
Macadamia Variety Non-Propagation Agreement

NON-PROPAGATION AGREEMENT CONDITIONS

Definitions

“Commercial Grower”: Entity which is planting and growing macadamia trees for the production of nuts and kernel.

“Licensor”: Means the Queensland Strawberry Growers Association or its assigns.

“Plants”: Means the Licensed Material of the plant variety or varieties (G, J, P and R) listed in Table 1 supplied by the Nursery as part of this Agreement

“Property”: means all horticultural land and buildings where the Plants are planted

“Nursery”: means the propagator that has a current valid license agreement to sell macadamia trees of certain varieties

1. *Your Nursery Name Pty Ltd* has a license to sell macadamia trees of certain varieties and collect royalties on the sale of such trees (“Licensed Material”). The Nursery warrants that the license is in good standing.
2. The purchaser of the macadamia trees agrees and covenants that the trees will be grown by the Commercial Grower only for the production of nuts and kernel for sale and WILL NOT under any circumstance attempt to undertake any further propagation in any form of any of the trees supplied by this licensed propagator *Your Nursery Name Pty Ltd*.
3. In addition, the Commercial Grower agrees not to use any part of the plants supplied for breeding, plant improvement or selection of any kind, or permit the use of genetic material from the supplied plants in any manner.
4. Any Intellectual Property Rights in any sports, adaptations, modifications or improvements of the Licensed Material will vest in the licensors or their representatives. Any adaptations, modifications or improvements are automatically deemed to be included in the definition of Licensed Material.
5. The macadamia tree planting material supplied by the propagator *Your Nursery Name Pty Ltd* to the Commercial Grower will not be sold, transferred, leased, hired, bartered, given, shared or in any way parted with, unless approval is given in writing by the Licensor.
6. All plants supplied are subject to protection by the Australian Plant Breeders Rights Act 1994 and the regulations therein and as such, the term of this agreement will be commensurate with the length of time that the Plants supplied are subject to registration under the Australian Plant Breeders Rights Act 1994.
7. The Commercial Grower of the plants shall not sell, lease, let or give the land or lands containing any or all of the plants until the Nursery has had 30-days from the time of introduction to the new owner, lessee or possessor of the land, to enter into a Non-Propagation agreement with the new owner, lessee or possessor of the land.

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8. *Your Nursery Name Pty Ltd*, its authorised agents, Queensland Strawberry Growers' Association and its representatives, or the owner of the Plant Breeder's Rights, shall have the opportunity to enter the Property used by the Commercial Grower for the supplied plants, at a reasonable time decided between the Nursery and the Commercial Grower and by giving the Commercial Grower a minimum of two (2) business days' notice for the purpose of determining whether the purchaser is breaching the Plant Breeders Rights Act. The Nursery, and/or its representatives, agrees to comply with all occupational workplace health and safety policies and procedures established on the Property, at all times for which the Nursery and/or its representatives are present on the Property. Refusal by the purchaser to allow such entry shall be "prima facie" evidence without further proof that the purchaser has contravened the Plant Breeders Rights Act unless it has been established that entry was refused on the basis of enforcing occupational health and safety standards, policies and procedures. Furthermore, the Commercial Grower agrees that plants, plant material or samples may be collected and removed for further testing. The sample size shall not compromise the commercial production of the Commercial Grower's investment in the Plants.
 9. The Commercial Grower of plants must grow plants at the address given overleaf, protect the plants from unauthorised use, and advise *Your Nursery Name Pty Ltd* of any unauthorised propagation.
 10. If land on which the macadamia trees are planted is sold, or leased, the Commercial Grower and/or the Land Owner must pay the remainder of any future royalties payable immediately to *Your Nursery Name Pty Ltd*, unless separate agreements are entered into as part of the transaction process such that the new owner or lessee agrees to pay the remainder of any future royalty payments.
 11. The Commercial Grower agrees to make commercially reasonable efforts to advise *Your Nursery Name Pty Ltd* of any changes to the performance of this agreement.

The Commercial Grower of these macadamia trees agree to indemnify, hold harmless and defend Your Nursery Name Pty Ltd against all liabilities, costs, damages, claims and losses arising out of or from any breach of the purchaser to this Agreement to the extent permitted by law under the Competition and Consumer Act 2010.

Other than any warranties implied under the Competition and Consumer Act 2010 (or other law), *Your Nursery Name Pty Ltd* makes no claims and warranties of the suitability of the trees to the extent permitted by law, and shall have no liability to the tree purchaser for any failure of the plants except as required by Queensland Strawberry Growers Association's "Dispute Notification and Resolution Process."

All varieties are managed under license agreements between *Your Nursery Name Pty Ltd* and the relevant Licensor/s.

The conditions of use of all varieties requires your permission to report your name, number of trees purchased, and address of where the trees are planted to the relevant Licensor/s.

This information must be provided to the Purchaser by completing and signing this Grower Declaration form before trees are delivered.

I / We, the Commercial Grower(s) accept that all trees supplied by Your Nursery Name Pty Ltd are subject to the above Conditions and Agreement for Non-propagation and agree to provide all details required to the Licensor.

EXECUTED by *Your Nursery Name Pty Ltd*

Date

(Your Nursery Name Pty Ltd inserted here)

Director

Director/Secretary

(Print Full Name)

(Print Full Name)

EXECUTED by Commercial Grower

Date

Director

Director/Secretary

(Print Full Name)

(Print Full Name)

Table 1. DUE TO BE RETURNED TO *Your Nursery Name Pty Ltd* OFFICE

<u>Grower name</u>	<u>Contact address</u>	<u>Phone numbers (home and mobile)</u>	<u>Email address</u>	<u>Variety</u>	<u>Number of trees ordered</u>	<u>Farm physical address where the new varieties are to be planted (Block number if available too)</u>
<i>Commercial Grower Name</i>	<i>1 Sample road, sample town, State, 1234</i>	<i>0123 456 789</i>	<i>sample@farm.com.au</i>	<i>Listed here</i>	<i>Listed here</i>	<i>Listed here</i>