

**TERMS OF TRADE**  
**NUFARM NZ (Company)**  
 Division of Nufarm Limited

The following terms of trade, as amended from time to time (**Terms of Trade**) shall be incorporated into and form a part of every Contract (together, **the Agreement**) between the person named as the Buyer (**Buyer**) in the Contract and the Company for the supply by the Company of Goods and/or Services, (together, **Products**) unless specifically excluded in writing and signed by both Parties. Any instructions received by the Company from the Buyer for the supply of Products shall constitute acceptance of these Terms of Trade.

**1. Interpretation**

**1.1 Defined Terms:** In the Agreement, unless the context otherwise requires, the following words have the following meanings:

- (a) **Contract** means each contract (which includes either a faxed, mailed or emailed copy of the customer purchase order) between the Parties which specifies the Products the Buyer will purchase from the Company.
- (b) **Goods** means the goods to be supplied by the Company to the Buyer as specified in the Contract.
- (c) **GST** means goods and services tax payable at the applicable rate in accordance with the Act.
- (d) **Notice** means:
  - (i) for a change/s to the Company's price list, one month prior written notice to the Buyer; and
  - (ii) for a change to an individual Product, two days prior written notice.
- (e) **Parties** mean the Company and the Buyer.
- (f) **PPSA** means the Personal Property Securities Act 1999 as amended and in force from time to time, and includes all relevant Regulations unless the context otherwise requires.
- (g) **Secured Goods** means all Goods the Company supplies to the Buyer and over which the Company has a security interest pending, and until the point in time that title passes to the Buyer for the relevant Goods, and includes all proceeds derived directly or indirectly from dealing with the Goods which become accessions before title passes to the Buyer.
- (h) **Services** means the services to be provided by the Company to the Buyer as specified in the Contract.

**1.2 PPSA Terminology:** Words in these Terms of Trade which are defined in the PPSA, have the same meanings as in the PPSA and the Regulations unless the context otherwise requires.

**2. Payment**

**2.1 Date:** Payment for the Products is to be made in full, by the Buyer, and without deduction, counterclaim or set-off as follows:

- (a) for Goods, by the 20<sup>th</sup> of the month following delivery; and
- (b) for Services by the 20<sup>th</sup> of the month following the invoice date for the Services;

in each case time being strictly of the essence, unless otherwise agreed in writing.

**2.2 Payments:** All payments by the Buyer to the Company for the supply of Products must be paid to the Company in cleared funds. Part payment will not compromise the Company's rights to recover the balance owing nor will it constitute satisfaction and/or transfer of title of the Goods.

**2.3 Returns:** The Buyer may not return Goods supplied by the Company unless the Company agrees in writing.

**2.4 Failure to Pay:** If the Buyer fails to make payment by the due date, the Company, without prejudice to its other rights or remedies, shall be entitled to charge the Buyer interest from the due date at a rate of 5% per annum above the current overdraft rate charged by the Company's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by the Company. Further, any expenses, disbursements and legal costs incurred by the Company in enforcing any rights in the Agreement shall be paid by the Buyer, including any reasonable solicitor's fees or debt collection agency fees.

**2.5 Credit Arrangement can be Terminated:** The Company has the absolute right to terminate any credit arrangements with the Buyer and to substitute cash-on-delivery payment terms at any time, without prior notice or reason being given.

**2.6 Immediate Payment:** Notwithstanding anything contained in the Agreement, all payments (whether due or not), shall become immediately due to the Company if:

- (a) the Buyer fails to comply with the terms of the Agreement; or
- (b) the Buyer commits an act of bankruptcy; or
- (c) the Buyer enters into an arrangement or composition with its creditors;
- (d) if the Buyer is a company:
  - (i) the Buyer does anything that would make it liable to be put into liquidation;
  - (ii) a resolution is passed or an application is made for the liquidation of the Buyer;
  - (iii) a receiver or statutory or official manager, or a person in a similar position, is appointed over all or part of the Buyer's assets and undertaking; or
  - (iv) any act of insolvency is committed.

**3. Price**

**3.1 Prices:** Prices are subject to alteration:

- (a) if Goods, on Notice from the Company and all Goods shall be charged at prices ruling at time of despatch.
- (b) if Services, upon two days prior written notice from the Company and all Services shall be charged at the rates specified in the Contract.

**3.2 Change in Price:** Any change in price arising from imposition of or change in Government duties, levies, fees and taxes of any type whatsoever shall be for the Buyer's account, shall be invoiced accordingly and shall be deemed to be part of the purchase price.

**3.3 GST:** All prices listed are exclusive of GST.

**4. Competing Security Interests**

**4.1 Competing Security Interests:** If any other person has a security interest in collateral which includes the Goods supplied by the Company, the Company may, as a condition of supplying the Goods, require the Buyer to procure the signing of a deed (even if the Company has previously supplied Goods to the Buyer without requiring this) which:

- (a) confers rights on the Company to recover all amounts which the Buyer is or becomes liable to pay, or to indemnify, or reimburse the Company in accordance with the Agreement in priority to all other secured parties; and
- (b) acknowledges the Company's priority rights:
  - (i) in relation to all Secured Goods; and
  - (ii) over payments received by the Company (including electronic funds transfer pursuant to a direct debit authority executed by the Buyer in the Company's favour); and
- (c) includes provisions acceptable to the Company as to the exercise of enforcement rights in relation to Secured Goods; and
- (d) is otherwise acceptable to the Company in its discretion.

**5. Default and Enforcement Rights**

**5.1 Default Event:** If the Buyer fails to pay any amount owing on the due date or commits any other default under the Agreement and any such default continues for seven days or the Company in its absolute discretion forms the opinion that the Buyer cannot or will not be able to pay its debts to the Company as they fall due, then:

- (a) the Company shall be entitled to refuse to provide any further Products to the Buyer;
- (b) the Company may repossess all Goods the property of the Company which are or should be in the possession of or under the control of the Buyer; and
- (c) the Company may by written notice to the Buyer cancel the Agreement;

and any rights exercised by the Company pursuant to this clause shall not terminate the Buyer's liabilities under the Agreement or to pay damages for any breach nor preclude the Company from exercising any other right or remedy (in equity or in law) that may be available to it.

**5.2 Exercise of Rights:** The following provisions apply to the exercise of the Company's rights under the Agreement:

- (a) the Company may exercise a right under the Agreement alone, or at the same time as exercising any other rights, powers or remedies available to the Company.
- (b) the Company does not need to notify the Buyer or any other person first before the Company exercises any rights (unless provided otherwise in the Agreement).
- (c) any delay by the Company in exercising any of its rights will not affect the subsequent exercise of any other rights.
- (d) the Company will not be liable or accountable to the Buyer or any other person for any loss caused by:
  - (i) the exercise or attempted exercise of any of the Company's rights; or
  - (ii) a failure by the Company to exercise, or any delay in exercising, any of the Company's rights; or
  - (iii) the manner in which the Company exercises any of its rights;

whether or not resulting from a mistake or error of judgment.

**6. Delivery and Risk in Goods**

**6.1 Delivery:**

- (a) Delivery to the Buyer shall be deemed to take place when the Goods leave the Company's premises.
- (b) Goods are deemed to **leave the Company's premises** when the Buyer or the Buyer's agent signs a receipt acknowledging the delivery of a quantity of Goods. If the Buyer pays for the freight of the Goods, the freight carrier is deemed to be the Buyer's agent.

**6.2 Risk:** The risk in the Goods shall pass to the Buyer when the Goods leave the Company's premises.

**6.3 Freight:** The Company will pay freight charges on consignments where individual orders exceed a minimum value of \$1,000.00 (excluding GST). Where an individual order fails to reach this value freight will be charged at the Company's standard commercial rates. The minimum freight charge is \$25.00.

**6.4 Order Size:** All orders are to be of such size and composition as are normally sold by the Company. Orders for lesser or unusual amounts may be accepted at the discretion of the Company and may be invoiced at the listed price plus 10%.

**6.5 Acceptance of Order:** All orders by the Buyer for Goods are deemed to be an offer to purchase the items specified in the order. The Company reserves the right to accept, in whole or in part, any order submitted by the Buyer. The supply of any Goods by the Company constitutes acceptance of the order only for the Goods for which an invoice is issued. An order may be cancelled by the Buyer only before delivery and with the Company's prior written consent.

**6.6 Possession:** The Buyer does not have the right to possess the Goods until delivery.

**6.7 Delivery date or time:** Any time or date for delivery given by the Company is only an estimate and the Company shall not be liable for the direct or indirect consequences of a delay however arising. The Buyer acknowledges that the Company will not accept any liability for any claims or losses (direct or indirect) arising from its failure to meet the delivery date (if any).

**6.8 Instalment Delivery:** The Company reserves the right to make deliveries in instalments, in which event each instalment will be a separate contract on these terms.

**6.9 Surcharge:** Where the Goods are delivered on Company-owned pallets, a surcharge of \$30 per pallet will be chargeable. A credit will be given when

- the pallet is returned in a satisfactory condition to the Company's issuing premises.
- 6.10 **Delivered Quantity:** All deliveries shall be deemed to have been delivered without shortage in quantity unless the Buyer notifies the Company of such shortage, if in writing, within 14 days and if verbally, within seven days after delivery of the Goods to the Buyer, provided that in each case a receipt signed by the Buyer and given to the carrier acknowledging delivery of a quantity of Goods shall be conclusive evidence of the quantity delivered to the Buyer by the Company.
- 6.11 **Receiving Goods:** The Buyer must ensure that it is ready and capable to accept delivery on the delivery date and that adequate facilities exist to accept and properly store the Goods. If the Goods are unable to be promptly discharged or delivered, the Buyer shall compensate the Company for any costs incurred by the Company as a result of any delay encountered.
- 6.12 **Insurance by the Buyer:** The Buyer shall insure the Goods, from time to time, in the joint names of the Company and the Buyer and shall have the following statement noted on such insurance cover: "Loss if any shall be payable to the Company whose receipt shall be a sufficient discharge", unless otherwise agreed by the Company in writing. The Buyer shall, if required by the Company, provide the Company with evidence that the Goods are fully insured in respect of any loss of or damage to the Goods.
7. **Security in the Company's Goods**
- 7.1 **Retention of Title:** Property and ownership in the Goods remains with the Company and will not pass to the Buyer until the Company receives payment in full of the purchase price of the Goods.
- 7.2 **Ordinary Course of Business:** Unless otherwise notified in writing to the Buyer by the Company, the Buyer is authorised to sell the Goods in the ordinary course of business, provided that the proceeds of any Goods sold shall be kept in a separate account and shall not be mixed with any other moneys, including funds of the Buyer.
- 7.3 **Fiduciary Bailee:** Until property passes to the Buyer, the Buyer shall hold the Goods as fiduciary bailee for the Company. The Buyer shall store the Goods separately and in a manner to enable them to be identified and cross referenced to particular invoices.
- 7.4 **Indemnity:** The Buyer irrevocably authorises the Company, its agents and employees for so long as title to the Goods remains with the Company, to search for and remove the Goods (and if any Goods are wholly or partially attached to or incorporated in any other goods, sever or disconnect the Goods from those other goods) and for that purpose to enter into any premises where they may be found using such force as is necessary. The Buyer will indemnify the Company against any costs and liabilities that may arise directly or indirectly as a result of the entry by the Company, its agents or employees into any premises or the seizure by the Company of any Goods (or the severing or disconnection of such Goods from other goods) under this clause.
8. **Safety**
- 8.1 The Buyer shall take all practicable steps to prevent accident or injury to persons at any place of work under the Buyer's control.
- 8.2 In particular the Buyer shall:
- take all reasonable and prudent measures to keep any Goods secure and in a safe place (whether in use or not);
  - handle the Goods or permit them to be handled only by properly skilled and experienced persons who are not under the influence of alcohol or drugs and in accordance with the requirements of any label or instruction on the Goods, and applicable laws on safe handling;
  - ensure that the Goods are sold solely for the purposes intended by the manufacturer having regard to their capabilities and limitations;
  - ensure that, at all times, the Buyer, its employees, subcontractors or agents will comply with all applicable laws including, but not limited to, the Health and Safety in Employment Act 1992 and the Hazardous Substances and New Organisms Act 1996.
9. **Performance of Services**
- 9.1 **Standard:** The Services will be provided with due skill and care, in a competent and professional manner and in compliance with all relevant laws in New Zealand.
- 9.2 **Access to premises:** In providing the Services, the Company may require assistance from the Buyer and access to the Buyer's premises. The Buyer will:
- promptly provide the Company any required material, data, or other information;
  - perform any tasks the Company reasonably requests the Buyer to carry out;
  - allow the Company access to the Buyer's premises; and
  - comply with any reasonable instructions from the Company.
- If the Buyer fails to provide or carry out any of the above requirements, the Company will not be liable for any failure or delay in providing the Services and the Company may charge, and the Buyer will pay, any costs relating from such failure.
10. **Authorisations**
- 10.1 **Authorisation:** It is the Buyer's risk and responsibility to obtain every necessary or prudent authorisation (including licences, permits and consents) to buy, possess, use, export, import or resell any Products and to ensure that the Products are purchased by an authorised person.
- 10.2 **Buyer Indemnities:** The Buyer shall indemnify the Company from any liability that may arise for any breach by, or on behalf of the Buyer, to obtain every necessary authorisation.
- 10.3 **Notify:** The Buyer shall notify to the Company in writing of the names of its personnel authorised to place orders on the Buyer's behalf and must advise in writing if any such authority is later withdrawn. The Buyer shall be solely responsible for supervising the use of the account and absent specific written advice of authorised personnel, the Company has no obligation to enquire into the authority of any person placing orders on any account in the name of the Buyer. Any orders made by an authorised person prior to the Company receiving written notice from the Buyer withdrawing that person's authority, shall be paid for by the Buyer.
11. **Purchases of Products for Business Purposes - Limitation of Liability**
- 11.1 If the Buyer acquires the Products from the Company for the purposes of a business in any way, or the Buyer holds itself out as acquiring the Products for the purposes of a business in any way, the Buyer agrees to the following terms;
- the conditions, warranties and guarantees, representations and descriptions in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 ("CGA") or implied by law, trade or custom will not apply and are excluded from the Agreement; and no claims for alleged defective Goods will be recognised unless made in writing and received by the Company within 14 days after delivery; and
  - the Buyer may not claim any of the remedies in the CGA from the Company or from any contract or to the Company or manufacturer of the Goods or from any manufacturer of any components or parts in the Goods; and
  - the only warranties, representations, conditions and agreements in respect of the Products are those which are contained in the Agreement or expressly authorised or confirmed in writing by the Company; and
  - the Company's liability in respect of all claims for loss, damage or injury arising from the breach of its obligations under the Agreement or in connection with the Products, from failure to perform the Company's warranty obligations or from negligence on the part of the Company, its employees, agents or contractors, shall be limited (at the Company's option) to repair or replacement of the Goods or Services or re-performance of the Services or credit, and shall not in aggregate exceed in value the price invoiced to the Buyer for those Goods;
  - the Buyer shall use its best endeavours to minimise loss and damage arising from any alleged defect; and
  - neither the Company, its employees, agents or contractors will be liable to the Buyer, its employees, agents or contractors for any consequential loss or damage howsoever caused. This exclusion of liability includes, but is not limited to, consequential loss or damage arising from suspension of performance of the Agreement pursuant to clause 5, delays in manufacturing, negligence, delivery and the costs incurred in returning any Goods to the Company or any manufacturer. This exclusion applies whether the consequential loss is incurred by the Buyer or a third party.
12. **Buyer Warranties and Indemnities**
- 12.1 **Warranties:** The Buyer warrants that if it purchased any Goods from the Company for resupply as, or incorporates any Goods into, goods ordinarily acquired for personal household or domestic use (**Consumer Goods**), it will supply the Consumer Goods on the following conditions:
- If it supplies the Consumer Goods for resupply by its customer, it will ensure that its terms and conditions of supply require its customer and each person in the distribution chain to include in its supply agreements or conditions of sale obligations requiring its customer to exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Goods for business purposes;
  - If it supplies the Consumer Goods directly to an end user/consumer, it will do so using terms and conditions of supply which exclude liability for any claims under the CGA, but only where the end user/consumer acquires the Consumer Goods for business purposes.
- 12.2 **Indemnities:** The Buyer agrees to fully indemnify the Company for, and on demand pay the Company, all costs (including costs calculated on a lawyer and own client basis), losses, damages, expenses and claims incurred or which the Company is or becomes liable for as a consequence of or in connection with:
- the Buyer's failing to comply with or breach any of its obligations under the Agreement; and
  - any claim or legal proceedings the Buyer or any other person brings against the Company or any person acting as the Company's agent in the exercise of the Company's rights under the Agreement; and
  - anything done or not done in good faith in the exercise or attempted exercise by the Company of its rights under the Agreement; and
  - any amount that the Buyer fails to pay on the due date for payment; and
  - the exercise, enforcement, preservation or attempted exercise, enforcement or preservation of any of the Company's rights under the Agreement, or in suing for and recovering any moneys that the Buyer owes or is liable to pay to the Company or indemnify the Company for; and
  - taking any actions or doing any things (including paying or incurring liabilities to pay any moneys) to protect or preserve the Company's rights under the Agreement, in respect of which the Company's security interest in Secured Goods, and/or any Secured Goods;
  - any failure by the Buyer, its customers or any person in the distribution chain to properly contract out of liability to business end users/consumers under the CGA.
- in all cases on a full indemnity basis.
13. **Privacy Act 1993**
- 13.1 The Company will hold any personal information received from the Buyer for marketing, product development, account administration and credit purposes. The Company may disclose personal information about the Buyer to any person the Buyer names as a credit referee or to any person for the purpose of securing the Company's interest in any Goods. Failure by the Buyer to supply personal information for these purposes entitles the Company to withdraw or refuse credit to the Buyer and to repossess any Goods in the possession or control of the Buyer.
14. **Intellectual Property**
- 14.1 The sale of any Products by the Company to the Buyer does not give the Buyer the right to use, sell, disseminate or duplicate any of the Company's

trademarks, copyrights, designs or other intellectual property rights (unless agreed otherwise by the Company in writing).

15. **General**

15.1 **Severance:** If any clause or part of a clause of these Terms of Trade and each Contract is held to be invalid or unenforceable for whatever reason, to the extent not inconsistent with that invalid clause, the remaining provisions shall remain in full force and effect.

15.2 **Entire Agreement:** These Terms of Trade and each Contract (together the **Agreement**) constitute the entire agreement of the Parties about the Products and any previous agreements, understandings and negotiations regarding the Products cease to have any effect. The terms and conditions of the Agreement, in relation to the Products, will prevail over any existing or subsequent terms and conditions set out in any document (including any Buyer purchase order), unless agreed otherwise in writing by the Company.

15.3 **Waiver:** No waiver of any breach of, or failure to enforce any provision of, the Agreement at any time by any party will in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of the Agreement.

15.4 **Force Majeure:** The Company shall not be liable for any delay in performing its obligations under the Agreement to the Buyer in whole or in part by force majeure which shall include (but not be limited to) an act of God, weather conditions, natural disasters, strikes, lockouts, fire, war, suit, civil commotion, inability to obtain Goods, Services or supplies including the imposition of any export or import bans or any other cause beyond the reasonable control of the Company.

15.5 **Variation:**

(a) This Agreement (these Terms of Trade and the Contract for the Products) shall not be modified unless agreed in writing by the Parties.

(b) The Company may amend the Terms of Trade, from time to time, by notice to the Buyer. Any instructions received by the Company from the Buyer for the supply of Products shall thereafter constitute acceptance of these Terms of Trade.

15.6 **Assignment:** The Buyer is not entitled to assign, transfer or otherwise dispose of any of its rights or obligations under the Agreement to anyone else without the Company's prior written consent. The Company shall be entitled to assign, transfer or dispose of any or all of its rights and obligations under the Agreement to any other person without the prior consent of the Buyer.

15.7 **Notice:** Unless agreed otherwise in writing, all notices under the Agreement shall be served in writing to the registered offices of the Parties.

15.8 **Errors and Omissions:** Errors and omissions of a clerical nature in quotations, invoices or statements shall be subject to correction.

15.9 **Governing Law:** The Agreement shall be governed by, and construed in accordance with, the law of New Zealand.

16. **Personal Property Securities Act 1999**

16.1 The Buyer acknowledges that the retention of title provisions in the Agreement create a security interest in any Goods supplied by the Company to the Buyer and their proceeds of sale in favour of the Company for the payment of the purchase price of the Goods.

16.2 The security interest referred to above extends to any Goods which have been incorporated in, attached to, or commingled with any other property whatsoever by any person or process even though those Goods may no longer be identifiable or separate.

16.3 The Buyer agrees that:

- (a) the Company will register a financing statement in respect of the security interest in the Goods and any proceeds of sale;
- (b) the Goods will be described on the financing statement as goods and inventory and such description will include any and all of the Goods supplied by the Company;
- (c) it will promptly give the Company all such assistance, and all such information, as is necessary to register that financing statement; and
- (d) the Company need not provide the Buyer with any notice or verification of any financing statement or financing charge statement in respect of the security interest.

16.4 Without limiting any of the Company's rights and remedies under the Agreement, the Buyer waives the right to receive any notice of repossession by the Company, or any notice required to be given by the Company to the Buyer, under Part 9 of the Personal Property Securities Act 1999.

17. **Contracting out of PPSA Rights**

17.1 **Power to Sell:** The Company may exercise any power to take possession of and/or to sell any Secured Goods even if the Company does not have priority over other secured parties having a security interest in the same collateral, and sections 109 and 111 of the PPSA shall not apply to the extent they are inconsistent with this clause.

17.2 **Power to retain:** The Company may retain any Secured Goods towards satisfaction of the Buyer's obligations without giving the Buyer prior notice of the Company's intention to do so.

17.3 **Accessions:** The Company may remove any accessions from Secured Goods without the need for any notice to the Buyer and without being liable to the Buyer for any damage or loss that might arise from the Company's doing so, and none of sections 125-127, 129 and 131 of the PPSA shall apply in the Buyer's favour to the extent that they may be inconsistent with this clause.

17.4 **Sections:** Nothing in sections 114(1)(a), 116, 117(1), 119, 120(2), 121, 132 and 134 of the PPSA shall apply to the Agreement.

18. **Release of Security Interest:**

18.1 The Company will not be obliged to register any financing change statement under the PPSA unless:

- (a) any costs incurred in doing so have first been paid by the Buyer; and
- (b) the Company is satisfied that any amounts paid by the Buyer to the Company or received prior to that release are not at risk of subsequently being set aside by the operation of any law, or of any claim to priority over the Company's security interest in such amount; and
- (c) if any payment to the Company is avoided or otherwise becomes payable to the Buyer or to any other person, to the extent possible the relevant release will have no effect, and the signing by the Company of any release or the registration of a financing

change statement discharging the Company's security interest in relation to any Goods will not prevent the Company from registering another financing statement or otherwise recovering any amount which is due to the Company in such manner as it may be entitled to do.