



NEW ZEALAND'S EXCHANGE

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 these terms and conditions of use and the NZX dairy report order form that accompanies these terms and conditions;

Authorised User means (where this is a multiple use subscription) the Subscriber's employees or contractors authorised to receive and use the Content as identified by the Subscriber, the number of which is approved in writing by NZX and which may be varied in accordance with clause 4.5 of this Agreement;

Commencement Date means the date that NZX receives an Agreement signed by the Subscriber or such other date as agreed between the Parties;

Content means the reports, publications and/or other content provided by NZX and purchased by the Subscriber pursuant to this Agreement;

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

Fees mean the annual fees set on the front page of this Agreement which may be varied from time to time by NZX for the access and use of the Content;

Licence means the licence granted in clause 4.2 of the Agreement;

NZX means NZX Limited, New Zealand company number 1266120;

Parties means NZX and the Subscriber, and "Party" shall mean either of them;

Subscriber means that person or entity on the NZX dairy report order form that has entered into this Agreement for the subscription of Content which has been approved by NZX;

Term means the period of 12 months from the Commencement Date, and each subsequent renewed period of 12 months pursuant to clause 2.2;

Unauthorised Recipient has the meaning set out in clause 8.1 of this Agreement.

2. Term

2.1. This Agreement will come into force on the Commencement Date and continues for the Term, unless terminated earlier in accordance with this Agreement.

2.2. This Agreement will renew automatically on each anniversary of the Commencement Date for a further period of 12 months unless the Subscriber gives written notice to NZX prior to the end of the relevant Term that it does not wish to renew this Agreement.

3. Ownership of Content

3.1. NZX warrants that it has the right to license the receipt and use of Content for the purposes specified in the Agreement.

3.2. The Content provided to the Subscriber by NZX, including without limitation, all information, text, materials, graphics, tools, results, advertisements, names, logos and trademarks used in the Content is protected by copyright, trade mark and other intellectual property laws unless expressly indicated otherwise. All rights, title and interest in and to the



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Content is owned, licensed or controlled by NZX or the third party accredited as the owner of the Content.

3.3. The Subscriber acknowledges and agrees that NZX 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. Except as specifically permitted by this Agreement, the Subscriber, and any Authorised User of the Subscriber, may not:

- (a) reproduce or redistribute Content (including any extracts of Content) to any third party, or to any internal recipient other than an Authorised User, or otherwise engage in the retransmission or commercialisation of the Content (including, without limitation, distributing the Content in any form of service for which the Subscriber charges fees for access to the Content);
- (b) authorise end users to do anything that the Subscriber is not permitted to do under this Agreement;
- (c) use the Content for an illegal purpose or otherwise in breach of any applicable laws in the jurisdiction in which the Subscriber operates; or
- (d) use the Content in any manner other than as expressly permitted by this Agreement.

4.2. Subject to the terms and conditions of this Agreement, NZX grants the Subscriber, and (where this is a multiple user subscription) any Authorised User of the Subscriber, a non-exclusive and non-transferable licence for the term of this Agreement to:

- (a) access, store and process the Content in the Subscriber's computer system;
- (b) use and reproduce the Content for internal business purposes consistent with this Agreement, except that the Subscriber (and any Authorised User where applicable) can only share or distribute Content internally to other Authorised Users; and
- (c) subject to NZX copyright, provide excerpts from the Content in any medium or format (including orally, in writing, electronically or otherwise) to the Subscriber's clients as part of a report, provided the Subscriber has obtained the prior written consent of NZX to such publication and has paid any applicable fees to NZX.

4.3. Subject to clause 4.1(a), the Subscriber (or any Authorised User where applicable) is able to reproduce Content to the extent such Content is customer data produced by NZX specifically for the Subscriber provided the Subscriber has first obtained written permission from NZX.

4.4. In using the Content in reports pursuant to clause 4.2(c) the Subscriber shall cause each screen display (if the report is in electronic form) and each copy transferred to a client to bear NZX proprietary and copyright notice, with the appropriate year, as set forth below: Source: NZX Limited © Copyright [Year]. All Rights Reserved.

4.5. The Subscriber may add to or change its Authorised Users during the Term by giving written notification to NZX. Where the number of Authorised Users increases, NZX reserves the right to charge additional Fees for to reflect any increase.



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4.6. Where this subscription is for single use only (as set out on the front page of this Agreement) the Subscriber may not allow access to the Content by more than one user. The Subscriber must subscribe for multiple use in order to allow access by multiple Authorised Users.

5. Fees

5.1. The Subscriber shall pay NZX the Fees as set by NZX by the due date and advised to the Subscriber from time to time. Any such fees paid are non-refundable.

5.2. The Vendor must pay NZX all goods and services tax payable under the Goods and Services Tax Act 1985 in respect of Fees payable under the Agreement.

5.3. All payments under this Agreement are to be made without any deduction or withholding for or on account of any taxes. If any deduction or withholding is required by law, then the payer must pay such additional amount to ensure that the other Party receives the full amount that the Party would have received had no such deduction or withholding been required.

5.4. Fees are payable by the due date set out on the invoice. Failure to pay by the due date may result in termination under clause 10.2, unless otherwise agreed between the Parties.

6. Audit and inspection

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

6.2. NZX may at any time and from time to time audit the Subscriber to ensure that any fees payable to NZX are accurate, and to monitor compliance with the terms of this Agreement. The Subscriber shall provide access to NZX to all of its records, accounts and all other information, including without limitation, access to its premises and employees, reasonably required by NZX to undertake an audit under this clause 6. The Subscriber shall permit NZX to take copies or extracts and, on demand, supply copies or extracts of such records, accounts or other information.

6.3. If, after completion of an audit under clause 6.2, all fees payable to NZX are found to be correct, NZX shall bear all of its costs and expenses associated with undertaking that audit. If, after completion of an audit under clause 6.2, any fee paid to NZX is found not to be correct, the Subscriber shall pay to NZX:

- (a) the amount of any discrepancy as determined by an audit;
- (b) 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), with such interest being payable for the period from the due date for payment of the relevant GST tax invoice, until the date that payment (including any interest owing) in full is made; and
- (c) all reasonable costs and expenses of NZX associated with undertaking that audit.

7. Reporting

7.1. Access to, and use of, the Content is limited to the number of Authorised Users approved by NZX. The Subscriber must obtain the prior written consent of NZX to vary the number of



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Authorised Users. Upon obtaining such consent, the Subscriber is liable for all fees associated with the varied number of Authorised Users.

8. Security

8.1. 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 (an "Unauthorised Recipient") can obtain access to the Content.

8.2. If, in NZX's sole discretion, NZX determines that an Unauthorised Recipient has access to the Content, the Subscriber shall take all steps necessary, and must provide such evidence to NZX as NZX determines, to alter the manner of receipt and use of the Content. If NZX 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 to discontinue using the Content by the inadequately secured means. The remedy available to NZX under this clause 8.2 is without prejudice to any other right or remedy NZX may have at law, in equity or otherwise.

8.3. 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.

9. Indemnity

9.1. The Subscriber shall indemnify and hold harmless and defend NZX, its subsidiary 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:

- (a) any breach by the Subscriber or Authorised User of this Agreement;
- (b) reliance upon, or use by, the Subscriber of the Content;
- (c) reliance upon, or use by, any person accessing the Content from the Subscriber of the Content; and
- (d) reliance upon any advice given by the Subscriber derived in whole or in part from the Content.

10. Termination

10.1. 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 10.1 any fees paid or payable up to the date of termination shall be non-refundable.

10.2. NZX may terminate this Agreement immediately, if the Subscriber:

- (a) fails to pay any Fees due to NZX on the due date for such payment and has not remedied that failure after receiving 7 days' written notice from NZX requesting remedy of that failure;



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(b) breaches any clause of this Agreement and (where remediable) has not remedied that breach after receiving 7 days' written notice from NZX requesting the remedy of that breach; and/or

(c) 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, unsatisfied for more than 7 days.

10.3. Upon termination of this Agreement, the Subscriber's right to receive and use the Content will cease.

10.4. The remedies set out in clause 10 do not prejudice NZX's rights to seek all other remedies available to it in law, equity or otherwise.

11. Force Majeure

11.1. Neither NZX 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.

12. Not Investment Advice

12.1. The Content provides general information only. It is not intended as investment advice and must not be relied upon as such. The Subscriber or any Authorised User should obtain professional investment advice tailored to the Subscriber's or Authorised User's specific circumstances and needs prior to making any investment decision.

12.2. The Subscriber agrees and acknowledges that neither NZX, its subsidiary companies nor any of their officers, employees and agents or licensors:

(a) has passed on the merit of any of the securities or financial products referred to in the Content;

(b) endorses or sponsors or has endorsed or sponsored, any securities or financial products referred to in the Content;

(c) makes or has made any recommendation regarding the advisability of investing in securities or other financial products made available by any of the companies identified in the Content; or

(d) makes or has made any recommendation regarding the advisability of investing in securities or other financial products generally or for any particular individual.

12.3. The Content does not, and must not, be construed as an offer of securities or other financial products and is not an invitation to the Subscriber to take up securities or other financial products.

12.4. Clauses 12 and 13 of this Agreement apply in addition to any disclaimers or limitations of liability contained in any Content, and in the event of any conflict the terms of this Agreement shall prevail.



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13. Disclaimer and Limitation of Liability

13.1. 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 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.

13.2. Unless otherwise expressly stated in this Agreement, all warranties, representations or conditions relating to Content (whether express, implied or whenever arising, including, without limitation, any implied warranty as to fitness for purpose) whether originating in statute, law, trade, custom, or otherwise that would (but for this clause) apply, are expressly excluded to the fullest extent permitted by law.

13.3. Neither NZX, its subsidiaries, nor their officers, employees or 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:

- (a) any decision made or action taken by the Subscriber in reliance upon the Content;
- (b) loss of use, data or profits whether arising from use of or inability to use any Content;
- (c) contingencies outside the control of NZX, its subsidiaries, their officers, employees or agents; or
- (d) any other cause.

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

14. Consumer Guarantees Act

14.1. The Subscriber confirms that it is acquiring products from NZX for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of that Act do not apply to any products provided by NZX under this Agreement.

15. General

15.1. The Subscriber may not assign any of its rights under this Agreement without the prior written consent of NZX. NZX 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 unless it is in writing and signed by a duly authorised representative of NZX.

15.3. This Agreement does not create any relationship of agency, joint venture or partnership and the Subscriber is not the agent of NZX and has no authority to bind NZX to any obligations to third parties

15.4. This Agreement constitutes the entire agreement between the Parties regarding this subject matter and supersedes any previous agreement between NZX and the Subscriber relating to the same subject matter.



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16. Notices

16.1. All notices and notifications required under this Agreement shall be in writing to the address set out on the front page of this Agreement (or as otherwise notified to the other Party). Notices and notifications required under this Agreement shall be deemed to have been served (a) three (3) Business Days after the time of posting if sent by registered post or (b) the next Business Day after the sending of an electronic transmission.

17. Governing Law

17.1. 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.