

PRODUCT AND EQUIPMENT SUPPLY AGREEMENT

Schedule 3 – Terms and Conditions for Equipment Lease

1. LEASE OF EQUIPMENT

- 1.1. **Lease of Equipment:** Farmlands shall lease the Equipment to the Customer on the terms set out in this Schedule 3 for the Term of this Agreement.
- 1.2. **Equipment:**
- a. Farmlands will make the Equipment available to the Customer on an exclusive basis during the Term for the purpose of storing Product supplied to the Customer in accordance with this Agreement. The Equipment shall not be moved anywhere other than the Premises without Farmlands' prior written consent.
 - b. Where the Premises is (or will be at any time during the term of this Agreement) subject to a mortgage or owned by a person other than the Customer, then the Customer shall obtain written acknowledgement and agreement in a form satisfactory to Farmlands from the owner of the Premises and from any mortgagee of the Premises, under which they:
 - i. acknowledge Farmlands' ownership of the Equipment;
 - ii. agree that the Equipment is released from any security they may hold from the Customer;
 - iii. grant to Farmlands the right to access the Premises to inspect or remove the Equipment from the Premises, or to otherwise protect its interests in the Equipment; and
 - iv. agree that they will not take any actions or omit to do anything, the doing or omission of which could interfere with Farmlands' interests in the Equipment.

2. FEE

- 2.1. **Customer to pay Fee:** The Customer shall pay the Fee specified in the Key Terms to Farmlands in consideration of Farmlands agreeing to lease the Equipment to Customer on the terms of this Agreement.
- 2.2. **Additional charges:** Farmlands may also invoice the Customer for any costs, taxes, charges or liabilities which may from time to time be imposed or charged by any government, quasi government, statutory or tax authority, or any costs, or charges or liabilities including under the emissions trading scheme pursuant to the Climate Change Response Act 2002.
- 2.3. **Reimbursement:** In addition to the Fee, the Customer shall reimburse Farmlands immediately upon receipt of an invoice from Farmlands for any costs incurred by Farmlands (including legal costs) in protecting Farmlands' interests under this Agreement, including in taking any enforcement action or taking possession of the Equipment and remedying any failure by Customer to comply with its obligations under this Agreement or otherwise. Farmlands may at its discretion remedy any failure by the Customer to comply with any of its obligations set out in this Agreement or otherwise, but is not obliged do so. Farmlands may at its discretion charge interest at the rate of 24% per annum on a daily basis on all such amounts.

- 2.4. **Changes to fee:** Farmlands will give at least 10 days' written notice to the Customer of any change in the amount of the Fee payable by Customer or the basis on which the Fee is charged, and all such changes will take effect from the date and time set out in Farmlands' notice. Any such change shall not apply retrospectively.

3. COMPLIANCE WITH LAWS

- 3.1. **Customer to comply with Laws:** The Customer shall comply with all Laws applying to the use of the Equipment (including the display of appropriate labels and warning signs) and otherwise applying to this Agreement, including obtaining and maintaining any licenses, authorizations, permits, consents, and certificates and any other authorizations required by any Law (Permits) for the operation of the Equipment. The Customer will, upon Farmlands' request, promptly provide Farmlands with a copy of any Permits.
- 3.2. **Trailer tanks:** Where the Customer leases trailer tanks from Farmlands as part of any Equipment, the Customer shall be responsible for complying, at its own cost, with all registration and Warrant of Fitness requirements, ensure that such trailer tanks are at all times towed by vehicles of appropriately rated capacity and are kept in warrantable condition at all times, and shall pay all registration, license and other fees payable in respect to the use or operation of such Equipment.
- 3.3. **Non-compliance:** In the event of non-compliance by the Customer with the requirements of any Laws which results or could result in either Party being or becoming liable under any Laws, the Customer shall:
 - a. immediately notify Farmlands of the non-compliance; and
 - b. to the maximum extent permitted by law, indemnify Farmlands against any liability, penalty and damage however arising as a result of such non-compliance.

4. USE OF EQUIPMENT

- 4.1. **Customer obligations:** The Customer shall at all times during the Term of this Agreement:
 - a. comply with its responsibilities set out in the Appendix to this Schedule 3, which sets out the responsibilities of the Parties in relation to the installation and maintenance of the Equipment. For the avoidance of doubt, the Customer is not entitled to any compensation for any improvements made to the Equipment by the Customer where permitted by Farmlands.
 - b. keep, operate, service and maintain the Equipment (as required in the Appendix to this Schedule 3) in good repair and condition, in accordance with manufacturers' recommendations and otherwise in compliance with such requirements as Farmlands may issue from time to time, and shall record all maintenance in an appropriate logbook. If the Customer fails to comply with any of its maintenance obligations, Farmlands may arrange for maintenance to be completed by itself or by any third party at its discretion, and the Customer shall be liable for any

costs incurred by Farmlands in carrying out such maintenance.

- c. keep full and accurate records of all checks and maintenance, servicing and repairs carried out on or in relation to the Equipment, provide those records to Farmlands upon request, and keep a copy of all such records for at least 24 months after termination or expiry of this Agreement.
- d. ensure that no Equipment is used in a dangerous or negligent manner, and that only competent and duly qualified persons in the direct employment of or under contract with the Customer shall be permitted to handle and use the Equipment.
- e. keep the Equipment at all times in the possession and control of the Customer at the Premises or place of work in the location of which the Customer will keep Farmlands notified of, and will not remove the Equipment (or any part of it) from those premises or allow the Equipment (or any part of it) to be removed without Farmlands' prior written consent.
- f. not to use the Equipment or permit the same to be used for any purpose for which it was not designed, or in contravention of any applicable Laws or terms of any insurance policy, or in such a manner as would contravene or would invalidate this Agreement.
- g. only use the Equipment in connection with the receiving, storing, handling or dispensing of Farmlands' Products and not for any other purpose without the prior written consent of Farmlands. In no circumstances shall the Customer use the Equipment or permit or allow the Equipment to be used for the storage, dispensing or handling of Products marketed by any competitor of Farmlands, other than as expressly agreed in writing by Farmlands under this Agreement or otherwise.
- h. not hold itself out as the true owner of the Equipment, or grant any security interest (as that term is defined in the PPSA) or other encumbrance in or over the Equipment, or otherwise deal with or dispose of any Equipment other than in accordance with this Agreement. The Customer must clearly indicate that the Equipment is the property of Farmlands during any dealings with third Parties (where relevant).
- i. not make any modification or alterations or attachments to the Equipment, other than with the prior written consent of Farmlands whose consent may be given subject to any conditions as may be imposed at its absolute discretion.
- j. not sell, assign, lease, transfer, mortgage, charge, bail, part with or lose possession of the Equipment or permit any encumbrance or allow the rights of Farmlands in the Equipment to be prejudiced.
- k. notify Farmlands as soon as any part of the Equipment is in need of repair or maintenance. The Customer shall be responsible for keeping the Equipment and any associated pumps, hoses, nozzles, pipes, lines and other fittings (Fittings) maintained and in good repair, order and condition at its own cost and to the maximum extent permitted by Law shall be responsible for and indemnify Farmlands against all loss or damage to the Equipment and associated Fittings. Farmlands

may at its discretion repair and maintain all or parts of the Equipment and require the Customer to deliver such Equipment to Farmlands or its agents as directed at the full or part cost of the Customer.

- l. on being given notice, permit access to Farmlands and its representatives during normal business hours to inspect the Equipment.
- m. not affix any markings on the Equipment or place any brand or trade or other name on any part of the Equipment without Farmlands' prior approval in writing, and shall not remove or obscure any identification features or serial numbers on any Equipment.
- n. not fix or permit the affixing of the Equipment to land or to any building without Farmlands' prior written consent.
- o. keep the Equipment secure at all times and use best endeavours to avoid any damage to or loss of the Equipment, and shall immediately notify Farmlands of any loss or damage to the Equipment from whatsoever cause and all claims which may be made against the Customer in respect of any damage to person or property caused or alleged to be caused by the Equipment or any operator of the Equipment.
- p. not do or omit to do anything which might prejudice or affect any warranties, or manufacturer's or supplier's guarantees relating to the Equipment. Without limitation, the Customer shall not mix or adulterate any Product stored in the Equipment, and shall not subject any part of the Equipment to misuse, neglect, contamination or damage.
- q. check the Equipment and Product stored in the Equipment on at least a weekly basis and in accordance with Farmlands' reasonable directions. The Customer shall dip the Product stored in the Equipment at least once a week to check for any water contamination, shall keep a written record of the results of all such dips, and shall notify Farmlands in writing immediately if any water contamination is found.

4.2. Tanks:

- a. Either Party (or its appointed representative) may at any time during the Term, during normal business hours and following reasonable prior notice, inspect (and test, if required) the Tanks owned by the other Party for the purpose of confirming that the other Party is complying with its obligations under this Agreement in respect of those Tanks.
- b. Each Party shall provide the other Party and its appointed representatives with access to its Tanks, and will provide all other co-operation and assistance as the other Party may reasonably request for the purposes of any assessment or inspection under clause 4.2 of Schedule 3.

5. NO WARRANTY

5.1. No warranty: The Customer agrees that:

- a. the description of the Equipment is for identification purposes only; and
- b. Farmlands has not made and does not give any representation, condition, guarantee or warranty in

connection with the Equipment, and any representation, condition, guarantee or warranty that would otherwise be implied by statute or otherwise under any Law is expressly excluded to the fullest extent permitted by Law.

5.2. **Customer's own judgment:** The Customer enters into this Agreement solely in reliance on its own judgment as to the quality of the Equipment and its fitness for purpose.

6. TERMINATION OF LEASE

6.1. **Termination:** Farmlands may at its option terminate the lease of the Equipment to the Customer either under a termination notice issued under clause 9 of Schedule 1, or separately by issuing a notice under clause 9 of Schedule 1 specifying that the lease of the Equipment to the Customer is terminated but that the supply of Product under this Agreement continues, in the event of any termination event set out in clause 9 of Schedule 1 occurring. Farmlands may also terminate the lease of the Equipment to the Customer by giving one month's written notice to the Customer.

7. CONSEQUENCES OF EXPIRY OR TERMINATION

7.1. **Customer obligations on expiry or termination:** The Customer acknowledges receipt of the Equipment in good order and condition. At the expiry or termination of the Agreement or of the lease of the Equipment, but subject to clause 9.3(a) of Schedule 1, on Farmlands' request the Customer at its expense shall return the Equipment to Farmlands in good repair and operable condition (fair wear and tear excepted), to such location and on board such transport as Farmlands may reasonably specify. The Customer shall also deliver to Farmlands any licenses and certificates of fitness and all other documentation relating to the Equipment or its use, maintenance, servicing and repair (including all logbooks).

7.2. **Failure to deliver:** Should the Customer fail to deliver the Equipment as required under clause 7.1 of Schedule 3 Farmlands may at any time and without notice retake possession of the Equipment and for such purpose enter upon the Premises, and the Customer shall be responsible for all costs, charges and expenses (including legal costs on a full indemnity basis) incurred by Farmlands in retaking possession of the Equipment and restoring the same to good working order and condition. Until return of the Equipment, the Customer's obligations in respect of the Equipment shall be deemed to continue and any fee payable by the Customer in consideration of such lease shall continue to be payable (calculated on a daily basis) until such time as the Equipment is delivered to Farmlands.

7.3. **Outstanding moneys:** Following expiry or termination of the lease of the Equipment to the Customer for any reason, all moneys outstanding from the Customer to Farmlands shall immediately become due and payable, and each Party will promptly return to the other any property of the other Party in its possession or control.

8. INDEMNITY

8.1. **Customer indemnity:** Without prejudice to such rights and remedies as are available to Farmlands under this Agreement or at law or in equity, the Customer shall to the maximum extent permitted by Law fully indemnify and

keep indemnified Farmlands from and against any liability, loss, damage, charges, costs and expenses (including legal fees on a full indemnity basis) whatsoever suffered or incurred by Farmlands (other than to the extent suffered or incurred as a result of the gross negligence or willful misconduct of Farmlands) by reason of:

- Farmlands exercising a right under this Agreement or at law or otherwise, including enforcement action of any kind; or
- Farmlands doing anything the Customer should have done under this Agreement; or
- the Customer not doing what the Customer should have done under this Agreement; or
- Farmlands having to seize, dismantle, transport, reassemble and/or store the Equipment; or
- any property being damaged or lost or any person suffering loss, injury or death directly or indirectly arising out of the Equipment, its loan or use by any person, whether occurring on the Premises or otherwise, including (but without limitation) arising out of any leakage, spillage, seepage, Contamination, environmental liability, fire or explosion and/or from any Fittings, utilities or facilities connected to the Equipment.

8.2. **Indemnity continuing:** Each indemnity is a continuing obligation, separate and independent from Customer's other obligations, and shall continue after this Agreement expires or is otherwise terminated.

APPENDIX –INSTALLATION AND MAINTENANCE RESPONSIBILITY SCHEDULE

Obligation	Responsibility	Farmlands Cost	Customer Cost
General Maintenance			
Installation, servicing and general maintenance of all Rotomould tanks and all tanks with a capacity of less than 5,000 litres as well as the associated hoses, pumps and equipment.	Customer	No	Yes
Servicing, general maintenance and preventative maintenance of all other tanks including hoses, associated pumps and equipment	Farmlands	Yes	No
API, interceptor Cleaning	Farmlands	Yes	No
Card Reader	Farmlands	Yes	No
Compliance			
Tank(s) or site HSN0 Certification	Farmlands	Yes	No
Wet Stock Management	Customer	No	Yes
Signage	Farmlands	Yes	No
Other			
Tank movement and removal from premises	Farmlands	No	Yes
Transportation to site	Farmlands	No	Yes
Damage Repairs	Farmlands	No	Yes
Insurance	Customer	No	Yes