

VANTAGE NEW ZEALAND AGRICULTURAL SOLUTIONS LTD

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- a) "Contract" means any contract entered into (written or verbal), between the Customer and the Company, for the supply of goods or services.
- b) "Customer" means the Customer or any person acting on behalf of and with the authority of the Customer. All references to Customer include the Guarantor (s), if any.
- c) "Company" means Vantage New Zealand Agricultural Solutions Limited and its successors and assigns, authorised employees or agents. Employees and agents of the Company are authorised to contract only on these Terms and Conditions.
- d) "Goods" means all goods, including goods invoiced to the Customer by the Company from time to time as outlined in any estimate, invoice or any evidence of any supply of goods or services whatsoever. This includes goods loaned or hired by the Company to the Customer.
- e) "Price" means the cost of the goods and/ or services, as agreed between the Company and the Customer, and is exclusive of GST and in NZ\$ unless stated otherwise in writing.
- f) "Services" means all services supplied to the Customer by the Company, including the EM mapping service.
- g) "Terms and Conditions" means these Terms and Conditions or as amended pursuant to Clause 15(i), and will apply to all contracts.

2. ACCEPTANCE

- a) The Terms and Conditions constitute the entire contract, including all future contracts, between the Company and the Customer. Any instructions received by the Company from the Customer for the supply of goods or services shall constitute acceptance of the Terms and Conditions. No contract shall be binding upon the Company unless formally accepted in writing and signed by the Company. No conditions or stipulations, proposed by the Customer, containing writing which is inconsistent with the Terms and Conditions, or which purports to add to or modify them, shall have any effect unless accepted by the Company in writing.
- b) Where more than one Customer has entered into a contract, the Customers shall be jointly and severally liable for all payments of the Price.

3. PRICE

- a) The Company will invoice the Customer for the goods and/or services at the price indicated on the quote. Quotes are based on rates and costs at the date of the quotes and are valid for 30 days from the date of issue. The Company reserves the right to adjust any quote prior to the date of dispatch of goods or prior to or following the performance of services for any reason. If additions or modifications to goods or services are requested by the Customer after the acceptance of the quote, the quote shall be adjusted to reflect the additions or modifications.
- b) Where no price is stated in writing or agreed to orally, the price shall be indicated on invoices provided by the Company in respect of goods and/or services supplied.
- c) Unless otherwise agreed, all freight, installation, travel, and accommodation costs are payable by the Customer.
- d) If there is money outstanding under two or more invoices, the Company may apply a payment made by the Customer in such a manner as the Company thinks fit.
- e) The Company shall not be bound by any typographical errors or omissions in any price list, newsletter, invoice, statements or any other documents used by the Company.
- f) Orders may be placed or quotes may be accepted by the Customer by telephone or in writing by facsimile, letter or by electronic means. The Company reserves the right to insist upon written confirmation prior to progressing any order.
- g) If loan, trial or hire equipment is returned damaged or incomplete, or if manuals or other instructions are not returned, the Customer shall be liable for the repair of or replacement of the damaged or missing item. All loan, trial or hire items must be returned in their original packaging as supplied by the Company upon delivery (where appropriate).
- i) If any loaned or hired equipment is not returned upon the expiry of any contract or within seven (7) days of demand by the Company or if the Customer prevents or makes it difficult for the Company to remove any installed loan, trial, or hire equipment, this shall be

regarded as a default and the default provisions under clause 7 shall apply. Notwithstanding any provisions to the contrary, failure to return any loan or hire equipment within 20 working days of demand or upon the expiry of any hire or loan contract, the Company may, at its sole discretion, invoice the Customer for the full replacement cost of the loan or hired equipment including freight, and for the costs relating to the provision of any service, including installation, travel, and accommodation and the provisions of clauses 7 (b), (c) and (d) shall apply.

- j) Unless agreed otherwise in writing, the price must be paid pursuant to the following payment schedule:
- i. For Goods with a price less than \$5,000 including GST and freight, payment of the price must be made in full within 7 days of provision of the goods.
 - ii. For Goods with a price exceeding \$5,000 including GST and freight, payment of the price must be made as follows: 20% upon acceptance of the quote, and 50% upon arrival of the Goods at a NZ port. The final 30% will be payable by the 20th day of the following month, after the provision of the goods to the Customer or after installation.
 - iii. For EM mapping services over a total area of 150ha, payment of the price must be made as follows: 30% upon completion of the mapping and field work. The final 70% will be payable by the 20th day of the following month after the provision of the report to the Customer.
 - iv. For EM mapping services with a total area of less than 150ha and all other services, payment of the price must be in full by the 20th day of the following month after provision of the report or service.

4. PAYMENT

- a. All payment must be in accordance with clause 3. j) above. Payment shall be by cash, cheque, direct debit, or internet banking.
- b. The Company is entitled at any time to refuse to supply goods and services on credit terms, and may require payment in full in advance, despite any prior agreement or understanding to the contrary.

5. SUITABILITY FOR CUSTOMER'S PURPOSE

The Customer must satisfy himself that the goods and services are fit and suitable for the purposes for which they are required and the Company gives no warranty nor will it accept any liability in respect of the fitness or suitability for the Customer's purposes.

6. RISK

- a) The risk in any goods provided by the Company shall pass to the Customer when the goods are picked up by the Customer from the Company's premises or some other agreed location, or, where agreed, when the goods have been delivered to the Customer's premises by the Company itself or when possession of the goods is given to a carrier, courier or other bailee, by the Company, for the purposes of transmission to the Customer.
- b) Any dates quoted by the Company for the delivery of goods or commencement or completion of any services are approximate only and shall not form part of the contract. The Company will not, under any circumstances, be liable for any costs, expenses, damages or loss of profits incurred by the Customer as a result of delay.

7. DEFAULT

- a) If the Customer defaults upon any contract the Customer authorises the Company to enter upon any premises or property occupied by the Customer or any property where the goods are stored, without notice, in order to inspect, search for and remove the goods supplied and the Customer agrees to procure all consents necessary and to indemnify the Company against any liability incurred in connection with such entry and removal. The Company may recover and resell the goods and apply the proceeds derived to all or part of the debt and all costs incurred in 7 (c). The Customer is liable to the Company for any shortfall and amounts due under Clauses 7(b) and 7(c).
- b) Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at the rate of 2% per calendar month on the total amount owing pursuant to Clause 7.a) above.
- c) Should the Company commence any action to recover the debt and interest or for any other breach of the contract, the Customer will reimburse the Company for all legal costs, debt collection and other costs (directly or indirectly) incurred by it enforcing the terms of the contract, whether or not Court proceedings are filed.
- d) In the event that:
 - i. Money payable to the Company becomes overdue or the Customer breaches any obligation under a contract or if the Customer jeopardises the Company's security interest in any goods, or in the Company's sole opinion the Customer will be unable to meet its payments as they fall due, or;
 - ii. The Customer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors or has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management;

then without prejudice to the Company's other remedies at law:

- The Company shall be entitled to cancel or suspend the provision of any goods or services to the Customer which remain unperformed or un-provided and any of its other obligations under the contract and will not be liable to the Customer for any loss or damage the Customer suffers pursuant to this clause;
- All amounts owing to the Company shall, whether or not due for payment, immediately become due and payable and all credit facilities cancelled;
- The Company may enforce any security interest granted to it by the Customer; and
- The Company may require payment in advance for all orders, including existing orders.

8. TITLE

- a) Property and title in the goods shall not pass until the Customer has made payment in full for all goods and services provided by the Company on all contracts.
- b) It is further agreed that:
 - i. Until title passes to the Customer, the Company may give notice in writing to the Customer to return the goods to the Company. If the Customer fails to return the goods to the Company prior to title passing then the provisions of 7 (a) shall apply.
 - ii. Until such time as title to the goods shall pass from the Company to the Customer, the Customer will keep the goods separate from any other goods in its possession and will keep the goods properly stored, protected, insured and identified or identifiable as the Company's property.
 - iii. If the Customer sells the goods prior to title passing but is deemed to have given good title to the Purchaser, then all moneys received by the Customer from such sale shall be held on trust for the Company absolutely until title has passed to the Customer in accordance with these Terms and Conditions.

9. PERSONAL PROPERTY SECURITIES ACT 1999 (OR ITS SUCCESSOR)

- a) The Customer acknowledges and agrees that:
 - i. These Terms and Conditions constitute a security interest in the goods for the purposes of the Personal Property Securities Act 1999 ("PPSA") as security for payment by the Customer for all amounts due under a contract including any future amounts; and
 - ii. In consideration for the Company providing goods to the Customer, including all future advances of goods, the Customer grants a Purchase Money Security Interest (as defined in the PPSA) to the Company which will continue until the purchase price is paid in full. If any goods supplied to the Customer are disposed of prior to payment and/or become mixed with other goods (whether supplied by the Company or not) the security interest shall continue in the proceeds of sale of the goods or the product produced by the mixing of the goods.
- b) The Customer undertakes to:
 - i. Sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, that the Company may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register ("PPSR");
 - ii. Indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing charge statement on the PPSR or releasing any Goods charged thereby;
 - iii. Not register a financing change statement or a change demand without the prior written consent of the Company;
 - iv. Give the Company not less than fourteen (14) days' prior written notice of any proposed change in the Customer's name or other details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and
 - v. Immediately advise the Company of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- c) The Company and the Customer agree that nothing in sections 114(1)(a), 122, 133 and 134 of the PPSA shall apply to the Terms and Conditions.
- d) The Customer waives its rights as a debtor under sections 116, 120, 121, 125, 126, 127, 128, 129, 131 and 132 of the PPSA.
- e) The Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10. LIMITATION OF LIABILITY

- a) Any liability of the Company, arising directly or indirectly from any defect in any goods or services provided, shall be limited to the replacement or repair of such defect and shall not in any case exceed the invoice value of the particular good or particular service provided.

- b) The Customer shall inspect the goods upon delivery and the services upon completion. Any complaint must be made in writing and communicated to the Company within 14 days of the goods having been provided or the services completed. The Customer must allow the Company to inspect the goods within a reasonable time of receiving notice.
- c) If the Company agrees in writing that the goods are defective, then the Customer may reject the goods provided:
 - i. The goods are returned at the Customer's cost within seven (7) days of the date of the Company's written agreement that the goods are defective, provided however that if goods have been installed by the Company, the Customer must arrange for the Company to come and remove the goods within seven (7) days of the date of the Company's written agreement that the goods are defective.
 - ii. The Company will not be liable for goods which have been stored or used improperly or tampered with or modified without the Company's approval, or where there has been continued use of any goods after any defect becomes apparent or should have become apparent to a prudent user or if in the Company's sole opinion any defects are of a cosmetic or non-substantial nature.
 - iii. The goods are returned in the condition and packaging in which they were delivered; and
 - iv. The Company elects not to repair or remedy the defect. If the Company elects to repair or remedy the defect it will do so with minimum delay, although the Customer acknowledges that this is dependent upon sourcing replacement parts and technical support. The Customer cannot arrange a third party or its own serviceman to fix the problem and then claim for warranty, without the Company's prior written approval.
- d) If the Customer fails to comply with any of the above provisions, the goods are deemed to have been supplied in accordance with the Terms and Conditions and free from any defect or damage.
- e) The Company will pass on the benefit of any manufacturer's warranties, although it will not be directly liable to the Customer under any warranty, The Customer is responsible for the cost of returning goods to the manufacturer or the Company under any warranty and the Customer may be responsible for additional costs including but not limited to freight. When the Customer requires the Company to do anything related to a warranty claim, the Customer must pay the Company's service and call out charges. The Company may refuse to assist with any warranties if any part of the price owed to the Company by the Customer is overdue.
- f) Unless otherwise agreed in writing, no warranty, manufacturer's or otherwise, is given for used or second hand goods purchased by the Customer "as is where is".
- g) The Customer must follow any manufacturer's services, storage, maintenance and use recommendations. Failure to do so may result in any warranty being voided.

11. CANCELLATION

- a) The Company may cancel any contract or cancel delivery or provision of goods and services at any time before the goods are delivered or services carried out by giving written notice at the Company's absolute discretion. On giving such notice the Company shall promptly refund to the Customer the price paid for those goods or services to date. However, if the Customer cancels delivery of goods or services and the Company consents to the cancellation, the Customer is liable for any costs incurred by the Company up to the time of cancellation. Where items are specifically ordered for a Customer, and must be imported from outside New Zealand, and are not normally in stock, the order cannot be cancelled unless the Company agrees and the supplier or manufacturer consents to the cancellation of the Company's order, in which case any costs incurred by the Company, including freight or any penalty or restocking fee incurred, will be payable by the Customer. The Company shall not be liable for any loss or damage to the Customer whatsoever arising from such cancellation or from unavailability of goods.

12. PRIVACY

The Customer authorises the Company to collect, retain and use personal information about the Customer in order to assess the Customer's credit worthiness, disclose to a 3rd party details of the Terms and Conditions or contract for the purposes of debt collection and providing credit references and credit checks.

13. DIMENSIONS & SPECIFICATIONS

Dimensions and specifications referred to in a contract or catalogue or any other publication maintained or issued by the Company are estimates only. Unless the Company agrees in writing, it is not a condition of the contract that the goods will correspond precisely with the dimensions, specifications or customary tolerances.

14. DISPUTES

- a) If any dispute arises out of a contract then the party claiming that a dispute has arisen must give written notice to the other party specifying the matter in dispute. The parties must then try to resolve the dispute in good faith within 10 working days of the date the Notice is served upon the other party, or Clause 14. b) will apply.

- b) The Customer hereby agrees that if the total amount in dispute is less than \$20,000.00 the matter shall be heard in the Disputes Tribunal if it cannot be resolved directly between the parties pursuant to Clause 14.a). If the amount in dispute exceeds \$20,000.00 or cannot be heard at the Disputes Tribunal then the parties shall refer the matter to Arbitration as per Clause 14.c).
- c) The dispute will be referred to arbitration by a sole arbitrator in accordance with the Arbitration Act 1996. If the parties cannot agree on the identity of the arbitrator within 10 working days from the date on which the dispute is referred to arbitration by either party, then the arbitrator will be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc, upon the application of any party. The Arbitration will take place in New Zealand. The award in the arbitration will be final and binding on the parties. The parties will bare their own costs in the arbitration and will share equally the arbitrator's costs.

15. GENERAL

- a) If any provisions of these Terms and Conditions shall be invalid or unenforceable the validity and enforceability of the remaining provisions shall not be affected.
- b) The Company shall be under no liability whatsoever to the Customer for any direct or indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these Terms and Conditions, including a defect in the goods or services provided.
- c) The Customer shall indemnify the Company 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 the Company or otherwise, brought by any person or company in connection with any matter, act, omission, or error by the Company in connection with goods and services provided, except as provided for in these terms and conditions
- d) The Consumer Guarantees Act 1993, the Fair Trading Act 1986, Sale of Goods Act 1908 and other statutes may imply warranties or conditions or impose obligations upon the Company which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of such implied warranties, conditions or terms imposed on the Company, the Company'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. In particular, the guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires goods or services from the Company for the purposes of a business in terms of sections 2 and 43 of that Act. In addition, the following provisions of the Sale of Goods Act 1908 are excluded as far as possible by law; Sections 15, 16, 17, 36, 37, 38, 54 and 55.
- e) Failure by the Company to enforce any of these Terms and Conditions is not a waiver of any of the rights and obligations of the Company.
- f) Neither party shall be liable for any default due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of either party.
- g) The Customer shall not set off against the price amounts due from the Company.
- h) The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- i) The Company reserves the right to review these Terms and Conditions at any time and if changes are made, that change will take effect from the date the Customer is notified of such change. All new contracts made after the amended Terms and Conditions have been provided or made available to the Customer or been posted upon the Company's website, will be deemed to have been made in acceptance of the new Terms and Conditions.
- j) The laws of New Zealand shall apply to these Terms and Conditions and all contracts between the Customer and the Company.
- k) If the Customer is a company or trust, the director(s) or trustee(s) signing any contract, in consideration for the Company agreeing to supply goods and services to the Customer, sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to the Company the payment of any and all monies now or hereafter owed by the Customer and indemnify the Company against non-payment by the Customer. The signatories and the Customer shall be jointly and severally liable under these Terms and Conditions and for payment of all sums due hereunder.