

TERMS OF TRADE

1. Terms apply to all work

- 1.1 These Terms of Trade (*Terms*) apply to all work we do for you including 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 and/or 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).
- 3.4 If:
 - (a) you are in breach of any of these Terms; or
 - (b) you become insolvent, bankrupt, convene a meeting with your creditors or propose or enter into an arrangement with creditors, or make an assignment for the benefit of your creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed with respect to you or any of your assets,all payments due under these Terms shall become immediately due and payable to us and we may without prejudice to any other remedies available to us, immediately terminate any engagement with you.

4. Confidentiality

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. Privacy

- 5.1 In your dealings with us we may sometimes collect and hold personal information about you. If you are an organisation, this may include collecting and holding personal information about your personnel.
- 5.2 We may also source information from publicly available sources. We may use that information to carry out services, collect any debts owed to us and to comply with our legal obligations. Failure to provide information we request may prevent or hinder us from providing services.
- 5.3 The information we collect and hold about you will be stored securely in New Zealand. We may also use service providers who store (on our behalf) the information overseas and information may be stored electronically. We use such security safeguards as are reasonable in the circumstances to protect it.
- 5.4 If we hold personal information about you, you have the right to access and correct this information as set out in the Privacy Act 2020.

- 5.5 We will otherwise collect, retain, use, and disclose any personal information collected in connection with our Services in accordance with our obligations under the Privacy Act 2020.

6. Third-party suppliers

- 6.1 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.
- 6.2 We shall have no liability to you in respect of any expense, loss or damage arising in connection with any goods or services provided by any third party.
- 6.3 We make no representations or warranties in respect of any third-party products or services.

7. Ownership and security interest

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.

8. Risk and delivery

- 8.1 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.
- 8.2 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.

9. PPSA

- 9.1 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.
- 9.2 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.

10. Warranties

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.

11. Qualifications

- 11.1 As part of our services, we may provide you with advice and/or reports. Any advice or report provided by us may contain statements which refer to our opinion. We have in each case formed that opinion in good faith. However, we are not in a position to make judgements in respect of your business. It may be that our opinion (whether as to the relevance, materiality or significance of a matter, or otherwise) will be found to be incorrect.
- 11.2 Where information is provided by you, or any third party, we will act in reliance on the information from you being complete, correct and true. We do not accept any responsibility for omissions or inaccuracies in any advice or report resulting from documents or information being incorrect, incomplete or outdated, or not being provided to us.
- 11.3 Any advice or report will be given on the basis that any decision or action taken by you based on that advice or report will be your responsibility and we assume no responsibility for the consequences of the decisions or actions taken by you.

12. Limitation on liability

- 12.1 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. You are responsible for assessing whether the services offered by us are suitable for your business needs.
- 12.2 Except as expressly agreed, 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.

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- 12.3 We will not be liable to you in contract (including under any warranty), tort (including negligence), equity or otherwise:
- (a) for any delay or non-performance in supplying any goods or services to you, including where there are delays in any decision or approval of any territorial authority, regional council or regulatory body, or due to any other event or circumstance beyond our reasonable control;
 - (b) where the terms of any written warranty have not been complied with;
 - (c) for any expense, loss or damage caused by any factors beyond our reasonable control;
 - (d) for any expense, loss or damage caused by any change in law(s) or regulation(s) or any expense, loss or damage arising from any ambiguity or unknown consequence in connection with such change in law or regulation;
 - (e) for any expense, loss or damage arising from a decision or enforcement action taken by a regulatory body or enforcement agency against you;
 - (f) for any expense, loss or damage arising from your reliance on any technical advice, or any aspect of it, provided by us;
 - (g) for any loss of profit or revenue, or for any special, indirect, incidental or consequential damage, loss or injury of any kind suffered or incurred by you; or
 - (h) where you have altered or modified any goods, mis-applied any products or subjected any products to any unusual or non-recommended use, service or handling;
- 12.4 If for any reason we cannot rely on the exclusion of liability contained in clause 12.3, the maximum aggregate liability that we will have to you is \$100.
- 12.5 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.
- 12.6 Our products and services are supplied to customers for trade purposes and accordingly, the Consumer Guarantees Act 1993 does not apply to the extent permitted by law.
- 13. Customer liability**
- 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.
- 14. Permitted use**
- Subject to our approval, we may grant you a limited licence to use any work produced by us for you (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.
- 15. Conflict**
- 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.
- 16. Termination**
- 16.1 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.
- 16.2 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.
- 17. Intellectual Property**
- 17.1 You acknowledge that we are the exclusive owner of any intellectual property rights (being all present and future rights in or to any copyright, patent, design, trade mark, brand name, domain name, business name, know-how, trade secret, confidential information and any other similar rights whether registered, registrable, patentable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights) relating to Agri Magic and the services that we supply.
- 17.2 Any information, ideas, inventions, trade secrets, trademarks, copyrights, or other forms of intellectual property disclosed or generated during the course of this Agreement shall remain our exclusive property.
- 17.3 This Agreement does not grant you any license or right in respect of our intellectual property rights.
- 18. General**
- 18.1 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.
- 18.2 Related entities – In some instances we may provide services to a related entity (a related entity being a holding entity or subsidiary of you) without entering into any agreement with that related entity. By agreeing to these Terms, you acknowledge that any related entity that we provide services for shall be deemed to be a party to the Agreement and bound by these Terms.
- 18.3 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.
- 18.4 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.
- 18.5 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.
- 18.6 Assignment – You must not transfer or assign your rights or obligations under these Terms to anyone else without our prior written consent. We may assign or transfer any of our rights or obligations under these Terms without your consent.