

TERMS OF TRADE

1. Terms apply to all work

- 1.1 These Terms of Trade (*Terms*) apply to any work we do for you including but not limited to services provided in relation to nutrient budgets and facilitation of third party supplier arrangements.
- 1.2 Our relationship with you is governed by New Zealand law and New Zealand Courts have exclusive jurisdiction.
- 1.3 In these Terms “we”, “us” or “our” means AgriMagic Limited and “you” or “your” means the person named on the front page of this Agreement as the customer.

2. Fees and other charges

- 2.1 Our fees are calculated with reference to an hourly rate. Where appropriate our Consultancy Agreement will state the hourly rates of the key staff working for you.
- 2.2 If we give an estimate of fees, it is based on our experience with similar matters. Any estimate is given as a guide only and is not a fixed price quotation. An estimate applies solely to the scope of services set out in on the front page of this Agreement. Work outside that scope, including any change or extension of services, will be charged in as set out in paragraph 2.1 above unless otherwise agreed in writing by us.
- 2.3 We may provide services to you in reliance on a third-party software provider. From time to time, updates to this software may require us to make changes to documentation (including but not limited to nutrient budgets) and provide additional services to you. These services shall be included in the scope of services provided under our Agreement and any work required will be charged at our hourly rates.
- 2.4 We will charge you for costs we incur in providing the services to you, including travel costs.
- 2.5 All amounts quoted are excluding GST. GST is payable on all fees at the same time and in the same manner as the amount to which the GST relates.

3. Payment

- 3.1 We will invoice you monthly unless we have agreed otherwise in writing with you. Unless you tell us otherwise, we will send our accounts to you by email. We may also invoice you on the completion of our work.
- 3.2 Payment is due on the 20th day of the month following the date of the relevant invoice.
- 3.3 If an invoice is not fully paid on the due date, we may charge interest on the unpaid amount at the interest rate of 10% per annum and we may compound interest monthly (so that it itself bears interest).

4. Confidentiality

- 4.1 Our work for you is provided on a non-exclusive basis (meaning we do not work solely for you). Notwithstanding this, we will hold in confidence all information concerning you or your affairs that we acquire while working for you. We will only disclose confidential information if it is necessary or desirable to enable us to carry out your instructions or if it is required by law.

5. Third-party suppliers

- 5.1 As part of our work for you we may liaise with third parties on your behalf to secure the supply of goods or services on favourable terms, including but not limited to nutrient supply and software licencing arrangements. We may remain actively involved to facilitate ongoing supply or we may refer you to third-party suppliers directly. In all cases you will be responsible for complying with any third-party supplier terms and requirements including delivery and payment terms.

6. Ownership and security interest

- 6.1 We may supply goods directly to you from time to time. We retain ownership in any goods until you have paid in full all monies owing by you to us.

7. Risk and delivery

- 7.1 Unless otherwise agreed in writing by us, you are responsible for the cost of and arranging transportation of all goods. We are not responsible for any late or non-delivery of goods to you in any circumstances whatsoever.
- 7.2 Risk in goods sold to you passes to you when the goods are delivered to you or your carrier, or the time you pay for the goods, whichever is the earlier. It is your responsibility to insure the Goods.

8. PPSA

- 8.1 You acknowledge that by agreeing to these Terms you grant to us a security interest in all goods supplied or to be supplied by us to secure all payments and all monies owing from time to time. If requested by us, you will do all things necessary for us to register a financing statement and to ensure the security interest is a first ranking perfected security interest over the goods and any proceeds. We may register a financing statement in our name as secured party even where we are acting as agent for a third-party supplier.
- 8.2 To the maximum extent permitted by law, you waive your rights to receive a verification statement and with our agreement, contract out of your rights under section 107 of the PPSA.

9. Warranties

- 9.1 Except to the extent of written warranties given by us to you, all warranties and representations in respect of goods sold or services supplied are excluded, including (to the extent permitted by law) those expressed or implied by law.

10. Limitation on liability

- 10.1 In providing services under this agreement we will act with the reasonable due skill, care and diligence of a competent professional providing work of this nature. We will act in reliance on information from you being complete, correct and true.
- 10.2 Our services do not include advice regarding your compliance with legal and other regulatory obligations related to your property. You should take independent legal advice in this regard.
- 10.3 We will not be liable to you in contract (including under any warranty), tort (including negligence), equity or otherwise for any loss or damage of any nature under these Terms or in relation to any goods or services provided to you and if for any reason we cannot rely on this exclusion of liability, the maximum aggregate liability that we will have to you is \$100.
- 10.4 Where, in relation to any Goods, the manufacturer’s warranty provides a greater warranty entitlement than provided for in these Terms, we will pass through the benefit of that warranty as it is received from the manufacturer.

11. Customer liability

- 11.1 You indemnify us from and against any liabilities, losses, damages, costs or claims which we incur or suffer in the course of our dealings with you under these terms and in respect of any breach by you of these terms except to the extent that we have been fraudulent or negligent in providing our services to you.

12. Permitted use

- 12.1 We grant you a limited licence to use any work produced by us for you, including any nutrient summary report (the “work product”). However, all_ intellectual property in all work product remains our exclusive property. You may use, copy and distribute the work product if such use, copying or distribution is required to give effect to the purpose it was intended. Any work product distributed electronically must not be capable of amendment or manipulation by the recipient (it must be in ‘read only’ format). You are responsible for ensuring that any third party using the work product complies with these Terms.

13. Conflict

- 13.1 We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises we will promptly notify you of this and obtain your consent to the structures and practices established to ensure information remains confidential.

14. Termination

- 14.1 We may terminate our arrangement with you with immediate effect at any time by giving written notice to you. You may terminate our arrangement by giving us 7 days’ notice in writing. If our arrangement is terminated, you must pay us all fees due to us and all expenses incurred by us up to the date of termination.
- 14.2 If our arrangement is terminated, you acknowledge that you remain liable for ongoing payment of any goods and services directly provided by a third-party supplier in connection with this arrangement and that you are responsible for terminating any such arrangements (should you wish to) in accordance with their terms.

15. General

- 15.1 Mediation - If a dispute arises we will try to settle the dispute by mediation before resorting to litigation or arbitration. Either of us may initiate mediation by giving written notice to the other. Mediators should be agreed upon by us but if we cannot agree on one within seven days after the mediation has been initiated, then the mediator shall be appointed by the chairperson of the New Zealand chapter of the Resolution Institute.
- 15.2 Waiver – A waiver of these Terms will only be effective if given by us in writing and only to the extent expressly stated to be given. Any waiver will not affect our rights under these Terms at any future time.
- 15.3 Changes to these Terms - We may change these Terms at any time. The changes will apply to any agreement that we have with you from the date that is one month after we have notified you in writing of the change.
- 15.4 Severability – If any part of these Terms illegal, unenforceable or invalid, the remaining Terms are not affected. However, we will negotiate in good faith to agree any other means by which the effect of that condition can be retained.