

Grownote Terms of Use Agreement

Welcome to Grownote, an online orchard management System designed for small or large orchard operations. This Terms of Use Agreement is intended to explain our obligations as a service provider and Your obligations as a customer. Please read them carefully.

This Agreement is binding in relation to any use of the System and applies to You from the time that Grownote provides You with access to the System.

The Grownote System will evolve over time, based on user feedback. This Agreement is not intended to answer every question or address every issue raised by the use of the Grownote System. Grownote reserves the right to change this Agreement at any time, effective upon the posting of modified terms and Grownote will make every effort to communicate these changes to You via email or notification via the Website. It is likely the terms of use agreement will change over time. It is Your obligation to ensure that You have read, understood and agreed to the most recent terms available on the Website.

By registering to use the System, you acknowledge that You have read and understood this Agreement and have the authority to act on behalf of any person for whom You are using the System. You are also deemed to have agreed to these Terms on behalf of any other entity for whom you use the System.

These Terms were last updated on the date in the footer of this document.

1. DEFINITIONS

"Agreement"

means these Terms of Use.

"Subscription Fee"

means the monthly fee (excluding any taxes and duties) payable by You in accordance with the fee schedule set out on the Website for your Active Hectares (which Grownote may change from time to time on notice to You). The name that will appear on your invoice will be Grownote Limited.

"Confidential Information"

includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the System but does not include information which

is, or becomes, publicly available other than through unauthorised disclosure by the other party.

"Data"

means any data inputted by You or with Your authority into the System.

"Intellectual Property Right"

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

"the System"

means the online orchard management System made available (as may be changed or updated from time to time by Grownote) via the Website.

"Website"

means the Internet site at the domain www.grownote.co.nz or any other site operated by Grownote.

"Grownote"

means Grownote Limited, a New Zealand-owned and registered company, and all current and future global subsidiaries or successors.

"Organisation"

means an entity which may control, contract to or be associated with any number of orchards in the day-to-day use of Grownote. An Organisation is the entity that is the subscriber to Grownote.

"Subscriber"

means the Organisation who registers to use the System.

"Invited User"

means an individual or entity to whom the Organisation has granted permission to use the System, whether internal or external to the Organisation.

"You"

means the Subscriber, and where the context permits, an Invited User. **"Your"** has a corresponding meaning.

"Active Hectares"

means the area of land that is the subject of planned and recorded orchard events in Grownote. Grownote does not specifically demarcate between producing and non-producing land in terms of subscription pricing, merely active and inactive. You are not charged for inactive hectares and cannot generate events in the current season for inactive hectares.

2. USE OF SOFTWARE

Grownote grants You the right to access and use the System via the Website with the particular user roles available to You according to Your subscription type. The right is available immediately on successful payment of the subscription. This right is non-exclusive, non-transferable, and limited by and subject to this Agreement.

You acknowledge and agree that, subject to any applicable written agreement between the Subscriber and any Invited Users, or any other applicable laws:

- 2.1. the Subscriber determines who is an Invited User and what level of user role access to the relevant organisation and System that Invited User has;
- 2.2. the Subscriber is responsible for all Invited Users use of the System;
- 2.3. the Subscriber controls each Invited User's level of access to the relevant organisation and System at all times and can revoke or change an Invited User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an Invited User or shall have that different level of access, as the case may be;
- 2.4. if there is any dispute between a Subscriber and an Invited User regarding access to any organisation or System, the Subscriber shall decide what access or level of access to the relevant Data or System that Invited User shall have, if any.

3. YOUR OBLIGATIONS

3.1. Payment obligations:

An invoice for the Subscription Fee will be issued each month starting on the date you commence your paid subscription to Grownote. All invoices will include the Subscription Fee for the upcoming period of use (one month). Grownote will continue invoicing You monthly until this Agreement is terminated in accordance with clause 8.

All Grownote invoices will be sent to You, or to a Billing Contact whose details are provided by You, by email. You are responsible for payment of all taxes and duties in addition to the Subscription Fee.

3.2. Preferential pricing or discounts:

You may from time to time be offered preferential pricing or discounts for the Subscription Fees. Eligibility for such preferential pricing or discounts is conditional upon Your acceptance of responsibility for payment of any Subscription Fees in relation to all of Your Organisations. Without prejudice to any other rights that Grownote may have under these Terms or at law, Grownote reserves the right to require payment for the full (non-discounted) Subscription Fees due or suspend or terminate Your use of the System in respect of any or all of Your Organisations in the event that any invoices for those Subscription Fees are not paid in full by the due date for payment.

3.3. General obligations:

You must only use the System and Website for Your own lawful internal business purposes, in accordance with this Agreement and any notice sent by Grownote or condition posted on the Website. You may use the System and Website on behalf of others or in order to provide services to others but if You do so, you must ensure that You are authorised to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to You.

3.4. Access conditions:

3.4.1. You must ensure that all usernames and passwords required to access the Service are kept secure and confidential. You must immediately notify Grownote of any unauthorised use of Your passwords or any other breach of security. You will be

responsible for resetting Your password and You must take all other actions that Grownote reasonably deems necessary to maintain or enhance the security of Grownote's computing systems and networks and Your access to the System.

3.4.2. As a condition of this agreement, when accessing and using the System, You must:

- 3.4.2.1. not attempt to undermine the security or integrity of Grownote's computing systems or networks or, where the System is hosted by a third party, that third party's computing systems and networks;
- 3.4.2.2. not use, or misuse, the System in any way which may impair the functionality of the System or Website, or other systems used to deliver the System or impair the ability of any other user to use the System or Website;
- 3.4.2.3. not attempt to gain unauthorised access to any materials or information other than those to which You have been given express permission to access.
- 3.4.2.4. not attempt to gain unauthorised access to the computer system on which the System is hosted;
- 3.4.2.5. not transmit, or input into the Website, any: (a) files that may damage any other person's computing devices or software, (b) content that may be offensive, or (c) material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which You do not have the right to use);
- 3.4.2.6. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the System or to operate the Website except as is strictly necessary to use either of them for normal operation.

3.5. Usage Limitations:

Use of the System may be subject to limitations, including but not limited to storage space, monthly transaction volumes and the number of calls You are permitted to make against Grownote's application programming interface. Any such limitations will be advised.

3.6. Communication Conditions:

As a condition of this agreement, if You use any communication tools available through the Website (such as any forum, chat room or message centre), You agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the System, including (but not limited to): (a) offers of goods or services for sale, (b) unsolicited commercial e-mail, (c) files that may damage any other person's computing devices or software, (d) content that may be offensive to

any other users of the System or the Website, or (e) material in violation of any law (including material that is protected by copyright or trade secrets which You do not have the right to use).

When You make any communication on the Website, You represent that You are permitted to make such communication. Grownote is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the System. As with any other web-based forum, You must exercise caution when using the communication tools available on the Website. However, Grownote does reserve the right to remove any communication at any time in its sole discretion.

3.7. Indemnity.

You indemnify Grownote against: all claims, costs, damage and loss arising from Your breach of any term of this agreement or any obligation You may have to Grownote, including (but not limited to) any costs relating to the recovery of any Subscription Fees that are due but have not been paid by You.

4. CONFIDENTIALITY AND PRIVACY

4.1. Confidentiality:

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

4.1.1. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with this Agreement. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by this Agreement.

4.1.2. Each party's obligations under this clause will survive termination of this Agreement.

4.1.3. The provisions of clauses 4.1.1 and 4.1.2 shall not apply to any information which:

- 4.1.3.1. is or becomes public knowledge other than by a breach of this clause;
- 4.1.3.2. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 4.1.3.3. was in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- 4.1.3.4. is independently developed without access to the Confidential Information.

4.2. Privacy:

Grownote maintains a privacy policy that sets out the parties' obligations in respect of personal information. You should read that privacy policy [here](#) and You will be taken to have accepted that policy when You accept this Agreement.

5. INTELLECTUAL PROPERTY

5.1. General:

Title to and all Intellectual Property Rights in the System, the Website and any documentation relating to the System remains the property of Grownote (or its licensors).

5.2. Ownership of Data:

Title to, and all Intellectual Property Rights in, the Data remain Your property. However, Your access to the Data is contingent on full payment of the Grownote Subscription Fee when due. You grant Grownote a license to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the System and for any other purpose related to provision of services to You.

5.3. Backup of Data:

Grownote will adhere to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. Grownote expressly excludes liability for any loss of Data no matter how caused.

There is currently no facility within Grownote for You to backup or restore your Data inputted into the System, but Grownote staff are able to make arrangements for restoration of your Data.

6. WARRANTIES AND ACKNOWLEDGEMENTS

6.1. Authority:

You warrant that where You have registered to use the System on behalf of another person, You have the authority to agree to this Agreement on behalf of that person and agree that by registering to use the System You bind the person on whose

behalf You act to the performance of any and all obligations that You become subject to by virtue of this Agreement, without limiting Your own personal obligations under this Agreement.

6.2. Acknowledgement:

You acknowledge that:

- 6.2.1. You are authorised to use the System and the Website and to access the information and Data that You input into the Website, including any information or Data input into the Website by any person you have authorised to use the System. You are also authorised to access the processed information and Data that is made available to You through Your use of the Website and the System (whether that information and Data is Your own or that of anyone else).
- 6.2.2. Grownote has no responsibility to any person other than You and nothing in this Agreement confers, or purports to confer, a benefit on any person other than You. If You use the System or access the Website on behalf of or for the benefit of anyone other than yourself (whether a body corporate or otherwise) you agree that:
 - 6.2.2.1. You are responsible for ensuring that You have the right to do so;
 - 6.2.2.2. You are responsible for authorising any person who is given access to information or Data, and you agree that Grownote has no obligation to provide any person access to such information or Data without Your authorisation and may refer any requests for information to You to address; and
 - 6.2.2.3. You indemnify Grownote against any claims or loss relating to:
 - 6.2.2.3.1. Grownote's refusal to provide any person access to Your information or Data in accordance with this Agreement,
 - 6.2.2.3.2. Grownote's making available information or Data to any person with Your authorisation.
- 6.2.3. The provision of, access to, and use of, the System is on an "as is" basis and at Your own risk.
- 6.2.4. Grownote does not warrant that the use of the System will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the System, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the System. Grownote is not in any way responsible for any such interference or prevention of Your access or use of the System.
- 6.2.5. It is Your sole responsibility to determine that the System meet the needs of Your business and is suitable for the purposes for which it is used.

6.2.6. You remain solely responsible for complying with all applicable tax and other laws. It is Your responsibility to check that storage of and access to your Data via the Software and the Website will comply with laws applicable to you (including any laws requiring you to retain records).

6.3. No warranties:

Grownote gives no warranty about the System. Without limiting the foregoing, Grownote does not warrant that the System will meet Your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

Further, Grownote bears no responsibility for the accuracy or safe transmission of any spray-related information to any third party application or spray diary.

6.4. Consumer guarantees:

You warrant and represent that You are acquiring the right to access and use the System for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the System, the Website or this Agreement.

7. LIMITATION OF LIABILITY

7.1. To the maximum extent permitted by law, Grownote excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the System or Website.

7.2. If You suffer loss or damage as a result of Grownote's negligence, error or failure to comply with this Agreement, any claim by You against Grownote arising from Grownote's negligence, error or failure will be limited in respect of any one incident, or series of connected incidents, to the Subscription Fees paid by You in the previous 12 months.

7.3. If You are not satisfied with the System, Your sole and exclusive remedy is to terminate this Agreement in accordance with Clause 8.

8. TERMINATION

8.1. Trial policy

When You first sign up for access to the System You can evaluate the System under the defined trial usage conditions, with no obligation to continue to use the System. If You choose to continue using the System thereafter, You will be billed from the day You first added Your billing details into the System.

8.2. Prepaid Subscriptions

Grownote will not provide any refund for any remaining prepaid period of a Subscription Fee.

8.3. No-fault termination:

This Agreement will continue for the period covered by the Subscription Fee paid or payable under clause 3.1. At the end of each billing period these Terms will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed Subscription Fee when due.

8.4. Breach:

8.4.1. If:

8.4.1.1. You breach any term of this Agreement (including, without limitation, by non-payment of any Subscription Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;

8.4.1.2. You breach any term of this Agreement and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of Subscription Fees that are more than 14 days overdue); or

8.4.1.3. Your organisation becomes insolvent or Your organisation goes into liquidation or has a receiver or manager appointed of any of its assets or if You become insolvent, or make any arrangement with Your creditors, or become subject to any similar insolvency event in any jurisdiction,

8.4.2. Grownote may take any or all of the following actions, at its sole discretion:

8.4.2.1. Terminate this Agreement and Your use of the System and the Website;

8.4.2.2. Suspend for any definite or indefinite period of time, Your use of the System and the Website;

8.4.2.3. Suspend or terminate access to all or any Data.

- 8.4.2.4. Take either of the actions in sub-clauses 8.4.2.1, 2 and 3 in respect of any or all other persons whom You have authorised to have access to Your information or Data.
- 8.4.2.5. For the avoidance of doubt, if payment of any invoice for Subscription Fees due in relation to any of Your payment obligations (per 3.1 above) of Your Organisations (as defined at clause 3) is not made in full by the relevant due date, Grownote may: suspend or terminate Your use of the System, the authority for all or any of Your Organisations to use the System, or Your rights of access to all or any Data.
- 8.4.2.6. Termination of this Agreement is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement You will:
 - 8.4.2.7. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
 - 8.4.2.8. immediately cease to use the System and the Website.

8.5 Expiry or termination:

8.5.1 Clauses 3.1, 3.7, 4, 5, 6, 7, 8 and 10 survive the expiry or termination of this Agreement.

9. HELP DESK

9.1. Technical Problems:

In the case of technical problems You must make all reasonable efforts to investigate and diagnose problems before contacting Grownote. If You still need technical help, please check the support provided online by Grownote on the Website or failing that email us at support@grownote.co.nz

9.2. Service availability:

Whilst Grownote intends that the System should be available 24 hours a day, seven days a week, it is possible that on occasions the System or Website may be unavailable to permit maintenance or other development activity to take place.

If for any reason Grownote has to interrupt the System for longer periods than Grownote would normally expect, Grownote will use reasonable endeavours to publish in advance details of such activity on the Website.

10. GENERAL

a. Entire agreement:

This Agreement, together with the Grownote Privacy Policy and the terms of any other notices or instructions given to You under these this Agreement, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between You and Grownote relating to the System and the other matters dealt with in this Agreement.

b. Waiver:

If either party waives any breach of this Agreement, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

c. Delays:

Neither party will be liable for any delay or failure in performance of its obligations under this Agreement if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

d. No Assignment:

You may not assign or transfer any rights to any other person without Grownote's prior written consent.

e. Governing law and jurisdiction:

New Zealand law governs this Agreement and You submit to the exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with this Agreement. In the event that either party wishes to take action to prevent a breach of this Agreement in any other jurisdiction, then that party may elect to use the courts, and laws, of that other jurisdiction, to obtain court orders in that other jurisdiction, preventing breach of this Agreement, or awarding damages or other remedies arising from a breach of this Agreement, in that jurisdiction.

f. Severability:

If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

g. Notices:

Any notice given under this Agreement by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Grownote must be sent to info@grownote.co.nz or to any other email address notified by email to You by Grownote. Notices to You will be sent to the email address which You provided when setting up Your access to the Service.

h. Rights of Third Parties:

A person who is not a party to this Agreement has no right to benefit under or to enforce any term of this Agreement.