



# APPLICATION FOR A COMMERCIAL CREDIT ACCOUNT AND SECURITY AGREEMENT

Please return the completed document to PO Box 84 BLAXCELL NSW 2142

<b>OFFICE USE ONLY:</b>	FOR COD ACCOUNT ONLY, PAYMENT TO BE MADE BY:					
	<input type="radio"/> CASH	<input type="radio"/> CHEQUE	<input type="radio"/> CREDIT CARD	<input type="radio"/> DIRECT DEBIT	<input type="radio"/> EFT	<input type="radio"/> OTHER:.....

AGREEMENT: The person or entity described below ("Purchaser") applies to establish a commercial credit account ("Credit Account and Security Agreement") with Gateway Liquor Wholesalers Pty Ltd ("Seller") (as defined in the Corporations Act 2001) to operate subject to the conditions set out in this document ("Conditions of Sale"). If your application to establish a commercial credit account is accepted, you will receive invoices from Gateway Liquor Wholesalers Pty Ltd for the order of goods or equipment, and the terms set out in this document will apply to all of your dealings with Gateway Liquor Wholesalers Pty Ltd. You (the Purchaser) must complete all parts of this document to enable your application to be assessed and you must give the Seller written notification of any change in your particulars. All non-corporate applicants must be over the age of 18 years. All corporate applications are subject to and conditional upon the Purchaser's directors executing a Guarantee and Indemnity in the form attached, unless otherwise stated by the Seller. Before signing this document the Seller recommends that the Purchaser obtains their own independent legal advice.

APPLICATION FOR: (Please tick one)	<input type="radio"/> ACCOUNT	<input type="radio"/> COD
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## SECTION 1. BUSINESS DETAILS

<b>TYPE OF BUSINESS</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Company	Partnership	Sole Trader	Trustee/Trust	Other (Please specify)	
Premise Name						
Premise Address					Phone	
Suburb & Post Code				Fax		
Nominee/Manager					Monthly purchases	\$
Licensee and Licence No.					Date Commenced Trading	/ /
Email address						

## SECTION 2. MAILING ADDRESS (If not forwarded to premise address)

Address		Account Contact	
Suburb & Post Code		Phone	

## SECTION 3. CUSTOMER SPECIFIC DETAILS

### Bank Details

Bank		Account Name	
BSB		Account Number	

### Australian Business Number (A.B.N.)

### WET Exempt?

Yes  No

If "yes" please attach a signed Annual Quotation of ABN. Note, if you wish to claim exemption occasionally you should supply a signed individual Quotation of ABN with your order.

### Delivery Basis/Instructions

Note: Unless otherwise notified, all products supplied will be delivered pursuant to clause 5(ii) of the Seller's Conditions of Sale

# CONDITIONS OF SALE

The Purchaser agrees that:

- 1. ALL ORDERS SUBJECT TO THESE CONDITIONS OF SALE**  
In consideration of the Seller providing the facilities of a commercial Credit Account and Security Agreement, the Purchaser agrees to be bound by and adhere to these Conditions of Sale (the receipt of a copy of which is hereby acknowledged). By accepting delivery of any of the goods or equipment described overleaf, the Purchaser agrees to be bound by and adhere to these Conditions of Sale. The Seller may accept any order for the supply of goods or equipment in whole or in part, or decline any order. Where the Seller delivers only parts of an order, these Conditions of Sale apply to the goods or equipment delivered. The Seller shall be under no liability to the Purchaser in respect of those goods and equipment that it is unable to supply to the Purchaser.
- 2. THESE CONDITIONS PREVAIL**  
Unless otherwise agreed in writing by the Seller, these Conditions of Sale prevail over the terms of any order, even if the terms of any order provide otherwise.
- 3. PAYMENT**  
All payment for all goods and equipment supplied by the Seller will be made strictly in accordance with the Conditions of Sale. The Purchaser will pay the Seller by cash, cheque, electronic funds transfer (or other payment method approved in writing by the Seller), the Purchase Price of the goods or equipment described overleaf within the time provided in any invoice or statement. If no time is specified, payment will be made within seven (7) days of a demand by the Seller. In the absence of manifest error, a statement from the Seller in respect of goods or equipment ordered or supplied or in respect of any amount owing by the Purchaser, shall be conclusive evidence of such matters.
- 4. FAILURE TO PAY**  
If:
  - a. The Purchaser fails to pay any amount to the Seller as and when due and payable (the "Purchaser's Debt") or otherwise fails to comply with its obligations under these Conditions of Sale;
  - b. A receiver, receiver and manager, liquidator, provisional liquidator or official manager, administrator, controller or trustee in bankruptcy is appointed over all or any of the assets of the Purchaser or a scheme of arrangement is proposed or approved in respect to the Purchaser; or
  - c. A petition is presented for the winding up or bankruptcy of the Purchaser;The Seller may at its option exercise all or any of the following rights (notwithstanding any prior failure to exercise such rights):
  - i. Refuse further supply of goods and equipment or require that goods and equipment be paid for at the time of supply;
  - ii. Demand payment of the whole of the Purchaser's Debt then outstanding, and the Purchaser agrees to pay the same immediately;
  - iii. Take possession of all goods title to which has not passed to the Purchaser (and for that purpose the Purchaser authorises the Seller to enter any premises where the goods may be situated and to take possession of them); and/or
  - iv. With or without taking possession of the goods, sell the goods by public auction, or by private treaty by retail or wholesale for cash or on terms and generally as the Seller thinks fit and apply the proceeds actually received by the Seller after defraying expenses of sale and enforcement towards reduction of the Purchaser's Debt.
- 5. INTEREST**  
If payment is not made by the Purchaser by the due date in accordance with clause 3, then the Purchaser must pay to the Seller interest on the Purchaser's Debt calculated from the due date until payment is made at the rate of 10% per annum.
- 6. DEFAULT COSTS**  
The Purchaser will pay on demand to the Seller the Seller's costs and expenses (including but not limited to fees, charges, disbursements or commissions) of legal advisers, mercantile agents, debt collecting firms and other agents acting on the Seller's behalf in respect of any recovery or attempted recovery of the Purchaser's Debt.
- 7. JURISDICTION**  
The Seller has the right to nominate the court in which any legal action is to be commenced or conducted and will give due consideration to the merits of the appropriate jurisdiction of the court, and the Purchaser consents to proceedings being heard in any such court as nominated by the Seller.

## 8. DELIVERY

In respect of goods supplied by the Seller to the Purchaser, the Seller at its sole discretion may either:

- a. Effect delivery of the goods to the Purchaser from the Seller's Premises. In such case, unless the Purchaser expressly provides to the contrary, the Purchaser requests the Seller to deliver the goods to the Purchaser using, if necessary, a subcontractor to make the actual delivery. The Purchaser shall pay the Seller on demand the freight, delivery and other charges described overleaf in respect of such delivery. The Purchaser agrees that such goods will be at the sole risk of the Purchaser from the time the goods are loaded for dispatch from the Seller's premises; or
- b. Effect delivery of the goods to the Purchaser at the Purchaser's Premises. In such case, the Seller shall deliver the goods to the Purchaser using, if necessary, a subcontractor or agent to make the actual delivery. The Purchaser shall pay to the Seller on demand the freight, delivery and other charges described overleaf in respect of such delivery. The Purchaser agrees that such goods will be at the sole risk of the Purchaser from the time the goods are delivered to the Purchaser's Premises.

The Seller shall notify the Purchaser of its election in respect of its preferred method of delivery of the goods (or of particular types of goods), but shall be deemed to have supplied the goods in accordance with clause 8(a) if it otherwise fails to provide such notice to the Purchaser.

## 9. NO LIABILITY FOR DELAYS

The Seller will make reasonable efforts to have goods delivered to the Purchaser on the date agreed, but the Seller shall be under no liability should delivery not be made on or within a reasonable period of such date due to circumstances outside of the Seller's control.

## 10. PROPERTY IN GOODS

- Property in goods does not pass to the Purchaser until:
- a. The Purchaser has paid the Purchase Price of the goods in full and there is no Purchaser's Debt in relation to the goods outstanding to the Seller; or
  - b. The goods are sold in accordance with clause 10(a).

## 11. STORAGE OF GOODS

Until property in goods passes to the Purchaser, the Purchaser must, as bailee of the goods, keep the goods stored separately and in a manner which enables them to be identified and cross-referenced to particular invoices.

## 12. PPS ACT

- a. The Purchaser warrants that all purchases under this Credit Account and Security Agreement are for commercial purposes only and, accordingly, the provisions of the National Credit Code will not apply.
- b. The Seller will have a purchase money security interest in goods, which secures the obligation of the purchaser to pay the Purchase Price of the goods to the seller, and a purchase money security interest in any equipment (which, for the purposes of the PPS Act, will be subject to one or more PPS Leases);
- c. The Seller may register one or more financing statements in relation to goods or equipment, with such expiry dates as the seller determines in its absolute discretion. The Purchaser will provide such information, documents or other assistance as may be required by the seller to enable such registrations, or other actions required by the seller to perfect any security interest in goods or equipment;
- d. Other than the existence of a security interest in goods or equipment, and details of the collateral, all other information relating to this document or any related agreement is subject to a duty of confidentiality, and may not be disclosed to any party (other than to a related entity, advisor, employee, banker, auditor or other consultant of the seller, to a potential assignee of the seller, or as required by law, other than the PPS Act, or by any Government Body or stock exchange);
- e. To the extent permitted by the PPS Act, the Seller is not obliged to provide any notices to the Purchaser under the PPS Act. The Purchaser and the Seller agree to contract out of the PPS Act in accordance with section 11.5 of the PPS Act to the extent that the section applies for the benefit of, and does not impose a burden on, the Seller. The Purchaser waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by the Seller in respect of the security interest created by these Conditions of Sale;
- f. to any registration by the Seller on the register. If Chapter 4 of the PPS Act would

otherwise apply to the enforcement of a security interest arising in connection with these terms, the Purchaser agrees that the following provisions of the PPS Act will not apply to the enforcement of these terms: section 95 (notice of removal or accession), to the extent that it requires the Seller to give a notice to the Purchaser; section 99 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grant); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the Seller to give a notice to the Purchaser; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and; section 143 (reinstatement of security agreement).

## 13. SELLER'S LIABILITY

The Purchaser agrees that:

- a. All implied conditions and warranties on the part of the Seller in relation to any goods or equipment to be supplied by the Seller hereunder are excluded to the maximum extent permitted by law;
- b. In respect of any liability which the Seller cannot exclude, the Seller's liability is limited, at its option, to the replacement, repair or resupply of the goods or equipment, or a refund of the cost of the goods or equipment; and
- c. Subject to any non-excludable rights conferred on the Purchaser by legislation, no claims in respect of any goods or equipment supplied by the Seller shall be recognised by the Seller unless made in writing and notified by the Purchaser to the Seller within 7 days of delivery of the goods or equipment to the Purchaser. Unless the Seller is required to do so by law, no goods or equipment may be returned or exchanged by the Purchaser without the Seller's prior written consent (which consent may be exercised at the Seller's discretion).

## 14. AUTHORITY TO DEAL WITH GOODS

Unless the Seller directs otherwise, the Purchaser is authorised to sell the goods pursuant to any bona fide lawful transaction in the normal course of the business of the Purchaser and the Purchaser assigns the proceeds of such sale to the Seller absolutely and not by way of security. The proceeds of sale of any goods owned by the Seller received by the Purchaser shall be deposited by the Purchaser on trust for the Seller separate from any other fund or monies until such time as the Purchaser has paid for the goods in full. The Purchaser acknowledges that the sale of the goods by an administrator or receiver shall not be a sale in the ordinary course of the Purchaser's business.

## 15. EQUIPMENT

- a. Property in equipment, including kegs, casks, barrels and/or reusable drums and any pallets supplied with goods will not pass to the Purchaser. The Purchaser is entitled to hold the equipment, including those kegs, casks, barrels and/or reusable drums on behalf of the Seller only for the purposes of the consumption of the liquid content or its resale or such other purpose permitted in a related agreement. Subject to the Seller's prior agreement (and provided that the pallets are in good order and condition), pallets supplied by the Seller may be exchanged with the Purchaser's pallets or a pallet define arrangement may operate. All empty kegs, reusable drums and pallets will be returned to the Seller at the Purchaser's cost. Where delivery is arranged by the Seller, the Purchaser is to retain these items in good order and condition until collected by the Seller or its authorised agent. If pallets are not returned, exchanged or defined at the fault of the Purchaser, a fee equivalent to the cost of the pallets or the pallet hiring charge plus GST and any other expenses incurred by the Seller may be invoiced to the Purchaser.
- b. The Purchaser warrants that any equipment is not, and will not become, a fixture, and further agrees to allow the Seller to do such things as it considers necessary to ensure that equipment will not become a fixture (including unaffixing equipment). Where required by the Seller, the Purchaser will procure consents from the landlord and any freehold mortgagee of premises in which any equipment is located, in a form reasonably required by the Seller, to ensure that Seller's rights to any equipment are protected.

## 16. BRANDED TAPS

Goods to be dispensed by taps supplied by the Seller and intended by the Purchaser to be dispensed for consumption on licensed premises, shall be dispensed from taps and other devices bearing the same product name or other logo associated with the product. No goods shall be dispensed for consumption from:

- a. A tap or device bearing the name or logo unless the goods relate to that name and the Purchaser waives in writing to receive notice of a verification statement in relation to the tap or device;
- b. An unbranded tap.

The Purchaser waives in writing to receive notice of a verification statement in relation to the tap or device.



# APPLICATION FOR A COMMERCIAL CREDIT ACCOUNT AND SECURITY AGREEMENT

## SECTION 4. IF A COMPANY/TRUSTEE COMPANY

(Complete this section and the attached Trade Guarantee and Indemnity)

Company/Trustee Company Name			A.C.N.	
Trust Name (if applicable)	Please provide a copy of the trust deed confirming the appointment of the trustee as trustee of the trust.			
Registered Address				
Suburb & Post Code			Phone	

## SECTION 5. DETAILS OF DIRECTORS/PARTNERS/SOLE TRADER/TRUSTEES

Given name & Surname			Given name & Surname		
Private Address			Private Address		
Suburb & Post Code			Suburb & Post Code		
Phone		Date of Birth	/ /	Phone	

Given name & Surname			Given name & Surname		
Private Address			Private Address		
Suburb & Post Code			Suburb & Post Code		
Phone		Date of Birth	/ /	Phone	

- \* To validate Date of Birth, please provide a copy of one of the following: Drivers Licence, Birth Certificate or Passport
- \* Add additional page if more space is required

## SECTION 6. BUSINESS DETAILS

Is your business premises Leased or Owned?		Main Business Activity	
If Leased Name of Landlord		Estimated monthly Credit limit required	
Period of Lease			

_____	_____	_____	_____
<b>Signature</b>	<b>Print Name</b>	<b>Position</b>	<b>Date</b>
_____	_____	_____	_____
<b>Signature</b>	<b>Print Name</b>	<b>Position</b>	<b>Date</b>

# CONDITIONS OF SALE

- 17. NO MIXING OF GOODS**  
Goods supplied by the Seller and intended by the Purchaser for consumption on licensed premises shall not be mixed with other liquids or substances except at the express request of a consumer for the purposes of consumption.
- 18. GOODS SOLD FOR RESALE IN AUSTRALIA**  
Unless otherwise agreed in writing by the Seller, the Seller sells the goods to the Purchaser for resale in Australia only. The Purchaser must not sell or otherwise supply the goods:  
a. Outside Australia; or  
b. In Australia where the purchaser knows, believes or ought reasonably suspect that the goods are intended for resale outside Australia.
- 19. GOODS SOLD FOR RESALE OUTSIDE AUSTRALIA**  
If the Seller sells goods to the Purchaser for sale outside Australia, the Purchaser must not sell or otherwise supply the goods:  
a. Inside Australia; or  
b. Outside Australia where the purchaser knows, believes or ought reasonably suspect that the goods are intended for resale inside Australia.
- 20. CONSEQUENCES OF BREACH**  
The Purchaser must indemnify the Seller and keep the Seller indemnified against all actions, claims, proceedings or demands which may be brought against it, arising out of any breach of clauses 18 and 19 by the Purchaser. Furthermore, if the Purchaser breaches this clause, in addition to any other rights the Seller may have, the Purchaser will forfeit any discounts, allowances or rebates.
- 21. CREDIT CARD SURCHARGE**  
The Purchaser agrees to pay the Seller any surcharge it may impose appearing on any invoice or statement for using a credit card (or any other payment method) to pay for goods or equipment supplied by the Seller.
- 22. GST**  
a. If GST is imposed on any supply of goods or equipment made under or in accordance with these Conditions of Sale, the Purchaser must, in accordance with clause 7, pay to the seller the Purchase Price (as defined) of the goods or equipment supplied, subject to the Seller issuing a valid tax invoice in respect of the supply.  
b. If an adjustment event arises in respect of a taxable supply, the amount payable under clause 9(a) will be recalculated to reflect the adjustment event and a payment will be made by the Seller or Purchaser as the case requires.
- 23. ASSIGNMENT**  
The Seller may assign, dispose of, declare a trust over, or otherwise create an interest in its rights under the Credit Account and Security Agreement without the consent of any other party.
- 24. TERMINATION**  
Either party, by the giving of reasonable notice in writing, may terminate this Credit Account and Security Agreement. At termination the Purchaser's Debt due by the Purchaser to the Seller shall become immediately due and payable by the Purchaser.
- 25. AMENDMENT TO THESE CONDITIONS OF SALE**  
If the Seller, in its discretion considers there is a reasonable and valid necessity to vary these Conditions of Sale and Guarantee and Indemnity below it may do so by giving 7 days notice to the Purchaser in writing. Such amended Conditions of Sale shall supersede all Conditions of Sale previously issued by the Seller. If the Seller does vary these Conditions of Sale and Guarantee and Indemnity it may not vary any term in a manner that would render the term unfair by law.
- 26. NEGOTIATION OF TERMS**  
The Seller is prepared to reasonably negotiate in good faith the Conditions of Sale and Guarantee and Indemnity if the Purchaser contacts the Seller prior to signing this Credit Application.
- 27. WAIVER AND AMENDMENT**  
No failure or delay in exercising any right of the Seller under these Conditions of Sale shall operate as a waiver of such right.
- 28. SEVERABILITY OF PROVISIONS**  
Any provision in these Conditions of Sale which is prohibited or unenforceable is to be severed to the extent necessary to make these Conditions of Sale enforceable, unless it would materially change the intended effect of these Conditions of Sale.
- 29. PRIVACY**  
a. The Seller may provide access to information held by the Seller in accordance with Privacy legislation.  
b. The Purchaser acknowledges and gives consent that the Seller may make enquiries as to the credit and financial situation of the Purchaser, including any proprietor, director, trustee and guarantor as permitted by Privacy legislation, and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the credit application, for the purposes of assessing this application for creditworthiness or continuing creditworthiness and as the Seller reasonably sees fit from time to time, for purposes including but not limited to:  
i. obtaining and exchanging the information with a credit reporting agency or credit provider, credit insurer or insurance broker;  
ii. passing the information on to a debt collector;  
iii. exchanging further personal information, including consumer and/or commercial credit information, with another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the Privacy legislation.  
c. The Purchaser acknowledges that the consent hereby given remains in force until all amounts owing in respect of any commercial credit provided are paid in full and the Purchaser no longer has an account with the Seller.
- 30. FIXED CHARGE**  
The Purchaser hereby charges in favour of the Seller all their estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which they now have any legal or beneficial interest or in which they later acquire any such interest, with payment of all monies owed by the Purchaser. The Purchaser consents to the lodging by the Seller of a caveat or caveats which note their interest in or over any such land or other caveatable property.
- 31. SOLVENCY**  
a. The Purchaser and any other director or principal of the Purchaser warrant that they have never been made bankrupt and are solvent and are able to pay their debts as and when they fall due and have not made any compromise or arrangement with their creditors and no application has been made or proposed to summon a meeting of their creditors or any class of them.  
b. If the Purchaser is a corporation, the corporation is solvent and able to pay its debts as and when they fall due and is not in liquidation or being wound up and no meeting has been called or resolution has been passed or order made for such purposes and no Receiver or Receiver and Manager has been appointed in respect of the Purchaser and the Purchaser has not made any compromise or arrangement with its creditors or any class of them and no application has been proposed or made to any court for any order summoning a meeting of its creditors or any class of them.  
c. If the Purchaser is a trustee of any trust it has the power to execute this Credit Application and enter into every transaction in relation to the Credit Account and Security Agreement with the Seller (and has a corresponding right under the trust to be indemnified out of the trust assets in respect of these matters) and executes this application in its personal capacity and in its capacity as trustee of each trust.
- 32. RELATED BODY CORPORATES**  
The Purchaser acknowledges and agrees that if the Seller accepts the Purchaser's application, the Seller does so in its own capacity. Any marketing/buying group owned by the Seller or any related body corporate of the Seller is able to assert all rights and remedies open to it. Any marketing/buying group or subsidiary company of the Seller may at any time choose not to supply some or all goods or equipment to the Purchaser, if the Purchaser is in breach of the Seller's Conditions of Sale whether in respect of a supply made by it, or any other related body corporate or buying/marketing group.
- 33. DEFINITIONS**  
In these Conditions of Sale, unless the contrary intention appears:  
"Credit Account and Security Agreement" means the credit account or trading account and security agreement established between Seller and Purchaser for the provision of goods and equipment by the Seller to the Purchaser on credit, governed by these Conditions of Sale;  
"equipment" means any and all equipment or items supplied by the Seller to the Purchaser, under this agreement or any related agreement (but does not include goods);  
"goods" means any and all goods or items supplied by the Seller to the Purchaser for resale by the Purchaser;  
"Purchaser" means the person, firm or company placing an order with the Seller for the supply of goods or equipment and applicant for Credit Account and Security Agreement per the overleaf;  
"Purchaser's Debt" means any moneys which the Purchaser may owe to the seller in respect of the supply of goods. For the purposes of clause 3(a), in respect of wine and cider products, Purchaser's Debt does not include amounts owing by the Purchaser to the Seller for freight and/or delivery charges or any surcharge imposed on the Purchaser for using a credit card (or any other payment method) to pay for such goods supplied by the seller;  
"Purchaser's Premises" means the place nominated by the Purchaser to be the place where goods are consigned from the seller to the purchaser;  
"Purchase Price" means the price, including (if applicable) GST, Wine Equalisation Tax and also includes any other applicable taxes, levies, duties or charges in respect of goods or equipment supplied by the Seller, stated in this invoice or any statement of account in respect of goods or equipment or, if no such price is stated therein, the Seller's normal selling price applicable to the goods or equipment as notified by the Seller to the Purchaser from time to time. For the purposes of clause 3(a), in respect of wine and cider products, Purchase Price does not include amounts owing by the Purchaser to the Seller for freight and/or delivery charges or any surcharge imposed on the Purchaser for using a credit card (or any other payment method) to pay for such goods supplied by the Seller;  
"related agreement" means any agreement between the Purchaser and the Seller (or any related body corporate of the Seller);  
"PPS Act" means the Personal Property Securities Act 2009 (Cth);  
"Seller" means Gateway Liquor Wholesalers Pty Ltd the entity described or indicated as the seller overleaf (or on any document attached or relevant to these Conditions of Sale) and which supplies any goods or equipment to the Purchaser in its own right or as agent for a third party (whether or not the fact of agency is disclosed to the purchaser);  
"Seller's Premises" means the place from where goods are consigned by the Seller to the Purchaser;  
Words and expressions which are not defined in this document but which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999, or in the PPS Act have that same meaning.  
**I/We the undersigned hereby request that the Seller supply goods and equipment subject to the terms of this document. In consideration of the Seller agreeing so to do, I/we hereby jointly and severally warrant to and covenant with the Seller to comply with the terms set out above in the Conditions of Sale.**



# GUARANTEE & INDEMNITY

**TO:** Gateway Liquor Wholesalers Pty Ltd ABN 46 161 164 414 (the "Seller")

**FROM:** [insert 1st guarantor name].....  
of [insert 1st guarantor address]..... (the "First Guarantor")

**AND:** [insert 2nd guarantor name].....  
of [insert 2nd guarantor address]..... (the "Second Guarantor")

**AND:** [insert 3rd guarantor name].....  
of [insert 3rd guarantor address]..... (the "Third Guarantor")

**AND:** [insert 4th guarantor name].....  
of [insert 4th guarantor address]..... (the "Fourth Guarantor")  
(collectively the "Guarantor")

In consideration for the Seller extending credit or agreeing to extend credit and/or establishing a trading account for the supply of goods or equipment with ..... [insert Purchaser name]  
(ACN/ABN .....), trading as ..... [insert trading name if applicable]  
of ..... [insert registered address] ("the Purchaser")

I/We confirm to you that I/We have had full and ample opportunity prior to the execution hereof to obtain independent legal advice as to the extent and implications of the Guarantee hereby given and I/we execute this security of my/our own free will.

**IMPORTANT: DO NOT USE COMPANY SEAL ON THIS DOCUMENT.**  
If you are not aware of the legal implications contained in this document, we suggest you seek independent legal advice before signing.

**EXECUTED** by the Guarantor as a deed poll **DATED** .....

**Name of the 1st Guarantor** .....  
[please print]

Signed by 1st Guarantor .....

In the presence of:  
Name of Witness .....  
[please print]

Witness Signature .....

Address of Witness .....  
[please print]

**Name of the 2nd Guarantor** .....  
[please print]

Signed by 2nd Guarantor .....

In the presence of:  
Name of Witness .....  
[please print]

Witness Signature .....

Address of Witness .....  
[please print]

**Name of the 3rd Guarantor** .....  
[please print]

Signed by 3rd Guarantor .....

In the presence of:  
Name of Witness .....  
[please print]

Witness Signature .....

Address of Witness .....  
[please print]

**Name of the 4th Guarantor** .....  
[please print]

Signed by 4th Guarantor .....

In the presence of:  
Name of Witness .....  
[please print]

Witness Signature .....

Address of Witness .....  
[please print]



# OPERATIVE PROVISIONS

- 1. GUARANTEE**

In consideration of any financial accommodation that the Seller may make available to or for the benefit of the Purchaser as defined in the preceding Credit Account and Security Agreement and Conditions of Sale, the Guarantor unconditionally, jointly, and severally guarantees the due and punctual payment by the Purchaser to the Seller on demand of all amounts (including damages) that are payable, owing but not payable, or that otherwise remain unpaid by the Purchaser to the Seller on any account at any time under or in connection with the Credit Account and Security Agreement and Conditions of Sale or any transaction contemplated by the Credit Account and Security Agreement and Conditions of Sale, whether present or future, actual or contingent, or incurred alone, jointly, severally, or jointly and severally and without regard to the capacity in which the Purchaser is liable (**Guaranteed Moneys**). The Guarantor guarantees the performance and observance of any other obligation as between the Purchaser and the Seller and as a separate obligation the Guarantor undertakes to indemnify and keep the Seller indemnified against any loss that the Seller may incur as a consequence of the failure for whatever reason of the Purchaser to pay all monies now owing or payable or hereafter to become owing or remaining unpaid and to fully comply with all of its obligations to the Seller.
- 2. NATURE OF GUARANTEE**

This Guarantee:

  - a. is a principal obligation and is not ancillary or collateral to any other right or obligation however created or arising;
  - b. may be enforced against the Guarantor without the Seller first being required to exhaust any remedy it may have against the Purchaser or to enforce any security it may hold relating to the Guaranteed Moneys;
  - c. is a continuing guarantee and indemnity for the whole of the Guaranteed Moneys; and
  - d. is absolute, unconditional and irrevocable, and remains in full force and effect until the Guaranteed Moneys have been irrevocably paid in full despite any transaction or other thing (including a settlement of account or intervening payment).

If the Guarantor is comprised of two or more persons, the Guarantors' obligations in this document are binding upon them jointly and individually. Each Guarantor hereby authorises the Seller to receive personal information including consumer credit information concerning the Guarantor from third parties including credit reporting agencies and other credit providers (Third Parties) for lawful purposes including the determination of whether to accept the Guarantor as a guarantor and the collection of overdue payments and authorises the Seller to provide personal information to Third Parties concerning the Guarantor including the existence of the proposed guarantee.

The Seller may at its discretion

  - i. grant the Purchaser or any Guarantor under this Guarantee and Indemnity time or any other indulgence or consideration;
  - ii. vary or alter the terms of any agreement between the Seller and the Purchaser; compound with or release in whole or in part or discharge the Purchaser at any time and from time to time; or
  - iii. grant any Guarantor the release either wholly or in part from any obligation contained in or implied by this Guarantee and Indemnity, without discharging or releasing or in any way affecting the liability of any Guarantor or any other Guarantor (as the case may be).
- 3. INTEREST**
  - a. The Guarantor must pay interest at the rate specified in paragraph (3)(b) on each amount from time to time owing under this Guarantee that is not paid when due, from the day on which it falls due.
  - b. Interest on any amounts referred to in paragraph (3)(a) accrues each day at the rate 10% per annum, both before and (as a separate, independent obligation) after any judgment.
- 4. GUARANTOR'S LIABILITY ABSOLUTE**

The liability of the Guarantor is absolute and is not affected by any circumstance, act, omission, matter or thing which, but for this provision, might otherwise affect it at law (including in equity).
- 5. LIMITATIONS ON GUARANTOR'S RIGHTS**

Until the Guaranteed Moneys have been irrevocably paid in full the Guarantor will not:

- a. be entitled to share in any security held or money received by the Seller or exercise any right of subrogation to the Seller;
- b. take any steps to enforce a right or claim against the Purchaser in respect of any money paid by the Guarantor to the Seller under this Guarantee; or
- c. exercise any rights as surety in competition with the Seller.

## 6. INSOLVENCY OF PURCHASER

If the Purchaser becomes insolvent, the Guarantor authorises the Seller to prove for all moneys which the Guarantor has paid under this Guarantee and to retain and to carry into a suspense account any dividends received in the insolvency of the Purchaser and any other moneys received in relation to the Guaranteed Moneys until the Guaranteed Moneys have been irrevocably paid in full.

## 7. SETTLEMENT, DISCHARGE AND RELEASE

If an amount is applied against any of the Guaranteed Moneys and the Seller forms the opinion in good faith that it is obliged to pay the amount paid by the Purchaser or Guarantor to any person under any law relating to bankruptcy, winding up or the protection of creditors:

- a. the Seller's rights are to be reinstated and will be the same in relation to that amount as if the application or the payment or transaction giving rise to it, had not been made; and
- b. the Guarantor must immediately do anything (including the signing of documents) required by the Seller to restore to the Seller any guarantee or security which it was entitled immediately before that application or the payment or transaction giving rise to it.

## 8. INDEMNITY

If the whole or any parts of the Guaranteed Moneys are not recoverable by the Seller for any reason whatsoever then:

- a. the Guarantor as a separate and severable liability under this Guarantee unconditionally and irrevocably indemnifies the Seller in respect of the Guaranteed Moneys;
- b. as a principal debtor, the Guarantor agrees to pay the Seller, on demand in writing, a sum equal to the amount of the Guaranteed Moneys; and
- c. for the purposes of this indemnity, this clause must be construed as if the Guaranteed Moneys were recoverable and the terms of this Guarantee apply as far as possible to this indemnity.

## 9. SECURITY

- a. The Guarantor must not take, without the written consent of the Seller, any security from the Purchaser for or in connection with this Guarantee. The Guarantor must hold any security it does take from the Purchaser in trust for the Seller and as security for the Purchaser's liability to the Seller under this Guarantee.
- b. The Seller is under no obligation to marshal in favour of the Guarantor any security whatsoever held by the Seller or any funds or assets that the Seller may be entitled to receive or claim.

## 10. JOINT AND SEVERAL GUARANTEE

Where this Guarantee is given by more than one person, the obligations on the part of the Guarantor contained in this Guarantee take effect as joint and several obligations and references to the Guarantor take effect as references to those persons or any of them. This Guarantee binds each of the persons executing it notwithstanding that any one or more of the persons named in this Guarantee as Guarantor does not execute, or is not or ceases to be bound by this Guarantee, or the Seller does not execute or only subsequently executes this Guarantee. A release by the Seller of any Guarantor from this Guarantee will not affect the liability of the other Guarantors.

## 11. SELLER'S CALCULATION

A statement from the Seller as to the amount for the time being owing by the Purchaser or the Guarantor to the Seller or as to the interest from time to time payable is conclusive unless clearly wrong on its face.

## 12. EXPENSES

The Guarantor must indemnify the Seller against all reasonable expenses incurred by the Seller

in connection with the collection or attempted collection of Guaranteed Moneys, and entry into, enforcement of, or the preservation of any rights under, this Guarantee including legal expenses on a full indemnity basis and any stamp duty.

## 13. ASSIGNMENT

The Seller may assign, dispose of, declare a trust over, or otherwise create an interest in its rights under this Guarantee without the consent of any other party.

## 14. NOTICES

Any demand, notice or other communication under this Guarantee must be in writing and signed and may be sent to the addressee either by hand, mail, email, or fax. If it is sent by mail, it is taken to have been received on the second business day after it is posted. If it is sent by fax or email, it is taken to have been received when the addressee actually receives it in full and in legible form.

## 15. WAIVERS, REMEDIES CUMULATIVE

No failure or delay by the Seller in exercising any right or remedy under this Guarantee constitutes a waiver. No single or partial exercise of any right or remedy will preclude any further exercise of that or any other right or remedy. The rights and remedies provided to the Seller in this Guarantee are cumulative and are not exclusive of any rights or remedies provided by law.

## 16. GOVERNING LAW AND JURISDICTION

The Seller has the right to nominate the court in which any legal action is to be commenced or conducted and will give due consideration to the merits of the appropriate jurisdiction of the court, and the Guarantor consents to proceedings being heard in any such court as nominated by the Seller. The Guarantor appoints:

.....  
Name  
.....  
Address

to receive service of process in connection with any proceedings and confirms that process served on that person is deemed duly served.

## 17. SEVERABILITY OF PROVISIONS

Any provision in this Guarantee which is prohibited or unenforceable is to be severed to the extent necessary to make this Guarantee enforceable, unless it would materially change the intended effect of this Guarantee.

## 18. VOIDED TRANSACTIONS

Any payment made to the Seller and later avoided by the application of any Statutory provision shall be deemed not to discharge any of the Guarantors from liability and in such an event the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

## 19. DEATH OF GUARANTORS

Guarantors shall not be released by the death of any of the Guarantors or by reason of any act of the Seller which might result in prejudice to any of the Guarantors, or by any legal disability on the part of the Purchaser or any of the Guarantors under this Guarantee and Indemnity.

## 20. PPSR

The Seller may register on the Personal Property Securities Register a security interest in the form of a Purchase Money Security Interest in this Guarantee and that such security interest shall include all present and after-acquired property.

## 21. CAVEATABLE INTEREST

The Guarantor hereby charges in favour of the Seller all their estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which they now have any legal or beneficial interest or in which they later acquire any such interest, with payment of all monies owed by the Purchaser. The Guarantor consents to the lodging by the Seller of a caveat which notes their interest in or over any such land or other caveatable property.