



1 INTERPRETATION

1.1 **Definitions:** In the Agreement, unless the context requires otherwise the following terms mean:

Agreement: these standard purchasing terms and the relevant Work Order relating to the Services, and includes any amendments or variations agreed in writing between the Parties.

Business Day: a day other than a Saturday, Sunday or public holiday in New Zealand.

Confidential Information: the terms and conditions of the Agreement and any information that is not public knowledge and which is obtained from the other party in the course of, or in connection with, the Agreement. Silver Fern Farms' Confidential Information includes its Intellectual Property.

Dispute: has the meaning ascribed to it in clause 9.1

Fees: the applicable fees for the provision of the Services set out in the SOW and/or PO.

Force Majeure means an event or circumstance that is beyond the reasonable control of the party claiming relief under clause 10.1 including:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, or any natural disaster;
- (b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; or
- (d) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties; or
- (e) strikes, lockouts, epidemic, pandemic, infectious disease, lockdowns or government order or intervention,

however a Force Majeure does not include any event or circumstance that the party claiming relief could have prevented or overcome by taking reasonable care.

Intellectual Property Rights: includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. **Intellectual Property** or **IP** has a corresponding meaning.

PO: purchase order issued by Silver Fern Farms.

Premises: any of Silver Fern Farms' offices, processing plants and/or properties.

Services: the services comprising all works and deliverables described in the Work Order that the Supplier agrees to provide in accordance with the Agreement;

SOW: statement or instructions of work issued by Silver Fern Farms relating to the provision of Services.

Services: the services that Silver Fern Farms may require from time to time by issuing the relevant Work Order.

Silver Fern Farms: Silver Fern Farms Limited (NZ Company Incorporation Number 5474064);

Supplier: any party who supplies or agrees to supply the agreed Services;

Supplier Personnel: means the Supplier's employees, contractors, consultants, agents, directors, shareholders and other authorised representatives **and**

Work Order: includes SOW, PO and other form of order relating to provision of the Services.

1.2 **Interpretation:** In the Agreement, unless the context requires otherwise:

- (a) a reference to a clause is a reference to a clause in this Agreement;
- (b) headings and sub-headings have been included for ease of reference only and will not affect the construction or interpretation of this Agreement;
- (c) any word importing the singular includes the plural and vice versa; and
- (d) a reference to any legislation includes all regulations under it and all amendments to and substitution of that legislation (or any part of it).

2 WORK ORDER

Silver Fern Farms may request the Supplier to provide the Services by sending a Work Order to the Supplier for the required services unless the parties have otherwise agreed a different ordering system in writing. Once Supplier accepts the Work Order in writing, a legally binding and enforceable agreement is deemed to have been concluded between the parties subject and on the terms set forth in the Agreement.

3 OBLIGATIONS

3.1 **General:** In addition to the other obligations of the Agreement, the Supplier must provide the Services:



- (a) in accordance with the Agreement, including any agreed time frames and other requirements set out in the Work Order, Silver Fern Farms' reasonable directions, all policies and procedures notified by Silver Fern Farms to the Supplier, and all applicable laws;
- (b) exercising reasonable and professional care, skill and diligence, having regard to best industry practice;
- (c) acting in Silver Fern Farms' best interest, and not do anything which will or might adversely affect Silver Fern Farms' assets, business or reputation; and
- (d) using suitably skilled, experienced and qualified staff.

3.2 **Materials and Assistance:** Unless Silver Fern Farms agrees otherwise, the Supplier will provide all the materials, equipment and labour necessary to provide the Services. The Supplier will promptly notify Silver Fern Farms if it requires any assistance from Silver Fern Farms to perform the Services. If Silver Fern Farms agrees to provide any equipment to the Supplier to assist with the provision of the Services, the Supplier must:

- (a) take good care of it;
- (b) use it only for proper purposes relating to the provision of the Services;
- (c) keep it secure from damage and unauthorised use; and
- (d) return it to Silver Fern Farms in the same condition in which it was provided to the Supplier, at Silver Fern Farms' request when the Agreement comes to an end.

3.3 **Records:** The Supplier must:

- (a) maintain full and accurate records in relation to the Services and will provide reasonable access to such records to Silver Fern Farms promptly upon request; and
- (b) promptly provide Silver Fern Farms with any information that Silver Fern Farms may reasonably request in relation to the Services or the Agreement.

3.4 **Non-exclusivity:** Silver Fern Farms is not entering into any form of exclusive arrangements with the Supplier for the supply of the Services by entering this Agreement, and may obtain services similar to or the same as the Services from anyone else at its sole discretion. The Supplier must co-operate with such other suppliers and service providers as Silver Fern Farms may reasonably require.

4 WARRANTIES

4.1 **General:** The Supplier warrants and represents that the Services (including any deliverables and work created in the performance of the Services):

- (a) are fit for purpose for Silver Fern Farms' intended use;
- (b) will, at the time they are provided, materially conform to all the requirements (if any) set out in the Work Order and the terms of the Agreement; and
- (c) do not infringe any patent, trademark or other Intellectual Property Rights or interest of a third party.

4.2 **Breach of warranty:** If the Services do not meet any warranty, the Supplier must, at Silver Fern Farms' request and at the Supplier's cost, re-perform the Services so that the Services meet or satisfy that warranty.

5 INTELLECTUAL PROPERTY

5.1 **Retained Intellectual Property:** The following IP (including any modification, enhancement or derivative work of that IP) remains the property of the current owner, regardless of its use in the Services:

- (a) IP that existed prior to the date of the Agreement; and
- (b) IP that was developed independently of the Agreement.

5.2 **Ownership of Works comprising the Services:**

- (a) Subject to clause 5.1, Silver Fern Farms will own all new IP that the Supplier creates or develops as part of or in connection with the provision the Services on payment of all of the Fees relating to those Services.
- (b) If any new IP described in clause 5.2(a) incorporates the Supplier's IP or any third party's IP, the Supplier grants or, in the case of third party IP, will obtain for Silver Fern Farms, an irrevocable, perpetual, royalty-free and non-transferable licence to use that IP for Silver Fern Farms' use at no additional cost to Silver Fern Farms.

6 FEES AND PAYMENT TERMS

6.1 **Invoicing:** The Supplier will provide Silver Fern Farms with valid GST tax invoices which:

- (a) identify the Services and the Fees for those Services;
- (b) quote Silver Fern Farms PO number (if any), and email the invoices to: APScan.Services@silverfernfarms.co.nz.

6.2 **Payment:** Unless otherwise agreed in writing by the parties, Silver Fern Farms will pay the Supplier for the Services by the last day of the month ("**Payment Month**") following the month in which the Services were delivered, provided a valid GST invoice has been received from the Supplier by the 5th day of the Payment Month. If:

- (a) the last day of the Payment Month is not a Business Day, then Silver Fern Farms will pay the invoice on the next Business Day;
- (b) the invoice is not received by the 5th day of the Payment Month, then Silver Fern Farms will process and pay the invoice in the ordinary course of its business.

6.3 **Dispute:** If Silver Fern Farms disputes the Supplier's invoice, then Silver Fern Farms:

- (a) will notify the Supplier of the dispute and the reasons for the dispute; and
- (b) may withhold payment of the disputed part of the invoice until the dispute is resolved in accordance with this Agreement.

6.4 **Currency:** All amounts are payable in New Zealand dollars unless otherwise specified.



6.5 **Set off:** Silver Fern Farms may set off any amount the Supplier owes to it against any amount it owes the Supplier. The exercise of Silver Fern Farms' rights under this clause does not limit or affect any other remedies available to Silver Fern Farms.

7 CONFIDENTIALITY

7.1 **Security:** Each party agrees that, unless it has the prior written consent of the other party, it will:

- (a) keep confidential at all times the Confidential Information of the other party; and
- (b) ensure that any personnel or professional advisor to whom a party discloses the other party's Confidential Information is aware of, and complies with, this clause 7.1.

7.2 **Disclosure required:** The obligations of confidentiality in clause 7.1 do not apply to any disclosure:

- (a) for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
- (b) required by law (including under the rules of any stock exchange);
- (c) of Confidential Information which:
 - (i) is publicly available through no fault of the recipient of the Confidential Information or its personnel; or
 - (ii) was rightfully received from a third party without restriction and without breach of any obligation of confidentiality; or
 - (iii) by the disclosing party if required as part of a bona fide sale of its business (assets or shares, whether in whole or in part) to a third party, provided that the disclosing party enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 7. Where a party discloses information pursuant to this clause, that disclosing party will remain fully liable for any disclosure by the recipient that would constitute a breach of this Agreement if made by the party as if the recipients acts and omissions were those of the disclosing party.

7.3 **Return of information:** Except to the extent that a party has ongoing rights to use Confidential Information, a party must, at the request of the other party following the expiry or termination of the Agreement, promptly return to the other party or destroy all Confidential Information of the other party in the recipient party's possession or control.

8 TERM AND TERMINATION

8.1 **Duration:** Unless terminated earlier under this clause 8, the Agreement ends on the later of the date set out in the Work Order or the date of completion of the Services. Completion means the date of written acceptance of the Services by Silver Fern Farms in accordance with this Agreement.

8.2 **Termination:** Silver Fern Farms may terminate the Agreement by giving at least thirty (30) days' written notice to the Supplier. Any such termination under this clause is

subject to Silver Fern Farms paying any amounts required under clause 8.4(b).

8.3 **Termination rights:** Either party may, by written notice to the other party, immediately terminate the Agreement if the other party:

- (a) breaches any material provision of the Agreement and the breach is not:
 - (i) remedied within 10 days of the receipt of the notice from the first party requiring it to remedy the breach (to the extent it is capable of being remedied); or
 - (ii) capable of being remedied;
- (b) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of external administration, or ceases to continue business for any reason; or
- (c) is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.

8.4 **Consequences of Expiry or Termination:**

- (a) Expiry or termination of the Agreement does not affect each party's rights and obligations accrued before the expiry or termination date.
- (b) Silver Fern Farms must pay for Services provided in accordance with the Agreement before the expiry or termination date.

8.5 **Obligations continuing:** Clauses which, by their nature are intended to survive expiry or termination, including clauses 5, 7, 8, 9 and 10, continue in force after termination or expiry of the Agreement.

8.6 **Transition:** On the termination or expiry of this Agreement, at Silver Fern Farms' request, the Supplier shall for a reasonable time after expiry or termination, assist Silver Fern Farms as is necessary to ensure a reasonably smooth handover to Silver Fern Farms. If this clause applies, the parties shall agree to reasonable costs and expenses, before these are incurred.

9 DISPUTES

9.1 **Good faith negotiations and mediation:** Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, the Agreement ("**Dispute**") through good faith negotiations, failing that by mediation in accordance with the terms of the Resolution Institute standard Mediation Agreement (NZ version). The mediation will be conducted by a mediator and at a fee agreed by the parties. Failing agreement between the parties, the Chair for the time being of Resolution Institute will select the mediator.

9.2 **Right to seek relief:** This clause 9 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

9.3 **No action:** A party may not issue legal proceedings (other than for urgent interlocutory relief) in respect of any Dispute



until the process set out in this clause 9 has been complied with.

10 FORCE MAJEURE

10.1 **No Liability:** Subject to Clause 10.2, neither party will be liable to the other for any failure to perform its obligations under this Agreement to the extent the failure is caused or contributed to by a Force Majeure.

10.2 **Obligations of the Affected Party:** A party who wishes to claim relief under clause 10.1:

- (a) notify the other party in writing as soon as reasonably possible. The notice must state:
 - (i) the nature of the circumstances giving rise to the Force Majeure;
 - (ii) the extent of that party's inability to perform under this Agreement;
 - (iii) the likely duration of that non-performance; and
 - (iv) the steps that party are taking and/or have taken to minimise the impact of the Force Majeure on the delivery of Services;
- (b) take all reasonable steps to avoid, remove, prevent or minimise the impact of the Force Majeure on the performance of its obligations under this Agreement and keep the other Party informed of the steps it is taking; and
- (c) promptly resume performance of all its obligations this Agreement as soon as such cause is removed and the effects remedied.

10.3 **Alternative Arrangements Requiring Immediate Termination:** If Silver Fern Farms, acting reasonably, requires the Services to be supplied during the period affected by a Force Majeure and the Supplier is unable to provide those Services during the required period after being notified of such requirement by Silver Fern Farms, then notwithstanding clause 10.4, Silver Fern Farms may terminate this Agreement immediately by giving notice in writing to the Supplier.

10.4 **Termination of Agreement:** If a party is unable to perform any obligations under this Agreement for 20 Working Days or more due to a Force Majeure, the other Party may terminate this Agreement immediately by giving notice in writing to the other party.

11 HEALTH AND SAFETY

11.1 The Parties agree to consult, cooperate and coordinate with each other to fulfil their health and safety obligations. Silver Fern Farms may require the Supplier to enter into a Memorandum of Understanding for the purpose of giving effect and adding detail to this clause.

11.2 The Parties will do all things necessary to ensure compliance with its obligations under the Health and Safety at Work Act 2015 ("Act") and any regulations, approved codes of practice or safe work instruments promulgated under the Act.

11.3 If required to enter the Premises:

- (a) The Supplier will, at its own cost, develop and implement a health and safety management system that covers the performance of any Supplier Personnel while on the Premises and which must be made available to Silver Fern Farms on request, for the purposes of investigation, review or audit. The Supplier will make any changes to that system and take any further action with regard to implementation of that system, as reasonably requested by Silver Fern Farms.
- (b) The Supplier will, and will procure Supplier Personnel to, promptly notify Silver Fern Farms when any hazard or risk exists, or any situation arises where any person may not be safe, or harm may result to any person.

11.4 It is acknowledged by the Parties that breach of this clause 11 may (if reasonably considered by Silver Fern Farms) amount to a breach which is not capable of remedy for which Silver Fern Farms may terminate this Agreement on written notice, pursuant to clause 8.3(a). In addition, Silver Fern Farms may require the Supplier and Supplier Personnel to leave the Premises in the event of such breach and may refuse re-entry at its sole discretion.

12 INSURANCE

The Supplier acknowledges that neither the Supplier nor any Supplier Personnel may enter the Premises unless the Supplier or the Supplier Personnel (as the case may be) holds public liability insurance for an amount of not less than \$10 million. Before entering the Premises, the Supplier or the Supplier Personnel (as the case may be) must provide to Silver Fern Farms a certificate of insurance evidencing the type and level of insurance identified in this subclause. The Supplier must provide updated copies of such certificate promptly on request by Silver Fern Farms.

13 GENERAL PROVISIONS

13.1 **Cumulative Rights; Waiver:** To the full extent permitted by law, all rights and remedies of either party, whether set forth in the Agreement or otherwise provided in law or at equity, are cumulative and not alternative. No waiver of any breach, or failure to enforce any provision, of the Agreement at any time by any party will in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with the provisions of the Agreement.

13.2 **Independent Contractor:** The Supplier is an independent contractor of Silver Fern Farms. No other relationship (e.g. joint venture, agency, employment, trust or partnership) exists under the Agreement. The Supplier shall not incur any liability on Silver Fern Farms' behalf without Silver Fern Farms' prior written approval and shall not hold itself out as having any authority that it does not expressly have under this Agreement.

13.3 **Notices:** A notice given by a party under the Agreement must be delivered via email to an email address notified by the other party for this purpose.



- 13.4 **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.
- 13.5 **Variation:** Any variation to the Agreement must be in writing and signed by both parties.
- 13.6 **Entire Agreement:** The Agreement constitutes the entire agreement and understanding (express and implied) between the parties relating to the subject matter of the Agreement as of the date of the Agreement. It supersedes and cancels all previous agreements and understandings between the parties (whether written or oral).
- 13.7 **Conflict:** If there is any conflict between the Agreement and:
- (a) the Supplier's terms and conditions, then the Agreement will apply and in any event none of the Supplier's terms and conditions will be of any effect nor binding on the parties unless Silver Fern Farms has expressly accepted them in writing; and
 - (b) those attached to any of Silver Fern Farms' SOW, PO or other form of orders, then these General Terms will apply unless clearly stated otherwise in that SOW, PO or other form of orders or in any relevant signed written agreement between the parties.
- 13.8 **Subcontracting and assignment:** The Supplier must not assign, subcontract or transfer any right or obligation under the Agreement without the prior written approval of Silver Fern Farms (acting in its sole discretion). The Supplier remains liable for its obligations under the Agreement despite any approved assignment, subcontracting, or transfer.
- 13.9 **Governing Law and Jurisdiction:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Subject to clause 9.1, each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement.
- 13.10 **Construction:** This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 13.11 **Counterparts:** This Agreement may be signed in two or more counterparts (including scanned and other electronic copies) each of which is deemed an original and all of which constitute one and the same document and a binding and enforceable agreement between the parties. Any party may sign this Agreement by signing any such counterpart (including by electronic signatures inserted by a party), and the other parties may rely on such electronic signatures and such signatures shall be deemed equivalent to original signatures.
- 13.12 **Further Acts:** The Supplier will sign all documents and do all deeds, acts and other things reasonably necessary to carry out and give effect to the terms of the Agreement.

