



# TERMS AND CONDITIONS & SECURITY AGREEMENT

Lion Pty Limited ABN 34 093 160 448  
Postal Address PO Box 138,  
Lidcombe, NSW 1825  
E-mail Ldd\_newaccounts@lionco.com  
Application Facsimile 612 8244 4614  
LD&D Accounts Telephone 1800 000 570 (option 1)

1. In these Terms, the words below have the following meanings:

Claim means any action, claim or demand, whether arising in contract, tort (including negligence), under statute, at common law or otherwise.  
Equipment means any equipment we provide to you (pursuant to these Terms or any other arrangement) to assist you in dispensing Products or involved in the delivery of Products, including milk crates, refrigeration equipment, kegs, gas cylinders, pallets, beer system equipment and signage.  
GST has the meaning given in the GST Act.  
GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).  
LBSW Product means a beer, cider, wine, spirits or alcoholic ready-to-drink product manufactured or distributed by us and supplied by us to you.  
LDD Product means a milk (including white or flavoured), fresh dairy, juice, cheese or non-alcoholic ready-to-drink product manufactured or distributed by us and supplied by us to you.  
Product means a LBSW Product or a LDD Product.  
Product Price means the purchase price payable for the sale of the Product excluding any applicable Service Fee.  
Related Bodies Corporate has the meaning given in the *Corporations Act 2001* (Cth).  
Separate Service Contract see clause 5.  
Service Fee means a separate fee which you agree to pay us under a Separate Service Contract for providing, on your behalf, freight, handling, delivery and insurance, including any charges referred to in clause 10.  
we, us or our refers to the Lion entity that supplies you with a Product. For LDD Products this entity will be LD&D Australia Pty Ltd (ABN 68 083 019 390) in accordance with clause 57 below. For LBSW Products, this entity will be one or more of Lion Pty Limited (ABN 34 093 160 448) and its associated and related entities including Lion-Beer, Spirits & Wine Pty Ltd (ABN 13 008 596 370), The South Australian Brewing Company Pty Limited (ABN 89 007 869 310), Tooheys Pty Limited (ABN 11 000 002 568), The Swan Brewery Company Pty Limited (ABN 85 009 065 267), Lion Victoria Pty Limited (ABN 11 006 532 896), J.Boag & Son Pty Limited (ABN 42 064 597 977), Bacardi Lion Pty Limited (ABN 40 103 911 146), Castlemaine Perkins Pty Limited (ABN 26 009 656 713) and Lion - Wine Pty Limited trading as Fine Wine Partners (ABN 11 007 982 818).  
You, or your means the customer specified on an invoice or in any credit application or other agreement with us, or the customer to whom our goods are supplied, and if more than one person, each of them jointly and severally.

## Buying the Product

- Unless otherwise agreed in writing, you request that we supply Products to you on these Terms.
- We may accept or decline any order for the Product in whole or in part. On acceptance, these Terms apply (unless we have made a separate written agreement with you about supply of the Product).
- We may change the specifications or ingredients of any Product from time to time and we are not required to notify you of such a change.

## Delivery

- Unless otherwise agreed in writing, and as a separate and independent contract from the contract relating to the Product, you agree to contract with us to deliver, on your behalf, any LBSW Product you order to you at the delivery location agreed between us and you and we will insure, on your behalf, those LBSW Products against loss or damage while they are in transit being delivered to you ("Separate Service Contract"). A Separate Service Contract is optional and you may choose other arrangements for these services.
- Unless otherwise agreed in writing, you acknowledge and consent to us delivering any LDD Products to you using a subcontractor or a third party member of Lion's distribution network. We will advise you of any additional charges or fees applicable to such a delivery, and you agree to pay such charges and fees as advised by us from time to time.
- The Product is deemed to be delivered when the Product arrives at your nominated delivery point, which delivery point must be safe and fully accessible. Neither us, nor our carriers or members of our distribution network are required to collect a signature from you or other proof of delivery.
- You cannot cancel an order once we have accepted it and you cannot refuse to accept delivery.
- Any delivery times communicated by us to you are estimates only, and you are not entitled to refuse to accept delivery of Products due to a delay in delivery. You acknowledge that we are not liable to you for any costs or losses that you suffer or incur as a result of any late delivery of the Products.
- We are entitled to charge you additional fees to cover any delay or storage needed if we attempt to deliver the Product to you, but cannot for any reason.
- You may collect the Products directly from us by prior agreement. Where agreed, you will need to give us advance notice so we can let you know when, how and where you, or your agent, can collect the Product from us.

## Charges and Payment

- Our prices are subject to alteration without notice. Unless we otherwise agree in writing, the price payable for the Products will be our current price at the date of delivery (plus any delivery charges or other applicable charges payable by you).
- The Service Fee payable under any Separate Service Contract will be as specified in our standard price list (as provided to you and updated from time to time), as agreed in a separate contract or as listed in an invoice. However, where we deliver the relevant LBSW Products to you, we will only charge you for delivery if: the delivery is within a Capital City area and you want it urgently; the delivery is outside a Capital City area; or the delivery is for a small quantity of Product as determined by us. You can contact us to obtain details about Capital City areas and small quantities.
- The charges specified in our standard price list, or quoted to you by us from time to time, do not include GST unless expressly specified otherwise.
- Wholesale prices for LBSW Products in our standard price list do not include Wine Equalisation Tax unless expressly specified otherwise. Product related final invoice prices (and prices specified in an invoice) do include Wine Equalisation Tax or excise tax, as applicable.
- The Product price is separate and distinct from any applicable Service Fee. Even though the amounts may be listed in one invoice they are not a single lump sum consideration but represent separate consideration for each independent contract.
- You must pay all charges listed in an invoice (including any GST and other taxes payable in connection with the supply or under these Terms) without set-off by the due date specified in the invoice. Time is of the essence with respect to this requirement.
- If you pay by cheque, payment is not made until cleared funds are credited to our account. If you pay by credit card, we may charge you an additional amount to cover service fees.
- We may charge you interest on any late payments at the Reserve Bank Interbank Overnight Cash Rate + 2%, calculated daily and compounding monthly, until you pay the overdue amounts.
- We are entitled to apply any payments we receive from you against any invoice or liability you have to us (including interest payments). This provision revokes any different or contrary direction given by you to us.
- If you do not pay any amounts payable under these Terms by their due date or you become bankrupt, insolvent or have a receiver, manager or liquidator appointed to you, then all monies for all Product and Equipment delivered to you become immediately due and payable (regardless of any

agreed credit terms) and we are entitled to suspend all further delivery of Product and Equipment under this or any other arrangement and all further performance of any other contract between you and us, until you pay all amounts due.

- You indemnify us for all costs we incur because of any overdue payment, including dishonour fees, collection fees or legal fees.
- If any payment you make is voided or conceded to be void or is voidable at our election, then that payment does not discharge your debt to us, and we remain the owner of the Product.
- You acknowledge that pursuant to another agreement between us and you, that you may provide us with services in connection with our supply to you of Products (including delivery services to our other customers). You agree that we may set out in an invoice where we set off or deduct such amounts against amounts which you are otherwise required to pay to us under these Terms.

## Ownership & Return of Equipment

- We remain the owner of the Product specified in this invoice until you have paid all money you owe us for the Product and for any other Product we have supplied to you (excluding any applicable Service Fee).
- We remain the owner of any Equipment at all times. You must not part with possession or control of the Equipment at any time, or attempt to sell it.
- After we deliver the Product or Equipment to you and while we still own it, you hold it for us as our bailee, which carries certain legal obligations including a duty to take care of the Product or Equipment. You promise to fulfil all your legal obligations as bailee.
- You must store or keep the Product and Equipment so that it is clearly identifiable as our property while we still own it. If you sell the Product while we still own it, we have the right to trace any proceeds of sale.
- We grant you the right to sell the Products to a third party before you have received title to them provided that where you sell the Products before such title has been transferred you agree to hold the proceeds from that sale on trust for us and you must pay those proceeds to us on demand.
- Until you have paid us the charges in full for all monies payable to us, we may repossess the Product and Equipment which we own and you authorise us or our nominees to enter any premises they believe the Product and Equipment are located to repossess the Product and Equipment and to inspect your records.
- We may resell Product and Equipment which we repossess on any terms and as we see fit. We may apply the proceeds to repay any debt you owe us.
- We are not liable for any damage caused to the premises during any repossession. You indemnify us against any Claim for the damage made by another person.
- You will return to us, at your cost, any Equipment provided to you when it has served its purpose or if we request its return. If you don't do this, then clauses 30 to 32 will apply. You agree to pay us the replacement cost of any Equipment lost, damaged, destroyed or not returned to us.
- If we have agreed to provide maintenance and repair services for the Equipment, you must allow us access to the Equipment to carry out those services and pay us the agreed service fee (plus GST). Otherwise, you must maintain the Equipment and keep it in working order.
- If these Terms (or a transaction in connection with it) is or contains a security interest for the purposes of the Personal Property Securities Act 2009 ("PPSA"), you must upon request do anything which we consider necessary for the purposes of ensuring that the security interest is enforceable, perfected and otherwise effective, and to enable us to apply for any registration, give any notification, and to exercise any rights in connection with the security interest.
- We are not obliged, before exercising a right under these Terms or conferred by law, to give you any notice or demand, or allow a lapse of time, that is required by law unless the notice, demand or lapse of time cannot be excluded. To the extent permitted by law, you expressly waive any rights you may have under the PPSA (including without limitation s. 157) to be given any such notices or demands.

## Risk and insurance

- Risk in the Product and any Equipment passes to you as soon as it leaves our premises (even if we are delivering it to you).
- Where we deliver a LBSW Product under a Separate Service Contract, we will insure the Product in accordance with clause 5 (and any other conditions that we agree in writing with you).
- Other than for LBSW Products while in transit under a Separate Service Contract as referred to in clause 38, you must take out insurance covering any Product (and also insure any Equipment that is on your premises) against loss or damage and note our interest in them. You must pay us any insurance payout you receive in relation to those Products and Equipment.
- You must show us evidence on request that you have taken out all required insurances.

## Recalls

- In the event of a product recall over Products you have acquired from us, you shall give us such assistance as we reasonably require in relation to that recall.

## Restrictions

- You must not do anything (including failing to act) that we believe is likely to adversely affect our reputation, sales or brands.
- LBSW Products supplied to you for consumption or dispensing on licensed premises must not be mixed with other liquids or substances, except as expressly requested by a patron, and must only be dispensed from taps and other devices bearing our product name or logo for the relevant LBSW Product.
- Unless we otherwise agree, Equipment supplied to you is only for use in relation to the dispensing or sale of our Products.
- You must exercise your own judgment and skill in the use of any Equipment (including kegs and gas cylinders), rather than relying on any advice we may give you about its use. You must seek any independent advice or instruction you need.
- You must notify us in advance of any change in your ownership, shareholders, directors, registered office or business address.

## Disputes and Claims

- You must inspect the Product and any Equipment within 48 hours of it being delivered to you.
- You must raise any Claims or dispute relating to the Product, the Equipment, an invoice or payment within 48 hours of the Product/Equipment being delivered to you. Otherwise, you waive and give up all Claims you have against us.
- In the absence of manifest error, our written records in relation to a delivery of Products will be conclusive evidence of the type and quantity of Products delivered and of the date and time of delivery.
- In the absence of manifest error, certification from our authorised representative will be conclusive evidence of the amount owed for the Products.





# TERMS AND CONDITIONS & SECURITY AGREEMENT (cont.)

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Postal Address PO Box 138,  
Lidcombe, NSW 1825  
E-mail Ldd\_newaccounts@lionco.com  
Application Facsimile 612 8244 4614  
LD&D Accounts Telephone 1800 000 570 (option 1)

## Liability

51. To the maximum extent permitted by law (including Part 3-2 of the Australian Consumer Law), we limit our liability to you in respect of any Claim relating to the Product, the Equipment or any services we provide to you in connection with them to our choice of supplying equivalent Product or Equipment, or resupplying the services, or giving you a credit for any price paid or payable for the Product, Equipment or services.
52. We warrant that we will provide you with good title to the goods and that the goods will be of merchantable quality and except for those statutory guarantees that apply under the Australian Consumer Law, we exclude all other express or implied warranties or representations about the Products, Equipment or services we provide to you in connection with them.
53. Except as provided in clause 51, we are not liable to you for any Claim in relation to lost profits or savings or any indirect or consequential losses.
54. Neither we nor you are liable to the other for any failure to perform an obligation under these Terms (other than the payment of money) where we are prevented from performing because of an act of God, natural disaster, terrorism, war or any other occurrence beyond the relevant party's reasonable control.
55. The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

## Group losses

56. You acknowledge that one or more of our Related Bodies Corporate may supply the Product and Equipment to you. You indemnify each of our Related Bodies Corporate against any loss or damage they suffer as a result of your breach of these Terms or any act or omission by you under or in connection with these Terms. We accept the benefit of this indemnity as agent for each of our Related Bodies Corporate.
57. LD&D Australia Pty Ltd acts as agent for and on behalf of LD&D Milk Pty Limited, LD&D Foods Pty Limited, Berri Pty Limited, Butterfields Specialty Foods Pty Ltd, Dairy Farmers Pty Limited, Dairy Vale Foods Pty Ltd and QUD Pty Ltd in various circumstances. For further information on these arrangements please contact our consumer enquiry centre.

## Indemnity and charge

58. To the maximum extent permitted by law, you indemnify us, and agree to keep us indemnified, against:
  - a) all losses we incur;
  - b) all liabilities we incur; and
  - c) all costs actually payable by us to our own legal representatives (whether or not under a costs agreement) and other expenses we incur in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal), arising directly or indirectly as a result of or in connection with the supply of Products by us to you;
  - d) except to the extent that we incur such losses, liabilities and/or costs as a result of our breaching the warranties set out in clause 52 or a condition or warranty which cannot lawfully be excluded under that clause; or
  - e) except to the extent that we incur such losses, liabilities and/or costs due to wilful misconduct on the part of us or any of our employees or agents acting within the scope of their employment.
59. You must pay to us all liabilities, costs and other expenses referred to in clause 58, whether or not we have paid or satisfied them.

60. You charge to us (and our Related Bodies Corporate) any interest that you may have in any real or personal property (including tangible, intangible, freehold and leasehold property) now or in the future, in any capacity (whether beneficially, as trustee of any trust or otherwise), to secure payment of all monies owed to us (and our Related Bodies Corporate) by you in any capacity, on your own account or with others, now or in the future.
61. You irrevocably consent to the lodgement of a caveat or caveats over any real property in respect of any interest of ours (or our Related Bodies Corporate) arising from these Terms. **Goods and Services Tax (GST)**
62. In clauses 63 and 64 of these Terms, capitalised terms have their meanings given in the GST Act.
63. If we make a Taxable Supply to you under these Terms for a Consideration which represents its Value, then you must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. Our right to payment under this clause is subject to a valid Tax Invoice, Recipient Created Tax Invoice or Adjustment Note being delivered to you.
64. Each of the parties to this agreement acknowledges that it is registered for GST and that it will notify the other party in a timely manner if it is not, or if it ceases to be, registered.

## Privacy and Spam

65. You can access the personal information we hold about you in the manner set out in our privacy policy, a copy of which is available at <<http://lionco.com/supplementary/privacy-policy/>>.
66. We (and our Related Bodies Corporate) may use your personal information to obtain and process credit reports about you, to manage and enforce our rights under these Terms, to meet our legal obligations to you and for direct marketing and promotional purposes, and you consent to such use.
67. We may disclose your personal information to our contractors or agents on strictly confidential terms, and you consent to such disclosure.

## General

68. These Terms (including any details included on an invoice) constitute the whole agreement between you and us and may only be varied by us in writing.
69. You may not assign or transfer your rights and obligations under these Terms without our prior written consent.
70. These are our standard terms of supply and we may change them from time to time on 7 days' notice. When you order Product from us, you are offering to acquire them on the most up-to-date version of these Terms as made available at <<http://lionco.com/supplementary/terms-conditions/sales-terms-condition/>> or as otherwise notified to you.
71. If you are acting as the trustee of any trust (whether disclosed or not), then you declare, warrant and represent that you are entering any agreement with us both in your own capacity and as trustee of the trust with the ability to bind, and the intention of binding, both and any charge over property will, without limitation, extend to the property of that trust.
72. Any leniency, indulgence or extension of time we grant you (whether under these Terms or under any other dealing with you) does not affect our rights in any way and does not constitute a waiver of those rights or of any of these Terms.
73. Any remedies in these Terms do not limit or affect any remedies available to us in law or equity.
74. The invalidity or unenforceability of any provision of these Terms does not affect the validity or enforceability of the remaining provisions.
75. You must pay any stamp duty payable on any registration under these Terms.
76. These Terms are governed by the laws of State in which the Product/Equipment is delivered to you. You and we accept the non-exclusive jurisdiction of those courts.

