



**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 ZGL 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 Export Authorisation granted under clause 1;
- (b) "enforcement event" has the meaning given to it in clause 6.1.1;
- (c) "export ban" means the restriction on exports of kiwifruit 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" in clause 6.5.1 means the company incorporated under the Companies Act 1993 as at April 2000 with the name Zespri Group Limited, and in the rest of the Authorisation, means that company and its subsidiaries.

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

**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 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 may have been a failure by ZGL to comply with any of the matters referred to in Regulation 33(1)(b)(i)-(iii).

6.1.2 Upon the occurrence of an enforcement event, KNZ may conduct an investigation in accordance with the enforcement procedures contained in clause 6.2.

6.1.3 Upon the occurrence of an enforcement event, KNZ may, at its sole discretion prior to conducting an investigation, carry out a preliminary assessment to establish whether or not it considers 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

6.1.4 Where KNZ carries out a preliminary assessment, KNZ may, and to the extent it considers necessary and possible, notify ZGL of the nature of the complaint and any outcome.

6.1.5 KNZ may request that ZGL and/or the complainant provide any additional information which KNZ considers may assist it in undertaking the preliminary assessment.

##### **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 As soon as KNZ is able to do so in the context of an investigation under this enforcement procedure, KNZ shall give notice of the investigation to ZGL and to the complainant.

6.2.3 To the extent possible, a notice of investigation under clause 6.2.2 will:

- (a) describe the nature of the investigation; and
- (b) identify the matter(s) in Regulation 33(1)(b)(i)-(iii) to which the investigation relates; and
- (c) set out the evidence of the alleged non-compliance; and
- (d) set out the evidence of the alleged effects of the non-compliance; and
- (e) describe the scope of the investigation; and
- (f) set out the process the investigation will follow and an indicative timeframe.

6.2.4 KNZ may from time to time amend the notice of investigation by way of notice of investigation updates which will be issued to ZGL and the complainant.

6.2.5 Where KNZ consider it is necessary, KNZ will give ZGL and the complainant the opportunity to make submissions to KNZ prior to issuing a notice of investigation update.

#### Obtaining information

6.2.6 KNZ may require ZGL, within set timeframes, to make submissions, respond to questions, supply information in ZGL's possession or control in accordance with Regulation 46, and supply any statements, reports, and agreements in accordance with Regulation 20(1)(b).

#### Opportunity to respond

6.2.7 If KNZ proposes to make a finding that is adverse to ZGL or the complainant, KNZ must, using whatever procedure it may determine, be satisfied that ZGL or the complainant:

- (a) is made aware of the matters on which the proposed finding is based; and
- (b) has had an opportunity, at any time, during the course of the investigation, to comment on those matters.

#### Issuing a decision

6.2.8 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 written provisional decision, with reasons, shall be made available to ZGL and to the complainant.

6.2.9 KNZ shall provide ZGL and the complainant with a reasonable opportunity to respond to the provisional decision.

6.2.10 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.

6.2.11 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 making an order under clause 6.3.4, KNZ shall give ZGL and the complainant a reasonable opportunity to make submissions on any proposed order/s, that KNZ is proposing to make.

#### 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 and 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 may 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 confidential 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 applying the monies received 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 to affected persons (which may also include groupings of the affected persons) 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 producer who has suffered loss directly arising from a failure by ZGL to comply with the prior notice rule in Regulation 10A.
- (c) To any producer who has suffered loss directly arising from a failure by ZGL to comply with the non-diversification rule in Regulation 11.
- (d) To any producer, ZGL shareholder, and supplier, who has suffered loss directly arising from a failure by ZGL to comply with the information disclosure requirements in the Regulations.
- (e) To any person who has suffered loss directly arising from a failure by ZGL to comply with the collaborative marketing requirements in clause 11.2.
- (f) To any person 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.

## **6.5 Compliance**

- 6.5.1 ZGL is responsible for ensuring that it and its subsidiaries comply fully with the Enforcement Procedure detailed in section 6 of this Authorisation.
- 6.5.2 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) complies with the rules of natural justice; and
- (b) ensures that the enforcement procedure is carried out in a manner that is efficient and avoids unnecessary delay or cost.

## **8. CONFIDENTIALITY**

- 8.1 Where KNZ considers it necessary for the protection of commercially sensitive or confidential information, it may restrict or place conditions on information it receives during a preliminary assessment or investigation. Where KNZ considers it appropriate, ZGL and the complainant will have the opportunity to comment prior to restrictions or conditions being put in place. ZGL and the complainant shall comply with such restrictions or conditions.
- 8.2 Where KNZ considers it necessary to protect commercially sensitive or confidential information, it may restrict or suppress information or findings in its notifications, provisional decision, final decision, orders, penalties, and costs. Where KNZ considers it appropriate, ZGL and the complainant will have the opportunity to comment prior to restrictions or suppression orders being made. ZGL and the complainant, shall comply with any such protection orders.

## **9. INFORMATION DISCLOSURE**

- 9.1 KNZ shall make determinations on, and administer, exemptions from the information disclosure requirements under Regulation 21.
- 9.2 ZGL shall apply in writing to KNZ if it wishes to obtain any exemption from the information disclosure requirements under 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.
- 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) the reasonable collaborative marketing costs incurred by KNZ which are not cost recovered from the applicants; but
  - (d) no other fees.
- 10.2 For the avoidance of doubt, KNZ shall not be required to apply any moneys received from ZGL 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.

## **11. COLLABORATIVE MARKETING ARRANGEMENTS**

- 11.1 ZGL must comply with the collaborative marketing requirements.
- 11.2 The collaborative marketing requirements include:
- (a) 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) enter into a contract with each collaborative marketing approval holder in accordance with Regulation 29 which is consistent with the terms of the collaborative marketing approval granted by KNZ under Regulation 28.

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

12.1 KNZ has the 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).

12.3 KNZ has the power to amend this authorisation in accordance with Regulation 7.

**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 9 FEBRUARY 2021 IN THE PRESENCE OF:



**Kristy McDonald QC**  
Chair



**Colin Olesen**



**Peter Ombler**



**Andrew Fenton**



**Sarah Paterson**



**Neville Harris**