



# Silver Fern Farms: Standard Terms of Product Sale

1. In these standard terms, we have used "you" or "your" to identify the "purchaser" and "product" to represent any products or goods that you buy from Silver Fern Farms Limited (5474064) or its Related Company (as defined in section 2 of the Companies Act 1993) ("**Silver Fern Farms**").
2. These standard terms apply to the sale of product by Silver Fern Farms to you. Where these standard terms conflict with the terms of trade in a specific Silver Fern Farms supply contract (including any Incoterm if used), then the terms in that specific contract apply.
3. You must pay the full price of the product purchased from Silver Fern Farms without deduction or set-off. If the time of payment has not been separately agreed then you must pay for the product prior to that product leaving Silver Fern Farms' premises or control (if stored off-site).
4. If you wish to make a claim against Silver Fern Farms in respect of any product sold to you then you must make that claim within (a) 14 days if the product is supplied chilled; or (b) 28 days if the product is supplied frozen, of receipt of the product. You must also provide Silver Fern Farms with the opportunity to inspect the product at Silver Fern Farms' discretion and provide data loggers on request. If Silver Fern Farms agrees that the product is entitled to be rejected then Silver Fern Farms may refund the price of the product or replace the product at Silver Fern Farms' cost.
5. The maximum value of any claim that may be made against Silver Fern Farms shall be the sale price to you of the product for which the claim is made. In no circumstances shall Silver Fern Farms be liable to you or to any third party for any indirect or consequential loss, loss of profits or similar.
6. Title in the product remains with Silver Fern Farms until the product has been paid for in full. Risk passes to you at the point the product leaves Silver Fern Farms' possession. You agree that we may enter your premises to collect any product that you have failed to pay for. Before entering your premises we will, wherever practicable, give prior notice and will do so at all reasonable times.
7. You grant a purchase money security interest (by virtue of the retention of title under clause 6) to Silver Fern Farms in the product and agree to provide all information and assistance necessary to enable Silver Fern Farms to register and enforce its interest. You agree not to change your name without first notifying Silver Fern Farms in writing and you waive any right you may have to receive a copy of any verification statement or financing change statement registered by Silver Fern Farms in respect of the security interest created.
8. Silver Fern Farms retains all of its intellectual property rights in any product (including packaging) we provide to you. Such rights include copyright, trademarks and designs. You may not separately use any such intellectual property rights without our prior written approval.
9. **Dispute Resolution:**
  - (a) **Notice:** If any dispute or difference arises out of, or in connection with, this Agreement ("**Dispute**"), the Party claiming that a Dispute has arisen shall give written notice ("**Notice of Dispute**") to the other Party specifying the nature, and reasonable details of the Dispute.
  - (b) **Negotiations:** On receipt of a Notice of Dispute, the Parties agree that they shall endeavour to resolve the Dispute through good faith negotiations and discussions.
  - (c) **Arbitration:** If the Dispute is not resolved within 15 (fifteen) days of the Dispute being referred to negotiations under Clause 9(b) then either Party may refer the Dispute for determination by arbitration in accordance with the following:
    - i the arbitration shall be conducted by a sole arbitrator agreed by the Parties (or if the Parties fail to agree on an arbitrator within five (5) Business Days of the reference of the dispute to arbitration, then the arbitrator shall be appointed by the President for the time being of the New Zealand Law Society (or the President's nominee));

- ii the decision of the arbitrator shall be final and binding on the Parties;
  - iii the arbitration shall be conducted in accordance with the Arbitration Act 1996 (excluding clause 5 of the Second Schedule);
  - iv any Dispute referred to arbitration shall be dealt with on an expeditious basis with the parties using all commercially reasonable endeavours to obtain and implement a timely decision of the arbitrator; and
  - v subject to any award being made by the arbitrator (it being the intent that the Party who is found to be at fault or incorrect in the arbitration shall bear costs), the costs of the arbitrator shall be borne equally.
- (d) **No action:** A Party may not issue legal proceedings (other than for urgent interlocutory relief) in respect of any Dispute.
10. You agree to pay Silver Fern Farms on demand all costs and expenses (including reasonable legal fees and/or debt recovery fees) incurred by Silver Fern Farms in connection with Silver Fern Farms recovering any overdue amount owed by you to Silver Fern Farms.
11. You must keep confidential any information you receive from us which you would expect to be confidential or commercially sensitive including product pricing. You may only disclose confidential or commercially sensitive information if you are required to by law.
12. You may not assign or transfer any of your rights under these standard terms without our prior written approval.
13. You authorise Silver Fern Farms to collect, use and disclose information about you and your employee and shareholders (if you are an employer and/or a body corporate) in accordance with the privacy policy of Silver Fern Farms. A copy of the privacy policy can be obtained from Silver Fern Farms' website. You expressly consent to Silver Fern Farms providing you with electronic communications from time to time, including newsletters and promotional material. You may unsubscribe at any time.
14. These standard terms shall be construed by and are subject to the laws of New Zealand. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these terms or any transaction conducted in accordance with, or pursuant to, these terms.
15. The New Zealand courts have exclusive jurisdiction in relation to any matter arising under these standard terms.
16. **FORCE MAJUERE**
- a **No Liability:** Subject to Clause 16.b below, Silver Fern Farms will not be liable to you for any failure to perform its obligations under these terms or any contract, order, or other agreement between you and Silver Fern Farms if the failure is due to a Force Majeure. For the purposes of these terms, Force Majeure means an event that is beyond the reasonable control of Silver Fern Farms but does not include any risk or event that Silver Fern Farms could have prevented or overcome by taking reasonable care. Examples of Force Majeure include:
- i acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, or any natural disaster;
  - ii acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
  - iii acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war;
  - iv contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties; or
  - v strikes, lockouts, epidemic, pandemic, infectious disease, lockdowns or government order or intervention.
- b **Obligations of the Affected Party:** If Silver Fern Farms wishes to claim suspension of its obligations due to a Force Majeure, it will notify you in writing as soon as reasonably possible. The notice will state:
- i the nature of the circumstances giving rise to the Force Majeure;
  - ii the extent of Silver Fern Farms' inability to perform;
  - iii the likely duration of that non-performance; and

- iv the steps that Silver Fern Farms is taking and/or has taken to minimise the impact of the Force Majeure on the performance of its obligations.
- c **Termination of Agreement:** If Silver Fern Farms is unable to perform any obligations for 30 days or more due to a Force Majeure, then either you or Silver Fern Farms may terminate the agreement between parties immediately by giving notice in writing to the other party.