

Applicant Name: \_\_\_\_\_ DOB (required for Credit Check) \_\_\_\_/\_\_\_\_/\_\_\_\_

Registered Name: \_\_\_\_\_ Trading As: \_\_\_\_\_

Postal Address: \_\_\_\_\_ Street Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Mobile: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Contact person (for account queries): \_\_\_\_\_

Email: \_\_\_\_\_

Date Company Registered \_\_\_\_/\_\_\_\_/\_\_\_\_ Accountant (if applicable) \_\_\_\_\_

Purchase Order Required      YES      NO      Email Statements      YES      NO

Business Type (please circle)      Registered Company      Partnership      Sole Trader      Individual

Provide Details for all Company Directors / Partnership Partners (not required for Sole Trader/Individual)			
Surname	Full Christian Name	Private Address	Phone

Credit References: Nominate only businesses you have traded with for at least 6 months - exclude service accounts (eg phone, power etc)	
Business Details	Phone

For Individual Applicants only: please provide details for an alternative contact person (must have known you for more than 12 months and living at a different address)		
Name	Address	Phone

### Privacy Act 1993

Where you are an Individual, the information included in this credit application is required in order to determine whether Southland Farm Machinery Ltd will accept this application for credit and whether to continue to provide credit. I/We authorise any person or company to provide Southland Farm Machinery with such information as Southland Farm Machinery may reasonably require as necessary for credit enquiry purposes. I/We understand that if full information is not provided, my/our application for credit may be declined and that I/We have a right of access to and to ask for correction of any personal information. I/We further authorise any third party details of this application and any subsequent dealing that I/We may have with Southland Farm Machinery Ltd.

### Acceptance of Terms and Conditions of Trade

I hereby apply to open a credit account with Southland Farm Machinery Ltd. I have read and fully understand Southland Farm Machinery Ltd Terms and Conditions of Trade (provided overleaf) and agree to abide by them.

Signature \_\_\_\_\_ Name \_\_\_\_\_ Date \_\_\_\_\_

Authorised Signatory

## **TERMS AND CONDITIONS OF SALE**

### **1 APPLICATION**

- 1.1 The terms and conditions of sale set out below shall apply to all agreements for the supply of Goods and Services made by the Company to the Customer and from the date of this Agreement shall supersede all previous oral or written proposals, negotiations, representations, commitments, agreements and all other communications between the Company and the Customer relating to the supply of Goods and Services.
- 1.2 No servant or employee or agent of the Company has or is deemed to have any authority to make any representation, warranty or agreement contrary to these terms and conditions of sale.
- 1.3 These terms and conditions of sale shall not be deemed or construed to be modified in whole or in part, except by written amendment signed by the Customer and a director of the Company.
- 1.4 Nothing in these terms and conditions shall in any way limit the rights of the Customer under the Consumer Guarantees Act 1993, or any other Act, except to the extent permitted by those Acts.

### **2 ACCEPTANCE**

- 2.1 Acceptance of delivery of any Goods or supply of any Service will be deemed to be acceptance by the Customer of these terms and conditions, notwithstanding anything that may be stated to the contrary in the Customer's inquiries or on the Customer's orders.

### **3 PRICE**

- 3.1 Prices are subject to change without notice. All orders will be filled at prices prevailing at the date of delivery of the Goods or supply of the Services and the Customer agrees to pay the prices charged. If GST or other taxes are payable by the Company in respect of the Goods or Services supplied or on any amount payable, the Customer shall pay the Company the amount of that tax. All prices are exclusive of freight costs, insurance charges and installation and maintenance costs.
- 3.2 All sales are subject to any trade discount that has been agreed to in writing between the Company and the Customer and applicable at the time of purchase or supply.

### **4 PAYMENT**

- 4.1 Payment of all accounts shall be made no later than the 20th of the month ("payment date") following the date of the invoice for the Goods and Services. In the event that payment is not received on or before the payment date default interest may be charged by the Company, at the rate of 18% per annum, for the period for which payment has been overdue.
- 4.2 Payment must be made in cleared funds without setoff or deduction of any kind. Payments made by the Customer shall be applied first in reduction of interest, liquidated damages and costs due under clauses 4.1 and 9.1 and then in reduction of any amounts due pursuant to clause 3.1, and against such outstanding accounts as the Company determines (at its sole discretion) and specifies to the Customer. Until the Company specifies its application of any moneys, all moneys received shall be held unallocated and in suspense and no amount due in respect of any Goods or Services or any invoice shall be reduced, or deemed reduced, until monies have been expressly applied by the Company.
- 4.3 Without prejudice to any of the Company's other rights, where any payment is overdue the Company shall have the right to discontinue any further credit to the Customer, until the account is paid, and to cancel all further credit.

### **5 DELIVERY**

- 5.1 Any date given for delivery is stated in good faith, but shall not be treated as a condition of sale, and no claim of any nature shall be made by the Customer on account of late delivery, howsoever caused.
- 5.2 Late delivery shall not constitute a breach of this agreement by the Company and the Customer shall not be entitled to cancel this Agreement because of late delivery.

### **6 RISK**

- 6.1 The risk in the Goods shall pass to the Customer immediately the Customer takes possession of the Goods from the Company. Where the Goods are to be delivered to the Customer, the risk in the Goods shall pass to the Customer immediately the Goods leave the Company's premises.

### **7 TITLE**

- 7.1 Without prejudice to the liability of the Customer to pay for Goods and Services supplied, all Goods shall remain the property of the Company as legal and equitable owner pending cleared payment in full of all moneys due under this Agreement or in respect of any other sums owed by the Customer to the Company. The Company holds a Security Interest in all Goods and all accessions to the Goods for payment of those moneys.
- 7.2 Further, the Customer acknowledges that until such time as title passes to the Customer the Customer holds the Goods as Bailee and shall if so requested forthwith return them to the Company and the Customer hereby grants an irrevocable right to the Company or its duly authorised agent to enter any premises and inspect, repair or maintain the Goods.
- 7.3 Until all moneys due to the Company are paid the Customer: (a) shall not sell, charge or part with possession of the Goods otherwise than for their full value in the ordinary course of business; (b) shall not alter, obliterate or deface the Goods (other than for the purpose of becoming an accession) and shall not alter, obliterate, deface, cover up or remove any identity mark indicating that the Goods are the property of the Company. (c) Must store the Goods in such a manner that they are clearly identifiable as the property of the Supplier and will keep separate records in respect of the Goods. (d) Will hold the proceeds of the Goods on behalf of the Company in a separate and identifiable account.
- 7.4 At the request of the Company the Customer will promptly do all things that the Company may require from time to time to give effect to this Agreement and to ensure that the Security Interest created under this Agreement constitutes a perfected security interest over the Goods, including signing all documents and providing any information the Company requests to enable it to complete a financing statement or financing change statement.
- 7.5 The Customer waives any right to receive a verification statement under the PPSA.
- 7.6 Nothing in sections 114(1) (a) (receipt of a notice of sale), 117(1) (distribution of surplus), 133 and 134 (reinstating this agreement) of the PPSA shall apply to this Agreement.
- 7.7 The rights of the Customer as debtor in sections 116 (to receive a statement of account), 119 (to recover surplus), 120(2) and 121 (to receive notice of any proposal to retain the Goods and object to such a proposal), 125 - 127 and 129 (relating to removal of accessions) of the PPSA shall not apply to this Agreement.

### **8 TERMINATION**

- 8.1 Notwithstanding anything contained in this Agreement, all moneys owed by the Customer (whether or not then due) shall become immediately due and payable and the Company shall have the right to forthwith cancel this Agreement, without prejudice to any of its other rights, upon the occurrence of any of the following events:
  - 8.1.1 The Customer ceases or threatens to cease to carry on business;
  - 8.1.2 The Customer enters into any arrangement or composition with its creditors;
  - 8.1.3 The Customer is unable to pay debts as they fall due;
  - 8.1.4 The Customer commits an act of bankruptcy or becomes bankrupt or proceedings are taken for liquidation of the Customer's affairs;
  - 8.1.5 The Customer, being a Company goes into liquidation or receivership;
  - 8.1.6 Any distress or execution is levied on the Customer;
  - 8.1.7 The Customer breaches any of the terms contained in this Agreement;
  - 8.1.8 The Customer gives notice under section 162 of the PPSA;
  - 8.1.9 The Goods are at "risk" as defined in the Credit (Repossession) Act 1997 or the PPSA (as applicable).
- 8.2 Upon the happening of any one or more of the above events the Company (without prejudice to any of its other rights) will be entitled at any time thereafter to:
  - 8.2.1 Withhold without notice deliveries of Goods or supply of Services ordered by the Customer;
  - 8.2.2 Seek damages from the Customer; and/or
  - 8.2.3 Enter upon the Customer's premises and/or any other place where the Goods are stored or thought to be stored at any reasonable time and in any reasonable manner (whether or not the Customer is present), take possession of and sell the Goods, even if the Company does not have priority over other persons having a Security interest in the Goods. The Company and the Customer agree to contract out of sections 108, 109 and 120 of the PPSA to the extent that they are inconsistent with this clause.

### **9 COSTS**

- 9.1 The Customer shall indemnify the Company and pay on demand all costs incurred by the Company (including costs on a solicitor - client basis and debt collectors costs) incurred in registration of a financing statement or a financing change statement, protection or maintenance of its Security Interest, or the recovery or attempted recovery of outstanding moneys and the enforcement of the Terms and Conditions or the Security Interest contained within this Agreement.

### **10 RETURNED GOODS**

- 10.1 Except as may be requested by law, no returned Goods shall be accepted by the Company unless such goods are returned within 30 days and in the same condition they were in when delivered to the Customer, and unless accompanied by the Company invoice or packing slip provided to the Customer.
- 10.2 Goods specifically procured for the Customer at the Customer's request shall not be returnable.
- 10.3 Any freight or transportation charges shall not be refunded to the Customer.

### **11 WARRANTIES**

- 11.1 The Company gives no warranty on any product or service performed beyond that offered by the manufacturer or supplier and any conditions and warranties expressed or implied by any statute, common law or otherwise, are hereby excluded to the extent permitted by such statutes.
- 11.2 Except as provided by any statute, Goods returned under warranty (if any) must be returned free into Company's store, all transportation charges, insurance, taxes, duties and charges being borne by the Customer.

### **12 REMEDIES AND LIABILITY FOR INDIRECT LOSS**

- 12.1 The Company's liability in any case of defect or fault shall be limited to the purchase price of the Goods in respect of which such liability arises, and the Company shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage (including loss of profit) whatsoever and howsoever arising.
- 12.2 Should the Company be prevented or delayed from carrying out its obligations as a result of any cause whatsoever beyond its control, it shall be relieved of all obligation and liabilities incurred under this Agreement insofar as so long as the performance of the Company's obligations is impeded, prevented or delayed.

### **13 CONSUMER GUARANTEES ACT 1993**

- 13.1 Where this Agreement would otherwise be subject to the provisions of the Consumer Guarantees Act 1993 and where any supply pursuant to this Agreement is a supply for business trade purposes, the Customer agrees that the Goods are supplied to the Customer for business and/or trade purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 and the provisions of the Consumer Guarantees Act 1993 will not apply as between the Company and the Customer.
- 13.2 Where any of the Goods are subject to any express warranty given by the Company to remedy any defect by repairing or replacing the Goods with Goods of identical type then the ultimate consumer shall not be able to exercise its remedies set out in the Consumer Guarantees Act 1993 without first giving the Company a reasonable opportunity to remedy the defect by repair or replacement in accordance with its express warranty.

### **14 PROPER LAW**

- 14.1 This Agreement and these terms and conditions shall be governed by the laws of New Zealand and the New Zealand courts shall have sole jurisdiction to adjudicate in respect of any dispute arising from this Agreement.

### **15 PRIVACY ACT 1993**

- 15.1 The Customer authorises the Company and its marketing representatives to collect from other persons the Customer's names and addresses, vehicle details and other personal information, which is connected with the marketing of the Company's products and services, and to use those details for marketing and sales promotion of the Company's products, debt collection purposes and to disclose those details to any other person.
- 15.2 The Customer agrees that the Motor Vehicle Trader, or Manufacturers or Distributors may wish to provide you with information about products and services, latest offers and promotional materials which we think you may be interested in. However, as we respect your right to privacy, please advise us if you do NOT wish to receive such information.

### **16 DEFINITIONS**

"Goods" means all parts, accessories, motor vehicles and other personal property supplied by the Company to the Customer, and includes all proceeds of those goods. "Services" means any services provided or to be provided to the Customer from time to time. "Security Interest" bears the same meaning as defined in the PPSA and includes the security interest contained in this Agreement. "PPSA" means the Personal Property Securities Act 1999 as amended from time to time and terms defined in the PPSA shall bear the same defined meanings in this Agreement.