



Silver Fern Farms (Shanghai): Standard Terms of Trade

银之蕨食品(上海)有限公司标准交易条款 (特殊情况)

This agreement sets out the terms and conditions relating to the supply and sale of the Products to the Purchaser ("Agreement").

本协议规定了与向采购方供应和销售产品有关的条款和条件("协议")。

1. Definitions and Interpretation 定义与解释

1.1. **Definitions.** In addition to other terms defined in this Agreement, capitalised terms used in this Agreement have the following meanings unless the context otherwise requires:

定义。除了本协议中定义的其他术语外,除非上下文另有要求,本协议中所使用的大写术语具有如下含义:

"Business Day" means a day of the week other than Saturday, Sunday and the official public holidays declared in the PRC.

"工作日"是指除星期六、星期日以及中国法定节假日以外的任何一天。

"Commencement Date" means the date of this Agreement.

"起始日"是指本协议的签署日。

"Damages" means any direct and indirect loss, liability, demands, awards, claim, suit, damage, costs and expense (including reasonable legal fees and expenses).

"损害"是指任何直接和间接的损失、责任、要求、裁决、索赔、诉讼、损害、成本和费用(包括合理的法律费用和支出)。

"Delivered" has the meaning ascribed to it in Clause 5.3, and **"Delivery"** has the same corresponding meaning.

"已交付"具有第5.3条中定义的含义,"**交付**"具有相同的对应含义。

"Force Majeure" means an event that is beyond the reasonable control of the Party immediately affected by such event, including:

"不可抗力"是指超出立即受该事件影响的一方合理控制范围的事件,包括:

(a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;

天灾、雷击、地震、海啸、火山爆发、洪水、暴风雨、爆炸、火灾、流行病和任何自然灾害;

(b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;

战争行为(不论是否宣战)、入侵、外敌行动、军事动员、征用或贸易禁令;

(c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; or

公敌行为、恐怖主义、暴动、内乱、恶意破坏、毁坏

、叛乱、起义、革命或军事政变或内战行为;

(a) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties,

核物质放射或细菌战或任何其他此类危险物质的污,

but excludes any risk or event that the Party claiming could have prevented or overcome by taking reasonable care.

但不包括主张不可抗力事由的当事方采取合理注意本可以预防或克服的任何风险或事件。

"Party" means a party to this Agreement and **"Parties"** means both of them.

"一方"是指本协议的其中一方当事方,"**双方**"是指本协议项下的双方当事方。

"PRC" means the People's Republic of China excluding, for the purpose of this Agreement only, the Hong Kong Special Administrative Region, the Macau Special Administrative Region and Taiwan.

"中国"是指中华人民共和国,仅为本协议之目的,不包括香港特别行政区、澳门特别行政区和台湾。

"Prices" means the prices for the Product as agreed between the Parties from time to time as specified in the relevant Purchase Order and the VAT Fapiao.

"价格"是指双方在相关订单和增值税发票中不时约定的产品价格。

"Product" means the products listed and identified in each Purchase Order.

"产品"是指每个订单中列出和注明的产品。

"Purchase Order" has the meaning ascribed to it in Clause 3.3 and includes the Final Purchase Order.

"订单"具有第3.3条规定的含义,包括最终订单。

"Purchaser" means the purchaser of the Products.

"采购方"是指产品采购方。

"Silver Fern Farms" means Silver Fern Farms (Shanghai) Limited, a limited liability company incorporated in the People's Republic of China (Unified Social Credit Code:91310115MA1HAE2L1K).

"银之蕨"是指银之蕨食品(上海)有限公司,一家注册在中国的有限责任公司(统一社会信用代码:91310115MA1HAE2L1K).

"Term" means the term of this Agreement as determined by Clause 2.1 of this Agreement.

"期限"是指本协议第2.1条确定的本协议的期限。

"VAT" means any valued added tax or any other goods and services tax applicable under PRC law, at the rate prevailing from time to time; and

"增值税"是指按照不时适用的税率,中国法律适用的任何增值税或任何其他货物和服务税;及

"VAT Fapiao" means the VAT invoice obtained from

local tax authority and issued by Silver Fern Farms which contains the following:

“**增值税发票**”是指从当地税务机关领购、由银之蕨开具的包含以下内容的增值税发票:

- (a) Full listed Chinese names of the Parties;
双方经登记的完整的中文名称;
- (b) Tax ID codes of the Parties;
双方的纳税人识别号;
- (c) Corresponding transaction amount; and
相应的交易金额; 及
- (d) Silver Fern Farms' *fapiao* chop.
银之蕨的发票章。

1.2. **Interpretation.** In this Agreement, unless the context otherwise requires or as specifically otherwise stated:

解释。 本协议中, 除非上下文另有要求或另有说明:

- (a) headings are to be ignored;
标题应予以忽略;
- (b) “including”, “particular”, “such as” and similar words do not imply any limitation;
“包括”、“特别是”、“例如”等类似措辞并不表示任何限制;
- (c) references to any form of law are to PRC law, including as amended or re-enacted at any time or from time to time;
本协议提及的任何形式的法律均指中国法律, 包括在任何时间或不时修订或重新颁布的法律;
- (d) references to a party or a person include any form of entity and their respective successors, assigns and representatives;
本协议提及的某方或某人士包括任何形式的实体及其各自的继承人、受让人和代表;
- (e) Shanghai times and dates apply, and references to a month or a year are references to a calendar month or year, as the case may be;
适用上海时间和日期, 本协议提及的一个月或一年均指一个日历月或一个日历年(视情况而定);
- (f) every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at any time;
一方当事人的每一项权利、权力和救济均不受限制, 且可以在不损害彼此的情况下随时行使;
- (g) singular includes plural and vice versa;
单数包括复数, 反之亦然;
- (h) references to sections, clauses, schedules, annexes and other identifiers are to those in this Agreement, and form part of this Agreement;

本协议提及的节、条款、附件、附录和其他标识是指本协议的节、条款、附件、附录和标识, 并构成本协议的一部分;

- (i) “written” and “in writing” include any means of reproducing words, figures or symbols in a tangible and visible form; and
“书面”和“以书面形式”包括以有形和可见的形式的复制文字、图形或符号的任何方式; 及
- (j) reference to “RMB” is to Renminbi, the legal currency of the PRC.

本协议提及的“人民币”是指中国的法定货币人民币。

2. Term and Termination 期限与终止

2.1. **Term:** This Agreement starts on the Commencement Date and will continue from that date until it is terminated in accordance with Clause 2.2 or 2.3 (“Term”).

期限: 本协议于起始日起开始生效, 并将自该日期起持续有效直至其根据第 2.2 条或第 2.3 条终止时为止 (“期限”)。

2.2. **Termination for Convenience:** Silver Fern Farm may terminate this Agreement at any time without cause by giving the Purchaser at least three (3) months' notice in writing.

便利终止: 银之蕨可在任何时间通过至少提前三 (3) 个月向采购方发出书面通知的方式无故终止本协议。

2.3. **Event of Default:** A Party may terminate this Agreement, with immediate effect, by notice in writing to the other Party if that other Party is in default as specified in this Clause 2.3. A Party is in default if that Party:

违约事件: 当一方有本协议第 2.3 条项下规定的违约行为时, 另一方可向对方发出书面通知终止本协议, 终止立即生效。一方发生如下情形的, 则构成违约:

- (a) commits a material breach which is not capable of remedy; or
有不可补救的重大违约行为; 或
- (b) commits a material breach which is capable of remedy and fails to remedy it within fifteen (15) Business Days (inclusive of the date of receipt) after receiving written notice to remedy from the other Party; or
有可以补救的重大违约行为, 但未能在收到另一方要求补救的书面通知后十五 (15) 个工作日 (含收到通知之日) 内予以补救; 或
- (c) is, or becomes, or is deemed to be, bankrupt or insolvent or has a trustee in bankruptcy or receiver or similar entity appointed; or
处于或将处于或被视为破产、资不抵债, 或已委任破产管理人、接管人或类似实体; 或
- (d) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, that Party's creditors; or
为该方债权人的利益作出转让行为, 或与该方债权人订立或作出任何安排或协议; 或



- (e) passes any resolution, or any processing is commenced, for the liquidation of that Party (whether voluntarily or otherwise); or

为该方的清算通过任何决议，或开始任何程序（无论是出于自愿还是其他原因）；或

- (f) suspends or ceases the primary, or all of the, business activities of that Party for fifteen (15) consecutive Business Days.

该方连续十五（15）个工作日暂停或停止其主要或全部商业活动。

- 2.4. **No Waiver of Other Rights or Remedies.** The exercise of either Party of any right of termination under this Agreement shall not constitute a waiver of any other rights or remedies available to that Party under this Agreement.

不放弃其他权利或救济。任何一方行使本协议项下的任何终止权利，均不构成该方对本协议项下其享有的任何其他权利或者救济的放弃。

- 2.5. **Effect of Termination; Survival:** The termination of this Agreement shall be without prejudice to any rights, remedies or obligations incurred or accrued under this Agreement prior to termination or expiration. Nothing in this Agreement shall prejudice:

终止效力；存续：本协议的终止不影响在本协议终止或期满前根据本协议产生或享有的任何权利、救济或义务。本协议中的任何规定均不影响：

- (a) the right of either Party to recover any amount outstanding at such termination or expiration; and

任何一方追索截止至该等终止或期满时的任何未付款项的权利；及

- (b) any additional obligations surviving, or intended to survive, this Agreement.

任何在本协议终止后应继续履行或意欲继续履行的额外义务。

- 2.6. **Performance of Confirmed Orders Post-termination:** If the Purchase Order is received and accepted by Silver Fern Farms before the notice of termination is issued pursuant to Clause 2.2 or 2.3, Silver Fern Farms and the Purchaser shall continue to perform such Purchase Order in accordance with this Agreement.

终止后已确认订单的履行：如在根据第 2.2 条或第 2.3 条发出终止通知前，订单已由银之蕨收到并接受，则银之蕨和采购方应当依据本协议规定继续履行该订单。

3. Supply and Order 供货与订单

- 3.1. **Supply:** Silver Fern Farms agrees to sell to the Purchaser, and the Purchaser agrees to purchase from Silver Fern Farms, the Products at the relevant Prices and in such quantities as the Purchaser may order from time to time subject to, and on, the terms and conditions of this Agreement. The Parties intend that the terms and conditions set out in this Agreement shall apply to the sale of Products by Silver Fern Farms to the Purchaser who will on-sell the Products to end customers without cutting up or toll processing the Products and then packing or repacking those Products using Silver Fern

Farm's brands, trademarks and/or logo. If this Agreement conflicts with the terms of trade in a specific Silver Fern Farms supply contract (such as distribution agreement with toll processing requirements), then the terms in that specific contract apply.

供货：银之蕨同意向采购方出售且采购方同意从银之蕨处以相关价格购买产品，数量由采购方根据本协议的条款和条件不时订购的数量决定。双方旨在使本协议的条款与条件适用于银之蕨向采购方出售产品，且采购方向最终消费者出售该等产品，而无需对产品进行切割或者来料加工，然后使用银之蕨的品牌、商标和/或者标志包装或者重新包装这些产品。如本协议与银之蕨特定的供应合同（如包含来料加工要求的分销协议）中的贸易条款相冲突，则以该特定合同中的条款为准。

- 3.2. **No Exclusive Supply:** Nothing in this Agreement restricts Silver Fern Farms from distributing, supplying or selling the Products to any third parties.

非独家供货：本协议不限制银之蕨向任何第三方分销、供应或销售产品。

- 3.3. **Order Placement Procedure.** The Purchaser will place orders for the Products (each a "Purchase Order"), specifying the Product item (including detailed description), unit of measure, currency, price and quantity in respect of the Products ordered and the requested delivery date. This is to ensure the Purchase Order and payment line are both matching in the Silver Fern Farms system.

订单下达程序：采购方将下达产品订单（每份称为“订单”），载明订购产品的产品名称（包括详细描述）、计量单位、货币、价格和数量以及要求的交付日期。这是为了确保订单和付款在银之蕨系统相匹配。

- 3.4. **Acceptance of Purchase Order.** Silver Fern Farms is entitled to propose modifications to the Purchase Orders placed by the Purchaser and the Parties shall endeavour to negotiate a final Purchase Order. Once the Purchase Order placed by the Purchaser is accepted by Silver Fern Farms via confirmation in writing, such Purchase Order ("Final Purchase Order") shall constitute binding purchase commitment on the Purchaser. If there is any discrepancy between this Agreement in terms of pricing and the quantities ordered and the Final Purchase Order as accepted by Silver Fern Farms pursuant to this Clause 3.4, the Final Purchase Order will prevail, provided however any reference to the Purchaser's terms and conditions of purchase in its own purchase order form (including the Final Purchase Order) will not form part of agreement to supply and will be of no effect, the intention being this Agreement will constitute the entire agreement between the Parties relating to the sale and purchase of the Products.

订单的接受。银之蕨有权对采购方下达的订单提出修改，双方应努力协商形成一份最终的订单。一旦银之蕨以书面形式确认接受采购方下达的订单，该订单（“最终订单”）应构成对采购方具有约束力的采购承诺。如本协议在定价和订购数量方面与银之蕨根据本协议第 3.4 条接受的最终订单存在任何差异，则以最终订单为准，但是，任何对以采购方订单样式（包括最终订单）中采购条款和条件的提及不构成供应协议的一部分，也不具有任何效力，本协议将构成双方之间有关产品销售和采购的完整协议。



3.5. **Resolution of Supply Problems:** Notwithstanding the above Clause 3.4, if Silver Fern Farms determines that it will not be able to meet the Purchaser's order, it will advise the Purchaser of the extent of the expected shortfall of supply or delay in Delivery, the reasons for the shortfall or delay, and Silver Fern Farms' proposed solution. The Parties will then work together in good faith to identify an appropriate resolution.

供货问题的解决: 尽管有上述第 3.4 条的规定, 如果银之蕨确定其将无法履行采购方的订单, 其将告知采购方预计的供应短缺或延迟履行交付的程度、出现短缺或延迟的原因以及银之蕨提出的解决方案。双方将本着诚意共同努力以确定适当的解决办法。

4. Pricing, Invoicing and Payment 定价、发票与付款

4.1. **Pricing:** The Price for the Products is identified in the Purchase Order and the VAT Fapiao.

定价: 产品价格将在订单和增值税发票中予以注明。

4.2. **Currency:** All Prices for the Product will be quoted in RMB.

货币: 所有价格均以人民币报价。

4.3. **Invoices:** Silver Fern Farms will invoice the Purchaser by issuing a VAT Fapiao for each sale following the acceptance of a particular Purchase Order by Silver Fern Farms and before the Products specified in such Purchase Order are cleared by the PRC customs. Before Silver Fern Farms issues the final VAT Fapiao, the Purchaser shall provide Silver Fern Farms with necessary information, including the Purchaser's full and official Chinese name and tax ID code.

发票: 在特定订单被银之蕨接受后且在该订单载明的产品完成中国海关的清关手续前, 银之蕨将会为该次的销售向采购方开具增值税发票。在银之蕨出具最终增值税发票之前, 采购方向银之蕨提供必要的信息, 包括采购方的官方中文全称以及纳税人识别号。

4.4. **Payment:** Unless otherwise agreed by the Parties in writing, the Purchaser must make full payment within seven (7) days before the vessel carrying the Products arrive at the nominated PRC port without set-off or deduction by internet banking, telegraphic transfer, direct debiting its account or such methods as agreed between Parties.

付款: 除非双方另有书面约定, 买方必须在运载产品的货船抵达指定的中国港口前七 (7) 日内通过网上银行、电汇、直接借记其账户或双方约定的其他方式付清全款, 不得有任何抵消或扣减。

5. Ownership, Delivery and Risk 所有权, 交付和风险

5.1. **Title:** Ownership of, and title to, the Products remain with Silver Fern Farms until all monies due from the Purchaser have been paid to Silver Fern Farms and the Products are Delivered in accordance with Clause 5.3.

所有权: 在采购方向银之蕨支付所有应付款项, 且产品按第 5.3 条交付之前, 产品的所有权属于银之蕨。

5.2. **Cost and Method of Delivery:** The method and cost of delivery will be subject to agreement between the Parties.

交付成本和方式: 交付方式和成本由双方约定。

5.3. **Delivery Defined:** Delivery of Products occurs when the Purchaser has received the Products either:

交付的确定: 当采购方在以下任一地点收到产品时, 交付行为即告发生:

(a) in the case where the Parties have agreed that Silver Fern Farms will be responsible for transporting the Products to the Purchaser's nominated destination, at the Purchaser's destination; or

双方约定由银之蕨负责将产品运输至采购方指定目的地的, 该采购方目的地; 或

(b) in the case where the Parties have agreed that the Purchaser will be responsible for collecting the Products at Silver Fern Farms' premises or warehouse or at the port ("Collection Point") and transporting the Products to the Purchaser's destination, at the agreed Collection Point.

双方约定由采购方负责在银之蕨经营场所、仓库或港口 ("收货地点") 收货并将该产品运输至采购方目的地的, 约定的收货地点。

5.4. **Date of Delivery:** Silver Fern Farms will:

交付时间: 银之蕨将

(a) use reasonable endeavours to deliver the Products within eight (8) weeks from the date of acceptance of the Purchase Order provided however Silver Fern Farms will not be liable to the Purchaser for any failure to deliver or for any delay in delivery howsoever caused; and

尽合理努力在接受订单之日起八 (8) 周内交付产品, 但无论因何种原因导致任何未能交付或延迟交付情形的, 银之蕨无需对采购方承担责任; 及

(b) not be obliged to deliver the Products until payment for the Products is received without set-off or deduction together with any other amounts owed by the Purchaser to Silver Fern Farms notwithstanding that the corresponding VAT Fapiao may not have been issued at the time payment is due.

在收到未被抵销或扣减的货款及采购方欠付银之蕨的任何其它款项后, 方有义务交付产品, 尽管在该款项到期时相应的增值税发票尚未开具。

5.5. **Risk:** Risk of loss or damage in the Products passes to the Purchaser when the Products is Delivered in accordance with Clause 5.3. The Purchaser will be solely responsible for the storage, and insurance in respect of the Products at and after Delivery, except where the Purchaser delays in collecting the Products at the Collection Point under Clause 5.3(b) before or on the requested delivery date as specified under the relevant Final Purchase Order, in which case the risk of loss or damage in the Products passes to the Purchaser on the requested delivery date and the cost of storage and insurance after the requested delivery date shall be borne by the Purchaser.



风险: 当产品按照第 5.3 条的规定交付至采购方时, 该产品灭失或损坏的风险转移至采购方。采购方将全权负责产品在交付时和交付后的储存和保险, 但在第 5.3 (b) 条项下, 若采购方在相关最终订单中要求的交付日期之后在收货地点收货的, 则产品灭失或损坏的风险在要求的交付日期即转移至采购方, 且要求的交付日期之后发生的储存和保险费用应由采购方承担。

6. Representations and Warranties 陈述和保证

Each Party represents and warrants to the other that:

每一方向对方陈述并保证:

- (a) the execution, delivery and performance by it of this Agreement complies with its constituent documents and does not constitute a breach of any law or obligations;

对本协议的签署、交付和履行符合其章程文件, 并且不违反任何法律或义务;

- (b) all necessary actions to authorise the execution, delivery and performance of this Agreement by it have been obtained; and

已采取为授权签署、交付和履行本协议必要的所有行动; 及

- (c) it has full power and capacity to enter into and perform its obligations under this Agreement.

其有充分的权力和能力签订本协议并履行其在本协议项下的义务。

7. Liability 责任

- 7.1. **Limitation:** Subject to Clause 7.2 and to the extent permitted by law, the liability of Silver Fern Farms is limited to the price paid by the Purchaser for the particular Products supplied by Silver Fern Farms to which the Purchaser's claim relates, or direct Damages, whichever is less.

限制: 根据第 7.2 条的规定并在法律允许的范围内, 银之蕨的责任限于采购方就其索赔所涉及的银之蕨供应的特定产品所支付的价款, 或直接损害, 以孰低者为准。

- 7.2. **Exclusion:** To the extent permitted by law, Silver Fern Farms will not be liable to the Purchaser for:

除外责任: 在法律允许的范围内, 银之蕨无需就如下情形对采购方承担责任:

- (a) delay in delivery;

迟延交付;

- (b) loss caused by anything which is beyond Silver Fern Farms' reasonable control;

任何超出银之蕨合理控制范围的事由导致的损失;

- (c) any increase in the losses or damages suffered by the Purchaser which would be prevented if the Purchaser has taken appropriate measures; or

若采购方采取合理措施即能避免的采购方损失或损害的任何增加部分;

- (d) loss of profits savings, goodwill, revenues, business or data or any indirect, special, exemplary, incidental or consequential loss or damage of any kind sustained or suffered by the Purchaser arising from or in any way connected with this Agreement or the sale or use of the Products.

因本协议或产品的销售或使用而导致或以任何方式与之相关的, 采购方遭受的利润、商誉、收入、业务或数据损失, 或任何形式的间接、特别、惩罚性、偶发性或间接损失或损害。

- 7.3. **Claims:** If the Purchaser wishes to make a claim against Silver Fern Farms in respect of any Product sold to the Purchaser, then the Purchaser must:

索赔: 若采购方希望就银之蕨向其销售的货物向银之蕨索赔, 采购方必须:

- (a) make that claim within:

在收到货物后的下述时间内提出索赔:

- (i) fourteen (14) days if the Product is supplied chilled; and

若供应的是冷藏产品, 则为十四 (14) 日; 及

- (ii) twenty-eight (28) days if the product is supplied frozen,

若供应的是冷冻产品, 则为二十八 (28) 日,

of receipt of the Product;

- (b) provide Silver Fern Farms with the opportunity to inspect the Product at Silver Fern Farms' discretion; and

向银之蕨提供由其自行决定检查该货物的机会;

- (c) provide data loggers to Silver Fern Farms on request.

按照要求向银之蕨提供数据记录。

If Silver Fern Farms agrees that the Product is entitled to be rejected, the remedies set out in Clause 7.4 will apply.

若银之蕨同意产品为不合格产品, 则适用第 7.4 条约定的救济措施。

- 7.4. **Remedies:** Silver Fern Farms may, at its option and cost, either:

救济: 银之蕨可自行决定并自行承担费用采取如下任一措施:

- (a) replace any defective Products; or

替换缺陷产品; 或

- (b) refund the purchase price for the affected Products,



退还受影响产品的购买价款，

provided however but to the extent permitted by law, Silver Fern Farms expressly disclaims liability and is not responsible for any defective Products if the Purchaser has not:

但是，在法律允许的范围内，若采购方未采取如下措施，银之蕨明确表明其将不承担责任并且不对任何缺陷产品负责：

- (a) notified Silver Fern Farms of the defect as soon as the Purchaser becomes aware of that defect (in any event within the same day); and

在采购方知晓缺陷后（在任何情形下，在同一天内）尽快通知银之蕨该等缺陷；并且

- (b) included in the Purchaser's notice full details of the Product's alleged defect, and all documents associated with the Purchaser's order and delivery; and

在采购方通知中包含产品所述缺陷的全部细节，以及与采购方订单和交付有关的所有文件；及

- (c) assisted Silver Fern Farms in a full investigation of the Purchaser's claim.

协助银之蕨对采购方的索赔进行全面调查。

8. Indemnification 赔偿

The Purchaser agrees to defend, indemnify and hold harmless Silver Fern Farms from all and any claims, loss, liability, damage, or expense (including reasonable legal fees) arising out of, or in connection with, or resulting from any breach of warranty, misrepresentation, breach or non-fulfilment of any agreement by the Purchaser under this Agreement, or any third party claims arising out of or in connection with the acts and omissions of the Purchaser.

采购方同意，对于因采购方违反本协议项下的保证、不实陈述、违反或不履行本协议项下的任何协议而产生的、与之相关的、或由此导致的所有和任何索赔、损失、责任、损害或费用（包括合理的律师费用），或因采购方的作为和不作为而产生或与之相关的任何第三方索赔，采购方将为银之蕨进行抗辩，向其赔偿并使其免受损害。

9. Confidentiality 保密

- 9.1. **Duty of Confidentiality:** Unless otherwise agreed between the Parties in writing, each Party will keep confidential and not directly or indirectly disclose, or permit the direct or indirect disclosure of, the content of this Agreement or any information made available to them by (or on behalf of) the other Party (including its affiliates) in connection with this Agreement (and the performance thereof) or any and all information whether commercial, marketing or other information relating to the business or finance of the Parties.

保密义务：除非双方另有书面约定，各方均应对本协议内容，或（代表）对方（包括其关联方）向其披露的与本协议（及其履行）有关的任何信息，或无论是商业、营销或其他与双方业务或财务有关的任何及所有信息进行保密，

不得直接或间接披露该等信息，或允许直接或间接披露该等信息。

- 9.2. **Permitted disclosure:** Notwithstanding Clause 9.1, a Party may disclose information:

被允许的披露：尽管有第 9.1 条之规定，一方可披露如下信息：

- (a) that is or becomes public knowledge (other than as a result of a breach of Clause 9.1 by the disclosing Party);

是或成为公众所知的信息（因披露方违反第 9.1 条导致的除外）；

- (b) that is lawfully received by the disclosing Party from a person who is not a party to this Agreement (provided that the person does not owe an obligation of confidentiality in respect of that information);

披露方于非本协议一方的主体处合法获取的信息（前提是该主体对该信息不负有保密义务）；

- (c) to the extent required by law; or

法律要求范围内的信息；或

- (d) to its related entities, officers, employees, agents and professional advisers only on a need-to-know basis for the purpose of performing this Agreement provided that the disclosing Party informs the recipient of, and ensures that the recipient complies with, the confidentiality obligations in this Clause 9 as if the recipient were a party to this Agreement.

仅基于需要知道的原则，为履行本协议向其关联实体、管理人员、雇员、代理和专业顾问披露的信息，前提是披露方告知并确保接收方如同本协议一方一样遵守第 9 条的保密义务。

- 9.3. **Disclosing Party Remains Liable:** Where a Party discloses information pursuant to Clause 9.2(d), 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 Party.

披露方仍有责任：一方按照第 9.2(d)条披露信息的，该披露方仍将对若由该方做出则会构成违约的接收方的任何披露承担全部责任。

- 9.4. **Announcements:** If any Party is required to make any announcement or disclosure as to the subject matter or any of the terms of this Agreement, that Party must first give notice of the requirement to the other Party, consult with the other Party and endeavour to agree with the other Party on the form of disclosure or announcement to be made.

公告：任何一方被要求就本协议标的或任何条款进行公告或披露的，该方必须首先告知对方该要求，与对方协商，并努力与对方就将进行的披露或公告的形式达成一致。

10. Dispute Resolution 争议解决



10.1. **Notice:** If any dispute or difference arises out of, or in connection with, this Agreement, including its existence, validity or termination (“**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.

通知: 因本协议产生或与本协议有关的任何争议或分歧, 包括本协议的成立、效力或终止 (“**争议**”), 主张争议发生的一方应向对方发出书面通知 (“**争议通知**”) 并载明争议的性质及合理细节。

10.2. **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 between the Parties at the executive level.

协商: 收到争议通知后, 双方同意其应努力通过双方管理层面的友好协商和讨论来解决争议。

10.3. **Arbitration:** If the Dispute is not resolved within fifteen (15) day of the Dispute being referred to negotiations under Clause 10.2, then the following shall apply:

仲裁: 在争议根据第 10.2 条提交双方协商后的十五 (15) 日内仍未解决的, 适用以下约定:

(a) the Dispute will be referred to and finally resolved by arbitration administered by the Shanghai International Arbitration Centre (“**SHIAC**”) in accordance with the Arbitration Rules of the Shanghai International Arbitration Centre (“**SHIAC Rules**”) for the time being in force, which rules are deemed to be incorporated by reference in this clause;

争议将提交上海国际仲裁中心按照届时有效的《上海国际仲裁中心仲裁规则》通过仲裁最终解决, 该规则通过引用被视为已成为本条款内容;

(b) the place and seat of the arbitration shall be Shanghai;

仲裁地点与仲裁法律地为上海;

(c) the arbitration tribunal shall consist of one (1) arbitrator;

仲裁庭由一 (1) 名仲裁员组成;

(d) the language of the arbitration shall be Chinese;

仲裁语言为中文;

(e) 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

提交仲裁的任何争议应被迅速处理, 双方应尽一切商业上合理的努力争取及时获得并执行仲裁员的裁决; 及

(f) 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.

受限于仲裁员作出的任何裁决 (仲裁中被认定存在过错或错误的一方应承担费用), 仲裁员费用应由双方平均分摊。

10.4. **Rights Preserved:** Nothing in this Clause 10 precludes a Party from issuing legal proceedings in the PRC courts for injunctive relief, urgent interlocutory relief and provisional measures, such as property preservation.

权利保留: 第 10 条的任何规定均未排除任何一方在中国法院就禁令性救济、紧急临时救济和临时措施 (如财产保全) 提起法律程序。

11. Intellectual Property Rights 知识产权

11.1. **Ownership:** All intellectual property rights owned by a Party at the Commencement Date of this Agreement shall remain solely with that Party, and the other Party shall not assert any ownership right or interest in any such intellectual property rights. No Party may use or apply the other Party’s intellectual property unless authorised to do so in accordance with this Agreement.

所有权: 一方在本协议起始日拥有的所有知识产权仍应归该方单独所有, 对方不得对任何此类知识产权主张任何所有权或权益。除非根据本协议获得授权, 否则任何一方均不得使用或应用对方的知识产权。

11.2. **Authority to Use of Silver Fern Farm’s Intellectual Property:** From time to time, Silver Fern Farms (acting in its sole discretion), may (at the request of the Purchaser) permit the Purchaser to use Silver Fern Farms intellectual property, including logo, brand, slogan, marks, service marks and marketing and promotional materials (“**Silver Fern Farms’ Intellectual Property**”) subject to the terms and conditions set out in Clauses 11.3 and 11.4 and 11.5 and such other terms and conditions as Silver Fern Farms may impose from time to time, all of which the Purchaser agrees and undertakes to comply with at all times. Any permission to use will only be given in writing and signed by Silver Fern Farms authorised representative

授权使用银之蕨的知识产权: 银之蕨 (完全由其自行决定) 可以 (应采购方要求) 不时许可采购方使用其知识产权, 包括标识、品牌、标语、标记、服务标记以及市场营销和促销材料 (“**银之蕨知识产权**”), 但必须遵守第 11.3 条、第 11.4 条和第 11.5 条中规定的条款和条件以及银之蕨可能不时施加的条款和条件, 采购方同意并承诺始终遵守该等条款和条件。任何使用的许可均应以书面形式做出, 并由银之蕨授权代表签署。

11.3. **Review of Materials:** Silver Fern Farms reserves the right to review the Purchaser’s marketing and sales materials that Silver Fern Farms has approved pursuant to Clause 11.2 prior to their publication or use. No rights shall inure to the Purchaser as a result of any such use or reference. All such rights, including goodwill, shall inure to the benefit of and be vested in Silver Fern Farms.

材料审查: 银之蕨保留在采购方市场营销和销售材料公开或使用之前, 审查该等根据第 11.2 条由银之蕨批准的材料权利。采购方不会因任何此类使用或引用而享有任何权利。所有此类权利, 包括商誉, 均应符合银之蕨的利益并归属于银之蕨。

11.4. **Conditions of Use:** The Purchaser:



使用条件: 采购方:

- (a) must not: 不得
- (i) distribute, sell, license or sub-license, let, trade, sale or dispose of Silver Fern Farms' Intellectual Property to a third party;
将银之蕨的知识产权分销、出售、许可或再许可、出租、交易、出售或处置给第三方;
- (ii) make copies of Silver Fern Farms' Intellectual Property except as expressly approved by Silver Fern Farms (acting in its sole discretion); or
除非获得银之蕨的明确批准 (完全由其自行决定), 复制银之蕨的知识产权; 或
- (iii) make any changes to Silver Fern Farms' Intellectual Property or its content except as expressly approved by Silver Fern Farms (acting in its sole discretion).
除非获得银之蕨的明确批准 (完全由其自行决定), 对银之蕨的知识产权或其内容进行任何更改。
- (b) may permit its employees to use Silver Fern Farms' Intellectual Property for sales, marketing and promotional purposes, provided that the Purchaser takes all necessary steps and imposes the necessary conditions to ensure that all employees using Silver Fern Farms' Intellectual Property do not commercialise or disclose the contents of Silver Fern Farms' Intellectual Property to any third person, or use it other than in accordance with the terms of this Agreement;

可以允许其雇员以销售、营销和促销之目的使用银之蕨的知识产权, 但前提是采购方应采取所有必要措施并施加必要条件以确保所有使用银之蕨知识产权的雇员均不会将银之蕨知识产权商业化或将其内容披露给任何第三方, 或未按本协议条款使用;

- (c) must ensure that all Silver Fern Farms' copyright notices and other proprietary legends and all trademarks or service marks of Silver Fern Farms are clearly marked, identified and retained as the sole and exclusive property of Silver Fern Farms.

必须确保银之蕨所有的版权声明和其他专有图例以及银之蕨所有的商标或服务标记均被清晰地标记、标识并作为银之蕨的独家财产保存。

11.5. Termination: Upon termination of this Agreement for any reason, the Purchaser must, and must procure its employees to, immediately cease using the Silver Fern Farm' Intellectual Property and take all appropriate and necessary steps to:

终止: 当本协议由于任何原因被终止后, 采购方必须且必须促使其雇员立即停止使用银之蕨的知识产权, 并采取所有适当和必要的措施以:

- (a) remove and cancel any listings in public records, telephone books, other directories, remove any visual displays or literature at the Purchaser's location, the

internet and elsewhere that would indicate or would lead the public to believe that the Purchaser is the representative of Silver Fern Farms or the Products; and

删除并取消所有公共记录、电话簿和其他目录中的任何记录, 删除采购方所在地、网站和其他可能会表明或导致公众相信采购方是银之蕨产品的代表之处的任何视觉上的展示或文字表达; 及

- (b) cancel, abandon or transfer (as requested by Silver Fern Farms) any product licenses, trade name filings, trademark applications or registrations or other filings with relevant government authorities (whether or not such filings were authorised by Silver Fern Farms) that may incorporate Silver Fern Farm's Intellectual Property, any marks or names confusingly similar to Silver Fern Farm's Intellectual Property. Upon the Purchaser's failure to comply with its obligations under this Clause 11.5, Silver Fern Farms may make application for such removals, cancellations, abandonments or transfers in the Purchaser's name. The Purchaser must provide all such assistance to Silver Fern Farms as Silver Fern Farms may require and reimburse Silver Fern Farms for expenses incurred in enforcing its rights under this Clause 11.5.

(根据银之蕨的要求) 取消、放弃或转让任何产品许可证、商号备案、商标申请或注册或向相关政府部门提交的其他登记 (无论此类登记是否由银之蕨授权), 前提是该等登记可能包含银之蕨知识产权或包含与银之蕨的知识产权相混淆的任何商标或名称。如果采购方未能履行其在第 11.5 条中规定的义务, 银之蕨可以以采购方的名义申请该等删除、取消、放弃或转让。采购方必须向银之蕨提供其可能要求的所有此类协助, 并向银之蕨补偿因执行第 11.5 条项下的权利所产生的费用。

11.6. Intellectual Property Rights Infringement by Third Parties: The Purchaser will:

第三方对知识产权的侵权: 采购方将:

- (a) fully co-operate with, support and assist Silver Fern Farms in its efforts to protect Silver Fern Farms' Intellectual Property Rights within PRC; and

与银之蕨全面合作、努力支持和协助银之蕨以保护银之蕨在中国境内的知识产权; 及

- (b) exercise reasonable diligence to detect and shall immediately advise Silver Fern Farms if the Purchaser has knowledge of, any infringement of any of Silver Fern Farm's Intellectual Property.

尽合理的努力发现任何侵犯银之蕨知识产权的行为, 且一旦采购方知晓任何侵犯银之蕨知识产权的行为应立即告知银之蕨。

12. Miscellaneous 其他

12.1. Relationship Management: Each Party will appoint and maintain during the term of this Agreement, a relationship or accounts manager with overall responsibility for managing this Agreement and the relationship between the Parties.



关系管理: 在本协议期限内, 各方将任命并维持一名关系或客户经理, 全面负责管理本协议以及双方之间的关系。

12.2. **Notices:** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given by:

通知: 根据本协议发出或做出的所有通知和其他通讯均以书面形式, 且在以下情形下视为有效发出:

(a) personal delivery to the Party to be notified;

专人送达至被通知方;

(b) electronic mail, and 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 confirming that the electronic mail was received by the intended recipient at the electronic mail address provided for the purposes of this clause,

通过电子邮件发送的, 应视为在发送电子邮件的计算机系统自动生成的送达报告中载明的时间发出, 以确认拟接收者已通过根据本条所提供的电子邮件地址接收到该电子邮件。

to the applicable address stated below or if a written notice of change of address is given, then to the new address:

至以下适用地址, 发出更改地址的书面通知的, 则以新地址为准:

Silver Fern Farms (Shanghai) Limited

银之蕨食品(上海)有限公司

Address: Room 2301, Central Plaza, No.381 Huaihai Zhong Road, Huangpu District, Shanghai

地址: 上海市黄浦区淮海中路 381 号中环广场 2301-2308 室

Email 邮箱: chinasales@silverfernfarms.co.nz

The Purchaser 采购方

Address: Refer to PO

地址: 参考采购订单

Email: Refer to PO

邮箱: 参考采购订单

Any notice given after 5pm, or on a day which is not a Business Day, shall be deemed to be given at 9am on the next Business Day.

所有在下午 5 点之后或非工作日发出的通知应视为在下一个工作日的上午 9 点发出。

12.3. **Force Majeure:** Neither Party will be liable to the other Party for any failure to perform its obligations under this Agreement due to any Force Majeure provided that the Party claiming Force Majeure has used reasonable efforts to avoid or remedy such Force Majeure. Subject to the foregoing, if the performance of a Party is delayed for three (3) months or more, the other Party may terminate this Agreement immediately by giving notice to the other Party.

不可抗力: 任何一方均无需因不可抗力而未能履行本协议义务而对对方承担责任, 前提是主张不可抗力的一方已采取合理的努力以避免或补救该等不可抗力。在不违反上述规定的前提下, 如果一方的履约行为延迟了三(3)个月及以上, 则对方可以立即通知该方终止本协议。

12.4. **Variation:** This Agreement may only be varied in writing signed by both Parties provided however Silver Fern Farms reserves the right to vary the standard terms and conditions set out in this Agreement at any time and will maintain the current copy on its website.

变更: 本协议只能通过双方签署书面文件进行变更 但银之蕨保留随时变更该协议里的标准条款和条件的权利, 若有变更, 网站内容会随之更新为最新版本。

12.5. **No Partnership:** Nothing in this Agreement or in the relationship between the Parties shall be construed as creating a joint venture, agency relationship or partnership between the Parties or as giving either Party any of the rights, or subjecting any Party to any liabilities, of a partner.

无合伙关系: 本协议或双方之间的关系中的任何内容均不得被解释为在双方之间建立合资企业、代理关系或合伙关系, 也不得被解释为给予任何一方或使任何一方承担任何合伙人的权利或责任。

12.6. **Cumulative Rights; Waiver:** To the full extent permitted by law, all rights and remedies of either Party, whether set forth in this Agreement or otherwise provided in law or at equity, are cumulative and not alternative. 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 such Party's right thereafter to enforce and compel strict compliance with the provisions of this Agreement.

权利的累积; 弃权: 在法律允许的最大范围内, 任何一方的所有权利和救济, 无论是本协议中约定的, 还是根据法律或者衡平法得出的, 都是可累积的, 而非择其一的。任何一方在任何时候对本协议的任何违反或不执行任何条款的弃权, 将不会以任何方式影响、限制或放弃该方此后执行和严格遵守本协议条款的权利。

12.7. **No Waiver:** The exercise of either Party of any right under this Agreement shall not constitute a waiver of any other rights or remedies available to that Party under this Agreement.

不弃权: 任何一方行使本协议项下的任何权利均不构成对该方在本协议项下的任何其他权利或救济的放弃。

12.8. **Severability:** If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Agreement which shall remain in full force.

可分割性: 如果本协议的任何部分被具有司法管辖权的任何法院或行政机关认定为非法、无效或不可执行, 该决定不会减损本协议剩余部分的可执行性, 该剩余部分仍具有完整效力。

12.9. **Construction:** This Agreement is not to be construed to the disadvantage of a Party because that Party was responsible for its preparation.



解释：本协议不得因为由一方负责准备而在解释时对该方不利。

- 12.10. **Further Assurances:** Each Party shall from time to time on request by the other Party execute and deliver all documents and do all other acts and things, which are necessary or reasonably required to give full force and effect to the provisions of, and arrangements contemplated by, this Agreement.

进一步保证：每一方应不时地应对方的请求签订和交付所有文件以及采取一切其他行动和措施，该等文件和行动为使本协议的条款和拟定的安排充分发挥效力所必须或合理要求的。

- 12.11. **Costs:** Except as expressly provided for in this Agreement, each Party shall bear its own costs and expenses incurred in connection with the negotiation, preparation, execution and implementation of this Agreement.

费用：除本协议明确规定外，各方应自行承担与本协议的谈判、准备、签订和实施有关的费用。

- 12.12. **Assignment: 转让:**

- (a) Silver Fern Farms reserves the right to assign or novate this Agreement.

银之蕨保留转让或替换本协议的权利；

- (b) The Purchaser must not assign, novate or transfer this Agreement without the prior written consent of Silver Fern Farms (acting in its sole discretion). For the purposes of Clause 12.12 (b), a change of control of the Purchaser is deemed to be an assignment for which the prior written consent of Silver Fern Farms is required under this sub-clause. In this sub-clause, “change of control” means any transfer of shares or other arrangement affecting any member of its group which results in a change in the effective control of the Purchaser.

未经银之蕨事先书面同意（完全由其自行决定），采购方不得转让或替换本协议。为第 12.12 (b) 条之目的，采购方控制权的变更应被视为转让，根据本款的规定，必须获得银之蕨的事先书面同意。在本款中，“控制权的变更”是指影响采购方的任何集团成员构成从而导致采购方的有效控制权发生改变的任何股份的转让或其他安排。

- 12.13. **Binding Effect in Successors and Assigns:** This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.

对继受人和受让人的约束力：本协议对双方及其各自的继受人、法定代表人和许可的受让人具有约束力，并应符合各方的利益。

- 12.14. **No Third-Party Rights:** Nothing expressed or referred to in this Agreement will be construed to give any person other than the Parties (and their respective successors, legal representatives and permitted assigns) any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.

无第三方权利：本协议中表述或引用的任何内容均不得解释为授予除双方（及其各自的继受人、法定代表和许可的受让人）以外的任何其他人任何本协议项下或者与本协议或本协议部分条款有关的任何法定的或衡平法上的权利、救济或主张。

- 12.15. **Counterparts:** This Agreement may be signed in any number of counterparts, including facsimile or scanned copies, all of which shall together constitute one and the same instrument and a binding and enforceable agreement between the Parties. Any Party may execute this Agreement by signing any such counterpart.

副本：本协议可以签署多份副本，包括传真或扫描件，所有副本应共同构成一份相同的文本，并构成双方之间具有约束力且可执行的协议。任何一方均可通过签署任何副本以签订本协议。

- 12.16. **Entire Agreement:** This Agreement together with the Purchase Order (any terms and conditions of trade or purchase, if referred to in the Purchaser's own purchase order form, excepted) and the VAT Fapiao constitute the entire agreement and understanding (express and implied) between the Parties relating to the subject matter of this Agreement as of the date of this Agreement and supersede and cancel all previous agreements and understandings between the Parties relating to the subject matter of this Agreement, whether written or oral.

完整协议：截至本协议签订之日，本协议与订单（但对采购方订单样式中任何交易或采购的条款和条件的提及除外）和增值税发票共同构成双方之间对于本协议标的达成的完整协议和理解（明示和暗示），并且取代并取消先前双方之间与本协议标的有关的所有书面或口头的协议和理解。

- 12.17. **Survival:** The Parties agree that those of such provisions of this Agreement that, by express terms of this Agreement, will not be fully performed during the Term of this Agreement, shall survive the termination of this Agreement to the extent permitted by law, including Clauses 9 and 11.

存续：双方同意，根据本协议的明示条款，无法在本协议的期限内完全履行的本协议相关条款应在法律允许的范围内在本协议终止后继续有效，包括第 9 条和第 11 条。

- 12.18. **Governing Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the PRC.

管辖法律：本协议应受中华人民共和国法律管辖，并依照该等法律进行解释。

- 12.19. **Dual Languages:** This Agreement has been written in Chinese and English, both versions being deemed authentic. If there is any discrepancy, conflict or inconsistency between the English and China versions, the English version will prevail, and will, for legal purposes, be given priority in interpretation over the Chinese version.

双语：本协议以中文和英文写就，两种版本均真实有效。英文版本和中文版本之间在任何差异、冲突或不一致的，则应当以英文版为准，并且从法律的角度上，在解释时优先于中文版本。

