

KP APPLICATION LIMITED

TERMS OF TRADE

1. Interpretation

1. In these terms:

Client means the person/s or entity requesting KP Application to provide the Products as specified in any invoice, document or order and if there is more than one person requesting the Products is a reference to each person jointly and severally.

Price means the cost payable for the Services and Goods as agreed between KP Application and the Client, subject to any variation in accordance with clauses 2 and 3.

Delivery Date means the date KP Application's Services are provided to the Client.

Goods means any goods, products and /or materials provided by KP Application in connection with the provision of Services or otherwise.

KP Application means KP Application Limited, with its registered office at Bailey Ingham, 18 Maniapoto Street, Otorohanga, together with its successors and assigns, agents, employees and contractors.

KP Application's Services means the Services and Goods (as applicable).

PPSA Personal Property Securities Act 1999.

Services means the pollen spraying services and related services provided by KP Application to the Client.

Site means the address nominated by the Client as the location that KP Application's Services shall be delivered to.

2. Acceptance

2.1. The Client is taken to have accepted and is immediately bound by these terms and conditions if the Client accepts delivery of any of KP Application's Services.

2.2. KP Application may amend these Terms at anytime and communicate it to the Client by posting the revised Terms on KP Application's website or providing to the Client direct.

3. Price

- 3.1. At KP Application's sole discretion, the Price shall be either:
- as indicated on any invoice provided by KP Application to the Client; or
 - the Price as at the Delivery Date according to KP Application's price list from time to time.

3.2. At KP Application's sole discretion a deposit may be required prior to KP Application's Services being delivered.

3.3. Any Price indicated by KP Application on quote, estimate or otherwise prior to the Delivery Date may be increased at KP Application's discretion upon delivery of KP Application's Services.

4. Access

4.1. It shall be the Client's responsibility to ensure that KP Application has authorised, clear and unobstructed access to the Site at all times to undertake KP Application's Services and that all information required by KP Application to carry out KP Application's Services are provided to KP Application.

4.2. KP Application may rely on all information given by the Client in relation to the Site as being accurate, including historical full bloom dates and current packhouse orchard maps.

4.3. KP Application shall not be liable for any loss or damage to the Site (including, without limitation, damage to the orchard, pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of KP Application.

5. Taxes and Duties

5.1. Unless expressly included in any invoice given by KP Application, GST (or other taxes payable on Goods supplied) are not included in the Price and are payable by the Client.

6. Payment

6.1. All payments for KP Application's Services are due (without deduction) on the due date on the invoice or within 14 days of the date KP Application invoices the Client, whichever is the earlier.

6.2. The Client is not entitled to withhold payment, set off counterclaim or to make any deductions from the Price without the prior written consent of KP Application.

7. Interest for Late Payment

7.1. Interest at 2% per month, calculated on a daily basis, is payable on any monies outstanding under any invoice to the Client from the date payment was due, until the date payment is received by KP Application whether before or after judgement but without prejudice to KP Application's other rights in respect of non-payment or late payment.

7.2. The Client acknowledges and agrees to pay all KP Applications' costs (including legal costs on a solicitor/client basis) incurred by KP Application in connection with any default by the Client or enforcement action taken by KP Application.

7.3. The Client indemnifies KP Application from and against all KP Applications costs and disbursements including legal costs, incurred by KP Application in enforcing its rights under these Terms.

8. Delivery

8.1. KP Application's Services shall be provided at the Site at the Delivery Date communicated by KP Application to the Client.

8.2. KP Application may license or sub-contract all or any part of its rights and obligations without the Client's consent.

9. Warranty

9.1. No guarantee, warranty or representation is given by KP Application in respect of how effective KP Application's Services are in relation to kiwifruit pollination due to the range of factors that affect successful pollination.

9.2. The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied by common law, equity or otherwise.

- 9.3. The Client acknowledges that the purchase of the Products is for the purposes of a Business (unless otherwise stated), and the provisions of the Consumer Guarantees Act 1993 will not apply
- 9.4. The Client acknowledges and accepts that the provision of KP Application's Services to the Client is for the purposes of a business and the the parties contract out of the provisions of the Fair Trading Act 1986 that relate to suppling and acquiring goods/services in trade to the fullest extent permitted by law and agree that it is fair and reasonable that the parties are bound by this clause.

10. Liability

- 10.1. Except as expressly set out in these Terms,, KP Application shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss of lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from the provision of KP Application's Services to the Client.
- 10.2. To the extent that KP Application is liable for any loss suffered or liability incurred by the Client from breach of these terms or for any other reason, such liability shall not exceed the value of invoice provided to the Client in relation to KP Application's Services in question.

11. Security

- 11.1. In consideration of KP Application agreeing to supply the Services, the Client charges all of its rights, title and interest in all present and after acquired personal property other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2. The Client indemnifies KP Application from and against all KP Application's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising KP Application's rights under this clause.
- 11.3. The Client irrevocably appoints KP Application and each director of KP Application as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12. PPSA

- 12.1. The Client will provide such information and do such acts and execute such further documents as in the opinion of KP Application may be necessary or desirable to enable KP Application to perfect under the PPSA the security interest created by these Terms (and in particular clause 11).
- 12.2. KP Application may do all things which it thinks desirable to remedy any default by the customer or otherwise protect the goods or the security interest created by these terms.
- 12.3. The customer irrevocably appoints KP Application to be the Client's attorney to do anything which the Client agrees to do under these terms and anything which the attorney thinks desirable to protect KP Application's interests under these Terms and the Client ratifies anything done by an attorney under this clause 12. The customer agrees sections 114 (1) (a), 133 and 134 of the PPSA shall not apply to these terms or the security under these terms.
- 12.4. The Client waives the Client's right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms.
- 12.5. The Client agrees that none of the Client's rights as debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA shall apply to these terms.
- 12.6. The Client also agrees, where KP Application has rights in addition to those in Part 9 of the PPSA, those rights will continue

to apply.

13. Cancellation

- 13.1. KP Application may cancel any commitment to deliver KP Application's Services to the Client upon notice to the Client. On giving such notice KP Application shall repay to the Client any money paid by the Client for KP Application's Services. KP Application shall not be liable for any loss or damage whatsoever arising from such cancellation.

14. No Assignment

- 14.1. The Client may not assign all or any of the Client's rights or obligations under these Terms without the prior written consent of KP Application.
- 14.2. KP Application may assign its rights under these Terms at any time.

15. Law and Jurisdiction

- 15.1. These Terms are governed by New Zealand law.
- 15.2. These Terms and any specific contract entered into between KP Application and the Client are the entire Agreement between the Client and KP Application, and supersede all representations, agreements and other communication.

16. Privacy

- 16.1. The Client authorizes KP Application or KP Application's agent to:
- access, collect, retain and use any information about the Client (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or for the purpose of marketing products and Products to the Client;
 - disclose information about the Client, whether collected by KP Application from the Client directly or obtained by KP Application from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.

- 16.2. Where the Client is an individual, KP Application will only use the Client's personal information as set out in our privacy policy and in accordance with the Privacy Act 2020 (New Zealand).

17. Force Majeure

- 17.1. KP Application shall not be liable for default, failure or delay to perform its obligations or deliver KP Application's Services if the delay or failure is beyond its reasonable control..

18. Waiver and Unenforceable Provisions

- 18.1. No failure or delay by KP Application to enforce any provision of these Terms shall be treated as a waiver of that provision, nor shall it affect KP Application's right to subsequently enforce that provision.
- 18.2. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19. Dispute Resolution

- 19.1. Any claim or dispute arising under these Terms shall be determined by mediation if the parties are unable to resolve such dispute between themselves within one month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand courts.

