



**AUTHORISATION TO EXPORT KIWIFRUIT GRANTED TO ZESPRI GROUP LIMITED BY  
NEW ZEALAND KIWIFRUIT BOARD**

**PURSUANT TO KIWIFRUIT INDUSTRY RESTRUCTURING ACT 1999 AND  
KIWIFRUIT EXPORT REGULATIONS 1999**

**1. AUTHORISATION**

- 1.1 The New Zealand Kiwifruit Board pursuant to the Kiwifruit Industry Restructuring Act 1999 and the Kiwifruit Export Regulations 1999 hereby authorises Zespri Group Limited to export kiwifruit on the terms set out below.

**2. DEFINITIONS**

- 2.1 In this Authorisation, unless the context otherwise requires:

- (a) "the Authorisation" means this Authorisation granted under clause 1;
- (b) "enforcement event" has the meaning given to it in clause 6.1.2;
- (c) "export ban" means the restriction on exports in Regulation 3;
- (d) "FOBS" means stowed on board the ship or aircraft on which the kiwifruit is exported;
- (e) "information disclosure requirements" means the requirements in Regulations 12 to 21;
- (f) "KNZ" means the New Zealand Kiwifruit Board constituted pursuant to the Regulations;
- (g) "Regulations" means the Kiwifruit Export Regulations 1999 and a reference to a particular numbered regulation is a reference to that numbered regulation in the Regulations; and
- (h) "ZGL" means Zespri Group Limited.

- 2.2 Words and terms used in the Regulations shall have the meanings given to them in the Regulations.

**3. COMMENCEMENT**

- 3.1 This Authorisation shall have effect from 1 June 2000.

#### **4. BOARD INCURS NO LIABILITY**

- 4.1 KNZ will not be liable in respect of the export ban, or anything done or omitted to be done by ZGL.

#### **5. ACQUISITION AT FOBS**

- 5.1 The point of acquisition of title to kiwifruit purchased for export shall be at FOBS (or, at ZGL's discretion, later in the supply chain than FOBS).

#### **6. ENFORCEMENT REGIME**

##### **6.1 Identification of enforcement events**

- 6.1.1 Subject to clauses 6.1.3-6.1.5 below, on the occurrence of an enforcement event KNZ may conduct an investigation in accordance with the enforcement procedure contained in clause 6.2.

- 6.1.2 An enforcement event is:

- (a) the receipt by KNZ of any complaint made to it in writing, by any person, alleging a failure by ZGL to comply with any of the matters referred to in Regulation 33(1)(b)(i)-(iii); or
- (b) the formation by KNZ of a view that there is reason to suspect that there has been a failure by ZGL to comply with any of the matters referred to in Regulation 33(1)(b)(i)-(iii).

- 6.1.3 An enforcement event that is a complaint will not trigger the enforcement procedure in clause 6.2 if, in KNZ's opinion:

- (a) the complaint is frivolous, vexatious, or trivial; or
- (b) too long a period has elapsed between the alleged failure to comply, and the lodging of the complaint; or
- (c) the complaint is the same as, or is similar to, a complaint previously received and resolved, or raises matters which are the same as, or similar to, matters previously investigated, by KNZ.

- 6.1.4 Upon the occurrence of an enforcement event, KNZ may carry out a preliminary investigation to establish whether or not there are sufficient grounds to justify an investigation under the enforcement procedure in clause 6.2. If KNZ decides that there are sufficient grounds, it may carry out an investigation under clause 6.2.

- 6.1.5 If KNZ carries out a preliminary investigation and forms an opinion that there are insufficient grounds to justify an investigation under the enforcement procedure in clause 6.2, it will notify the complainant of this decision and will notify ZGL of the complaint if it considers it appropriate to do so.

##### **6.2 Enforcement procedure**

### *Purpose of an investigation*

- 6.2.1 The purpose of an investigation conducted under this enforcement procedure is to determine whether ZGL has, on the balance of probabilities, failed to comply with any of the matters referred to in Regulation 33(1)(b)(i)-(iii).

### *Notice of an investigation*

- 6.2.2 Before initiating an investigation under this enforcement procedure (other than a preliminary investigation), KNZ shall give notice of the investigation to ZGL and to the complainant, if any.
- 6.2.3 Notice of an investigation under clause 6.2.2 must:
- (a) describe fully the subject matter of the investigation;
  - (b) identify the matter(s) in Regulation 33(1)(b)(i)-(iii) to which the investigation relates;
  - (c) set out the evidence of the alleged non-compliance; and
  - (d) set out the evidence of the alleged effects of the non-compliance

### *Submissions*

- 6.2.4 KNZ shall give ZGL and the complainant, if any, an opportunity to make submissions on any matters raised in the notice under clause 6.2.2 and shall consider those submissions.
- 6.2.5 KNZ shall, on a continuing basis, provide ZGL with, and give ZGL the opportunity to respond to, any prejudicial comment by other parties on which KNZ intends to rely in its provisional decision.
- 6.2.6 KNZ shall, on a continuing basis, provide a complainant with, and give a complainant the opportunity to respond to, any prejudicial comment by ZGL on which KNZ intends to rely in its provisional decision.
- 6.2.7 The disclosure of prejudicial comments to ZGL or the complainant under clauses 6.2.5 and 6.2.6 may be subject to any restrictions or conditions that KNZ considers necessary for the protection of commercially sensitive information.

### *Obtaining information*

- 6.2.8 KNZ may require ZGL, within set timeframes, to make submissions, respond to questions and provide information during its investigation.
- 6.2.9 KNZ may require ZGL to supply information in ZGL's possession or control that is relevant to its investigation, in accordance with Regulation 46.
- 6.2.10 KNZ may require ZGL to supply any statements, reports, agreements, particulars, and other information that is relevant to its investigation, in accordance with Regulation 20(1)(b).

### *Issuing a decision*

6.2.11 Before KNZ makes any final decision in respect of whether ZGL has failed to comply with any of the matters in Regulation 33(1)(b)(i)-(iii), a copy of its provisional decision, with reasons, shall be made available to ZGL and to the complainant, if any.

6.2.12 KNZ shall provide ZGL and the complainant, if any, with a reasonable opportunity to respond to any comments or conclusions contained in the provisional decision, and shall consider such response.

6.2.13 KNZ shall provide its final decision in respect of whether ZGL has failed to comply with any of the matters in Regulation 33(1)(b)(i)-(iii), with reasons, in writing, to ZGL and to the complainant, if any.

6.2.14 KNZ may publish its final decision, with reasons.

### 6.3 Remedies

6.3.1 If KNZ's decision is that, on the balance of probabilities, ZGL has failed to comply with any of the matters in Regulation 33(1)(b)(i)-(iii), it may:

- (a) make one or more orders under clause 6.3.4; or
- (b) decide that no order should be made.

6.3.2 Before deciding on the making of an order under clause 6.3.4, KNZ shall give ZGL and the complainant, if any, an opportunity to make submissions on the orders, if any, which are appropriate in the circumstances.

#### *Considerations*

6.3.3 When considering whether to make an order under clause 6.3.4, KNZ must have regard to the following matters:

- (a) the submissions of ZGL or the complainant, if any.
- (b) the circumstances in which the non-compliance occurred;
- (c) the degree of the non-compliance;
- (d) the extent to which the non-compliance was inadvertent, negligent, deliberate, or otherwise;
- (e) the duration of the non-compliance;
- (f) ZGL's actions on learning of the non-compliance;
- (g) how the non-compliance was discovered;
- (h) any benefit that ZGL obtained, or expected to obtain, as a result of the non-compliance;
- (i) any previous, non-compliance by ZGL;



- (j) the impact of the non-compliance on the complainant and/or the kiwifruit industry generally;
- (k) any explanation for the non-compliance provided by ZGL; and
- (l) such other matters as KNZ thinks fit.

#### *Orders*

6.3.4 Subject to clause 6.3.5, KNZ may make the following orders on such terms and conditions as it considers appropriate:

- (a) issue a private warning or reprimand;
- (b) issue a public warning or reprimand;
- (c) impose a financial penalty in accordance with clauses 6.3.6 and 6.3.7;
- (d) order the payment of compensation in accordance with clause 6.3.8;
- (e) require ZGL to take any action necessary to restore it to a position of compliance with the matters in Regulation 33(1)(b)(i)-(iii);
- (f) make a cease and desist order restraining non-compliant conduct by ZGL; or
- (g) make orders providing for any other reasonable remedies, undertakings, or penalties that KNZ considers appropriate.

6.3.5 No order may be made by KNZ that includes any matter which cannot be provided for by the Authorisation itself under Regulation 6.

#### *Financial penalties*

6.3.6 If KNZ chooses to impose a financial penalty, KNZ may, at its discretion, apply the moneys so received in whole or in part:

- (a) to a party or parties detrimentally affected by ZGL's non-compliance;
- (b) for a purpose of benefit to the kiwifruit industry; or
- (c) to the operating costs of KNZ.

6.3.7 Prior to making an application under clause 6.3.6, KNZ may accumulate, and invest in an interest bearing bank account, such moneys received from a financial penalty for such reasonable periods as KNZ may determine.

#### *Payment of compensation*

6.3.8 KNZ may order the payment of compensation as follows:

- (a) To any supplier or potential supplier who has suffered loss directly arising from a failure by ZGL to comply with the non-discrimination rule in Regulations 9 and 10.

- (b) To any provider of capital, shareholder or supplier who has suffered loss directly arising from an activity, or ownership or operation of assets by ZGL which did not comply with the non-diversification rule in Regulation 11.
- (c) To any provider of capital, shareholder or supplier who has suffered loss directly arising from a failure by ZGL to comply with the information disclosure requirements in the Regulations.
- (d) To any person or entity who has suffered loss directly arising from a failure by ZGL to comply with the collaborative marketing requirements in clause 11.2.
- (e) To any person or entity who has suffered loss directly arising from a failure by ZGL to comply with any other matters referred to in Regulation 33(1)(b)(ii)-(iii).

#### **6.4 Costs**

- 6.4.1 KNZ may make any orders as to the costs of an investigation or an enforcement proceeding as it thinks fit, whether or not any other order has been made under clause 6.3.4.
- 6.4.2 KNZ may require a complainant to give an undertaking to comply with any order for costs made under clause 6.4.1, and may refuse to consider a complaint unless such an undertaking is provided.

#### **6.5 Compliance**

- 6.5.1 ZGL shall comply promptly with any order made by KNZ under clauses 6.3.4 and 6.4.1.

#### **6.6 Decisions are final and binding**

- 6.6.1 A decision of KNZ under this Authorisation in relation to any complaint or investigation, or order, shall be final and binding on ZGL and all other persons.

### **7. CONDUCT OF KNZ IN CARRYING OUT THE ENFORCEMENT PROCEDURE**

- 7.1 KNZ shall regulate its own procedure in a way that:

- (a) is consistent with the rules of natural justice; and
- (b) ensures that the enforcement procedure is carried out in a manner that is speedy, inexpensive and simple.

#### *Conflicts*

- 7.2 On the occurrence of an enforcement event, the members of KNZ must, prior to conducting an investigation, or preliminary investigation, consider whether they are subject to a conflict of interest in relation to the enforcement event.
- 7.3 Members of KNZ are under a continuing obligation to consider whether a conflict of interest has arisen throughout the course of the enforcement procedure in relation to the enforcement event.

- 7.4 A member of KNZ has a conflict of interest in relation to an enforcement event before KNZ if he or she:
- (a) is the complainant;
  - (b) is a family member of the complainant;
  - (c) has a financial interest in a company, trust or other entity that has brought the complaint; or
  - (d) otherwise has a particular pecuniary interest in the investigation of the enforcement event.
- 7.5 A member of KNZ will not have a conflict of interest in relation to an enforcement event simply because he or she has interests in the kiwifruit industry.
- 7.6 Where a member of KNZ has a conflict of interest they must, immediately upon becoming aware of that conflict, declare it.
- 7.7 A member who has a conflict may not participate further in the discussion of, or deliberation on, the enforcement event giving rise to the conflict, and must not be present for any such discussion or deliberation unless, all other members resolve that the conflict is so minor or inconsequential that it will not affect the independence of that member.

## **8. CONFIDENTIALITY**

- 8.1 KNZ may require ZGL and the complainant, if any, to keep confidential any information relevant to an investigation by KNZ, and any decision of KNZ, and ZGL and the complainant, if any, shall comply with such requirement.
- 8.2 KNZ may require a complainant to give an undertaking, in advance of its investigation of a complaint, to comply with any such confidentiality requirement and, if the complainant fails to give such an undertaking, KNZ may decline to investigate the complaint.

## **9. INFORMATION DISCLOSURE**

- 9.1 KNZ shall make determinations on, and administer, exemptions from the information disclosure requirements as authorised by Regulation 21.
- 9.2 ZGL shall apply in writing to KNZ if it wishes to obtain any exemption from the information disclosure requirements as authorised by Regulation 21.
- 9.3 An application for an exemption should identify the provision of the information disclosure requirements from which exemption is requested and the nature of the exemption sought.
- 9.4 An application by ZGL should include any information as to how the exemption will affect the scrutiny of ZGL's performance or how public disclosure will affect the commercial position of ZGL, as relevant to the exemption applied for.
- 9.5 KNZ shall ensure that ZGL is given a reasonable opportunity to make submissions to KNZ on any issues material to KNZ's decision to grant an exemption under Regulation 21 before the decision is made.



- 9.6 KNZ will promptly consider any application for an exemption, and any submissions in support, made by ZGL.
- 9.7 If KNZ decides to grant an exemption in respect of the information disclosure requirements under Regulation 21 it will provide notice of its decision to ZGL in writing.
- 9.8 ZGL shall comply with any request for information made by KNZ under Regulation 46.

## **10. FUNDING OF KNZ**

### **10.1 ZGL shall pay to KNZ:**

- (a) the reasonable costs incurred by KNZ in administering this Authorisation, including costs of monitoring and enforcement activities;
- (b) the reasonable costs of KNZ's communications with producers; and
- (c) no other fees.

### **10.2 For the avoidance of doubt, KNZ shall not be required to apply any moneys received from as a financial penalty under clause 6.3.4 to meet its operational or other costs.**

### **10.3 KNZ shall provide ZGL with an annual budget of its costs, before the commencement of each financial year, but this shall not limit KNZ's ability to recover its actual, reasonable costs in accordance with the terms of this Authorisation and of the Regulations.**

### **10.4 ZGL shall make payment to KNZ monthly in advance based on the budget, and KNZ shall from time to time, as agreed with ZGL, advise actual expenditure. In the event KNZ notifies ZGL of anticipated additional expenditure over budget, payments shall be adjusted to take account of this.**

### **10.5 Any dispute arising between KNZ and ZGL as to whether a cost is recoverable from ZGL in whole or in part, in terms of this Authorisation and the Regulations, shall be referred for decision to the President of the New Zealand Law Society or his or her nominee.**

## **11. COLLABORATIVE MARKETING ARRANGEMENTS**

### **11.1 ZGL must comply with the collaborative marketing requirements.**

### **11.2 The collaborative marketing requirements include the requirements:**

- (a) to comply with any direction made by KNZ under Regulation 26(1) specifying the volume of kiwifruit which ZGL must make available for collaborative marketing arrangements in that current season; and
- (b) to enter into a contract which is consistent with the terms of the collaborative marketing approval granted by KNZ under Regulations 28 with each collaborative marketing approval holder in accordance with Regulation 29.

## **12. POWER TO TERMINATE OR AMEND THE AUTHORISATION**

### **12.1 KNZ has to power to terminate this Authorisation only in the event of the insolvency of ZGL.**



12.2 Insolvency, for the purpose of clause 12.1, has the meaning given to it in Regulation 6(2).

### 13. CONFLICT WITH THE REGULATIONS

13.1 In the event of any conflict between the contents of this Authorisation and the Regulations, the Regulations shall prevail.

COMMON SEAL OF THE BOARD AFFIXED ON 22 NOVEMBER 2016:



A handwritten signature in blue ink, appearing to read 'Kristy McDonald'.

**Kristy McDonald QC**  
Chair

A handwritten signature in blue ink, appearing to read 'Hendrik Pieters'.

**Hendrik Pieters**  
Deputy Chair

A handwritten signature in blue ink, appearing to read 'Ian Greaves'.

**Ian Greaves**

A handwritten signature in blue ink, appearing to read 'Andrew Fenton'.

**Andrew Fenton**

A handwritten signature in blue ink, appearing to read 'Ruth Lee'.

**Ruth Lee**