

TERMS AND CONDITIONS OF SUBSCRIPTION FOR BUSINESS USE**1. Definitions and Interpretations**

In this Agreement the following definitions shall apply (unless the context otherwise provides):

Agreement means this agreement;

Authorised User means the Subscriber's employees or contractors required to receive and use the Content as identified by the Subscriber in its Subscription Form, the number of which is set out in the Subscription Form and which may be varied in accordance with clause 8.1 of this Agreement;

Content means the content (and includes but is not limited to data, commentary, products and information) provided by NZX Agrifax and nominated by the Subscriber on the Subscription Form;

Employee means an employee (as defined under the Employment Relations Act 2000) of the Subscriber;

Fees mean the fees set from time to time by NZX Agrifax for the access and use of the Content;

Licence has the meaning set out in clause 4.1 of this Agreement;

Subscriber means that person or entity that has completed and returned the Subscription Form for the subscription of Content which has been approved by NZX Agrifax;

Subscription Form means the form provided by NZX Agrifax for the subscription of NZX Agrifax Content by Subscribers;

NZX Agrifax means NZX Agrifax Limited; and

Unauthorised Recipient has the meaning set out in clause 9.1 of this Agreement.

2. Term

- 2.1 This Agreement will come into force on the date that NZX Agrifax receives an Agreement executed by the Subscriber or such other date as agreed between the parties and will continue until terminated in accordance with this Agreement.

3. Ownership of Content

- 3.1 The Content provided to the Subscriber by NZX Agrifax pursuant to the Subscriber's Subscription Form, including without limitation, all information, text, materials, graphics, tools, results, advertisements, names, logos and trade marks used in the Content is protected by copyright, trade market and other intellectual property laws unless expressly indicated otherwise. All rights, title and interest in and to the Content is owned, licensed or controlled by NZX Agrifax or the other party accredited as the owner of the Content.

- 3.2 The Subscriber acknowledges and agrees that NZX Agrifax retains all right, title and interest in the Content. The Subscriber obtains no right, title and/or interest in the Content other than as expressly set out in this Agreement. The Subscriber agrees not to claim rights in or to the Content.

4. Permitted use of Content

- 4.1 Subject to the terms and conditions of this Agreement, NZX Agrifax grants the Subscriber, and any Authorised User of the Subscriber, a non-exclusive and non-transferable licence (**Licence**) for the term of this Agreement to:

- access, store and process the Content in the Subscriber's computer system;
- use and reproduce the Content for internal business purposes consistent with this Agreement including interrogation, retrieval, analysis, manipulation, recompilation and report preparation;
- use and reproduce the Content for the Subscriber's own internal business applications and information including reports, presentations, analytics, formulae, graphs, algorithms and other uses and publications which incorporate, utilise or display the Content; and
- subject to NZX Agrifax's copyright, provide excerpts from the Content in any medium or format (including orally, in writing, electronically or otherwise) to the Subscriber's clients and/or external parties as part of a report, provided the Subscriber has obtained the prior written consent of NZX Agrifax to such publication and has paid the applicable fee to NZX Agrifax.
Where there is any doubt as to whether NZX Agrifax's permission is required for distribution of the Content, NZX Agrifax should be contacted to provide clarification.

- 4.2 Except as specifically permitted by this Agreement, the Subscriber, and any Authorised User of the Subscriber, may not:

- reproduce or redistribute unprocessed/raw Content to any third party, or otherwise engage in the systematic retransmission or commercialisation of the Content;
- distribute the Content in any form of service for which the end users pay periodic or usage based fees for access to the Content;
- authorise end users to do anything that the Subscriber is not permitted to do under this Agreement;
- use the Content for an illegal purpose or otherwise in breach of any applicable laws in the jurisdiction in which the Subscriber operates; or
- use the Content in any manner other than as expressly permitted by this Agreement.

5. Use of Content in Reports

- 5.1 In using the Content in reports pursuant to clause 4.1(d), the Subscriber shall cause each screen display (if the report is in electronic form) and each copy transferred to a client to bear NZX Agrifax's proprietary and copyright notice, with the appropriate year, as set forth below:
Source: NZX Agrifax © Copyright [Year] NZX Agrifax Limited. All Rights Reserved.

6. Fees

- 6.1 The Subscriber shall pay NZX Agrifax the fees as set by NZX Agrifax and advised to the Subscriber from time to time.

7. Audit and inspection

- 7.1 The Subscriber must retain records which enable NZX Agrifax to verify the number of Authorised Users that have access to the Content in the immediately preceding year.

- 7.2 NZX Agrifax may at any time and from time to time audit the Subscriber to ensure that any fees payable to NZX Agrifax are accurate. The Subscriber shall provide access to NZX Agrifax to all of its records, accounts and all other information, including without limitation, access to its premises and employees, reasonably required by NZX Agrifax to undertake an audit under this clause 7. The Subscriber shall permit NZX Agrifax to take copies or extracts and, on demand, supply copies or extracts of such records, accounts or other information.

- 7.3 If, after completion of an audit under clause 7.2, all fees payable to NZX Agrifax are found to be correct, NZX Agrifax shall bear all of its costs and expenses associated with undertaking that audit. If, after completion of an audit under clause 7.2, any fee paid to NZX Agrifax is found not to be correct, the Subscriber shall pay to NZX Agrifax:

- the amount of such discrepancy;
- interest calculated on the amount of such discrepancy at 2% per annum above the 90 day bank bill rate as published by the Reserve Bank of New Zealand (as at the due date for payment of the relevant GST tax invoice/invoice), with such interest being payable for the period from the due date for payment of the relevant GST tax invoice/invoice, until the date that payment (including any interest owing) in full is made; and
- all reasonable costs and expenses of NZX Agrifax associated with undertaking that audit.

8. Reporting

- 8.1 The use of the Content is limited to the number of Authorised Users set out in the Subscriber's Subscription Form. The Subscriber must obtain the prior written consent of NZX Agrifax to: (a) vary the number of Authorised Users; and/or (b) provide the Subscriber's clients and/or external parties with the Content. Upon obtaining such consent, the Subscriber is liable for all applicable amended fees.

9. Security

- 9.1 The Subscriber must ensure that its processing, transmission and communications equipment and software are arranged and protected so that, as far as reasonably possible, no person or entity other than the Subscriber and the Authorised Users (**Unauthorised Recipient**) can obtain access to the Content.
- 9.2 If, in NZX Agrifax's sole discretion, NZX Agrifax determines that an Unauthorised Recipient has access to the Content, the Subscriber shall take all steps necessary, and must provide such evidence to NZX Agrifax as NZX Agrifax determines, to alter the manner of receipt and use of the Data. If NZX Agrifax determines that any action taken by the Subscriber to preclude access by such Unauthorised Recipient to the Content is not adequate, the Subscriber shall immediately comply with any written instructions from NZX Agrifax to discontinue using the Content by the inadequately secured means. The remedy available to NZX Agrifax under this clause 9.2 is without prejudice to any other right or remedy NZX Agrifax may have at law, in equity or otherwise.
- 9.3 The Subscriber must use all reasonable endeavours to ensure that no Unauthorised Recipient obtains the Content from the Subscriber or from equipment or software used by the Subscriber. If an Unauthorised Recipient does so obtain the Content, the Subscriber must use its best endeavours to ascertain the source and manner of acquisition or access to the Content.

10. Indemnity

- 10.1 The Subscriber shall indemnify and hold harmless and defend NZX Agrifax, its parent and related companies and their directors, officers, employees and agents against all loss, actions, proceedings, costs, expenses (including legal fees), claims and damages incurred or suffered by any of them arising from:
- any breach by the Subscriber of this Agreement;
 - reliance upon, or use by, the Subscriber of the Content;
 - reliance upon, or use by, any person accessing the Content from the Subscriber of the Content; and
 - reliance upon any advice given by the Subscriber derived in whole or in part from the Content.

11. Termination

- 11.1 Either party may terminate this Agreement by providing 30 days written notice to the other party at their nominated address. For the avoidance of doubt, if the subscriber terminates this Agreement under this clause 11.1 any fees paid or payable up to the date of termination shall be non-refundable.
- 11.2 NZX Agrifax may terminate this Agreement immediately, if the Subscriber:
- fails to pay any fees due to NZX Agrifax on the due date for such payment and has not remedied that failure after receiving 7 days written notice from NZX Agrifax requesting remedy of that failure;
 - breaches any other clause of this Agreement and has not remedied that breach after receiving 7 days written notice from NZX Agrifax requesting the remedy of that breach; and/or
 - is adjudged bankrupt, enters into liquidation or any arrangement or composition with its creditors or if a receiver is appointed to any part of the Subscriber's assets and not discharged within 14 days or if any judgement against the Subscriber remains, in the opinion of NZX Agrifax, unsatisfied for more than 7 days.
- 11.3 Upon termination of this Agreement, the Subscriber's right to receive and use the Content will cease.
- 11.4 The remedies set out in clauses 11.1 and 11.2 do not prejudice NZX Agrifax's rights to seek all other remedies available to it in law, equity or otherwise.

12. Force Majeure

- 12.1 Neither NZX Agrifax or the Subscriber shall be liable for delay or failure in performance resulting from causes beyond either parties reasonable control, including but not limited to Acts of God, acts of war, fire, flood, or other disaster, act of government, strike, lockout, communications line or power failures.

14. Disclaimer

- 14.1 The Content is derived from various sources believed to be accurate and current as at the date specified in the relevant Content. However, due to the number of sources from which materials may be obtained and, where the Content is received in electronic form, the inherent hazards of electronic distribution, NZX Agrifax and its directors, officers, agents, employees or contractors do not give any representation or warranty as to the reliability, accuracy or completeness of the Content.
- 14.2 Neither NZX Agrifax, its parent or related companies, nor their officers, employees and agents shall under any circumstances be liable in any way for any loss of direct, consequential, incidental, indirect or special damages of any kind or any other damages howsoever arising (whether in negligence or otherwise) out of or in connection with the Content and/or any omission from the Content, including, without limitation those arising from:
- any decision made or action taken by the Subscriber in reliance upon the Content;
 - loss of use, data or profits whether arising from use of or inability to use any Content;
 - contingencies outside the control of NZX Agrifax, its subsidiaries, their officers, employees or agents; or
 - any other cause.

except where liability is made non-excludable by legislation. Any clause, or part thereof, declared invalid shall be deemed servable and not affect the validity or enforceability of the remainder.

- 14.3 In the case of goods or services supplied or offered by NZX Agrifax, its parent or related companies and their officers, employees and agents, liability for breach of any implied warranty or condition which cannot be excluded is limited at NZX Agrifax's option to either:
- the supply of the goods (or equivalent goods) or services again; or
 - the payment of the cost of having the goods (or equivalent goods) or services supplied again.

15. General

- 15.1 The Subscriber may not assign any of its rights under this Agreement without the prior written consent of NZX Agrifax. NZX Agrifax may assign its rights under this Agreement.
- 15.2 Except as provided in this Agreement, no variation of this Agreement shall be binding on NZX Agrifax unless it is in writing and signed by a duly authorised representative of NZX Agrifax.

16. Governing Law

- 16.1 The terms of this Agreement and the use of the Content by the Subscriber is governed by and shall be construed and enforced in accordance with the laws of New Zealand without regard to the conflicts of law principles hereof. Any dispute arising from or in connection with the terms of this Agreement shall be subject to the exclusive jurisdiction of the courts of New Zealand.