

Farmers Air Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Seller" shall mean Farmers Air Limited Ltd its successors and assigns or any person acting on behalf of and with the authority of Farmers Air Limited.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Seller to the Customer.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Services" shall mean all Services supplied by the Seller to the Customer (and includes any advice or recommendations) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer.
- 1.5 "Price" shall mean the price payable for the Services as agreed between the Seller and the Customer in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Customer for the supply of Services and/or the Customer's acceptance of Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 2.4 The Customer shall on demand provide all information to the Seller that it may require in its sole discretion for the provision of the Services including but not limited to the weight and height of passengers and their dimensions, weight and characteristics of any cargo to be carried by the Seller.
- 2.5 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.
- 2.6 The Seller, at its sole discretion, reserves the right to refuse the carriage of any goods or persons, particularly where the Seller suspects that any person may be under the influence of drugs or alcohol, or the goods are of a dangerous nature.
- 2.7 If the Customer is a company or other non-natural entity then by accepting these terms and conditions the Customer irrevocably and unconditionally warrants to the Seller that it has the full authority of its shareholders, partners or members to bind that entity to these terms and conditions.

3. Price And Payment

- 3.1 At the Seller's sole discretion, the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Customer in respect of Services supplied; or
 - (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within thirty (30) days.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3 At the Seller's sole discretion, a deposit may be required.
- 3.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due shall be due seven (7) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 3.5 Payment will be made by direct credit, or by any other method as agreed to between the Customer and the Seller.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.7 The Seller reserves the right in its sole discretion to delay provision of the Services until the Seller receives payment for the Services from the Customer.

4. Delivery Of Services

- 4.1 At the Seller's sole discretion delivery of the Services shall take place when the Customer takes possession of the Services at the:
 - (a) Seller's address; or
 - (b) Customer's nominated address (in the event that the Services are delivered by the Seller or the Seller's nominated carrier).
- 4.2 The Customer shall make all arrangements necessary to take delivery of the Services whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Services as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.3 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 4.4 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 4.5 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Services (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.
- 4.6 The Customer acknowledges that flight duration times are approximate and, at the Seller's sole discretion, flight routes may vary due to weather conditions.
- 4.7 The Customer irrevocably and unconditionally warrants to the Seller that it will comply with any and all directions of the Seller or its agent or employees at all times during the delivery of the Services.

5. Title

- 5.1 The Seller and Customer agree that ownership of the Services shall not pass until:
 - (a) the Customer has paid the Seller all amounts owing for the particular Services; and
 - (b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.
- 5.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Services shall continue.

6. Error and Omissions

- 6.1 The Customer shall inspect the Services on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 6.2 For defective Services, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Services or repairing the Services provided that the Customer has complied with the provisions of clause 6.1.

7. Refunds

- 7.1 A full refund will only be given in the event of adverse weather conditions, or any other reason where the Seller is prevented from delivering of the Services, and the date for delivery of the Services is not rearranged.
- 7.2 Where Services have commenced and are then discontinued by the Seller for any reason, the amount of the refund given shall be at the sole discretion of the Seller and subject to the extent of the Services already provided.
- 7.3 The Customer acknowledges that under no circumstances shall the Seller be liable for the Customer's inability to complete the Services for any reason, and such event shall not validate the refund of the Price by the Seller.

8. Liability

- 8.1 The Customer acknowledges that the Services offered by the Seller are of a hazardous nature (including, but not limited to, terrain, weather conditions and mechanical failure) and may result in damage or loss to property and/or serious or fatal injury to any person/s. The Customer agrees to indemnify the Seller against all liability for any injury, damage or loss of any property, injury or death of any person/s and from any claim made by the Customer and/or the Customer's family, estate, heirs or assigns that may arise from the supply of Services.
- 8.2 The Customer acknowledges it is their responsibility to provide the Seller with any relevant information that may impact on the way the Services are to be provided by the Seller (including, but not limited to, the location of any spray/fertiliser sensitive areas close to where spraying/topdressing is to take place). The Customer agrees to indemnify the Seller against all claims whatsoever arising (including those from any third party), where it is evident that the Customer has failed to provide such information.
- 8.3 The Customer and Guarantor indemnify the Seller for any loss, damage or costs whatsoever incurred by or charged to the Seller due to an omission or action by the Customer or the Guarantor during the delivery of the Services and this clause shall apply notwithstanding whether any breach of these terms has occurred, or the status or applicability of any insurance policy held by the Seller upon which the Seller shall be under no obligation to claim.
- 8.4 The Customer also acknowledges that if the place of Delivery is a workplace as defined in the Health & Safety at Work Act 2015 (HSWA) then the Customer has obligations under the HSWA and warrants to abide by those obligations and warrants to identify any hazards at the place of Delivery of the Services.

9. Consumer Guarantees Act 1993

- 9.1 If the Customer is acquiring Services for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by the Seller to the Customer.

10. Default & Consequences Of Default

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 10.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Seller.
- 10.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own Customer basis and the Seller's collection agency costs.
- 10.4 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 10.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 10.6 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

11. Security And Charge

- 11.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
 - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Customer basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
- 11.2 In addition to the rights conferred on the Seller in the foregoing clause 11.1:
 - (a) The Customer acknowledges that its acceptance of these terms and conditions creates a security interest ("security interest") (as that term is defined in the Personal Properties Securities Act 1999 ("PPSA")) in the Services and the payment of the Price due to the Seller for the Services. The Customer will, if requested by the Seller, sign any documents (including any new agreements), provide all necessary information and do anything else required by the Seller to ensure that the security interest is a perfected security interest (as that term is defined in the PPSA).
 - (b) If the Services are for the Customer's business use, the Customer agrees, to the extent permitted under the PPSA, that the customer will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation, the Customer will have no rights under sections 114(1)(a) and 116 (to receive notice of sale and statement of account), sections 121 (2) and 122 (to receive any proposal or object to any proposal to retain the goods), sections 125 and 129 (relating to removal of accessions), and sections 132 and 133 (to redeem Services or reinstate these terms and conditions).
 - (c) The Customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPSA).
 - (d) The Customer acknowledges that it has received value from the Seller as at the date of first delivery of the Services and has not agreed to postpone the time for attachment of the security interest granted to the Seller under these terms nor to subordinate such security interest in favour of any person.
 - (e) These terms and conditions each security interest created hereunder is a continuing security, notwithstanding intermediate payments or anything else and is in addition to, and not to be merged in, any other security agreement, guarantee or other agreement (present or future) expressed or intended to be security for any amounts owing to the Seller in respect of the Services.
 - (f) No security interest created under these terms is discharged, nor are the Customer's obligations affected by any amendment to, or failure to enforce these terms.
 - (g) The Seller is not liable to the Customer even though the Customer's rights in subrogation or otherwise may be prejudiced as a result.
 - (h) The security interest created by these terms and conditions is not discharged nor are the Customer's obligations affected by the administration of the Customer. The Customer must immediately notify the Seller if the Customer is considering whether to appoint an Administrator or Liquidator of the Customer and will not without the consent of the Seller appoint an Administrator or Liquidator.
 - (i) If any event of default occurs under these terms and conditions to the extent permitted by law, each security interest created hereunder will become immediately enforceable.

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- (j) The Customer irrevocably and unconditionally authorises the Seller on their behalf to apply for, access, hold and utilise any information regarding the Customer's credit history and ongoing worthiness prior to, during and after the supply of the Services.

12. Cancellation

- 12.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 12.3 The Seller will not be liable to repay any funds paid by the Customer where the delivery of the Services are cancelled by the Customer under the foregoing clause.

13. Privacy Act 1993

- 13.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Seller to:
- (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
 - (b) disclose information about the Customer and/or Guarantors, whether collected by the Seller from the Customer and/or Guarantors directly or obtained by the Seller 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 Customer and/or Guarantors.
- 13.2 Where the Customer and/or Guarantors are an individual the authorities under clause 13.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 13.3 The Customer and/or Guarantors shall have the right to request the Seller for a copy of the information about the Customer and/or Guarantors retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer and/or Guarantors held by the Seller.

14. General

- 14.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 14.3 The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
- 14.4 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 14.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.
- 14.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 14.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.
- 14.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 14.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 14.10 The failure or delay by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.
- 14.11 The Guarantor irrevocably and unconditionally agrees to guarantee payment by the Customer and the performance by the Customer of all its obligations under these terms and conditions and the Guarantor further agrees that for all purposes they may be treated as the Customer under these terms and conditions.
15. If the Customer is a company or other non-natural entity, then the natural person who accepts these Terms & Conditions in accordance with Clause 2, shall be the Guarantor and guarantees payment and performance of all other obligations of the Customer under these Terms and Conditions; and indemnifies the Seller against any loss the Seller might suffer should any of the Terms and Conditions be breached in any way by the Customer.