

## **Parties**

### **An Agreement dated**

**Between Newlands Group Ltd the supplier.**

**80 Kermode St Ashburton,  
827 Jones Rd Rolleston  
& 86 Hilton Highway Timaru.**

### **And 'The Customer'**

**By requesting Newlands Group Ltd to supply services and goods to the Customer, the Customer acknowledges and agrees that:**

- a)** the Customer's written assent or agreement to Newlands Group Ltd's terms and conditions of trade (the 'Terms') forming part of each Contract (as evidenced by the Customer's signature on Newlands Group Ltd's credit application form or any other document which incorporates these Terms) is and constitutes a security agreement in favour of Newlands Group Ltd in all of the Customer's present personal property and after-acquired property, but that these Terms do not apply to property not supplied by Newlands Group Ltd ;and
- b)** the Terms will apply to each Contract and the supply of services and goods by Newlands Group Ltd to the Customer and, where applicable, the provision of any incidental services under the Contract; and
- c)** the Terms will be or are deemed to be incorporated into, and form part of, each Contract, as if these Terms were set out or implied therein in full; and
- d)** each Contract will create or creates, in favour of Newlands Group Ltd , a security interest in the services and goods which are the subject of the Contract; and
- e)** the security interest granted by the Customer to Newlands Group Ltd secures the payment by the Customer to Newlands Group Ltd of all amounts the Customer may owe Newlands Group Ltd from time to time and at any time.

## **1. Interpretation**

### **1.1** In these Terms:

'Amount Owing' means, at any time in respect of the Contract, the unpaid part of the Price and any other amounts which Newlands Group Ltd is entitled to recover under the contract (including these Terms);

'Contract' means any contract between Newlands Group Ltd and the Customer for the supply of services and or goods, whether created by electronic mail, order form or by any other means; 'Contract Date' means:

**i)** for a Contract arising from an order placed by the Customer, the date Newlands Group Ltd accepted the order; or

**ii)** for a Contract arising from a quotation from Newlands Group Ltd , the date the Company receives written notification of acceptance of the quotation or, if Newlands Group Ltd receives no written notification of acceptance of the quotation, the date Newlands Group Ltd receives a form of acceptance that Newlands Group Ltd (in its absolute discretion) treats as a valid acceptance; 'Customer' means the person(s) described or referred to on the credit application form which these Terms form part of or (if applicable) the person(s) identified as such on any document which incorporates these Terms; 'Event of Default' means any of the following:

**i)** the Customer fails to comply with the Contract or any other Contract or agreement with Newlands Group Ltd '

**ii)** the Customer is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event;

**iii)** an event occurs or information becomes known to Newlands Group Ltd , which in Newlands Group Ltd 's opinion, might materially affect the Customer's creditworthiness, the value of the service or goods, or the Customer's ability or willingness to comply with its obligations under the contract or any other Contract or agreement with Newlands Group Ltd ;

**iv)** any guarantor of the Customer's obligations under the contract is in default under any agreement between the guarantor and Newlands Group Ltd ;

'FIS Contract' means a Contract under which goods and services are delivered on a 'free in store' basis;

'Goods and services' means all goods and services supplied by Newlands Group Ltd to the Customer from time to time under the Contract, provided that;

**i)** (but solely for the purposes of the application of the PPSA) where the goods and services supplied are inventory of the Customer, then all references to goods and services shall, in respect of those goods and services, be read as references to inventory for so long as they are held as inventory; and

**ii)** references to Goods and services shall mean the goods and services described or referred to (whether by item or kind or otherwise) in the relevant delivery docket or invoice (or its equivalent, whatever called) prepared by Newlands Group Ltd on the basis that each such delivery docket or invoice (or its equivalent) is deemed to be

assented to by the Customer and to be included in and form part of the contract; and

iii) unless the context requires otherwise, Goods and services shall include all proceeds of such goods and any objects, products or mass which the goods and services subsequently become part of; 'GST' means Goods and Services Tax; 'Person' includes a body corporate, an association of persons (whether corporate or not), firm or individual; 'PPSA' means the Personal Property Securities Act 1999; and 'Price' means the price of services and goods agreed between Newlands Group Ltd and the Customer, subject to any variation in accordance with these Terms and, unless specifically agreed otherwise in writing, is expressed before the addition of GST and any other applicable taxes and duties.

**1.2** Headings do not affect the interpretation of these Terms.

**1.3** Unless the context requires otherwise, the following words and phrases (and grammatical variations of them) used in these Terms have the meanings given to them in, or by virtue of, the PPSA: 'after-acquired property', 'financing statement', 'future advance', 'services', 'goods', 'inventory', 'perfection', 'personal property', 'proceeds', 'purchase price', 'security agreement', 'security interest' and 'verification statement'.

**1.4** A reference to an enactment includes that enactment as amended or substituted and includes any regulations made under that enactment.

**1.5** A reference to any party under these Terms includes that party's successors and permitted substitutes and assigns.

## **2. Price and Payment**

**2.1** The Price is Newlands Group Ltd's current price for the services and or goods and any incidental services as at the Contract Date or (if applicable, and subject to clauses 3 and 4) the Price quoted by Newlands Group Ltd.

Any difference between the price of the services/goods at the contract Date and at the date of delivery, due to circumstances beyond Newlands Group Ltd's control, is to the Customer's account and the Price shall be adjusted accordingly.

**2.2** Where the Customer requests Newlands Group Ltd to estimate the quantity of the goods and services to be supplied from sketches, plans, schedules, specifications or otherwise, the Customer agrees to pay for any variation between the estimate and the actual quantities supplied and the Contract shall be deemed to be adjusted accordingly.

**2.3** Where the Price is quoted on a FIS basis:

i) the Price includes all expenses necessary for Newlands Group Ltd to deliver the services/goods to the delivery site noted in the Contract;

ii) unloading of the goods at the delivery site is to the Customer's account;

iii) the Customer will arrange for unloading of the goods at the delivery site within 30 minutes of the carrier arriving on-site; otherwise, waiting time may be charged by Newlands Group Ltd ;

iv) the Customer will ensure at its own expense that a reasonably safe and hard surface road or access-way is made available for use by the Company's carrier.

**2.4** Payment for the services/goods will be made on the terms contained in the Contract. If not otherwise specified in the Contract, the Customer shall pay for the goods on the 20th of the month following receipt of an invoice (time being of the essence). An invoice will be issued by Newlands Group Ltd on delivery or proof of shipment.

If Newlands Group Ltd is required by law to repay any amount on account of the Price, that amount will be deemed not to have been received by Newlands Group Ltd and the Company shall be restored to the position it would have been in had no such payment been received by Newlands Group Ltd .

**2.5** Newlands Group Ltd may, at any time, require the Customer to pay the Price by letter of credit, bank cheque, post-dated cheque or to secure payment of the Price by providing an assignment of debt, lien, mortgage, charge, guarantee or any other form of security.

**2.6** Newlands Group Ltd shall, without prejudice to any other remedy available to it at law, be entitled to treat any failure to make payment on the due date as a repudiation of the Contract by the Customer. In no event shall Newlands Group Ltd be obliged to make any delivery of goods or services if any moneys due and payable by the Customer under any other Contract remain outstanding.

**2.7** All expenses, costs, fees and disbursements incurred by Newlands Group Ltd in recovering the Price and any other amounts payable under these Terms shall be recoverable from the Customer as part of the purchase price.

**2.8** All costs incurred by Newlands Group Ltd in recovering overdue monies and enforcing the Agreement (including court, solicitor and debt collection costs).

## **3. Quotes**

**3.1** A quotation by Newlands Group Ltd is based on the current price for the services/goods and any incidental services (based on Newlands Group Ltd performing the work during normal working hours) and subject to availability from Newlands Group Ltd's usual source of supply as at the date of the quote and shall not be binding on Newlands Group Ltd unless the Customer has accepted Newlands Group Ltd's quote within 30 days from the date of Newlands Group Ltd's quote (time being of the essence).

**3.2** Newlands Group Ltd shall not be responsible for any errors or omissions caused by the mutilation or incorrect transmission contained in a facsimile message, electronic mail or other means of transmission in which the Customer has accepted the Company's quote.

**3.3** For the purpose of calculating increased costs under a non-fixed price Contract, the Price specified in the quote does not include any labour costs. The Price shall be

adjusted by Newlands Group Ltd to reflect all labour costs and any other increased costs.

**3.4** Labour costs for the purpose of calculating increased costs under the Contract will be based on Labour Cost Index (All Labour Costs) plus an allowance for holiday pay and insurances.

**3.5** No allowance is made in Newlands Group Ltd 's quotation for any items set out under Special Conditions in Newlands Group Ltd 's quotation form.

#### **4. Variations**

**4.1** Any requested variation to the services, goods or work covered by Newlands Group Ltd 's quotation must be notified in writing by the Customer. If Newlands Group Ltd agrees, the Company's quotation and the Price will be adjusted accordingly. If a variation is agreed after the Contract is formed, the Contract and the Price will be adjusted accordingly.

**4.2** Should the Customer request Newlands Group Ltd to work overtime or extra shifts, the Price will be adjusted to reflect the increase in cost caused thereby based on the excess rates paid and working hours recorded.

**4.3** The Price will be adjusted to reflect any extra cost or expense incurred by the Company because of any instruction received from the Customer or any action or inaction on the part of the Customer.

#### **5. Contract**

**5.1** These Terms shall be read subject to the express terms and conditions contained in Newlands Group Ltd 's quotation or contained in Newlands Group Ltd 's confirmation of order.

The Contract is subject to Newlands Group Ltd having the goods in stock and subject to availability from Newlands Group Ltd 's usual source of supply.

**5.2** All other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise, are expressly excluded.

**5.3** If there is a conflict between the Customer's order and Newlands Group Ltd 's confirmation of order (including these Terms), Newlands Group Ltd 's confirmation of order (including these Terms) will prevail.

**5.4** An agent or representative of Newlands Group Ltd is not authorised to make any representations, warranties or agreements that a senior executive of Newlands Group Ltd has not confirmed in writing. Newlands Group Ltd is not bound by unauthorised statements. Unauthorised statements cannot form a contract, or part of a contract, collateral to the Contract.

**5.5** The rights, powers and remedies provided for in the Contract (including these Terms) are in addition to, and do not limit or exclude (or otherwise adversely affect), any

right, power or remedy provided to Newlands Group Ltd by law.

**5.6** The Customer's obligation to pay amounts (other than the Price) to Newlands Group Ltd under these Terms shall be continuing and separate obligations which will survive termination of the contract and payment of the Price.

#### **6. Taxes And Duties**

Unless expressly included in the quotation from Newlands Group Ltd , the Price will be stated before the addition of GST and any other taxes and duties charged or levied in connection with the supply of the goods and any incidental services to the Customer.

GST and all such other taxes and duties will be charged to and borne by the Customer (in each case, at the rate applicable at the date of any relevant invoice).

#### **7. Default Penalty**

Newlands Group Ltd may charge the Customer a Default Penalty on any moneys due but unpaid under the contract which will be calculated on a daily basis at a rate of 1.5 per cent per month. The Default Penalty is without prejudice to any of Newlands Group Ltd 's rights, powers or remedies arising after the Customer's payment default.

#### **8. Delivery**

**8.1** Delivery of the goods and services will be made at the Customer's premises unless the Customer has instructed otherwise. If the Customer fails to take delivery, the Goods and services are deemed to have been delivered when Newlands Group Ltd was willing to deliver them and the Customer shall pay Newlands Group Ltd an amount equal to any extra cost Newlands Group Ltd incurs for either transport or storage or both.

**8.2** Newlands Group Ltd accepts no responsibility for delay in delivery howsoever caused.

**8.3** Delivery is deemed to occur, when the goods or services are ready and available for the unloading at the delivery point noted in the Contract or the site designated by the Customer:

ii) in any other case, when possession of the goods and services is taken by the Customer.

**8.4** Newlands Group Ltd may deliver goods and services by instalments. Each instalment is deemed to be a separate contract on the same terms as the Contract. If Newlands Group Ltd fails to deliver, or makes defective delivery of, one or more instalments, the Customer is not entitled to cancel the Contract.

**8.5** Delivery of 10% more or less of the quantity of goods and services ordered by the Customer constitutes performance of the Contract by Newlands Group Ltd . The amount under or over supplied shall be deducted or charged for pro rata and the Price shall be adjusted accordingly.

**8.6** If the Customer requests delivery to be made outside of normal working hours, the Customer shall pay to Newlands Group Ltd an amount equal to any extra cost the Company incurs for transport.

## 9. Risk

**9.1** All risk in and for the goods and services passes to the Customer on delivery by Newlands Group Ltd .

i) If any of the goods are damaged or destroyed prior to property in them passing to the Customer, Newlands Group Ltd is entitled, without prejudice to any of its other rights or remedies under the Contract (including the right to receive payment of the Price), to receive all insurance proceeds payable for the goods or services. This applies whether or not the Price has become payable under the Contract. The production of the contract (including these Terms) by Newlands Group Ltd is sufficient evidence of the Company's right to receive the insurance proceeds without the need for any person dealing with Newlands Group Ltd to make further enquiries.

## 10. Property

**10.1** Property in, ownership of and title to the goods shall not pass to the Customer until:

- i) the Customer pays the Amount Owing in full and all other amounts owing under other contract; or
- ii) (if applicable) the Customer resells the goods pursuant to the authority granted by these Terms.

**10.2** Until property in goods passes to the Customer, the Customer holds the goods as Newlands Group Ltd 's bailee and, as agent for the Customer, Newlands Group Ltd (and its employees and agents) may, without prior notice, enter upon any land or premises where Newlands Group Ltd believes the goods are kept in order to inspect the goods. The Customer must store the goods so they can be identified separately from the Customer's own goods. Newlands Group Ltd authorises the Customer, in the ordinary course of the Customer's business, to use the goods or resell them for full consideration.

**10.3** This authority is revoked immediately if:

- i) an Event of Default occurs; or
- ii) Newlands Group Ltd notifies the Customer in writing that this authority is revoked.

## 12. Fabrication

**12.1** If Newlands Group Ltd fabricates the goods, Newlands Group Ltd warrants the fabrication against faulty workmanship for a period of 6 months from the date of delivery of the goods.

**12.2** Newlands Group Ltd warrants that the fabricated goods will substantially conform with written specifications supplied by the Customer.

**12.3** A claim under this clause must be in writing to Newlands Group Ltd (addressed to the Company Secretary) within 6 months from the date of delivery of the goods and no claim can be made under this clause unless and until the Price is paid in full. The Customer must also give Newlands Group Ltd notice of any defect in the goods within 7 days of the defect becoming apparent.

**12.4** Newlands Group Ltd 's liability under this clause will be limited in its sole discretion to:

- i) restoring the goods in conformity with the written specifications supplied by the Customer; or
- ii) replacing the goods

**12.5** Any repairs will be done at such place as Newlands Group Ltd specifies and the Customer is responsible for cartage of the goods or parts of the goods as is necessary to and from the place so specified.

**12.6** The repair of the goods under this clause does not include the cost or removal of defective material and fixing replacement material.

**12.7** The warranty under this clause does not apply to goods repaired by any person not authorised by Newlands Group Ltd and does not apply if the goods are used for purposes other than that for which they were intended.

## 13. Return of Goods

**13.1** Except as provided in this clause, the Customer is not entitled to return the goods to Newlands Group Ltd for any reason. For defective goods which the Customer is entitled to reject, Newlands Group Ltd 's liability is limited to either (at Newlands Group Ltd 's discretion) repairing or replacing the goods, or refunding the Price provided that:

- i) the Customer must notify Newlands Group Ltd within 7 days of delivery that the goods are defective;
- ii) Newlands Group Ltd is given a reasonable opportunity to investigate the Customer's claim;
- iii) Newlands Group Ltd will not be liable for goods which have been tampered with or modified without Newlands Group Ltd 's approval or which have not been stored or used in a proper manner; and
- iv) Newlands Group Ltd will not be liable to pay the Customer any amount more than the amount (if any) Newlands Group Ltd actually receives from the supplier for the defective goods.

**13.2** Newlands Group Ltd may (in its discretion) accept the goods for credit but this will incur a handling fee of such amount as Newlands Group Ltd may determine (and notify to the Customer) and the amount of any credit will be less any freight costs.

## 14. Liability

**14.1** Newlands Group Ltd will not be liable for:

- i) failure to deliver the goods by a specified date;
- ii) an event beyond Newlands Group Ltd 's control;
- iii) failure of the goods howsoever arising;
- iv) testing the goods;
- v) deterioration of the goods due to exposure to the elements after delivery;
- vi) any negligence, misrepresentation or other act or omission by the Company or its agents; or
- vii) any loss or damage resulting directly, or indirectly, from any of the above.

**14.2** Despite anything else, any liability of Newlands Group Ltd arising under the contract will not exceed the value of the replaced goods in relation to which the liability has arisen.

## 15. Default

**15.1** If an Event of Default occurs, and without prejudice to any other rights, powers or remedies Newlands Group Ltd may have:

- i) Newlands Group Ltd may suspend or terminate the supply of goods or services to the Customer and any of its other obligations under the contract (and any other

Contract), or cancel all or any part of any order with the Customer which remains underperformed;

ii) all Amounts Owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen; and

iii) Newlands Group Ltd may enforce any security interest granted to it by the Customer.

**15.2** Newlands Group Ltd will not be liable to the Customer for any loss or damage the Customer suffers because Newlands Group Ltd exercises any rights, powers or remedies after the occurrence of an Event of Default, including under this clause.

**15.3** The Customer agrees that, at any time after an Event of Default has occurred or at any time if any services/goods are at risk, Newlands Group Ltd may;

i) take possession of any goods; and/or

ii) sell or dispose of any goods in such manner and generally on such terms and conditions as Newlands Group Ltd thinks fit, and, in each case, otherwise do anything the Customer could do in relation to the goods.

Newlands Group Ltd and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular goods if and only for so long as Newlands Group Ltd is not the secured party with priority over all other secured parties in respect of those goods. As agent for the Customer, Newlands Group Ltd (and its employees and agents) may, without prior notice, enter upon any land or premises where Newlands Group Ltd believes the goods are kept in order to take possession of and/or remove them. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify Newlands Group Ltd (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.

## **16. Patents and Copyright**

**16.1** Copyright in all drawings, specifications and other technical information provided by Newlands Group Ltd concerning the Contract is vested in Newlands Group Ltd.

**16.2** If the goods are to be supplied to the Customer's design, the Customer warrants that the manufacture and supply of the goods by Newlands Group Ltd will not infringe any patent, copyright, registered design or other rights of any other person. The Customer agrees to indemnify Newlands Group Ltd against any liability it incurs (including any costs and expenses) as a result of any claim that the manufacture or supply of the goods by Newlands Group Ltd infringes any patent, copyright, registered design or other rights of any other person.

## **17. Dimensions and Specifications**

Dimensions and specifications referred to in the Contract, a catalogue or other publication maintained or issued by Newlands Group Ltd are estimates only. Unless the Company agrees in writing, it is not a condition of the Contract that the goods will correspond precisely with the dimensions, specifications or customary tolerances. In the absence of customary tolerances, reasonable tolerances will be allowed.

## **18. Consumer Guarantees Act 1993 ('CGA')**

**18.1** If the Customer is not a consumer as defined in the CGA or the Customer acquires or holds itself out as acquiring the goods under the Contract for the purposes of a business, nothing in the CGA will apply to the supply of the goods.

**18.2** In the case of any Customer (to which clause 18.1 does not apply), the provisions of the Contract (including these Terms) will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.

## **19. PPSA**

**19.1** To the extent permitted by law, the Customer and Newlands Group Ltd contract out of:

i) section 114(1)(a) of the PPSA; and

ii) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

**19.2** The Customer waives its right to receive a copy of any verification statement in respect of any financing statement relating to any security interest granted to the Company by the Customer.

**19.3** The Customer agrees to indemnify Newlands Group Ltd, upon demand, for all costs and expenses (including legal fees) incurred by Newlands Group Ltd:

i) as a result of the occurrence of an Event of Default (including upon actual or attempted enforcement of any security interest granted to the Company by the Customer); and

ii) in complying with any demand made under section 162 of the PPSA.

**19.4** On the request of Newlands Group Ltd, the Customer shall promptly do all things (including signing any delivery docket and/or invoice) and provide all information necessary to enable Newlands Group Ltd to perfect and maintain the perfection of any security interest granted to Newlands Group Ltd by the Customer (including by registration of a financing statement).

## **20. Waiver And Severability**

**20.1** All the rights, powers, exemptions and remedies of Newlands Group Ltd remain in force despite any neglect, forbearance or delay in enforcing them. Newlands Group Ltd will not be considered to have waived any right, power, remedy or condition unless the waiver is in writing under signature of either Newlands Group Ltd or an authorised officer. The waiver applies only in a particular transaction, dealing or matter unless the Company agrees otherwise.

**20.2** If any part of the Contract (including these Terms) or any other contract.

**20.3** The Customer may also authorise Newlands Group Ltd to provide information about the Customer (including information relating to any default in its payment obligations) to any third party (including the Credit Agency) for the purpose of that party carrying out credit checks, obtaining credit reports or debt collection. To the extent permitted by law those third parties may hold that

information in their systems and use it now and in the future. The Credit Agency may also share the Customer's information to other customers using its services.

### **21. Compliance with Laws**

Newlands Group Ltd will comply with all legislation, codes and standards specified in the contract and Newlands Group Ltd is under no liability for a failure to meet any other legislation, codes or standards.

If, after the Contract Date, there are any changes in legislation, codes or standards with which Newlands Group Ltd must comply, then the Customer agrees to reimburse or pay to Newlands Group Ltd an amount equal to any additional costs incurred by Newlands Group Ltd relating to such compliance.

### **22. Assignment and Change of Name Etc**

**22.1** The Customer may not assign any of the Customer's rights or obligations under the contract without Newlands Group Ltd's prior written consent.

**22.2** Newlands Group Ltd may assign any of Newlands Group Ltd's rights under the contract without the Customer's consent.

**22.3** The Customer must give Newlands Group Ltd (addressed to Newlands Group Ltd Secretary) not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).

### **23. Trustee Liability**

If the Customer is a trust, the contract will bind each trustee of that trust and each trustee personally. Newlands Group Ltd's rights against each trustee will only be limited if the trustee is an independent trustee (not being a trustee who has a right to or interest in any of the assets of the trust). However, this shall not affect the liability of an independent trustee who has guaranteed, in his or her personal capacity, the Customer's obligations under the contract.

### **24. Review of Terms**

Newlands Group Ltd reserves the right to review any of these Terms at any time and from time to time. If, following any such review, there is any change to these Terms that change will take effect from the date on which Newlands Group Ltd gives notice to the Customer of such change.

### **25. Two or More Contracts**

Where, at any time, there is an Amount Owing under two or more contracts, the Company may apply a payment made by the Customer under the contract in such manner (including in such order and to any amounts owing to Newlands Group Ltd, including under another Contract) as Newlands Group Ltd thinks fit (despite any direction to the contrary and whether before or after any default by the Customer). The security interest provided for by these Terms and created by the Contract also secures the Amount Owing under any other Contract, and each Contract (and these Terms) shall be construed accordingly.

### **26. Governing Law**

The Contract and these Terms are governed by the law of New Zealand.

Signed:

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[Position Title], [Company Name]

Date:

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[Position Title], [Customer Name]