



QBAN

Terms and Conditions



1. General

1.1 These terms and conditions and the terms of the Application govern the supply of QBAN Accreditation by Australian Banana Growers' Council (ABGC) to an Applicant pursuant to an Application for QBAN Accreditation.

1.2 These terms and conditions prevail over any other terms that may be communicated in writing or orally. If there is any inconsistency between these terms and conditions and other QBAN 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 ABGC 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 ABGC.

1.4 The ABGC 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 ABGC. Such 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 ABGC in writing that you do not accept them, in which event the ABGC may terminate this Contract, including QBAN Accreditation, by written notice to you.

2. Definitions

In these terms and conditions:

"QBAN" means the Quality Banana Approved Nursery accreditation scheme administered by ABGC;

"QBAN Accreditation" means confirmation that the Site of the Applicant has been certified to meet the requirements of NIASA accreditation to Banana Nursery Stock Specification and the Applicant meets these terms and conditions;

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

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

"Appropriate Business" means a banana propagative business;

"Certificate" means the document issued by the ABGC to record QBAN Accreditation of an Applicant;

"Contract" means the contract between the ABGC and you resulting from your Application for QBAN Accreditation, which includes these terms and conditions;

"QBAN Oversight Committee" means the ABGC committee providing oversight to the QBAN Accreditation comprising of nominees of ABGC and GIA.

"Australian Banana Growers' Council" means ABGC (ABN 60 381 740 734) **"In Writing"** in regard to a document, means written on paper or produced in a way that that can be printed;

"GIA" means **Greenlife Industry Australia (ACN 59 634 584 017)** or any successor body performing the same functions as the national peak industry body for the nursery industry;

"NIASA Accreditation" means confirmation that the Site of the Applicant has been certified in accordance with the NIASA Accreditation Procedures including Appendix 16 NIASA accreditation to the Banana Nursery Stock Specification;

"QBAN Accreditation Mark" means a symbol, word or other sign that signifies that an Applicant has received QBAN 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 QBAN Accreditation requested by you pursuant to your Application.

3. QBAN Application

- 3.1 A QBAN Application must be lodged with the ABGC.
- 3.2 An Application must be made for each Site on which you carry on an Appropriate Business under the one business name.
- 3.3 The QBAN Application must include all details required by ABGC as set out in the Application form.
- 3.4 The ABGC agrees to provide, and you agree to accept, the QBAN Accreditation requested by you pursuant to your Application.

4. Fees and Charges

- 4.1 You must pay to the ABGC all fees and charges due in respect of QBAN Accreditation provided or to be provided by the ABGC to you.
- 4.2 The fees and charges payable under clause 4.1 are those set out in the QBAN Application form current from time to time or as otherwise agreed to by the ABGC and you, from time to time.
- 4.3 The ABGC may from time to time, render invoices for fees and charges due and you must pay the invoiced amount to the ABGC within the time specified in the invoice.
- 4.4 The ABGC 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 ABGC reserves the right to suspend, cancel or terminate your QBAN Accreditation if you fail to pay scheduled fees and charges, as invoiced by the ABGC from time to time, for the provision of QBAN Accreditation.

5. QBAN Accreditation

5.1 Once your Application is received by the ABGC your Application will be assessed within fourteen (14) days to determine if you meet the criteria for QBAN Accreditation.

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

- (a) Grant QBAN Accreditation, on such terms and conditions as the ABGC thinks fit, in its absolute discretion.
- (b) Issue you with a Certificate, valid for the period during which your QBAN Accreditation remains current.
- (c) Grant to you a non-exclusive licence, revocable at will, to use the applicable QBAN Accreditation Mark for the purpose of displaying the QBAN Accreditation.
- (d) Keep you informed of changes or updates to the QBAN Accreditation and these terms and conditions.

5.3 If the ABGC is not satisfied that QBAN Accreditation is appropriate, the ABGC will notify you.

5.4 You will comply with the ABGC's directions, acting reasonably, in relation to QBAN Accreditation.

6. After QBAN Accreditation

6.1 Subject to these terms and conditions, and unless terminated earlier under this Contract, your QBAN Accreditation remains valid for the remainder of the calendar year in which QBAN 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 ABGC, by the date notified by ABGC.

6.3 Failure to renew your Accreditation by the date notified by ABGC will deem your Accreditation to be expired.

6.4 You must not, without the ABGC'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 QBAN Accreditation has been granted and display the Certificate as evidence of QBAN Accreditation. You may copy the Certificate, provided that each copy is clearly identified as a copy.

- 6.6 The original and any copies of the Certificate remain the property of the ABGC and must be returned immediately if requested by the ABGC.
- 6.7 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 QBAN Accreditation.
- 6.8 You must promptly comply with any directions given by the ABGC to correct any conduct or misrepresentation in breach of clause 6.6.
- 6.9 The ABGC may suspend or terminate your QBAN Accreditation with immediate effect by giving notice to you if the ABGC reasonably believe that QBAN Accreditation is no longer appropriate or you breach this Contract.
- 6.10 If Your QBAN Accreditation is suspended:
- a) Upon notice of suspension, the ABGC 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 QBAN Accreditation to be lifted; and
 - c) You must take all steps reasonably required by the ABGC to prevent the public being misled or misinformed.
- 6.11 If the ABGC is satisfied with the remedial action taken by you, the ABGC may lift the suspension of QBAN Accreditation by notifying you.
- 6.12 The ABGC may terminate your QBAN Accreditation with immediate effect by giving notice to you, if your QBAN Accreditation has remained suspended for a period of more than ninety (90) days.
- 6.13 If your QBAN Accreditation expires or is terminated or the Contract is terminated or you no longer wish to be QBAN Accredited, you must immediately:
- (a) pay to the ABGC all amounts owing but unpaid by you;
 - (b) cease using any QBAN Accreditation Mark;
 - (c) withdraw from public display and return to the ABGC, as required by the ABGC, the original and all copies of the Certificate;
 - (d) cease all advertising, promotions or other publication of the fact of QBAN Accreditation;
 - (e) take any steps reasonably required by the ABGC to notify staff, customers and/or suppliers of the expiry or termination of the QBAN Accreditation;

- (f) take steps to repaint or redecorate signage or other parts of your Site to remove all references to QBAN Accreditation;
- (g) stop using the ABGC's confidential information and, at the ABGC's option return to the ABGC all the ABGC'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 QBAN Accreditation has not expired or been terminated.

7. Confidentiality

- 7.1 The ABGC will direct its employees, agents and contractors to treat as confidential, any confidential information belonging to you with which the ABGC becomes acquainted during the term of the Contract, except that, where the ABGC considers it appropriate, the ABGC may disclose your identity and the nature, status, scope or effect of your QBAN Accreditation.
- 7.2 You must treat as confidential and not disclose to any third party, without the prior written consent of the ABGC, proprietary or confidential information belonging to the ABGC.
- 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) ABGC is the owner all intellectual property rights in the Certificate, the QBAN Accreditation Mark, the QBAN Accreditation Procedures and any associated documentation and in any way relating to QBAN Accreditation; and
- (b) no right, title or interest in the Certificate, the QBAN Accreditation Mark, the QBAN 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 ABGC for all claims losses or damages arising out of or related to the Contract and/or the QBAN 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 ABGC 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 ABGC 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 ABGC. A reference in this clause to "you" and "ABGC" 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 QBAN Accreditation; and
 - ii ABGC arising out of your breach of these terms and conditions or any of your acts or omissions, as if ABGC were a jointly insured party under each of those policies; and
- (b) upon request, provide ABGC with certificates of currency and any other evidence of those policies that ABGC may reasonably require.

11. Indemnity

You must indemnify ABGC 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 ABGC) that ABGC 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 ABGC 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 QBAN Accreditation.

12. Termination of contract

- 12.1 You or ABGC 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 ABGC 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 QBAN Accreditation; or
 - (d) any event referred to in clause 12.3 happens to you
- 12.3 You must notify the ABGC 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 ABGC has the right to suspend, cancel or terminate your QBAN Accreditation and in so doing takes no responsibility, nor has any liability, for any impacts the removal of your QBAN Accreditation may have on your Business. For clarity, you release ABGC from all damages, costs and expenses arising from a suspension, cancellation or termination of your QBAN Accreditation.

13. After termination

- 13.1 On termination of the Contract, your QBAN 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 ABGC not to grant QBAN Accreditation in respect of your Application and if the ABGC suspends or terminates your QBAN Accreditation.
- (b) Your appeal must be made In Writing and include all details and materials relating to such appeal and be submitted to the ABGC 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 QBAN Accreditation.
- (c) Your appeal will be reviewed by the ABGC no later than thirty (30) days after receipt of the appeal.
- (d) The ABGC will inform you of the outcome of the appeal In Writing.
- (e) The decision of the ABGC is final and conclusive.

15. Assignment

- 15.1 ABGC may assign all or any of their respective rights under the Contract.
- 15.2 Your rights under this Contract including, without limitation, the QBAN 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 ABGC 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 ABGC 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 (5) 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 ABGC is required under the Contract then, unless otherwise stipulated to the contrary, such consent or approval may be given, withheld or conditioned, as the ABGC 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 laws applicable in Queensland
- 23.2 Each party submits to the non-exclusive jurisdiction of the courts of Queensland