

Farmlands Co-operative Society Limited

Terms and Conditions



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Terms and Conditions

Please read the following Terms carefully. They apply to the Account, the supply and hire of all Goods by Farmlands and all Farmlands Card and Card Partner Card use from 01/03/2015.

DEFINITIONS

"Account" means all accounts (however titled) provided by Farmlands to record transactions and the supply and hire of Goods.

"Address for Service" means:

- a. for any Shareholder, Card Signatory or Guarantor either (at Farmlands' election):
 - i. the postal or email address or fax number last notified to Farmlands by the Shareholder, Card Signatory or Guarantor; or
 - ii. if it is a company, the company's registered address for service; or
- b. for Farmlands Co-operative Society Limited, 535 Wairakei Road, PO Box 271, Christchurch 8140, New Zealand.

"AML/CFT Act" means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and includes all regulations and codes of practice issued under that Act.

"Amount Due" means the amount specified as the closing balance of the Account in the relevant Statement (and any subsequent Default Event costs).

"Application" means an application made by the Shareholder for an Account, Farmlands Card or Card Partner Card.

"Authorised Person" means any person that a Card Partner Card is issued to or who is otherwise authorised to use that Card Partner Card.

"Card Partner" means any agent, merchant, retailer or supplier bound by a supply agreement with Farmlands (including any Farmlands Card or Card Partner agreement).

"Card Partner Card" means any card issued by a Card Partner, which is linked and debited to the Account.

"Card Signatory" means a person named on or who uses or is authorised to use a Farmlands Card or Card Partner Card.

"Default Event" means an event where:

- a. the Shareholder, Card Signatory or Guarantor fails, or in Farmlands' opinion is likely to fail, to pay the Amount Due by the Due Date or to otherwise comply with these Terms, the Rules of Farmlands or any other contract with Farmlands or its Related Entities;
- b. the Shareholder, Card Signatory or Guarantor commits an act of bankruptcy;
- c. the Shareholder, Card Signatory or Guarantor enters into any composition or arrangement with creditors;
- d. anything occurs which in Farmlands' reasonable opinion adversely affects the Shareholder's, Card Signatory's or Guarantor's ability to pay all monies howsoever owing to Farmlands; or
- e. if the Shareholder, Card Signatory or Guarantor is a company:
 - i. it does any thing which would make it liable to be put into liquidation;
 - ii. a receiver, statutory manager or official manager is appointed over any of its assets; or
 - iii. a resolution is passed or an application is made for its liquidation.

"Due Date" means the date notified by Farmlands by which the Amount Due must be paid and if no date is specified, the 20th day of the month following the relevant purchase or transaction.

"Farmlands" means Farmlands Co-operative Society Limited.

"Farmlands Card" means any debit card, credit card or discount card (however branded) issued by Farmlands that is linked and debited to the Account (including, for the avoidance of doubt, a Card Partner Card).

"Guarantor" means a guarantor of a Shareholder signing any guarantee in favour of Farmlands.

"Goods" means any goods (including equipment) or services supplied or hired by Farmlands or any of its Related Entities to the Shareholder (including any goods or services purchased using a Farmlands Card or any Card Partner Card) and recorded to the Account or invoice.

"PIN" means the confidential personal identification numbers for use with a Farmlands Card.

"PPSA" means the Personal Property Securities Act 1999.

"Related Entity" has the meaning set out in section 2(3) of the Companies Act 1993 but read as if the word company in that section includes an industrial and provident society.

"Shareholder" means a person recorded in Farmlands' share register as a shareholder/

member (or, in the case of an Account provided to a person who is not a Farmlands shareholder/member, the Account holder).

"Statement" means Farmlands' monthly business record of Account transactions.

"Terms" means these Farmlands Co-operative Society Limited Terms and Conditions, as amended from time to time and any additional terms recorded on Farmlands' invoices or despatch notes.

Account Payments

1. The Shareholder shall pay the Amount Due to Farmlands by the relevant Due Date.
2. The Amount Due may include:
 - a. GST and any other taxes, duties and levies payable in respect of the Goods at the invoice date; and
 - b. any increase in the cost of the Goods (including any change in currency rates affecting the cost of production or supply) before the date of supply.
3. Payment of the Amount Due shall be made in full without deduction, set off, counter claim or any other legal or equitable claim.
4. Farmlands may apply any payment:
 - a. received from or on behalf of the Shareholder; or
 - b. due by Farmlands to the Shareholder or any of its Related Entities,

in reduction of the Amount Due as Farmlands thinks fit and may apportion payments as it thinks fit to preserve any purchase money or security interest it has in the Goods.

Risk and Security Interest

5. Risk of any loss, damage or deterioration to Goods passes to the Shareholder on supply.
6. Goods are deemed to be supplied on the earlier of:
 - a. despatch from Farmlands' premises;
 - b. despatch or supply from the Farmlands supplier or Card Partner if supplied directly to the Shareholder; and
 - c. the invoice date.
7. Ownership of Goods remains with Farmlands and does not pass to the Shareholder until the Shareholder pays the Amount Due and has satisfied all its other obligations to Farmlands.
8. Until payment of the Amount Due, the Shareholder shall insure Goods for their full insurable value.
9. The Shareholder grants a security interest in all Goods and all present and after-acquired property of the Shareholder to Farmlands as security for payment of the Goods and for any other amounts from time to time owing by the Shareholder to Farmlands and for the performance by the Shareholder of all the Shareholder's other obligations to Farmlands.
10. While ownership of Goods remains with Farmlands:
 - a. the Shareholder shall store the Goods separately, not mix them and clearly identify them as belonging to Farmlands. If any Goods are stored in breach of this clause or cannot be clearly identified, Farmlands may select which goods it has security over;
 - b. Farmlands authorises the Shareholder in the ordinary course of the Shareholder's business to use the Goods or sell them for full consideration, subject to clause 14. This authority is revoked when:
 - i. a Default Event occurs; or
 - ii. Farmlands notifies the Shareholder that the authority is revoked; and
 - c. the Shareholder shall advise Farmlands immediately:
 - i. if a Default Event occurs; or
 - ii. of any other act, matter or thing (including action by any of the Shareholder's creditors) which could affect Farmlands' security interest in the Goods.
11. The Shareholder grants Farmlands an irrevocable licence to take any action it considers necessary at any time without notice to protect the Goods, or its security interest in the Goods (including entering the land and premises where the Goods are stored, regardless of whether or not an occupier is present and removing them). To the extent permitted by law, Farmlands shall not be responsible for any damage caused by such action.
12. Farmlands may resell any of the Goods and apply the proceeds of sale in reduction of the Amount Due.

13. The Shareholder agrees to promptly do anything that Farmlands reasonably requires to ensure Farmlands has a first ranking perfected security interest in all of the Goods (and any proceeds).
14. If the Shareholder resells, uses or otherwise deals with Goods before ownership in the Goods has passed to the Shareholder, the proceeds of such shall be received and held by the Shareholder (in whatever form) in trust for both the Shareholder and Farmlands. Farmlands' interest as beneficiary under that trust shall be equal to the Amount Due. The balance proceeds (if any) shall be the Shareholder's beneficial interest under that trust.

Contracting out of the PPSA

15. The Shareholder waives its right to receive a copy of any verification statement under the PPSA .
16. The Shareholder:
 - a. shall not grant any other security interest in Goods without Farmlands' prior written consent;
 - b. waives, contracts out of and agrees that nothing in sections 114(1)(a), 116, 120(2), 121, 125, 127, 129, 131, 133 and 134 of the PPSA shall apply to these Terms; and
 - c. shall pay all costs, expenses and other charges incurred by Farmlands in relation to:
 - i. the filing of a financing statement or financing change statement; and
 - ii. any disputes or negotiations with third parties claiming an interest in Goods.

Claims and Liability Limitation

17. The Shareholder and Card Signatory acknowledge that any advice, information or recommendation given by Farmlands is given in good faith and based on the information provided by the Shareholder or Card Signatory but that the decision to order, use or hire Goods or to follow a recommendation is the Shareholder's or Card Signatory's decision alone.
18. To the extent permitted by law, Farmlands:
 - a. excludes all recommendations, warranties, descriptions, representations and conditions in relation to Goods, whether expressed or implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability for purpose, or otherwise and all specific conditions even though such conditions may be known to Farmlands;
 - b. shall not be responsible for any loss or liability caused by failure or refusal to supply Goods or defective supply of Goods, or any occurrences beyond Farmlands' control where a Farmlands Card is unable to be used; and
 - c. excludes all liability to the Shareholder and any third party, whether in tort (including negligence), contract, equity or otherwise, for any loss or liability whatsoever, (including recommendations, seed pre-mixed with fertiliser, seed description, growth, parity, productiveness, resultant crop, or agricultural and chemical application), whether direct, indirect, special or consequential.
19. If Farmlands is ever liable to the Shareholder or any third party and for any reason whatsoever, cannot rely on the exclusion of liability set out in clause 18.c, the maximum amount Farmlands will have to pay the Shareholder and the third party combined in respect of the Goods is limited to the price of the Goods concerned. This limitation applies to the extent permitted by law, whatever the Shareholder or third party is claiming for and however liability arises or might arise if not for this clause.
20. If the Shareholder acquires Goods for business purposes, the Consumer Guarantees Act 1993 does not apply to the Goods. Farmlands does not contract out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act.
21. Farmlands may, at its complete discretion, replace or give credit for Goods not supplied, incorrectly recorded or established to be defective.
22. Any invoice from Farmlands or that Farmlands receives from a Card Partner shall be conclusive proof that a transaction occurred (unless Farmlands accepts there has been a manifest error, or if the Farmlands Card has been lost or stolen and this has been notified to and acknowledged in writing by Farmlands in accordance with clause 24.h).
23. If the Shareholder on-sells the Goods it shall be a term of the new sale contract that the Consumer Guarantees Act 1993 does not apply if the Goods are being acquired for business purposes.

Farmlands Cards

24. Each Card Signatory acknowledges that all Farmlands Cards are owned by Farmlands and remain its sole property at all times. Each Card Signatory must:
 - a. immediately sign the Farmlands Card when it is received and not use the Farmlands Card until it is signed;
 - b. not use the Shareholder Account number as a PIN;
 - c. keep PINs secure;
 - d. not allow others to use the Farmlands Card or PINs, or be party to any negotiation for direct "cash" discounts with a Card Partner;
 - e. present the Farmlands Card to Farmlands or the Card Partner when purchasing Goods to be charged to the Account or Farmlands Card;
 - f. ensure that the listed retail price has been charged;
 - g. ensure credit that is due from a Card Partner is passed in favour of Farmlands for the Shareholder;
 - h. notify Farmlands immediately if the Farmlands Card is lost or stolen or a PIN disclosed. Farmlands shall not be liable for any unauthorised use of the Farmlands Card (except where it results from Farmlands' fraud or negligence) until Farmlands has given written acknowledgement of this notification; and
 - i. return or destroy the Farmlands Card when required to do so by Farmlands, or if the Account is closed. Such notice may be given orally and is deemed to be

given when a notice is posted to the Card Signatory's Address for Service and would have been received in the ordinary course by post. The Shareholder and Card Signatory acknowledge that any use of the Farmlands Card after notice to return or destroy it is fraudulent.

25. The Card Signatory shall be jointly and severally liable with the Shareholder to pay for all Goods purchased with a Farmlands Card.

Card Partners and Card Partner Cards

26. The Shareholder is responsible for:
 - a. ensuring that the Authorised Person complies with the terms and conditions of the Card Partner Card and with these Terms; and
 - b. any use of the Card Partner Card (whether authorised or not).
27. Farmlands does not guarantee a continuing relationship with any Card Partner or supplier of Goods.

Claims and Disputes

28. Farmlands has a complaints policy for dealing with any claims or disputes relating to an invoice, Statement or Goods or any matter relating to these Terms. A copy of the policy is available on request.
29. Farmlands shall not be responsible for:
 - a. any dispute between a Shareholder and a:
 - i. Card Signatory;
 - ii. Authorised Person;
 - iii. Card Partner;
 - iv. Card Signatory and Card Partner; or
 - v. Authorised Person and Card Partner;
 - b. any dispute between a Card Signatory and a Card Partner;
 - c. the actions of any Card Partner;
 - d. any credit due by a Card Partner to a Shareholder, Authorised Person or Card Signatory until notification of such credit is received from the Card Partner; or
 - e. any losses caused where a Card Partner Card is unable to be used.
30. The Shareholder, Card Signatory and Authorised Person each agree not to join Farmlands as a party to any claim involving a Card Partner and expressly agree that any breach of this term is a Default Event.

Default Events

31. If a Default Event occurs, Farmlands may at its sole discretion (without prejudice to its other rights and remedies):
 - a. suspend or terminate any Account;
 - b. require immediate payment of the Amount Due and all other money owing to Farmlands notwithstanding that those amounts are not yet due;
 - c. charge interest at the rate of 24% per annum (or such other rate as Farmlands notifies from time to time) in respect of the Amount Due. Such interest shall accrue on a daily basis from the Due Date until payment in full;
 - d. reverse any discounts or credit rebates recorded on the Account invoices and statements;
 - e. debit any other account the Shareholder may have to pay the Amount Due;
 - f. terminate the shareholding of the Shareholder and credit the Shareholder's shares to pay the Amount Due;
 - g. make demand on the Card Signatory; and
 - h. require the Shareholder and the Card Signatory to pay for all:
 - i. Farmlands Card and Account transaction fees set by Farmlands from time to time;
 - ii. administration collection costs;
 - iii. legal costs of Farmlands as between solicitor and client; and
 - iv. collection commissions,
 incurred as a consequence of a Default Event or incurred by Farmlands taking possession of any Goods supplied, recovering monies howsoever owing by the Shareholder or exercising, enforcing or attempting to enforce any of its rights or protecting any of its interests, under or in connection with these Terms.

Information Use

32. The Shareholder, Card Signatory and Guarantor agree that any personal information provided to, obtained by or retained by Farmlands about them (including personal information about their Directors or Trustees) may be held and used for any of the following purposes:
 - a. determining eligibility for credit;
 - b. the supply and hire of Goods;
 - c. enforcing debt and legal obligations under these Terms;
 - d. undertaking initial and ongoing customer due diligence (including verification of identity) in accordance with the AML/CFT Act; and
 - e. the marketing of goods and services including emails and market research by Farmlands, a Card Partner or any other Farmlands supplier.
33. Each Shareholder, Card Signatory and Guarantor authorises Farmlands to:
 - a. use any personal information for the purposes in clause 32;
 - b. provide any personal information (along with details of any dealings between the Shareholder, Card Signatory, Guarantor and Farmlands) to any third party; and
 - c. obtain any information about the Shareholder, Card Signatory or Guarantor (including personal information about their Directors or Trustees) from any other source for Farmlands' business with the Shareholder, Card Signatory and Guarantor.

34. Each Shareholder, Card Signatory and Guarantor understands that Farmlands will ask them for personal information about themselves so as to use credit reporting services (such as Veda's credit reporting services) to credit check them. They each understand that:
- the credit reporter (e.g. Veda) will give Farmlands information about them for that purpose;
 - Farmlands will give their personal information to the credit reporter and the credit reporter will hold that information on their systems and use it to provide their reporting service;
 - when the credit reporter's other customers use its credit reporting service, that credit reporter may give the information to those customers;
 - Farmlands may use the credit reporter's credit reporting services in the future for purposes related to the provision of credit to each of them. This may include using the credit reporter's monitoring services to receive updates if any of the information held about them changes;
 - if they default in their payment obligations to Farmlands, information about that default may be given to credit reporters (e.g. Veda) and credit reporters may give information about that default to their other customers.
35. Each Shareholder, Card Signatory and Guarantor understands that Farmlands will ask them for personal information about themselves so as to use electronic customer due diligence services to verify their identity and conduct any other customer due diligence required under the AML/CFT Act using an electronic source operated by an independent third party. They each understand that:
- the third party will give Farmlands information about them for that purpose;
 - Farmlands will give their personal information to the third party and the third party may hold that information on their systems and use it to provide their electronic customer due diligence services to other persons;
 - Farmlands may use the third party's electronic customer due diligence services in the future. This may include using the third party's monitoring services to receive updates if any of the information held about them changes; and
 - Farmlands due diligence obligations under the AML/CFT Act extend to the beneficial owners of each Shareholder, Card Signatory and Guarantor and to any person acting on behalf of a Shareholder, Card Signatory or Guarantor. The Shareholder, Card Signatory or Guarantor represent that they have obtained the consent of all such people for Farmlands to carry out due diligence on them also, as contemplated by these Terms and Conditions.
36. The Shareholder, Card Signatory and Guarantor must promptly notify Farmlands of any change in circumstances that may affect the accuracy of the information provided by them to Farmlands.

Assignment/Cancellation

37. No Shareholder, Card Signatory or Guarantor may assign any of its rights or obligations under these Terms without Farmlands' prior written consent.
38. Any:
- change in the ownership or effective control of a Shareholder, Card Signatory or Guarantor;
 - sale or transfer of a Shareholder's, Card Signatory's or Guarantor's business; or
 - material change in the nature of a Shareholder's, Card Signatory's or Guarantor's business
- shall be deemed to be an assignment requiring Farmlands' consent under clause 37.
39. Farmlands shall be entitled to:
- assign to any other person all or part of the Amount Due and the assignee shall have the same rights in relation to the Amount Due as Farmlands had before the assignment; and
 - cancel all or any part of the Shareholders' Account or these Terms at any time with or without prior notice. Any such cancellation shall be without prejudice to Farmlands' rights and remedies including but not limited to, those which may arise from any breach or non-compliance by the Shareholder.
40. The Card Signatory may cancel its Farmlands Card at any time by:
- advising Farmlands that it wishes to cancel its Farmlands Card;
 - paying the Amount Due and any other money owing to Farmlands; and
 - surrendering all Farmlands Cards to Farmlands.

Such cancellation will be effective only on Farmlands' written acknowledgement of the cancellation.

41. The Shareholder may close its Account at any time by giving notice in writing to Farmlands that the Account is to be closed and repaying the Amount Due and any other money owing to Farmlands.
42. The Card Signatory and Shareholder remain liable for the Amount Due, all Farmlands Card and Card Partner Card use and all invoices debited to the Account where Farmlands has not acknowledged in writing receipt of the Shareholders' instructions to close the Account.

Other Terms

43. If there is any inconsistency between these Terms and any order submitted by the Shareholder, or any other arrangement between the parties, these Terms shall prevail unless otherwise agreed in writing by the parties.

Waiver

44. If at any time Farmlands does not enforce any right or obligation under these Terms, or grants the Shareholder time or other indulgence, Farmlands shall not be construed as having waived the right or obligation or its right to later enforce the right or obligation under these Terms.

Terms Separately Binding

45. Each clause of these Terms is separately binding. If any clause is void, unenforceable or otherwise ineffective by operation of New Zealand law the remaining clauses shall continue to be valid and enforceable.

Changing these Terms

46. Farmlands may add, change or remove clauses in these Terms at any time without obtaining the consent of the Shareholder or Card Signatory.
47. Farmlands may advise when changes to these Terms are to take effect by notice to the Shareholder's Address for Service.
48. By signing the Application or guarantee, using the Account, Farmlands Card, or being a member of Farmlands, the Shareholder, Guarantor and Card Signatory each acknowledge that these Terms and Farmlands' current Rules apply to the Account.
49. A copy of the current Terms can be obtained from Farmlands at its Address for Service or viewed online or downloaded from www.farmlands.co.nz.

Sending Bills and Notices and Serving Documents

50. The Shareholder, Card Signatory and Guarantor agree that any:
- invoice, statement, notice or newsletter is deemed to be received 4 days after it has been sent by Farmlands;
 - fax is deemed to be received on confirmation of transmission;
 - document is deemed to be served and received on the date of delivery; and
 - email is deemed to be received 1 day after it has been sent.
51. Any Shareholder, Card Signatory or Guarantor must give Farmlands not less than 21 days prior written notice at Farmlands' Address for Service (addressed to the Credit Manager):
- of any proposed change in its name; or
 - if its Address for Service, contact phone number or email address will be changed.

Returns

52. Where Farmlands at its discretion allows the Shareholder to return Goods (not defective or non-complying), Farmlands reserves the right to charge a return fee in addition to any delivery costs.
53. The Shareholder and Card Signatory each acknowledge the following Goods cannot be returned in any circumstance:
- seed; and
 - part containers of product;

or any similar products and such other Goods as may be notified from time to time and recorded in any Farmlands Returns Policy.

Legal Forum

54. These Terms are subject to, governed by and interpreted in accordance with New Zealand law and the parties shall submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute in relation to these Terms.

Hire of Goods

55. The Card Signatory and Shareholder acknowledge that any Goods hired were in good order and condition at the commencement of the hire.
56. The hire period is the period of hire agreed between the parties and recorded on the invoice. The Shareholder shall take proper care of the Goods, use the Goods in the manner in which they were designed to be used and return the Goods in good order and condition.
57. Goods must be returned by the time and date indicated by Farmlands.
58. A quoted hire fee does not include delivery and removal charges unless Farmlands agrees otherwise.
59. The Shareholder shall pay as invoiced for:
- the cost of hiring Goods for the hire period;
 - any loss or damage to the Goods (however arising);
 - any delivery or removal costs;
 - any excess use charges for excess use of Goods;
 - any cleaning costs incurred by Farmlands to return the Goods to their original condition; and
 - default charges for late return of Goods or late payment. Farmlands is entitled to charge extra on a day by day basis for any Goods not returned on time. Goods that are not returned by the time specified shall be deemed to have been returned the following day.
60. The Shareholder authorises Farmlands to bring any vehicle on to the place where the Goods are to be used to deliver the Goods or to remove the Goods for whatever reason.
61. The Shareholder indemnifies Farmlands against:
- any cost, claim, loss, liability, damage, expense incurred or action commenced against Farmlands directly or indirectly arising from Farmlands delivering or removing the Goods under clause 60; or
 - any claim made by any person arising directly or indirectly out of the Shareholders' or Card Signatory's use or possession of the Goods.

Overall Discretion

62. Farmlands may, at any time in its discretion and without giving notice:
- refuse further credit to the Shareholder; or
 - close any Account.