

TERMS OF TRADE

1 Interpretation

- 1.1 In these Terms of Trade unless the context otherwise requires the following terms shall have the following meanings:
- (a) **"Agronomy Supplies"** means any agricultural product (including crops, feed, chemicals and organic or inorganic matter) or general merchandise or any other item specified in an order or instruction which is ordered, sold or acquired under these Terms of Trade;
 - (b) **"Application"** means the application by the Customer to open a trading account;
 - (c) **"Customer"** means the person, partnership, company or trust named as customer in the Application or who instructs Fergus Hazlett or places an order with Fergus Hazlett under clause 2.1 and in the case of a partnership or trust includes each partner of the partnership or trustee of the trust as the case may be in their personal capacity both joint and several;
 - (d) **"Default"** means any of the events specified in clause 7.1;
 - (e) **"Default Interest Rate"** means the per annum rate of 10% plus the per annum overdraft rate charged to Fergus Hazlett by its banker;
 - (f) **"Equipment"** means any vehicle, machinery, apparatus, device, bin, vat, structure and any other like or associated equipment ordered, sold or acquired under these Terms of Trade;
 - (g) **"Fergus Hazlett"** means Fergus Hazlett Limited and any assign or subsidiary company or related company of Fergus Hazlett Limited;
 - (h) **"Guarantor"** means each of the persons, partnerships, companies or trusts named as guarantors in the Application and in the case of a partnership or trust includes each partner of the partnership or trustee of the trust as the case may be in their personal capacity both joint and several;
 - (i) **"Livestock"** means any livestock to be sold or acquired under these Terms of Trade;
 - (j) **"NAIT Act"** means the National Animal Identification and Tracing Act 2012 and includes any applicable regulations and any successor enactment or enactments;
 - (k) **"Party"** means the Customer, each Guarantor and any person or entity named in the Application or who signs the Application;
 - (l) **"PPSA"** means the Personal Property Securities Act 1999 and includes any applicable regulations and any successor enactment or enactments;
 - (m) **"PPSR"** means the Personal Property Securities Register; and
 - (n) **"Secured Property"** means that property stipulated in clause 5.1.

2 General

- 2.1 The Customer shall be deemed to have accepted these Terms of Trade by signing the Application or instructing Fergus Hazlett in respect of Livestock, Equipment or Agronomy Supplies, or placing an order for Equipment or Agronomy Supplies.
- 2.2 No instruction by the Customer to Fergus Hazlett or order by the Customer may be cancelled, varied or suspended without the written approval of Fergus Hazlett.
- 2.3 Fergus Hazlett may amend these Terms of Trade from time to time. The prevailing version of the Terms of Trade shall be available at www.fergushazlett.nz and Fergus Hazlett shall not be obliged to provide any further notification to the Customer of the Terms of Trade or any amendment to the same.
- 2.4 The Customer acknowledges and agrees that:
- (a) Fergus Hazlett may act as agent and/or broker for either or both of a vendor or purchaser of Livestock, Equipment or Agronomy Supplies;
 - (b) Fergus Hazlett may charge commission and/or fees for its agency and/or brokerage services;
 - (c) Fergus Hazlett may deduct commission and/or fees from monies owed to a vendor or purchaser of Livestock, Equipment or Agronomy Supplies;
 - (d) Fergus Hazlett may sell Livestock, Equipment or Agronomy Supplies to a purchaser for a different price than paid to the vendor;
 - (e) Fergus Hazlett shall not be liable in any way for any act done or not done by Fergus Hazlett as agent and/or broker for the Customer and the Customer shall indemnify Fergus Hazlett as agent/broker for any liability howsoever arising;
 - (f) Fergus Hazlett shall not be liable in any way for any act done or not done by a party to a contract brokered or facilitated by Fergus Hazlett and Fergus Hazlett gives no warranty or assurance concerning the parties to that contract or the subject matter of the contract;
 - (g) Fergus Hazlett shall not be obliged to pay or credit any amount on account of a purchase price until the full purchase price has been received from the purchaser;
 - (h) All information supplied to Fergus Hazlett by a vendor Customer concerning Livestock, Equipment or Agronomy Supplies is accurate and complete and Fergus Hazlett is not obliged to verify that information;
 - (i) All Livestock, Equipment or Agronomy Supplies offered for sale (by any means whatsoever) by a vendor Customer is free of any security interest, charge, mortgage or other encumbrance; and
 - (j) Fergus Hazlett may act upon the instruction or communication of any one person comprising the Customer or holding himself/herself as having authority to act for the Customer.

3 Payment and Accounts

- 3.1 The Customer will make payment to Fergus Hazlett in full (including all commission, fees, delivery costs, charges, takes and the like, plus GST) within the time specified in the invoice or if no time specified the Customer shall make payment within:
- (a) 14 days of the date of the invoice in the case of payment for Livestock; or
 - (b) the 20th day of the month following the month of the invoice in the case of payment for Equipment and/or Agronomy Supplies.
- 3.2 The Customer shall make payment to Fergus Hazlett in full without deduction, set-off or counterclaim.
- 3.3 The Customer authorises Fergus Hazlett to without prior notice apply any

monies held by Fergus Hazlett for or on behalf of the Customer towards any amounts owing by the Customer.

- 3.4 In the event that the Customer considers that there is an error in an invoice the Customer must within 3 working days of the date of the invoice give a notice in writing to Fergus Hazlett specifying full details of the error and if no such notice is provided the invoice shall be treated as correct.
- 3.5 In the event that the substance of a notice given under clause 3.4 is not immediately resolved such that a dispute arises:
- (a) the Customer must make payment to Fergus Hazlett of the undisputed amount in accordance with clause 3.1;
 - (b) Fergus Hazlett may withhold delivery of any Livestock, Equipment or Agronomy Supplies pending resolution of the dispute; and
 - (c) the Customer must within 3 working days of the determination of the dispute make payment to Fergus Hazlett of any amounts still owing.
- 3.6 The Customer acknowledges that all prices, commission amounts, fees, delivery costs, charges, takes and the like are plus GST unless otherwise indicated.

4 Title, Delivery and Risk

- 4.1 Title to any Livestock, Equipment or Agronomy Supplies shall remain with Fergus Hazlett (or the vendor as the case may be) until payment in full by the Customer for the same and all other sums due on any account whatsoever.
- 4.2 The risk in any Livestock shall pass to the Customer on crossing the tailgate of the carrier at the place of collection and the risk in any Equipment or Agronomy Supplies shall pass to the Customer on delivery of the same to the Customer's address specified in the Application or such other agreed address or when such Equipment or Agronomy Supplies are available for collection by the Customer (as the case may be).
- 4.3 The time for delivery of Livestock, Equipment or Agronomy Supplies shall not be of the essence and Fergus Hazlett shall not be liable for any direct or consequential loss resulting from:
- (a) a delay in delivery, a failure to deliver, or a change in the location or method of delivery due to circumstances beyond the reasonable control of Fergus Hazlett; or
 - (b) part or multiple deliveries.
- 4.4 Fergus Hazlett may cancel any instruction or order or any part thereof where some or all of the Livestock, Equipment or Agronomy Supplies cannot be delivered due to circumstances beyond the reasonable control of Fergus Hazlett and Fergus Hazlett shall not be liable in any way whatsoever for such cancellation.
- 4.5 In the event that the Customer does not for any reason take delivery of Livestock, Equipment or Agronomy Supplies:
- (a) Fergus Hazlett may in its discretion resell or resupply to a third party and the Customer shall be liable for any loss on the resale or the resupply;
 - (b) the Customer shall be liable for any additional costs incurred by Fergus Hazlett including any additional delivery, transportation, storage, disposal and logistical costs; and
 - (c) the Customer shall be liable for any perishing or deterioration in the condition of the Livestock, Equipment or Agronomy Supplies.
- 4.6 The Customer shall be deemed to have accepted the condition and suitability of the Livestock, Equipment or Agronomy Supplies unless the Customer gives a notice in writing to Fergus Hazlett within 5 working days of delivery specifying full details.

5 Security

- 5.1 The Customer hereby grants to Fergus Hazlett under the PPSA a security interest over all present and after-acquired property of the Customer including any Livestock, Equipment or Agronomy Supplies upon and incorporating the ADLS general terms registered pursuant to section s 209 Land Transfer Act 2017 under number 2018/4344 and the secured monies shall include all existing and/or future obligations of the Customer under these Terms of Trade, any other agreement, or arising in any other manner whatsoever, owed to Fergus Hazlett or any entity or person related to Fergus Hazlett including any assignee and the Customer permits Fergus Hazlett to register a financing statement or financing statements on the PPSR in respect of the said security interest and the Customer shall be liable to pay the registration fees upon the demand of Fergus Hazlett and the Customer shall do all things necessary for Fergus Hazlett to register the financing statement or financing statements and perfect and maintain its security interest, including taking all reasonable steps to obtain from creditors of the Customer their written acknowledgement of Fergus Hazlett's ownership and/or security interest and/or priority over the Livestock, Equipment or Agronomy Supplies.
- 5.2 The Customer and Fergus Hazlett intend that the security interest granted in the Livestock, Equipment or Agronomy Supplies under these Terms of Trade constitutes a purchase money security interest as defined under the PPSA and shall have priority over any other security interest in the same.
- 5.3 The Customer hereby waives any rights it may have under ss 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 148 of the PPSA.

6 Additional Customer Obligations and Restrictions

- 6.1 The Customer shall:
- (a) permit Fergus Hazlett or any person designated by Fergus Hazlett access at all times to any premises for the purposes of inspecting, removing or taking possession of the Secured Property;
 - (b) not charge, mortgage or encumber any Livestock, Equipment or Agronomy Supplies until payment is made in full for the same;
 - (c) not change its name without giving at least 15 days written notice to Fergus Hazlett before the name change takes effect;
 - (d) not where the Customer is a company change its registered office without giving at least 15 days written notice to Fergus Hazlett before the change of registered office takes effect; and
 - (e) not assign any of the rights of the Customer under these Terms of Trade without the prior written consent of Fergus Hazlett.

7 Default and Enforcement

- 7.1 There shall be in default where:
- the Customer breaches any provision of these Terms of Trade including any obligation to make payment or in the discretion of Fergus Hazlett the Customer will in the future breach any provision of these Terms of Trade;
 - any representation made by the Customer or supplied by the Customer to Fergus Hazlett is untrue;
 - the Secured Property is in the discretion of Fergus Hazlett at risk; or
 - the Customer is insolvent, adjudicated bankrupt, placed in liquidation, dissolved, struck-off or a receiver or administrator is appointed in respect of the Customer.
- 7.2 In the event of a Default:
- all amounts payable or to become payable under these Terms of Trade shall become immediately due;
 - Fergus Hazlett may in its discretion refuse to deliver Livestock, Equipment or Agronomy Supplies;
 - Fergus Hazlett may in its discretion require the Customer to cease selling or disposing of the Secured Property; and
 - Fergus Hazlett shall without prejudice to its rights at law be entitled to enter any property or premises and take possession of and sell any of the Secured Property or take possession of any proceeds of sale of the Secured Property and may apply any proceeds of sale towards repayment of any amounts outstanding under these Terms of Trade.
- 7.3 The Customer shall be liable to pay any cost, loss, liability or expense incurred by Fergus Hazlett in enforcing or attempting to enforce these Terms of Trade or resolving any dispute under clause 3.5 including without limitation full solicitor/client costs, disbursements and agency fees, debt collection costs, and transportation and storage costs.
- 7.4 The Customer shall be liable to pay interest at the Default Interest Rate from the date of Default down to the date of repayment in full on all amounts owing under these Terms of Trade which interest shall capitalise monthly and be calculated daily on the unpaid total of all amounts owing and capitalised interest.
- 7.5 All payments received by Fergus Hazlett shall be applied first in payment of interest and any costs or expenses incurred by Fergus Hazlett.
- 7.6 Time is of the essence in respect of the performance of the obligations of the Customer to Fergus Hazlett under these Terms of Trade.

8 Exclusions

- 8.1 The Customer acknowledges that:
- the Livestock, Agronomy Supplies or Equipment are not intended for personal, domestic or household use or consumption and/or they are acquired for resupply in trade or consumption in the course of production such that the Consumer Guarantees Act 1993 does not apply; or otherwise
 - the Customer is in trade, the Livestock, Agronomy Supplies or Equipment are both supplied and acquired in trade, the Customer agrees to contract out of the provisions of the Consumer Guarantees Act 1993, and this clause is fair and reasonable such that the provisions of the Consumer Guarantees Act 1993 do not apply; except that the Consumer Guarantees Act 1993 shall apply where its application cannot be lawfully excluded.
- 8.2 The Customer acknowledges that it relies upon its own judgment as to the nature, quality, condition and description of the Livestock, Agronomy Supplies or Equipment and the suitability of the same for any particular purpose.
- 8.3 The Customer acknowledges that:
- the Customer is in trade, the Livestock, Agronomy Supplies or Equipment are both supplied and acquired in trade, the Customer agrees to contract out of the provisions of the Fair Trading Act 1986 (including ss 9, 12A, 13 or 14(1)) to the maximum extent permitted by law, and this clause is fair and reasonable such that the relevant provisions of the Fair Trading Act 1986 do not apply (except that those provisions shall apply where they cannot be lawfully excluded); and
 - to the maximum extent permitted by law, any warranties or conditions imposed upon Fergus Hazlett by the Contract and Commercial Law Act 2017, and any other enactment, regulations or by-laws are excluded.
- 8.4 Fergus Hazlett shall not be liable for any loss or damage of any kind whatsoever including loss of profits and consequential loss whether suffered or incurred by the Customer or another person whether in contract or tort or otherwise and irrespective of whether such loss or damage arises directly or indirectly from any defect in the Livestock, Equipment or Agronomy Supplies or any error or misdescription relating to the same.
- 8.5 In the event that Fergus Hazlett is liable to the Customer in any manner arising out of the provision of Livestock, Equipment or Agronomy Supplies, the liability of Fergus Hazlett shall not exceed the price paid by the Customer for the same.
- 8.6 The rights of Fergus Hazlett under these Terms of Trade and at law shall not be affected by any neglect, forbearance or delay in enforcement.

9 Continuing Guarantee and Professional Trustee Limitation

- 9.1 The Guarantor (if more than one jointly and severally) shall be with the Customer jointly and severally liable to Fergus Hazlett as principal debtor for the due performance and observance by the Customer of its obligations to Fergus Hazlett whether under these Terms of Trade or otherwise and shall indemnify Fergus Hazlett for any costs, expenses or losses which Fergus Hazlett incurs in consequence of any breach or default by the Customer.
- 9.2 The liability of the Guarantor under this clause 9 shall not be affected by:
- the granting of time or any other indulgence to the Customer or another Guarantor, or the compounding, compromise, release, abandonment, waiver, variation or renewal of any of the rights of Fergus Hazlett against the Customer or another Guarantor;
 - the neglect or omission by Fergus Hazlett to make any prior demand on the Customer or another Guarantor or to enforce any rights against the Customer or another Guarantor; or
 - the Customer or another Guarantor failing to sign the Application or not being bound by these Terms of Trade.
- 9.3 Where a person or company enters into these Terms of Trade as a trustee of a trust and neither the person nor any family member of the person, or (as the case may be), neither the company nor any director or shareholder of the company, has any right to or interest in the assets of the trust (including any direct or indirect interest, or a contingent or unvested interest) other than in his/her/its capacity as trustee, then that trustee's liability under these Terms

of Trade will be limited to the assets of the trust from time to time save that this clause shall not apply if the trustee acts in breach of trust or otherwise loses the right to be indemnified from the trust assets.

10 NAIT

- 10.1 Where the Customer is a "PICA" or "PICA delegate", as defined under the NAIT Act, the Customer appoints and authorises Fergus Hazlett to perform any of the following functions on behalf of the Customer:
- register the Customer with the "NAIT organisation" as defined under the NAIT Act.
 - register with the NAIT organisation the "NAIT animals", as defined under the NAIT Act, that the Customer is in charge of.
 - ensure that all details required by NAIT Act and any associated legislation and regulations are maintained.
 - make animal movement declarations to the NAIT organisation on behalf of the Customer.
 - notify the NAIT organisation when animals that the Customer is in charge of die, are lost or are exported live.
 - access and manage the Customer's personal information and data required for NAIT purposes.
- 10.2 Fergus Hazlett shall be entitled to act under the authority contained within clause 10.1 but shall not be obliged to do so unless specifically instructed to do so in writing by the Customer.
- 10.3 Nothing within clause 10.1 shall preclude the Customer from itself submitting data for NAIT purposes or appointing an alternate information provider or multiple information providers.
- 10.4 The Customer warrants that it will comply with all NAIT Act obligations and requirements and any obligations and requirements under any associated legislation and regulations.
- 10.5 The Customer warrants that it will provide Fergus Hazlett with accurate and complete information for NAIT purposes as and when necessary or requested by Fergus Hazlett and the Customer acknowledges that Fergus Hazlett shall not be obliged to verify the accuracy of the same.
- 10.6 The Customer hereby indemnifies Fergus Hazlett for any claim against Fergus Hazlett or loss or damage sustained by Fergus Hazlett as a result of any breach of warranty or obligation by the Customer under this clause 10.
- 10.7 Fergus Hazlett shall be entitled to renounce the appointment and authority contained within clause 10.1 at any time.

11 Privacy and Information

- 11.1 The Parties will comply with the Privacy Act 2020 and any other applicable privacy laws having regard to the rights and obligations under this clause 11.0.
- 11.2 Each Party authorises, in accordance with the Privacy Act 2020 and Fergus Hazlett's privacy statement (which is available on the Fergus Hazlett website and which Fergus Hazlett can change from time to time in accordance with its terms), Fergus Hazlett (including all related companies, agents and assigns) to collect, retain, use, store and disclose to third parties, and obtain from third parties, any information about the Party (or any other person or entity) for any purpose including, without limitation, verifying the identity of a Party, complying with obligations under the AML/CFT Act or any other enactment or law, assessing credit worthiness, processing applications, administering these Terms of Trade, enforcing or selling/assigning any rights under these Terms of Trade, and implementing other relationships and transactions between any Party and Fergus Hazlett (including all related companies, agents and assigns).
- 11.3 Each Party warrants that all information supplied by each Party to Fergus Hazlett is complete and correct and each Party will immediately advise Fergus Hazlett of any changes to such information. Each Party will immediately provide any information or authority requested by Fergus Hazlett which Fergus Hazlett in its discretion deems necessary for any purpose.
- 11.4 Each Party who is a natural person may request access to the information Fergus Hazlett holds about that Party and request that it be corrected.
- 11.5 Fergus Hazlett will hold all information received about each Party securely but shall be permitted to disclose it in accordance with this clause 11.0.
- 11.6 Each Party who provides information to Fergus Hazlett about another person or entity warrants it has the authority of such person or entity to disclose the information to Fergus Hazlett and to consent to the disclosure of the information to third parties.
- 11.7 The Customer hereby consents to receiving from Fergus Hazlett by any medium commercial electronic messages for the purposes of the Unsolicited Electronic Messages Act 2007.

12 Miscellaneous

- 12.1 Fergus Hazlett may assign its rights title or interest under these Terms of Trade at any time without affecting the liability of the Customer or the Guarantor.
- 12.2 Should any part or provision of these Terms of Trade be held unenforceable or in conflict with applicable laws or regulations, the invalid or unenforceable part or provision shall be replaced with a provision which accomplishes, to the extent possible, the original business purpose of the part or provision in a valid and enforceable manner, and the remainder of these Terms of Trade shall remain binding.
- 12.3 Any right or discretion reserved to Fergus Hazlett under these Terms of Trade may be exercised by Fergus Hazlett without fetter, in its sole interest and without requirement to give reasons for such exercise.
- 12.4 Fergus Hazlett may with immediate effect suspend or terminate the Customer's account at any time provided that suspension or termination shall not affect the Customer's liability to discharge its accrued obligations.
- 12.5 The Customer acknowledges and agrees with Fergus Hazlett that all of Fergus Hazlett's rights and powers under these Terms of Trade may be exercised and enforced by any of its related companies (as defined in the Companies Act 1993) or any of its duly authorised representatives or agents or assigns for any purpose connected with these Terms of Trade, and that in terms of the Contract and Commercial Law Act 2017, Part 2, Subpart 1 the obligations of the Customer under these Terms of Trade are intended to confer a benefit on any such related companies, representatives or agents or assigns as well as Fergus Hazlett and accordingly are enforceable at the suit of such related companies, representatives, agent or assigns.
- 12.6 The Application may be executed in any number of counterparts (including e-mail and facsimile copies) all of which, when taken together, will constitute one and the same instrument. A party may enter into the Application, and thereby these Terms of Trade, by executing any counterpart.