



100% MADE OF NEW ZEALAND

STANDARD PURCHASING TERMS (NON-LIVESTOCK GOODS)



1. Definitions and Interpretations

1.1 Definitions:

In this Agreement unless the context otherwise requires:

"Agreement" means this agreement and the PO (if any), and includes any amendments or variations agreed in writing;

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

"Defective Goods" has the meaning given in clause 5.1;

"Dispute" has the meaning given in clause 12.1;

"Force Majeure" means an event or circumstance that is beyond the reasonable control of the party claiming relief under clause 16.1, including:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires or 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 hazardous properties; or
- (e) strikes, lockouts, epidemic, pandemic, infectious disease, lockdowns or government order or intervention,

however a Force Majeure does not include any event or circumstance that the party claiming relief could have prevented or overcome by taking reasonable care;

"Goods" means the Supplier's goods listed or identified in the PO;

"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;

Payment Month has the meaning set out in clause 3.2;

"PO" has the meaning in clause 2.1;

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

"Price" means the applicable price stated in the PO relating to the Goods;

Silver Fern Farms means Silver Fern Farms Limited (NZ Company Incorporation Number 5474064);

"Supplier" means any person that supplies or agrees to supply Goods to Silver Fern Farms in accordance with any PO; and

"Supplier's Personnel" means the Supplier's employees, contractors, consultants, agents, directors, shareholders and other authorised representatives.

1.2 Interpretations:

In this Agreement unless the context otherwise requires:

- (a) where the terms stated in this Agreement are in conflict the PO issued by Silver Fern Farms; then the PO will prevail;
- (b) a reference to a clause is a reference to a clause in this Agreement;
- (c) headings and sub-headings have been included for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) any word importing the singular number includes the plural and vice versa;

2. Orders

2.1

Silver Fern Farms may order Goods by sending a purchase order 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 Goods it has not ordered and

100% MADE OF NEW ZEALAND

may return to the Supplier at the Supplier's cost any such Goods delivered.

3. Price and Payment

3.1 Unless Silver Fern Farms has agreed in writing prior to consignment of the Goods, the Supplier must not invoice Silver Fern Farms more than the Price.

3.2 Unless otherwise agreed in writing by the parties, Silver Fern Farms must pay the Supplier for the Goods by the last day of the month ("Payment Month") following the month in which the Goods were delivered, 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 the invoice shall be paid 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 Goods supplied (by item where applicable) and the price for those Goods;
- (b) quote Silver Fern Farms purchase order number (if any);
- (c) be sent by electronic email to: APScan.Services@silverfernfoods.co.nz or any other address as Silver Fern Farms may advise 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 in accordance with this Agreement.

3.5 The Price includes all taxes 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 Goods.

4. Delivery and Packaging

4.1 The Supplier must deliver the Goods:

(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; and

(c) with documentation giving details of the Goods including the order number (if any).

4.2 The Supplier must obtain written acknowledgement of receipt from Silver Fern Farms immediately on delivering the Goods.

4.3 All costs incurred in delivering the Goods (including packaging costs) will be met by the Supplier.

5. Rejection of Goods

5.1 The following Goods are deemed to be "Defective Goods":

- (a) Goods having any defect or not conforming to specifications or requirements notified by Silver Fern Farms;
- (b) Goods supplied to Silver Fern Farms that Silver Fern Farms did not order;
- (c) Goods supplied in a different quantity than ordered unless agreed to in writing by Silver Fern Farms; or
- (d) Goods not delivered as required under this Agreement unless agreed to in writing by Silver Fern Farms.

5.2 Silver Fern Farms may:

- (a) reject Defective Goods in whole or in part; or
- (b) require the Supplier to replace Defective Goods.

5.3 Silver Fern Farms must notify the Supplier of the reasons why Defective Goods have been rejected.

5.4 If Silver Fern Farms rejects any of the Defective Goods, Silver Fern Farms:

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



6. Title and Risk

- 6.1 Title in the Goods passes to Silver Fern Farms upon payment in full for those Goods unless Silver Fern Farms is withholding part payment due to a dispute concerning those Goods (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 Goods passes to Silver Fern Farms on delivery in accordance with clause 4.1.
- 6.3 Clauses 6.1 and 6.2 do not apply to Defective Goods 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. Supplier's Warranties

- 7.1 The Supplier warrants that the Goods:
- (a) are free from encumbrances at the time title in the Goods passes to Silver Fern Farms;
 - (b) are free from material defects;
 - (c) meet and will perform the functions set out in the Supplier's specifications (if any); and
 - (d) do not infringe any patent, trade mark or other intellectual property right of a third party.

8. Duration and Termination

- 8.1 Silver Fern Farms may terminate this Agreement at any time by giving at least thirty (30) days' written notice to the Supplier.
- 8.2 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 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 a certificate of insurance in

accordance with clause 14.2.

8.3 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.

8.4 Termination or expiry of this Agreement will not prejudice any rights or obligations of the parties which exist prior to termination or expiry.

8.5 On termination or expiry of this Agreement (subject to clause 8.6) the Supplier must supply, and Silver Fern Farms must pay for, all Goods ordered by Silver Fern Farms up to and including the termination or expiry date.

8.6 The Supplier is not obliged to supply, nor is Silver Fern Farms obliged to pay for Goods that have not been supplied before termination and (subject to clause 8.7) the Supplier will reimburse any payment made by Silver Fern Farms for any unsupplied Goods.

8.7 Where this Agreement is terminated under clause 8.1 and the Supplier gives prompt notice of any Goods it has already taken steps to supply, Silver Fern Farms may elect to either:

- (a) accept and pay for the Goods yet to be supplied; or
- (b) not accept such Goods, in which case Silver Fern Farms will reimburse proven or substantiated costs reasonably incurred by the Supplier in relation to the unsupplied Goods prior to the date of termination, provided that the Supplier takes reasonable steps to mitigate the risks and minimise costs.

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. Conflict
- 10.1 In the event of any conflict between this Agreement and the Supplier's terms and conditions, then this Agreement will apply.
- 10.2 In the event of any conflict between this Agreement and those attached to any order furnished by Silver Fern Farms, then this Agreement will apply unless stated otherwise in that order.
- ## 11. Regulatory inspection
- Where a regulatory inspection is conducted of the Supplier's facilities and that inspection touches on Goods 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 shall 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 endeavor 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 Resolution Institute'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 and conducted under clause 12.3, then either party may refer the Dispute for determination by arbitration in accordance with the following:
- (a) 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);
 - (b) the decision of the arbitrator shall be final and binding on the parties;
 - (c) the arbitration shall be conducted in accordance with the Arbitration Act 1996 (excluding clause 5 of the Second Schedule);
 - (d) 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
 - (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 shall bear costs), the costs of the arbitrator shall 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.
- ## 13. Confidentiality
- 13.1 Neither party will disclose any information concerning this Agreement to any person (except as may be required by law) without the prior written approval of the other 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) shall have provided to Silver Fern Farms a certificate of insurance evidencing the type and level of insurance identified in clause 14.1 and shall provide updated copies as requested by Silver Fern Farms.

15. Health and Safety

- 15.1 The Parties agree to consult, cooperate and coordinate with each other to fulfil their health and safety obligations. Silver Fern Farms may require the Supplier to enter into a Memorandum of Understanding for the purpose of giving effect and adding detail to this clause.
- 15.2 The Parties 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.
- 15.3 The Supplier will, and will procure that Supplier Personnel will, if required to enter the Premises:
- (a) 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; and
 - (b) If providing Goods that requires machinery, tools and/or equipment or physical work on the Premises itself, prior to entering the Premises:
 - i. complete a Silver Fern Farms induction;
 - ii. provide certification evidence of relevant competencies to undertake services or provide the deliverables;
 - iii. have a readily available site-specific safety plan (SSSP), as well as any other risk assessments or permits completed as required by Silver Fern Farms;
- Farms; and
- iv. ensure that such tools, machinery and/or equipment are compliant with the relevant Australian or New Zealand Standards (AS/NZS); or
- (c) If providing Goods that do not require physical tools, equipment or physical work on the premises itself, enter the Premises under the direct supervision and guidance of a fully-inducted Silver Fern Farms staff member.
- 15.4 The Supplier will, at its own cost, develop and implement a health and safety management system that covers the performance of any Supplier Personnel while on the Premises and which must be made available to Silver Fern Farms on request, for the purposes of investigation, review or audit. The Supplier will make any changes to that system and take any further action with regard to implementation of that system, as reasonably requested by Silver Fern Farms.
- 15.5 The Supplier will, and will procure Supplier Personnel, 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.
- 15.6 It is acknowledged by the Parties that breach of this clause 15 may (if reasonably considered by Silver Fern Farms) amount to a breach which is not capable of remedy for which Silver Fern Farms may terminate this Agreement on written notice, pursuant to clause 8.3(a). In addition, Silver Fern Farms may require the Supplier and Supplier Personnel to leave the Premises in the event of such breach and may refuse re-entry at its sole discretion.

16. Force Majeure

- 16.1 **No Liability:** Subject to Clause 16.2, neither party will be liable to the other for any failure to perform its obligations under this Agreement to the extent the failure is caused or contributed to by a Force Majeure.
- 16.2 **Obligations of the Affected Party:** A party who wishes to claim relief under clause 16.1 shall:
- (a) notify the other party in writing as soon as reasonably possible. The notice must state:



	<ul style="list-style-type: none"> i. the nature of the circumstances giving rise to the Force Majeure; ii. the extent of that party's inability to perform under this Agreement; iii. the likely duration of that non-performance; and iv. the steps that party are taking and/or have taken to minimise the impact of the Force Majeure on the performance of obligations under this Agreement; 	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.
17.4		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.
17.5		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.
17.6		Notice: Notice to be given in writing under, or in connection with, this Agreement shall be given by personal delivery or by electronic mail, and in the case of electronic mail shall 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.
17.7		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 shall be deemed equivalent to original signatures.
17.8		Governing Law: This Agreement shall be construed in accordance with the laws of New Zealand. Subject to clause 12, the New Zealand courts will have exclusive jurisdiction.
17.1	Variation: This Agreement shall not be varied or modified in any way subsequent to its execution except in writing signed by the parties.	
17.2	Assignment: The Supplier shall 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).	
17.3	No Waiver: No waiver of any breach, or	

