

CERTIFICATION OLIVEMARK[®] LICENCE AGREEMENT

AGREEMENT made this _____ day of _____ by and between Olives New Zealand Inc. ("Licensor"), and _____ ("Licensee").

RECITALS

- A. Licensor is the owner of the Olives New Zealand (ONZ) Certification Trade Mark, a representation of which is set forth in Schedule A attached hereto (the "OliveMark[®]").
- B. Licensor has established certain standards for Extra Virgin Olive Oils set forth in Schedule B hereto (the "Standards"). Licensor offers certification that Extra Virgin Olive Oils made, blended, sold, marketed or distributed comply with the Standards and will Licence use of the OliveMark[®] for the purpose of advertising that such certification has taken place.
- C. Licensee desires to make, blend, sell, market or distribute Extra Virgin Olive Oil which complies with the Standards and receive a Licence to use the OliveMark[®], on the terms and conditions contained herein.

THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. Certification. Licensee has submitted samples to Licensor of olive oil which have subsequently been certified by Olives New Zealand as having the characteristics set forth in Schedule B – The Certification Standards. Such Lot or Lots of olive oil shall be referred to hereafter as the "Certified Extra Virgin Olive Oil".
2. Licence. In consideration of the fee and other mutual obligations set forth, the Licensor hereby grants to Licensee a non-exclusive Licence to use the OliveMark[®] on vessels containing Certified Extra Virgin Olive Oil and promotional and marketing materials developed by Licensee in connection therewith, and for no other purpose, and Licensee hereby accepts such grant subject to the terms and conditions hereof.
3. Obligations of Licensee. Licensee hereby represents and agrees that:
 - 3.1 The Request and Authorisation for Certification Assessment of Olive Oils and all other information provided by Licensee to Licensor concerning the Certified Extra Virgin Olive Oil is true and correct.

- 3.2 Licensee shall use the OliveMark® only on vessels containing the Certified Extra Virgin Olive Oil and promotional and marketing materials developed by Licensee in connection therewith.
- 3.3 In the event that the Certified Extra Virgin Olive Oil represents a single lot of Extra Virgin Olive Oil, Licensee shall use the OliveMark® only on vessels containing such lot, and shall apply for new certification for any other new and distinct lot.
- 3.4 Labels used on vessels containing Certified Extra Virgin Olive Oil shall be the same as samples submitted with the Request and Authorisation for Certification Assessment of Olive Oils, and shall comply with all reasonable requirements of the Licensor, to enable Certified Extra Virgin Olive Oil at all times to be identified, verified, audited, and traced.
- 3.5 Licensee will ensure that the Certified Extra Virgin Olive Oil will be packaged in containers that exclude light (such as dark glass bottles, cans, clear bottles inside containers that exclude light, metallised polyester type plastic bags in a box or cans).
- 3.6 A "lot" is a homogenous batch of oil, of uniform composition throughout.
 - 3.6.1 A lot may consist of the oil from a single milling operation, or oils from multiple milling operations that have been combined into an homogenous batch prior to testing.
 - 3.6.2 "Lots" that have been tested and gained approval to use the OliveMark® as single "lots" may be combined.
 - 3.6.3 Oils that are part of a lot that has been tested and approved as a homogenous batch are not deemed to be Certified in their own right.
 - 3.6.4 A licensee who has obtained approval to use the OliveMark® on one lot of oil is not authorized to use the OliveMark® on another lot that has not been tested and approved.
- 3.7 Licensee shall take all reasonable measures to ensure that the OliveMark® will not be associated with any other olive oil or products sold, marketed or distributed by Licensee and not covered by a similar licence agreement with Licensor.

- 3.8 The Licensee is authorised or empowered to execute this licence so as to bind any person or entity entitled to assert ownership or control of Certified Extra Virgin Olive Oil.
- 3.9 Licensee shall inform Licensor immediately of any material change to any of the foregoing.

4. Quality Control.

- 4.1 Licensor may take all reasonable steps to conduct audits and ensure that the OliveMark® is used only on or in relation to vessels containing the Certified Extra Virgin Olive Oil and that the Certified Extra Virgin Olive Oil continues to comply with the Standards. Any such audit of Certified Extra Virgin Olive Oil may, without limitation, require up to date chemical analysis and sensory evaluation.
- 4.2 The Licensee shall be liable for and agrees to pay, if demanded, all reasonable costs and disbursements of any audit which reveals non-compliance with the Standards.
- 4.3 Licensee shall keep and maintain appropriate records in accordance with the requirements and obligations of this Licence Agreement.
- 4.4 Licensee hereby agrees to provide Licensor or its authorised representative access, at all reasonable times, to Licensee's business facilities and records and any other facilities or records which are relevant to the production, bottling or storage of Certified Extra Virgin Olive Oil sold, marketed or distributed by Licensee for the purpose of inspection for compliance with the Standards. Licensee further agrees to provide samples to Licensor, upon Licensor's reasonable request by the Licensor, of Certified Extra Virgin Olive Oil, marketed or distributed by Licensee bearing the OliveMark® and all promotional and marketing materials developed by Licensee in connection therewith.
- 4.5 Licensee acknowledges that the Certified Extra Virgin Olive Oil is a perishable product, which may over time cease to comply with the Standards, and licensee therefore agrees to take all reasonable steps to ensure that its vessels bearing the OliveMark® are not sold or marketed by licensee if the Certified Extra Virgin Olive Oil no longer complies with the Standards. Such reasonable steps include but shall not be limited to advising any third party selling or marketing the vessel that the contents no longer comply with the Standards required by the OliveMark®.

5. Fees. Licensor has published details of fees with respect to:

5.1 The Licence fee for use of the OliveMark[®] in accordance with paragraph 2, which is an annual one-off fee per Licensee.

5.2 Administration and assessment of oil for the ONZ certification programme.

The Licensee agrees to pay such fees upon submission of this Licence Agreement to the Licensor for execution.

6. OliveMark[®].

6.1 Licensee agrees to display or affix the OliveMark[®] to all vessels containing the Certified Extra Virgin Olive Oil.

6.2 Licensee may reproduce, and incorporate the OliveMark[®] (as supplied by Olives New Zealand) as part of any labelling used by the Licensee, subject to **prior approval** by the Licensor.

6.3 The OliveMark[®] must not be reproduced in any other colour, size, or obscured by any other label, device, material or artwork.

6.4 Any display or reproduction of the OliveMark[®] for promotional purposes where the OliveMark[®] appears in isolation and separate from a vessel (such as a bottle) shall require prior approval of the Licensor.

7. Ownership and Goodwill. Licensee acknowledges and agrees that:

7.1 The OliveMark[®] is the sole and exclusive property of Licensor;

7.2 No right, title or interest in the OliveMark[®] is transferred to Licensee by this Agreement, but only a licence to use the OliveMark[®] subject to the terms and conditions hereof;

7.3 The goodwill developed in connection with the OliveMark[®] is for the benefit of Licensor,

7.4 The Licensor has the right and obligation to enforce the Standards to protect the goodwill of the OliveMark[®] in accordance with the terms and conditions of this Agreement.

7.5 The Licensee shall not contest the validity of the OliveMark[®] or Licensor's rights thereto or make any claim adverse to Licensor's right, title and interest in and to the OliveMark[®].

- 7.6 The Licensor may use the OliveMark® to educate the public about Licensor's certification programme and other activities.
8. Registration of OliveMark®. Licensor has registered and trademarked the OliveMark® in New Zealand. Licensee shall not undertake any action which would adversely affect, undermine or compromise the Licensor's ownership of and rights to the OliveMark®. This covenant shall survive the termination of this Agreement.
9. Term and Termination.
- 9.1 Term. Unless earlier terminated: this Agreement shall terminate on a date which is the earlier of twenty four months from the date of certification of the Certified Extra Virgin Olive Oil and the 31st day of July in each year.
- 9.2 Termination. If Licensee shall fail to perform any material obligation, covenant, undertaking, term or condition of this Agreement and fails to cure such default within 14 days from the date written notice of such failure of performance is given to Licensee by Licensor, then Licensor shall be entitled to terminate this Agreement immediately without further notice and shall be entitled to all remedies set forth in clause 9 and all other remedies available at law.
- 9.3 Effect of Termination. Upon termination of this Agreement, Licensee shall immediately discontinue all use of the OliveMark®.
10. Liquidated Damages and Remedies. Licensee hereby acknowledges that the OliveMark® is extremely valuable to Licensor, and that any material breach of this Agreement by Licensee (whether intentional or not) may result in substantial harm to Licensor, which may be difficult to measure and not adequately compensated by monetary damages. Therefore, in the event of the termination of this Agreement pursuant to paragraph 9.2 the Licensor may:
- 10.1 Require Licensee to recall and regain from distribution all vessels bearing the OliveMark®; and the Licensee agrees to do so immediately upon written request by Licensor.
- 10.2 Require Licensee to pay Licensor the greater of the sum of Ten Thousand Dollars (\$10,000) or the sum of One Dollar (\$1.00) per vessel which bears the OliveMark®; and Licensee shall make such payment within 30 days of written notice by Licensor.
- 10.3 Disseminate a press release describing the circumstances of the termination, breach or recall including public dissemination by any medium including direct

mailing by retailers. Such press release may include but is not limited to the following language:

"Olives New Zealand announced today that (Name of Certified Extra Virgin Olive Oil) certified on (Date) and bearing the Olives New Zealand OliveMark® no longer meets the requisite Standard and that the certification and licence to use the OliveMark® has been withdrawn. Further the Licensee has agreed to recall from Distribution or remove the ONZ OliveMark® from all vessels certified on (Same Date). This announcement does not apply to (Name of Certified Extra Virgin Olive Oil) certified on other dates."

10.4 Licensee agrees that the above remedies are reasonable and may be imposed either individually or cumulatively at the sole discretion of Licensor.

11. Indemnification. Licensee shall indemnify, defend and hold Licensor harmless from and against any and all claims, judgments, liabilities, losses, damages, penalties, fines, or costs (including, but not limited to, reasonable legal fees), which arise from, or are related to, Licensee's use of the OliveMark®. This indemnity shall survive the expiration and termination of this Agreement.
12. Successors. Licensee may not sell, assign, transfer, mortgage, sublicense, or otherwise part with any of its rights or obligations under this Agreement, to any person or entity, without the prior written consent of Licensor, which consent may be withheld at Licensor's sole discretion. Subject to the foregoing limitation, the provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the heirs, successors, executors, administrators and assigns of the parties hereto.
13. Notice. Any notice, demand, request, consent or other communication which either party desires or is required to give to any other party shall be in writing and shall be deemed to have been given when either:
 - 13.1 Delivered in person or by facsimile, or
 - 13.2 Emailed with attachment and verified Read Receipt Request
 - 13.3 Either party may designate another address at any time upon written notice to the other party.
14. Dispute Resolution.
 - 14.1 The parties shall in good faith work toward the resolution of any disputes or issues arising under this contract including through mediation.

14.2 If the parties fail to reach an agreement with respect to any such disputes or issues, the parties shall submit such disputes or issues to binding arbitration. Such disputes or issues shall be arbitrated pursuant to the Arbitration Act 1996. The parties may hereafter agree to other arbitration rules but any such agreement must be in writing. The arbitrator's decision shall be binding on the parties.

15. Expense of Enforcement. If any action, proceeding or litigation is commenced to enforce any provision of this Agreement, then the prevailing party shall be entitled to be reimbursed by the unsuccessful party for all fees, expenses and costs incurred in connection with such action, proceeding or litigation, including a reasonable allowance for legal fees and costs and expert witnesses' fees and costs, which amount shall be added to and become part of the final decision in such matter.

16. Governing Law.

This agreement is governed by the laws of New Zealand and the parties agree to submit to the non exclusive jurisdiction of the courts of New Zealand.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date first set forth above.

Licensee

Name:

Address:

By (signature):

By (printed):

Title:

Date:

Licensor

Olives New Zealand Inc.

18 Busby Hill

HAVELOCK NORTH 4130

By (signature):

By (printed):

Title:

Date:

SCHEDULE A (Recital A)

Representation of the OliveMark®:



SCHEDULE B (Recital B)

The Certification Standards:

- (1) Absence of defects as established by the IOC and tested by the Department of Primary Industries Oil Testing Service, New South Wales, Australia, as follows:
 - Fusty/ Muddy sediment
 - Musty
 - Rancid
 - Winey / Vinegar
 - Frost Bitten/ Wet Wood
 - Metallic
 - Other (e.g. Metallic, Vegetable water, Frosted, Earthy, Cucumber, Grubby).
- (2) Presence of the fruity attribute as established by the IOC and tested by the Sensory Panel of the Department of Primary Industries Oil Testing Service, New South Wales, Australia, as follows:
 - Fruity
 - Bitter
 - Pungent
 - Sweet.
- (3) The Oil must contain less than zero point five percent (0.5%) Free Fatty Acids (FFA).
- (4) The Oil must have a Peroxide Value (PV) (expressed as mEq/kg) of less than 15.