

## TRUE AUSSIE TRADE MARK TERMS AND CONDITIONS

The True Aussie trade mark is owned by **MEAT & LIVESTOCK AUSTRALIA LIMITED** ABN 39 081 678 364 of Level 1, 40 Mount Street, North Sydney, New South Wales, 2060, Australia, (MLA). Any rights to use the True Aussie trade mark granted by MLA is governed by this Agreement.

### 1. DEFINITIONS

In this Agreement, the following definitions apply, except where the context otherwise requires:

**Agreement** means an agreement between the Licensee and MLA, consisting of the Licence Application and these Terms and Conditions.

**Applicable Laws and Standards** means all laws, regulations, requirements, standards, or codes of conduct in a country within the Territory in relation to consumer protection, food quality, food labelling and any issues in connection with the Licensee's use of Licensed Mark and the supply of Products under this Agreement.

**Approved Sub-licensee** means the third party nominated under the Proposed Sub-licensee Details of the Licence Application.

**Brand Standards** means the guidelines, standards, instructions or requirements for or in relation to the use of the Licensed Mark or the MLA Materials prescribed by MLA from time to time including the True Aussie Brand Usage Guidelines.

**Claims** means any claims including actions, proceedings, arbitrations, monies, debts, dues, costs, demands, liabilities, verdicts and judgments either at or in equity or arising under the provision of any statute.

**Eligible Product** means "Eligible Australian Red Meat and Products" as defined in the document entitled the "True Aussie Trade Mark Licence Application Criteria and Process" available at [trueaussielicence.mla.com.au](http://trueaussielicence.mla.com.au)

**Licence Application** means the application submitted by the Licensee in relation to use the Licensed Mark in a form which has been agreed to and accepted by MLA.

**Licensed Mark** means:

- (a) the True Aussie logo set forth under "Trade Mark" in the Licence Application; and
- (b) any other trade mark registrations and applications for the True Aussie logo in a country within the Territory.

**Licensee** means the applicant described in the Licence Application under the Applicant Details.

**Licensee Trade Mark** means the trade marks described under the Applicant Trade Marks section of the Licence Application.

**MLA Materials** means all information, material or resources made available by MLA to the Licensee during the Term of this Agreement, including graphics, artwork or design of or relating to the True Aussie trade mark and other marketing materials (such as brochures and fact sheets), whether in

print (such as in the form of pre-produced stickers or labels, banner) or digital.

**Product** means the product described under the Product Description in the Licence Application.

**Territory** means each country nominated under the Territory section in the Licence Application.

### 2. TRADE MARK LICENCE

#### 2.1 Non-Exclusive Grant

Subject to the Licensee complying with the terms of this Agreement, MLA grants to the Licensee separate, royalty-free, non-transferable, non-exclusive licences to use the Licensed Mark solely on the Products and in relation to the promotion and marketing of the Products in each country within the Territory during the Term and on the terms and conditions of this Agreement.

#### 2.2 Sub-licensing

The Licensee may not sub-license its rights under clause 2.1 other than to an Approved Sub-licensee. The Licensee must procure and ensure any Approved Sub-licensee complies with the terms of this Agreement as if the Approved Sub-licensee is a party to this Agreement in the capacity of the Licensee. Notwithstanding the above, the Licensee remains bound by all provisions of this Agreement.

#### 2.3 Limitations on the Licensee's Rights

The Licensee acknowledges and agrees that:

- (a) its right to use the Licensed Mark is derived solely from this Agreement and is limited to the promotion, marketing and supply of the Product under the Licensed Mark within the Territory and the performance of its obligations under this Agreement;
- (b) the Licensee must not at any time supply any products under the Licensed Mark outside the Territory without the prior written consent of MLA;
- (c) any use of the Licensed Mark for or in relation to any product, transaction, business or service not included within the definition of Eligible Product (except when the Licensee has obtained MLA's prior written consent) will be deemed an unauthorised use of the Licensed Mark;
- (d) any unauthorised use of any of the Licensed Mark by or on behalf of the Licensee constitutes a breach of this Agreement and an infringement of the rights of MLA in the Licensed Mark; and
- (e) to the extent permitted by law, any powers of the Licensee conferred by legislation in a country within the Territory which are contrary to this Agreement are excluded.

#### 2.4 Acknowledgement

The Licensee agrees that:

- (a) it must identify itself as a licensee of the Licensed Mark in the manner MLA reasonably prescribes from time to time but must not hold itself out as being entitled to bind MLA in any way; and
- (b) MLA may identify the Licensee as a licensee of the Licensed Mark.

### **3. USE OF LICENSED MARK AND MLA MATERIALS**

#### **3.1 Use of the Trade Mark**

The Licensee must:

- (a) use the Licensed Mark in full compliance with this Agreement and the Brand Standards and must use the following symbols as appropriate: “®” (for registered trade marks) and “™” (for unregistered or pending trade marks);
- (b) where requested by MLA, include in a prominent position in all packaging, promotional, marketing, technical and point of sale materials applying the Licensed Mark, a permanent and legible statement that the Licensed Mark are used under licence from MLA; and
- (c) supervise all of its employees, contractors, agents and all Approved Sub-licensees to ensure proper use of the Licensed Mark and compliance with this Agreement.

#### **3.2 Restriction on Use**

The Licensee must not:

- (a) use in relation to the Product any trade marks other than the Licensed Mark, the Licensee Trade Mark or where applicable, a trade mark owned or licensed to an Approved Sub-licensee as indicated in the Licence Application, without MLA's prior written consent.
- (b) use the Licensed Mark either by themselves or as part of any other identification or name in relation to any products, goods or services other than the Product without MLA's prior written consent;
- (c) use any trade mark (other than the Licensed Mark) that is substantially identical with or deceptively similar to any of the Licensed Mark or the translation, literal or semantic transliteration or phonetic equivalent of the Licensed Mark in the local language of a country;
- (d) use, apply for, register or renew any company name, business name, trading name, trade mark, domain name or similar containing words comprised in the Licensed Mark;
- (e) to the extent permitted by law, challenge or do anything that will prejudice MLA's ownership or the registrability or validity of the Licensed Mark; and
- (f) do or omit to do anything that prejudices the goodwill associated with the Licensed Mark.

#### **3.3 Manner of Use**

MLA is entitled to control the manner in which the Licensee uses the Licensed Mark. All written material or broadcasts or other communications relating to Product bearing the Licensed Mark prepared by the Licensee for dissemination to the public, including advertisements and leaflets, must be in full compliance with the Brand Standards. Upon the request of MLA, the Licensee must submit samples of such materials to MLA. If MLA objects to the manner in which the Licensee is using or allowing the Licensed Mark to be used, MLA will notify the Licensee and the Licensee agrees promptly to remedy the situation to MLA's satisfaction.

#### **3.4 Provision of MLA Materials**

MLA may, at its discretion, make available to the Licensee MLA Materials free of charge from time to time. The Licensee must not modify, adapt or create derivative works of the MLA Materials, in whole or in part without the prior written consent of MLA other than inserting the Licensee Trade Marks in such MLA Materials. The Licensee may only reproduce the MLA Materials by the Licensee and any Approved Sub-licensees on or in relation to the Products. All use of the MLA Materials must be in full compliance with the Brand Standards.

### **4. INTELLECTUAL PROPERTY**

#### **4.1 Title**

The Licensee acknowledges that MLA is the owner of the Licensed Mark and the MLA Materials and that it does not acquire any right, title or interest in the Licensed Mark or the MLA Materials by virtue of this Agreement other than the rights expressly set out in this Agreement.

#### **4.2 Prosecution, Maintenance, Enforcement, and Defence of Licensed Mark**

MLA will have the sole discretion with respect to the protection, maintenance, enforcement and defence of the Licensed Mark in the Territory but is not obligated to do so. The Licensee must, at MLA's expense, assist MLA and execute any and all other instruments and documents which, in the opinion of MLA, are reasonably necessary or advisable to protect, maintain, enforce and defend the Licensed Mark or to give effect to this Agreement.

#### **4.3 Goodwill**

The Licensee acknowledges that any goodwill relating to and generated by the Licensee's use of the Licensed Mark will inure for the benefit of MLA.

#### **4.4 Copyright**

To the extent the Licensed Mark or any MLA Materials is incorporated in any promotional, advertising or other materials created by or on behalf of the Licensee, the Licensee acknowledges and agrees that MLA remains to be the owner of the copyright of the Licensed Mark and any such incorporated MLA Materials. MLA does not claim ownership of copyright in any Licensee Trade Marks or trademarks of any Approved Sub-licensee incorporated in such promotional, advertising or other materials.

#### **4.5 Infringement Claims by Third Party**

In the event the Licensee is aware of any claim or threatened claim that use of the Licensed Mark in relation to the Product in the Territory infringes the rights of any third party, the Licensee must promptly advise MLA in writing providing reasonable details, MLA may, at its discretion, terminate this Agreement upon immediate written notice to the Licensee without liability to the Licensee.

#### **4.6 Enforcement**

The Licensee agrees and acknowledges that:

- (a) MLA will be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Licensee or Approved Sub-licensee of this Agreement, in addition

to any other remedies available to MLA at law or in equity;

- (b) MLA may seek specific performance or injunctive relief in the courts of the country where the Licensee or Approved Sub-licensee is using the Licensed Mark under this Agreement and the parties submit to the jurisdiction of the courts of such country for any such action; and
- (c) for any proceedings brought by MLA under this clause 4.6, this Agreement is governed by the laws of the country where MLA brought proceedings.

## **5. QUALITY CONTROL**

### **5.1 Quality Control**

The Licensee, when providing or offering to provide the Product in connection with the Licensed Mark:

- (a) must do so to the highest possible standards and comply with all Applicable Laws and Standards in each country within the Territory;
- (b) must observe the Brand Standards; and
- (c) must not offer or supply any Products that are non-Eligible Products or would otherwise be detrimental to the good name and reputation of MLA.

### **5.2 Inspections and Audits**

The Licensee must upon thirty (30) days' notice, give access or obtain the rights for MLA or its representative or a third party to access during normal business hours the premises at which the Product is manufactured, processed or supplied to enable MLA to examine and to verify that the Licensee is complying with this Agreement.

## **6. TERM AND TERMINATION**

### **6.1 Term**

The Term of this Agreement commences on the Commencement Date and continues for twelve (12) months unless it is terminated earlier in accordance with its terms.

### **6.2 Termination**

This Agreement may be terminated by either party:

- (a) at any time by giving thirty (30) days' written notice to the other party; and
- (b) by immediate written notice to the other party if the other party is in breach (other than a trivial breach causing no material harm) of any provision of this Agreement and, where the breach is capable of remedy, the party in breach has failed to remedy the breach within thirty (30) days of receipt of written notice from the other party describing the breach and calling for it to be remedied.

### **6.3 Termination for Insolvency or Change in Control**

In addition to clause 4.5, MLA may terminate this Agreement immediately by giving written notice to the Licensee if the Licensee goes into liquidation, appoints a receiver or administrator, or otherwise commits an act of bankruptcy or if there is a change in control in the Licensee, unless such change in control is approved by MLA in writing, which approval must not be unreasonably withheld.

## **6.4 Consequences of Termination**

Upon termination or expiry of this Agreement for any reason, the Licensee must:

- (a) unless otherwise notified in writing by MLA, immediately cease all use of the Licensed Mark, the MLA Materials and any confidential information of MLA;
- (b) not use any trade marks identical with or deceptively similar to the Licensed Mark;
- (c) unless otherwise notified in writing by MLA, promptly at the option of MLA and as applicable, deliver up to MLA or destroy all MLA Material, confidential information of MLA and any signs, advertising, promotional or display materials in digital or printed form featuring or referring to the Licensed Mark; and
- (d) cease to hold itself out as being associated with MLA in any way.

## **6.5 Survival of Provisions**

Termination or expiry of this Agreement for any reason does not affect any right or remedy that has accrued prior to termination or the provisions of clauses 3.2 (Restriction on Use), 4.1 (Title), 4.3 (Goodwill), 4.4 (Copyright), 6.4 (Consequences of Termination) to 0 (Survival of Provisions) and 8 (Confidential Information) to 11 (General) (inclusive).

## **7. INSURANCE**

The Licensee must take out and maintain during the Term a comprehensive public and product liability policy to cover all sums which it may become legally liable to pay as compensation consequent upon death of, or bodily injury (including disease or illness) to, any person; or loss of, or damage to, property arising out of or in connection with this Agreement or the promotion and supply of the Products. The Licensee must produce to MLA evidence of such insurance promptly upon request.

## **8. CONFIDENTIAL INFORMATION**

### **8.1 Permitted Use and Disclosure**

To the extent a party provides information of a confidential nature to the other party, each party must take all action necessary to maintain the confidential nature of the confidential information of the other party. Each party may use the confidential information of the other party to the extent that such use is necessary for that party's performance of its obligations under this Agreement, its internal business operations, or to the extent required by applicable law or legal process.

## **9. WARRANTIES**

### **9.1 Mutual Warranties**

Each party warrants that as at the Commencement Date, it has the power and authority to enter into and perform its obligations under this Agreement and that the execution of this Agreement by it has been duly and validly authorised by all necessary corporate action.

## **9.2 MLA's Warranties**

MLA warrants that as at the Commencement Date it is the owner of the Licensed Mark but does not otherwise warrant that the Licensed Mark are or will be valid, will not be capable of rectification or cancellation, or will not infringe the intellectual property or other rights of third parties.

## **9.3 Licensee's Warranties**

The Licensee warrants and represents that:

- (a) it has the resources, skills, knowledge and abilities necessary to perform its obligations under this Agreement;
- (b) all Products on which the Licensed Mark is applied are Eligible Products; and
- (c) it will comply with this Agreement, all Applicable Laws and Standards, in its promotion, marketing and supply of the Products.

## **10. LIABILITIES AND INDEMNITIES**

### **10.1 Exclusion**

Nothing in this Agreement excludes, restricts or modifies the application of any legislation which by law cannot be excluded, restricted or modified. Subject to this provision, all representations, warranties, guarantees, terms and conditions which would otherwise be implied in this Agreement are hereby excluded.

### **10.2 Consequential Loss**

MLA will not be liable to the Licensee for any special, indirect or consequential loss or damage, loss of profit, loss of data or loss of business opportunity, suffered in connection with or arising out of this Agreement, whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise.

### **10.3 Acknowledgement**

Each party acknowledges that the other party would be irreparably harmed by a breach or threatened breach of its obligations contained in clauses 3 (Use of Trade Mark) and 8 (Confidential Information) and that monetary damages would be insufficient to remedy such actual or threatened breach.

### **10.4 Licensee's Indemnity**

The Licensee indemnifies MLA, its officers, employees, consultants and agents from and against all Claims (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Licensee, in respect of any loss, death, injury, illness or damage (whether personal or property or otherwise) arising out of:

- (a) a breach of the Licensee's warranties or obligations contained in this Agreement; or
- (b) the promotion, marketing or supply of Product by or on behalf of the Licensee (including by any Approved Sub-Licensee),

and from and against all damages, reasonable costs and expense including reasonable attorney's fees incurred in satisfying, defending or settling any such Claim.

## **11. GENERAL**

### **11.1 Amendment**

MLA reserves the right to amend those Terms and Conditions at any time at its discretion. Any amendments will be published and available on our website and notified to the Licensee by email or other means. If any amendments to these Terms and Conditions are unacceptable to the Licensee, the Licensee may terminate this Agreement in accordance with clause 6.2 above. Continued use of the Licensed Mark will constitute the Licensee's acceptance of any amendments to the Agreement. If the amendment potentially affects the eligibility of the Products, MLA will request the Licensee to submit a new Licence Application based on the amended Agreement.

### **11.2 No Assignment**

The Licensee may not assign or transfer the rights or obligations under this Agreement unless with MLA's express prior consent.

### **11.3 No Waiver**

Any delay or failure by us in enforcing our rights under this Agreement is not to be construed as a waiver of those rights.

### **11.4 No Partnership or Agency**

This Agreement does not constitute any party the agent of another or imply that the parties intend constituting a partnership, joint venture or other form of association in which any party may be liable for the acts or omissions of another. No party has authority to pledge the credit of the other party.

### **11.5 Further Assurances**

Each party agrees, at its own expense, on the request of the other party, to do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it, including the execution of documents.

### **11.6 Entire Agreement**

This Agreement contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by and agreements between the parties with respect to its subject matter.

### **11.7 General Interpretation Principles**

The following rules of interpretation apply unless the context requires otherwise:

- (a) The word "including" and similar expressions are not words of limitation.
- (b) This document or any part of it is not to be construed against a party because that party drafted or proposed it.

### **11.8 Severance**

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.

### **11.9 Notices**

All notices under this Agreement must be in writing and sent by email or via the Licensee's online account.

**11.10 Dispute Resolution**

If a dispute arises out of or related to this Agreement, the parties will meet within seven (7) days of the notification of the dispute by a party, with a view to resolve the dispute in good faith. If the parties fail to resolve the dispute, then the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration (unless otherwise agreed by the parties). No party may commence court or arbitration proceedings (other than proceedings for urgent

interlocutory relief or under proceedings under clause 4.6) unless it has complied with this clause.

**11.11 Governing Law**

Subject to clause 4.6, this Agreement is governed by the laws of New South Wales and the parties submit to non-exclusive jurisdiction of the courts of New South Wales. Service of any legal process may be effected on a party by forwarding that legal process as if it were a notice given under this Agreement.

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**EXECUTION**

**THIS SECTION IS ONLY REQUIRED IF EXECUTING A HARD COPY AGREEMENT**

*If executing in hard copy, you must upload a signed copy of this True Aussie Trade Mark Terms and Conditions to your True Aussie trade mark licence online application.*

**SIGNED AS AN AGREEMENT**

Signed for and on behalf of the Licensee:

Signed for and on behalf of **Meat & Livestock Australia Limited**:

\_\_\_\_\_  
Name of Authorised Representative (PLEASE PRINT)

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Name of Authorised Representative (PLEASE PRINT)

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Position (title)

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Position (title)

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Signature of Authorised Representative

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Signature of Authorised Representative

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