

# IMAGE REPRODUCTION LICENCE FOR MERCHANDISE

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**THIS IS AN AGREEMENT BETWEEN:**

**Name:**

**ABN:**

**Of**

**Address:**

**Phone:**

**(Owner)**

**AND**

**SOSOCO-GLOBAL (AUST) PTY LTD**

**A.C.N 631059562, A.B.N 28631059562**

**OF:**

**5/6 Webb Lane, East Melbourne, Vic, 3002**

**Phone: 0403324740**

**(Licensee)**

## THE PARTIES AGREE AS FOLLOWS:

### 1. Licence

- 1.1. In consideration of the payments to be made to the Owner under this agreement, the Owner grants to the Licensee an exclusive licence to reproduce, incorporate and commercialise the image as described in the Schedule (**Licensed Image**) in connection with the manufacture, importation, distribution, supply, promotion, advertising and sale of the merchandise described in the Schedule (**Licensed Merchandise**) on the terms of this agreement.
- 1.2. The licence granted under clause 1.1:
  - a. applies throughout the world;
  - b. applies only for the term of this agreement under clause 2;
  - c. to avoid doubt, includes the purpose of uploading the Licensed Image onto the Licensee's website [www.sosocoglobal.com](http://www.sosocoglobal.com) as updated from time to time (**Website**), for viewing (but not downloading) by users of the Website.
- 1.3. The Licensee acknowledges that the Owner owns and will continue to own all rights and interests in the Licensed Image, including the copyright in the Licensed Image.
- 1.4. The Licensee may at any time sub-license the Licensed Image to any person (**Purchaser**) including, without limitation, to a fashion designer, and to permit the Purchaser to sub-license the Licensed Image to the extent necessary for the Purchaser to exercise the benefit of the licence granted under clause 1.1, provided that:
  - a. the Licensee must pay, or procure the Purchaser pays, the Owner in accordance with clause 8; and
  - b. each sub licence must include a requirement that the sub-licensee comply with the terms of this licence and a further requirement that the sub-licensee ensure that any sub-sub-licence includes a requirement that the sub-sub-licensee comply with the terms of this licence;
  - c. the Licensee notifies the Owner as soon as practicable after the Licensed Image has been sub-licensed.
- 1.5. The Owner grants to the Licensee complete and sole discretion regarding the terms and conditions of licensing the Licensed Image to a Purchaser and acknowledges that the Licensee does not guarantee that the Licensed Image will be licensed accordingly.

### 2. Term of agreement

This agreement begins on the date of its execution by all parties (**Date of agreement**) and continues until termination in accordance with its terms under clause 11.

### 3. Attribution and alterations

- 3.1. If the Owner created the Licensed Image, the Licensee must identify the Owner as the creator on the label (if any) which is attached to the Licensed Merchandise.

- 3.2. Except as expressly permitted under clause 1 and clause 3.2, and without limiting any moral rights that the Owner may have under the Copyright Act 1968 (Cth), the Licensee must not add to or destroy the Licensed Image or any reproduction of the Licensed Image without obtaining the Owner's prior written consent.
- 3.3. To avoid doubt, where the Owner has given its consent under clause 3.2, clause 3.2 does not apply, provided any future use of the Licensed Image is in accordance with that consent.

#### **4. Original proof of Image**

- 4.1. The Owner must:
  - a. Grant access to digital image/s of the Licensed Image suitable for reproduction to the Licensee, and in such format as reasonably required by the Licensee, within 30 calendar days of the date of this agreement; and
  - b. Provide the original proof of the Licensed Image to the Licensee.
- 4.2. The Licensee acknowledges that the delivery of an Original proof under clause 4.1b does not affect the Owner's rights and interests in the Original proof.

#### **5. Owner's inspection of mock-ups of Licensed Merchandise (Fabric)**

- 5.1. The Licensee must deliver to the Owner free of charge at least one mock-up not less than that part of the Licensed Merchandise (Fabric) which reproduces the Licensed Image no less than 30 calendar days before the Licensed Merchandise (Fabric) is due to be manufactured; and
- 5.2. If the Owner is not satisfied with the quality or any other aspects of the proof provided by the Licensee under clause 5.1, the Owner may request reasonable changes to the reproduction of the Licensed Image in the Licensed Merchandise (Fabric) no later than [14] calendar days after receipt of such proof.
- 5.3. Clause 5.1 applies in relation to any change to the Licensed Merchandise (Fabric) requested under this clause.

#### **6. Representations, warranties and indemnities**

- 6.1. The Owner represents and warrants that the Owner;
  - a. Is the sole author of the Licensed Image, which is original to the Owner or is otherwise authorised to grant the licence set out in this agreement;
  - b. Owns or has been granted all rights and interests in the Licensed Image necessary to grant the licence granted to the Licensee under this agreement; and
  - c. Has the power and capacity to enter into this agreement and to perform the Owner's obligations under this agreement. The Owner represents and warrants that the Owner;
  - d. the subject matter of the Licensed Image was not wrongfully obtained from a third party; and
  - e. as at the date of this agreement, no third party has challenged or disputed the Owner's ownership of the Licensed Image or the validity of the Licensed Image.

- 6.2. The Licensee represents and warrants that the Licensee;
  - a. Has the power and capacity to enter into this agreement and to perform the Licensee's obligations under this agreement;
  - b. Subject to clause 6.4, Is responsible for any loss or damage to the Licensed Image, and must take out and maintain appropriate insurance for the Licensed Image while it is in the Licensee's possession or control.
- 6.3. Subject to clause 6.4, each party will unconditionally indemnify and keep indemnified the other party against all losses, liabilities, costs and expenses (including reasonable legal expenses as between solicitor and client) that a party incurs as a result of or in relation to a breach of any of the other party's representations or warranties under clause 6.1 and 6.2.
- 6.4. The Licensee shall not be liable to the Owner for any costs, expenses, loss or damage (whether direct, indirect or consequential and whether economic or other) arising as a result of:
  - a. any third party breaching and/or exceeding the rights granted to it by the Licensee under any sub-licence of the Licensed Image, provided such terms of the sub-licence comply with this agreement; and
  - b. any unauthorised access to the Website which results in a breach of your Intellectual Property Rights in the Licensed Image.

## **7. Third party infringement claim**

- 7.1. If a third party should make or file any claim for copyright infringement, passing off or unfair competition on account of the Licensee's, Purchaser's and any sub-sub-licensee's use of the Licensed Image in accordance with the terms of this agreement (***IPR Infringement Claim***), the Licensee shall promptly notify the Owner of such claim, and thereafter the Owner shall undertake diligent efforts to have such claim withdrawn, settled, defended or compromised.
- 7.2. The Licensee shall cooperate with and assist the Owner's efforts under this clause, including, at the Owner's request, providing the Owner with evidence of the Licensee's use of the Licensed Image in advertising, labels, packaging and otherwise, provided the Owner pays the Licensee's reasonable costs of providing such information and assistance.
- 7.3. The Owner shall, at its sole expense and in accordance with its own reasonable business judgment, take whatever steps it deems necessary or appropriate finally to dispose of the IPR Infringement Claim (including, at the Owner's election, defending any legal action to final judgment). If the Owner disposes of such claim by payment, the Owner shall be solely responsible for such payment. If such claim is disposed of by an agreed suspension in the sales of the Licensed Merchandise or limitation on the items of merchandise on which the Licensed Image may be used (or if any court shall direct such suspension or limitation), on notice from the Owner, the Licensee shall suspend or limit its sales of the Licensed Merchandise. The Owner shall not agree to any such suspension without first consulting with the Licensee and attempting to secure an adequate sell-off period for inventory on hand and in process.
- 7.4. If the Licensee is required to suspend or limit its sales of the Licensed Merchandise, then the Owner and the Licensee shall discuss and agree in good faith an appropriate reduction in the royalty which would otherwise have been payable during the period after such suspension or limitation arose, such agreed reduction to be based on the Licensee's sales of the Licensed Merchandise.

- 7.5. The Owner fully indemnifies the Licensee and its officers, employees, agents and contractors (including, without limitation, any sub-licensee or sub-sub-licensee) from and against all loss and damage suffered or incurred by the Licensee or any of its officers, employees, agents and contractors (including, without limitation, any sub-licensee or sub-sub-licensee) to the extent such loss and damage is suffered or incurred as a result, where direct or indirectly, of an IPR Infringement Claim.
- 7.6. The Owner grants the indemnity in clause 7.5 irrespective of whether legal proceedings are instituted with respect to the IPR Infringement Claim and irrespective of the means, manner or nature of any settlement, compromise or determination.

## 8. Payment

- 8.1. The Licensee must give the Owner at least one free metre of the Licensed Merchandise (Fabric).
- 8.2. The Licensee must pay or procure that the Purchaser pays the Owner:
  - a. a one-off image fee as set out in the Schedule (**Image Fee**) prior to the grant of a sub-licence to the Purchaser; and
  - b. the price per metre of Licensed Merchandise (Fabric) on which the Licensed Image appears and which is manufactured by the Licensee, as set out in the Schedule (**Royalty Fee**) or as otherwise agreed by the parties in writing.
- 8.3. The Licensee must provide the Owner with royalty statements and pay the Royalty Fee under clause 8.2 within 30 calendar days after the end of every calendar quarter (**Quarter**) commencing on 1 January, 1 April, 1 July or 1 October in any year during the Term. Those statements must show:
  - a. The number of metres of Licensed Merchandise (Fabric) manufactured; and
  - b. The amount owing to the Owner under this agreement for the previous Quarter.
- 8.4. The Licensee must keep adequate books and records in relation to the Licensee's reproduction and exploitation of the Licensed Image. The Owner or the Owner's representative may inspect and take copies of and extracts from these books and take copies of and extracts from these books and records at any time during business hours on reasonable notice. Any such inspection is at the Owner's costs.
- 8.5. A reference in this agreement to *dollars* or \$ is to Australian currency and all Image Fees listed on the Website will be in Australian currency.

## 9. Goods and Services Tax

- 9.1. The parties agree that all amounts payable under this agreement are exclusive of Goods and Services Tax (GST)
- 9.2. If a party is liable to pay GST in respect of any good or service supplies under this agreement, that party will invoice the other for the GST amount payable for the good or service and will ensure that the invoice is a GST compliant invoice.

- 9.3. The party who receives the GST compliant invoice must pay the amount of GST invoiced at the same time as the amount payable under this agreement.

## 10. Name, likeness, voice and biography

The Licensee may use and authorise others to use the Owner's name, approved likeness and approved biography provided the Licensee obtains the Owner's prior written consent to any such use.

## 11. Termination

- 11.1. The Owner may terminate this agreement immediately by written notice to the licensee, until such written notice is provided to the Licensee, the license granted under this agreement is deemed to continue.
- 11.2. Subject to clauses 11.3 and 11.4, on termination or expiry of this agreement, the Licensee:
- a. Must cease all use of the Licensed Image in connection with the manufacture, importation, distribution, promotion, advertising and sale of the Licensed Merchandise;
  - b. The Licensee upon termination of this agreement, must cease to use the Licensed Image in connection with the manufacture, importation, distribution, promotion, advertising and sale of the Licensed Merchandise or engage in any other act which might cause anyone to believe the Owner is affiliated with, sponsored by, or otherwise in a relationship with the Licensee and
  - c. Must pay the Owner all amounts payable to the Owner under this agreement.
- 11.3. Any orders for Licensed Merchandise (Fabric) accepted by the Licensee prior to the notification to the Licensee of termination under clause 11.1 (**Last Order**) may be fulfilled by the Licensee.
- 11.4. The Licensee, the Purchaser and any sub-sub-licensee may complete the production of any Licensed Merchandise (Garment) using any existing Licensed Merchandise (Fabric) including from the Last Order.
- 11.5. The Licensee and any Purchaser may sell:
- a. any Licensed Merchandise (Garment) in stock, completed or partially completed as at termination date; and
  - b. any Licensed Merchandise (Garment) completed or partially completed, using existing Licensed Merchandise (Fabric) including from the Last Order, after the termination date.
- 11.6. The Owner must not licence the Licensed Image to any person for a period of [one year] after the date of termination.
- 11.7. This clause survives termination of the agreement.

## 12. Disputes

- 12.1. If a dispute or disagreement (**Dispute**) arises between the parties in connection with this agreement:
- a. One party must notify (each/the) other party in writing about the Dispute (**Notice of Dispute**); and

- b. No party may start any litigation or arbitration in relation to the dispute until the parties have complied with this clause.
- 12.2. The parties must meet within 14 calendar days after the receipt of the Notice of Dispute and hold good faith discussions to attempt to resolve the Dispute.
  - a. If the Dispute is not settled within [21] calendar days of notification under clause 12.1, the parties will, if mutually agreed, submit the Dispute to mediation [administered by the Resolution Institute].
  - b. The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by [the Chief Executive Officer of the Resolution Institute].
  - c. Any mediation meetings and proceedings under this clause must be held in Melbourne.
- 12.3. A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.
- 12.4. The parties must continue to perform their respective obligations under this agreement despite the existence for a Dispute.
- 12.5. Nothing in this clause 12 will impact on either party's rights to terminate under clause 11 of this agreement.

### **13. General provisions**

- 13.1 The parties acknowledge that they are independent contractors and that nothing in this agreement creates any relationship of partnership or employment between the parties.
- 13.2 A notice required to be given under this agreement may be delivered by hand, or sent by pre-paid post or fax to the address of the party indicated at the top of this agreement. Notices are taken to have been served when received, or within 2 business days of having been sent, whichever occurs first.
- 13.3 The Owner must not assign, subcontract, novate or otherwise divest this agreement or any of its rights or obligations under this agreement without the Licensee's prior written consent which may not be unreasonably withheld.
- 13.4 The Licensee may assign, subcontract, novate or otherwise divest this agreement or any of its rights or obligations under this agreement without the Owner's prior written consent.
- 13.5 Subject to clause 13.6, this agreement is the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to this subject matter is replaced by this agreement and has no further effect.
- 13.6 This agreement may only be modified by a written amendment signed by the parties.
- 13.7 Invalidity of any clause of this agreement will not affect the validity of any other clause except to the extent made necessary by the invalidity.

13.8 This agreement is governed by the law in force in Victoria, Australia. The parties submit to the jurisdiction of the courts of that State and any court competent to hear appeals from those courts.



EXECUTED AS AN AGREEMENT

SIGNED BY THE OWNER:

SIGNATURE:

NAME (PRINT)

DATE:

SIGNED BY THE LICENSEE:

SIGNATURE:

NAME (PRINT)

DATE:

## SCHEDULE

### Licensed Image

*[Drafting note: insert copy of image]*

### Licensed Merchandise

Description/type:

- a. Printed textile/fabric for use in garment construction and sale (**Licensed Merchandise (Fabric)**)
- b. Clothing garments and associated accessories using the Licensed Merchandise (Fabric) (**Licensed Merchandise (Garment)**),

(together, the **Licensed Merchandise**).

### Image Fee

AUD\$ [\*]

*[Drafting note: insert the amount of the upfront image fee agreed by the Licensee and the Owner]*

### Royalty Fee

For each metre of Licensed Merchandise (Fabric) on which the Licensed Image is used, the Owner will be paid AUD\$[\*] per meter *[Drafting note: Insert amount in AUD per meter agreed between the Licensee and Owner]*