

DRAFT (1): 24 September 2020 v4

Trademark Licence Agreement

between

Fédération Européenne du Verre d'Emballage (FEVE)
as Licensor

and



as Licensee

relating to the licence of a trademark

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THIS TRADEMARK LICENCE AGREEMENT is dated
made

and

BETWEEN:

- (1) **FÉDÉRATION EUROPÉENNE DU VERRE D'EMBALLAGE (FEVE) AISBL**, (the "Licensor"), an international non-profit association registered in Belgium under number 0417.651.811 and having its registered office at Avenue Louise 89, box 4, 1050 Brussels; and
- (2) **[...]**, (the "Licensee"), registered in **[country]** under company number ● and having its registered office at ●.

BACKGROUND:

- (A) The Licensor is the Federation of European manufacturers of glass containers and machine-made glass. The Licensor has some 60 corporate members belonging to approximately 20 independent corporate groups.
- (B) The Licensee is a **[member of the Licensor/company]** which **[description of the activities of the Licensee]**.
- (C) The Licensor has registered a figurative trademark (the "Trademark", hereafter further defined and illustrated). The purpose of the Trademark is to communicate key environmental, product quality and taste preservation assets of glass as a packaging solution. The Licensor wishes to allow the glass-container and machine-made glass industry and their customers to use the trademark on pack (meaning on the bottle or jar, on the label, decorated, printed, embossed, etc.) of their products and off pack (on communication tools like website, leaflets, etc.)
- (D) The Licensee would like to use the Trademark on its products.
- (E) The Licensor is willing to grant a non-exclusive licence to the Licensee under the terms and conditions set forth in this Agreement.

THE PARTIES AGREE THAT:

1. **Definitions**

- 1.1 In this Agreement, the following words and phrases shall have the following meanings:

"Agreement" means this Trademark Licence Agreement and all its schedules.

"Commencement Date" means [the date of last signature by any party to this Agreement].

"Licence" means a non-exclusive, non-transferable, revocable and royalty-free licence granted by the Licensor to the Licensee to use the Trademark under the terms and conditions of this Agreement, including the Visual Identity Guidelines (provided under Schedule 2); for the sake of clarity the Licence is limited to the products and services for which the Trademark is registered.

“Purposes” means the purposes for which the Trademark can be used by the Licensee under this Agreement, i.e. [please list the purposes].

“Trademark” means the figurative trademark of the Licensor set out in Schedule 1 to this Agreement and registered as an EU trademark under no. 018222248, which the Licensee is permitted to use under the terms of this Agreement.

“Visual Identity Guidelines” means the branding guidelines of FEVE, as set out in Schedule 2 and as amended and communicated to the Licensee by the Licensor from time to time.

1.2 In this Agreement:

- (A) a person includes an individual, a corporate body (wherever incorporated), an unincorporated association, a partnership, a government or a governmental body;
- (B) a document is a reference to that document as modified or replaced from time to time;
- (C) a person includes a reference to that person's legal personal representatives, successors and permitted assigns; and
- (D) a clause or schedule, unless the context otherwise requires, is a reference to a clause of or schedule to this Agreement; and
- (E) the headings do not affect the interpretation of this Agreement.

2. Licence

- 2.1 The Licensor hereby grants to the Licensee, who hereby accepts, the Licence to use the Trademark solely for the Purposes subject to the terms of this Agreement.
- 2.2 The Licence granted under this Agreement shall commence on the Commencement Date and shall continue until terminated as provided for herein.
- 2.3 The Licensee shall not be entitled to sub-license the rights granted in this Agreement without the prior written consent of the Licensor in which event the actions or omissions of such sub-licensees shall be deemed to be the actions or omissions of the Licensee and the Licensee shall be obliged to ensure that any such sub-licence granted, and all obligations imposed on such sub-licensees are, on the same terms and conditions and no less onerous as those contained in this Agreement save that there shall be no further right to sub-licence. The Licensee shall indemnify the Licensor in respect of any and all losses, damages, costs, expenses (including without limitation legal costs and expenses) suffered or incurred by the Licensor as a result of the actions of any sub-licensee.
- 2.4 The Licensee acknowledges that the Licensor is the exclusive owner of all right, title and interest in and to the Trademark and nothing contained in this Agreement shall give the Licensee (or any sub-licensee, where appropriate) any right, title or interest in and to the Trademark other than as expressly provided for in this Agreement.
- 2.5 The Licensor shall at its own discretion decide whether or not to renew the Trademark. If the Licensor decides not to do so, this Agreement shall be terminated automatically and the Licensee shall no longer be entitled to use the Trademark on its products.

3. **Obligations of the Licensee**

- 3.1 The Licensee shall not be entitled to allow any other person to use the Trademark without the prior written consent of the Licensor.
- 3.2 In addition to its obligations under clause 3.1, the Licensee shall only use the Trademark in accordance with and in the manner and form set out in the Visual Identity Guidelines set out in Schedule 2. Where the Visual Identity Guidelines are updated, altered or replaced by the Licensor from time to time, the Licensee shall ensure that its use of the Trademark conforms to this new version of the Visual Identity Guidelines within 14 days of being notified of the changes by the Licensor.
- 3.3 The Licensee shall only use or display the Trademark as registered and as provided in Schedule 1.
- 3.4 The Licensee shall not:
- 3.4.1 use the Trademark in combination with any other trademark, name, logo, device or design, except the trademark by the Licensee on its own products;
 - 3.4.2 use the Trademark as part of any corporate, trading, business, domain name or meta-tag of the Licensee or, where appropriate, of any sub-licensee;
 - 3.4.3 use the Trademark other than for purposes of its use in relation to the Purposes as provided for under this Agreement;
 - 3.4.4 use any other trade mark, name, logo, device or design so resembling the Trademark as to be likely to cause confusion;
 - 3.4.5 apply for or hold anywhere in the world any applications or registrations for trademarks, names, logos, devices or designs in respect of any products or services which contain or consist of the Trademark or any confusingly similar signs (and shall not authorise or assist any third party, including, where appropriate, any sub-licensee, to do so);
 - 3.4.6 represent to any party that it holds any rights, title or interest in and to the Trademark beyond those expressly granted to the Licensee under this Agreement;
 - 3.4.7 do, or omit to do, anything which impairs the registrations of, and/or the rights of the Licensor in the Trademark or which debases or reduces the commercial value of the Trademark;
 - 3.4.8 do, or omit to do, anything which damages or dilutes the value, reputation or goodwill of the Licensor in and to the Trademark;
 - 3.4.9 at any time, whether during or after the end of this Agreement, do or cause to be done any act or thing challenging, contesting, impairing, invalidating, or tending to impair or invalidate, any of the Licensor's rights in the Trademark or any registrations derived from such rights.

4. **Approval**

- 4.1 The Licensee shall submit for approval by the Licensor, not later than 14 days prior to the date of the first intended use of the Trademark, detailed descriptions together with samples and, if applicable, details of the proposed content, of the proposed use of the Trademark.

- 4.2 The Licensor shall consider the samples and descriptions provided and shall, as soon as reasonably practicable, but in any event no later than 14 days after receipt of same, provide the Licensee with written notice that the samples and descriptions have either:
- 4.2.1 been approved;
 - 4.2.2 not been approved and the reasons therefor together with suggestions as to how such samples and descriptions can be brought into compliance with Licensor's requirements insofar as use of the Trademark is concerned.
- 4.3 Should the Licensor fail to respond to the Licensee within the 14-day period provided for in clause 4.2, use of the Trademark in accordance with the samples and descriptions submitted under clause 4.1 shall be deemed to be approved 30 days following expiry of such 14 day period.
- 4.4 In the event of Licensor rejecting the samples and descriptions submitted by the Licensee under clause 4.1, the Licensee shall be permitted to re-submit such samples and descriptions for approval by Licensor. Licensor shall, in this regard, provide all such reasonable assistance to the Licensee for purposes of enabling re-submission of such samples and descriptions.
- 4.5 Consideration of any samples and descriptions re-submitted for approval under clause 4.4 shall be in accordance with clause 4.2 hereof. Should Licensor fail to respond to the Licensee within the 14 day period provided for in clause 4.2, use of the Trademark in accordance with the re-submitted samples and descriptions shall be deemed to be approved 30 days following expiry of such 14 day period.
- 4.6 In the event of Licensor rejecting any samples and descriptions re-submitted for approval under clause 4.4, the Licensee shall not be permitted, under any circumstances, to use the Trademark in the manner and form proposed and, to the extent that any such use has been made or commenced, shall immediately cease all and any such use.
- 4.7 The Licensee shall only be permitted to use the Trademark in accordance with the samples and descriptions as approved or deemed to be approved by Licensor under this clause. Any amendments, changes or variations to any approved or deemed approved samples and description, will constitute a new and unauthorised use of the Trademark for which separate approval by Licensor in accordance with the provisions of this clause will be required.
- 4.8 Licensor may at any time revoke any approval given under this clause 4. If Licensor does revoke its approval, then the Licensee shall cease all such use of the Trademark as soon as commercially practicable and no later than 60 days after receipt of the notice revoking the approval.

5. **Recordal of Licence**

- 5.1 At the request of Licensor, the Licensee shall give all reasonable assistance for purposes of recording this Agreement as a licence or for purposes of recording the Licensee as a permitted user of the Trademark. All costs incurred in this regard shall be borne by the Licensee.
- 5.2 Upon termination of the Licence granted under this Agreement, the Licensee shall at the request of the Licensor do all things necessary to ensure that any recordal of this Agreement as a licence or of the Licensee as a permitted user of the Trademark is removed or cancelled. All costs incurred in this regard shall be borne by the Licensee.

6. **Warranties**

- 6.1 Licensor warrants to the Licensee that it is the exclusive owner of the Trademark.
- 6.2 Other than as provided for under this clause, Licensor gives no warranties or representations in respect of the Trademark and excludes all implied warranties or representations to the fullest extent permitted by law.

7. **Quality Control**

- 7.1 The Licensee shall ensure that the use of the Trademark as provided for under this Agreement, shall comply with all applicable laws and regulations imposed by any governmental or other competent authority including any industry standards.
- 7.2 The Licensee shall indemnify Licensor in respect of all claims, liabilities, and expenses arising out of its failure on the part of the Licensee to ensure that its use of the Trademark complies with any applicable laws or regulations, industry standards or with any obligations accepted by the Licensee under any contract. Any approval given by Licensor in accordance with clause 4 shall not affect the scope of this indemnity.

8. **Infringement**

- 8.1 The Licensee shall promptly inform Licensor of any attack on the validity or any infringement of the Trademark which comes to its attention.
- 8.2 The Licensee shall not take any steps or make any admissions regarding any infringement of the Trademark, but shall provide, at the cost of Licensor, all assistance which Licensor may reasonably request in taking any steps against any infringement of, or other proceedings instituted against, the Trademark. Licensor shall be responsible for the cost of any legal proceedings which it requires, and shall be entitled to any damages, account of profits or costs which may be obtained or awarded.

9. **Termination**

- 9.1 The Licence granted under this Agreement shall continue for an indefinite term, except if one of the cases mentioned in the clause 9.2 occurs.
- 9.2 Notwithstanding any other provision contained in this Agreement, Licensor will have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by written notice to the Licensee if:
- 9.2.1 the Licensee is in material breach of this Agreement and has failed to remedy such breach within 14 days of receiving written notice thereof;
- 9.2.2 any change in any applicable laws or regulations makes continuation of this Agreement or the ability of the Licensee (or, where appropriate, any sub-licensee) to perform its obligations under this Agreement and in the manner required by Licensor impossible or unlawful;
- 9.2.3 the Licensee:
- (i) is unable to pay its debts or becomes insolvent;
 - (ii) is the subject of any form of seizure or an order made or a resolution passed for the administration, winding-up or dissolution;

- (iii) has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets;
- (iv) enters into or proposes any composition or arrangement with, or assignment for the benefit of, its creditors generally; or
- (v) is the subject of any events or circumstances or analogous to the foregoing in any applicable jurisdiction;

9.2.4 there is a change of control of the Licensee; or

9.2.5 the Licensee ceases or threatens to cease to carry on its business; or

9.2.6 the Licensee challenges the validity or ownership of the Trademark or files an application in its own name for the Trademark or any sign that contains the Trademark; or any sign that is confusingly similar to the Trademark or assists any person to do any of the foregoing.

9.3 Either party may terminate this Agreement on giving the other party at least 30 days written notice.

9.4 Termination howsoever occasioned shall be without prejudice to any rights of the other party that have or may have accrued prior to termination. Further, clause 6 - Recordal of licence shall survive termination of this Agreement.

10. **Consequence of Termination**

10.1 On termination of this Agreement, the Licensee shall:

10.1.1 immediately cease and desist from using the Trademark (and putting it on its products); and

10.1.2 immediately return all documents and information regarding, referring or relating to the Trademark, including all secret and proprietary information of Licensor and all promotional material and documents, including all copies thereof, and shall undertake not to use such documents and information for any purpose or in any manner; and

10.1.3 permanently delete all documents and information relating to, regarding, referring or relating to the Trademark, including all secret and proprietary information of Licensor and all promotional material and documents, including all copies thereof, from any computer system and any electronic or digital information storage system whatsoever within the power, possession or control of the Licensee or any third party to whom the Licensee has made a disclosure as permitted in terms of this Agreement; and

10.1.4 immediately terminate all sub-license agreements which the Licensee may have executed under clause 2.3 of this Agreement and provide the Licensor with copies of the certificates signed by a director of any and all sub-licensees as to their compliance with their termination and cessation obligations.

10.2 The Licensee shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 10.1.

11. **Miscellaneous Provisions**

11.1 **Notices**

Any notice or other document to be served under this Agreement to a party may be delivered or sent by post or facsimile to the party to be served at its address set out below:

(a) to FEVE at:	(b) to the Licensee at:
Avenue Louise, 89, box 4, 1050 Brussels, Belgium	[●]
E-mail: [●]	E-mail: [●]
Marked for attention of: [●],	Marked for attention of: [●],

or at any other address or facsimile number or to any other addressee as it may have notified to either party in accordance with this clause. Any notice or other document sent by post will be sent by prepaid first class recorded delivery post.

11.2 **Announcements**

The making of any press release or other public statement or disclosure concerning this Agreement or any of the matters contemplated by this Agreement shall be subject of mutual agreement between the two parties that will frame one or a series of communication activities and the content to be shared. Parties shall make their best efforts to reach such a mutual agreement without the discussion being too cumbersome nor time-consuming.

11.3 **Personal nature of Agreement**

The Agreement is personal to the Licensee and the Licensee may not assign, pledge, dispose of or otherwise transfer all or any of its rights or benefits under this Agreement without the prior written consent of Licensor. Licensor may, in its sole discretion and without the consent of the Licensee, assign the benefit of, and may delegate any of its duties under, this Agreement.

11.4 **Entire Agreement and variation**

This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties prior to this Agreement and constitutes the entire understanding between the parties in relation to its subject matter. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of both parties.

11.5 **Further assurance**

Each party shall, at the request of the other party and at its own expense, do or procure the doing of all things that may be required to give full effect to this Agreement, including the execution of any documents.

11.6 **Severability**

If any, or any part of any, term of this Agreement is determined by any competent authority to be illegal, invalid or unenforceable in any jurisdiction, such term shall to that extent be severed from the remaining terms which shall continue to be valid and enforceable to the fullest extent permitted by law.

11.7 **No partnership or agency**

11.7.1 Nothing in this Agreement shall be deemed to constitute a partnership between the parties, nor constitute either party the agent of the other party for any purpose.

11.7.2 Neither party shall have any right or authority to nor shall do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the other party nor shall it bind the other party in any way or hold itself out as being connected with or acting in any capacity on behalf of the other party

11.8 **Waiver**

The rights of each party under this Agreement:

- may be exercised as often as necessary;
- are cumulative and not exclusive of rights or remedies provided by law; and
- may be waived only in writing and specifically.

Failure or delay in exercising or non-exercise of any such right or remedy shall not impair or operate as a waiver of that right or remedy.

11.9 **Costs**

Each party will pay the costs and expenses incurred by it in connection with the negotiation, entering into and execution of this Agreement.

11.10 **Governing law and jurisdiction**

This Agreement shall be governed by and construed in accordance with Belgian law and the parties irrevocably submit to the exclusive jurisdiction of the courts of Brussels.

This Agreement has been made in two originals, each party acknowledging having received one original.

For the Licensor

Represented by [name]
In his/her capacity as [title]

For the Licensee

Represented by [name]
In his/her capacity as [title]

SCHEDULE 1: THE TRADEMARK



SCHEDULE 2: VISUAL IDENTITY GUIDELINES

Please refer to the BrandBook accessible through the FEVE website <https://feve.org/hallmark/>
