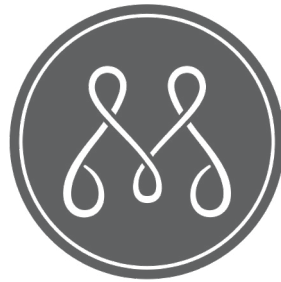




# TRADE MARK USE AGREEMENT



MOHAIR

Entered between:

MOHAIR SOUTH AFRICA NPC

Registration Number: 1997/021800/09

herein represented by \_\_\_\_\_ in his/her capacity as General Manager,  
duly authorised thereto  
(Hereinafter referred to as "MSA")

and

\_\_\_\_\_  
Full Name and Surname or Company Name

\_\_\_\_\_  
Identity Number or Registration Number

herein represented by \_\_\_\_\_ in their capacity as \_\_\_\_\_,  
duly authorised thereto  
(Hereinafter referred to as "Trade Mark User")



## 1. INTRODUCTION

MSA is the owner of all rights, title and interest in and to the registered Trade Mark “Mohair”, and the Mohair logo, as are contained on page 5 of annexure “A” hereto, and the goodwill pertaining thereto.

MSA and the Trade Mark User (as defined hereunder) have agreed for these Trade Mark Use terms and conditions to govern the relationship between the parties and the Trade Mark User’s use of the Trade Marks (as defined hereunder), Terms of Use in order to ensure the uniform use of the Trade Marks within the Mohair Industry and to ensure that the Mohair brand is not diluted as a result of inconsistencies in respect of the use thereof.

## 2. DEFINITIONS

2.1 In these Terms of Use, unless inconsistent with the context, the following words and expressions shall bear the meanings assigned thereto and cognate words and expressions shall bear corresponding meanings:

2.1.1 “Terms of Use” means these Terms and Conditions of Use of the Trade Marks by the Trade Mark User, including any Schedules hereto.

2.1.2 “Effective Date” means the date of transmission of the e-mail acceptance by MSA in its sole and absolute discretion of the application received from the Trade Mark User via MSA’s website for use of the Trade Mark;

2.1.3 “Logo” means the Mohair logo which consists of two elements being the Mohair icon and the Mohair word mark, which should strictly be used as indicated in annexure “A” hereto (being the Logo Identity Guideline), however an exception may be applied for, for use of the Mohair word mark and/or the Mohair icon on its own or separately by the Trade Mark User to MSA in writing;

2.1.4 “Logo Identity Guideline” means the guidelines developed and published by MSA from time to time in order to ensure uniform use of the Logo and Trade Marks within the Mohair Industry, and as displayed on MSA’s website from time to time.

2.1.5 “Mohair” means the fleece shorn from the Angora goat and shall for purposes of these Terms of Use include any processed form of the aforesaid mohair fibre.

2.1.6 “MSA” means Mohair South Africa NPC, Registration Number 1997/021800/09 with its principal place of business at 127 Fordyce Road, Walmer, Gqeberha (Port Elizabeth), 6070.

2.1.7 “Term” means the term of these Terms of Use.

2.1.8 “Territory” means the use of the Trade Marks by the Trade Mark User in terms of this Terms of Use throughout the world.

2.1.9 “Trade Marks” means the Trade Mark “Mohair”, and the Mohair Logo, as contained and set out on page 5 of annexure “A” hereto.

2.1.10 “Trade Mark User” means, the applicant who submitted an application via MSA’s website to use the Trade Marks and who has agreed to be bound by these Terms of Use by way of ticking an acceptance tab on such website with its principal place of business and contact details as set out in such application form.

2.2 In these Terms of Use, words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include feminine and neuter genders, and vice versa. Words importing persons shall include partnerships and bodies corporate. The headings to the paragraphs to these Terms of Use are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

2.3 If any provision in the preamble to these Terms of Use and/or if any provision in this clause 2 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in the preamble and/or this clause 2, as the case may be, effect shall be given thereto as if such provision were a substantive provision in the body of these Terms of Use.

2.4 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of these Terms of Use, shall not apply.

2.5 These Terms of Use shall be binding on the estate, executors, administrators, liquidators, trustees or assigns of the parties as fully and effectually as if they had signed these Terms of Use in the first instance and reference to any party shall be deemed to include such party’s estate, executors, administrators, trustees, assigns or liquidators, as the case may be.

2.6 The rights and obligations of the party/ies comprising the Trade Mark User (if applicable) in terms of these Terms of Use shall be joint and several. Payment of any amount to MSA by the Trade Mark User shall constitute valid discharge of



the indebtedness of the Trade Mark User to MSA in this regard.

### **3. APPLICATION FOR USE OF TRADE MARK AND GRANT OF TRADE MARK USE**

3.1 The Trade Mark User by means of submission of an application form via the website of MSA has applied to be granted a non-exclusive, non-transferable and revocable right to use the Trade Marks within the Territory.

3.2 The grant of a non-exclusive, non-transferable and revocable right to the Trade Mark User by MSA to use the Trade Marks within the Territory is subject to the sole and absolute discretion of MSA and these Terms of Use and the grant of the aforesaid license by MSA to the Trade Mark User to use the Trade Mark shall only become effective and these Terms of Use binding upon the parties once MSA has transmitted via e-mail to the Trade Mark User confirmation of their acceptance of the Trade Mark User's application for use of the Trade Mark as submitted by the Trade Mark User to MSA in terms of clause 3.1 above (in other words this will constitute the Effective Date (as defined) of these Terms of Use). For purposes of clarity, it is recorded that notwithstanding the provisions of section 22(2) of the Electronic Communications and Transactions Act 25 of 2002, these Terms of Use will only become binding upon the parties on the date of transmission of the aforesaid acceptance e-mail from MSA to the Trade Mark User and these Terms of Use will be deemed to have been concluded within Gqeberha (Port Elizabeth), Eastern Cape, South Africa being the seat of MSA's principal place of business.

3.3 Nothing in these Terms of Use will be construed to prevent MSA from granting any other rights for the use of the Trade Marks to any third party, or from using the Trade Marks in any other business/es.

### **4. FOR USE OF TRADE MARKS**

4.1 MSA reserves its rights to at any time during the currency of these Terms of Use charge a reasonable fee determined within its sole and absolute discretion for the use rights granted to the Trade Mark User in terms of these Terms of Use. If exercised by MSA it shall give the Trade Mark User 1 (one) month's written notice of such fee which shall then be levied on an annual basis and each successive year be payable on the anniversary date of the Effective Date.

4.2 In the event of MSA exercising its right to charge a reasonable consideration for the use rights granted to the Trade Mark User in terms of these Terms of Use as contemplated in clause 4.1 above and the Trade Mark User is not satisfied with such consideration, it shall be entitled to cancel these Terms of Use by giving MSA 1 (one) month's written notice to such effect.

4.3 Where the Trade Mark User elects to cancel these Terms of Use in the circumstances as contemplated in clause 4.2 above, it shall be entitled for a further period of six months ("Amnesty Period") calculated from the date of termination of these Terms of Use by the Trade Mark User (i.e. at the expiry of the 1 (one) month's written notice given by the Trade Mark User to MSA to cancel these Terms of Use) to still make use of labels or other advertising material ("Excess Material") which still bears the Trade Mark without having to pay any fees to MSA for the continued use of the Trade Mark on the Excess Material. However, if the Trade Mark User is as at the date of termination of these Terms of Use still in possession of Excess Material whereon the Trade Mark is still displayed, and it wishes to avail itself of the Amnesty Period it shall inform MSA in writing of the quantity of the Excess Material in its possession and if the Excess Material is finished prior to the expiration of the Amnesty Period, it shall desist from any further use of the Trade Mark in any manner or form whatsoever.

### **5. OWNERSHIP**

5.1 The Trade Mark User acknowledges the validity of the Trade Marks and MSA's sole and exclusive right, title and interest in and ownership of the Trade Marks, including MSA's right to register or to have registered, the Trade Marks. Apart from its rights under the use rights granted in clause 3 above, the Trade Mark User will not acquire any right, title or interest in or to the use of the Trade Marks during or after the term of these Terms of Use.

5.2 The Trade Mark User will use and display the Trade Marks only in a form and style which do not and are not reasonably likely to defame or otherwise injure or damage MSA, its reputation and brand and in accordance with the Logo Identity Guideline.

5.3 The Trade Mark User will not represent in any manner that it has any ownership of right, title or interest in or to the Trade Marks other than as set forth in these Terms of Use. All use of whatsoever nature of the Trade Marks by the Trade Mark User shall revert to the benefit of and be on behalf of MSA.



## 6. TRADE MARK USE POLICY

6.1 MSA has prepared a Logo Identity Guideline which is displayed on MSA's website.

6.2 The Trade Mark User acknowledges the Logo Identity Guideline and agrees and undertakes to strictly abide by and adhere to the Logo Identity Guideline as set forth therein. MSA retains the right to amend the Logo Identity Guideline from time to time and if so amended, MSA shall forthwith provide the Trade Mark User with an updated version of such revised Logo Identity Guideline which the Trade Mark User hereby irrevocably and unconditionally agrees to be bound by in its use of the Trade Marks.

## 7. TERM AND TERMINATION

7.1 These Terms of Use shall commence on the Effective Date and shall endure for an indefinite period, unless otherwise provided in these Terms of Use.

7.2 Notwithstanding anything contained to the contrary in these Terms of Use, MSA shall at any time during the currency of these Terms of Use have the right to, within its sole and absolute discretion revoke the right granted to the Trade Mark User to use the Trade Marks in terms of these Terms of Use by giving the Trade Mark User 1 (one) month's written notice to such effect but shall nevertheless be entitled to immediately revoke such right of use by written notice to the Trade Mark User in circumstances where the Trade Mark User commits a material breach of these Terms of Use. For purposes of this clause, whether a particular breach is of a material nature shall be determinable within the sole and absolute discretion of MSA.

7.3 Upon expiration or termination of these Terms of Use, the Trade Mark User will immediately cease all use of the Trade Marks and deliver up to MSA all items, material, goods or other commodities in its possession bearing the Trade Mark and/or Logo.

## 8. WARRANTIES, LIMITATION OF LIABILITIES AND INDEMNITY

### WARRANTIES

8.1 No implied warranties of quality, merchantability or fitness for a particular purpose are given by MSA hereunder, and no implied warranty arising by usage or trade, course of dealing, or course of performance is made by MSA nor shall any such implied warranty arise in terms of these Terms of Use and/or MSA's conduct in relation thereto, and in no event shall MSA be liable of any such warranty with respect to any part or all of the products sold displaying the Trade Marks and/or Logo or any service provided by MSA hereunder.

8.2 The Trade Mark User warrants that:

8.2.1 it is a commercial sound enterprise operating in the Mohair Industry in the Territory.

8.2.2 it has exercised its own judgment and relied on its own expertise with respect to the products to be sold bearing the Trade Marks and/or Logo (which judgment and expertise renders it capable of ensuring that the warranty referred to in clause 8.2.8 and the quality control undertakings referred to in clause 10 can be given effect to) and such judgment and expertise has led it to conclude these Terms of Use;

8.2.3 it shall at all times possess or have the right to use knowledge to enable it to comply with its obligations stipulated in these Terms of Use.

8.2.4 it shall at all times use and adopt techniques and standards to enable it to comply with its obligations in a fit and proper manner and with due care, skill and diligence.

8.2.5 it shall at all times during the term of these Terms of Use have (or have recourse to) a sufficient number of adequately qualified, skilled and experienced personnel and other resources to carry out its obligations in accordance with the provisions of these Terms of Use.

8.2.6 it shall not make any misrepresentations to third parties regarding the Trade Marks and Logo or the Trade Mark User's capabilities.

8.2.7 it shall not do anything that may prejudice or be averse to the operations, business, and reputation of MSA and/or the reputation of the Mohair Industry as a whole and the goodwill of the Trade Marks.

8.2.8 it shall at all times during the currency of these Terms of Use only use the Trade Marks and/or Logo in respect of



products which contains or consists of Mohair as defined of at least 10% (ten percent).

8.2.9 It shall not use in its business, within the Territory any other Trade Marks so resembling the Trade Marks as to be likely to cause confusion or deception, the decision as to whether such trade marks are of such a nature being at all times within the sole and absolute discretion of MSA.

8.2.10 It shall not market, distribute or deal in any product of whatsoever nature under the Trade Marks or which incorporates the Trade Marks into its name, nor shall the Trade Mark User apply the Trade Marks to any product of whatsoever nature other than those as stipulated in clause 8.2.8 above.

#### LIMITATION OF LIABILITY

8.3 In no event shall MSA be liable to the Trade Mark User (or any party claiming through or on behalf of the Trade Mark User) for any claim, expense, liability and/or incidental, indirect, special or consequential damages whatsoever (including, but not limited to, loss of profits or interruption of business) arising out of or relating to these Terms of Use or the use of the Trade Marks and/or the Logo or for any claim by any third party against the Trade Mark User.

#### INDEMNITY

8.4 Subject to clause 9 below, MSA shall indemnify, hold harmless and defend the Trade Mark User from and against any and all damages, costs, losses and expenses (including settlement awards and proper legal expenses) awarded by a Court of Law against the Trade Mark User arising from or in connection with any claim that MSA did not have the right to grant the Trade Mark User the use rights in terms of these Terms of Use.

8.5 The Trade Mark User hereby agrees to indemnify, defend and hold MSA harmless – and any of its officers, employees, and agents – for and from any and all claims, liabilities, judgments, costs, expenses and damages of whatsoever nature, including Court costs and attorneys' fees on an attorney and own client scale (including the cost of Counsel, if applicable), arising out of these Terms of Use or any action by the Trade Mark User under these Terms of Use.

### 9. NOTICE OF INFRINGEMENT

The Trade Mark User shall immediately on becoming aware thereof, inform MSA in writing of any infringement or apparent infringement of, or challenge or threat to the Trade Marks by any person or entity of whatsoever nature and it undertakes to assist MSA in all respect in taking such actions, at MSA's expense, as MSA deems appropriate to protect its rights.

### 10. QUALITY CONTROL

10.1 The Trade Mark User agrees that the nature and quality of all the products rendered by the Trade Mark User in connection with the Trade Marks, all goods sold by the Trade Mark User under the Trade Marks, and all related advertising, promotional and other related uses of the Trade Marks by the Trade Mark User shall conform to standards set by and be under the control of MSA. The Trade Mark User agrees to strictly abide by the Logo Identity Guideline as displayed on MSA's website from time to time.

10.2 The Trade Mark User agrees to co-operate with MSA in facilitating MSA's control of such nature and quality, to permit reasonable inspection of the Trade Mark User's operation, and to supply MSA with specimens of all uses of the Trade Marks and Logo upon request. The Trade Mark User shall comply with all applicable laws and regulations and obtain all appropriate Government approvals pertaining to the sale, distribution and advertising of goods and services covered by these Terms of Use.

### 11. BREACH

11.1 Save for the provisions of clause 7.2 above, if any party commits a breach of any of the provisions of these Terms of Use and fails to remedy such breach within 10 (ten) days of receipt of written notice from any other party calling upon it to do so then the innocent party giving such notice shall be entitled, without prejudice to any other rights which it may have in terms of these Terms of Use and/or at law to:

11.1.1 cancel these Terms of Use forthwith, with or without claiming damages.

11.1.2 obtain an Order against the defaulting party for specific performance, with or without claiming damages.

11.2 Without prejudice to any other rights which MSA may have against the Trade Mark User, whether in terms of these Terms of Use or otherwise in law, in the event of a committal of a material breach of these Terms of Use by the Trade Mark User and where MSA has exercised its rights to terminate these Terms of Use in terms of clause 7.2 above, the parties



hereby irrevocably and unconditionally acknowledge that the agreed damages which in these circumstances would be due by the Trade Mark User to MSA shall be an amount of 10 000 (ten thousand) Euros which shall immediately be payable by the Trade Mark User to MSA upon MSA serving the Trade Mark User with its notice of cancellation as contemplated in clause 7.2 above. Further, the additional provisions of clause 7.2 shall apply in these circumstances in respect of the use by the Trade Mark User of the Trade Marks.

## 12. DOMICILE

12.1 The parties hereto select as their respective domicilium citandi et executandi the following addresses to which all notices may be posted or delivered and at which all legal process may be served arising from these Terms of Use:

### 12.1.1 MSA

Physical address: 127 Fordyce Road, Walmer, Port Elizabeth, South Africa  
Tel: +27 415811681  
E-mail: info@mohair.co.za

### 12.1.2 TRADE MARK USER

Physical address, telephone number and email address: as reflected in its online application for use of the Trade Marks.

12.2 A party may at any time change its domicilium by 1 (one) calendar months' notice in writing, provided that the new domicilium includes a physical address at which process can be served.

12.2.1 Any notice given in connection with this Memorandum shall:

12.2.2 be delivered by hand; or

12.2.3 be sent by registered post; or

12.2.4 be sent by telefax transmission; or

12.2.5 be sent by electronic mail transmission.

12.3 A notice given as set out above, shall be deemed to have been duly given:

12.3.1 if delivered, on the date of delivery.

12.3.2 if sent by registered mail, on the fifth calendar day after posting.

12.3.3 if sent by telefax or e-mail, on the date of transmission.

12.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party or an authorized representative of a party (as the case may be) shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at this chosen domicilium citandi et executandi.

## 13. GENERAL

13.1 These Terms of Use constitutes the sole record of the agreement between the parties in relation to its subject matter.

13.2 No party is bound by any representation, warranty, promise or the like not recorded in these Terms of Use.

13.3 No addition to and/ or variation of these Terms of Use will be of any force or effect unless MSA has given the Trade Mark User one calendar month's written notice of such additions and/or variations . Should the Trade Mark User elect to no longer use the Trade Marks in terms of such varied Terms of Use it shall be entitled to withdraw from these Terms of Use on one calendar month's written notice to MSA which notice may run concurrently with the aforesaid notice from MSA to the Trade Mark User that of any such addition to and/or variation of these Terms of Use.

13.4 No relaxation or indulgence which a party may grant to the other party, will in any way prejudice or constitute a waiver of any of the rights of the grantor.

13.5 All provisions of these Terms of Use are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of these Terms of Use, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever will, in such



jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scrip to and the remaining provisions of these Terms of Use will be of full force and effect. The parties declare that it is their intention that these Terms of Use would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.

13.6 These Terms of Use and any disputes of whatsoever nature resulting therefrom or pursuant thereto shall be governed and determined in accordance with South African Law and for such purposes the parties hereby submit to the exclusive jurisdiction of the Eastern Cape High Court, Gqeberha (Port Elizabeth), Eastern Cape, South Africa, or its successors-in-title from time to time.

Terms of Use (please tick box)

“I confirm that I have read and understand the terms and conditions as contained in these Trade Mark Use Terms and Conditions contained in Mohair SA’s website (as may be amended from time to time) and hereby agree to be bound by these Terms and Conditions as stated in the said Trade Mark Use Terms and Conditions, in the event that Mohair SA accepts my application herewith to use its Trade Marks.”

