

CREDIT ACCOUNT APPLICATION

SECTION 1. APPLICANT / CUSTOMER DETAILS

TRADING/BUSINESS NAME: <i>This is the entity that will appear on all invoices</i>		COMPANY NAME <i>(If different to Trading Name)</i>	
LIST COMMITTEE MEMBER (1) FOR INCORPORATED ASSN		COMMITTEE MEMBER (2) FOR INCORPORATED ASSN	
THE APPLICANT IS A: COMPANY <input type="checkbox"/> SOLE TRADER <input type="checkbox"/> TRUSTEE ON BEHALF OF A TRUST <input type="checkbox"/> INCORPORATED ASSOCIATION <input type="checkbox"/>			
ABN:		ACN (IF ANY):	
PHONE No:		FAX No:	
EMAIL:			
POSTAL ADDRESS:		DELIVERY ADDRESS:	
NATURE OF BUSINESS (e.g. hotel, restaurant, bar, retail):		DATE BUSINESS STARTED:	

SECTION 2. LIQUOR LICENCE DETAILS (Attach copy of liquor licence)

LIQUOR LICENCE <i>(circle)</i> :	YES / NO	LICENCE NUMBER: LIQ
DATE LIQUOR LICENCE ISSUED:		ADDRESS FOR WHICH LICENCE ISSUED:
LICENSEE NAME:		BUYING GROUP:

SECTION 3. CREDIT INFORMATION / REFERENCES

ESTIMATED TRADE VALUE PER MONTH: \$		CREDIT AMOUNT REQUIRED: \$	
DETAILS OF APPLICANT'S 3 MAJOR CREDIT PROVIDERS:			
	PROVIDER 1	PROVIDER 2	PROVIDER 3
FULL NAME OF PROVIDER AND ABN			
ADDRESS			
EMAIL ADDRESS:			
MOBILE NUMBER:			
MONTHLY CREDIT VALUE:			
PROVIDE DETAILS OF THE APPLICANT'S RELATED BUSINESSES OR COMPANIES (IF ANY):			
	Full Name of Related Business and ABN	Address	Relationship to Applicant
Related Business 1			
Related Business 2			

SECTION 4. AUTHORISED PERSON (S) OF APPLICANT RESPONSIBLE FOR ORDERING AND PAYING ACCOUNTS

PROVIDE DETAILS OF THOSE PERSONS WHOM THE APPLICANT AUTHORISES TO ORDER AND RECEIVE GOODS AND PAY ACCOUNTS:

NAME OF APPLICANT'S AUTHORISED PERSON	POSITION TITLE ie Cellarman/Bar Manager/Accounts	MOBILE	EMAIL ADDRESS
1. ORDERS:			
2. ORDERS:			
3. PAYING ACCOUNTS:			

SECTION 5. AGREEMENT AND EXECUTION BY APPLICANT AND/OR PERSONAL GUARANTOR

The Applicant and/or Guarantor acknowledges receipt of the **attached** Terms and Conditions of Sale (and Personal Guarantee) (as amended from time to time) ('**T&Cs**'). Capitalised terms used below have the same meaning as in the T&Cs. The Applicant and/or Guarantor agrees that the T&Cs will apply to the supply of any and all Goods to the Applicant and/or Guarantor (referred to as the 'Customer' in the T&Cs) by the Supplier and the Customer will be bound by the T&Cs.

We warrant and represent to the supplier that within the last 5 years no Proprietor, Director, or Manager of the Customer has been the subject of Bankruptcy proceedings or been associated as a Manager, Member, Director of Partner of a company or business which has failed or was the subject of a receivership, Voluntary Administration, Liquidation or to which an Administrator or Controller has been appointed.

For companies, corporate trustees and incorporated associations PLEASE COMPLETE PARTS 1 AND 2 AND 4

PART 1 SIGNED by the Director/Sec/Committee Member, in accordance with s.127 Corporations Act and its Constitution:

Signature of Director /Secretary/Committee member 1

PRINT name of Director 1/Secretary/Committee member 1

Insert DOB

Signature of Director /Secretary/Committee member 2

PRINT name of Director 2/Secretary/Committee member 2

Insert DOB

PART 2 SIGNED by the Guarantors in the presence of a witness

Signature of Guarantor 1

PRINT Name of Guarantor 1

Insert DOB

Signature of Guarantor 2

PRINT Name of Guarantor 2

Insert DOB

Witness Signature

PRINT Witness Name

Insert DOB

For sole traders and personal trustees PLEASE COMPLETE PART 3 AND 4

PART 3 Signed by the Applicant

Signature of Applicant 1

PRINT Name of Applicant 1

Insert DOB

Signature of Applicant 2

PRINT Name of Applicant 2

Insert DOB

Signature of Witness

PRINT Name of Witness

PART 4

DATE OF APPLICATION

TERMS AND CONDITIONS OF SALE (AND PERSONAL GUARANTEE)

1. DEFINITIONS

Agreement means this document titled 'Terms and Conditions of Sale (and Personal Guarantee)' and includes the Schedule.

Authorised Persons means those persons authorised by the Customer to order Goods and whose details are set out in Section 4 of the Schedule, or such other persons as notified to the Supplier from time to time.

Credit Card Charges means, in respect of any amount paid by the Customer to the Supplier by credit card, **2.5%** for American Express cards and **1.25%** for all other credit cards.

Customer means the person(s), corporation, association or other entity whose details are specified in Section 1 of the Schedule.

Delivery Charges means the fees and charges in connection with the cost of delivery and any special packaging materials used in relation to the Goods, as set out in the Invoice.

Due Date means the date that is [14 days] after the date of the Invoice, or such other date as agreed by the Supplier in writing.

Goods mean all goods supplied by the Supplier to the Customer.

Guarantor means the person whose details are set out as guarantor in Section 1 of the Schedule and who has signed Section 6.

Invoice means a written invoice provided to the Customer by the Supplier in connection with delivery of the Goods in respect of each Order.

Late Payment Fee means **3.0%** of the overdue amount

Order means each order for Goods made by the Customer or its Authorised Person.

Outstanding Amount means all amounts due and payable to the Supplier by the Customer and includes the Price and Late Payment Fee for any Orders which are outstanding.

Price means the price payable, and monies due to the Supplier by the Customer, for an Order and includes Delivery Charges.

Products means all products made from the Goods or new objects or materials made from the Goods, mixes of the Goods with other materials or where the Goods become part of other objects or materials.

Quote/Quotation means the written quote provided by the Supplier at the request of or otherwise for the Customer.

Return Fee means **\$4.50** per carton plus GST.

Return Value means the amount equal to the Price less the sum of: (a) the Return Fee; (b) the Late Payment Fee (if any); (c) the Delivery Charges (if any); and (d) the Credit Card Charges (if any).

Schedule means the Schedule attached to these Terms and Conditions of Sale (and Personal Guarantee).

Supplier means Global Brands Liquor Pty Ltd (ACN 160 592 085) and its related bodies corporate and related entities as defined in the *Corporations Act 2001* (Cth) and includes their successors and assigns.

2. QUOTATIONS & ORDERS

- 2.1 The Customer agrees that this Agreement is the governing agreement in relation to the conduct of its trading account with the Supplier and will apply to all Orders.
- 2.2 A Quote is valid for thirty (30) days from the date of the Quotation. Unless otherwise stated, prices quoted by the Supplier are exclusive of GST and Delivery Charges.
- 2.3 Quotations are an invitation to the Customer to provide an Order subject to the terms set out in this Agreement, and are not to be construed as an obligation to provide any Goods.
Orders will only be accepted by fax, email or by completing the online form and

signed by the Customer or an Authorised Person. Verbal orders will only be accepted if given by an Authorised Person.

- 2.4 Each Order accepted by the Supplier constitutes a separate contract for the supply of Goods on the terms of this Agreement and the breach of any one contract so formed will not be grounds for the Customer to terminate any other contract.

3. PRICE AND PAYMENT

- 3.1 Prices of Goods may vary without notice and will be the standard current recommended price for the Goods at the date of delivery, except if prices are advertised or Quoted below that price.
- 3.2 The Customer will make payment to the Supplier of the Price on or before the Due Date.
- 3.3 If the Customer pays the Price or Late Payment Fee (or any part of them) by credit card, the Credit Card Charges will apply and will be immediately due and payable in addition to the Price.
- 3.4 If the Customer fails to make full payment in respect of an Order by the Due Date, the Customer will incur a Late Payment Fee.
- 3.5 If the Customer has purchased any Goods which are supplied in drums or containers which are to be returned to the Supplier and these are not returned within three (3) months of receipt or such other period notified by the Supplier to the Customer in writing, the Customer must pay the Supplier's nominated value for those drums and containers in the Supplier's absolute discretion.
- 3.6 The Customer acknowledges and agrees that the Supplier may issue legal proceedings to recover any Outstanding Amount; and that the Customer will be liable for any costs incurred by the Supplier including legal fees on a full indemnity basis incurred by the Supplier in relation to the Outstanding Amount such as Mercantile Agents fees.

4. DELIVERY AND ACCEPTANCE OF GOODS

- 4.1 The Supplier will deliver the Goods to the delivery address specified in Section 1 of the Schedule, unless otherwise agreed between the parties in writing.
- 4.2 If the Customer requires the Goods to be supplied by a specific date, the Supplier will endeavour to comply with that request.
- 4.3 The Supplier may at its discretion deliver the Goods to the Customer in any number of instalments.
- 4.4 The Customer will be deemed to have accepted the Goods on delivery of the Goods and signing of the Delivery Docket by the Customer, its Authorised Person, or any employee or agent of the Customer ('Deemed Delivery').
- 4.5 The Customer agrees that risk in the goods shall remain with Supplier only to the point of loading of the goods upon a transport vehicle at Supplier's nominated distribution centre and, from then on the goods are deemed to be delivered and all risk of damage, loss or deterioration of goods from any cause whatsoever shall pass on to the Customer. The Supplier is not liable for any damage, loss or deterioration to the goods in transit.
- 4.6 The Customer will insure the goods for the full value of the goods under a comprehensive policy of insurance, in the names of the Supplier and the Customer, from the time of loading of the goods at Suppliers nominated distribution centre against Fire; Accident; Malicious damage; Theft and such other risks as the Supplier may from time to time require.
- 4.7 The Customer is to pay all premiums payable in respect of such policy and produce a certificate of the policy to Supplier within seven (7) days of request by Supplier.
- 4.8 If the Customer fails to effect insurance on the goods the Supplier may refuse to deliver the goods or, at its discretion, may insure the goods for delivery and the cost of such insurance shall be to the Customer's account.

5. RETURNED GOODS AND CANCELLATION

- 5.1 The Supplier will not accept Goods for return due to incorrect purchase unless: (a) the Customer notifies the Supplier within seven (7) days from receipt of Goods and complies with this clause 5; and (b) the Supplier provides written approval to the Customer, with such approval to be given or withheld by the Supplier in its absolute discretion.
- 5.2 Goods must be returned to the Supplier's registered address at the cost of the

Customer in the same condition as they were [when they left the Supplier's premises/ on Deemed Delivery] and must be delivered to the Supplier by a courier authorised by the Supplier.

- 5.3 Goods that are returned due to incorrect purchase will be charged a Return Fee.
- 5.4 Once the returned Goods have been received by the Supplier and the Supplier is satisfied that their condition is in accordance with clause 5.2, the Supplier will issue the Customer a credit note to the Customer for the Return Value.

6. DEFECTIVE GOODS

- 6.1 If the Customer believes any of the Goods are defective the Customer must notify the Supplier in writing of the defect within two (2) days of receipt of the Goods and return the defective Goods to the Supplier (at its own cost) within seven (7) days of giving such notice to the Supplier. The Customer will be deemed to have accepted the Goods unless it notifies the Supplier otherwise in writing within seven (7) days of receipt of the Goods.
- 6.2 If, upon inspection of the Goods:
 - (a) the Supplier is satisfied that the Goods are defective, then the Supplier may either replace the Goods or refund the Customer the Price for those Goods supplied that are defective; or
 - (b) the Supplier is not satisfied that the Goods are defective, the Customer must collect the Goods from the Supplier (at its own cost) within fourteen (14) days and if the Customer fails to collect the Goods within that time:
 - (i) it must pay on demand all Outstanding Amounts and the Supplier reserves all rights in relation to the recovery of the Outstanding Amounts; and
 - (ii) the Supplier may sell or otherwise deal with those Goods to the extent necessary to pay its costs (and any reasonable associated costs) of storing those Goods (with such costs being recoverable from the Customer as an additional Outstanding Amount) and may take any other action to otherwise mitigate its loss.

7. RETENTION OF TITLE AND RIGHT OF ENTRY

- 7.1 Until all Outstanding Amounts are paid in full by the Customer and all monies receipted and cleared, ownership of the Goods remains with the Supplier.
- 7.2 If the Customer sells the Goods to a third party prior to payment to the Supplier of all Outstanding Amounts owed in connection with those Goods, the proceeds from the sale of those Goods will be held on trust for the Supplier.
- 7.3 If the Customer has mixed or used the Goods and other materials to create Products, all right title and interest in the Products immediately passes to the Supplier until the Customer has made full payment to the Supplier of the Outstanding Amounts owed in connection with those Products.
- 7.4 To the extent there remains any unpaid Outstanding Amount on any Goods or Products held by the Customer, the Customer must:
 - (a) keep those Goods and Products in a fiduciary capacity as bailee for the Supplier; and
 - (b) maintain all prudent insurance in respect of any loss or damage to all Goods and Products held in its possession and must provide certificates of insurance to the Supplier upon demand.
- 7.5 If the Customer breaches this Agreement including by failing to pay any Outstanding Amount:
 - (a) the Supplier will have the right (without giving notice) to retake possession of the Goods and Products to which the Outstanding Amount relates;
 - (b) the Customer authorises the Supplier and its representatives to enter the premises upon which the Goods or Products are housed or stored for the purpose of retaking possession of the Goods or Products; and
 - (c) the Supplier will not be liable for any cost, losses, damages, expenses or other monies incurred or lost by the Customer as a result directly or indirectly of the Supplier retaking possession of those Goods or Products.

TERMS AND CONDITIONS OF SALE (AND PERSONAL GUARANTEE)

8. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- 8.1 In this clause 8:
- The following terms have the meaning given to them in the PPSA:
 - Financing Statement;
 - Financing Change Statement;
 - Purchase Money Security Interest ('PMSI');
 - Security Agreement; and
 - Security Interest.
 - 'PPS Register' means the Personal Properties Securities Register established under the PPSA;
 - Despite anything to the contrary contained in this Agreement the Supplier may take a Security Interest in:
 - all present and after acquired Goods supplied by the Supplier;
 - any proceeds of any sale of the Goods; and
 - any proceeds of any insurance held by the Customer for the Goods, to secure (with equal priority) payment of all Outstanding Amounts.
- 8.2 The Security Interest will continue until the Customer has paid all Outstanding Amounts.
- 8.3 The Customer:
- agrees that the Supplier may register (either or both) Financing Statements and Financing Change Statements for any Goods;
 - will promptly sign any further documents, provide any further information, or do any other things that the Supplier reasonably requires at the Customer's own expense to enable the Supplier to perfect and maintain the perfection of its Security Interest;
 - indemnifies (and if requested will reimburse) the Supplier for all expenses that it incurs in registering a Financing Statement or Financing Change Statement or releasing Goods charged by the Statement;
 - will not register or permit to be registered a Financing Statement or a Financing Change Statement in any Goods in which the Supplier holds a Security Interest without the Supplier's prior written consent; and
 - will give the Supplier fourteen (14) days' prior written notice of any change in the name, business practice or any other details of the Customer, and must ensure that any applicable Financing Change Statement is registered disclosing those new details.
- 8.4 The Customer agrees that:
- any purchase by it on credit terms from the Supplier or retention of title supply pursuant to clause 7 will constitute a PMSI;
 - the PMSI granted will continue to apply to any Goods acquired or proceeds of sale arising from the sale of any of the Goods; and
 - the Supplier will continue to hold a Security Interest in Goods presently or after acquired by the Customer, notwithstanding that the Goods may be processed, commingled or become an accession with other Goods or become Products.
- 8.5 The Customer waives its right to receive:
- a verification statement confirming registration of a Financing Statement or a Financing Change Statement;
 - any or all notice(s) of: (i) the Supplier's proposal to remove personal property that has become an accession in accordance with section 95 of the PPSA; (ii) the Supplier's proposal to dispose of any personal property under section 130 of the PPSA; and (iii) the Supplier's proposal to retain any personal property under section 135 of the PPSA; and
 - a statement of account and details of any amounts paid to other secured parties provided by the Supplier under section 132 of the PPSA.
- 8.6 The Customer agrees that:
- the Supplier is under no obligation to dispose of or retain any secured property seized by it within the period specified in section 125 of the PPSA;
 - following a default by the Customer, the Customer has no rights to redeem the secured property under 142 of the PPSA; and
 - it has no right to reinstate this Agreement following a default under section 143 of the PPSA.
- 8.7 Except if section 275(7) of the PPSA applies, the Customer will not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available and agrees not to request that such information is disclosed.

- 8.8 This clause 8 will survive the termination of this Agreement to the extent permitted by law.

9. PROTECTION OF INTELLECTUAL PROPERTY

- 9.1 All intellectual property rights in the Goods and in any information provided in connection with the Goods remains at all times vested in the Supplier.
- 9.2 This Agreement does not confer any intellectual property rights on, and the Supplier does not grant any intellectual property rights to, the Customer in connection with the Goods.

10. LIABILITY

- 10.1 To the fullest extent possible permitted by law and except as is provided in this Agreement, all warranties, guarantees, terms, conditions, undertakings, inducements and representations (whether express or implied and whether under statute, general law or otherwise) relating to the Goods, are expressly excluded.
- 10.2 Despite any provision of this Agreement, the Supplier will not be liable for:
- physical or financial injury, loss or damage of any kind arising out of or in connection with the Goods, including any such injury, loss or damage arising from the Supplier's negligence, fraud or dishonesty; or
 - any consequential, indirect or special loss, loss of profits or revenue, loss of business opportunity, loss of production or loss of goodwill suffered by the Customer whether arising from or in connection with the Goods or anything incidental to the Goods.
- 10.3 The Supplier's liability for a breach non-excludable right or any express warranty is limited, at the Supplier's option, to:
- the replacement of the Goods;
 - the supply of equivalent Goods;
 - the payment of the cost of replacing the goods or of acquiring equivalent Goods; or
 - the payment of the cost of having the Goods repaired.
- 10.4 The Supplier will not be liable for any or all of the following:
- Goods not inspected by the Customer within the time period required under clause 6;
 - Goods which have been on-sold;
 - Goods which have been combined with other goods or services or have become Products;
 - Goods not operated or used strictly in accordance with instructions provided by the Supplier or written on the packaging;
 - Goods tampered with;
 - Goods which have had any original identification marks removed; and
 - damages to Goods due to circumstances beyond the Supplier's reasonable control.
- 10.5 The Customer warrants that all information provided by the Customer to the Supplier including the information set out in the Schedule is true and correct as at the date of this Agreement and the date of each Order.

11. GUARANTEE AND INDEMNITY

- 11.1 In consideration of the credit being provided by the Supplier to the Customer under this Agreement, the Guarantor guarantees:
- the due and punctual payment of all monies payable to the Supplier by the Customer under this Agreement; and
 - the performance by the Customer of all of its obligations under this Agreement.
- 11.2 The Guarantor indemnifies the Supplier against all and any losses, costs, expenses or damages (including legal costs on a full indemnity basis) which may be suffered or incurred by the Supplier in connection with:
- the failure of the Customer to pay any Outstanding Amount; and
 - a breach by the Customer of its obligations under this Agreement.
- 11.3 The Guarantor acknowledges that the terms of this clause 11 will apply despite any concession or indulgence given by the Supplier to the Customer.

- 11.4 This guarantee and indemnity is a continuing obligation and will apply despite any termination of this Agreement by the Supplier.

12. CHANGE OF OWNERSHIP

- 12.1 Any proposed change of controlling ownership, legal status or financial position of the Customer must be notified in writing to the Supplier twenty-eight (28) days prior to any such change occurring.

13. GOVERNING LAW AND JURISDICTION

- 13.1 This Agreement will be governed and construed by the laws applicable in the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place in respect of any dispute of whatsoever nature arising under this Agreement or its implementation or enforcement.

14. FORCE MAJEURE

- 14.1 If either the Supplier or the Customer is unable to perform part or all of any obligation (except to pay any money) under these terms and conditions due to an event beyond that party's ("Defaulting Party") control and which the Defaulting Party could not have reasonably foreseen, then the Defaulting Party is relieved of that obligation to the extent and for the period that it is unable to perform and is not liable in respect of such inability to perform.

15. WARRANTY

- 15.1 The Customer warrants that:
- It has all necessary power and authority to accept these terms and conditions; and
 - That it will not breach any agreement with a third party by ordering any goods; and
 - That any person ordering goods on behalf of the Customer from time to time is authorised by the Customer to do so; and
 - It holds all necessary licences and permits required to purchase goods from the Supplier and it will supply any particulars relating to such licences and permits immediately upon request by the Supplier.

16. RIGHT OF SET OFF

- 16.1 The Customer agrees that if it has supplied goods or services to the Supplier, the Supplier may recover any monies owed to it by the Customer by setting off such amounts (together with interest and costs of collection) against any sum owed to the Customer by the Supplier.

17. TERMINATION

- 17.1 If, at any time, the Supplier believes the Customer's circumstances have changed or may change such change does or may cause the Customer to be unable to meet its payment obligations to the Supplier, the Supplier may:
- request a new credit application; or
 - cancel the Customer's credit.
- 17.2 The Supplier may terminate this Agreement or cease to supply Goods in whole or in part at any time by giving notice to the Customer.

18. GENERAL

- 18.1 This Agreement supersedes and prevails over any previous terms and conditions agreed between the parties or provided by a Customer.
- 18.2 To the extent of any inconsistency between this Agreement and a Purchase Order, Quotation or Invoice, the terms of this Agreement will prevail.
- 18.3 Words used in this Agreement importing the singular or the plural will be deemed to include the plural and the singular respectively.
- 18.4 If any part of this Agreement is deemed invalid, illegal or unenforceable, such offending term or that portion of the term is to be severed and the balance of the term/s will remain applicable.