



**AMHA
AUTHENTIC**

Australian Manuka Honey Association Ltd

**By-laws as to Licensing and Conditions of Use of the
Mark of Authenticity**

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This Licence is made between:

AUSTRALIAN MANUKA HONEY ASSOCIATION LTD (ABN 21 622 228 031) (**AMHA**);

and

The Licensee.

It is agreed as follows:

1. Definitions:

Conditions of Use means those conditions set forth in Schedule 1 as may be amended by AMHA in its absolute discretion from time to time.

Effective Date means the date on which this Licence Agreement is accepted and executed by the Licensee.

Intellectual Property means rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields throughout the world, including copyright, rights in relation to trade marks (including trade mark registrations) and rights in relation to designs (including design registrations).

Licensee means a Member in good standing of the AMHA (excluding “Research Associate” and “Affiliate” memberships) licensed by the AMHA to use the Mark of Authenticity.

Mark of Authenticity means the mark displayed in Schedule 1 which can be varied from time to time in accordance with clause 9.

Materials means the Licensee’s jars, containers, packaging, promotional and advertising materials, website and social media sites which contain and/or relate solely to Verified Australian Manuka Honey products.

Packer means a Company engaged in the packaging of any honeys for commercial sale and use.

Producer means a bee keeper who is engaged in the primary production of raw honey using honey bee colonies in Australia for wholesale selling to commercial honey packers.

Verified Australian Manuka Honey means Manuka honey produced from Australian *Leptospermum* which has been tested and approved in accordance with the AMHA’s *Criteria for Defining Australian Manuka Honey* (as amended from time to time) (**Criteria**). The Criteria is downloadable from the AMHA website.

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2. Mark of Authenticity display

The Licensee wishes to display the Mark of Authenticity on its Materials from the Effective Date. For the avoidance of doubt, the Licensee acknowledges that the Mark of Authenticity can only be used on Materials which relate solely to Verified Australian Manuka Honey such that there is no confusion over which products have been tested and approved under the Criteria and are the subject of this Licence Agreement.

3. Property

The Mark of Authenticity remains at all times the legal property of the AMHA.

4. Exclusive use

Use of the Mark of Authenticity is exclusively for the Licensee named in this Agreement. The Licensee agrees to abide by the Conditions of Use set out in Schedule 1 and any Code of Ethics that may be authorised by the Board of Directors of the AMHA from time to time. A Licence entitles the Licensee to use the Mark of Authenticity only for as long as the Licensee is a member in good standing of the AMHA and has entered into this Licence Agreement and paid the annual fee.

The Mark of Authenticity must be applied by the Licensee in Australia, but Verified Australian Manuka Honey may be exported from Australia bearing the Mark of Authenticity. AMHA does not warrant or represent that the Mark of Authenticity may be used in any country in the world and it is the responsibility of the Licensee to undertake its own research to determine whether the Mark of Authenticity may be used in any particular country.

5. Termination

Where the Licensee ceases to be eligible to use the Mark of Authenticity, this Licence will terminate and the Mark of Authenticity must be removed from all Materials not later than one (1) month from the cessation of eligibility.

6. Licence Fee

Details of the licence fee are contained in Schedule 1 and are subject to change at any time.

7. Misuse of Mark of Authenticity

The Mark of Authenticity must not be used in any way which could:

- (a) Bring the AMHA into disrepute; or

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- (b) Be in breach of any of the provisions of any AMHA Code of Ethics or Conditions of Use; or
- (c) Suggest AMHA endorsement of any person, entity or product which is not eligible to use/display the Mark of Authenticity.

8. Compliance Audits

The AMHA may at its sole discretion, conduct compliance audits of the Mark of Authenticity at any time. The cost of any audit as to the compliance with this Licence Agreement will be borne by the Licensee.

9. Changes to Mark of Authenticity

The AMHA may change the Mark of Authenticity and any of the Conditions of Use associated with the Mark of Authenticity at any time upon giving reasonable notice in writing to the Licensee.

10. No sub-licensing of Mark of Authenticity

The Licensee must not sub-license the use of the Mark of Authenticity at any time to any other person or entity. Doing so will jeopardise the Licence of the Licensee to use the Mark of Authenticity.

11. Non-exclusive right

The limited right and licence granted to the Licensee hereunder is non-exclusive and the AMHA, at its sole discretion, shall be free to use or grant others the right to use the Mark of Authenticity, including those in competition with the Licensee.

12. Not transferable

The right granted in this Licence to the Licensee shall not be transferable or assignable without the AMHA's prior written consent, which it may withhold in its sole and absolute discretion. Any such assignment or transfer without such consent shall be void and of no effect.

13. Termination Notice

Except as otherwise provided herein, this Licence Agreement shall remain in full force and effect as long as the Licensee remains a member in good standing of AMHA, pays the annual licence fee and adheres to the terms of this Agreement.

AMHA may terminate this Agreement if the Licensee breaches a term of this agreement:

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- (a) and, if the breach relates to the payment of any fee, fails to remedy the breach within 14 days after written notice is received identifying the breach and the action needed to remedy of breach;
- (b) which in AMHA's reasonable opinion is capable of remedy, and the Licensee fails to remedy the breach within 30 days after written notice is received identifying the breach and the action needed to remedy of breach; or
- (c) which in AMHA's reasonable opinion is not capable of remedy and will have a materially damaging effect on AMHA or the Mark of Authenticity.

Further, each party may terminate this Licence Agreement at any time, without cause, upon providing the other party with 30 days' written notice of such termination.

Subject to this clause, upon expiration or termination of this Licence Agreement for any reason, the Licensee will immediately cease and desist from all further use of the Mark of Authenticity or distribution of products bearing the Mark of Authenticity and will destroy the bromide of the Mark of Authenticity together with all advertising and promotional materials displaying the Mark of Authenticity.

Provided that this Licence Agreement is not terminated by AMHA for breach pursuant to this clause 13 or terminates under clause 5, the Licensee may continue to sell its existing stock of products using Materials bearing the Mark of Authenticity for a maximum of three (3) months from the date of expiration or termination of this Licence Agreement.

14. Suspension of Licence

The AMHA may also suspend a Licence to use a Mark of Authenticity following a substantiated breach of this Licence Agreement.

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15. Right title and interest in the Mark of Authenticity

The Licensee acknowledges the AMHA's exclusive right title and interest in and to the Mark of Authenticity and will not at any time do or cause any act or thing contesting or in any way impairing or tending to impair any part of such right title and interest. The Licensee shall not in any manner represent that it has any ownership in the Mark of Authenticity or registration thereof and the Licensee acknowledges that use of the Mark of Authenticity shall not create any right title or interest in favour of the Licensee but all uses of the Mark of Authenticity by the Licensee shall inure to the benefit of the AMHA.

If the Licensee becomes aware of any use of the Mark of Authenticity, or any trade mark substantially identical with or misleadingly similar to the Mark of Authenticity, on or in relation to honey or goods similar to honey, which appears not to be authorised by AMHA, it must immediately notify AMHA. The Licensee must provide AMHA with any assistance reasonably required by AMHA in relation to infringement of the Mark of Authenticity by such use, at AMHA's expense.

16. Indemnification and Limitation of Liability

AMHA does not give any express warranties, or make any representations, and excludes all implied warranties (other than warranties implied by statute which may not lawfully be excluded by agreement):

- (a) that the use of the Mark of Authenticity on or in relation to honey products does not infringe the Intellectual Property of third parties;
- (b) that any trade mark applications for the Mark of Authenticity will be granted; or
- (c) concerning the validity of any trade mark registrations for the Mark of Authenticity.

AMHA's liability on any legal basis for all loss, damage, costs and expenses incurred by the Licensee arising out of or connection with this Agreement, or the supply of any goods or services by AMHA, shall be limited to the resupply of the goods or services, or payment of the amount paid by the Licensee to AMHA in respect of the supply of the goods or services, at AMHA's option.

The Licensee hereby covenants and agrees to indemnify and hold harmless the AMHA, its respective officers, directors, agents and employees from and against any and all claims, loss, damage, injury and liability resulting from the Licensee's use of the Mark of Authenticity or the supply of any goods or services by the Licensee, and to pay for all legal and other costs (including reasonable legal fees) AMHA might incur in defending any such action.

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This clause 16 does not apply in circumstances where their inclusion would breach the Australian Consumer Law or any other applicable legislation.

17. Jurisdiction

The laws of Western Australia govern this Licence and any dispute shall be heard in the courts of Western Australia.

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Schedule 1 – Conditions of Use

(a) Standard Mark of Authenticity set

The AMHA's certified 'Marks of Authenticity' (MoA) are only to be used by Licenced Members, on products that meet AMHA's strict criteria.

The logos must not be redrawn or altered in any way - this includes alteration to the proportions.

The MoA's can be used on product labels, lids, neck tags – individually or in combination.

Refer to the 'Mark of Authenticity' Style & Marketing Guide document for further details.

(b) Licence Fee

\$2,400 plus GST.

(c) Conditions

- A. The Mark of Authenticity is the symbol of the AMHA and it carries with it the identity and reputation of AMHA, wherever and whenever it is used. It is the responsibility of the Licensee to seek clarification from the AMHA should it be in any doubt as to the correct use of the Mark of Authenticity.
- B. The Mark of Authenticity should always be used with proper discretion and good taste and should not be used in any manner which is derisive to the Mark of Authenticity, AMHA or the Manuka Honey Industry.
- C. Licensees will be provided with a standard "Mark of Authenticity Logo Set" which includes:
- 'Mark of Authenticity' Style & Marketing Guide
 - EPS, JPG and PNG files for each standard Mark colour
- D. Notwithstanding anything in the Licence Agreement or in these Conditions, the grant of and commencement of this Licence is to be on such date as notified by AMHA to the Licensee. If for any reason in the absolute discretion of AMHA it refuses the grant of a licence to a party it will refund any monies paid by the party for the licence.