

HOW TO ORDER 1:50,000 & 1:250,000 SCALE TOPOGRAPHIC VECTOR DATA

Set out below is the Licence Agreement (entitled “LINZ 1:50,000 & 1:250,000 Topographic Vector Data Supply Agreement”) which will apply to any supply of digital topographic data to you.

THE LICENCE AGREEMENT SETS OUT IMPORTANT PROVISIONS RELATING TO YOUR OBLIGATIONS TO LINZ AND LINZ’S LIABILITY TO YOU. YOUR ATTENTION IS DRAWN SPECIFICALLY TO CLAUSES 5 TO 11 OF THE LICENCE AGREEMENT.

To order your 1:50,000 & 1:250,000 scale vector data you will first need to contact LINZ’s agent at the contact details supplied on the LINZ web-site. You will be sent two copies of the Licence Agreement along with a Licence Application Form. You must sign both copies of the Licence Agreement, complete and sign the Licence Application Form and send all of these documents to the agent together with payment. Upon sending the documents you will be deemed to have made an offer to LINZ on the terms set out in the Licence Agreement. That offer will only be accepted by LINZ upon your receipt of a copy of the Licence Agreement countersigned by LINZ together with the DVD containing the topographic vector data. LINZ takes no responsibility for delays in the receipt of any offer from you. Nothing you add to the Licence Application Form or otherwise specify to LINZ or the said agent (whether or not in writing) will amend or override the terms below.

LINZ DVD 1:50,000 & 1:250,000 TOPOGRAPHIC VECTOR DATA SUPPLY AGREEMENT

- 1 These terms, along with the notices, cautionary notes and disclaimers referred to in clause 20.1 hereof, and your completed Licence Application Form together constitute the agreement between you and Her Majesty The Queen in right of New Zealand acting by and through Land Information New Zealand (“LINZ”), for the supply by LINZ and the use by you of the topographic vector data, and the media on which that data is stored, both as described in the Licence Application Form and in LINZ’s web-site relating to topographic data (“the Web-site”). That data and the said media shall be referred to in these terms as “the Data”. Unless otherwise specified in these terms, references to “the Data” also refer to the whole or any part of the said data and media (whether or not in a modified form, or as part of some compilation or derivative work). In these terms: the said agreement between you and LINZ shall be referred to as “this Agreement”; the said Licence Application Form as completed by you shall be referred to as “the Order Form”; and the person from time to time listed in the Web-site as LINZ’s agent in relation to the ordering and delivery of the Data shall be referred to as “the Agent”.

PLEASE READ THESE TERMS CAREFULLY. THEY CONTAIN IMPORTANT PROVISIONS RELATING TO YOUR OBLIGATIONS TO LINZ AND LINZ’S LIABILITY TO YOU. BY SIGNING AND SENDING TO THE AGENT THE CORRECTLY COMPLETED ORDER FORM TOGETHER WITH TWO SIGNED COPIES OF THIS AGREEMENT AND PAYMENT, YOU ARE DEEMED TO MAKE AN OFFER TO LINZ. IF LINZ ACCEPTS THAT OFFER, IN THE MANNER PRESCRIBED BELOW, THEN YOU WILL BE DEEMED TO HAVE ENTERED INTO A CONTRACT WITH LINZ AND YOU WILL BE BOUND BY THESE TERMS.

NOTHING YOU STATE ON THE ORDER FORM OR OTHERWISE (WHETHER OR NOT IN WRITING) WILL HAVE THE EFFECT OF AMENDING OR OVERRIDING THESE TERMS. ANY DELIVERY OF THE DATA BY THE AGENT TO YOU, IN CIRCUMSTANCES WHERE YOU HAVE SOUGHT TO AMEND, DELETE OR ADD TO THE TERMS SET OUT BELOW, WILL NOT CONSTITUTE ACCEPTANCE BY LINZ OF AN OFFER ON TERMS DIFFERING FROM THESE TERMS.

FORMATION OF AGREEMENT

- 2 Once you have signed and sent to the Agent, at the address from time to time listed on the Web-site as the address for the Agent, the correctly completed Order Form together with two signed copies of this Agreement and payment, you are deemed to have made an offer to LINZ on the terms set out in this Agreement.
- 3 LINZ will be deemed to accept your said offer, and an enforceable agreement between you and LINZ will be formed, upon your receipt from the Agent of a copy of this Agreement countersigned by LINZ, together with the Data. The agreement between you and LINZ will be deemed to be upon the unmodified terms and conditions of this Agreement.

AGREED USE

- 4 You have the unlimited right to use, modify, copy, create derivative works from, on-supply and otherwise deal with the Data, subject always to the terms of this Agreement.
- 5 If ever you intend to supply the Data to a third party pursuant to a contract with that third party, you will use your best endeavours to negotiate terms into that contract which:
 - 5.1 exclude and/or limit (as the case may be) LINZ's liability to the extent set out in this Agreement; and
 - 5.2 replicate this clause 5, for the benefit of LINZ.
- 6 You also agree that you will:
 - 6.1 Include, for LINZ's benefit, in any compilations, derivative works, modified versions, copies or reproductions that you make of or from the Data, all disclaimers contained on or within the packaged DVDs containing the Data and/or contained in any of the Data itself; and
 - 6.2 use your best endeavours to ensure that all third parties to whom you directly or indirectly supply such compilations, derivative works, modified versions, copies or reproductions also include, for LINZ's benefit, those disclaimers in any further compilations, derivative works, modified versions, copies or reproductions they make of or from the Data. Where derived products are in the form of published mapping, and it is not possible to reproduce the disclaimers within the publication, the following acknowledgement note shall be shown: "Sourced from NZTopo Database. Crown Copyright Reserved".

INDEMNITY

- 7 You agree to indemnify LINZ and hold LINZ harmless against all losses, demands, costs and liabilities suffered and incurred by LINZ resulting from your breach of this Agreement and/or from any claim by any third party which claim arises from or in connection with any copying of, modification to, creation of compilations or derivative works from using, and/or on-supply of the Data by you or by any third party receiving the Data from you.

DISCLAIMERS AND LIABILITY

No representations or warranties

- 8 Except as specified in clause 17, but without limiting clauses 9 to 11 below:
 - 8.1 The scale, resolution, generalisation and vertical integration specifications and accuracy tolerances of the Data are those expressed in the description of the Data contained in the Order Form and the Web-site, in particular in the material entitled "NZTopo Data Dictionary", forming part of the Data, and also accessible through the Web-site ("the Data Dictionary"). While all reasonable efforts have been made by LINZ to ensure that the Data is as accurate as practicable within the bounds of those specifications and tolerances, LINZ makes no representations and gives no warranties that the Data is free from errors, omissions or other

inaccuracies. You agree to release LINZ from all liability (whether in contract, tort (including negligence), equity or any other basis) for any errors, omissions or other inaccuracies in the Data.

- 8.2 LINZ also makes no representations and gives no warranties that the Data, as delivered, will be capable of being processed on your computer equipment and software. You agree that LINZ has no obligations under this Agreement to install or convert the Data for use with your computer equipment and software (such installation and conversion being entirely at your own risk), nor does LINZ have any obligation for training you or your personnel in the use of the Data. Further, you acknowledge that the only technical documentation LINZ is obligated to supply to you is that contained in the Data Dictionary or elsewhere in the Data itself.
- 8.3 LINZ gives no warranty that the Data will be free from infection, viruses or destructive code. LINZ shall not be liable (whether in contract, tort (including negligence), equity or any other basis) for any damage to, or viruses that may infect, your computer equipment or software due to your use, installation or conversion of the Data.

No liability for loss or damage arising from use

- 9 Except as specified in clause 17, LINZ shall not be liable (whether in contract, tort (including negligence), equity or on any other basis) for any loss or damage, sustained by you or any other person, directly or indirectly from any use whatsoever of the Data (even if LINZ has been advised of the possibility of such loss or damage). Such loss/damage includes, without limitation, damage to property, injury to persons, loss of profits, business interruption loss and loss of data.
- 10 In particular, but without limiting the foregoing provision, LINZ will not be liable (whether in contract, tort (including negligence), equity or on any other basis) for any loss or damage whatsoever arising from any modification or amendment made to the Data or any compilation or derivative work created from or using the Data, in each case whether made by you or by any other person.

LINZ's cap on liability

- 11 In the event that any exclusion of LINZ's liability set out in this Agreement is inapplicable or is held unenforceable, LINZ's liability under or in connection with this Agreement, or arising out of any use, reproduction, modification, or creation of compilations or derivative works of or from the Data (by you or by any other person), whether that liability arises in tort (including negligence), contract, equity or on any other basis, shall be limited to the (GST exclusive) fees paid by you pursuant to the Web-site relating to the Data version which gave rise to the said loss or damage.

INTELLECTUAL PROPERTY

- 12 You acknowledge and agree that all copyright and other intellectual property rights (together "IP") comprising, or used or embodied in, the Data are vested absolutely and exclusively in LINZ. LINZ does not assign to you any IP in any of the Data. You will, however, own all IP (upon its creation in material form) in any modification or derivative work you make to or from the Data, to the extent that new IP exists in that modification or derivative work.

TERMS OF PAYMENT

- 13 You agree to pay the fees, as specified in the Web-site (plus GST (if any) and any other applicable taxes, imposts or levies) by arrangement with the Agent whose contact details (including address and telephone number) are from time to time listed on the Web-site.
- 14 LINZ shall not be held responsible or liable (whether in tort (including negligence), contract, equity or on any other basis) for any losses incurred through:
- 14.1 Your provision of credit card details in the Order Form or otherwise; and/or
- 14.2 Your sending of any cash by mail or courier.

Your provision of such credit card details in the Order Form or otherwise and/or delivery of cash by mail or courier is undertaken by you entirely at your own risk.

PRIVACY

- 15 You acknowledge that any information supplied by you to the Agent may be used for any purpose in connection with the ordering or delivery of, or payment for, the Data (and may be used by LINZ and/or the Agent for, among other things, credit checking and debt collection). You authorise the Agent and LINZ to use any information you supply, pursuant to this Agreement, for these purposes. If you are an individual, you may notify the Agent of any corrections which need to be made to the information you have supplied, and you may require access to any information LINZ and/or the Agent holds about you. All such corrections and requests for access should be made in writing and sent to the Agent's address specified in the Web-site.

DELIVERY

- 16 Sections 34(2), 34(3) and 44(1)(a) of the Sale of Goods Act 1908 do not apply to the delivery of the Data to you.
- 17 You must notify the Agent within [30] days after receiving the Data of any shortage, divergence from specification or damage to the media during transit. If you do not do so, LINZ will not be liable for any such shortage, divergence or damage. Defective media will be replaced and/or such shortage, divergence or damage will be remedied within a reasonable time, provided you notify the Agent in accordance with this clause.
- 18 Risk in the Data shall pass to you upon delivery of the Data to your address specified in the Order Form.

NEW VERSIONS OF THE DATA

- 19 From time to time, LINZ may release, and make available for ordering through the Web-site, new versions of the material and information comprising the Data ("New Versions"). You will not be entitled to receive such New Versions unless you order them in the manner then prescribed in the Web-site and pay the fees (plus GST (if any) and any other applicable taxes, imposts or levies) then specified in the Web-site. Your order for the New Version shall be subject to the terms and conditions set out in the Web-site as at the date of submission of that order. LINZ will use reasonable efforts to place an announcement on the Web-site when a New Version has or will shortly become available for ordering.

GENERAL

- 20 You agree that:
- 20.1 These terms, along with the Order Form and any written notices, cautionary notes and disclaimers contained in the Data, constitute the entire agreement between you and LINZ. Any other agreement (oral or written), correspondence and other documentation relating to the Data or other subject matter of this Agreement, and not expressly referred to in this Agreement, is superseded and extinguished by this Agreement.
- 20.2 All warranties, terms and conditions which are implied into contracts by equity, common law or statute are expressly excluded from this Agreement to the fullest extent permitted.
- 20.3 All differences and disputes arising in relation to or out of or in connection with this Agreement, or your use/copying/modification/creation of compilations or derivative works from or of the Data, or your on-supply of the Data, will be determined in accordance with the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule). If the parties cannot agree on an arbitrator within 5 business days of either party notifying the other of its desire to refer the matter to arbitration, the arbitrator shall be appointed by the then President of the New Zealand Law Society.
- 20.4 Any notice or request to be given under this Agreement shall be in writing addressed to the party to whom it is to be sent, at the address or facsimile number from time to time designated by that party in writing to the other. Until either party advises the other in writing of a change in its contact details, the address and facsimile number for service of notices to that party shall be as specified in the Order Form or (in respect of LINZ) the Web-site. A notice or request:
- (a) delivered by hand, will be deemed received at the time of delivery;

- (b) delivered by prepaid post, will be deemed received 2 business days after posting unless such posting is via international mail, in which case receipt will be deemed to occur 10 business days after posting;
- (c) sent by facsimile, will be deemed received on the day of transmission,

provided that if any deemed date of receipt is not a business day in the country where receipt will occur, receipt shall be deemed to occur on the next business day after that date.

- 20.5 Neither party shall be liable for any failure to perform its obligations (other than to pay money) under this Agreement, if such failure arises from an event beyond that party's reasonable control. Such events include, without limitation, any act of God, fire, strike, embargo, loss of power of essential services, lack of or inability to obtain raw materials, labour, fuel or other supplies, or the adoption or enactment of any law or regulation directly or indirectly interfering with or rendering more burdensome the manufacture or delivery of the Data. LINZ may, by notice in writing to you, cancel any order at any time before delivery, due to circumstances beyond its control, and LINZ will not be liable in any way if it does so.
- 20.6 References to either party to this Agreement include the successors and any permitted assigns of that party. Where the context permits, references in this Agreement to "LINZ" shall also be references to any duly authorised agent (including the Agent) or subcontractor of Her Majesty the Queen in right of New Zealand acting by and through Land Information New Zealand. A reference to a "person" includes a corporation sole, and also a body of persons, whether corporate or unincorporated.
- 20.7 No failure, delay or indulgence by any party in exercising any power or right conferred on that party by this Agreement shall operate as a waiver of such power or right. Nor shall a single exercise of any such power or right preclude further exercises of that power or right or the exercise of any other power or right under this Agreement.
- 20.8 If any part of this Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Agreement which shall remain in full force.
- 20.9 In the event of a conflict between any parts of this Agreement, then for the purposes of interpretation, these terms shall have first priority, followed by the disclaimers, notice and cautionary notes set out in the Data, followed by the Order Form.
- 20.10 This Agreement shall be governed by, and construed in accordance with, the laws of New Zealand. Subject to clause 20.3, the parties submit to the jurisdiction of the New Zealand courts in respect of any dispute or difference arising under or in connection with this Agreement.