

Trade Mark Licence Agreement

Australian Made Campaign Limited

and

[insert name]

Date

Parties

Australian Made Campaign Limited (ACN 086 641 527) of Suite 105, 161 Park Street, South Melbourne, Victoria

(Licensor)

[insert name and company number] of [address]

(Licensee)

Background

- A The Licensor is the owner of the Australian Made, Australian Grown Logo which is a registered certification trade mark in Australia and certain other countries and which is well-known and respected within Australia and internationally.
- B The Licensor wants to allow the Licensee to use that Logo and other related trade marks in accordance with the terms of this agreement.
- C The Licensee has lodged a valid Application to use the Logo on specified Products and this Application has been approved by the Licensor.

Agreed Terms

1. Interpretation

1.1 Definitions

In this agreement:

"Application" means the application, either in digital or hard copy, that must be submitted to the Licensor by any person wishing to use the Logo as a certification trade mark on nominated products;

"Code of Practice" means the Australian Made, Australian Grown Logo Code of Practice, as amended from time to time, copy of which is annexed to this agreement as Annexure A;

"Commencement Date" means the date upon which this agreement is fully executed;

"Extended Term" means the period specified in Item 2 of the schedule;

"Initial Term" means the period specified in Item 1 of the schedule;

"Licence Fee" means the fee referred to in Item 3 of the schedule;

“Licensor’s Bank Account” means the bank account details of which are set out in Item 6 of the schedule

“Logo” means the Logo details of which are set out in Item 4 of the schedule, which in Australia is a registered certification trade mark number 451318;

“Logo Representations” means the representations of the Logo details of which are set out in Item 5 of the schedule;

“Products” means goods registered by the Licensee with the Licensor under the Code of Practice as being approved to bear the Logo;

“Suppliers” means the Australian based manufacturers, processors, growers, exporters or distributors of the Products being sold by the Licensee pursuant to this contract;

"Term" means the Initial Term and any Extended Term;

"termination" includes expiration by effluxion of time;

"Trade Marks" means

- (i) the Logo;
- (ii) the Logo Representations; and
- (iii) such other registered or unregistered trade marks which the Licensor notifies in writing to the Licensee from time to time.

1.2 Construction

In this agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations, partnerships and any other entities recognised by law;
- (d) references to clauses and schedules are to clauses of and schedules to this agreement; and
- (e) references to \$, AUD or dollars are to Australian dollars;
- (f) if a word or a phrase is defined, cognate words or phrases have corresponding definitions.

2. Grant of Licence

2.1 Grant of licence

Subject to the terms of this agreement, the Licensor grants to the Licensee a licence to use the Trade Marks on or in relation to the Products for the Term.

2.2 Code of Practice

The Code of Practice forms part of this agreement and a breach of same will amount to a breach of this agreement.

2.3 Rights personal to the Licensee

The rights given by this agreement are personal to the Licensee and are not saleable or transferable in any manner whatsoever and the Licensee must not in any way sublicense, encumber, mortgage or grant rights under this agreement to any other person other than in accordance with the terms of this document and any attempt to do so will be void.

3. Use of Trade Marks

3.1 Use of the Trade Marks

- (a) The Licensee acknowledges that the Logo and the Logo Representations are of great value to the Licensor and have a significant international reputation which would suffer great damage if the Licensee were to use the Trade Marks other than in accordance with this agreement.
- (b) The Licensee must therefore only use the Trade Marks in accordance with this agreement and the Code of Practice.

3.2 Recognition of validity of the Trade Marks

- (a) The Licensee must not challenge or in any manner impugn the validity or, where applicable, the registration of the Trade Marks, ownership by the Licensor of the Trade Marks or the exclusive rights of the Licensor to take appropriate measures for the protection of the Trade Marks.
- (b) The Licensee acknowledges that:
 - (i) all intellectual property rights in the Trade Marks are owned by the Licensor; and
 - (ii) the Licensee has no right, title or interest in the Trade Marks other than the rights granted by this agreement.

3.3 Reporting infringement

The Licensee must promptly report to the Licensor particulars of any use by any third party of a trade name, trade mark, copyright work or get up of goods, mode of advertising, mark or design which might reasonably amount to infringement of any of the Trade Marks or to unfair competition or passing off or other equivalent or similar breach of any applicable law.

3.4 Allegations of invalidity

If the Licensee becomes aware that any third party alleges that the Trade Marks are invalid or that the Trade Marks infringe any rights of that third party or that the Trade Marks are open to any other form of attack the Licensee must not make any admission but must promptly report full details of the matter to the Licensor.

3.5 Conduct of proceedings

The Licensor will have the conduct of all proceedings relating to the Trade Marks but nothing in this agreement will impose any obligation on the Licensor to defend any action or proceedings in relation to the Trade Marks or take proceedings for their infringement or passing off.

3.6 Full co-operation

If the Licensor in its absolute discretion takes or defends any proceedings relating to the Trade Marks, the Licensee must fully co-operate with the Licensor and provide any assistance reasonably required in relation to such proceedings.

3.7 Indemnity

The Licensee will indemnify Australian Made Campaign Limited against any action or claim brought against Australian Made Campaign Limited as a result of the Licensee's use of the Trade Marks.

4. Suppliers

4.1 List of Suppliers

- (a) Immediately upon the execution of this agreement, the Licensee must provide to the Licensor a full list of its current Suppliers, including full contact details.
- (b) During the Term, the Licensee must keep the Licensor informed of any changes to this list of Suppliers.

4.2 Sharing of information

The Licensee must use its best endeavours to facilitate the sharing of information between its Suppliers and the Licensor regarding all aspects of the production and supply of the Products to the Licensee.

5. Warranty and indemnity

5.1 Warranty

The Licensee warrants that:

- (a) the Products will at all times comply with the rules and conditions for the use of the Trade Marks as detailed in the Code of Practice and, in particular rules 20 and 21 of the Code of Practice;
- (b) it will maintain documentary records sufficient to demonstrate the compliance of the Products with the relevant criteria set out in the Code of Practice;
- (c) all material published by it on the AMCL website is true and correct, complies with the law and does not infringe the rights of any third party; and
- (d) any sales information provided to the Licensor as the basis for calculation of the Licence Fee will be an accurate statement of actual sales (expressed in equivalent Australian dollars) or an honest projection of estimated sales of the Products, as the case may be.

5.2 Indemnity

The Licensee must indemnify the Licensor against all losses, costs, demands, expenses and liabilities whatsoever arising out of or referable to any circumstances which would not have arisen but for a breach of the warranties given in clause 5.1.

6. Licence Fee

6.1 Payment of Licence Fee

- (a) In consideration of the rights granted to it by the Licensor under this agreement, the Licensee must pay to the Licensor the Licence Fee and a small charge to cover associated bank transaction fees as determined from time to time by the Licensor.
- (b) The Licence Fee is payable annually by the Licensee within 30 days of receipt of a valid tax invoice from the Licensor.

6.2 Payment to nominated account

All payments to the Licensor under this agreement must be made to the Licensor's Bank Account.

6.3 Licensee to keep accounts and records

During the Term and thereafter for a period of 24 months after the dates of the transactions to which they relate, the Licensee must keep at its principal office true and correct accounts and records of all sales of the Products.

7. Compliance audit and inspection of documents

7.1 Compliance audit

- (a) The Licensee agrees to submit to compliance audits in respect of its use of the Trade Marks as may be required from time to time by the Licensor during the Term.
- (b) The Licensee must cooperate fully with the Licensor or its authorised representatives in their conducting a compliance audit under clause 7.1(a).
- (c) The Licensee agrees to pay the costs associated with conducting any such audit.

7.2 Inspection of documents

At the time of the Licensor or its authorised representatives conducting an audit under clause 7.1 or after giving reasonable notice, the Licensor or its representatives may inspect and audit the accounts and records of the Licensee relating to the sale of the Products and all other matters directly or indirectly relevant to the calculation of the amount of any payment due to the Licensor. The Licensor or its representatives may take copies of or extracts from any such records.

8. Term

8.1 Initial Term

This Agreement will commence on the Commencement Date and will continue for the Initial Term unless terminated under clause 9.

8.2 Extended term

- (a) After the expiry of the Initial Term, (or, if the Initial Term has been extended, at the end of any Extended Term) provided the Licensee is not then in breach of this agreement, the Term will, upon receipt by the Licensor of a valid licence renewal application and payment of the appropriate Licence Fee, be extended for the first Extended Term or any subsequent Extended Term, as the case may be.
- (b) Any extension of this agreement under clause 8.2(a) will be on the same terms as this agreement.

9. Termination

9.1 Termination By Either Party

This agreement may be terminated:

- (a) by the mutual agreement of the parties in writing; or
- (b) by either party by notice to the other party if
 - (i) the other party fails to remedy any breach of this agreement within 14 days of receiving written notice from the first party requiring it to do so, or commits any breach of this agreement incapable of remedy;
 - (ii) the other party has an agent in possession, mortgagee in possession, administrator, manager and receiver or receiver appointed of the whole or any substantial part of its assets or if any order is made or a resolution passed for the winding up of the other party; or
 - (iii) the other party becomes insolvent or makes an assignment for the benefit of creditors or any arrangements pursuant to bankruptcy law or if the other party discontinues business or if the other party ceases to do business.

9.2 Termination by Licensor

The Licensor will have the right to terminate this agreement and the licences under it immediately by notice in writing to the Licensee upon the happening of any of the following events:

- (a) the Licensee does not meet the requirements of Clause 3.1 and in particular
 - (i) uses the Trade Marks in a way that is likely to damage their reputation or that of the Licensor ; or
 - (ii) uses the Trade Marks on products not manufactured or grown in Australia; or
 - (iii) uses the Trade Marks on products other than the Products; or
- (b) the Licensee commits or suffers any act or omission which does or is reasonably likely to damage the reputation of the Trade Marks or that of the Licensor.

10. Consequences of Agreement Ending

10.1 No use after termination or expiry

The rights of the Licensee to use the Trade Marks will expire with this agreement and following termination or expiry of this agreement the Licensee will not at any time use the Trade Marks or any other name or sign confusingly similar to the Trade Marks.

10.2 Rights and obligations of the Licensee

- (a) Where the agreement is terminated by the Licensor pursuant to clause 9.2, the Licensee must within 30 days withdraw from sale any products carrying the Trade Marks on their packaging and remove or cause to be removed from public display any sign, label or poster incorporating the Trade Marks in the possession power or control of the Licensee and provide the Licensor with a declaration that it has done so.
- (b) Where the agreement is terminated by the Licensee for whatever reason, the time frame associated with the termination should be such that the contract remains in place until there is no further stock for sale which carries the Trade Marks on its label or packaging. Thereafter, the Licensee must make no further use of signage or point of sale material which carries the Trade Marks and must remove them or cause them to be removed from public display.

11. Confidentiality

The terms of this agreement are to be kept confidential between the parties.

12. Variations to Agreement

Any modification, alteration, change or variation of any term and condition of this agreement will only be made in writing and executed by the parties.

13. Severability

The provisions of this agreement will be deemed to be severable and any invalidity of any provision of this agreement will not affect the validity of the remaining provisions.

14. Notices

14.1 Notices by electronic mail

Any notice required or authorised to be given by any party to another concerning anything relating to this agreement will be in writing and may (without prejudice to the use of any other method) be given by being sent by electronic mail. Any notice given by electronic mail will be deemed to have been properly served when the sender's electronic mail system produces a return receipt or confirmation stating that the electronic mail was received by the addressee.

14.2 Notice when office not open

If any notice given under this clause is given on a day when the office of the party to whom it is addressed is not open for business the notice will be deemed to have been given on the next day on which such office is open for business.

15. Entire Agreement

This agreement constitutes the entire agreement of the parties and there are no other oral undertakings, warranties or agreements between the parties relating to the subject matter and this agreement is not based upon any representations as to profit or worth nor has any representation been made (whether by this agreement or otherwise) to induce the Licensee or AMS to accept and execute this agreement.

16. Governing Law

This agreement will be construed in accordance with and be governed by the laws of the State of Victoria, Australia and the parties hereby submit to the jurisdiction of the Courts of the State of Victoria, Australia including the Federal Court of Australia.

Schedule

Item 1

Initial Term

1 year

Item 2

Extended Term

1 year

Item 3

Licence Fee

The licence fee is that amount in Australian dollars set in accordance with the current fee schedule as determined from time to time by the Licensor and published on the Licensor's website.

Item 4

The Logo



Item 5

Logo Representations





Item 6

Licensor's Bank Account

Westpac Banking Corporation, Fyshwick, ACT branch. SWIFT Code WPACAU2S.
Account name Australian Made Campaign Ltd, BSB 032-747, account number 152025.

Execution

By the Licensor

Executed by Australian Made Campaign Limited, ACN 086 641 527, in accordance with section 127 of the *Corporations Act 2001*:

Chief Executive Signature

Director/Company Secretary Signature

Print Name

Print Name

By the Licensee

Executed by [insert name] in accordance with its Constitution:

Director Signature

Director/Company Secretary Signature

Print Name

Print Name