

## **INTRODUCTION OF THE TEA BOARD AND THE LICENSE PROGRAM**

### **A. The Tea Board of India**

All teas produced in the tea growing areas of India are administered by the Tea Board, India ("the Board") under the Tea Act, 1953 (hereinafter, the Tea Act).

The Board was established by the Indian Government in 1953 for the purposes of controlling the Indian tea industry. The constitution of the Board is diverse and its members represent the Indian Parliament, owners of tea estates, growers of tea, the Governments of the principal tea growing states of India, employees of tea estates and gardens, exporters of tea, internal traders of tea, tea manufacturers and tea consumers.

The objects of the Board are, inter alia, to regulate the production and cultivation of tea in India, to encourage research, to regulate the sale and export of tea, to provide training in tea testing and fixing grade standards of tea, and improving the marketing of tea in India and elsewhere. The Board has numerous statutory duties and functions under the Tea Act and its various enabling Orders which govern production, marketing and export of teas.

The Board is not involved in the manufacture or trade of tea and is run on a non-profit making basis.

### **B. Tea From The District of Darjeeling, India**

The District of Darjeeling is situated in the state of West Bengal, India. Since about 1835, tea has been cultivated, grown and produced in certain tea gardens geographically located in the areas within the State. Due to the unique and complex combination of agro-climatic conditions prevailing in the region and the production regulations imposed by the Board, such tea has a distinctive and naturally occurring quality and flavour which has won the patronage and recognition of discerning consumers all over the world. Consequently, such tea, known worldwide as DARJEELING tea, has acquired both domestic and international reputation. Any member of the trade or public in India or abroad ordering or purchasing DARJEELING tea will expect the tea to be the tea cultivated, grown and produced in the defined region of the District of Darjeeling and to have the special characteristics associated with such tea.

Since its establishment, the Board has had sole control over the growing and exporting of Darjeeling tea. It is that control which has given rise to the reputation enjoyed by Darjeeling tea.

### **C. The Licensing Program**

In order to ensure that the reputation of DARJEELING tea is maintained, the Board has registered the "DARJEELING Logo" and "DARJEELING" (the word mark) (the DARJEELING marks) as certification marks and geographical Indications in India and under available means in other jurisdictions. This guarantees that tea sold under the DARJEELING marks is produced in the defined regions of the District of Darjeeling and meets the criteria laid down by the Board. This is in the interest of both the tea trade and the tea consumer.

Further, the Board has put in place a licensing program to ensure the supply chain integrity for DARJEELING tea so that the tea leaving the shores of India and claimed as DARJEELING tea the world over is genuine DARJEELING tea. A license to use the DARJEELING marks will be granted without discrimination to anyone who applies, provided the tea meets the required criteria.

All licenses to use the DARJEELING marks aim to put in place a system that meets the dual objective of ensuring that (a) tea sold as DARJEELING tea is genuine DARJEELING tea and (b) all sellers of genuine DARJEELING tea are duly licensed. This license program affords the Board the necessary information and control over the DARJEELING tea industry to ensure that tea sold in worldwide under the DARJEELING marks adheres to the standards for DARJEELING tea as set forth by the Board.

LICENSE AGREEMENT FOR THE USE of

DARJEELING and  IN CANADA

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2005 between Tea Board, India, 14, B.T.M. Sarani (Brabourne Road), P.O. Box No.2172, Kolkata of the first part (herein called "the Proprietor") and \_\_\_\_\_

\_\_\_\_\_ of the second part (herein called "the User").

**WHEREAS**

- A. The Proprietor is the owner of the marks "DARJEELING" and DARJEELING (logo) (fully described in Schedule I hereto and hereinafter called the Marks) relating to tea which meets qualitative requirements (fully detailed in Schedule II and hereinafter called the Qualitative Requirements) imposed by the Tea Board, India as a prerequisite to the grant of an authorization to use the Marks;
- B. The Proprietor also owns in Canada an Official Mark for the DARJEELING logo under No. 903,697; public notice of the Proprietor's adoption and use of the DARJEELING logo was given in the *Trade-marks Journal* dated July 5, 1989. Further, the Proprietor is the owner of artistic copyright in the DARJEELING logo under Indian registration no. A-67292/2004 dated May 11, 2004 and the same is entitled to protection in Canada under international law.
- C. The User has applied to the Proprietor for an authorization, entitling him to use the Marks in respect of tea conforming to the Qualitative Requirements (hereinafter called "the Goods") within the territory of Canada (hereinafter called "the Territory")

**NOW THIS AGREEMENT WITNESSETH** that in consideration of the mutual promises and covenants hereinafter contained, the Proprietor and the User hereby agree to the following terms and conditions.

**1. GRANT AND CONSIDERATION**

- 1.1 The Proprietor hereby grants to the User a non-exclusive authorization or license to use within the Territory the Marks in respect of the Goods.
- 1.2 In consideration of the rights of authorized or licensed use granted hereunder, the User shall pay to the Proprietor a one-time registration fee and an annual fee computed in accordance with Schedule V towards its operational and administrative costs in controlling the use of the Marks.

**2. DURATION AND TERMINATION**

- 2.1 This Agreement shall come into force from the date hereof and shall continue for one year and shall be renewable automatically for subsequent periods of one year unless terminated in accordance with the terms of this Agreement.
- 2.2 Either party may terminate this Agreement without prejudice to its other remedies forthwith by notice in writing to the other if that other commits a breach of this Agreement, provided that if the breach is capable of remedy the notice shall only be given if the party in breach shall not have remedied the same within one month of having been given notice in writing specifying the breach and requiring it to be remedied.
- 2.3 If the User uses the Marks in an unauthorized, misleading or deceptive manner, or in any manner that defames or causes disrepute to the Goods, or if the User is convicted of any offense leading to the discredit of his reputation or good faith as a trader, or is adjudicated bankrupt, or goes into liquidation (other than voluntary liquidation for the purpose of amalgamation or reconstruction), or has a receiver appointed over his assets, the Proprietor may terminate the License.
- 2.4 Except as otherwise set forth herein, and specifically subject to Sections 2.2 and 2.3, the Proprietor may not terminate a License.

**3. OWNERSHIP OF THE MARKS**

The User hereby acknowledges that the Marks are the absolute property of the Proprietor and any and all rights created by the use of the Marks are the sole property of the Proprietor. The power of issuing and terminating a license is vested in the Proprietor. The decision to issue a license is dependent solely on conformance with the criteria set forth herein.

#### **4. UNDERTAKINGS OF THE USER**

- 4.1 The User undertakes that the Goods in respect whereof it has been authorized by the Proprietor to use the Marks shall conform to the Qualitative Requirements as set forth in Schedule II.
- 4.2 So that the Proprietor may monitor the legitimacy and quality of the Goods, the Proprietor's authorized representatives shall be entitled to inspect, prior to and after the grant of the authorization, during business hours and with reasonable notice to the User, any premises where the Goods are is being processed, manufactured, packed or stored for the purpose of ensuring that the standards laid down by the Proprietor are being adhered to and complied with.
- 4.3 So that the Proprietor may monitor the legitimacy and quality of the Goods, at the Proprietor's request, the User shall submit to the Proprietor a sample of the Goods in relation to which the User uses or intends to use the Marks and/or packaging used by the User. User shall submit any samples requested pursuant to this paragraph to Proprietor within two (2) weeks of receipt of such request from the Proprietor; and
- 4.4 So that the Proprietor may determine the quantities purchased by the User for assessing the annual fee in accordance with Schedule V, the User will maintain adequate systems of control and inspection including books and records. User shall submit to the Proprietor an annual report of purchases, sales and inventory of the Goods in the form of Schedule VI hereto (the "Annual Report"). The Annual Report for each calendar year shall be due to Proprietor immediately on the expiration thereof.
- 4.5 The Marks shall be applied to packaging of the Goods so that they are clearly visible to purchasers/consumers. All presentations of the Marks shall be accompanied by an indication that they are the intellectual property of the Proprietor. Subject to this license, the User shall decide the way in which the Marks may be represented including specifications as to colour, size and lettering of the Marks (with the exception of the DARJEELING Logo, which must appear as presented in Schedule I hereto) and what matter of any description may be used in close association with the Marks and in what relationship, except that the Marks must appear in a different size or font than the Licensee's trademarks and company name. In the event of any representation of the Marks being considered unsuitable by the Proprietor, the User shall terminate such use.

- 4.6 In particular, but without limitation of or prejudice to the generality of the foregoing, the User undertakes to refrain from:
- 4.6(a) registering a mark identical with or similar to the Marks or either of them in respect of any goods;
  - 4.6(b) using for any purpose a mark identical with or similar to the Marks or either of them except as permitted by the Proprietor in this Agreement;
  - 4.6(c) using the name 'Darjeeling' as part of its corporate name or trading style.
  - 4.6(d) opposing the use and the registration of a mark identical with or similar to the Marks or either of them or contesting the validity of any such registration;
  - 4.6(e) causing or assisting any person to do any of the things mentioned in the above sub-clauses 4.6(a)-(d).
- 4.7 The obligations set out in the above clause 4.6 hereinbefore shall survive termination of this Agreement for whatsoever reason.
- 4.8 The User undertakes to bring to the notice of the Proprietor all cases of wrongful use or infringement of the Marks or either of them registration or attempted registration of a mark identical with or similar to the Marks, or either of them. In the event of the Proprietor undertaking any opposition to or any action to restrain or punish such act or acts, the User agrees to co-operate fully and freely with the Proprietor and undertakes to do all such acts and things as the User shall reasonably require to assist the Proprietor in any legal proceedings in respect of infringement or use or registration of the Marks or either of them or any mark similar thereto.
- 4.9 The User will not claim, in relation to the Goods bearing the Marks that the Goods possess any characteristic not specified in the specifications prescribed for such Goods by the Proprietor so as to suggest that such claim is certified by the Marks or in any way controlled by the Proprietor.

## 5. INDEMNITY

The User shall be liable for and shall indemnify the Proprietor (together with its officers, servants and agents) against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Proprietor whether direct or consequential (including but without limitation any economic loss or other loss of profits, business or goodwill) arising out of any dispute or contractual, tortious or other claims or proceedings brought against the

Proprietor by a third party claiming relief against the Proprietor by reason of the manufacture, use or sale of any Goods by the User or the use by the User of the Marks, except insofar as any such claims may arise from:

- (a) any breach of this Agreement by the Proprietor;
- (b) any invalidity or defect in the title of the Proprietor to the Marks not caused by any act or default of the User, or
- (c) from the instructions given to the User by the Proprietor provided such instructions have been properly carried out by the User.

**6. ASSIGNMENT**

Neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other.

**7. SEVERABILITY**

If any term, paragraph or provision of this Agreement shall be held to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other term, paragraph or provision thereof, and such invalid term, paragraph or provision shall be deemed to have been deleted from this Agreement. The parties will negotiate in good faith to replace any such invalid term, paragraph or provision with a valid term, paragraph or provision which is as nearly as possible in conformity or keeping with the spirit of the invalid term, paragraph or provision and this Agreement generally.

**8. NOTICES**

Any notice given by the Proprietor in pursuance of this authorization, to the User shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to such authorized user at his address in the Register. Any notice given by the User to the Proprietor shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to the Proprietor at Director of Tea Promotion, Tea Board, 5<sup>th</sup> Floor, 14 B.T.M. Sarani (Barabourne Road), PO Box No. 2172, Kolkata 700 001, India.

**9. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of Canada.

**IN WITNESS WHEREOF** the Proprietor and the User have executed this Agreement the date and year first above written.

For and on behalf of the PROPRIETOR

For and on behalf of the USER

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\_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_