

## Australian PorkMark Licence

### Term Sheet

<b>APL</b>	Name	<b>Australian Pork Limited</b> ABN 83 092 783 278
	Address	Level 2, 2 Brisbane Ave. Barton ACT 2600
	Telephone	02 6270 8833
	Fax	02 6270 8899
	Address for Notice	Tracey Buckler Australian Pork Ltd PO Box 4746 Kingston ACT 2604 Australia Email: PorkMark@australianpork.com.au
<b>Licensee</b>	Business Name	
	Contact Name	
	Address	
	Telephone	
	Fax	
	Address for Notice	
	Email	
<b>Territory</b>	Australia	
<b>Licensee industry capacity</b>	Not a holder of, or entitled under, any permit, licence or other authorisation to import pork for further processing or sell imported pork for further processing in Australia not including already cured meats such as prosciutto etc.  [specify whether Processor, Retailer, Wholesaler or Food Service provider or other capacity]	
<b>Term</b>	12 months	
<b>Nominated Products</b>	[ ]	
The Term Sheet incorporates the Terms and Conditions attached.		
Executed as an agreement.		
Signed for and on behalf of Australian Pork Limited by its duly authorised representative:  ..... Signature  ..... Name  ..... Position  ..... Date	Signed for and on behalf of the Licensee by its duly authorised representative:  ..... Signature  ..... Name  ..... Position  ..... Date	

## Terms and Conditions

### 1. Definitions

#### 1.1 In this Agreement:

- (1) **Agreement** means these Terms and Conditions and the Term Sheet, including any schedule or annexure;
- (2) **Consumer** means a non-commercial purchaser of pork products for consumption;
- (3) **Food Service** means a commercial entity which prepares meals from pork products for provision to Consumers, and includes the practice of serving food in a commercial context;
- (4) **Insolvency Event** means one or more of the following has occurred:
  - (a) a meeting of the Licensee's creditors has been convened, or a scheme of arrangement has been made for the benefit of the Licensee's creditors;
  - (b) an application or order is made to or by a court, or a resolution is passed, for the winding-up of the Licensee;
  - (c) a Trustee, Liquidator, Receiver or Receiver/Manager is appointed to the Licensee;
  - (d) any act of bankruptcy is committed by the Licensee within the meaning of the Bankruptcy Act 1966 (Cth); or
  - (e) the Licensee is placed under external management or steps are taken for the appointment of an external manager.
- (5) **Licensee** means the Licensee named and described in the Term Sheet;
- (6) **Nominated Product** means the Australian pork product or products described in the Term Sheet;
- (7) **Policies** means any policies, procedures, guidelines or standards published by APL on all matters relevant to the Trade Mark and its use;
- (8) **Processor** means a commercial entity which processes pork and **Process** includes the practice of doing so;
- (9) **Quality Assurance Program** means the Licensee's documented operating procedures and manufacturing practices for Processing, Wholesaling, Retailing and Food Service (as the case may be) of Nominated Products;
- (10) **Regulation** means a statute, regulation, other statutory instrument or law, or a provision thereof, or binding code or standard (as may be amended or replaced from time to time) applicable to the Licensee, including any requirements for use of the Trade Mark in connection with the Nominated Products, and for the content, production, processing, delivery, storage, advertising, packaging or promotion of Nominated Products;
- (11) **Retailer** means a commercial entity which sells pork products to Consumers and **Retail** includes the practice of doing so;
- (12) **Term** means the term of this Agreement identified in the Term Sheet;
- (13) **Term Sheet** means the Australian PorkMark Licence Agreement Term Sheet, to which these terms and conditions are attached and/or refer;
- (14) **Territory** means the territory described in the Term Sheet;
- (15) **Trade Mark** means the unregistered Trade Mark shown in the Schedule; and
- (16) **Wholesaler** means a commercial entity which receives pork product from a Processor for distribution to other commercial entities for onsale, and **Wholesale** includes the practices of doing so.

### 2. Interpretation

#### 2.1 Reference to:

- (1) a person includes a body corporate; and

- (2) a party includes the party's executors, administrators, successors and permitted assigns.

- 2.2 Including and similar expressions are not words of limitation.
- 2.3 Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- 2.4 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation or the inclusion of the provision in the Agreement.

### 3. Grant of licence

- 3.1 APL hereby grants on the terms and conditions contained within this Agreement a non-exclusive licence to the Licensee to use the Trade Mark for the Term in the Territory solely on and in connection with the Nominated Products, in the Licensee's industry capacity specified in the Term Sheet.

### 4. Term

- 4.1 This Agreement will commence on the date of execution by the parties and continue for the Term subject to any earlier termination in accordance with this Agreement.

### 5. Licensee obligations and rights

#### 5.1 The Licensee must:

- (1) use the Trade Mark:
  - (a) only on and in relation to Nominated Products; and
  - (b) in accordance with any Policies published by APL and applicable to the Trade Mark, and the following branding and advertising requirements;
    - (i) The Trade Mark must appear on every pack of Nominated Products sold, so as to ensure their clear identification in-store;
    - (ii) A picture of a pack (or packs) of Nominated Products must be shown in any advertisements for the Nominated Products;
    - (iii) only in the form (including the proportions, fonts, colour and overall design) of the Trade Mark provided in the Schedule (as may be varied by written notification from APL);
- (2) submit for APL's approval any packaging, advertising and promotional material bearing the Trade Mark prior to it being used by the Licensee. APL will advise the Licensee whether it grants approval within 4 business days of receipt of such material.
- (3) apply the Trade Mark on any product label for Nominated Products, in a visually prominent position;
- (4) use its best endeavours to observe and protect the reputation of APL and the Trade Mark;
- (5) not use the Trade Mark in any manner which may be misleading or deceptive or adversely affect the interests of APL in the Trade Mark;
- (6) not make, or cause to be made, or assist directly or indirectly in making, any act or omission which may, or may be likely to infringe, threaten or otherwise interfere with any part of the right, title or interest of APL in the Trade Mark;
- (7) not use or register or attempt to register any business name, domain name, corporate name or trade mark which is, or incorporates the Trade Mark or any name, word, mark, design, emblem, visual representation or slogan substantially identical with or deceptively similar to the Trade Mark; and
- (8) not use the Trade Mark as part of the logo or identity of the Licensee.

## Terms and Conditions

- 5.2 The Licensee must ensure that all Nominated Products:
- (1) contain pork exclusively sourced from pigs raised and slaughtered in Australia; and
  - (2) meet the requirements of the Australian Meat Standards AS4696 for the hygienic production and transportation of meat and meat products for human consumption.
- 5.3 The Licensee's Quality Assurance Program must ensure accurate and correct labelling of Nominated Products.
- 5.4 The Licensee must, notwithstanding any other provision of this Agreement, comply with all Regulations applicable to the exercise of the Licensee's rights and performance of its obligations under this Agreement, and/or to food identification, traceability, advertising and labelling in connection with the Nominated Products, including:
- (1) Labelling and Food Identification Requirements of Standards 1.2.1 and 1.2.2 of the Food Standards Code; and
  - (2) Country of Origin Labelling Requirements of Standard 1.2.11 of the Food Standards Code.
- 5.5 To the extent permitted by law, any rights that the Licensee might have under common law, equity or statute (including under section 26 of the Trade Marks Act 1995 (Cth)) in relation to the Trade Mark and this Agreement are specifically excluded and the Licensee's rights are limited to those expressly contained under this Agreement.
- 5.6 The Licensee does and will not acquire title to, goodwill in, or any other rights to the Trade Mark other than the right to use the Trade Mark in accordance with this Agreement. Any reputation or goodwill arising in the Trade Mark accrues solely and exclusively to the benefit of APL.
- 5.7 Not a holder of, or entitled under, any permit, licence or other authorisation to import pork for further processing or sell imported pork for further processing in Australia not including already cured meats such as prosciutto etc.
- 6. Quality Assurance Program**
- 6.1 The Licensee must at its cost, upon request by APL, submit documents that detail the Licensee's Quality Assurance Program.
- 7. Policies**
- 7.1 The Licensee must comply with the Policies as notified by APL from time to time.
- 8. Indemnity and product liability**
- 8.1 The Licensee indemnifies and will keep indemnified APL, its servants, agents, officers and employees, from and against any and all claims, actions, proceedings, demands, costs or expenses arising directly or indirectly from:
- (1) the Licensee's unlawful, wilful or negligent acts or omissions;
  - (2) the Licensee's breach of this Agreement;
  - (3) any damage, loss, injury or death to any person as a result of or in connection with a Nominated Product; or
  - (4) use of the Trade Mark other than in accordance with this Agreement.
- 8.2 The Licensee must not (either expressly or impliedly) represent to any person that APL warrants or guarantees the quality or properties of the Nominated Products or any other product or service. APL acknowledges that the use of the Trade Mark on Nominated Products in accordance with this Agreement does not, by itself, breach this clause.
- 8.3 APL does not by the grant of the licence to use the Trade Mark under this Agreement, accept any liability to the Licensee or any other party for any damage, loss or injury caused as a result of the use of any Nominated Product.
- 8.4 Subject to clause 8.5 and clause 8.7, and, to the extent permitted by law:
- (1) APL excludes all:
    - (a) terms, conditions, warranties, undertakings or representations of any kind in relation to the Trade Mark or this Agreement;
    - (b) liability (other than liability which may not be lawfully excluded or direct loss arising from APL's negligence or wilful misconduct) for loss or damage (including indirect or consequential loss and loss of profit, anticipated profit, expectation, revenue, data, use, damage to goodwill or loss due to delay) however caused (including breach of contract, negligence, tort and/or under statute) that may be suffered or incurred or that may arise from or in connection with this Agreement or the Trade Mark; and
  - (2) where a condition or warranty cannot be excluded liability is limited (at APL's discretion) to:
    - (a) if the breach relates to goods, the replacement of the goods or the supply of equivalent goods; or payment of the costs of replacing the goods or of acquiring equivalent goods; or
    - (b) if the breach relates to services, the supplying of the services again or the payment of the cost of having the services supplied again.
- 8.5 APL warrants that to the best of its knowledge, information and belief as at the date of this Agreement the Trade Mark does not infringe any third party's intellectual property.
- 8.6 The Licensee acknowledges and agrees that the Trade Mark is unregistered, and that APL does not warrant or represent that:
- (1) it will register the Trade Mark under the Trade Marks Act 1995 (Cth) or that the Trade Mark is able to be registered; or
  - (2) it has any exclusive rights to the Trade Mark.
- 8.7 Where APL is found to be in breach of clause 8.5 APL will indemnify the Licensee against any direct costs arising out of the Licensee's use of the Trade Mark in accordance with the terms of this Agreement.
- 8.8 This clause 8 survives termination or expiry of this Agreement.
- 9. Termination and expiry**
- 9.1 APL may terminate this Agreement in whole or in part by giving to the Licensee written notice of termination, effective on the date specified in the notice, upon the occurrence of any one or more of the following:
- (1) an Insolvency Event;
  - (2) APL ceases to offer or to manage the use of the Trade Mark, in whole or in part;
  - (3) if the Licensee at any time breaches the warranty in clause 5.7;
  - (4) if the Licensee at any time breaches any provision of this Agreement, including any provision of the Policies, and does not rectify the breach within 7 business days of being notified of the breach;
  - (5) if the Licensee repeatedly breaches any provision of this Agreement, including any provision of the Policies;
  - (6) where, in the reasonable opinion of APL, there is a danger to the health or welfare of the public in respect of a Nominated Product; or
  - (7) where, in the reasonable opinion of APL, the reputation of APL, or the Trade Mark is at risk.
- 9.2 Upon termination or expiry of this Agreement, the Licensee will:
- (1) immediately cease to have any rights in relation to the Trade Mark and must immediately cease to use or reproduce the Trade Mark or to hold itself out as being entitled to use or reproduce the Trade Mark;

## Terms and Conditions

- (2) in the manner and within the timeframe APL requires deal with all packaging and promotional material etc that feature the Trade Mark; and
- (3) if required by APL, recall the Nominated Products for the purpose of removing the Trade Mark from the Nominated Products.
- 9.3 Any termination by APL of this Agreement, in whole or in part, will be without prejudice to any other rights and remedies of APL under this Agreement or at law.
- 10. Dispute Resolution**
- 10.1 If a dispute arises under this Agreement, a party to the dispute must give to the other party to the dispute notice specifying the dispute and requiring its resolution under this clause 13 (“Notice of Dispute”).
- 10.2 The principal executive officers of each party must confer within 3 business days after the Notice of Dispute is given to try to resolve the dispute.
- 10.3 If the dispute is not resolved within 7 business days after the Notice of Dispute is given to the other party or parties (“First Period”), the dispute is by this Rule submitted to determination by an expert (“Hearing”). The Hearing must be conducted in the Australian Capital Territory. The provisions of the “Rules for the Expert Determination of Commercial Disputes” as published by the Institute of Arbitrators and Mediators Australia (to be found on its website [www.iama.org.au](http://www.iama.org.au)) apply, except to the extent that there are inconsistent provisions in these Rules.
- 10.4 If the parties have not agreed upon the expert and the expert’s remuneration within 7 business days after the First Period:
- (1) the expert is the person appointed by the President of the Law Society of the Australian Capital Territory (“President”) or the President’s nominee acting on the request of any party to the dispute; and
- (2) the remuneration of the expert is the amount or rate determined by the President.
- 10.5 After considering such evidence as the parties may submit, including any evidence requested by the expert, and after each party has had an opportunity of being heard, the expert will decide the matter.
- 10.6 The parties must pay the expert’s remuneration in equal shares. Each party must pay its own costs of the Hearing.
- 10.7 Nothing in this clause 13 prevents any party from obtaining any injunctive, declaratory or other interlocutory relief from a court that may be urgently required.
- 11. General**
- 11.1 **No partnership** - Nothing in this agreement is intended to create a partnership, agency or joint venture as between the Licensee and APL.
- 11.2 **No assignment** - The Licensee may not assign or otherwise deal with the whole or any part of this Agreement, or sublicense or otherwise deal with the rights granted to it by APL in relation to the Trade Mark.
- 11.3 **Severability** - If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
- 11.4 **Entire understanding** - This Agreement and the Policies form the entire Agreement and understanding between the parties on everything connected with the subject matter of this agreement, and supersede any prior agreement or understanding on anything connected with that subject matter.
- 11.5 **Variation** - An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- 11.6 **Waiver** - A party’s failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver is not effective unless it is in writing.
- 11.7 **Costs and outlays** - Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
- 11.8 **Notices** - A notice or other communication connected with this Agreement (Notice) has no legal effect unless it is in writing and must be delivered to the Parties’ contact details specified in the Term Sheet.
- 11.9 **Governing law and jurisdiction** - The law of the Australian Capital Territory (ACT) governs this Agreement and the parties submit to the non-exclusive jurisdiction of the courts of the ACT and of the Federal Court of Australia.

### Schedule

Trade Mark	
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