

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 'F&M' shall mean Forlong & Maisey Limited.
- 1.2 'Customer' shall mean the Customer, or any person acting on behalf of and with the authority of the Customer, or any person purchasing Goods from F&M.
- 1.3 'Goods' shall mean:
 - 1.3.1 all Goods supplied by F&M to the Customer; and,
 - 1.3.2 all inventory of the Customer that is supplied by F&M; and,
 - 1.3.3 all Goods supplied by F&M and further identified in any invoice issued by F&M to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and,
 - 1.3.4 all Goods that are marked as having been supplied by F&M or that are stored by the Customer in a manner that enables them to be identified as having been supplied by F&M; and,
 - 1.3.5 all goods, products, services and advice provided by F&M to the Customer and shall include without limitation the importing, design, manufacture and supply of syringes, drench guns and other agricultural or horticultural equipment manufactured by F&M or any fee or charge associated with the supply of Goods by F&M to the Customer; and
 - 1.3.6 the above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 'Price' shall mean the cost of the Goods as agreed between F&M and the Customer and includes all disbursements e.g. charges F&M pay to others on the Customers behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by F&M from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises F&M to collect, retain and use any information about the Customer, for the purpose of assessing the Customers credit worthiness, enforcing any rights under this contract, or marketing the Goods provided by F&M to any other party.
- 3.2 The Customer authorises F&M to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no Price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by F&M at the time of the contract.
- 4.2 The Price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of F&M between the date of the contract and delivery of the Goods.

5. PAYMENT

- 5.1 Unless otherwise agreed payment for Goods shall be made in full on or before the 20th day of the month following the date of the invoice ('the due date').
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by F&M in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.
- 5.6 F&M reserve the right to suspend the dispatch of any Goods to the Customer where payment has not been received by the due date.

6. QUOTATION

- 6.1 Where a quotation is given by F&M for Goods:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue and shall apply for the proposed transaction only,

- 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary; and
- 6.1.3 F&M reserve the right to alter the quotation because of circumstances beyond its control.

7. RISK

- 7.1 The Goods remain at F&M's risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when F&M gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless otherwise agreed in writing between the parties.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods supplied by F&M passes to the Customer only when the Customer has made payment in full for all Goods provided by F&M and of all other sums due to F&M by the Customer on any account whatsoever. Until all sums due to F&M by the Customer have been paid in full F&M has a security interest in all Goods.

- 8.2 If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with F&M until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall deemed to be assigned to F&M as security for the full satisfaction by the Customer of the full amount owing between F&M and Customer.

- 8.3 The Customer gives an irrevocable authority to F&M to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if F&M believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. F&M shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract nor in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. F&M may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as F&M reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

- 8.4 Where Goods are retained by F&M pursuant to clause 8.2 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ('PPSA') and to object under s.121 of the PPSA.

- 8.5 The following shall constitute default by the Customer:

- 8.4.1 Non payment of any sum by the due date;
- 8.4.2 The Customer indicates that it will not pay any sum by the due date;
- 8.4.3 Any Goods are seized by any other creditor of the Customer or any other Creditor indicates that it intends to seize Goods;
- 8.4.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to F&M remains unpaid;
- 8.4.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets;
- 8.4.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days; and
- 8.4.7 Any material adverse change in the financial position of the Customer

9. SECURITY INTEREST FOR SERVICE PROVIDERS

- 9.1 The Customer gives F&M a security interest in all of the Customer's present and after-acquired property that F&M has performed services on or to or in which goods or materials supplied or financed by F&M have been attached or incorporated..
- 10 PAYMENT ALLOCATION**
- 10.1 F&M may in its discretion allocate any payment received from the Customer towards any invoice that F&M determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by F&M, payment shall be deemed to be allocated in such manner as preserves the maximum value of F&M's purchase money security interest in the Goods.
- 11 DISPUTES AND RETURN OF GOODS**
- 11.1 No claim relating to the Goods will be considered unless made within seven (7) days of delivery
- 11.2 No Goods will be considered for return without prior approval of F&M. Claims for shortages or damage must be lodged within forty eight (48) hours of receipt quoting the delivery docket number and date.
- 12 LIABILITY**
- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from F&M for the purposes of a business in terms of section 2 and 43 of that Act.
- 12.2** The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon F&M which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on F&M, F&M's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.3 F&M shall not be liable for:
- 12.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods by F&M to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by F&M to the Customer; and
- 12.2.2 The Customer shall indemnify F&M against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of F&M or otherwise, brought by any person in connection with any matter, act, omission, or error by F&M in connection with the Goods.
- 13 COPYRIGHT AND INTELLECTUAL PROPERTY**
- 13.1** F&M, owns and has copyright in all designs, drawings, specifications, documents and software produced by F&M in connection with the Goods provided pursuant to this contract and the Customer may use the Goods only if paid for in full and for the purpose for which they were intended and supplied by F&M.
- 14 GOVERNING LAW**
- 14.1 This contract is governed by New Zealand law. F&M and the Customer agree that the construction, interpretation and validity of this contract shall be governed solely by New Zealand law and the exclusive jurisdiction of the New Zealand courts.
- 15 PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
- 15.1** If the Customer is a company or trust, the directors or trustees signing this contract, in consideration for F&M agreeing to supply Goods and Services and grant credit to the Customer all their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to F&M the payment of any and all monies now or hereafter owed by the Customer to F&M and indemnify F&M against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
- 16 MISCELLANEOUS**
- 16.1** F&M shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its contract.
- 16.2 Failure by F&M to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations F&M has under this contract.
- 16.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.