

TRADE MARK USE AGREEMENT

entered into between:

MOHAIR SOUTH AFRICA

Registration Number: 1997/021800/09

herein represented by DEON SAAYMAN in his capacity as General Manager,
duly authorized thereto
(hereinafter referred to as "MSA")

and

Registration/Identity Number: _____

herein represented by _____ in his capacity as _____,
duly authorized thereto
(hereinafter referred to as "Trade Mark User")

1. **INTRODUCTION**

- 1.1 MSA is the owner of all right, title and interest in and to the trade mark "Mohair", and the Mohair logo, (as are contained on page 5 of annexure "A" hereto) and the goodwill pertaining thereto.
- 1.2 The parties have agreed to enter into this Trade Mark Use Agreement in order to ensure the uniform use of the Trade Marks within the Mohair Industry and to ensure that the Mohair brand is not diluted as a result of inconsistencies in respect of the use thereof.

2. **DEFINITIONS**

- 2.1 In this Agreement, unless inconsistent with the context, the following words and expressions shall bear the meanings assigned thereto and cognate words and expressions shall bear corresponding meanings:
- 2.1.1 "Agreement" means this agreement including any Schedules hereto;
- 2.1.2 "Effective Date" means the date of signature of this Agreement by the party signing last in time;
- 2.1.3 "Logo" means the Mohair logo which consists of two elements being the Mohair icon and the Mohair word mark, which should strictly be used as indicated in annexure "A" hereto (being the Logo Identity Guideline), however an exception may be applied for, for use of the Mohair word mark and/or the Mohair icon on its own or separately by the Trade Mark User to MSA in writing;
- 2.1.4 "Logo Identity Guideline" means the guidelines developed and published by MSA from time to time in order to ensure uniform use of the Logo and Trade Marks within the Mohair industry and which is annexed hereto marked "A";

- 2.1.5 "Mohair" means the fleece shown from the Angora goat and shall for purposes of this Agreement include any processed form of the aforesaid mohair fibre;
- 2.1.6 "MSA" means Mohair South Africa, Registration Number 1997/021800/09 with its principal place of business at 4 Johcla Street, Sydenham, Port Elizabeth;
- 2.1.7 "Term" means the term of this Agreement;
- 2.1.8 "Territory" means the use of the Trade Marks by the Trade Mark User in terms of this Agreement throughout the world.
- 2.1.9 "Trade Marks" means the trade mark Mohair, and the Mohair Logo, as contained and set out on page 5 of annexure "A" hereto;
- 2.1.10 "Trade Mark User" means (Your Company name) _____, Registration/Identity Number: _____, with its principal place of business at _____.
- 2.2 In this Agreement, words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include feminine and neuter genders, and vice versa. Words importing persons shall include partnerships and bodies corporate. The headings to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.3 If any provision in the preamble to this Agreement and/or if any provision in this clause 2 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in the preamble and/or this clause 2, as the case may be, effect

shall be given thereto as if such provision were a substantive provision in the body of the Agreement.

- 2.4 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.
- 2.5 This Agreement shall be binding on the estate, executors, administrators, liquidators, trustees or assigns of the parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any party shall be deemed to include such party's estate, executors, administrators, trustees, assigns or liquidators, as the case may be.
- 2.6 The rights and obligations of the party/ies comprising the Trade Mark User shall be joint and several. Payment of any amount to Mohair shall constitute valid discharge of the indebtedness of the Trade Mark User.

3. **GRANT OF TRADE MARK USE**

- 3.1 Subject to the terms and conditions of this Agreement, MSA grants and the Trade Mark User accepts, the non-exclusive, non-transferable, revocable right to use the Trade Marks within the Territory.
- 3.2 Nothing in this Agreement will be construed to prevent MSA from granting any other rights for the use of the Trade Marks to any third party or from using the Trade Marks in any other business/es.

4. **USE RIGHTS FEE**

- 4.1 MSA reserves its rights to at any time during the currency of this Agreement charge a reasonable fee determined within its sole and absolute discretion for the use rights granted to the Trade Mark User in terms of this Agreement which right, if exercised by MSA, it shall give the Trade Mark User 1 (one) month's written notice of which shall then be levied on an annual basis and

each successive year be payable on the anniversary date of the Effective Date.

- 4.2 In the event of MSA exercising its right to charge a reasonable consideration for the use rights granted to the Trade Mark User in terms of this Agreement as contemplated in clause 4.1 above and the Trade Mark User is not satisfied with such consideration, it shall be entitled to cancel this Agreement by giving MSA 1 (one) month's written notice to such effect.
- 4.3 Where the Trade Mark User elects to cancel this Agreement in the circumstances as contemplated in clause 4.2 above it shall be entitled for a further period of six months ("Amnesty Period") calculated from the date of termination of this Agreement by the Trade Mark User (i.e. at the expiry of the 1 (one) month's written notice given by the Trade Mark User to MSA to cancel this Agreement) to still make use of labels or other advertising material ("Excess Material") which still bears the Trade Mark without having to pay any fees to MSA for the continued use of the Trade Mark on the Excess Material. However, if the Trade Mark User is as at the date of termination of this Agreement still in possession of Excess Material whereon the Trade Mark is still displayed, and it wishes to avail itself of the Amnesty Period it shall inform MSA in writing of the quantity of the Excess Material in its possession and if the Excess Material is finished prior to the expiration of the Amnesty Period, it shall desist from any further use of the Trade Mark in any manner or form whatsoever.

5. **OWNERSHIP**

- 5.1 The Trade Mark User acknowledges the validity of the Trade Marks and MSA's sole and exclusive right, title and interest in and ownership of the Trade Marks, including MSA's right to register or to have registered, the Trade Marks. Apart from its rights under the use rights granted in clause 3 above, the Trade Mark User will not acquire any right, title or interest in or to the use of the Trade Marks during or after the term of this Agreement.

- 5.2 The Trade Mark User will use and display the Trade Marks only in a form and style which do not, and are not reasonable likely to defame or otherwise injure or damage MSA, its reputation and brand and in accordance with the Logo Identity Guideline.
- 5.3 The Trade Mark User will not represent in any manner that it has any ownership of right, title or interest in or to the Trade Marks other than as set forth in this Agreement. All use of whatsoever nature of the Trade Marks by the Trade Mark User shall revert to the benefit of and be on behalf of MSA.

6. **TRADE MARK USE POLICY**

- 6.1 MSA has prepared a Logo Identity Guideline which is annexed hereto marked Annexure "A".
- 6.2 The Trade Mark User acknowledges the Logo Identity Guideline and agrees and undertakes to strictly abide by and adhere to the Logo Identity Guideline as set forth therein. MSA retains the right to amend the Logo Identity Guideline from time to time and if so amended, MSA shall forthwith provide the Trade Mark User with an updated version of such revised Logo Identity Guideline which the Trade Mark User hereby irrevocably and unconditionally agrees to be bound by in its use of the Trade Marks.

7. **TERM AND TERMINATION**

- 7.1 This Agreement shall commence on the Effective Date and shall endure for an indefinite period, unless otherwise provided in this Agreement.
- 7.2 Notwithstanding anything contained to the contrary in this Agreement, MSA shall at any time during the currency of this Agreement have the right to, within its sole and absolute discretion revoke the right granted to the Trade Mark User to use the Trade Marks in terms of this Agreement by giving the Trade Mark User 1 (one) month's written notice to such effect but shall nevertheless be entitled to immediately revoke such right of use by written notice to the Trade Mark User in circumstances where the Trade Mark User

commits a material breach of this Agreement. For purposes of this clause, whether a particular breach is of a material nature shall be determinable within the sole and absolute discretion of MSA.

7.3 Upon expiration or termination of this Agreement, the Trade Mark User will immediately seize all use of the Trade Marks and deliver on to MSA all items, material, goods or other commodities in its possession bearing the Trade mark and/or Logo.

8. **WARRANTIES, LIMITATION OF LIABILITIES AND INDEMNITY**

WARRANTIES

8.1 No implied warranties of quality, merchantability or fitness for a particular purpose are given by MSA hereunder, and no implied warranty arising by usage or trade, course of dealing, or course of performance is made by MSA nor shall any such implied warranty arise in terms of this Agreement and/or MSA's conduct in relation thereto, and in no event shall MSA be liable on any such warranty with respect to any part or all of the products sold displaying the Trade Marks and/or Logo or any service provided by MSA hereunder.

8.2 The Trade Mark User warrants that:

8.2.1 it is a commercial sound enterprise operating in the Mohair Industry in the Territory;

8.2.2 it has exercised its own judgment and relied on its own expertise with respect to the products to be sold bearing the Trade Marks and/or Logo (which judgment and expertise renders it capable of ensuring that the warranty referred to in clause 8.2.8 and the quality control undertakings referred to in clause 10 can be given effect to) and such judgment and expertise has led it to conclude the Trade Mark Use Agreement;

- 8.2.3 it shall at all times possess or have the right to use knowledge to enable it to comply with its obligations stipulated in this Agreement;
- 8.2.4 it shall at all times use and adopt techniques and standards to enable it to comply with its obligations in a fit and proper manner and with due care, skill and diligence;
- 8.2.5 it shall at all times during the term of this Agreement have (or have recourse to) a sufficient number of adequately qualified, skilled and experienced personnel and other resources to carry out its obligations in accordance with the provisions of this Agreement;
- 8.2.6 it shall not make any misrepresentations to third parties regarding the Trade Marks and Logo or the Trade Mark User's capabilities;
- 8.2.7 it shall not do anything that may prejudice or be adverse to the operations, business and reputation of MSA;
- 8.2.8 it shall at all times during the currency of this Agreement only use the Trade Marks and/or Logo in respect of products which contains or consists of Mohair as defined of at least 10% (ten percent);
- 8.2.9 It shall not use in its business, within the Territory any other trade marks so resembling the Trade Marks as to be likely to cause confusion or deception, the decision as to whether such trade marks are of such a nature being at all times within the sole and absolute discretion of MSA;
- 8.2.10 It shall not market, distribute or deal in any product of whatsoever nature under the Trade Marks or which incorporates the Trade Marks into its name, nor shall the Trade Mark User apply the Trade Marks to any product of whatsoever nature other than those as stipulated in clause 8.2.8 above.

LIMITATION OF LIABILITY

8.3 In no event shall MSA be liable to the Trade Mark User (or any party claiming through or on behalf of the Trade Mark User) for any claim, expense, liability and/or incidental, indirect, special or consequential damages whatsoever (including, but not limited to, lost of profits or interruption of business) arising out of or relating to this Trade Mark Use Agreement or the use of the Trade Marks and/or the Logo or for any claim by any third party against the Trade Mark User.

INDEMNITY

8.4 Subject to clause 9 below, MSA shall indemnify, hold harmless and defend the Trade Mark User from and against any and all damages, costs, losses and expenses (including settlement awards and proper legal expenses) awarded by a Court of Law against the Trade Mark User arising from or in connection with any claim that MSA did not have the right to grant the Trade Mark User the use rights in terms of this Trade Mark Use Agreement.

8.5 The Trade Mark User hereby agrees to indemnify, defend and hold MSA harmless – and any of its officers, employees, and agents – for and from any and all claims, liabilities, judgments, costs, expenses and damages of whatsoever nature, including Court costs and attorneys' fees on an attorney and own client scale (including the cost of Counsel, if applicable), arising out of this Agreement or any action by the Trade Mark User under this Agreement.

9. **NOTICE OF INFRINGEMENT**

The Trade Mark User shall immediately on becoming aware thereof, inform MSA in writing of any infringement or apparent infringement of, or challenge or threat to the Trade Marks by any person or entity of whatsoever nature and it undertakes to assist

MSA in all respect in taking such actions, at MSA's expense, as MSA deems appropriate to protect its rights.

10. **QUALITY CONTROL**

10.1 The Trade Mark User agrees that the nature and quality of all the products rendered by the Trade Mark User in connection with the Trade Marks, all goods sold by the Trade Mark User under the Trade Marks, and all related advertising, promotional and other related uses of the Trade Marks by the Trade Mark User shall conform to standards set by and be under the control of MSA. The Trade Mark User agrees to strictly abide by the Logo Identity Guideline as set forth in annexure "A" hereto.

10.2 The Trade Mark User agrees to co-operate with MSA in facilitating MSA's control of such nature and quality, to permit reasonable inspection of the Trade Mark User's operation, and to supply MSA with specimens of all uses of the Trade Marks and Logo upon request. The Trade Mark User shall comply with all applicable laws and regulations and obtain all appropriate Government approvals pertaining to the sale, distribution and advertising of goods and services covered by this Trade Mark Use Agreement.

11. **BREACH**

11.1 Save for the provisions of clause 7.2 above, if any party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 10 (ten) days of receipt of written notice from any other party calling upon it to do so then the innocent party giving such notice shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement and/or at law to:

11.1.1 cancel this Agreement forthwith, with or without claiming damages;

11.1.2 obtain an Order against the defaulting party for specific performance, with or without claiming damages.

11.2 Without prejudice to any other rights which MSA may have against the Trade Mark User, whether in terms of this Agreement or otherwise in law, in the event of a committal of a material breach of this Agreement by the Trade Mark User and where MSA has exercised its rights to terminate this Agreement in terms of clause 7.2 above, the parties hereby irrevocably and unconditionally acknowledge that the agreed damages which in these circumstances would be due by the Trade Mark User to MSA shall be an amount of 5000 Euros which shall immediately be payable by the Trade Mark User to MSA upon MSA serving the Trade Mark User with its notice of cancellation as contemplated in clause 7.2 above.

12. **DOMICILE**

12.1 The parties hereto select as their respective *domicilium citandi et executandi* the following addresses to which all notices may be posted or delivered and at which all legal process may be served arising from this Agreement:

12.1.1 **MSA**

Physical address: 4-8 Johcla Road, Sydenham, Port Elizabeth, South Africa, 6001

Telefax: +27 (41) 487 1336

E-mail: info@mohair.co.za

12.1.2 **TRADE MARK USER**

Physical address:

Telefax:

E-mail:

12.2 A party may at any time change its domicilium by notice in writing, provided that the new domicilium is within the Republic of South Africa and consists of, or includes a physical address at which process can be served.

12.3 Any notice given in connection with this Memorandum shall:

12.3.1 be delivered by hand; or

- 12.3.2 be sent by registered post; or
- 12.3.3 be sent by telefax transmission; or
- 12.3.4 be sent by electronic mail transmission.

12.4 A notice given as set out above, shall be deemed to have been duly given:

- 12.4.1 if delivered, on the date of delivery;
- 12.4.2 if sent by registered mail, on the fifth calendar day after posting;
- 12.4.3 if sent by telefax or e-mail, on the date of transmission.

12.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party or an authorized representative of a party (as the case may be) shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at this chosen *domicilium citandi et executandi*.

13. **GENERAL**

- 13.1 This Agreement constitutes the sole record of the agreement between the parties in relation to its subject matter.
- 13.2 No party is bound by any representation, warranty, promise or the like not recorded in this Agreement.
- 13.3 No addition to, variation, novation or agreed cancellation of this Agreement will be of any force or effect unless in writing and signed by or on behalf of the parties.
- 13.4 No relaxation or indulgence which a party may grant to the other party, will in any way prejudice or constitute a waiver of any of the rights of the grantor unless reduced to writing and signed by all parties.
- 13.5 Any suspension, extension, relaxation or indulgence given or made in terms of clause 13.4 as the case may be, will be strictly construed as relating strictly to the matter in respect whereof it was given or made, as the case may be.

- 13.6 Each party undertakes to procure that the provisions of this Agreement will be binding upon any successor-in-title and any permitted assign, delegate or cessionary as the case may be, of such party.
- 13.7 All provisions of this Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever will, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this Agreement will be of full force and effect. The parties declare that it is their intention that the Agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.
- 13.8 This Agreement and any disputes of whatsoever nature resulting therefrom or pursuant thereto shall be governed and determined in accordance with South African Law and for such purposes the parties hereby submit to the exclusive jurisdiction of the Eastern Cape High Court Port Elizabeth or its successors-in-title from time to time.

SIGNED BY THE PARTIES AT THE PLACES AND ON THE DATES SET OUT BELOW.

PLACE _____

DATE _____

WITNESS _____

MSA

PLACE _____

DATE _____

WITNESS _____

TRADE MARK USER