

Protection and administration of Darjeeling in Canada

The procedure is as follows:

Application in Form-I

Signing of appropriate License Agreement (2 copies)– on plain paper, signature on all pages by the authorized signatory of the applicant company with official company seal on the last page. This is to be sent to Tea Board by post. The license agreement is for use of the Darjeeling word and logo marks. Use of Darjeeling logo is optional.

Payment of Use Fees as per Schedule. – to be made at the time of sending License / Use agreement. (Importer)

In US \$:	One time registration \$ 50 Annual Fees – 1.0 US Cent per kilo of teas purchased.
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The use fees shall be paid to the Proprietor at the beginning of each year based on average purchases of the last three years. A reconciliation shall occur at the end of each year, at the time of renewal of the license, based on the actual quantities sold by the authorised user and calculated at the applicable rate. This is to be indicated in the form of a letter to Tea Board.

Issuance of License Number to applicant. (signed photocopy of agreement will be sent to the applicant at this stage). This user license number is to be carried on all packs along with the statement. “Darjeeling –Intellectual Property of Tea Board India, used under license”. This statement can be put on side panel of packs.

Annual filing of form given under Schedule D on quantities sold under the Darjeeling Logo/Word (for renewal of permission).

Form 1

On the Letterhead of Applicant

I/We* wish to execute the Licence Agreement with the Tea Board of India for use of the "DARJEELING" (word), and/or the Darjeeling Logo, U.S. Registration No. 0903697 and enclose an A/C payee demand draft for \$[] payable to the Tea Board of India towards part payment of the annual Licence Fee.

I/We* agree to abide by the attached Regulations as well as the terms of the Licence Agreement in relation to my/our* use of the Certification Mark/s.

Name of applicant in block letters (specify whether company, partnership, individual, etc):
Description of applicant (please circle those which are applicable): Packer / Importer / Bulk Supplier or Wholesaler / Owner of Retail Store / Tea Boutique / Others: (please specify)

Address:

Telephone numbers:

Fax No.

E-mail address:

I hereby declare that the aforesaid information is true and correct to the best of my knowledge and belief.

Place:

Date:

(Authorized Signatory of the
Applicant or the Applicant)

Verification:

* Checked and verified the above information and recommended that the applicant is a member of the Tea Trader's Association of _____ and/or is also a member of Tea Council of _____ and/or an Importer and/or Re-exporter of Darjeeling Tea.

Place :

Date :

(Authorised Signatories of Tea Trader's Association and/or Tea Council of _____ or the Indian Tea Exporter having User Licence Number _____ of DARJEELING CTM.

*strike out whichever is not applicable.

ANNUAL TRANSACTIONS / INVENTORY OF DARJEELING TEA
(on Licensee's letterhead)

User License Number:

Name:

Address:

Date:

Dear Sir(s),

The following is my/our declaration relating to the sale and stock of Darjeeling Tea held by me/us over the period stated above.

Opening stock of Darjeeling Tea as on : 1st January (year) : _____ kg.

Qty. of Darjeeling Tea purchased during the 12 month period : _____ kg.

COO No.	Supplier/source of purchase	Tea Garden Mark	Invoice number	Grade	Quantity	No.of packages

Qty. of Darjeeling Tea sold during the 12 month period : _____ kg. including

Qty of Darjeeling Tea exported during the 12 month period _____kg

Destination of Darjeeling Tea sold

- 1.
- 2.
- 3.

Any other details :

(Qty. sold under logo mark)

(Qty. sold under word mark)

Closing stock of Darjeeling Tea as on 31st December (year) :_____ kg.

I/we* hereby certify that the information given above is correct and that we have not concealed any material facts.

Signature of Licensee.

TERMS AND CONDITIONS FOR THE USE of

DARJEELING and IN CANADA

THIS AGREEMENT is made the _____ day of _____ 2004 between Tea Board, India, 14, B.T.M. Sarani (Brabourne Road), P.O. Box No.2172, Kolkata of the first part (herein called “the Proprietor”)and _____ of the second part (herein called “the User”)

WHEREAS

A. The proprietor is the owner of the marks “DARJEELING” and DARJEELING (logo) (fully described in Schedule I hereto and hereinafter called the Marks) relating to tea which meets qualitative requirements (fully detailed in Schedule II and hereinafter called the Qualitative requirements) imposed by the Tea Board, India as a prerequisite to the grant of an authorization to use the Marks;

B. The Proprietor also owns a Canadian registration for the DARJEELING logo as an Official Mark under registration no. 0903697. Further, the Proprietor is the owner of artistic copyright in the DARJEELING logo under Indian registration no. A-67292/2004 dated May 11, 2004 and the same is entitled to protection in Canada under international law.

C. The User has applied to the Proprietor for an authorization, entitling him to use the Marks in respect of tea conforming to the Qualitative requirements (hereinafter called “the Goods”) within the territory of Canada (hereinafter called “the Territory”)

NOW THIS AGREEMENT WITNESSETH that in consideration of the terms and conditions hereinafter contained, the Proprietor hereby agrees to permit the User to use the Marks in respect of the Goods.

1. GRANT AND CONSIDERATION

1.1 The Licensor hereby grants to the User a non-exclusive authorization to use within the Territory the Marks in respect of tea which conforms with the Qualitative requirements as set forth in Schedule II.

1.2 In consideration of the rights of licensed use granted hereunder, the User shall pay to the Proprietor an annual fee computed in accordance with Schedule V towards its operational and administrative costs in controlling the use of the Marks.

2. DURATION

2.1 This Agreement shall come into force from the date hereof and shall continue for one year, subject to automatic renewals from time to time.

2.2 Either party may terminate this Agreement without prejudice to its other remedies forthwith by notice in writing to the other if that other commits a

breach of this Agreement, provided that if the breach is capable of remedy the notice shall only be given if the party in breach shall not have remedied the same within one month of having been given notice in writing specifying the breach and requiring it to be remedied.

2.3 Either party may terminate this Agreement by notifying its decision by writing served on the other party two months before the anniversary date of the conclusion of this Agreement.

3.COMPLIANCE WITH QUALITATIVE REQUIREMENTS

3.1 The User undertakes that the tea in respect whereof it will use the Marks shall conform to the Qualitative requirements and in order to enable the Proprietor to check that the User complies with Qualitative requirements, the User further undertakes that:

(a) The Proprietor's authorised representatives shall be entitled to inspect, prior to and after the grant of the authorization, as and when desired by the Proprietor, the User's premises for the purpose of inspecting the same and/or taking samples of tea and/or packaging used by the User.

(b) As and when required by the Proprietor, prior to or after the grant of the authorization, the User shall supply samples of the tea in relation to which it uses or intends to use the Marks for testing by the Proprietor to determine that the tea, in respect of which the Marks are used or will be used, still conforms to the standards prescribed by it; and

(c) That the User will maintain adequate systems of control and inspection, including books and records, to ensure that the tea in

respect of which the Marks are proposed to be used will continue to conform to the standards prescribed by the Proprietor.

4. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

4.1 The User hereby acknowledges that any and all rights created by the use of the Marks are the sole property of the Proprietor.

4.2 The Marks shall not be used in a manner which is deceptive or which would bring it into disrepute and its use generally shall be subject to the reasonable requirements of the Proprietor.

4.3 The User hereby undertakes not to use the Marks in any manner which may jeopardise the distinctiveness or validity of the Marks and shall apply and use the Marks only on and in connection with such of the Goods and only in such form and manner as the Proprietor or its representatives may from time to time direct or approve and the labels, containers, packaging, pamphlets, advertisements and the like used in connection with the Goods shall show the Marks in such a manner and with such lettering and marking as may be so directed or approved. The User undertakes in this respect that as and when the Marks are used by it on or in relation to the Goods, it shall be accompanied by such indication as the Proprietor may require that the Marks belong to the Proprietor and are being used by the User only by way of licensed use to indicate that the Goods conform to the standards prescribed by the Proprietor.

4.4 In particular, but without prejudice to the generality of the foregoing, the User undertakes to refrain from:

4.4(a) registering a mark identical with or similar to the Marks or either of them in respect of any goods;

4.4(b) using for any purpose a mark identical with or similar to the Marks or either of them except as permitted by the Proprietor in this Agreement;

4.4(c) using the name 'Darjeeling' as part of its corporate name or trading style. In the event the User has been so permitted, it fully recognizes that the right to use the same does not create any rights in the word 'Darjeeling' in its favour. The User undertakes that:

i. it will use such corporate name only in respect of 100% Darjeeling tea conforming to the Qualitative requirements as set forth in Schedule II.

ii. The User will not use such corporate name for any products other than the Goods;

iii. Should there cease to exist any license arrangement between the Proprietor and the User, the User will cease to use the corporate name and will take immediate steps to amend the same so as to delete the word 'Darjeeling' therefrom;

iv. The Proprietor and the User will co-operate in good faith should future conditions or developments suggest to either the possibility that the User's use of 'Darjeeling' might be likely to create confusion in the marketplace with the Marks.

4.4(d) opposing the use and the registration of a mark identical with or similar to the Marks or either of them or contesting the validity of any such registration;

4.4(e) causing or assisting any person to do any of the things mentioned in the above sub-clauses 4.4(a), 4.4(b), 4.4(c) and 4.4(d).

4.5 The obligations set out in the above clause 4.4 hereinbefore shall survive termination of this Agreement for whatsoever reason.

4.6 The User undertakes to bring to the notice of the Proprietor all cases of wrongful use or infringement of the Marks or either of them registration or attempted registration of a mark identical with or similar to the Marks, or either of them. In the event of the Proprietor undertaking any opposition to

or any action to restrain or punish such act or acts, the User agrees to co-operate fully and freely with the Proprietor and undertakes to do all such acts and things as the User shall reasonably require to assist the Proprietor in any legal proceedings in respect of infringement or use or registration of the Marks or either of them or any mark similar thereto.

4.7 If the User or any of its customers is sued as a direct result of use of the Marks, the User, on service upon it of any notice of any such claim, shall forthwith give the Proprietor written notice thereof and of all particulars thereof and the Proprietor shall have the right to participate in the defence of such suit by its own counsel and at its own expense.

4.8 The User will not claim in relation to the Goods bearing the Marks, that they possess any characteristic not specified in the specifications prescribed for such goods by the Proprietor so as to suggest that such claim is certified by the Marks or in any way controlled by the Proprietor.

5. INDEMNITY

5.1 The User shall be liable for and will indemnify the Proprietor (together with its officers, servants and agents) against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Proprietor whether direct or consequential (including but without limitation any economic loss or other loss of profits, business or goodwill) arising out of any dispute or contractual tortious or other claims or proceedings brought against the Proprietor by a third party claiming relief against the Proprietor by reason of the manufacture, use or sale of any Licensed products by the User or the use by the User of the Marks, except insofar as any such claims may arise from:

(a) any breach of this Agreement by the Proprietor;

(b) any invalidity or defect in the title of the Proprietor to the Marks not caused by any act or default of the User, or

(c) from the instructions given to the User by the Proprietor provided such instructions have been properly carried out by the User.

6. ASSIGNMENT

6.1 Neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other.

7. SEVERABILITY

7.1 If any term, paragraph or provision of this Agreement shall be held to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other term, paragraph or provision thereof, and such invalid term, paragraph or provision shall be deemed to have been deleted from this Agreement.

8. NOTICES

8.1 Any notice given by the Proprietor in pursuance of this authorization, to the User shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to such authorised user at his address in the Register. Any notice given by the User to the Proprietor shall be deemed to have been duly given if forwarded through the post by prepaid letter addressed to the Proprietor at Director of Tea Promotion, Tea Board, 5thFloor, 14 B.T.M. Sarani (Barabourne Road), PO Box No. 2172, Kolkata 700 001, India.

9. GOVERNING LAW

9.1 This Agreement shall be governed by and construed in accordance with the laws of _____.

IN WITNESS WHEREOF the Proprietor and the User have executed this Agreement the date and year first above written.

SIGNED BY

for and on behalf of the PROPRIETOR

SIGNED BY

for and on behalf of the USER

SCHEDULE I

DARJEELING

And

DARJEELING LOGO

SCHEDULE II

The use of the Marks is restricted to tea which strictly meets the following Qualitative requirements to the extent that it:

(a) is cultivated, grown or produced in the tea gardens in the geographic areas listed in the attached Schedule III and which have been registered with the Proprietor in accordance with the provisions of the (Indian) Tea Act, 1953 or any relevant law which may replace this Act;

(b) has been cultivated, grown or produced in one of the tea gardens listed in Schedule IV (which may be amended from time to time by the Proprietor);

(c) has been processed and manufactured in a factory located in the geographic areas listed in the attached Schedule III; and

(d) when tested by expert tea tasters on behalf of the Proprietor, is determined to have the distinctive and naturally occurring organoleptic characteristics of taste, aroma and mouth feel typical of tea cultivated, grown and produced in the region of Darjeeling, India.

Explanation

The Marks may be used in relation to a blend of DARJEELING teas drawn from more than one tea garden in Darjeeling, India, as listed in Schedule IV, only if each tea constituting the blend has been derived from a single tea garden in Darjeeling, India, as such gardens are listed in Schedule IV. In such cases, the packaging for the tea must clearly indicate that the tea is a blend of DARJEELING tea with prominent use of the term “blend” or the term “blended.”

SCHEDULE III

The following areas within the District of Darjeeling in the State of West Bengal, India;

(i) hilly areas of Sadar sub-division

(ii) hilly areas of Kalimpong sub-division

(iii) Kurseong sub-division excluding the areas in the District of Darjeeling Authority's Jurisdiction List numbered 20, 21, 23, 24, 29, 30 and 33. These areas under above seven jurisdiction list numbers, are non-hilly areas of the Kurseong sub-division of the district of Darjeeling, which are not capable of producing tea of the requisite standard.

SCHEDULE IV

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|------------------------------|------------------------------|----------------------------|
| 1. Alloobari | 33. Margaret's Hope | 65. Samabeong |
| 2. Ambiok (Hilton) | 34. Marybong | 66. Selimbong (Rongbong) |
| 3. Arya | 35. Mim | 67. Soom |
| 4. Avongrove | 36. Mission Hill | 68. Singtom |
| 5. Ambootia | 37. Moondakotee | 69. Steinthal |
| 6. Badamtam | 38. Mohan Majhua | 70. Sungma |
| 7. Barnesbeg | 39. Makaibari | 71. Selim Hill |
| 8. Bannockburn | 40. Mullotar | 72. Singbulli |
| 9. Balasun | 41. Mahalderm | 73. Sivitar |
| 10. Chongtong (Sirisi) | 42. Monteviot | 74. Springside |
| 11. Chamong | 43. Nagri | 75. Soureni |
| 12. Castleton | 44. Nagri Farm | 76. Singell |
| 13. Dhajea | 45. North Tukvar | 77. Sepoydhoorah(Chamling) |
| 14. Dooteriah | 46. Narbada Majhua | 78. Seeyok (Spring Valley) |
| 15. Dilaram | 47. Nurbong | 79. Tukvar (Puttabong) |
| 16. Edenvale | 48. Namring & Namring(Upper) | 80. Tumsong |
| 17. Ging | 49. Oaks | 81. Turzum |
| 18. Gielle | 50. Okayti | 82. Tindharia |
| 19. Glenburn | 51. Orange Valley | 83. Thurbo |
| 20. Gopaldhara | 52. Pandam | 84. Tukdah |
| 21. Goomtee | 53. Pashok | 85. Teesta Valley |
| 22. Giddapahar | 54. Phoobsering | 86. Upper Fagu |
| 23. Gyabaree & Millikthong | 55. Poobong | 87. Vah Tukvar |
| 24. Happy Valley | 56. Pussimbing (Minzoo) | |
| 25. Jogmaya | 57. Phuguri | |
| 26. Jungpana(Jungpapa Upper) | 58. Rangaroon | |
| 27. Kalej Valley | 59. Ringtong | |
| 28. Kumai (Snowview) | 60. Risheehat | |
| 29. Lingia | 61. Rohini | |
| 30. Liza Hill | 62. Runglee Rungliot | |
| 31. Longview(Highlands) | 63. Rungmook/Cedars | |
| 32. Lopchu | 64. Kanchaan View | |

SCHEDULE V : USE FEE

In US \$: In US \$:	One time registration \$ 50 Annual Fees – 1.0 US Cent per kilo of teas purchased.
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The Proprietor has the power to revise the use fees upwards by giving six months' notice in writing to the User, provided two years have elapsed following the effective date of the license. The Proprietor will act fairly in determining the amount of use fees as it is a non profit-making body.