



Terms of Trade

All Customers

- An invoice detailing the charges for work undertaken will be forwarded by 5th Biz Agri. Unless stipulated otherwise all invoices must be paid in full payment no later than the 20th of the month following date of invoice. Note: some invoices are payable in advance and in respect of such invoices, 5th Biz Agri shall not be required to provide the products or services unless or until payment has been received in full in advance, according to the invoice requirements.
- All amounts payments and references to dollar and \$ shall, unless clearly or specifically noted otherwise, mean New Zealand dollars (NZD\$).
- 5th Biz Agri reserve the right to charge the customer for any bank charges associated with processing their payment (eg, foreign exchange charges, cheques drawn on non-New Zealand banks, dishonoured cheques etc). When making payment, and where the payment process includes an option to pre-pay bank charges, foreign exchange, or payment costs, then customers must add such charges to the payment before processing.
- Payment is due immediately and 5th Biz Agri may take immediate action to recover such debt in the event of the following occurring: -
 - (a)The customer is in default under any agreement with 5th Biz Agri.
 - (b)The customer commits an act of insolvency or bankruptcy.
 - (c)The customer goes into receivership or liquidation.

New Customers

5th Biz Agri reserves the right to require payment to be made in advance for any work to be done and/or require the customer to fill in a credit application form prior to the report being released.

Requests to invoice another customer/entity

5th Biz Agri will: -

- Not release any analysis or report until both customer and third party have signed an approval form for re-invoicing to occur
- Charge a NZD\$25 re-invoicing fee to the customer

Overdue Accounts

If an account is overdue, 5th Biz Agri reserves the right to: -

- Withhold results until payment is received.
- Charge interest on overdue accounts at the rate of 1.5% per month from the due date until payment.
- Recover from the customer any debt collection charges including commission from Debt Collection Agencies.



Poor Account History

Should a customer develop a history of poor account payment, 5th Biz Agri reserve the right to: -

- Require payment prior to release of results.
- Refuse to undertake any further work without pre-payment.
- Withdraw any special discounts or arrangements that may have been negotiated.

Termination of Agreement

Should the client wish to terminate their agreement with 5th Biz Agri one month notice is required. Any outstanding invoices must be paid in full

Delivery

If 5th Biz Agri is unable to deliver the results or perform a service because of any cause beyond its control (including any force majeure event), it may suspend delivery or cancel the customer's order without incurring any liability for loss or damage suffered by the customer.

Delivery of results shall be deemed to be made to the customer when the report is first dispatched from 5th Biz Agri, New Zealand, or collected by the customer or the customer's agent. All carriers, including couriers, are deemed to be agents of the customer.

Intellectual Property

The Customer acknowledges and agrees that 5th Biz Agri shall own all intellectual property relating to the provision of 5th Biz Agri's products or services. Such intellectual property shall extend to all data provided by the customer to 5th Biz Agri, however 5th Biz Agri will grant to the customer, an unrestricted royalty-free licence to use and copy all data provided by the customer to 5th Biz Agri including all pre-existing intellectual property to the extent reasonably required to enable the customer to make use of 5th Biz Agri's products or services or use, adapt, update or amend any physical work relating to the services, for the customer's use, but the customer must not allow any other person to use 5th Biz Agri's products or services without agreement with 5th Biz Agri.

Intellectual property prepared or created by 5th Biz Agri in carrying out its services or being a functional output of 5th Biz Agri's products or services, and provided to the customer ("New Intellectual Property") shall be jointly owned by the customer and 5th Biz Agri. 5th Biz Agri and the customer hereby grant to the other an unrestricted royalty-free licence in perpetuity to copy or use New Intellectual Property. The customer's rights in relation to this New Intellectual Property are conditional upon the customer having paid all amounts due and owing to the 5th Biz Agri under these terms of trade.



Relationship between parties

Nothing in this Agreement will be construed as constituting either of the parties as a partner, agent or representative of the other. No party will have any fiduciary obligation to the other arising out of the provision of 5th Biz Agri's products or services. Nothing in this Agreement will be construed as giving any party any right or authority to act for or represent or otherwise assume any obligation on behalf of or in the name of the others.

Assignment

The customer may not assign or purport to assign (whether in part or in whole) their interest in the use of 5th Biz Agri's products or services without the prior written consent of the 5th Biz Agri.

Severability

If any provision of these terms of trade is held invalid, unenforceable or illegal for any reason, these terms of trade will remain otherwise in full force apart from such provision which will be deemed deleted, or modified to such limited extent necessary to ensure that the terms of trade shall be enforceable.

Warranties and Conditions

TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO LAW, 5TH BIZ AGRI DISCLAIMS ALL LIABILITY TO THE CUSTOMER AND EVERYONE ELSE IN RESPECT OF THE GOODS OR SERVICES SUPPLIED BY 5TH BIZ AGRI OR ANY AGENT OR SUPPLIER FROM 5TH BIZ AGRI, INCLUDING IN RESPECT OF ALL SERVICES, INFORMATION, DATA, AND MATERIALS PROVIDED BY OR ON BEHALF OF 5TH BIZ AGRI, WHETHER UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER IN RESPECT OF DIRECT, INDIRECT, CONSEQUENTIAL, FINANCIAL, ECONOMIC, SPECIAL, PUNITIVE OR SIMILAR DAMAGES, EVEN IF 5TH BIZ AGRI WAS ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IF FOR ANY REASON THE LAW DOES NOT PERMIT AN EXCLUSION OF LIABILITY OR LIMITS THE AMOUNT BY WHICH 5TH BIZ AGRI MAY LIMIT ITS LIABILITY, TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO LAW, 5TH BIZ AGRI'S LIABILITY SHALL BE LIMITED TO THE REPAYMENT OF THE PRICE ACTUALLY PAID BY THE CUSTOMER TO 5TH BIZ AGRI TO PROVIDE THE GOODS OR SERVICES, AND REPAYMENT BY 5TH BIZ AGRI OF SUCH PRICE SHALL BE DEEMED TO BE A FULL SETTLEMENT OF ANY SUCH CLAIM ACCORDINGLY.

THE CUSTOMER SHALL INDEMNIFY (INCLUDING ON A FULL SOLICITOR/CLIENT BASIS) 5TH BIZ AGRI FROM AND AGAINST ALL CLAIMS, COSTS, LIABILITIES AND DEMANDS AND ACTIONS WHICH THE CUSTOMER OR ANY PERSON WHO MAY RECEIVE THE BENEFIT OF 5TH



BIZ AGRI'S SERVICES VIA THE CUSTOMER, MAY MAKE AGAINST 5TH BIZ AGRI RELATING TO THE PROVISION OF GOODS AND SERVICES BY 5TH BIZ AGRI TO THE CUSTOMER.

Limitation Period

The period in which to bring any claim against 5th Biz Agri shall be 2 years from the date of the provision of the services to which the claim relates. The customer and no person via the customer shall bring a claim against 5th Biz Agri later than within the 2 year period in this term and this term shall amend the limitation period under the Limitation Act 2010.

Dispute Resolution

All claims, disputes, or controversies arising from or related to the services provided by 5th Biz Agri to the Customer (including all statutory claims and any state, or federal claims shall be resolved in accordance with the mediation and arbitration herein.

By agreeing to making use of 5th Biz Agri's products or services, the customer agrees that they/it are waiving their rights to use other available resolution processes, such as court action or administrative proceedings, to settle their disputes. The customer agrees that these terms require the use of mediation and arbitration on an individual basis to resolve covered disputes, rather than any trial (incline jury trials) or class actions.

These terms, and any non-contractual matters or obligations arising out the these terms for the supply of goods or services by 5th Biz Agri, including arising in tort, fraud, contract, under statute or otherwise arising from tor relating to the goods or services, or questions arising from or relating to the scope or enforceability of this paragraph, shall be governed by, and construed in accordance with the laws of the Jurisdiction below.

If any dispute or difference shall arise in relation to the interpretation, application of or any matter touching upon these terms, the parties will meet in good faith in an attempt to resolve the issue. If such issue is not resolved by negotiation between the parties, then either party may require that the dispute be resolved by mediation and the parties will jointly appoint a mediator in New Zealand, but if they cannot agree on who to appoint then any party may request the President of the New Zealand Law Society or his/her nominee to nominate a person to be a mediator and such mediation shall take place in New Zealand within 20 working days of the appointment of the mediator and each party shall attend and participate in the mediation in good faith to negotiate towards achieving a settlement of the issue. Time shall be of the essence under this term.



Any mediation must be conducted in terms of the Mediation Protocol of the Arbitrators and Mediators' Institute of New Zealand Inc (**AMINZ**) or any other agreement agreed to by the parties and the mediator.

The mediation must be conducted by the mediator and at a fee agreed by the parties, or failing agreement as prescribed by the mediator.

That parties agree to be bound by any decision or award made pursuant to this term.

If the dispute is not resolved by mediation that the matter shall be referred to arbitration under the provisions of the Arbitration Act 1996 (NZ).

Any referral to arbitration under this term shall be a submission to arbitration under the Arbitration Act 1996 which Act shall, to the extent not inconsistent with anything in this clause, apply to any such submission.

Privacy

The customer agrees that 5th Biz Agri may obtain information about the customer from any person (including any Credit or Debt Collection Agency), for any purpose being in the course of 5th Biz Agri business, including credit assessment and debt collecting and the customer consents to any person providing 5th Biz Agri with such information. The customer agrees that 5th Biz Agri may use for lawful purposes any information it has about the customer relating to the customer's creditworthiness for lawful purposes.

Jurisdiction

In the event of a dispute arising between 5th Biz Agri and the customer, such dispute shall be governed by New Zealand Law and the place of any hearing shall be New Plymouth, New Zealand