

# **Terms & Conditions**

## **LYNWOOD AVOCADO NURSERY**

### **TERMS AND CONDITIONS OF TRADE – COMMERCIAL GROWERS**

#### **DEFINITIONS**

1. In these Terms and Conditions and any ancillary documentation referred to in them, unless the context or subject matter otherwise require:

- **Agreed Delivery Date** means the date stipulated as the delivery date on the Order Confirmation Form or such other date as is agreed to by us and you;
- **Agreed Terms** means terms agreed between us and you from time to time with respect to when payment is required to be made for our Goods/Services. If no terms are agreed or there is a dispute as to the Agreed Terms, then the Agreed Terms will default to:
  - (a) prior to Delivery; or if Delivery has already occurred,
  - (b) within ten days of Delivery.
- **Lynwood** (we/us/our) means Lynwood Avocado Nursery Ltd;
- **Clonal Rootstock Trees** means trees propagated from cutting complete with a fruiting scion graft;
- **Delivery** means delivery of Goods to the location/s agreed between Lynwood and you or such other location as Lynwood may at its sole discretion consider reasonable;
- **Goods** means the plant/s in the number and variety listed on an Order Confirmation Form and/or any other plants that are ordered by the Purchaser from time to time;
- **Non-Propagation Agreement** means a separate but related agreement between the Purchaser and the Master Licensee of Protected Plant Material
- **Order Confirmation & Payment Plan Form** means a form entitled 'Lynwood Avocado Nursery Ltd Order Confirmation & Payment Plan' that is provided by Lynwood to a Purchaser after a request for Goods is made;
- **Overdue Amount** means any amount of money that remains unpaid outside of Agreed Terms;
- **Personal Information** has the definition attributed to it under the Privacy Act 1993;
- **Plant Variety Rights or PVR** has the definition attributed to PVR under the Plant Variety Rights Act 1987;
- **Premises** means the nursery located at:
  - 701 State Highway 14, Maunu, Whangarei 0179
- **Protected Plant Material** is plant material protected by a PVR;
- **Public Variety** means any plant variety not protected by PVR;
- **Purchaser** (you/your) means:
  - (a) if an Order Confirmation Form is submitted by Lynwood, the person or entity identified as purchaser on the Order Confirmation Form; or
  - (b) if an Order Confirmation Form is not used in any particular request for our Goods/Services, then the person or entity who has requested our Goods/Services and/or the person or entity on behalf of whom the request for our Goods/Services is made;
- **Seedling Rootstock Plants** means plants propagated from seeds complete with a fruiting scion graft;
- **Services** means the growth, propagation and Grafting of the Goods by Lynwood for the Purchaser; and

- **Terms and Conditions** means the terms and conditions set out in this document.

## **GENERAL**

2. When you enter into any transaction with Lynwood, whether conditional or unconditional, you acknowledge that:

- (a) you have read and agree to be bound by these Terms and Condition
- (b) you have read and agree to be bound by the terms of any ancillary documents referred to in these Terms and Conditions that you may be required to execute in accordance with these Terms and Conditions; and
- (c) Lynwood is transacting with you on the express basis that these Terms and Conditions will apply in full to the transaction.

## **NON-PROPAGATION AGREEMENT**

3. If you order Goods that are subject to Plant Variety Rights, you will need to execute a Non-Propagation Agreement before such time as Delivery will be made.

4. If you fail or decline to execute a Non-Propagation Agreement when required:

- (a) your obligations including, without limitation, the obligation to make full payment of our invoice, under these Terms and Conditions will continue;
- (b) our obligations under these Terms and Conditions will not be enforceable by you with respect to an order for Goods subject to Plant Variety Rights.

## **ORDERING**

5. Upon requesting our Goods/Services, we will send you an Order Confirmation & Payment Plan Form in accordance with your request and this will constitute an offer from Lynwood to the Purchaser.

6. Lynwood's offer contained in an Order Confirmation & Payment Plan Form may be provided to you by any method including, without limitation, ordinary post, facsimile, email or hand delivery.

7. Where Lynwood's offer includes an Agreed Delivery Date, we reserve the right to change that date at our sole discretion. At all times Lynwood will be making all efforts to meet your expectations on delivery date.

8. You may accept an offer from Lynwood contained in an Order Confirmation & Payment Plan Form by any of the following:

- (a) payment of a Confirmation Deposit as referred to in the Order Confirmation & Payment Plan Form
- (b) continuing to communicate with Lynwood after the offer has been made in a manner that would reasonably imply acceptance.

9. Once you perform an act of acceptance under clause 8 of these Terms and Conditions, Lynwood is entitled to:

- (a) rely on this acceptance as forming a contract to perform/provide the agreed Goods/Services; and
- (b) receive payment in accordance with the clauses under Payment / Non-Payment in these Terms and Conditions.

## **PAYMENT / NON-PAYMENT**

9. Payment for Goods/Services in the form of a forward order must be made in the following manner:

- (a) a non-refundable (with the exception of clause 33) cash deposit as stated on the Order Confirmation & Payment Plan Form, payable:
  - Order Confirmation Deposit upon receipt of order ... and then
  - A Production Payment on the
  - First day of April the year before delivery on clonal rootstock plants... OR

- First day of June the year before delivery on seedling rootstock plants
  - The balance within ten days of delivery.
10. Payment of an invoice must be made in accordance with Agreed Terms and only by the methods provided on the invoice.
11. If payment is not received pursuant to Agreed Terms, this constitutes an event of default and the invoiced amount becomes an Overdue Amount.
12. In the event of default, Lynwood may:
- (a) charge interest on the Overdue Amount; at the rate of 2% per month whilst any of the amount remains overdue, which interest will immediately form part of the Overdue Amount; and/or
  - (b) receive a monthly plant maintenance fee for all Goods held beyond the Agreed Delivery Date. The monthly maintenance fee will be 3% of final cost price of the Goods held, which fee will immediately form part of the Overdue Amount; and/or
  - (c) seek indemnity for any and all costs incurred by Lynwood in taking any action under this clause.
13. To secure the due and punctual payment of our invoices, you charge in favour of us all right, title and interest in, to, under or derived from any property of any form owned by you until such time as any and all Overdue Amounts are paid.

### **LYNWOOD'S WARRANTY**

14. Lynwood may accept responsibility (limited to the extent set out in clause 15 of these Terms and Conditions) for damage caused during Delivery, if we are notified within three days after the date of Delivery.
15. Lynwood's obligation with respect to damage or destruction of Goods during Delivery is limited to a refund of the cost of the damaged Goods or replacement of the damaged Goods at Lynwood's discretion.
16. If you request replacement of damaged Goods you must bear the costs of Delivery of the replacement Goods.
17. Lynwood may, in certain circumstances, replace Goods or refund the cost of those Goods that fail to grow in an acceptable manner to be determined at the sole discretion of Lynwood.
18. If you wish for Lynwood to consider a replacement or refund of any Goods that are failing to grow in an acceptable manner you should notify Lynwood within one month after Delivery. Lynwood will then consider the merits of your claim and at its sole discretion either:
- (a) replace the Goods;
  - (b) refund part or all of the amount paid for the Goods; or
  - (c) decline to replace the Goods or to issue a refund for the amount paid for the Goods.
19. Lynwood expressly disclaims, to the fullest extent permitted by law, all express, implied and statutory warranties. Where any statutory terms may not be excluded, liability in respect of them is limited to:
- (a) replacement of the Goods; or
  - (b) refund of the cost of the Goods, that are the subject of the statutory warranty.

### **INDEMNITY**

20. Lynwood makes no guarantee that Goods will not be damaged during delivery and whilst we invite you to notify us of any damaged Goods, you acknowledge that Delivery breaks the chain of causation and Lynwood is not liable for any losses incurred outside of refund or replacement of the Goods.
21. Despite its best intentions, Lynwood can make no guarantee that any Goods will grow, produce fruit or be fit for any specific purpose and you fully indemnify and hold harmless Lynwood from any claims, by you or a third party, arising from a failure of any Goods to grow.
22. Lynwood makes no representation as to the suitability of any Goods and the Purchaser has

made no reliance on any information provided by Lynwood or its agents or employees in its selection of Goods.

23. You agree to indemnify and hold harmless Lynwood from any action or recovery arising from Lynwood's termination of any agreement with you governed by these Terms and Conditions.

24. You warrant that you will not claim any causal link between the provision of Goods/Services from Lynwood and any agreement you may enter into with another party to sell to, supply to or otherwise contract with another party.

### **INTELLECTUAL PROPERTY**

25. Your purchase of Goods protected by PVRs in no way transfers any rights in the intellectual property of the Goods.

26. Any intellectual property vested in the Goods including, without limitation, PVRs remains vested in the rightful owner of the intellectual property in those Goods.

27. Any use of Goods that are protected by PVRs must be in accordance with the terms of the relevant Non-Propagation Agreement and any breach of those terms gives both the true owner of the intellectual property and/or Lynwood the entitlement to sue you for infringement and/or breach of contract.

### **TERMINATION**

#### Termination by Lynwood

28. Lynwood may terminate any transaction arising out of the provision of its Goods/Services to you immediately upon notice to you in any form at any time.

29. Lynwood's only liability to you upon termination by Lynwood is limited to a refund of the amount of payments made in advance of a stage of the Goods/Services which Lynwood has yet to perform, after deduction of any moneys that are owing to Lynwood.

#### Termination by the Purchaser

30. You may terminate any agreement arising out of the provision of Lynwood's Goods/Services to you upon written notice to Lynwood sent by post to 701 State Highway 14, R.D.9, Whangarei 0179, OR by email stated on Lynwood's website.

31. Even if you terminate a transaction with Lynwood in accordance with clause 30 of these Terms and Conditions, you are still liable to pay the full amount or balance thereof that would have been payable upon completion of the transaction provided that Lynwood have commenced any part of the process involved in completing the transaction agreed, including, without limitation, any administrative function.

32. Upon receipt of your written termination, Lynwood will issue you an invoice for any amounts payable upon completion of the transaction that have not yet been paid. The amount of this invoice will become an Overdue Amount if not paid within ten days of the date of the invoice.

33. If, in the event of termination, Lynwood is able to on sell the plants, any deposits paid will be refunded, and no further payments will be sort.

### **PRIVACY**

34. Without limiting any other clause in these Terms and Conditions, Lynwood will not, without your consent, use your Personal Information in a way that breaches the Privacy Principles set out in the Privacy Act 1993.

### **RETENTION OF TITLE**

35. Subject to the limited warranties contained in clauses 14 to 19 of these Terms and Conditions, the risk and all attached liability to damage in the Goods passes to the Purchaser at the point of departure of the Goods from Lynwood's Premises, even if Lynwood delivers the Goods itself.

36. Ownership of the Goods does not pass to the Purchaser until the Purchaser has paid in full for the Goods, and the Purchaser is obliged to keep the Goods in substantially the same (and no worse) form and condition as at the time they were provided to the Purchaser until such time as payment is made.

37. If the Purchaser deals with the Goods in a manner that renders it incapable of complying with

clause 35 of these Terms and Conditions, then Lynwood is entitled to claim the amount of \$5,000 as liquidated damages in addition to any amount still owing under the Order Confirmation Form.

## **DISPUTE RESOLUTION**

38. If you consider there is a legitimate dispute between us and you (the Parties) as to any part of a transaction governed by these Terms and Conditions or any ancillary agreement, you must first go through the following dispute resolution process before the commencement of any arbitration or other legal proceedings.

39. You must give us notice in writing setting out full details of the dispute (Dispute Notice).

40. To resolve the dispute:

(a) for a period of 14 days after a Dispute Notice is given (or a longer period if the Parties agree in writing), the Parties will engage in negotiations and discussions in order to seek to resolve the dispute.

(b) the Parties must participate in the negotiations and discussions referred to in clause 40(a) in good faith and will use all reasonable endeavours to resolve the dispute. The Parties may also appoint third party consultants to assist in the resolution of the dispute.

(c) if the Parties cannot resolve the dispute within the period set out in clause 40(a), you may request that the dispute be referred to mediation upon providing a written undertaking to bear all costs involved in the mediation.

(d) if you do not undertake to pay all costs involved in the mediation, then Lynwood is not obliged to attend any mediation.

41. If the Parties to the dispute cannot agree on a mediator within seven days after a request under clause 40(c), upon the request of either Party the president of the New Zealand Law Society Inc or that president's nominee may appoint a mediator.

42. Unless agreed by the mediator and the Parties, the mediation must be held within 15 days of a request for the dispute to be referred to mediation being made under clause 40(c) and must occur in Northland unless otherwise agreed.

43. If a Party to a dispute fails to comply with any aspect of clauses 38-42, the other Party does not have to comply with those clauses in relation to the dispute.

44. Nothing in these Terms and Conditions obliges Lynwood to attempt the dispute resolution process outlined in clauses 38-43 before it can take action against a Purchaser.

## **ILLEGALITY AND SEVERABILITY**

45. The provisions of this Agreement will so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect but if any provision on its true interpretation is illegal, invalid or unenforceable:

(a) that provision will so far as possible be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or

(b) if the provision or part of it cannot be read down the provision or part will be deemed to be void and severable and the remaining provisions of this instrument will not in any way be affected or impaired.

## **JURISDICTION**

46. You irrevocably acknowledge that despite:

(a) your business/residential location;

(b) the delivery place of the Goods; or

(c) any other geographical indicia, any transaction entered into between you and Lynwood is entered into under the laws of New Zealand.

47. Any dispute that is not resolved in accordance with the process outlined in clauses 38 to 43 must be resolved in a court of competent jurisdiction in New Zealand.



**LYNWOOD AVOCADO NURSERY LTD**

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FROM: 23<sup>rd</sup> February 2021

## **HEALTH CERTIFICATE**

Lynwood Avocado Nursery is a member of the New Zealand Avocado Nurserymen's Association.

Our nursery uses Good Agricultural Practices.

We employ a High Health Scheme at all stages of avocado propagation, which naturally includes high levels of hygiene management.

This means there are records to confirm that the propagation material (seeds, rootstock and fruiting scions) is true to type, meet defined physical specifications, are free from pests and diseases and meet all applicable industry and regulatory requirements.

For all trees with a current PVR (Plant Variety Right) we are holding a copy of the required, signed "Non-Propagation Agreement" on site.

This serves as the certification required, for Avocado trees supplied by Lynwood Avocado Nursery Ltd.

Your faithfully

Lynwood Avocado Nursery Ltd

Bryan Purton  
Administration Manager

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# Avocado High Health Scheme

## - Annual Audit Record -

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### Lynwood Nursery Ltd

**Audit: Pass**  
**Audit No: AQ2020-2**  
**Date of audit: 27/01/2021**

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A selection of plants produced and systems applied have been audited under the *NZAGA High Health Scheme - Version 2*

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#### Scope of High Health Scheme

- Trueness to type
- Disease testing
- Minimum specifications
- Propagation process/traceability



Brad Siebert, New Zealand Avocado Industry Ltd

A handwritten signature in blue ink, appearing to read 'Brad Siebert'.



Audit Organisation: AsureQuality

Auditor's Name: Elena Ellis

