you** means the person or other entity who has placed an Order with us for the supply of Goods or Services (or the person on whose behalf an Order is placed).

33.8 **Damage Waiver** means the amount stated in the Hire Schedule you are required to pay to reduce your financial liability in the event of damage, loss, or theft to the Equipment (or, where no amount is stated, the Damage Waiver will be an amount equal to 12.5% of the Hire Rate).

33.9 **Equipment** means the plant, machinery, vehicles, tools, or equipment described in the Hire Schedule (including, unless otherwise agreed in writing, any replacement parts, components, tools, and other items used to service and maintain the Equipment), including manuals and logbooks, associated or attached tools (including GETs), accessories and parts we have agreed to hire to you in accordance with the hire contract.

33.10 **Fair Wear and Tear** means wear and tear which would be normal for similar Equipment operated under normal operating conditions (and within its design parameters and recommended procedures), but expressly excludes:

(a) wear of, or damage to, Wear Items;

(b) dents or other impact damage;

(c) damage to glass or instrumentation; and

(d) panel or structural damage from collision or abuse and damage to the drive system.

33.11 **GETs** means any wear part or tool of the Equipment that engages the ground or comes into contact with specific material and includes all cutting edges, bucket teeth, hardwire, bucket ends, ripper teeth, blade faces, blade push arms, blade mould boards, and roller feet.

33.12 **Goods** means all goods supplied by us, as described on our quotation, invoice, or any other form issued by us.

33.13 **Hire Period** means the period the Equipment is to be hired by you, as stated in the Hire Schedule (or where no Hire Schedule has been issued, the period we have agreed to hire the Equipment to you).

33.14 **Hire Rate** means the rate payable by you to hire the Equipment, calculated in accordance with rates stated in the Hire Schedule (or where no Hire Schedule has been issued, the rate payable by you to hire the Equipment as advised by us).

33.15 **Hire Schedule** means the document, if any, provided by us which includes particulars of the Equipment, the Site, the Hire Rate, any other applicable charges, and the Off-Hire Date.

33.16 **Hirer**, you means the person or other entity hiring Equipment from us.

33.17 **Insured Value** means the value of the Equipment stated in the Hire Schedule or otherwise advised by us (or where no Hire Schedule has been issued, the value of the Equipment as advised by us).

33.18 **Minimum Hire Period** means the minimum Hire Period stated in the Hire Schedule (if any) (or where no Hire Schedule has been issued, the minimum Hire Period advised by us).

33.19 **Off-Hire Date** means the date you expect the Hire Period to end, as stated in the Hire Schedule (or where no Hire Schedule has been issued, the date you expect the Hire Period to end as advised by you).

33.20 **On-Hire Date** means the date stated in the Hire Schedule as the on-hire date (or where no Hire Schedule has been issued, the on-hire date advised by us).

33.21 **On-Hire Report** means an on-hire inspection report prepared by us.

33.22 **Order** means a written or oral order placed by you requesting to hire Equipment from us or that we provide Goods or Services.

33.23 **Personnel** means officers, employees, and agents engaged by each party (but does not include the other party) and, in the case of the Supplier includes its subcontractors (and any employee of those subcontractors).

33.24 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.

33.25 **Services** means all services performed by us, as described on our quotation, invoice, or any other form issued by us.

33.26 **Site** means the land (including any structure or other facility on the land) upon, over, below, or through where the Equipment will be used, as stated in the Hire Schedule (or where no Hire Schedule has been issued, the land (including any structure or other facility on the land) upon, over, below, or through where the Equipment will be used advised by you and agreed by us).

33.27 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.

33.28 **SMU** means a service meter unit or similar device fitted to the Equipment designed to record the utilisation hours of the Equipment.

33.29 **Supplier**, **we**, **us** means OPT Hire Pty Ltd (ACN 661 787 533).

33.30 **Weed and Seed Equipment** means equipment that requires special cleaning for the purpose of complying with an industry standard.

34 Interpretation

In these Terms, unless the context otherwise requires:

34.1 A time is a reference to the time zone of Melbourne, Australia unless otherwise specified.

34.2 $, dollar, or AUD is a reference to the lawful currency of Australia.

34.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.

34.4 A right includes a benefit, remedy, authority, discretion, or power.

34.5 The singular includes the plural and vice versa, and a gender includes other genders.

34.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

34.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.

34.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".

34.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.