

Standard Terms and Conditions

(Also available on our website www.graincorpfeeds.co.nz)

The following Terms and Conditions apply to all purchases of goods and services (“**the Goods**”) made by the Purchaser from GrainCorp Feeds (“**the Company**”) as described in the relevant invoice / statement / Sales Contract unless stated otherwise.

These Terms and Conditions together with the terms set out in the relevant Sales Contract and the Account Application (where applicable) set out the entire agreement between the parties for the supply of Goods and prevail over any other conditions of purchase, other terms, requisition forms or any other communication between the parties. In the event of any inconsistency between these Terms and Conditions and any terms and conditions set out in the relevant Sales Contract, the Sales Contract will prevail.

1 Price

Subject to clause 5.3 and 5.5 below, prices charged are those ruling on the date of despatch of the Goods, or if a quote has been provided to You for the Goods, the price quoted in writing prior to date of despatch of the Goods.

2 Payment

2.1 You must pay the price of the Goods to the Company (as set out in invoices it renders to You) in full on delivery, or subject to the Company’s credit terms, on the 20th day of the month following date of invoice (“**Payment Date**”).

2.2 You must not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Company.

2.3 If You do not pay the Company in full for the Goods by the Payment Date, then You will be in default and You must, upon demand by the Company:

- a) pay the Company default interest on the overdue amount, at the Reserve Bank of New Zealand’s official cash rate (displayed at about 2pm New Zealand time on the Reserve Bank of New Zealand website on the date of delivery) plus 2 % per annum, calculated on a daily basis from the Payment Date until payment is made; and
- b) reimburse the Company for the expenses and costs (including reasonable legal costs as between solicitor and client) incurred by the Company in relation to the Company obtaining or attempting to obtain a remedy for Your failure to pay.

You acknowledge that this clause is reasonably necessary to assist the Company against the effects of late payment and mitigate the Company’s losses.

3 Tax

You must, at the time that You pay for Goods, also pay to the Company the Goods and Services tax levied in respect of each supply in terms of the Goods and Services Tax Act 1985.

4 Delivery

4.1 Delivery will occur when the Goods are loaded for transport to the Purchaser at the Company premises.

4.2 The Company will endeavour to have Goods available for delivery on the agreed delivery date(s) but will not be liable for late delivery. Late delivery does not entitle You to cancel any order or part order of the Goods.

5 Sales Contracts Commitments and Remedies

5.1 You agree to uplift the Goods in the specified quantities and delivery spreads set out in the relevant Sales Contract within the shipment period.

5.2 You may, at least 7 days prior to the agreed delivery date, request that the Company delay the supply of the Goods and the Company may, in its sole discretion, grant such an extension.

5.3 Where the Company grants an extension under clause 5.2 above, You acknowledge and agree that you will be liable for any actual and reasonable costs that the Company incurs as a result of that extension including (but not limited to) storage costs.

5.4 In the event that You are not able to accept delivery of all or part of the Goods on the agreed delivery date, or the extended delivery date agreed by the parties pursuant to an extension under clause 5.2 above, You will be in default.

5.5 In the event of default by You under clause 5.4 above, in addition to any other rights of the Company under this Agreement, the Company will not be under any obligation to re-deliver the Goods to You, but may:

- a) issue a notice to You which sets out the date by which you must uplift the Goods; or
- b) resell the Goods to a third party buyer (**Default Resale**),

and in either case, You will be liable for any actual and reasonable storage, haulage, interest charges and related costs incurred by the Company as a result of the default, and the difference between the Price and the price finally agreed under any Default Resale.

6 Quality of Goods

6.1 Any Goods that are damaged, whether in transit or while in Your possession, must not be sold or displayed under the Company’s label without the express prior permission of the Company.

7 Risk

The risk of any loss, damage or deterioration to Goods due to any cause whatsoever will pass to You on delivery of the Goods.

8 Title

8.1 Title to the Goods will not pass to You until the Company has received payment in full for all Goods.

8.2 You shall at the request of the Company sign and return to the Company immediately any document required pursuant to the Personal Property Securities Act 1999 (“**PPSA**”) to grant a security interest enforceable against third parties in the Goods and/or any present and after acquired goods and their proceeds and provide all information and do all things necessary to allow the Company to register a financing statement and to ensure that the security interest granted constitutes a first ranking perfected security interest over the Goods and/or any present and after acquired goods and their proceeds including to secure moneys owing by You to the Company from time to time.

8.3 You agree to pay, on invoice, all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or a financing change statement which the Company may register.

8.4 Nothing in Sections 114 [1] [a], 117 [1] [c], 120(2), 133 or 134 of the PPSA applies. The Purchaser’s rights in Sections 116, 119, 120 [2], 121, 125, 126, 127, 129, 131 and 132 of the PPSA do not apply.

8.5 You acknowledge that this clause 7 is reasonably necessary to enable the Company to efficiently exercise the Company’s rights under the PPSA by reducing the administrative process and costs associated with doing so.

9 Consumer Guarantees Act and Fair Trading Act

Where the Purchaser is “in trade” within the meaning of the Fair Trading Act 1986 (“**FTA**”) and/or the Consumer Guarantees Act 1993 (“**CGA**”) (as the case may be) the Company and the Purchaser agree to contract out of the CGA, and sections 9, 12A, 13 and 14(1) of the FTA, and agree that the Credit Contracts and Consumer Finance Act 2003 will not apply.

10 Claims

- 10.1 Any claim by You (regardless of how it arises) as to damage to, or defects in, the Goods occurring or arising prior to You uplifting the Goods from the agreed point of collection must be in writing and be received by the Company within 7 days of the collection of the Goods by You (time being of the essence).
- 10.2 If You dispute the price of any Goods set out in invoices rendered by the Company You must notify the Company in writing prior to the Payment Date (time being of the essence).

11 Liability

- 11.1 Except as expressly set out in these terms, all warranties, representations or conditions (whether express or implied and whenever arising) whether originating in law, equity, by statute, trade, custom or others, that would (but for this clause) apply to the Goods or the Company's supply of the Goods are excluded to the extent permitted by law.
- 11.2 Subject to clause 10.3, to the extent permitted by law, any liability of either party to the other party, whether at law, by statute, in equity or otherwise arising from the relationship between You and the Company shall be limited to an amount equal to:
- In the case of the Company, the lower of the cost of replacing the Goods and the cost of obtaining equivalent Goods; and
 - In the case of You, the price paid or payable for all Goods supplied or to be supplied under these terms.
- 11.3 In no circumstances will either party be liable to the other party, whether at law, by statute, in equity or otherwise (except to the extent that such liability cannot, by law, be excluded) arising from the relationship between You and the Company for:
- In the case of You or the Company, any indirect or consequential losses or damages, including any loss that does not ordinarily or naturally flow from the breach; and
 - In the case of the Company, any loss or profits, loss of opportunity, loss of goodwill, or special or punitive damages, arising from the supply, late supply or non-supply of the Goods, or for any breach of these terms, or for any other reason which relates to these terms or the Goods, even where the party has been advised or is aware of the possibility of that loss.
- 11.4 You confirm that these terms are reasonable having regard to the price payable for the Goods and their nature.

12 Default

- 12.1 In the event that a party:
- commits a material breach of this Agreement (whether in relation to the sale of Goods or otherwise) and the breach is not capable of remedy, or the breaching party fails to remedy the breach within 30 days of receipt of a notice to remedy; or
 - becomes insolvent, has a receiver or administrator appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or have a liquidator (provisional or otherwise) appointed in relation to it or is placed under statutory or official management,
- then:
- the other party may cancel all or any part of any Sales Contract which remains unperformed;
 - subject to clause 5.5 above, all amounts outstanding under any Sales Contract will, whether or not due for payment, immediately become due and payable by You, including in cases where the Goods cannot be resold by the Company; and
 - the Company may reclaim any Goods in Your possession or control and dispose of them for its own benefit in order to mitigate the effects, and the Company's losses, from such default or cancellation.

13 Force Majeure and Suspension of Deliveries

- 13.1 The Company will not be liable for any loss, damage, injury, shortages, delay, late delivery or non-delivery whatsoever due to any cause that is beyond the control of the Company ("**Force Majeure Event**") including, without limitation, non-availability of, or late departure of, or non-delivery or late delivery by, shipping or any other freight, acts of Government, strikes, lock outs, fire, accidents, breakdowns of plant or machinery, raw material shortages, acts of war, floods, riots, civil commotions, malicious mischief or theft.
- 13.2 Deliveries may be totally or partially suspended by the Company during any period in which the Company is prevented or hindered from delivering by the Company's normal means of supply or delivery by normal route due to any Force Majeure Event.
- 13.3 The Company shall have no liability in respect of any such suspension and will not be obliged to deliver at any future time the Goods which were not delivered during the period of suspension. Where the Purchaser has paid for such Goods that are not delivered during or after the period of suspension, the Company will provide a refund or credit for such amounts.

14 No Waiver

Any exercise or failure to exercise any right or remedy available to the Company does not prejudice the Company's rights to exercise that or any other right or remedy. A waiver of any of these terms must be specified in writing and signed by an authorized officer of the Company.

15 Severance

If any part of these terms is rendered void, unenforceable or otherwise ineffective by operation of law, that will not affect the enforceability or effectiveness of any other part of these terms.

16 Variation to these terms

The Company may in its absolute discretion change these terms at any time by publication of updated terms on its website <https://feeds.graincorp.co.nz/>. The change will take effect from the time of publication and apply to purchases of Goods on and from the date the change takes effect. Your purchase of Goods with the Company is covered by the then-current terms at the time of the purchase.

17 Disputes

- 17.1 Each party will as soon as reasonably practicable give the other party a notice of any dispute which arises between them in connection with this Agreement ("**Dispute**"). The parties undertake to use all reasonable efforts to promptly resolve any Dispute between them.
- 17.2 If the Dispute is not resolved between the parties within 30 days after notice of the Dispute, then the parties will try to resolve the Dispute by mediation before resorting to litigation. Either party may initiate mediation by giving written notice to the other party. The mediator should be agreed by the parties, but if the parties cannot agree on one within 10 days after the mediation has been initiated, then the mediator will be selected by the President for the time being of the Arbitrators and Mediators' Institute of New Zealand Inc. or its successor.

18 Governing Law

These terms shall be governed and construed in accordance with the laws in force in New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand in respect of any dispute or proceeding arising out of these terms.

19 Definitions

Capitalised terms have the meanings set out in this clause 19, or as used in context.

Account Application means the commercial credit application form executed by the Purchaser and submitted to and accepted by the Company; **Agreement** means these Standard Terms and Conditions together with the terms set out in the relevant Sales Contract and the Account Application (where applicable); **The Company** means GrainCorp Feeds Limited (and its successors and assigns); **Goods** means the goods sold subject to these terms as set out in the relevant invoice/statement/Sales Contract; **You or Purchaser** means the person purchasing the Goods from the Company pursuant to these terms, including that person's successors and assigns; **person** includes a corporation, association, firm company, partnership or individual; **Sales Contract** means the purchase order document for the sale of Goods, executed by the parties; **Terms and Conditions** means the standard terms and conditions set out in this document.