

# **Sainsbury’s x Black History Month Greeting Card**

# **General Terms and Conditions**

THIS AGREEMENT is dated [DATE] and is made BETWEEN:

1. **OHH DEER LTD** whose registered office is at 18 Frederick Street, Loughborough, LE11 3BJ, registered at Companies’ House with company registration number 07731922, VAT Number: 151 5890 06, (the ‘**Company**’); on behalf of the **GREETING CARD ASSOCIATION** whose registered office is at United House, North Road, London, N7 9DP and
2. {**INSERT CONTRIBUTOR NAME & ADDRESS & CONTACT DETAILS - Address, Email, Telephone number + any registration/VAT number if applicable**}, (the ‘**Contributor**’).

BACKGROUND

1. The Contributor has created the Work (as defined below).
2. The Company wishes to receive and the Contributor has agreed to grant to the Company a licence on the terms and conditions set out in this Agreement to reproduce the Work on the Products (as defined below) and to sell the Products on which the Work has been reproduced.
3. The Company and the Contributor have agreed that these General Terms and Conditions shall apply to each and every Grant of Rights (as defined below).

NOW IT IS AGREED as follows:

# **Interpretation**

# **Definitions**

‘**Agreement**’ means, together, the General Terms and Conditions and all and any Grants of Rights entered into pursuant to them.

‘**Business Day**’ means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

‘**Commencement Date**’ means [the date stated at the beginning of this Agreement/insert specific date].

‘**Copyright**’ means all copyright and rights in the nature of copyright subsisting in a Work in any part of the world to which the Contributor is, or may become, entitled.

‘**General Terms and Conditions**’ means the Company’s general terms and conditions comprised in this document.

‘**Grant Effective Date**’ means, in relation to a particular Work, the date of the relevant Grant of Rights.

‘**Grant of Rights**’ means a grant of rights entered into between the parties in relation to a Work in the form set out in the Schedule.

‘**Grant Term**’ means the term of a Grant of Rights, determined in accordance with clause 7.2.

‘**Licensed Products**’ means the Products on which the Work has been reproduced pursuant to clause 2.2.1.

‘**Royalties**’ means £0.15 per single unit sold to Sainsbury’s.

‘**Territory**’ means within Sainsbury’s stores across the UK.

‘**VAT**’ means value added tax or any equivalent tax chargeable in the UK or elsewhere.

‘**Work**’ means a piece of artwork shown in or annexed to a Grant of Rights.

* 1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  2. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
  3. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
  4. A reference to writing or written includes email but not fax.
  5. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

# **Commencement Date and grant of licence**

* 1. These General Terms and Conditions shall apply as between the Company and the Contributor in relation to Grants of Rights with effect from the Commencement Date.
  2. In consideration for the payment of Royalties by the Company to the Contributor, the Contributor hereby grants to the Company, in relation to each Work, a non-exclusive licence (contributor agrees not to sell licenced design to another UK based supermarket before and including February 2022) under the Copyright to do the following acts in the Territory for the relevant Grant Term, subject to, and in accordance with these General Terms and Conditions:
     1. reproduce the Work on the Products; and
     2. sell the Licensed Products.

1. **Additional rights and restrictions**
   1. Contributor
      1. The Contributor may reproduce or licence the Work to third parties on such items not comprising the Products including Greeting Cards except where it may be sold to another UK based Supermarkets before and including February 2022.
   2. Company
      1. The Company shall be entitled to:
         1. use the Work in any of its promotional and/or advertorial campaigns, including catalogues, brochures, point of sale displays, window displays, social media, digital marketing and print advertising;
         2. send out any Products free of charge, without any royalties due in a bid to gain marketing / PR exposure;
   3. Moral rights
      1. The Company shall credit the Contributor as the artist on page 4 of the greeting card, the final appearance of this credit shall be decided by the Company.

# **Warranties and indemnity**

* 1. The Contributor warrants and represents to the Company that:
     1. the Work is original, does not knowingly infringe on other copyrights, and does not contain any scandalous, libellous, or unlawful matter;
     2. the Contributor is not aware of any claim by any third party that the Work or any pre-existing material incorporating the Work or included within the Work, or the exploitation of the Work by either the Contributor or the Company, has infringed or will infringe any rights of any third party and the Contributor agrees that they shall immediately inform the Company if they become aware of any such claim; and
     3. the Contributor has all necessary rights and authority to enter into and perform this Agreement in accordance with its terms, including the right and authority to licence the use of any Work(s) pursuant to this Agreement.
  2. The Contributor shall indemnify and at all times keep indemnified the Company against all actions, proceedings, costs, claims, damages and losses (including direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) whatsoever incurred by or awarded against the Company and compensation agreed by the Company in consequence of any breach or non-performance by the Contributor of any of the Contributor’s warranties and undertakings in this Agreement.

# **Product pricing and VAT**

* 1. The Company shall be entitled to decide upon all final trade, distribution and retail prices for the Licensed Products without reference to the Contributor, and the Company may change the same without notice.
  2. The Contributor acknowledges that, in relation to Sainsbury’s, whilst the Company shall provide recommended retail prices to Sainsbury’s, they are entitled to decide upon their own prices for the Licensed Products.
  3. The Company is VAT registered within the UK. The Contributor shall, if applicable, provide the Company with their VAT registration details on each invoice submitted by the Contributor to the Company pursuant to this Agreement and shall include any applicable VAT on each such invoice (note: the contributor does not need to be VAT registered).

# **Royalties, reporting and payments**

* 1. The Company shall pay Royalties to the Contributor in accordance with this clause 6.
  2. The Company will produce a sales report 3 months after all sales of Licensed Products that took place as per the company’s invoice date which shall incorporate a self-billing invoice in respect of Royalties due. The Sales Report will be provided to the Contributor by no later than the end of the third month.
  3. In the event that no sales of Licensed Products took place, the Company shall not be obliged to produce and provide a Sales Report or make a payment to the contributor.
  4. The Sales Report shall include the number of units of each Licensed Product sold (shown by Product category) and the corresponding Royalties due from the Company to the Contributor.
  5. Subject to the provisions of this clause 6, the Company shall make payments to the Contributor in respect of Royalties on or before the end of the third month. The Company shall pay Royalties to the Contributor by PayPal or BACS (Bank Transfer) only. Any bank charges (being transfer or other bank fees and including currency exchange fees) imposed by the Contributor’s bank will be paid by the Contributor and the Company will deduct the amount of such charges from the relevant Royalties payment, where applicable.

# **Duration and termination**

* 1. The Agreement shall continue unless and until the expiry or termination of all Grants of Right between the parties.
  2. Each Grant of Rights shall commence of the relevant Grant Effective Date and, subject to earlier termination pursuant to this clause 7, shall continue until 28th February 2022.
  3. Termination for cause: Either party may terminate this Agreement by notice with immediate effect if:
     1. the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
     2. the other party suspends, or threatens to suspend, payment of their debts or is unable to pay their debts as they fall due or admits inability to pay their debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (‘**IA 1986’**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
     3. the other party commences negotiations with all or any class of their creditors with a view to rescheduling any of their debts, or makes a proposal for or enters into any compromise or arrangement with any of their creditors;
     4. the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
     5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership);
     6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
     7. the holder of a qualifying floating charge over the assets of the other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
     8. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
     9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
     10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 7.4.2 to clause 7.4.9 (inclusive); or
     11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of their business.

Termination of the Agreement pursuant to this clause 7.4 shall be deemed to terminate all and any Grants of Right in existence between the parties.

* 1. Effects of termination: Upon termination of this Agreement or a Grant of Rights for whatever reason, the Company shall, in relation to the Licensed Products the subject of such termination, be entitled (but shall not be obliged) to:
     1. continue to sell all and any remaining stock of such Licensed Products and/or any Licensed Products yet to be manufactured by the Company’s suppliers and in relation to which cancellation without penalty is not possible;
     2. fix the price of such Licensed Products as the Company may in its own discretion determine, whether at a profit or at a loss;
     3. temporarily discontinue and remove such Licensed Products from sale at any time without notifying the Contributor.
  2. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement or a Grant of Rights shall remain in full force and effect.

# **Confidentiality and non-competition**

* 1. The Company shall not, and the Contributor shall not be entitled to require the Company to, disclose any details of the Company’s manufacturers, customers or suppliers to the Contributor.
  2. The Company reserves the right, without prior explanation to or the prior agreement of the Contributor, to limit or withhold the sale of Licensed Products to specific customers where (in the opinion of the Company) it may affect the Company’s trading relationships.
  3. In order to protect the legitimate business interests of the parties, each of the Company and the Contributor covenant with the other that it shall not at any time after termination or expiry of this Agreement, say anything which may be harmful to the reputation of the other party or Sainsbury’s, whether defamatory or otherwise.
  4. Each party shall notify the other party promptly in writing of any changes to contact information, including email, telephone number and postal address prior to the date of such change.

1. **Governing Law**
   1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
2. **Jurisdiction**
   1. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been entered into on the date stated at the beginning of it.

**Grant of Rights**

**Design Licence Number:** [0000]

**Duration:** Licence is non-exclusive with the exception of not being able to sell the design into any other UK Supermarket before February 2022.

**A licence is granted pursuant to clause 2.2 of General Terms and Conditions for the following Products:**

|  |  |
| --- | --- |
| **Product Category** | **Royalties** |
| Greeting Cards | £0.15 per unit sold |

**Information about the Work**

**Title of Work:** [ENTER TITLE OF ARTWORK PROVIDED BY CONTRIBUTOR]

**Description of Work:** [ENTER CLEAR DESCRIPTION OF ARTWORK]

**Images of Work:** [ATTACH IMAGES OF ARTWORK & ANY EXTERNAL LINKS TO THE ARTWORK IF AVAILABLE]

**ACKNOWLEDGED AND AGREED BY**

**THE CONTRIBUTOR:**

Name:

Title:

Date:

**ACKNOWLEDGED AND AGREED ON BEHALF OF**

**OHH DEER LTD AND THE GREETING CARD ASSOCIATION:**

Name:

Title:

Date: