



CREDIT APPLICATION AND TERMS OF TRADE AGREEMENT

This Agreement made the _____ day of _____ 20____

Between Southland Farm Service Limited (“the Vendor”)

And _____ (“the Buyer”)

Trading As: _____ Company Inc. No: _____

Postal Address: _____

Delivery Address: _____

Phone: _____ Facsimile: _____

Cell phone: _____ E-Mail: _____

Dairy Supply No: _____ Rapid No: _____

Accounts Email: _____

THE BUYER agrees with the Vendor as follows:

- A. To be bound by and to abide by the terms of trade **attached** to this Agreement. The terms of trade form part of the Agreement between the Buyer and the Vendor. The Vendor’s terms of trade shall always apply unless changed by written agreement between the Buyer and the Vendor.
- B. The Buyer authorises any person or company to provide the Vendor with such information as the Vendor may require for the purpose of assessing the Buyer’s creditworthiness, and the Buyer authorises the Vendor to disclose information about the Buyer whether collected by the Vendor from the Buyer directly or obtained by the Vendor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
- C. That the person who signs agreement is authorised to sign for and on behalf of the Buyer and that the information supplied by the Buyer on this Agreement is true and accurate.

Note: the Vendor particularly draws to the attention of the Buyer.

- A. That the payment for all goods and services are strictly paid by the 20th of the month following date of invoice.
- B. The default interest provisions of clause 6.6 of the terms and conditions of sale attached to the Agreement.

Print Name: (in full) _____ **DOB:** _____

Designation: _____ **Signed:** _____ **Dated:** _____

Print Name: (in full) _____ **DOB:** _____

Designation: _____ **Signed:** _____ **Dated:** _____

SOUTHLAND FARMING SERVICES LIMITED

TERMS OF TRADE

In these Terms of Trade (**Terms**) we have used **we**, **us** and **our** to refer to Southland Farming Services Limited and **you** to refer to our customer.

1. SERVICES AND SCOPE

1.1 These Terms apply to all of the Goods we supply to you and/or any Services we provide to you to the exclusion of your terms (if any).

2. ACCEPTANCE

2.1 You are taken to have exclusively accepted and are immediately bound, jointly and severally, by these Terms if you place an order for Goods or Services or accept Delivery of Goods or Services.

3. DELIVERY

3.1 We may arrange for Delivery of the Goods or Services to your nominated address.

3.2 We shall not be liable for any loss or damage to the Goods during transportation provided that this clause shall not prevent you from exercising any remedies you may have under the Consumer Guarantees Act 1993.

3.3 We reserve the right to arrange Delivery of Goods by instalments.

3.4 We reserve the right to cancel delivery of the Goods or such instalments thereof without prejudice to our rights to recover all sums owing to us in respect of deliveries already made.

3.5 Where you do not take delivery of the Goods by the delivery date specified or such later date as the parties agree, you shall pay reasonable storage costs until such time as you accept the Goods, such cost to be determined by us.

3.6 If we have given you a time for delivery of the Goods or Services (or any part of them), such time is approximate only and is not deemed to be of the essence.

4. TITLE AND RISK

4.1 We will retain title to Goods we supply until they have been paid for in full and you have performed all your other obligations under these Terms.

4.2 Risk in all Goods passes to you when Goods have been Delivered.

4.3 You will insure Goods for their full price, and will not sell, dispose or part with possession of them or do anything else inconsistent with our ownership of the Goods until title in them passes to you.

5. PRICE

5.1 All prices are stated in New Zealand dollars. Our prices are subject to change without notice.

5.2 Unless we agree otherwise in writing, the amount you will be charged for Goods will be the price as at the date of Delivery.

5.3 You acknowledge that any price given to you by us is an estimate only, it is based on information available to us at that time and is subject to change. Notwithstanding any quotation or estimate given by us, you agree to pay us the actual cost of the Goods, shipping, freight and handling costs together with all other monies payable under these Terms.

5.4 For any quotation given by us, you shall be responsible for the accuracy of any information upon which the quotation is based. Any changes to specifications or requirements will be invoiced in accordance with our current pricing structure.

5.5 Unless otherwise agreed, any quotation given in relation to Services does not allow for follow-up visits to the property to modify, adjust or alter any work performed by us. Any additional rectification services will be charged as an extra.

5.6 When we provide Goods or Services and we encounter unforeseen or hidden problems or unsuitable conditions (including, but not limited to, those underground, in wall or roof spaces and relating to flooring or worn, damaged or corroded fittings), we will contact you immediately and provide you with an estimate of further costs to provide the Goods and/or Services as an adjustment to the quotation.

5.7 We may vary a Services quotation or charge:

(a) If a variation to the Services originally scoped (including any applicable plans or specifications) is requested; or

(b) if variations which are beyond our control occur (such as the cost of materials, labour, taxes, levies, duties, insurance and/or freight etc.); or

(c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather/environmental conditions, limitations to accessing the property, any subsidence of ground conditions, availability of machinery, protruding or dismantled formwork, repositioning or adjusting any scaffolding due to moved planks not by us, additional visits to the property required, safety considerations, any relocation and/or alteration to working

platforms, which are only discovered on commencement of the Services.

5.8 In the event that we are required to provide the Services urgently, that may necessitate our staff to work outside our normal business hours (including but not limited to working through lunch breaks, weekends and/or public holidays) then we may charge the you additional labour costs, unless otherwise agreed between the parties.

5.9 Unless otherwise agreed in writing, you shall be liable for payment of any costs associated with engineering reports or other inspections required including any building or resource consents required by the local territorial authority in the course of any contract undertaken by you. You are responsible for ensuring compliance with all legislation, regulations, by-laws or rules in connection with any Services performed by us.

5.10 We may require you to pay a deposit prior to the commencement of any Services or delivery of any Goods, being an advance payment.

5.11 All prices are exclusive of freight costs, insurance charges, and installation and maintenance costs, unless otherwise agreed in writing between us and you.

5.12 All amounts payable under these Terms are plus GST and other taxes, duties and exchange rates (including import, customs or excise duties) which will be paid by you.

6. PAYMENT

6.1 You must pay for Goods or Services on the 20th of the month following the issue of the relevant invoice unless otherwise agreed between the parties.

6.2 We are under no obligation to supply Goods to you on credit.

6.3 All payments will be made without set-off or deduction. Receipt of a bill of exchange, or other negotiable instrument will not constitute payment and you remain liable for payment until payment is received by us.

6.4 We may apportion payments to outstanding accounts as we see fit.

6.5 You acknowledge that the Services may be "building works" for the purposes of the CCA and where we provide Services that are "building works" for the purposes of the CCA, we may issue invoices as payment claims under and in compliance with the CCA and the following paragraphs (a) to (d) shall apply:

(a) Payment claims are due on the date specified in the invoice. Payment claims received after the due date will be deemed to have been received on the next due date.

(b) If you intend to pay less than the amount specified in the invoice you must, not later than the day on which the payment would otherwise have been due, issue a payment schedule that complies with the CCA.

(c) If there is an error or over certification resulting in the amount paid to us exceeding the amount properly due, the amount over paid becomes a debt due from us to you payable on demand.

(d) The issue of a payment schedule or payment of any amount does not constitute or imply acceptance of the Services or Goods.

6.6 Invoices or payment claims more than 21 days past due will accrue interest at the Default Interest Rate compounded monthly, and we may:

(a) suspend performance of the Services; or

(b) withhold the Delivery of any Goods,

(as applicable) until payment of all invoices and/or payment claims that are outstanding are paid in full.

7. DEFECTS

7.1 You shall inspect the Goods and Services on Delivery and shall within 48 hours of Delivery (time being of the essence) notify us in writing of any alleged defect (including shortage in quantity or damage) (**Complaint**).

7.2 We accept no liability for Goods which have not been stored or used in a proper manner.

7.3 In respect to a Complaint made about our Goods or Services, we shall be entitled to request reasonable evidence of any defect alleged in such Complaint. Where we agree that any our Goods or Services are defective, we shall at our option within a reasonable period either replace or repair the Goods, re-perform

the Services to an acceptable standard, or provide a refund to you of that part of the charges which applies to the defective Goods or Services.

8. SERVICES

8.1 You shall ensure we have clear and free access to the nominated property at all times (and that such access is suitable to accept the weight of laden trucks or other heavy equipment as may be deemed necessary by us) to enable us to perform the required Services. Where we require access to an adjoining or adjacent property or land to the nominated site, then it is your responsibility to gain permission from the relevant land owner to use the above mentioned property.

8.2 If, during the course of the performance of Services by us, you tamper, modified or interfere with the work we are carry out any rectification work that my need to be performed by us will be at your expense.

8.3 You shall be responsible for obtaining all permits and licences and give all notices required under any statute regulation or bylaw in force, and obtain all necessary consents required from any local authority inspector or adjoining owners in respect of the Services.

8.4 You shall at all times indemnify us from and against all loss, costs, claims, damages, expenses (including all legal costs and expenses incurred on a solicitor/own client basis) we incur or suffer, and all claims and other proceedings made or brought against us, as a consequence of any breach of these Terms by you or failure to comply with your obligations in clauses 8.1 to 8.4 inclusive; or any representation made, or any act, omission, or negligence committed by you or by those for whom you responsible; or any failure use any systems installed in accordance with the recommended guidelines and specifications.

8.5 Where the supply of Goods and/or Services must be co-ordinated with other trades you must provide us with a schedule detailing all relevant information relating to installation or supply with sufficient time allowed for us to meet delivery or supply dates.

8.6 If you are to supply materials then those materials must meet the relevant ASNZ Standard. If we are not satisfied that the materials meet the ASNZ Standard then the materials will not be used. We will not be liable for any costs arising from the decision not to use the materials you supplied. You will be liable to pay for our time, materials and equipment costs that arise from your failure to satisfy us that the materials you have supplied meet ASNZ Standard.

8.7 If you are to supply materials then those materials must be on site prior to us attending to carry out the Services. We will not be liable for any costs arising from delays due to your supplied materials not being available when we attend the site. You will be liable to pay for our time, materials and equipment costs that arise from your failure to have materials on site prior to us attending to carry out the Services.

8.8 Where Services are provided, these Terms shall be deemed to be a "construction contract" under section 5 of the CCA are subject to the CCA and you agree that we have all the rights of a party to a construction contract under the CCA and any revision of the CCA.

9. PERFORMANCE OF SERVICES

9.1 We will:

- (a) perform the Services with reasonable skill, care and diligence in a professional manner;
- (b) endeavour to ensure that the Services are performed in accordance with any time frames agreed in writing with you;
- (c) liaise with you during the course of performing the Services in accordance with your reasonable requirements.

9.2 You will give reasonable assistance to enable us to perform the Services by:

- (a) giving clear instructions;
- (b) promptly providing any information or content required from you for us to complete the Services;
- (c) ensuring that the Services are fit for the purpose you intend to use them for and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards or practices.

10. DEFAULT

10.1 You will be in Default if:

- (a) you fail to pay an amount due under these Terms by the due date for payment; or
- (b) you commit a breach of any of your other obligations under these Terms, the Security or the terms of any other contract you have entered into, or enter into in the future, with us or one of our related entities; or

(c) you become insolvent, are wound up, have a receiver appointed, enter into any composition or arrangement with your creditors, do any act which would render you liable to be placed in liquidation or have a receiver appointed over your property, commit an act of bankruptcy, cease to be of full legal capacity, or die;

(d) Goods that we have retained title to are at risk (as that term is defined in the PPSA); or

(e) an event or a series of events (whether related or not) occurs which, in our opinion, may cause a material adverse change in your ability to meet your obligations to us.

10.2 If you are in Default then we may, at our option, do any one or more of the following:

(a) charge you at the Default Interest Rate on a daily basis from the due date until the date payment is received;

(b) require you to remedy the default in the manner and within a period that we tell you;

(c) require you to pay to us all amounts you owe us immediately;

(d) suspend or terminate your account with us;

(e) enforce security interests created by these Terms;

(f) exercise any rights that we have under these Terms or that are available to us at law.

10.3 We may suspend or terminate your account with us at any time in our sole discretion. If your account is terminated, you must immediately pay us any amount you owe us. Termination will not affect any of our rights that have arisen before termination.

11. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

11.1 Clause 4.1 creates a security interest in Goods we supply to you.

11.2 You will not grant any other security interest or any lien over Goods that we have a security interest in.

11.3 At our request you will promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.

11.4 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.

11.5 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You will not grant any other security interest or any lien in either the Goods or in the whole.

11.6 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, and 133 of the PPSA.

11.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).

11.8 You will give us prior written notice of any proposed change of your name or address.

12. WARRANTIES

12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations on us which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.

12.2 Where you acquire goods and/or services from us for the purposes of a business:

(a) the parties acknowledge and agree that:

(i) you are acquiring the goods and/or services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;

(ii) the goods and/or services are both supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and

(b) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.

13. LIMITATION OF LIABILITY

13.1 Except as expressly otherwise provided by clauses 12.1 or 12.2, we will not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort, or otherwise and whether such

loss or damage arises directly or indirectly from Goods provided by us to you.

13.2 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, such liability is limited to the amount of the price of the Goods concerned. If Goods are returned by you, or if you make a claim in writing to us in relation to Goods provided, we may, in our discretion, repair or replace the Goods, or refund the price of those Goods to you, provided that:

- (a) the Goods must be returned or the claim must be made in writing to us within 1 calendar month of delivery; and
- (b) you must supply the date and number of any invoice relating to the Goods; and
- (c) we must be given a reasonable opportunity to inspect the Goods.

14. DISCLAIMER

14.1 You acknowledge that you rely solely on your own judgment as to the nature, quality and condition of the Goods and Services and their sufficiency for purpose and that you do not rely on any representation or warranty (verbal or in writing) nor any sample or description of the Goods provided by us or any of our representatives.

15. DIMENSIONS, PLANS, SPECIFICATIONS

15.1 We are entitled to rely upon the accuracy of any dimensions, plans, specifications and other information provided by you.

16. PRIVACY OF INFORMATION

16.1 You authorise us:

- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
- (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

17. NOTICES

17.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you or where you are a company, to any of your directors.

18. OBLIGATIONS

18.1 You acknowledge that:

- (a) We do not warrant or represent the suitability of any Goods or Service for your use;
- (b) If any recommendation or advice has been given by us, we will not be responsible for the actual implementation of the recommendation or the advice or actions or performance by you;
- (c) You shall cooperate and coordinate with us in a timely manner with regard to all health and safety matters which may concern or affect us.

18.2 Should any health and safety risk arise in relation to us or our workers (as that term is defined in the Health and Safety at Work Act 2015), we will be entitled without penalty to suspend immediately the performance of any part or all of the Services for such period as it considers necessary and until you have remedied such health and safety risk.

19. CONFIDENTIALITY

19.1 You will at all times treat as confidential all non-public information and material received from us and will not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

20. COSTS

20.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.

21. GUARANTEE

21.1 Where you are a company, in consideration for us agreeing to supply Goods or perform Services and granting credit to you at your request the signatories to the Agreement are signing the Agreement in their personal capacity and jointly and severally personally undertake as principal debtors to the company for the payment of any and all moneys now or hereafter owed by you to us ("**Guarantors**"). The Guarantor(s) and you are jointly and

severally liable to perform these conditions and to make payment of all sums due hereunder

22. INSURANCE

22.1 If the Services require an alteration to your property, you shall be solely responsible for arranging insurance cover for the alteration and all associated risks.

22.2 You are responsible for ensuring that your insurance coverage is adequate for your requirements.

23. CREDIT INFORMATION

23.1 You consent to us, or any financier or credit-rating agency, making enquiries of and obtaining any information about your financial standing and credit worthiness.

24. JURISDICTION

24.1 These Terms are governed by and construed according to the laws of New Zealand and, subject to clause 26, the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these Terms.

25. ASSIGNMENT

25.1 You must not subcontract or assign any of your rights, powers or obligations under these Terms of Trade.

26. DISPUTES

26.1 Any claim or dispute arising under these Terms will be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand courts.

27. FORCE MAJEURE

27.1 We will not be liable for any failure or delay in complying with any obligation imposed on us under these Terms if the failure or delay arises directly or indirectly from a cause reasonably beyond our control.

28. WEBSITE

28.1 While we present the information on our website in good faith and believe it to be correct as at the date it is published, we make no warranties or representations about the accuracy or the completeness of our website or its contents nor do we undertake to keep its contents updated as it is subject to change from time to time.

28.2 You must take your own steps to ensure that the process which you employ for accessing our website does not expose you to the risk of viruses or other forms of interference which may damage your computer system. We do not accept any responsibility for any interference of damage to your computer arising out of or relating to your use of this site. Any information which you transmitted to us is transmitted through a secure internet system. All reasonable steps to ensure this information is secure shall be taken.

28.3 All Intellectual property rights in our website are owned by us and copying or reproduction of any content is only permitted with our prior written approval.

29. SURVIVAL

29.1 This clause 29 and clauses 4, 6, 12, 13, 16, 17, 18, 20, 24, 26, and 31 and any other provision which by its nature is intended to survive the termination or expiration of these Terms will survive the termination or expiration of these Terms or completion of the Work.

30. GENERAL

30.1 These Terms supersede and cancel any earlier representations, warranties, understandings and agreements (whether oral or written), and together with your Credit Application constitute the entire agreement between us and you relating to their subject.

30.2 You may only assign, sell, or otherwise dispose of any right or obligation under these Terms if we consent in writing first.

30.3 If you have entered into these Terms as the trustee of a trust and you have no right to or interest in any of the assets of the trust except in your capacity as trustee of the trust, your liability will be limited to the value of the assets of the trust which now or in the future are (or, but for your wilful neglect or default, would be) in the hands of the trustees for the time being of the trust. This clause does not limit any liability you have to us as a personal guarantor.

30.4 No failure or delay by us to exercise (in whole or in part) any right, power or remedy under these Terms will operate as a waiver of that right, power or remedy.

30.5 We may change these Terms at any time. Any change applies from when it is published on our website at <https://www.southlandfarmservices.co.nz/>.

31. DEFINITIONS

31.1 In these Terms unless the context otherwise requires:

CCA means the Constructions Contracts Act 2002.

Default has the meaning set out in clause 10.1.

Default Interest Rate means 10% per annum.

Delivery is deemed to have occurred when:

(a) In relation to Goods:

- (i) At the time you (or a person nominated by you) collect the Goods from us; or
- (ii) At the time the Goods are collected by a carrier for carriage arranged by us; or
- (iii) At the time the Goods are collected by a carrier for carriage arranged by you; or
- (iv) At the time the Goods are delivered to you directly by us and offloaded at the address for delivery (regardless of whether or not you are home).

(b) In relation to services:

- (i) When we notify you that performance of the services have been completed.

Goods means all goods that we supply to you includes any associated services that we supply.

Security means all existing and future security held by us that secures your obligations under these Terms

Services means any service performed by us to you including, without limitation, the installation of dairy systems, installation of cow barns, plant servicing and testing, milk machine testing and the design, installation and servicing of plumbing, pumps and effluent systems.

31.2 The rule of construction known as the contra proferentem rule does not apply to these Terms.

31.3 Words referring to the singular include the plural and vice versa.

31.4 Any reference to a party includes:

- (a) that party's executors, administrators, or permitted assigns; or
- (b) if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.

31.5 Clause headings are for reference only.

31.6 References to clauses are references to clauses of this agreement.

31.7 References to money will be New Zealand currency, unless specified otherwise.

31.8 Expressions referring to writing will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by fax or email).

31.9 References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

