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## Vegan Australia Certified Trade Mark Licence

This agreement sets out the terms and conditions between Vegan Australia (ABN 21 169 219 854) and the **Licensee** for the use of the Vegan Australia Certified Trade Mark.

### RECITALS

- A. Vegan Australia is the owner of the right, title, interest and goodwill in the certification trade mark set out in **Item 1 of the Schedule ("CTM")**.
- B. Vegan Australia has obtained protection in Australia under the Trade Marks Act 1995 (Cth) ("**Act**") of the right, title, interest and goodwill in the CTM, as a certification trade mark, and details of the trade mark registration are set out in **Item 2 of the Schedule**.
- C. In consideration of payment of the Annual Licence Fee as set out in this Agreement, Vegan Australia has authorised the Licensee to use the CTM on the terms and conditions contained herein ("**Licence**") and in accordance with the Certification Rules.

**NOW THE PARTIES AGREE** as follows:

### **1. Appointment of user**

- (1) Subject to the terms of this Agreement, Vegan Australia grants to the Licensee for the Term a non-exclusive, non-assignable licence to use the CTM in Australia (the "**Territory**") upon or in relation to the Products as agreed by the parties, initially as indicated in the first invoice for the annual licence fee.
- (2) If the Licensee wishes to amend the list of Products, it is required to submit to Vegan Australia for consideration additional applications for certification in accordance with the Certification Rules. Upon any new products being certified by Vegan Australia, Vegan Australia will advise the Licensee that such products may be added to the Products list and issue the Licensee with an amended certified products list.
- (3) This Agreement shall commence on the date this Agreement is executed ("**Execution Date**") and expire on the date one (1) year after the Execution Date ("**Term**"), or such later time as may be agreed by the parties in writing prior to the date 1 year after the Execution Date.

### **2. Payments**

In consideration of the Licence, the Licensee must, upon receipt of a valid tax invoice from Vegan Australia, pay Vegan Australia the Annual Licence Fee in accordance with the payment terms specified in that invoice.

### **3. Promotion**

- (1) The Licensee agrees to use the CTM solely in respect of the Products as agreed in writing by the parties.
- (2) The Licensee must ensure that no advertising or promotional material produced in respect of the Products that incorporates the CTM contravenes the *Competition and Consumer Act 2010* (Cth) or similar legislation in any jurisdiction in the Territory or guidelines of the Australian Competition and Consumer Commission in relation to promotion of the Products.
- (3) Where the Licensee only manufactures or supplies the Products and no other products, the Vegan Australia Certified Label may also be placed anywhere the Licensee's business name appears.
- (4) The licensee may refer to themselves as a 'Vegan Australia Certified' supplier in the following approved ways - marketing, promotion and sales related to the Vegan Australia Certified Products, including on the websites, social media pages, business cards, brochures and other branding of the applicant - provided always that the marketing, promotion and sales relate only to products that are Vegan Australia Certified Products.

#### **4. Quality control of Products/Services**

- (1) The Licensee must not use the CTM either by itself or as part of any other identification or name in relation to any Products or services other than the Products that comply with clause 4(2) of this Agreement.
- (2) Regarding the production, preparation, packaging and supply of the Products, the Licensee must:
  - (a) ensure that the Products continue to meet the criteria required in the Certification Rules and Standard as referenced in **Item 3 of the Schedule**;
  - (b) comply with the Australia New Zealand Food Standards Code, as defined in the Health (ANZ Food Standards Code Adoption) Regulations 2001;
  - (c) comply with any reasonable directions given by Vegan Australia from time to time in writing.
- (3) The Licensee must permit any officer or agent of Vegan Australia, who is authorised in writing for that purpose, to enter upon any premises of the Licensee during normal business hours (on 2 business days' written notice), in order to inspect the circumstances of manufacture, production, provision or supply of the Products and the use or application of the CTM. The officer or agent is entitled to take samples and to carry out tests for the purpose of examination and testing for compliance with the terms and conditions of this Agreement, subject to appropriate confidentiality undertakings. The test results will be shared with the Licensee upon request.

#### **5. No agency**

The Licensee must not:

- (1) in any manner describe itself or hold itself out as the agent of Vegan Australia and Vegan Australia cannot be or become liable whatsoever in respect of the manufacture, production, provision or supply of the Products entered into by the Licensee with any other party;
- (2) grant any right, licence or authority to any third party whether at common law or otherwise to use the CTM (however, Vegan Australia acknowledges that the

Licensee may allow its suppliers to use the CTM solely to the extent necessary to supply materials and services directly related to the manufacture and sale of the Products);

- (3) use the CTM without submitting to Vegan Australia an application for certification for the proposed products and receiving such certification from Vegan Australia; or
- (4) use Vegan Australia's name in any manner other than as contemplated by clause 3(4), without the prior written consent of Vegan Australia.

## **6. Title**

- (1) The Licensee acknowledges Vegan Australia's title to the CTM in Australia, the validity of Vegan Australia as the registered proprietor under the Act and undertakes not to take any action which would or might:
  - (a) invalidate or put in dispute Vegan Australia's title or rights;
  - (b) oppose any application for registration for the CTM or invalidate any registration of the CTM in due course;
  - (c) support an application to remove the CTM as a registered trade mark;
  - (d) cause any Registrar of Trade Marks to require a disclaimer of a monopoly in the CTM; or
  - (e) assist any other person directly or indirectly to take action resulting in any of the acts outlined in clause 6(1)(a) to (d).
- (2) The Licensee undertakes not to apply, vary or cancel any record under the Act of its interest as an authorised user of the CTM in respect of the Products without the express written authority of Vegan Australia.

## **7. Similar marks**

The Licensee shall not use in its business any other trade mark or logo which is similar to or substantially similar to or so nearly resembles the CTM as to be likely to cause deception or confusion among the public.

## **8. Maintenance of value**

The Licensee must use its best endeavours to preserve the value and validity of the CTM and in particular must:

- (1) endeavour to create, promote and retain the goodwill in its business relating to the manufacture, production, provision or supply of the Products;
- (2) use the CTM as follows:
  - (a) The CTM may be used in any material, promotions, packaging, menus or information relating to the Products.
  - (b) If displayed, the CTM must appear complete and in full and must not be cropped.
  - (c) The CTM may be displayed with any foreground and background colours including transparent or the Vegan Australia standard colour Pantone 363 C.
  - (d) The CTM may be displayed at any size and may be rotated, however the CTM must not be altered in terms of graphic proportions relating to the design.

- (e) The CTM must not be used on packaging that also depicts any animals being exploited or harmed.
- (3) not use the CTM accompanied by words describing the Products unless the CTM is distinguished from the descriptive surrounding and adjacent text.

### **9. Infringement proceedings**

- (1) The Licensee undertakes to Vegan Australia that it will do all things reasonably necessary for the protection of the CTM against deregistration or infringement.
- (2) In the event that:
  - (a) the Licensee receives notice of any infringement or threatened infringement of the CTM or any common law passing off by reason of imitations of get up or otherwise; or
  - (b) the Licensee becomes aware that a third party alleges or claims that the CTM is liable to cause deception or confusion to the public, the Licensee must promptly notify Vegan Australia giving particulars, and provide all information and assistance to Vegan Australia, at Vegan Australia's cost, in the event that Vegan Australia commences or defends proceedings in relation to the above claims or infringements. Any such proceedings will be under the control and at the expense of Vegan Australia.

### **10. Indemnity**

The Licensee must at all times keep Vegan Australia, its employees, agents and contractors, indemnified from and against all claims, demands, actions, proceedings and prosecutions which may be brought, commenced or prosecuted against Vegan Australia, its employees, contractors or agents or in which Vegan Australia, its employees, contractors or agents may be involved to the extent determined to have been caused or contributed to by the manufacture, production, provision or supply of the Products by the Licensee. The indemnity will extend to all costs, damages and expenses incurred by Vegan Australia, its employees, agents and contractors.

The Licensee acknowledges and agrees that any use of the CTM by the Licensee in any country other than Australia shall be entirely at the risk of the Licensee and Vegan Australia shall not be liable for any resulting loss or damage from such use.

### **11. Termination**

Without prejudice to any right or remedy which Vegan Australia may have against the Licensee for breach of this Agreement, Vegan Australia has the right to terminate or suspend the Licence and this Agreement at any time by notice to the Licensee:

- (1) if an insolvency event occurs where:
  - (a) the Licensee ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so;
  - (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to the Licensee or any of its assets;
  - (c) the Licensee enters into, or resolves to enter into, a scheme or arrangement, compromise or composition with any class of creditors;
  - (d) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of the

Licensee;

- (e) if any liquidator, receiver or manager enters into possession of any of the assets of the Licensee; or
  - (f) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- (2) if the Licensee commits a breach of any of the provisions of this Agreement and does not remedy the breach within a period of 30 days after receiving notice from Vegan Australia specifying the nature of the default;
  - (3) if the Licensee commits a breach of any of the provisions of this Agreement which in the reasonable opinion of Vegan Australia is not capable of remedy; or
  - (4) if in the reasonable opinion of Vegan Australia, the reputation of Vegan Australia is, or is likely to be, damaged by any act of omission of the Licensee.

Where Vegan Australia suspends the Licence, it may reinstate it at such time as it considers appropriate in its absolute discretion.

Where Vegan Australia terminates the Licence, there will be no reinstatement of it and the Licensee shall have no right to the return of any portion of the Licence Fee.

## **12. Notices**

Notices must be in writing, in English, and must be given by an authorised representative of the sender to the other party.

## **13. GST**

- (1) In this clause 13:
  - (a) **GST Act** means *A New Tax System (Products and Services Tax) Act 1999* (Cth), and where the context permits, includes the Commissioner of Taxation's Products and services tax rulings and determinations;
  - (b) **Additional Amount**, **Recipient** and **Supplier** have the meanings given in clause 13(3);
  - (c) Any terms used in this clause 13 that are defined in the GST Act have the same meanings as in the GST Act.
- (2) All prices or other amounts fixed or determined under, or referred to in, this Agreement are exclusive of GST, except where expressly provided to the contrary in a particular provision of this Agreement.
- (3) Subject to clause 13(4), if GST is or becomes payable by a Party ("**Supplier**") in relation to any supply that it makes under, in connection with or resulting from this Agreement, the Parties agree that, in addition to any consideration provided by a Party ("**Recipient**") for that supply, the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply ("**Additional Amount**") at the same time as the relevant consideration or any part of it is provided.
- (4) The obligation to pay the Additional Amount only arises once the Supplier has issued a tax invoice (and adjustment note) to the Recipient in respect of the Additional Amount.
- (5) If, under this Agreement, one Party is required to pay an amount to reimburse or compensate the other Party for any cost or liability incurred by that Party, the amount to be reimbursed or compensated excludes any GST component of

that cost or liability for which that other Party is entitled to claim an input tax credit.

#### **14. Assignment**

The Licensee must not assign all or any of its rights in this Agreement without the prior written consent of Vegan Australia.

#### **15. Amendments**

This Agreement may not be varied except in writing signed by all of the parties.

#### **16. Severability**

If any provision of this Agreement is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation it is to be severed so that the validity and enforceability of remaining provisions are not affected.

#### **17. Entire agreement**

This Agreement records the entire agreement between the parties and replaces all representations, warranties or proposals not embodied herein.

#### **18. Execution**

The parties agree to execute all documents and do all acts and things required to give effect to this Agreement.

#### **19. Counterparts**

This Agreement may be executed by the parties in counterpart. Each counterpart shall constitute a binding agreement once both parties have executed.

#### **20. Applicable law**

This Agreement is governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that State.

#### **21. Expiration**

If this Agreement terminates or expires and is not renewed, the Licensee must cease using the Vegan Australia Certified Label and must cease claiming to be Vegan Australia Certified. Notwithstanding this clause 21, the Licensee is permitted to:

- (1) Sell any finished Products bearing the CTM; and
- (2) Produce Products bearing the CTM to the extent necessary to exhaust all packaging materials that exist as at the date the Agreement expires or is terminated,

provided that such Products continue to comply with Certification Rules and Standard as referenced in **Item 3 of the Schedule**.

# Schedule

## Item 1 - Trade Mark



Access to high definition digital copies of the trade mark will be given on completion of certification.

## Item 2 - Trade Mark Registration Details

The CTM Australian registration details are as follows:

Trade Mark Owner	Trade Mark	Registration number	Commencement date	Classes
Vegan Australia	Refer to Item 1	1944358	27 July 2018	29, 30, 31, 32, 33, 43

## Item 3 - Certification Rules and Standard

The trade mark certification rules and standard for Vegan Australia Certified can be downloaded from the Australian Government's IP Australia website at this address:

<https://www.ipaustralia.gov.au/tools-resources/certification-rules/1944358>

The file name is **1944358\_certified\_rules.pdf**. If you are unable to download this file, please contact Vegan Australia.