

Licence Terms for Growers

For: Network Squar'd Pty Ltd T/A
Plantation Planning Solutions

Version: 1

Date: June 30th 2012

Abstract: The terms which apply to end
users (eg growers) of the Profit
Planner and Business Planner
software

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LICENCE TERMS

Effective from [30th June 2012]

*Note: Please read this document carefully before installing or using
Plantation Profit Planner or Plantation Business Planner.*

1. About these Licence Terms

- 1.1 These Licence Terms contain the terms and conditions by which we will agree to allow you to use our software. By installing and/or using our software you are entering into an agreement with us which incorporates and which is governed by these Licence Terms and any of the documents referred to in **clause 17.1** that are relevant to you.
- 1.2 If you do not accept these Licence Terms you must not use or install our software. In that case you may be entitled to a refund under **clause 8**.

2. General Licence Terms

- 2.1 You are granted a limited non-exclusive licence to use our software for your internal business purposes subject to these Licence Terms. This licence does not make you the owner of our software (see **clause 9**).
- 2.2 You must only install and use our software on a maximum of 2 personal computers that you own and/or control, unless we tell you otherwise in writing.
- 2.3 Our software may be delivered to you via purely electronic means and/or in physical media such as a CD-ROM or a USB stick.
- 2.4 You must not:
 - (a) copy, modify, disassemble, decompile, reverse engineer, attempt to derive the source code of, decrypt, modify or create derivative works of our software; or
 - (b) merge our software with any other software; or
 - (c) rent, lease, lend, sell, redistribute or sublicense our software; or
 - (d) directly or indirectly permit any person to do any of these things.

These restrictions do not apply to the extent that any laws which cannot be excluded by agreement permit you to do something.

3. Activation Codes

- 3.1 You may need to input an activation code before you can install and use (or continue using) our software.
- 3.2 We will only provide you with activation codes if you are up-to-date with payment of all applicable licence fees payable by you under these Licence Terms.

- 3.3 Activation codes we provide to you may be purposely designed to expire automatically to coincide with applicable due dates for licence fees payable by you under these Licence Terms. Before the expiry of an existing activation code you should contact us to obtain a new activation code in order to continue using our software (although you still need to pay the applicable licence fees).
- 3.4 Only you may access and use any activation codes we provide to you. You must keep all activation codes secret and secure. You must notify us immediately of any breach of security or unauthorised access to or use of any activation codes.
- 3.5 You must not attempt or engage in any conduct intended to circumvent the activation code system for our software. This requirement applies in addition to any other legal rights we may have regarding circumvention of technological protection measures.

4. Instructional Materials

- 4.1 We may prescribe instructional manuals and other information explaining how to use our software properly in electronic and/or hardcopy form, at our option.
- 4.2 You must comply with all instructional materials provided to you when installing or using our software.

5. Backups

You may make one copy of our software in machine-readable form for backup purposes only, provided that the backup copy must include all copyright or other proprietary notices contained in or on the original.

6. Updates

- 6.1 We may at our discretion make available updates or upgrades to our software for you to install and use in accordance with these Licence Terms.
- 6.2 We will provide any minor updates and enhancements applicable to the version of our software which you are licensed to use at no additional charge.
- 6.3 For new versions and major upgrades to our software, we may require you to pay further licence fees to access and use that new version or upgrade.

7. Payment by You

In return for being licensed to use and install our software in accordance with these Licence Terms, you must pay all licence fees as set out in the Fee Schedule and on the terms specified in the Fee Schedule.

8. Refunds

- 8.1 If you do not accept these Licence Terms you may, prior to installing our software, return it to the original place of purchase for a refund with sufficient proof of purchase and all instructional materials. To get a refund you must undertake to permanently destroy any other copies of our software in your possession, custody or control.
- 8.2 We will not provide you with a refund if you simply change your mind and decide you no longer want to use our software. However, you may have rights under applicable laws in your jurisdiction which we cannot exclude or limit, such as the guarantees to Australian consumers under the Australian Consumer Law (see **clause 16.1**). Nothing in these Licence Terms affects or limits those rights.
- 8.3 We will process refunds by reverse transaction through the payment method used for the original purchase.

9. Intellectual Property Rights

- 9.1 Nothing in the Agreement or these Licence Terms has the effect of transferring to you or any other person ownership of any intellectual property rights in and to our software.
- 9.2 All intellectual property rights in and to instructional materials vest solely in us at all times.
- 9.3 All intellectual property rights in and to any template provided with or created in the course of you using our software (but excluding any data or information you populate those templates with) vests solely in us at all times and you automatically assign to us all intellectual property rights in and to such templates upon creation. You must do all things necessary as and when reasonably required by us (at our cost) to vest in us all the rights referred to in this **clause 9.1**. We grant you a limited non-exclusive licence to use those templates only whilst this agreement continues.
- 9.4 The intellectual property rights in and to any content displayed by or accessed through our software belongs to the respective content owner. These Licence Terms do not grant you any right to use such content and we do not guarantee that such content will continue to be available to you.

10. Term and Termination

- 10.1 The Agreement will continue until terminated in accordance with these Licence Terms.
- 10.2 We may terminate the Agreement immediately and without notice if you:
 - (a) commit any breach of the Agreement;
 - (b) cease to carry on business;
 - (c) have an agent in possession, mortgagee in possession, administrator, receiver and manager or receiver appointed of the whole or any substantial part of your assets or if any order is made or a resolution passed for your winding up; or
 - (d) become insolvent or make an assignment for the benefit of your creditors or any arrangements pursuant to bankruptcy law or if you discontinue business or cease to do business.
- 10.3 Upon the termination of the Agreement, you must cease all use of our software and you must:
 - (a) on our request, either return to us (at your cost) or permanently destroy all instructional materials; and
 - (b) permanently delete all copies (full or partial) of our software in your possession, custody or control.
- 10.4 Any termination of the Agreement will not prejudice our rights at the time of such termination.
- 10.5 Clauses 7, 9, 10.5, 11, 12, 13, 14, 16.1, 16.3, 16.5, 16.6 and 17 survive any termination of the Agreement.

11. Warranty

You warrant to us that:

- (a) the information you provide in your Order is accurate and complete;
- (b) you will only use our software in compliance with all applicable laws in Australia; and
- (c) there is no contractual obligation restricting you from making these warranties.

12. Disclaimer

- 12.1 This **clause 12** is subject to any legal rights you may have under the laws in your jurisdiction which we cannot exclude or limit (and which we therefore do not exclude or limit). For Australian consumers, this includes your rights under the Australian Consumer Law (see **clause 16.1**).

12.2 To the extent permitted by law, we disclaim all statutory and implied warranties, including without limitation, warranties of merchantability and fitness for a particular purpose and warranties against hidden or latent defects, to the extent permitted by law.

12.3 To the extent permitted by law, we do not make any warranties or guarantees as to the efficacy or suitability of our software in your particular circumstances, and we do not warrant that:

- (a) use of our software, or any template created using our software, will be uninterrupted, secure or error-free, or that data loss will not occur; and
- (b) use of our software will improve your financial position or increase your profit;

and in no way will any such matters affect your liability to pay us in full in accordance with these Licence Terms.

12.4 You acknowledge and agree that, if you have had discussions with us prior to entering into the Agreement including in relation to your aims and targets, you have not relied on any such discussions and that such discussions do not form representations from us that you have relied upon in entering into the Agreement.

13. Liability

13.1 This **clause 13** is subject to any legal rights you may have under the laws in your jurisdiction which we cannot exclude or limit (and which we therefore do not exclude or limit). For Australian consumers, this includes your rights under the Australian Consumer Law (see **clause 16.1**).

13.2 To the extent permitted by law, we will not be liable to you for any incidental damage or consequential loss or in relation to any loss of or damage to any of our software or instructional materials in your possession, custody or control, to the extent permitted by law.

13.3 To the extent permitted by law, our liability to you for all other proven loss and damage is limited for an aggregate of all claims to the amounts paid by you to us in relation to our software in the 12 month period prior to such claims .

14. Indemnity

You indemnify us against any liability, loss (including consequential loss), damage, claim or costs in relation to:

- (a) any negligent or tortious act or wrongdoing by you; and

- (b) any breach by you of the Agreement (including breach of these Licence Terms).

15. Variation of these Licence Terms

We reserve the right to vary the Agreement with your consent and otherwise in situations including if:

- (a) variation is necessary due to applicable law or a change in applicable law;
- (b) variation is necessary for technical reasons;
- (c) variation is necessary to facilitate the operation of our software;
- (d) variation does not materially alter the pre-existing balance between your rights and our rights under the Agreement; or
- (e) variation is to your advantage.

16. General Terms

16.1 For Australian Consumers only:

Nothing in these Licence Terms or the Agreement in any way affects your rights under the Australian Consumer Law (as contained in Schedule 2 to the Competition and Consumer Act 2010 (Cth)).

16.2 Inability to carry out obligations:

If we are unable to perform any or all of our obligations under the Agreement by reason of an event which is not reasonably within our control including omissions or impositions by federal or national government authorities, fire, flood, earthquake and other natural disasters, acts of god, war, revolution, strike, fuel shortages and shortage of raw materials, we are relieved of those obligations to the extent and for the period that they are unable to be performed.

16.3 Governing law and jurisdiction:

The Agreement is governed by the laws in force in the State of Victoria and you must submit to the non-exclusive jurisdiction of the courts of the State of Victoria (including the Federal Court of Australia).

16.4 Our employees and agents:

None of our employees, agents or authorised suppliers have the authority to vary these Licence Terms in individual cases.

16.5 Severability:

The provisions of these Licence Terms will be deemed to be severable and any invalidity of any provision of these Licence Terms will not affect the validity of the remaining provisions of these Licence Terms.

16.6 Taxes:

You are solely responsible for payment of any tax or like liability that arises as a result of your using our software, and you indemnify us against any liability in relation to such amounts.

16.7 Transferring rights:

- (a) You must not transfer your rights or obligations under the Agreement to any person without our prior written consent.
- (b) We may assign our rights and novate our obligations under the Agreement to any person at any time without consent.

16.8 Waiver:

Any delay or failure by us to enforce any rights under the Agreement does not constitute waiver.

16.9 Entire agreement:

The Agreement constitutes the entire agreement between you and us in relation to our software and any other representation, warranty, condition, promise, undertaking or other provision not expressly set out in same is, to the full extent permitted by law, of no force or effect.

as we may advise you in writing from time to time;

- (c) **Fee Schedule** means the written document provided to you by us or our Authorised Supplier setting out the licence fees that apply to our software and how those fees are payable by you, which document you may confirm your acceptance of by signing;
- (d) **instructional materials** means all materials prescribed by us under **clause 4.1**;
- (e) **our software** includes the software known as Plantation Profit Planner and Plantation Business Planner;
- (f) **party** means any party to the Agreement; and
- (g) **we, us** means Network Squar'd Pty Ltd trading as Plantation Planning Solutions.

17. Interpretation

17.1 In these Licence Terms, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) references to the words include and including must not be interpreted as being limiting;
- (c) references to payment means payment in Australian currency inclusive of GST unless otherwise stated;
- (d) references to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- (e) references to persons include any entities recognised by law;
- (f) references to clauses are to clauses of these Licence Terms; and
- (g) headings will be ignored in construing these Licence Terms.

17.2 In these Licence Terms:

- (a) **Agreement** means the agreement between us and you referred to in **clause 1.1**;
- (b) **Authorised Supplier** means any person that has express authority from us to sell copies of our software to you,