

The Incorporated Societies Act 2022
Constitution and Rules
of
Tomatoes New Zealand Incorporated

1 Definitions

1.1 In these rules unless the context otherwise requires:

“**Act**” means the Incorporated Societies Act 2022;

“**AGM**” means the annual general meeting of TNZ Inc;

“**Annual Report**” means the report referred to in clause 15.11;

“**Board**” means the committee of Directors of TNZ Inc and the TNZ Inc Chair constituted in terms of clause 7;

“**Complaint**” has the meaning set out in section 38 of the Act;

“**Director**” means a person elected as Director of the Board pursuant to these rules;

“**Dispute**” has the meaning set out in section 38 of the Act;

“**Dispute Procedures**” means the procedures set out in Schedule 1;

“**general meeting**” means any meeting of Members;

“**General Manager**” means the general manager appointed by the Board to undertake administrative and secretarial duties on behalf of TNZ Inc or person performing the equivalent duties by whatever name known

“**HortNZ**” means Horticulture New Zealand Incorporated;

“**Interests Register**” means the interests register kept by TNZ Inc pursuant to section 73 of the Act;

“**Levy**” means a levy in respect of the growing of tomatoes pursuant to the Commodity Levies (Fresh Tomatoes) Order 2019 (“the Order”) or such order made in substitution for the Order pursuant to the Commodity Levies Act 1990, or pursuant to any voluntary levy agreed to be paid by commercial growers of tomatoes;

“**Life Member**” means a person who has been designated as a Life Member as set out in clause 4.4;

“**Member**” means a person who has qualified for, and been accepted as, a Member, as set out in clause 4.2, and includes both corporate and unincorporated bodies;

“**month**” means a calendar month;

“person” includes an individual, firm, company, corporation, partnership, incorporated or unincorporated body of persons, joint venture (incorporated or unincorporated), Maori incorporation, incorporated charitable trust board, Maori Trust Board, any public, territorial or regional authority, any government, and any agency of any government or of any such authority;

“Register of Members” means the register of members kept by TNZ Inc pursuant to section 79 of the Act;

“Registrar” means the Registrar of Incorporated Societies;

“rules” means these rules as they may be amended from time to time;

“TNZ Inc” means the incorporated society governed by these rules and known as Tomatoes New Zealand Incorporated or by such other name as TNZ Inc adopts from time to time;

“TNZ Inc Chair” means the chairperson of TNZ Inc from time to time elected as set out in clause 7.3.

1.2 In the interpretation of this Constitution:

- (a) A reference to “writing” or “in writing” includes a reference to an electronic communication as that term is used in the Electronic Transactions Act 2002;
- (b) A reference to persons present or voting at a general meeting includes persons present or voting by proxy;
- (c) A reference to a "month" means a calendar month;
- (d) References to the singular shall include the plural and reference to the one gender shall include other genders;
- (e) A reference to any legislation, regulation or order includes a modification and re-enactment of that legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;
- (f) Headings are included for the purpose of ease of reference only and shall not have any effect on construction and interpretation;
- (g) A reference to a person includes a partnership and also a body of persons, whether corporate or unincorporated; and
- (h) A reference to “includes” and “including” shall be by way of inclusion and shall not limit other matters to which no reference is made.

2 Name and Registered Office

- 2.1 The name of the society is Tomatoes New Zealand Incorporated ("TNZ Inc").
- 2.2 The registered office of TNZ Inc is at Level 4, 20 Ballance Street, Wellington or at such other place as the Board may decide from time to time. Notice of any change of situation of the registered office must be sent to the Registrar.

3 Objects

- 3.1 The principal object for which TNZ Inc has been established is to promote and build a resilient, sustainable and profitable New Zealand tomato industry to facilitate the industry vision, for Members. At the date of adoption of these rules the industry vision is for Members to be economically and environmentally sustainable growers of healthy, safe and nutritious fresh tomatoes in a progressive industry that will attract investment.
- 3.2 In order to attain the principal object, TNZ Inc will:
- (a) Establish and maintain in New Zealand an association of growers of tomatoes for the mutual benefit and assistance of the Members, and act as a forum for the exchange of information and for the discussion of matters of common concern between tomato producers;
 - (b) Represent the common views of Members to any relevant organisations eg: policy makers, media, consumers and the general public and when necessary advocate on behalf of Members.
 - (c) Provide relevant information on matters impacting on production, marketing and exporting to assist in decision making by Members.
 - (d) Provide a coordinated industry approach to market analysis and research on fresh tomatoes for the long term benefit of all participants in the industry;
 - (e) Identify information available or the need for information to be developed and provide or encourage appropriate forums and methods for this information to be shared and used amongst Members where collective benefits exist;
 - (f) Provide and raise funds for the purpose of TNZ Inc by levies, borrowing, subscriptions, annual or otherwise, or by any other means;
 - (g) If considered appropriate, affiliate, take shares in, become members of, or otherwise cooperate with any other person, body or organisation having similar objects and contribute to the funds of any such body or organisation;
 - (h) To undertake any obligations that are required of TNZ Inc pursuant to the Order, the Commodity Levies Act 1990, the Biosecurity Act 1993, and any other relevant legislation;

- (i) Generally do all such things and to take all such initiatives as TNZ Inc may from time to time consider beneficial to its Members in order to attain the above mentioned objects or any of them including, if considered appropriate, to apply for status as a recognised product group, (and apply to be excluded from such recognition) pursuant to the New Zealand Horticulture Export Authority Act 1987.

3.3 For the avoidance of doubt, but without limiting the objects of TNZ Inc:

- (a) TNZ Inc may carry out the objects of HortNZ in so far as they relate to the interests of growers of tomatoes for sale on the fresh domestic and fresh export market as a sector of the New Zealand horticulture industry; and
- (b) TNZ Inc will apply for affiliated membership with HortNZ.

4 Membership and Classes of Members

Classes of membership

4.1 **Classes of Membership:** There shall be two classes of membership:

- (a) Members; and
- (b) Life Members.

4.2 **Members:** A person will be eligible to become a Member if that person:

- (a) is actively engaged in the commercial production of tomatoes in New Zealand for sale on the fresh domestic or fresh export markets (but excluding tomatoes grown for processing); and

4.3 in the preceding 12 month period (or part thereof), has paid a Levy.

4.4 **Life Members:** The Board may award life memberships to those Members who have provided extended periods of service to the Board (as determined from time to time by the Board) and/or who have also served as Chair. A person must consent to becoming a Life Member. Life Members shall not have voting rights unless the Life Member remains a Member.

4.5 **Awards:** The Board may also grant:

- (a) Awards of merit, to Members who provided extended service to the Board; and
- (b) Lifetime achievement awards, to persons (who need not have been Members) who have provided outstanding service to the fresh tomato industry.

- 4.6 **Condition of Membership:** A Member or Life Member shall not do any act or thing which may bring TNZ Inc or the tomato industry into disrepute.
- 4.7 **Register of Members:** The Board shall maintain the Register of Members and may prescribe the documentation required to establish membership. The Register of Members must contain:
- (a) the name of each Member or Life Member;
 - (b) the Member's membership class;
 - (c) the last known contact details of each Member or Life Member;
 - (d) the date on which each person became a Member or Life Member;
 - (e) the name of each person who has ceased to be a Member within the previous 7 years and the date on which each person ceased to be a Member; and
 - (f) any other information required by the Act.
- 4.8 A Member shall notify TNZ Inc in writing of any changes to the information recorded on the Register of Members in relation to that Member.
- 4.9 TNZ Inc must ensure that the register of members is updated as soon as practicable after becoming aware of changes to the information recorded on the Register of Members.
- 4.10 TNZ Inc may delegate its duties under this clause to the General Manager.

Application for membership

- 4.11 Any person who wishes to become a Member of TNZ Inc must complete the official TNZ Inc membership application form (which includes the person's consent to becoming a Member), and shall pay any joining fee and any subscription fee to TNZ Inc. On payment of such amounts, and acceptance of membership by the Board, the applicant will become a Member of TNZ Inc.

Ceasing to be a Member

- 4.12 Any Member may resign from membership by notice to the General Manager and every such notice shall unless otherwise expressed take effect from the end of the then current financial year.
- 4.13 If any Member, or any principal representative, trustee, partner or officer of a Member, is convicted of an indictable offence or is adjudged a bankrupt or makes a composition with creditors or if any effective resolution or order of court is passed or made for the winding up or dissolution of any company or other body corporate which is a member, then that Member shall without release from any prior liability to TNZ Inc forthwith cease to be a Member, but TNZ Inc may in its discretion reinstate the Member.
- 4.14 A person will cease to be a Member:

- (a) On termination of a Member's membership following a dispute resolution process under the Dispute Procedures;
- (b) If in the reasonable opinion of the Board, the person has ceased to qualify for membership in accordance with clause 4.2;
- (c) If in the reasonable opinion of the Board, the Member, or any principal representative, trustee, partner or officer of a Member:
 - (i) is in default of any of the Member's obligations under these rules (including obligations to provide information); or
 - (ii) has done any act or thing which may bring TNZ Inc or the tomato industry into disrepute; or
- (d) If the person has failed to pay any Levy, joining fee, subscription, charge or other levy when due.

Provision of Information

- 4.15 The Board may from time to time require any Member to provide information to TNZ Inc concerning any matter which is relevant to the application of these rules to that Member in such form, within such period, and at such time or times as the Board determines.
- 4.16 A Member shall provide all information in such form, within such period, and at such time or times as the Board requires pursuant to Rule 04.15.

5 Subscriptions/Fees/Levies

- 5.1 Each year the Board may recommend:
- (a) A fee to be paid by new Members as a joining fee; and
 - (b) A subscription charge payable by any Member in respect of each of TNZ Inc's financial years; and
 - (c) Any special charge or levy (other than a Levy) including any amount required to fund compliance with TNZ Inc's cost-sharing obligations under any deed signed committing TNZ Inc to the Government Industry Agreement for Biosecurity Readiness and Response ("GIA").
- 5.2 The recommendations of the Board for the fees, subscriptions, charges or levies noted above shall be considered by Members at each AGM and approved or varied by the AGM, as Members think fit. The decision of the AGM as to the amounts of joining fees, subscriptions, charges or levies for the then current financial year shall be final and binding on all Members provided that no joining fee, subscription, charge or levy shall be less than the amount recommended by the Board.

- 5.3 Any Member failing to pay the appropriate amount within one month of its due date may be liable to have that Member's membership terminated.
- 5.4 The Board shall have the power to reduce pro rata any amounts for Members joining in the second half of any financial year.

6 **DISPUTES**

If a Dispute arises, the Dispute Procedures shall apply (Schedule 2) .

7 **Board of Directors of TNZ Inc**

- 7.1 The Board of TNZ Inc shall comprise:
- (a) **Directors:** 6 individuals holding office from time to time as the Directors. Directors are elected by Members as set out in clause 7.2; and
 - (b) **TNZ Inc Chair:** The TNZ Inc Chair, appointed as set out in clause 7.3.
- 7.2 The Directors of TNZ Inc shall be elected as follows:
- (a) Each Director shall hold office for a term of 3 years, or any earlier date of retirement or death.
 - (b) Retiring Directors are eligible for re-election, and there is no maximum number of terms that an individual can be re-elected as a Director.
 - (c) At each AGM at least one-third of the Directors (or such number as nearly equates with one-third), excluding the TNZ Inc Chair (if that person is also a Director), shall retire from office. Those to retire shall be those who have been in office longest since they were last elected or re-elected. As between Directors elected on the same day, those to retire shall be determined by lot, unless agreed otherwise.
 - (d) Retiring Directors shall be deemed to be re-elected if there is no opposing candidate for election unless it is resolved at the AGM not to fill the vacated office, or if a resolution for the re-election of the Director is put to the meeting and is lost.
 - (e) A Director must retire if they cease to be qualified to hold office as set out in clause 7.5.
 - (f) In each year, the General Manager will organise for a vote to take place (which can include by post, email and online) to elect a new Director to fill an upcoming vacancy, due to expiry of the 3 year term, or otherwise.
 - (g) Voting forms will be included with the notice of meeting for the AGM, and the vote shall be completed at least 7 days prior to the date for holding the AGM of TNZ Inc so that the result is available at the AGM.

- (h) All Members entitled to receive a notice of meeting for the AGM are entitled to participate in the vote for the Director.
- (i) A retiring Director shall act as a Director throughout the AGM at which that person retires.

7.3 The TNZ Inc Chair shall be selected by the Directors and need not be a Member or a Director. The TNZ Inc Chair will hold office for a term of one year from the date of appointment, subject to clause 7.1(b).

7.4 The Directors shall on an annual basis elect from amongst the Directors a Vice Chair who shall hold office otherwise on such terms and for such period as determined by the Directors.

7.5 The following persons shall be eligible for election as Directors:

- (a) Any Member who is a natural person; or
- (b) Any director or shareholder of a Member that is a company; or
- (c) Any partner, employee or nominated representative of a Member that is a partnership or joint venture (whether incorporated or not); or
- (d) Any member of a committee of management of a Member that is a Maori incorporation; or
- (e) Any trustee of a Member that is a trust (including a Maori Trust Board); or
- (f) any employee of a Member;

being the person nominated as the principal representative of that Member in respect of dealings with TNZ Inc. Each Member may only nominate one person for the purposes of this clause.

7.6 The office of Director or of TNZ Inc Chair shall be vacated:

- (a) If the person is absent from two consecutive Board meetings without special leave; or
- (b) If the person is or becomes bankrupt or suspends payment or compounds with his or her creditors; or
- (c) If the person dies or loses mental capacity;
- (d) If the person is disqualified under section 47(3) of the Act; or
- (e) (In the case only of a Director) if he or she ceases to be a Member.

7.7 If the Chair shall resign from office, die, become bankrupt, or in some other way become incapable of carrying out his or her duties as Chair for a period of more than 6 weeks then

the Vice Chair shall assume the position of Chair and hold office until the Directors appoint a replacement Chair.

- 7.8 Any casual vacancy in the Board may be filled by the remaining Directors appointing a duly qualified person to fill such vacancy and the person so appointed shall hold office until the next AGM. The existence of a vacancy shall not affect the validity of any acts or decisions on the part of the Board provided that there continues to be a quorum present.
- 7.9 A Director or the TNZ Inc Chair may be removed by an ordinary resolution of the Members at any general meeting of which notice specifying the intention to propose the resolution has been duly given, and the Board may suspend any Director (or TNZ Inc Chair) who persists in any conduct injurious to TNZ Inc.
- 7.10 All acts done by any Director, the TNZ Inc Chair, or by a committee of the Board or by any person acting as a member of such committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Director, TNZ Inc Chair, or of the persons acting as aforesaid or that they or any of them were disqualified, be as valid as if every person had been duly appointed and was qualified to be a Director or TNZ Inc Chair or committee member.
- 7.11 Notwithstanding anything to the contrary in these rules, the Board shall be entitled to call upon the services of any person whom it may think desirable to add to its Directors on account of any special skill in any field of the production, marketing, packaging, processing or distribution of tomatoes as a co-opted member of the Board. The co-opted person shall be permitted to participate in Board decision making but shall not have a vote in respect of a Levy matter unless that co-opted person is a Member. The period of co-option shall be limited to 12 months, but the Board may re-appoint a person for a further period (or periods) of 12 months.

8 Powers and duties of the Board

- 8.1 Management and control of the affairs and business of TNZ Inc shall be vested in its Board.
- 8.2 The general functions and powers of the Board shall be:
- (a) To control, administer and manage the property and affairs of TNZ Inc;
 - (b) To carry out, effect and perform the objects of TNZ Inc according to these rules.
- 8.3 The Board may employ such employees or contractors either honorary or otherwise upon such terms and conditions and remuneration as the Board thinks fit and may from time to time remove and replace any person so appointed.
- 8.4 The borrowing powers of TNZ Inc shall be vested in the Board.
- 8.5 Proper minutes shall be kept of all meetings of TNZ Inc and the Board and the minutes of all meetings of the Board shall be open to inspection by all Members.

- 8.6 In exercising powers or performing duties as a Director, each Director (which for the purposes of this clause includes the TNZ Inc Chair) shall:
- (a) Act in good faith and in what the Director believes to be the best interests of TNZ Inc;
 - (b) Exercise a power as a Director for a proper purpose;
 - (c) Not act, or agree to TNZ Inc acting, in a manner that contravenes the Act or these rules;
 - (d) Exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances taking into account (without limitation):
 - (i) the nature of TNZ Inc;
 - (ii) the nature of the decision; and
 - (iii) the position of the Director and the nature of the responsibilities undertaken by him or her.
- 8.7 A Director (which for the purposes of this clause includes the TNZ Inc Chair) must not:
- (a) Agree to the activities of TNZ Inc being carried on in a manner likely to create a substantial risk of serious loss to TNZ Inc's creditors;
 - (b) Cause or allow the activities of TNZ Inc to be carried on in a manner likely to create a substantial risk of serious loss to TNZ Inc's creditors; or
 - (c) Agree to TNZ Inc incurring an obligation unless the Director believes at that time on reasonable grounds that TNZ Inc will be able to perform the obligation when it is required to do so.
- 8.8 No part of the income or property of TNZ Inc will be paid directly or indirectly to any Member provided that this clause will not prevent TNZ Inc making reasonable payments to Members for professional or other services rendered.

9 Board Meetings

- 9.1 The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and procedures as they may think fit.
- 9.2 The Board shall where appropriate preserve the confidentiality of information provided to them and the Board may formulate appropriate guidelines and undertakings to protect such confidential information.
- 9.3 Any Director shall have the right to appoint an alternate to attend a meeting of the Board in his or her stead by notifying the TNZ Inc Chair or General Manager prior to commencement

of that Board meeting. Such alternate shall for all purposes have the power of the appoint or and be deemed to be a Director for the duration of the meeting.

- 9.4 Three Directors and the TNZ Inc Chair (or Vice Chair) present or represented by an alternate shall constitute a quorum.
- 9.5 Voting at meetings of the Board will be on the basis of one vote per Director. Subject to clause 9.9 the TNZ Inc Chair shall be entitled to a casting as well as a deliberative vote unless the vote relates to the Levy.
- 9.6 A resolution in writing signed by all Directors and by the TNZ Inc Chair (including by way of electronic circulation and signature) shall be as valid and effectual as if it had been passed at a meeting duly constituted and held.
- 9.7 The use of telephones or other means of communication (such as Zoom) of a quorum of Directors and the TNZ Inc Chair whether or not any one or more of the Directors or the TNZ Inc Chair is out of New Zealand shall be deemed to constitute a meeting of the Board and all the provisions in these rules as to meetings of the Board shall apply to such meetings provided that:
- (a) All persons entitled to receive notice of meeting are notified by telephone or other means of communication and are linked by telephone or such other means for the duration of the meeting; and
 - (b) At the commencement of the meeting each of the persons taking part in the meeting acknowledges that they are able to hear each of the other persons taking part.
- 9.8 At any meeting of the Board there may be present by direction or invitation such employees, contractors or other persons as the Board decides.
- 9.9 The TNZ Inc Chair shall preside at every meeting of the Board unless absent from that meeting. In the TNZ Inc Chair's absence the Vice Chair may chair the meeting and have all powers, functions and duties of the TNZ Inc Chair except for the right to have a casting vote.

10 Conflicts of Interest

- 10.1 Where a Director (which for the purposes of this clause includes the TNZ Inc Chair) is interested (as defined in the Act) in a matter relating to TNZ Inc, the Director must, as soon as practicable after the Director becomes aware that they are interested in the matter, disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified):
- (a) to the Board; and
 - (b) in the Interests Register.

- 10.2 A Director who has a conflict of interest:
- (a) must not vote or take part in a decision of the Board relating to the matter;
 - (b) must not be present at the time of the decision of the Board;
 - (c) may sign any document relating to the entry into a transaction or the initiation of the matter; and
 - (d) may take part in any discussion of the Board relating to the matter (unless the Board decides otherwise).
- 10.3 A Director who is prevented from voting on a matter under the Act and these rules may still be counted for the purpose of determining whether there is a quorum at any Board meeting at which the matter is considered.
- 10.4 Paragraphs (a) and (b) of clause 10.2 do not apply to a Director if all Directors who are not interested in the matter consent to the Director so acting.
- 10.5 If 50% or more of the Directors are prevented from voting on the matter under clause 10.2(a), a special general meeting of TNZ Inc must be called to consider and determine the matter.
- 10.6 Section 64(3) of the Act is hereby negated.

11 Indemnities and Insurance

- 11.1 TNZ Inc may, in accordance with subpart 6 of the Act, indemnify a Director, officer, a Member, or an employee of TNZ Inc for:
- (a) Liability to any person other than TNZ Inc for any act or omission in their capacity as an officer, a member, or an employee of that society (not being a liability specified in paragraph (b));
 - (b) Subject to paragraph (c), costs incurred by the officer, member, or employee in defending or settling any claim or proceeding relating to that liability.
- 11.2 The liabilities for which TNZ Inc may not indemnify a Director, officer, a Member, or an employee of TNZ Inc are:
- (a) Criminal liability; and
 - (b) A liability that arises out of a failure to act in good faith and in what the Director, officer, Member, or employee believes to be the best interests of TNZ Inc when acting in their capacity as a Director, officer, a Member, or an employee of TNZ Inc.
- 11.3 TNZ Inc may indemnify a Director, officer, a Member, or an employee of TNZ Inc for any costs incurred by them in defending or settling a proceeding that relates to liability of a kind referred to in paragraph (a)(i) if:

- (a) Judgment is given in their favour or if they are acquitted; or
 - (b) The proceeding is discontinued.
- 11.4 TNZ Inc may, with the prior approval of the Board, effect insurance for a Director, officer, a Member, or an employee of TNZ Inc in respect of:
- (a) Liability (other than criminal liability) of a kind referred to in section 94 of the Act; or
 - (b) Costs incurred by the Director, officer, Member, or employee in defending or settling any claim or proceeding relating to that liability; or
 - (c) Costs incurred by the Director, officer, Member, or employee in defending any criminal proceedings:
 - (i) That have been brought against the Director, officer, Member, or employee in relation to any alleged act or omission in their capacity as a Director, officer, Member, or employee; and
 - (ii) In which they are acquitted.
- 11.5 The Directors who vote in favour of authorising the insurance under paragraph (d) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to TNZ Inc.
- 11.6 For the purposes of section 98 of the Act, TNZ Inc is expressly authorised to indemnify a Director or officer, or to effect insurance for a Director or officer, for the following matters:
- (a) Liability (other than criminal liability) for a failure to comply with:
 - (i) A duty under sections 54 to 61 of the Act (officers' duties); or
 - (ii) Any other duty imposed on the Director or officer in their capacity as an officer; and
 - (b) Costs incurred by the Director or officer for any claim or proceeding relating to that liability.

12 Sub-Committees

- 12.1 The Board may from time to time confer upon Directors or sub-committees of Directors such powers of the Board under these rules as they see fit and shall determine the duties those Directors or sub-committees are required to perform and may as the Board deems expedient withdraw, revoke or vary such powers or duties.
- 12.2 Any sub-committee shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed upon it by the Board.

- 12.3 The meetings and proceedings of any sub-committee shall be governed by the same rules as apply to the regulation of meetings and proceedings for the Board, as far as they are applicable and are not superseded by any other regulations made under these rules.
- 12.4 Any Director or representative appointed to chair a sub-committee will be responsible for reporting in writing to the Board on items or activities from those meetings.

13 Remuneration

- 13.1 Members and the Board and any sub-committees may be paid such remuneration by way of honorarium as may be determined by TNZ Inc at the AGM.
- 13.2 The persons described in clause 13.1 may also be paid travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board, a sub-committee or any general meetings of TNZ Inc or in connection with the business of the TNZ Inc and in addition may be paid such sum as may be determined by the Board (by prior resolution) in respect of any extra service performed by any such person within New Zealand or elsewhere either in respect of attendance at any such meeting or in respect of any special exertions in travelling abroad or otherwise for any of the purposes of the TNZ Inc.

14 Commodity Levy

- 14.1 Any decision in relation to the imposition of a Levy will require approval by Members by way of a referendum. In order for approval to be granted for imposition or variation of a Levy, both the following conditions must be met:
- (a) the votes in favour of imposition or variation of the Levy (ie the "YES" votes) must represent more than 50% of all votes cast from all Members (on a one Member one vote basis); and
 - (b) those votes in favour must represent more than 50% of the gross proceeds of sale (before deduction of costs and charges) of tomatoes sold by Members who voted in the referendum, during the 12 month period prior to the Levy referendum.
- 14.2 Should any proposal be made as to change or expenditure of the Levy, such matters must be referred to the Members at a general meeting. Only Members who pay a Levy may vote on matters relating to the Levy. On such matters each Member shall have a dual vote. In order for any proposal to change the Levy rate or in respect of the expenditure of the Levy to be approved the specific decision will require both a majority of votes by number of Members and a majority by weighted vote. For the weighted voting part of this process each Member will be entitled to 1 vote for every \$100 (or part thereof) of Levy paid. The weighting of each Member's vote will be based on the dollar value of Levy paid, directly or indirectly, during the Member's previous full financial year prior to the notice of meeting for the relevant meeting being given. In order to be entitled to a weighted vote, each Member must complete and return to the General Manager within 7 days of the date of the meeting a declaration setting out the amount of Levy paid in the Member's previous full financial

year prior to the relevant notice. Such declaration may be subject to audit and/or a requirement to provide a statutory declaration before being accepted.

- 14.3 Any person who is a grower of fresh tomatoes and who pays a Levy but who is not a Member of TNZ Inc (for example because of a conscientious objection) may attend the general meeting and will have speaking rights only in respect of the rate of the Levy and expenditure of the Levy by TNZ Inc.

15 General Meetings

- 15.1 A general meeting must be held by a quorum of Members :

- (a) Being assembled together at the time and place appointed for the general meeting;
- (b) Participating in the general meeting by means of audio link, audiovisual link, or other electronic communication; or
- (c) By a combination of both of the methods described in paragraphs (a) and (b).

- 15.2 Any Member shall be entitled to attend and speak at a general meeting of TNZ Inc.

- 15.3 The TNZ Inc Chair shall serve as chairperson of the general meeting. If the TNZ Inc Chair is absent, the Vice Chair shall serve as chairperson of the general meeting. In the absence of both persons, the Members present shall elect one of the Directors present as chairperson of the meeting.

- 15.4 Voting at general meetings shall be as follows:

- (a) **Entitlement to vote:** Voting entitlements will be determined at 5 pm on the date 4 weeks prior to the date fixed for the general meeting. Persons whose name and address are recorded in the membership lists of TNZ Inc at that time will be the only persons entitled to vote at the general meeting.
- (b) **Voting:** Unless otherwise provided by these rules, voting at a general meeting shall be by show of hands on the basis of one vote per Member present in person or represented by proxy. A poll may be directed by the TNZ Inc Chair, if demanded by not less than 10 Members present at the meeting. On any poll, each Member present or represented by proxy will have one vote. The TNZ Inc Chair shall have a casting as well as a deliberative vote.
- (c) **Proxies:** If any Member is unable to attend at any general meeting, that Member may by notice in writing delivered to the General Manager not later than 48 hours prior to the time fixed for such general meeting appoint any other person entitled to attend any such general meeting to be the proxy of that Member and any proxy so appointed shall be entitled to exercise the vote available to that Member under these rules.
- (d) **Quorum:** Ten(10) Members personally present or represented by proxy shall form a quorum at all general meetings of TNZ Inc.

Annual general meetings

- 15.5 A meeting of all Members of TNZ Inc, called the “AGM”, shall be held within 6 months of the end of each Financial Year and not later than 15 months after the previous AGM, on such date as is determined by the Board. All Members have the right to attend the AGM.
- 15.6 Seven (7) weeks’ written notice shall be given to Members of the AGM.
- 15.7 The agenda of the AGM shall include the following:
- (a) Receiving the Annual Report from the Board;
 - (b) Consideration and if appropriate approval of TNZ Inc’s financial statements for the preceding financial year;
 - (c) Appointment of an auditor;
 - (d) Setting the subscription (if any) payable for membership;
 - (e) Notifying the outcome of the election of Directors;
 - (f) Generally reviewing TNZ Inc’s operations in the preceding financial year;
 - (g) Considering any remits initiated by Members or by any Director by written notice
 - (h) to the General Manager in the manner set out in clauses 15.8 to 15.10;
 - (i) Conducting such other general business as the Members think fit (by majority approval of Members present at the AGM, provided that such business shall not be put to a resolution).
- 15.8 **Remits:** In the event that a Member of the TNZ Inc wishes to have a certain matter considered at an AGM pursuant to clause 15.7(g) of these rules then the relevant person (“the Proposer”) shall give notice in writing to the TNZ Inc Chair and the General Manager of the remit not less than 28 days prior to the date fixed for the AGM.
- 15.9 **Notice of remit:** If the notice referred to in clause 15.8 of these Rules is received by the TNZ Inc Chair and the General Manager not less than 28 days prior to the date fixed for the AGM, the General Manager must give notice of the Remit and the text of any proposed resolution to all Members entitled to receive notice of the AGM not less than 21 days prior to the date fixed for the AGM, **provided that** the TNZ Inc Chair has the right to exclude the notice of a remit or statement prepared by a proposer which the TNZ Inc Chair considers to be defamatory, frivolous or vexatious.
- 15.10 **Written proposals:** If the Board intends that Members may vote on a remit, it must give the proposer the right to include in or with the notice referred to in 15.8 a statement of not more than 1,000 words prepared by the proposer in support of the remit, together with the name and address of the proposer.

15.11 **Annual Report:** . The Annual Report shall contain the following matters:

- (a) an annual report on the operations and affairs of TNZ Inc during the preceding Financial Year;
- (b) audited financial statements of TNZ Inc for the preceding Financial Year; and
- (c) notice of the disclosures, or types of disclosures, made under section 63 of the Act (disclosure of interests) during the preceding Financial Year (including a brief summary of the matters, or types of matters, to which those disclosures relate).

Special general meetings

15.12 Twelve (12) Members may by requisition addressed to the TNZ Inc Chair and the General Manager demand that a special general meeting of TNZ Inc shall be called to consider any matter set out in such requisition and upon receipt of such requisition the General Manager shall proceed to call such a meeting with not less than 21 days' notice to Members entitled to attend the same. The Board may also call such a special general meeting by giving the same notice to Members, and shall call a special general meeting where clause 10.5 applies.

15.13 All provisions relating to operation of general meetings contained in these rules shall, to the fullest extent possible, apply to any special general meeting called pursuant to clause 15.12.

16 Records

16.1 The Board shall ensure that:

- (a) A record is kept of all proceedings of TNZ Inc and the Board;
- (b) The Register of Members and Interests Register are kept;
- (c) All correspondence, records and reports connected with TNZ Inc are kept for a reasonable period; and
- (d) A record of monies due to TNZ Inc, or payments made by TNZ Inc is kept in a correct record of such receipts and payments.

17 Balance Date

17.1 The balance date for TNZ Inc shall be 31 March each year or such other date as the Board may determine.

18 Auditor

- 18.1 An auditor, being a person who is not a member, but who is a current member of the Institute of Chartered Accountants of New Zealand shall be appointed by the Board, and such appointment shall be confirmed by the members at the AGM.
- 18.2 It shall be the duty of the auditor to examine and check the financial records of TNZ Inc and see they are properly kept and balanced and also to audit the annual financial statements of TNZ Inc.

19 TNZ Inc Funds

- 19.1 All moneys received by or on behalf of TNZ Inc shall forthwith be paid to the credit of TNZ Inc in a bank account nominated by the Board and all payments and withdrawals drawn on the account shall be signed by two people appointed for that purpose by the Board.
- 19.2 TNZ Inc may from time to time without restriction invest and reinvest with or without security and upon such terms as the Board thinks fit the whole or any part of its funds not required for the immediate business of TNZ Inc.
- 19.3 No member or any person associated with a member shall participate in or materially influence any decision made by TNZ Inc or the Board in respect of any payment to or on behalf of that members or associated person of any income, benefit or advantage whatsoever.
- 19.4 Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transactions (being the open market value). The provisions and effect of this clause 19.4 shall not be removed from these rules and shall be included and applied into any document replacing this clause 19.4.
- 19.5 **None of the income and property of TNZ Inc shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profits to members of TNZ Inc.**

20 Borrowing

- 20.1 TNZ Inc may in addition to the other powers vested in it borrow or raise money from time to time by the issue of debentures, bonds, mortgages or any other security founded or based on all or any of the property and/or rights of TNZ Inc or without any security and upon such terms as to priority and otherwise as TNZ Inc thinks fit.

21 Winding Up

- 21.1 TNZ Inc may be wound up voluntarily if TNZ Inc, at a general meeting of its Members, passes a simple majority resolution requiring TNZ Inc to be wound up, and that resolution is confirmed by a simple majority resolution at a subsequent special general meeting called for that purpose and held not earlier than thirty days after the date on which the original resolution to be confirmed was passed.

- 21.2 If TNZ Inc is wound up, any surplus assets after payment of TNZ Inc's liabilities and the expenses of the winding-up shall be disposed of to one or more not-for-profit entities in accordance with section 216 of the Act.

22 Rules and Regulations

- 22.1 These rules may be altered, added to, rescinded or otherwise amended by a resolution passed by a majority of those present in person or by proxy at a general meeting of which 3 weeks' notice has been given. No alteration shall be made to the rules if it would enable the income or other funds of TNZ Inc to be used for or be available for the private pecuniary profit of any Member or in any other way would affect the charitable or non-profit status of TNZ Inc.
- 22.2 No addition to or alteration of the non-profit aims, personal benefit clause or the winding up clause shall be approved. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.
- 22.3 Every notice given in terms of clause 22.1 shall set out the wording and purpose of the proposed alteration, addition, rescission or other amendment to these rules.
- 22.4 Duplicate copies of every alteration, addition, rescission or amendment to these rules shall forthwith be delivered to the Registrar in accordance with the requirements of the Act.
- 22.5 The Board may from time to time make, amend or rescind regulations or by-laws not inconsistent with these rules governing the affairs of TNZ Inc and the procedures at its meetings.
- 22.6 The decision of the Board on the interpretation of these rules or any matter or thing not contained in these rules and which pertains to TNZ Inc shall be conclusive and binding on all Members unless revoked at an AGM or special general meeting.

23 Contact person

- 23.1 For the purposes of the Act, the contact person of TNZ Inc shall be the General Manager.

SCHEDULE 1

Dispute Procedures

1 Overview of this schedule

This Schedule sets out the procedures to be followed relating to Disputes (as defined in section 38 of the Act).

2 How Complaint is made

- 2.1 A Member or a Director may make a Complaint by giving to the Board (or a complaints subcommittee, if the Board has established one) a notice in writing that:
- (a) states that the Member or Director is starting a procedure for resolving a Dispute in accordance with these Rules; and
 - (b) sets out the allegation to which the Dispute relates and whom the allegation is against; and
 - (c) sets out any other information reasonably required by TNZ Inc.
- 2.2 The Society may make a Complaint involving an allegation against a Member or a Director following a resolution of the Board to do so by giving to the Member or Director a notice in writing that:
- (a) states that the Society is starting a procedure for resolving a Dispute in accordance with these Rules; and
 - (b) sets out the allegation to which the Dispute relates.
- 2.3 The information given under clause 2.1(b) or clause 2.2(b) must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

3 Person who makes Complaint has right to be heard

- 3.1 A Member or a Director who makes a Complaint has a right to be heard before the Complaint is resolved or any outcome is determined.
- 3.2 If the Society makes a Complaint:
- (a) the Society has a right to be heard before the Complaint is resolved or any outcome is determined; and
 - (b) a Director may exercise that right on behalf of the Society.
- 3.3 Without limiting the manner in which the Member, Director, or Society may be given the right to be heard, they must be taken to have been given the right if:
- (a) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
 - (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (c) an oral hearing (if any) is held before the decision maker; and

- (d) the Member's, Director's, or Society's written statement or submissions (if any) are considered by the decision maker.

4 **Person who is subject of Complaint has right to be heard**

4.1 This clause applies if a Complaint involves an allegation that a Member, a Director, or the Society (the **respondent**)—

- (a) has engaged in misconduct; or
- (b) has breached, or is likely to breach, a duty under these Rules or bylaws or the Act; or
- (c) has damaged the rights or interests of a Member or the rights or interests of Members generally.

4.2 The respondent has a right to be heard before the Complaint is resolved or any outcome is determined.

4.3 If the respondent is the Society, a Director may exercise the right on behalf of the Society.

4.4 Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if:

- (a) the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
- (b) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- (c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- (d) an oral hearing (if any) is held before the decision maker; and
- (e) the respondent's written statement or submissions (if any) are considered by the decision maker.

5 **Investigating and determining Dispute**

5.1 The Society must, as soon as is reasonably practicable after receiving or becoming aware of a Complaint made in accordance with these Rules, ensure that the Dispute is investigated and determined under these Rules.

5.2 Disputes must be dealt with under these Rules in a fair, efficient, and effective manner.

6 **The Society may decide not to proceed further with a Complaint**

6.1 Despite clause 5, the Society may decide not to proceed further with a Complaint if:

- (a) the Complaint is trivial; or
- (b) the Complaint does not appear to disclose or involve any allegation of the following kind:
 - (i) that a Member or a Director has engaged in material misconduct;

- (ii) that a member, a Director, or the Society has materially breached, or is likely to materially breach, a duty under these Rules or bylaws, the Act or any other relevant legislation; or
- (iii) that a Member's rights or interests or Members' rights or interests generally have been materially damaged; or
- (c) the Complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) the conduct, incident, event, or issue giving rise to the Complaint has already been investigated and dealt with under these Rules; or
- (e) there has been an undue delay in making the Complaint.

7 **The Society may refer matter**

7.1 The Society may refer a Complaint to:

- (a) a subcommittee or an external person to investigate and report; or
- (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.

7.2 The Society may, with the consent of all parties to a Complaint, refer the Complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

8 **Decision makers**

A person may not act as a decision maker in relation to a Complaint if 2 or more Directors or (if there is a complaints subcommittee) 2 or more members of the complaints subcommittee consider that there are reasonable grounds to believe that the person may not be:

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.

9 **Time periods and other matters**

Except as set out in this Schedule 3, the Board, or any complaints subcommittee, shall determine the timetable to be followed in any investigation, including the dates by which any submissions are due, any hearings will be held and any determination will be made.