



**SILVER  
FERN  
FARMS**

100% MADE OF NEW ZEALAND

## STANDARD PURCHASING TERMS: GOODS AND SERVICES



### 1 DEFINITIONS AND INTERPRETATIONS

1.1 **Definitions:** In this Agreement unless the context otherwise requires:

**"Agreement"** means and includes these standard purchasing terms and the relevant PO (if any), the SOW (if any) and any amendments or variations agreed in writing;

**"Authorised Person"** has the meaning given in clause 15.2;

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in New Zealand;

**"Confidential Information:"** the terms and conditions of the Agreement and any information that is not public knowledge and which is obtained from or in relation to the other party in the course of, or in connection with, the Agreement. Each Party's Confidential Information includes its Intellectual Property;

**"Defective Products"** has the meaning given in clause 5.1;

**"Dispute"** has the meaning given in clause 12.1;

**Force Majeure** means an event that is beyond the reasonable control of the party immediately affected by the event. A Force Majeure does not include any risk or event that the party claiming could have prevented or overcome by taking reasonable care. Examples of Force Majeure include:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, and any natural disaster;
- (b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; or
- (d) contamination by radioactivity from nuclear substances or germ warfare or any other such
- (e) hazardous properties; or
- (f) strikes, lockouts, epidemic, pandemic, infectious disease, lockdowns or government order or intervention.

**"Goods"** means the Supplier's goods listed or described in the PO or SOW, including all incidental or related goods and products and all goods or products developed or otherwise arising out of or in the course of the performance of the Services;

**"Intellectual Property"** or **"IP"** means all intellectual property rights, including:

- (a) copyright and all rights existing anywhere in the world  
conferred under statute, common law or equity relating to inventions (including patents), registered or unregistered patents, trademarks, service marks, trade names, symbols, logos and designs;
- (b) all circuit layouts, data and databases, formulae, methods, plans, data, drawings, specifications, characteristics, algorithms, source and object code, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, costings, brochures;
- (c) know-how, confidential information, proprietary rights and all other rights resulting from intellectual activity.

**"Notice of Dispute"** has the meaning given in clause 12.1;

**"Party"** means either Silver Fern Farms or the Supplier as the case may be and **"Parties"** means both of them;

**"Products"** means the Goods and Services;

**"Payment Month"** has the meaning set out in clause 3.2;

**"PO"** has the meaning set out in clause 2.1;

**"Premises"** means any of Silver Fern Farms' processing plants or offices;

**"Price"** means the applicable price stated the PO or SOW relating to the Products;

**"Services"** means the services described in the relevant PO or SOW;

**"Silver Fern Farms"** means Silver Fern Farms Limited (incorporation number 5474064);



**“SOW” or “Statement of Work”** means any Statement of Work issued for the Product to be provided by the Supplier to Silver Fern Farms under this Agreement; and

**“Supplier”** means any person that supplies or agrees to supply the Products to Silver Fern Farms in accordance with any PO.

1.2 **Interpretations:** In this Agreement unless the context otherwise requires:

- (a) a reference to a clause is a reference to a clause in this Agreement;
- (b) headings and sub-headings have been included for ease of reference only and will not affect the construction or interpretation of this Agreement;
- (c) any word importing the singular includes the plural and vice versa; and
- (d) a reference to any legislation includes all regulations under it and all amendments to and substitution of that legislation (or any part of it).

## 2 ORDERS

- 2.1 Silver Fern Farms may order any Products by sending a SOW and/or purchase order for those Products to the Supplier (“**PO**”) unless the parties have otherwise agreed a different ordering system in writing.
- 2.2 Silver Fern Farms is not required to purchase Products it has not ordered and may return to the Supplier at the Supplier's cost or otherwise reject any such Products delivered.

## 3 PRICE AND PAYMENT

- 3.1 Unless Silver Fern Farms has agreed in writing prior to delivery of the Products, the Supplier must not invoice Silver Fern Farms more than the Price for those Products.
- 3.2 Unless otherwise agreed in writing by the parties, Silver Fern Farms must pay the Supplier for the Products by the last day of the month (“**Payment Month**”) following the month in which the Products were supplied, provided a valid GST invoice has been received from the Supplier by the 5th day of the Payment Month. If:
  - (a) the last day of the Payment Month is not a Business Day, then Silver Fern Farms will pay the invoice on the next Business Day;
  - (b) the invoice is not received by the 5th day of the Payment Month, then Silver Fern Farms will process and pay the invoice in the ordinary course of its business.
- 3.3 Invoices issued by the Supplier must:
  - (a) identify the Products supplied (by item where applicable) and the price for those Products;
  - (b) quote Silver Fern Farms' PO number (if any) and be emailed to [APScan.Services@silverfernfarms.co.nz](mailto:APScan.Services@silverfernfarms.co.nz) or any other address as Silver Fern Farms may advise the Supplier in writing from time to time.
- 3.4 If Silver Fern Farms disputes an invoice (or part of an

invoice) issued by the Supplier, then Silver Fern Farms:

- (a) must notify the Supplier of the dispute and the reasons for the dispute; and
  - (b) may withhold payment of the disputed part of the invoice until the dispute is resolved.
- 3.5 The Price includes all taxes, levies and duties unless otherwise stated.
  - 3.6 All amounts are payable in New Zealand dollars unless otherwise specified.
  - 3.7 The Supplier is not entitled to recover from Silver Fern Farms any amount other than the Price for the Products.
  - 3.8 Silver Fern Farms may set off any amount the Supplier owes to it against any amount it owes the Supplier.

## 4 DELIVERY AND PACKAGING

- 4.1 The Supplier must deliver or supply the Products:
  - (a) within the time reasonably requested by Silver Fern Farms or, where no time is stated, in a timely manner;
  - (b) in a secured manner to the required delivery address specified in the PO or SOW; and
  - (c) with documentation giving details of the Products delivered, including the order number (if any).
- 4.2 The Supplier must obtain written acknowledgement of receipt from Silver Fern Farms immediately on supplying the Products.
- 4.3 All costs incurred in delivering the Products (including packaging costs) will be met by the Supplier unless specified otherwise in this Agreement or the relevant PO or SOW.

## 5 REJECTION OF PRODUCTS

- 5.1 For the purposes of this clause, the following Products are deemed to be “**Defective Products**”:
  - (a) Products having any defect or not conforming to Product specifications or the requirements of Silver Fern Farms;
  - (b) Products supplied to Silver Fern Farms that Silver Fern Farms did not order;
  - (c) Products supplied in a different quantity than ordered unless agreed to in writing by Silver Fern Farms; or
  - (d) Products not delivered as required under this Agreement unless agreed to in writing by Silver Fern Farms.
- 5.2 Silver Fern Farms may, at its sole discretion:
  - (a) reject Defective Products in whole or in part; or
  - (b) require the Supplier to replace or re-perform Defective Products.
- 5.3 Silver Fern Farms must notify the Supplier of the reasons why Defective Products have been rejected.
- 5.4 If Silver Fern Farms rejects any of the Defective Products. Silver Fern Farms:



- (a) will return the rejected Defective Products to the Supplier at the Supplier's cost; and
- (b) is not required to pay for the Defective Products and the Supplier must immediately refund any payments made by Silver Fern Farms for the Defective Products without any set off or deduction.

## 6 TITLE AND RISK

- 6.1 Title in the Products passes to Silver Fern Farms upon payment in full for those Products unless Silver Fern Farms is withholding part payment due to a dispute concerning those Products (having notified the Supplier of the reason for the dispute) in which case title passes on payment of the amount not in dispute.
- 6.2 Risk of loss or damage to the Products passes to Silver Fern Farms on delivery or supply in accordance with clause 4.1.
- 6.3 Clauses 6.1 and 6.2 do not apply to Defective Products that are rejected or replaced under clause 5.2 in which title and risk is deemed never to have passed to Silver Fern Farms.

## 7 WARRANTIES AND OBLIGATIONS

- 7.1 The Supplier warrants and represents to Silver Fern Farms that the Products are:
  - (a) free and clear from all charges, encumbrances and other interests at the time title in the Products passes to Silver Fern Farms in accordance with clause 6.1;
  - (b) free from material defects (including virus in the case of a software product) and are generally of acceptable and merchantable quality and condition;
  - (c) will be provided by persons who are properly qualified, licensed and capable to provide the Products, and that Products will be provided with the degree of skill, diligence, prudence and foresight which would reasonably be expected from a contractor who is skilled, competent and experienced in providing services that are similar in size, type, nature, scope and complexity to the Products;
  - (d) meet and will perform the functions set out in the Supplier's specifications (if any) and any requirements set out in this Agreement (including any service level agreement); and
  - (e) do not infringe any patent, trademark or other Intellectual Property right of a third party.
- 7.2 The Supplier will take all reasonable steps to ensure that Silver Fern Farms has the full benefit of any manufacturer or other third-party warranties (if any) in relation to the Products.
- 7.3 The Supplier will pay all costs and expenses (including any legal costs) incurred by Silver Fern Farms as a result of any failure by the Supplier to comply with any obligation under this Agreement in a timely manner or in relation to Silver Fern Farm's enforcement or attempted enforcement of its rights, remedies and powers under this Agreement.

## 8 DURATION AND TERMINATION

- 8.1 This Agreement commences on the Start Date and

continues unless or until earlier terminated in accordance with this clause 8.2, 8.3 or 8.5.

- 8.2 Silver Fern Farms may terminate this Agreement at any time by giving at least thirty (30) days' written notice to the Supplier.
  - 8.3 Silver Fern Farms may terminate this Agreement immediately on written notice to the Supplier if:
    - (a) the Supplier is, in the reasonable opinion of Silver Fern Farms, failing in a material respect to perform or comply with the Supplier's obligations under this Agreement;
    - (b) the Supplier has breached a warranty or representation given to Silver Fern Farms under this Agreement; or
    - (c) the Supplier or the Supplier's agent or contractor (as the case may be) does not hold public liability insurance in accordance with clause 14.1 or fails to provide to Silver Fern Farms with a certificate of insurance in accordance with clause 14.2.
  - 8.4 Either party may terminate this Agreement immediately on written notice to the other, if the other party:
    - (a) is in breach of this Agreement (not being a minor matter) and, if the breach is capable of remedy, the other party has not remedied the breach within 14 days after receiving a notice from the terminating party requiring it to do so; or
    - (b) has a liquidator (other than a liquidator appointed in connection with a solvent reconstruction or amalgamation), receiver, statutory manager or similar officer appointed over its assets.
  - 8.5 Termination or expiry of this Agreement will not prejudice any rights or obligations of either party which existed prior to termination or expiry. Clauses which, by their nature are intended to survive expiry or termination, will continue to be in force following termination or expiry of this Agreement.
  - 8.6 On expiry of this Agreement (unless it is terminated earlier) the Supplier must supply, and Silver Fern Farms must pay for, all Products ordered by Silver Fern Farms up to and including the expiry date.
  - 8.7 If this Agreement is terminated before expiry, the Supplier is not obliged to supply, and Silver Fern Farms is not obliged to pay for, any Products that have not been supplied before termination, and the Supplier must refund all payments made by Silver Fern Farms for any unsupplied Products.
  - 8.8 **Transition:** On the termination or expiry of this Agreement, at the Client's request, the Supplier shall for a reasonable time after expiry or termination, assist the Client as is necessary to ensure a reasonably smooth handover to the Client.
- ## 9 DEDUCTIONS
- 9.1 Silver Fern Farms may deduct from any amount it owes the Supplier an amount equal to any payment made to the Supplier in excess of what was owed to the Supplier at the time of payment. If making a



deduction under this clause then Silver Fern Farms must notify the Supplier of the reasons for claiming the deduction.

- 9.2 The exercise of Silver Fern Farms' rights under this clause does not limit or affect any other remedies available to Silver Fern Farms.

## 10 INTELLECTUAL PROPERTY RIGHTS

10.1 **Retained Intellectual Property:** The following IP (including any modification, enhancement or derivative work of that IP) remains the property of the current owner, regardless of its use in the Product:

- (a) IP that existed prior to the date of this Agreement; and
- (b) IP that was developed independently of this Agreement.

10.2 **Ownership of IP created as part of providing the Goods and Services:**

Subject to clause 10.1 and unless otherwise specified elsewhere in this Agreement, the Silver Fern Farms will own all new IP that the Supplier creates or develops as part of or in connection with the supply or provision of the Products on payment of all of the Fees relating to those Products. If any new IP described in this clause 10.2 incorporates the Supplier's IP or any third party's IP, the Supplier grants or, in the case of third party IP, will obtain for Silver Fern Farms, an irrevocable, perpetual, royalty-free and non-transferable licence to use that IP for Silver Fern Farm' use at no additional cost to Silver Fern Farms.

10.3 **Indemnity:** Subject to the limitations in this clause, the Supplier agrees to indemnify, keep indemnified and hold harmless Silver Fern Farms against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses (including all legal costs and expenses on a solicitor and own client basis) suffered or incurred by Silver Fern Farms arising out of, or in connection with, any claim that Silver Fern Farms' use or possession of any IP provided by the Supplier infringes the IP rights of any third party.

## 11 REGULATORY INSPECTION

Where a regulatory inspection is conducted of the Supplier's facilities and that inspection touches on Products that are supplied to Silver Fern Farms, then the Supplier must provide a copy of the final report of that inspection to Silver Fern Farms upon request.

## 12 DISPUTE RESOLUTION

12.1 **Notice:** If any dispute or difference arises out of, or in connection with, this Agreement ("**Dispute**"), the party claiming that a Dispute has arisen must give written notice ("**Notice of Dispute**") to the other party specifying the nature, and reasonable details of the Dispute.

12.2 **Negotiations:** On receipt of a Notice of Dispute, the parties agree that they will endeavour to resolve the

Dispute through good faith negotiations and discussions.

12.3 **Mediation:** If the Dispute is not resolved within ten (10) Business Days of the Dispute being referred to negotiations under clause 12.2, the Parties will refer the Dispute to mediation unless the Parties agree to some other form of alternative dispute resolution. If the Dispute is referred to mediation, the mediation will be conducted:

- (a) by a single mediator agreed by the Parties or if they cannot agree, appointed by the Chair of the New Zealand Resolution Institute ("**NZRI**") (or such other body that may replace that one from time to time);
- (b) on the terms of the NZRI's standard mediation agreement; and
- (c) at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Chair of NZRI.

Each Party will pay its own costs of mediation or alternative dispute resolution under this clause 12.3

12.4 **Arbitration:** If the Dispute is not resolved within fifteen (15) Business Days of the Dispute being referred to mediation or other agreed alternative dispute resolution method conducted under clause 12.3, then either party may refer the Dispute for determination by arbitration in accordance with the following:

- (a) the arbitration will 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 will be appointed by the President for the time being of the New Zealand Law Society (or the President's nominee);
- (b) the decision of the arbitrator will be final and binding on the parties;
- (c) the arbitration is to be conducted in accordance with the Arbitration Act 1996 (excluding clause 5 of the Second Schedule);
- (d) any Dispute referred to arbitration is to 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
- (e) 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 will bear costs), the costs of the arbitrator will be borne equally.

12.5 **No action:** A party may not issue legal proceedings (other than for urgent interlocutory relief) in respect of any Dispute until the process set out in this clause 12 has been complied with.

## 13 CONFIDENTIALITY

13.1 **Security:** Each party agrees that, unless it has the prior written consent of the other party, it will:

- (a) keep confidential at all times the Confidential Information of the other party; and



- (b) ensure that any personnel or professional advisor to whom a party discloses the other party's Confidential Information is aware of, and complies with, this clause 13.1.

13.2 **Disclosure required:** The obligations of confidentiality in clause 13.1 do not apply to any disclosure:

- (a) required for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
- (b) required by law (including under the rules of any stock exchange); or
- (c) of Confidential Information which:
  - i is publicly available through no fault of the recipient of the Confidential Information or its personnel; or
  - ii was rightfully received from a third party without restriction and without breach of any obligation of confidentiality; or
- (d) by the Supplier if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that the Supplier enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 13.

13.3 **Return of information:** Except to the extent that a party has ongoing rights to use Confidential Information, a party must, at the request of the other party following the expiry or termination of the Agreement, promptly return to the other party or destroy all Confidential Information of the other party in the recipient party's possession or control.

13.4 Where a party discloses Confidential Information to any person, including any authorised personnel or third-party purchaser under clause 13.2, that disclosing Party will remain fully liable for any disclosure by the recipient that would constitute a breach of this Agreement if made by the disclosing Party.

## 14 INSURANCE

14.1 The Supplier acknowledges that neither the Supplier nor any agent or contractor of the Supplier may enter the Premises unless the Supplier or the Supplier's agent or contractor (as the case may be) holds public liability insurance for an amount of not less than \$10 million.

14.2 Prior to entering the Premises, the Supplier or the Supplier's agent or contractor (as the case may be) must provide to Silver Fern Farms a certificate of insurance evidencing the type and level of insurance identified in clause 14.1 and must also provide updated copies as and when requested by Silver Fern Farms.

## 15 HEALTH AND SAFETY

15.1 This clause 15 identifies certain health and safety obligations to be met by the Supplier prior to entering, and while on, the Premises.

15.2 The Supplier will be responsible for ensuring the health and safety of any person authorised by the Supplier to enter the Premises ("**Authorised Person**") and any person who may be affected by the performance of an Authorised Person while on the Premises.

15.3 The Supplier will do all things necessary to ensure compliance with its obligations under the Health and Safety at Work Act 2015 ("**Act**") and any regulations, approved codes of practice or safe work instruments promulgated under the Act.

15.4 The Supplier will, procure any Authorised Person to, comply with Silver Fern Farms' health and safety policies, procedures and standard practices and all safety directions of Silver Fern Farms given prior to entering, and while on, the Premises.

15.5 The Supplier will, prior to entering the Premises, provide Silver Fern Farms with written notice advising that each Authorised Person is adequately qualified to perform the acts that the Authorised Person is entering the Premises to undertake.

15.6 The Supplier will, at its own cost, develop and implement a health and safety management plan that covers the performance of any Authorised Person while on the Premises and which must be made available to Silver Fern Farms on request. The Supplier will make any changes to that plan reasonably requested by Silver Fern Farms.

15.7 The Supplier will, and will procure its Authorised Persons to, promptly notify Silver Fern Farms when any hazard or risk exists, or any situation arises, where any person may not be safe, or harm may result to any person, as a result of the performance of any act by an Authorised Person while on the Premises.

15.8 Silver Fern Farms may terminate this Agreement without notice and require the Supplier and its Authorised Persons to leave the Premises if the Supplier or its Authorised Persons are in material breach of this clause 15. If termination under this clause 15 occurs, then Silver Fern Farms will not be liable to the Supplier for any balance of the term of this Agreement.

## 16 GENERAL

16.1 **Variation:** This Agreement may not be varied or modified in any way subsequent to its execution except in writing signed by the parties.

16.2 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:

- (e) immediately notifies the other party and provides full information about the Force Majeure;
- (f) uses best endeavours to overcome the Force Majeure; and



- (g) continues to perform its obligations as far as practicable to the extent not affected by the Force Majeure.
- 16.3 **Assignment:** The Supplier must not assign this Agreement (including by operation of law, judicial process or otherwise) without the prior written consent of Silver Fern Farms (acting in its sole discretion).
- 16.4 **No Waiver:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by any party will in any way affect, limit or waive that party's right thereafter to enforce and compel strict compliance with the provisions of this Agreement.
- 16.5 **Severability:** Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down, if possible, so as to be valid and enforceable, and is otherwise severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement.
- 16.6 **Entire Agreement:** This Agreement constitutes the entire agreement and understanding of the parties concerning its subject matter and supersedes all prior agreements and understandings between the parties.
- 16.7 **Notice:** Notice to be given in writing under, or in connection with, this Agreement is to be given by personal delivery or by electronic mail, and in the case of electronic mail will be deemed to be given at the time specified in the delivery report automatically generated by the computer system from which the electronic mail was sent.
- 16.8 **Counterparts:** This Agreement may be signed in two or more counterparts (including scanned and other electronic copies) each of which is deemed an original and all of which constitute one and the same document and a binding and enforceable agreement between the parties. Any party may sign this Agreement by signing any such counterpart (including by electronic signatures inserted by a party), and the other parties may rely on such electronic signatures and such signatures will be deemed equivalent to original signatures.
- 16.9 **Governing Law:** This Agreement is to be construed in accordance with the laws of New Zealand. Subject to clause 12, the New Zealand courts will have exclusive jurisdiction.
- 16.10 **Independent Contractor:** The Supplier is Silver Fern Farms' independent contractor. No other relationship (e.g. joint venture, agency, employment, trust or partnership) exists under this Agreement. Neither party has authority to bind the other party in relation to any matter.
- 16.11 **Conflict:** In the event of any conflict between this Agreement and:
- (a) the Supplier's terms and conditions, then the Agreement will apply and in any event none of Supplier's terms and conditions will be of any effect nor binding on the parties unless Silver Fern farms has expressly accepted them in writing; and
- (b) those attached to any of Silver Fern Farms' orders or purchase orders, then the Agreement will apply unless clearly stated otherwise in that order or any relevant signed written agreement between Silver Fern Farms and the Supplier.

