

## The Main Elements of A Consumer Product Retail License Agreement

- A license agreement contains many important provisions, responsibilities and obligations. As you consider applying for a license, we believe it may be helpful for you to first understand some of these key clauses so you can make an informed decision about your potential pathway ahead. The below is for informational purposes only and does not constitute a binding license agreement.

### KEY PROVISIONS, RESPONSIBILITIES & OBLIGATIONS

- Schedule A contains all of the rights granted, including the Property, the Licensed Intellectual Property, authorized Territory, approved Licensed Consumer Products, approved Retail Channels where product can be distributed, exemption policies, Royalty Rate(s), Guaranteed Minimum Royalty, Advance Royalty, Annual Fees, Royalty Period (quarterly vs. monthly), contract term, and any additional requirements a university may mandate as a condition of granting the license.
- Schedule A-1 outlines the Code of Conduct for each individual Property. All factories, contractors, manufacturers, vendors, or any other component suppliers that produce, assemble or package Licensed Consumer Products must comply with the requirements outlined. Requirements may include but not be limited to registering and actively participating with the Fair Labor Association (FLA) ([www.Fairlabor.org](http://www.Fairlabor.org)) and public disclosure of all factory locations used in the production of all consumer products under the Agreement, including locations owned and operated by the licensee, blank good suppliers and suppliers of finished goods.
- Sublicensing, which is authorizing another manufacturer to produce and sell products under your Agreement, is not allowed.
- Licensees may not sell Licensed Consumer Products to a distributor unless prior approval has been granted by Fermata, on behalf of a Property. A special request must be submitted to pursue approval.
- Licensees must take possession of all imported goods prior to distribution. A licensee may not allow its customers to purchase Licensed Consumer Products and have such products delivered FOB ("Freight On Board"), unless prior approval has been granted by Fermata, on behalf of a Property. A special request must be submitted to pursue approval and if approved, a higher royalty rate may be required.
- Licensees may not use or allow third parties to use any Licensed Consumer Products or the Licensed IP of a Property in connection with any fundraising or charitable efforts unless prior approval has been granted by Fermata, on behalf of a Property. A special request must be submitted to pursue approval and separate advance fees and a higher royalty rate may be required.
- A factory can manufacture your product and/or embellish it with a Property's Licensed IP only if an Authorized Manufacturer's Letter Agreement has been fully executed. Licensees are responsible for all licensing requirements, including but not limited to obtaining approval of the product and invoicing all customers.
- Licensees may not use or allow third parties to use any licensed consumer products or the marks of a Property in connection with any premiums or giveaways unless prior approval has been granted by Fermata on behalf of a Property. A special request must be submitted to pursue this approval, and a higher royalty rate may be required.
- Royalties are due on Net Sales, which are defined as the greater of the invoice price or usual wholesale price (including the applicable royalty) less the following (i) allowed quantity discounts and customary, lawful trade discounts, (ii) credits for products actually returned (a credit memoranda actually issued to a customer must be provided with the royalty report and taken within six (6) months following the date that the products were sold by licensee) up to a maximum deduction for returns of ten percent (10%) of the total gross sales for any Royalty Period (the sales period for which royalties are to be paid and reported as defined on Schedule A), (iii) applicable sales taxes, and (iv) transportation/freight/shipping charges for shipment from Licensee to the particular invoiced customer.

#### Net Sales Example

Gross Invoice Price	\$10,000
Quantity Discount	(\$500)
Sales Tax	(\$800)
<u>Freight &amp; Shipping</u>	<u>(\$200)</u>
Net Sales	\$8,500

- Licensees are required to report quarterly unless a licensee's total gross royalties for all licenses held through Fermata reported annually exceeds \$5,000. If a licensee's total royalties reported annually exceeds \$5,000, licensee must report monthly. Evaluation at renewal will determine if a change needs to be made from quarterly to monthly reporting period or vice versa. The threshold of \$5,000 may be evaluated and changed based on the number of Properties represented by Fermata.
- Sales must be reported when the product is paid for, invoiced or shipped, whichever comes first.
- Royalty reports must be submitted within CAMPUS, Fermata's online system for managing all aspects of the licensing process. Gross royalties must be reported by (1) Property, (2) Product Category, (3) Approved Brand (if applicable); (4) Retail Channel and Retailer (5) SKU (stock keeping unit) and include number of units and price the good was sold at.
- A report must be submitted for each Reporting Period, even if sales were \$0 during that period.
- Licensees approved to sell direct to consumers must pay royalties based on the final invoice price charged the customer/consumer.
- If a licensee sells any Licensed Consumer Products to any party affiliated with the licensee (or in any way related to or under common control with the licensee) or an approved distributor at a price less than the Net Sales price charged to other parties, the royalties are required to be computed on the basis of the Net Sales price charged to other unaffiliated parties

- If selling to an exempt account as noted on Schedule A for a Property, sales must still be reported. No royalties are due on sales to the exempt account, including any royalties that have been built into the cost of the product.
- Advance fees that are paid up front when initially licensed and/or at renewal are good for one contract year. If royalties reported during the contract year do not exceed an advance fee, it will not carry over to a new contract year and any remaining balance will not be refunded.
- Licensees may grant rebates and/or reduce or discount its pricing (e.g. “close-outs”) for no more than ten percent (10%) of its reported sales for any given Reporting Period. The royalty owed to Fermata for such discounted sales will be calculated based on the reduced or discounted wholesale price for such Licensed Consumer Products. For royalty purposes, all other “close-out” sales must be reported based on Net Sales.
- Any late payments received more than 20 days after the close of the Reporting Period will incur interest at 1.5% per month. If Licensee makes any late royalty payments, they will be calculated at the royalty rate currently in effect at the time the payment is made.
- Licensees will be required to assign a unique SKU (stock keeping unit) number to each Licensed Consumer Product and will be responsible for reporting all sales by SKU. During the product approval process, all design submissions should include a SKU when possible.
- All books and records, including invoice detail and related obligations under the license agreement must be maintained and made accessible to Fermata or its representatives (e.g., auditors) for three years following expiration or termination of the agreement.
- Licensees are required to pay the cost of an audit if a licensee requests a change to a scheduled audit date, a licensee’s books and records are not organized or available to audit, or if an underpayment of \$5,000 (or 5% if less than \$5,000) is discovered in an audit.
- During the contract term for each license held, Licensees are required to provide a reasonable number of samples of each product free of charge to a Property. Licensees will also agree to sell additional Licensed Consumer Products to Fermata and/or a Property for similar use at Licensee’s actual cost of goods, plus 10%. No royalty will be due on such sales and these items will not be re-sold.
- All designs, promotional materials, advertising, and packaging incorporating a Property’s Licensed IP must be submitted for approval prior to production through CAMPUS. All submissions should meet the design guidelines outlined within a Property’s Logo Guide or Style Guide, available under the Brand tab in CAMPUS.
- All license requests to amend an agreement (i.e. New Property, New Product, New Channel, New Label, etc.) must be submitted for approval prior to production or distribution through CAMPUS, Fermata’s online system.
- Licensees are required to meet all labeling requirements. A Licensee’s company name or authorized label/brand must appear on all Licensed Consumer Products or packaging. All Licensed Consumer Products must also include the Genuine College Product label as outlined in the guidelines for use. Licensees are not authorized to allow any third party, with the exception of an authorized manufacturer on file with Fermata, to add the hologram label without prior approval from Fermata. Any unused holograms must be returned to Fermata upon termination/expiration of the agreement and no refund will be made for any unused hologram labels. Fermata and the Properties are not responsible for any Licensed Consumer Products that are confiscated due to missing labeling requirements.
- All labels and brands utilized on product or packaging other than a Licensee’s name must be submitted for approval prior to use. If multiple are authorized, Licensees may be required to submit artwork, pay advances and report royalties separately by label.
- Reasonable damages may be assessed if a licensee breaches the agreement. The failure to resolve a breach of contract can lead to termination of the agreement.
- Excessive breaches during a contract term may result in additional Annual Fees at renewal, should one be offered.
- Each Property has the right to terminate the agreement at any time, with or without cause. Each Property will make a decision regarding a renewal offer and there is no express or implied obligation to offer a renewal. Fermata and each Property are not responsible for any financial obligation that a Licensee may have in anticipation of receiving a renewal.
- Within 30 days, if a license agreement expires, or immediately upon termination of a license agreement, Licensees must provide to Fermata a complete schedule of all inventory of products on-hand that include Licensed IP of Properties represented by Fermata. If the license agreement is not renewed or expired, licensees will have 60 days to sell-off any remaining inventory. If the license agreement is terminated, generally, no sell-off is allowed and no further distribution of Licensed Consumer Products may occur from the date of termination. All remaining inventory must then be destroyed unless a Property chooses to have the remaining inventory sent to the Property, which will be done at the expense of the licensee.
- Licensees shall purchase and maintain at their own expense, insurance meeting Fermata’s requirements from a carrier that is rated at least “A-7” in Best’s Key Rating Guide and licensed to do business in the Territory. Fermata’s insurance requirements can be referenced [here](#).
- The license agreement cannot be assigned or transferred unless prior approval has been granted by Fermata, on behalf of a Property. Any action by a licensee that involves a change of control of a licensee or transfer of more than 50% of the outstanding stock of a licensee will be considered an assignment and may only be made with the prior approval of Fermata, on behalf of a Property. Fermata and/or Properties may require a transfer fee to be paid by a licensee or the proposed acquiring company for the transfer of its license rights by a licensee to such acquiring entity via a merger or acquisition.