



ANVAS



Terms and Conditions

1. General

1.1 These terms and conditions and the terms of the Application govern the supply of ANVAS Accreditation by Avocados Australia Limited to an Applicant pursuant to an Application for ANVAS Accreditation.

1.2 These terms and conditions prevail over any other terms that may be communicated In Writing or orally, whether in an order, letter, or other document, in negotiations or otherwise. If there is any inconsistency between these terms and conditions and other ANVAS documents, these terms and conditions prevail to the extent of any such inconsistency.

1.3 No person acting or purporting to act on behalf of Avocados Australia Limited shall have authority to waive or change these terms orally. Waivers or changes shall have effect only if made In Writing and signed by a duly authorised officer of Avocados Australia Limited.

1.4 The Avocados Australia Limited may vary, insert additional provisions and/or amend these terms and conditions at any time by notifying You In Writing, such notice to be signed by an authorised officer of Avocados Australia Limited. Such variation, insertion and/or amendment will take effect after the expiration of fourteen (14) days of such notice being given, or such longer period as is stipulated in the notice, unless You notify the Avocados Australia Limited In Writing that You do not accept them, in which event the Avocados Australia Limited may terminate this Contract, including ANVAS Accreditation, by written notice to You.

2. Definitions

In these terms and conditions:

"ANVAS" means the Avocado Nursery Voluntary Accreditation Scheme administered by Avocados Australia Limited

"ANVAS Accreditation" means confirmation that the Site of the Applicant has been certified to meet the requirements of NIASA Accreditation and the Applicant meets these terms and conditions;

"Applicant" means a company or individual carrying on an Appropriate Business;

"Application" means an application for ANVAS Accreditation of a Site made, or to be made, by an Applicant to Avocados Australia Limited, such application to be in form and substance acceptable to the Avocados Australia Limited;

"Appropriate Business" means an avocado production nursery business;

"Certificate" means the document issued by the Avocados Australia Limited to record ANVAS Accreditation of an Applicant;

"Contract" means the contract between the Avocados Australia Limited and You resulting from Your Application for ANVAS Accreditation, which includes these terms and conditions;

"ANVAS Oversight Committee" means the Avocados Australia Limited committee providing oversight to the ANVAS Accreditation comprising of nominees of Avocados Australia Limited and NGIA.

"Avocados Australia Limited" means Avocados Australia Limited (ACN 105 853 807)

"GIA" or "Greenlife Industry Australia" means Greenlife Industry Australia (ACN 634 584 017) or any successor body performing the same functions as the national peak industry body for the nursery industry;

"In Writing" in regard to a document, means written on paper or produced in a way that that can be printed;

"NIASA Accreditation" means confirmation that the Site of the Applicant has been certified in accordance with the NIASA Accreditation Procedures including Appendix 13 of those Procedures – Avocado Nursery Stock Specification accreditation;

"ANVAS Accreditation Mark" means a symbol, word or other sign that signifies that an Applicant has received ANVAS Accreditation;

"NIASA Accreditation Procedures" means the procedures developed by GIA, as documented in the then current NIASA Guidelines to assess each Site for the purpose of granting or maintaining NIASA Accreditation;

"Site" means each location the subject of an Application, at which the Applicant carries on an Appropriate Business;

"You" means the Applicant applying for ANVAS Accreditation requested by You pursuant to Your Application.

3. ANVAS Application

3.1 An Application must be lodged with the Avocados Australia Limited.

3.2 Subject to any requirement of the Avocados Australia Limited, an Application must be made for each Site on which You carry on an Appropriate Business under the one business name.

3.3 The Application must include all details required by Avocados Australia Limited as set out in the Application form.

3.4 The Avocados Australia Limited agrees to provide, and You agree to accept, the ANVAS Accreditation requested by You pursuant to Your Application.

4. Fees and Charges

4.1 You must pay to the Avocados Australia Limited all fees and charges due in respect of ANVAS Accreditation provided or to be provided by the Avocados Australia Limited to You.

4.2 The fees and charges payable under clause 4.1 are those set out in the ANVAS Application form current from time to time or as otherwise agreed to by the Avocados Australia Limited and You, from time to time.

4.3 The Avocados Australia Limited may from time to time render invoices for fees and charges due and You must pay the invoiced amount to the Avocados Australia Limited within the time specified in the invoice.

4.4 The Avocados Australia Limited reserves the right to amend its fees and charges at any time and to require payment of fees and charges in advance.

4.5 The Avocados Australia Limited reserves the right to suspend, cancel or terminate Your ANVAS Accreditation if You fail to pay scheduled fees and charges, as invoiced by the Avocados Australia Limited from time to time, for the provision of ANVAS Accreditation.

5. ANVAS Accreditation

5.1 Once Your Application is received by the Avocados Australia Limited Your Application will be assessed within fourteen (14) days to determine if You meet the criteria for ANVAS Accreditation

5.2 If you are not in breach of these terms and conditions and the warranties in the Application, the Avocados Australia Limited will:

- (a) Grant ANVAS Accreditation, on such terms and conditions as the Avocados Australia Limited thinks fit, in its absolute discretion
- (b) issue You with a Certificate, valid for the period during which your ANVAS Accreditation remains current
- (c) grant to You a non-exclusive licence, revocable at will, to use the applicable ANVAS Accreditation Mark for the purpose of displaying the ANVAS Accreditation
- (d) keep You informed of changes or updates to the ANVAS Accreditation and these terms and conditions

5.3 If the Avocados Australia Limited is not satisfied that ANVAS Accreditation is appropriate, the Avocados Australia Limited will notify You

5.4 You will comply with the Avocados Australia Limited's directions, acting reasonably, in relation to ANVAS Accreditation.

6. After ANVAS Accreditation

6.1 Subject to these terms and conditions, and unless terminated earlier under this Contract, Your ANVAS Accreditation remains valid for the remainder of the calendar year in which ANVAS Accreditation was issued.

6.2 You must renew Your Accreditation each year by completing a renewal Application, paying any fees and charges as outlined in 4.2 and providing required documentation requested by Avocados Australia Limited, by the date notified by Avocados Australia Limited.

6.3 Failure to renew Your Accreditation by the date notified by Avocados Australia Limited will deem Your Accreditation to be expired.

6.4 You must not, without the Avocados Australia Limited's consent, alter, modify, deface or destroy the Certificate.

6.5 Subject to these terms and conditions, for each Site, You may publicise the fact that ANVAS Accreditation has been granted and display the Certificate as evidence of ANVAS Accreditation. You may copy the Certificate, provided that each copy is clearly identified as a copy.

6.5 The original and any copies of the Certificate remain the property of the Avocados Australia Limited and must be returned immediately if requested by the Avocados Australia Limited

6.6 You must not:

- (a) engage in any conduct which might mislead, deceive or confuse any person in relation to; or
- (b) otherwise misrepresent the nature, status, scope or effect of, Your ANVAS Accreditation.

6.7 You must promptly comply with any directions given by the Avocados Australia Limited to correct any conduct or misrepresentation in breach of clause 6.6.

6.8 The Avocados Australia Limited may suspend or terminate Your ANVAS Accreditation with immediate effect by giving notice to You if the Avocados Australia Limited reasonably believe that ANVAS Accreditation is no longer appropriate or You breach this Contract.

6.9 If Your ANVAS Accreditation is suspended:

- (a) Upon notice of suspension, the Avocados Australia Limited will furnish You with information outlining the steps that must be taken by You to enable the suspension to be lifted;
- (b) You must immediately take all steps necessary to enable the suspension of Your ANVAS Accreditation to be lifted; and
- (c) You must take all steps reasonably required by the Avocados Australia Limited to prevent the public being misled or misinformed

6.10 If the Avocados Australia Limited is satisfied with the remedial action taken by You, the Avocados Australia Limited may lift the suspension of ANVAS Accreditation by notifying You

6.11 The Avocados Australia Limited may terminate Your ANVAS Accreditation with immediate effect by giving notice to You, if Your ANVAS Accreditation has remained suspended for a period of more than ninety (90) days.

6.12 If Your ANVAS Accreditation expires or is terminated or the Contract is terminated or You no longer wish to be ANVAS Accredited, You must immediately:

- (a) pay to the Avocados Australia Limited all amounts owing but unpaid by You;
- (b) cease using any ANVAS Accreditation Mark;
- (c) withdraw from public display and return to the Avocados Australia Limited, as required by the Avocados Australia Limited, the original and all copies of the Certificate;
- (d) cease all advertising, promotions or other publication of the fact of ANVAS Accreditation;
- (e) take any steps reasonably required by the Avocados Australia Limited to notify staff, customers and/or suppliers of the expiry or termination of the ANVAS Accreditation;
- (f) take steps to repaint or redecorate signage or other parts of Your Site to remove all references to ANVAS Accreditation;
- (g) stop using the Avocados Australia Limited's confidential information and, at the Avocados Australia Limited's option return to the Avocados Australia Limited all the Avocados Australia Limited's confidential information in Your possession or control; and
- (h) take all other necessary steps to ensure that third parties are not misled to believe that the ANVAS Accreditation has not expired or been terminated.

7. Confidentiality

7.1 The Avocados Australia Limited will direct its employees, agents and contractors to treat as confidential, any confidential information belonging to You with which the Avocados Australia Limited becomes acquainted during the term of the Contract including tree sales data, except that, where the Avocados Australia Limited considers it appropriate, the Avocados Australia Limited may disclose Your identity and the nature, status, scope or effect of Your ANVAS Accreditation.

7.2 You must treat as confidential and not disclose to any third party, without the prior written consent of the Avocados Australia Limited, proprietary or confidential information belonging to the Avocados Australia Limited.

7.3 The obligations of confidentiality under these terms and conditions do not extend to information that:

- (a) is rightfully known to or in the possession or control of the receiving party and not subject to an obligation of confidentiality owed by the receiving party;
- (b) is public knowledge (otherwise than as a result of breach of these terms and conditions);
- (c) is required by an accrediting authority to be disclosed; or

(d) is required by law to be disclosed.

8. Intellectual property rights

You acknowledge that:

(a) Avocados Australia Limited is the owner all intellectual property rights in the Certificate, the ANVAS Accreditation Mark, the ANVAS Accreditation Procedures and any associated documentation and in any way relating to ANVAS Accreditation; and

(b) no right, title or interest in the Certificate, the ANVAS Accreditation Mark, the ANVAS Accreditation Procedures or that associated documentation is transferred or assigned to You under the Contract

9. Limitation of liability

9.1 All conditions and warranties implied by statute, general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void ('non-excludable statutory condition') are excluded from, and do not apply to, these terms and conditions.

9.2 Except to the extent prohibited by law, the entire liability of Avocados Australia Limited for all claims losses or damages arising out of or related to the Contract and/or the ANVAS Accreditation, whether in contract, equity, negligence, tort, statute or otherwise, is limited to and will not exceed, in the aggregate for all claims, actions and causes of action of every kind and nature, the amount paid to Avocados Australia Limited under the Contract and excludes liability for loss of income, profit or savings, loss of data, loss of commercial reputation or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, even if Avocados Australia Limited has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed. No cause of action which arises out of an event or events, which occurred more than two years prior to the commencement of proceedings, may be asserted by You or any third party against Avocados Australia Limited. A reference in this clause to "You" and "Avocados Australia Limited" includes its respective officers, employees, agents and contractors.

10. Insurance

You must:

(a) take out and maintain valid and enforceable public liability, professional indemnity and workers' compensation insurance policies to cover potential liability of:

- (i) Yourself arising out of the Contract or ANVAS Accreditation; and
- (ii) Avocados Australia Limited arising out of Your breach of these terms and conditions or any of Your acts or omissions, as if Avocados Australia Limited were a jointly insured party under each of those policies; and

(b) upon request, provide Avocados Australia Limited with certificates of currency and any other evidence of those policies that Avocados Australia Limited may reasonably require.

11. Indemnity

You must indemnify Avocados Australia Limited from and against all expenses, losses, damages and costs (on a full indemnity solicitor and own client basis and whether incurred by or awarded against Avocados Australia Limited) that Avocados Australia Limited may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach of these terms and conditions by You, including, but not limited to, a breach in respect of which Avocados Australia Limited exercises an express right to terminate these terms and conditions; or
- (b) any loss of or damage to any property or injury to or death of any person;
 - (i) caused by any negligent act or omission or wilful misconduct of You or Your officers, contractors and employees; or
 - (ii) arising out of or in connection with Your Site, product, process or service that is the subject of ANVAS Accreditation.

12. Termination of contract

12.1 You or Avocados Australia Limited may terminate the Contract at any time by giving thirty (30) days' prior written notice to the other party.

12.2 In addition to any other right of termination under the Contract, the Avocados Australia Limited may terminate the Contract with immediate effect by giving written notice to You if:

- (a) You breach any of these terms and conditions and fail to remedy the breach within thirty (30) days after receiving notice requiring You to do so;
- (b) You breach a material provision of these terms and conditions where that breach is not capable of remedy;
- (c) any of Your Sites ceases to have ANVAS Accreditation; or
- (d) any event referred to in clause 12.3 happens to You

12.3 You must notify the Avocados Australia Limited immediately if:

- (a) there is any change, after the date of Application, in Your direct or indirect beneficial ownership or control;
- (b) You dispose of the whole or any part of Your assets, operations or business, other than in the ordinary course of business;
- (c) You cease to carry on business;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of Your assets, operation or business;

- (e) any step is taken to enter into any arrangement between You and Your creditors;
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of Your assets or business; or
- (g) where You are a partnership, any step is taken to dissolve that partnership or a partner dies.

12.4 You acknowledge and agree that the Avocados Australia Limited has the right to suspend, cancel or terminate Your ANVAS Accreditation and in so doing takes no responsibility, nor has any liability, for any impacts the removal of Your ANVAS Accreditation may have on Your Business. For clarity, you release Avocados Australia Limited from all damages, costs and expenses arising from a suspension, cancellation or termination of Your ANVAS Accreditation.

13. After termination

13.1 On termination of the Contract, Your ANVAS Accreditation is cancelled and You must immediately comply with all Your obligations under clause 6.12.

13.2 Clauses 6.12, 7, 8, 9, 11, and 13 continue after termination of the Contract

13.3 Termination of the Contract does not affect any accrued rights or remedies of either party.

14. Appeals

(a) You have the right to appeal against the decision of the Avocados Australia Limited not to grant ANVAS Accreditation in respect of Your Application and if the Avocados Australia Limited suspends or terminates Your ANVAS Accreditation.

(b) Your appeal must be made In Writing and include all details and materials relating to such appeal and be submitted to the Avocados Australia Limited together with payment of the appropriate fee (if any), within fourteen (14) days of being notified of the decision not to grant or to terminate Your ANVAS Accreditation.

(c) Your appeal will be reviewed by the Avocados Australia Limited no later than thirty (30) days after receipt of the appeal.

(d) The Avocados Australia Limited will inform You of the outcome of the appeal In Writing.

(e) The decision of the Avocados Australia Limited is final and conclusive.

15. Assignment

15.1 Avocados Australia Limited may assign all or any of their respective rights under the Contract.

15.2 Your rights under this Contract including, without limitation, the ANVAS Accreditation and Certificate are personal and cannot be assigned, transferred or otherwise disposed.

16. Severability. If all or any part of the Contract is found by a Court of competent jurisdiction to be illegal or unenforceable, the illegal or unenforceable part(s) will be read down so as to make the part legal and enforceable, but if this is not possible, then those parts will be severed from the Contract and the remaining parts of the Contract will continue in force.

17. Waiver. The failure of Avocados Australia Limited at any time to require performance of any obligation under the Contract is not a waiver of its right at any other time to require performance of that or any other obligation under the Contract.

18. Relationship. The Contract does not create any fiduciary, employment, agency or partnership relationship between Avocados Australia Limited and You.

19. Notice

19.1 A party giving notice or notifying under the Contract must do so In Writing:

(a) directed to the recipient's address for correspondence as nominated in the Application or varied by any notice; and

(b) hand delivered or sent by prepaid post to that address.

19.2 A notice given in accordance with clause 19.1 is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, four (4) days after the date of posting; or

(c) if sent by electronic mail, when the sender's computer system generates a message confirming successful transmission of the total number of pages of the notice, but if the electronic mail is sent after business hours in the place of receipt, then it will be deemed to be received on the next business day.

20. Headings. Headings are for ease of reference only and do not affect the meaning of these terms and conditions.

21. Force Majeure. No party is liable for any failure to perform or delay in performing its obligations under the Contract if that failure or delay is due to flood, fire, earthquake, act of God or other occurrence beyond that party's reasonable control (other than lack of funds). If that failure or delay exceeds sixty (60) days, the other party may terminate the Contract, without penalty (except for antecedent breaches) and with immediate effect by giving notice to the other party. The terms of clause 6.12 apply to such termination.

22. Consent. Where the consent or approval of the Avocados Australia Limited is required under the Contract then, unless otherwise stipulated to the contrary, such consent or approval may be given, withheld or conditioned, as the Avocados Australia Limited thinks fit, in its absolute discretion. Any consent or approval given must be In Writing.

23. Governing law and jurisdiction

23.1 The Contract is governed by the law applicable in Queensland

23.2 Each party submits to the non-exclusive jurisdiction of the courts of Queensland