



# TERMS AND CONDITIONS OF SALE

Lion - Beer, Spirits & Wine (NZ) Limited  
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## APPLICATION

1. The Contract forms the basis on which Lion supplies and sells Goods to the Customer. Each such supply and sale shall be effected pursuant to the terms of this Contract (unless in any specific case specifically agreed otherwise in writing). Any invoice or other document evidencing or describing any Goods is incorporated into and forms part of the Contract. Any variation to the Contract must be in writing and signed by a representative of Lion.

## PRICE

2. The Customer must pay the price for Goods indicated on the invoice (or other similar document) which is provided by Lion for those Goods. Lion can alter prices without notice and prices charged may be different from prices provided at the time of order.  
3. The price shall be increased by the amount of any GST and other applicable taxes and duties if such taxes are not expressly included in the price. The Customer is bound to pay the price from the time that Lion accepts the Customer's order. An order is not binding on Lion until it is accepted by Lion.  
4. The Customer shall pay deposits, delivery and freight charges as set out in the invoice or Lion's price list from time to time. Alterations to Lion's price list shall be effective from the date specified by Lion at the time of giving notice to the Customer.

## PAYMENT

5. Payment is due on or prior to delivery unless Lion has agreed in writing to provide the Customer with credit in which case payment is due in accordance with the payment date in the invoice.  
6. Lion can vary the terms of any credit it provides to the Customer at any time. If Lion considers the credit worthiness of the Customer is unsatisfactory then it can require security for payment, in addition to that already provided for in this Contract, before it supplies any more Goods to the Customer.  
7. Lion may impose a credit limit at its discretion, and alter the credit limit without notice. Where the credit limit is exceeded, Lion can refuse to supply Goods to the Customer.  
8. The Customer cannot withhold payment or make any deductions from any amount owing by the Customer without Lion's prior consent.

## DELIVERY

9. Lion will use all reasonable efforts to deliver the Goods to the Customer on any delivery date specified. Lion may deliver the Goods by instalments, and each instalment shall be treated as a separate contract. Lion can impose minimum delivery requirements from time to time. Any time stated for delivery is an estimate only. Lion is not liable for any delay in delivery.

## RISK AND SECURITY INTEREST

10. Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery (or from the time the Customer fails to accept the Goods or requests delayed delivery). The Customer must ensure that the Goods are insured (for their full insurable value) with Lion's interest noted on the policy.  
11. (a) In the event Goods are damaged or partially lost during transit the Customer must, within 14 working days of delivery of the relevant Goods, provide Lion written notice giving reasonable particulars of any such alleged damage or partial loss. The Customer acknowledges and agrees that no claim whatsoever shall be accepted by Lion (or any of its agents) for any damage to, or partial loss of, Goods which occurred during transit of the Goods where written notice is not provided to Lion within this period.  
(b) If you dispute an item on the invoice (item price and/or discounts) you must provide Lion written notice within 14 working days from the invoice date failing which you waive all claims rights relating to the item price and discount.  
12. The Customer grants a security interest to Lion in all present and after acquired Goods and proceeds thereof as security for payment of the Goods and for any other amounts owing by the Customer to Lion from time to time, and for the performance by the Customer of all the Customer's other obligations to Lion from time to time, ("Customer's indebtedness and obligations"). For the purposes of section 36 (1) (b) of the PPSA, and to ensure maximum benefit and protection for Lion by virtue of section 36 (1) (b) (iii) of the PPSA, Lion confirms and agrees that the Customer intends to and does grant to Lion, as security for the Customer's indebtedness and obligations, a security interest in all of the Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property"):  
(a) in or to which the Customer has rights; and  
(b) which has not been supplied by Lion to the Customer, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by the Lion to the Customer.  
13. While the Goods continue to secure the Customer's indebtedness and obligations the Customer must store the Goods separately and clearly identify the Goods as belonging to Lion.  
14. Lion authorizes the Customer in the ordinary course of its, the Customer's, business to use or sell for full consideration any Goods that are comprised in the Customer's inventory. This authority is revoked from the time that:  
(a) an Event of Default occurs; or  
(b) Lion notifies the Customer in writing that this authority is revoked.  
15. The Customer must advise Lion immediately of any Event of Default or any action by third parties (including any of its creditors) affecting Lion's security interest in the Goods.  
16. The Customer agrees to do anything that Lion reasonably requires to ensure that Lion has a perfected security interest in all of the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.

17. Lion may allocate amounts received from the Customer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.  
18. The Customer agrees to reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to registering, maintaining or releasing any financing statement or any other document, in respect of any security interest under the Contract.  
19. No consent or subordination: Nothing in these terms and conditions shall be construed as:  
(a) an agreement to subordinate the security interest created by these terms and conditions in favour of any person;  
(b) a consent by Lion to any other security interest attaching (as that term is used in the context of the PPSA) to, or any other security interest subsisting over, any of the Goods; or  
(c) a consent by Lion to any property that is not Goods becoming an accession to any Goods or consent that any Goods become an accession to any property that is not Goods.

## CONTRACTING OUT OF THE PPSA

20. The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Contract.  
21. The Customer:  
(a) agrees that nothing in sections 114(1) (a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the Customer's rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and  
(b) agrees that where Lion has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.

## WARRANTIES

22. Lion only warrants that the Goods (but not including services for this purpose) are of the agreed quality and that any services are provided with due care and skill.  
23. The Customer represents and warrants that it must not on-sell any product supplied to it unless and until it has obtained a valid Liquor Licence under the Sale of Liquor Act. This representation and warranty continues to apply throughout the terms of this Contract.  
24. If the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 ("CGA") does not apply. If the Customer on-sells the Goods then it must be a term of the sale contract that the CGA does not apply if the Goods are being acquired for business purposes.  
25. The Customer indemnifies Lion against any liability or cost incurred by Lion under the CGA as a result of any breach by the Customer of the obligations contained in the Contract.  
26. The following terms apply wherever the CGA does not apply, or where the following terms are not inconsistent with the CGA:  
(a) defective Goods or Goods which do not comply with the Contract shall at Lion's discretion be repaired, replaced or repeated, or the price refunded;  
(b) any right which the Customer may have to reject non-conforming or defective Goods shall only be effective if the Customer notifies Lion in writing within five days following delivery and Lion is given the opportunity to inspect the Goods;  
(c) Lion accepts no liability for any Claim by the Customer or any other person, including without limitation any Claim relating to or arising from:  
(i) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise;  
(ii) any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by Lion in writing, and the Customer agrees to indemnify Lion against any such Claim. In any event, Lion's liability under any Claim shall not exceed the price of the Goods.  
27. Nothing in these terms is intended to have the effect of contracting out of the provisions of the CGA except to the extent permitted by the CGA, and these terms are to be modified to the extent necessary to give effect to that intention. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

## DEFAULT

28. If an Event of Default occurs, Lion may suspend or terminate the Contract.  
29. If the Customer does not pay the Price by due date:  
(a) Lion may (without prejudice to Lion's other rights and remedies in respect of non-payment or late payment) charge a default penalty at a rate per annum equal to 4% above the retail lending base rate of Lion's banking provider as varied from time to time and calculated on a daily basis on the unpaid portion of the price from due date until payment in full, plus any GST; and  
(b) any discounts may be disallowed.  
30. If an Event of Default occurs, all amounts owing by the Customer shall immediately become due and payable notwithstanding that the due date has not arisen.  
31. Lion is entitled to recover from the Customer all legal, accounting and other costs incurred by Lion arising from the collection of any amount owing by the Customer or in relation to maintaining or releasing any financing statement in respect of any security interest under the Contract. If any payment tendered by the Customer is dishonored or is required to be presented or acted on again by Lion, Lion may, at its sole discretion require the customer to pay Lion an administration fee of \$25 (excluding GST if any).  
32. Lion can also terminate any services provided to the Customer by giving the Customer seven days' notice of termination.  
33. At any time after an Event of Default, Lion may:



(a) enter on any land or premises where the Goods may be situated and take possession of the Goods;

(b) sell or dispose of the Goods in such manner and generally on such terms and conditions as Lion thinks fit; and

(c) whether or not Lion has exercised any other right, appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.

#### USE OF INFORMATION

34. The Customer, Directors and Partners each agree that Lion and its agents may obtain information about them from the Customer or any other person (including other members of the Lion group of companies ("Companies") and any credit or debt collection agencies) in the course of Lion's business, including credit assessment, debt collecting and its marketing activities, and the Customer, Directors and Partners consent to any person providing Lion or its agents with such information.

35. The Customer, Directors and Partners agree that Lion may use any information it has about them relating to their credit worthiness and give that information to any other person, including any credit or debt collection agency and any of the Companies, for credit assessment and debt collection purposes. The Customer, Partners and Directors agree that any other information collected by Lion about them may be accessed or collected for the use of Lion or the Companies in the course of their business, including their marketing activities. The covenants and consents of the Directors and Partners in clause 32 and this clause 33 are given by those persons in their personal capacity and are directly enforceable against them in that capacity.

36. The Directors, Partners and the Customer (if the Customer is an individual (i.e. a natural person)) has rights under the Privacy Act 1993 to access and request the correction of any personal information which Lion (or its agents) holds about them.

#### BRANDS AND PACKAGING

37. Lion, or its licensors, is the owner of all rights to the brands of Goods supplied to the Customer. The Customer can only use these brands for promotional purposes with Lion's prior consent.

38. Beer kegs, beer bottles and beer crates are the property of Lion (or The Associated Bottlers Co Limited). The Customer must return them to Lion on demand. The Customer cannot reuse any of this type of packaging (including refilling beer kegs or beer bottles). Lion can require the Customer to pay deposits before it provides this type of packaging to it.

#### CUSTOMER TO NOTIFY LION WHEN TRADING CEASES OR WHERE OWNERSHIP OF BUSINESS CHANGES ETC

39. The Customer must give written notice to Lion within 7 days of any of the following events

- (a) the Customer ceases trading;
- (b) the Customer assigns or disposes of any of the assets of its business (other than in the ordinary course of trading) or any part of its interest in the business; or
- (c) there is proposed to be a Change of Control of the Customer (if the Customer is a Company or Incorporated Body).

#### OTHER GENERAL TERMS

40. These terms and conditions of sale are paramount, and, to the extent that there is any conflict between any provision of them and any invoice or other document evidencing or describing any Goods (whether in writing, verbally or by Electronic Data Interchange (EDI)), these terms and conditions of sale will prevail. Further, if there is any other document or arrangement which conflicts with the Contract, the Contract shall prevail.

41. The Customer authorises Lion, to apply (without notice or demand) any sum paid by the Customer to any of the Companies against any amounts owing by the Customer to any other of the Companies.

42. If Lion exercises or fails to exercise any right or remedy available to it, this shall not prejudice Lion's right in exercising that right or any other right or remedy. Waiver of any term of the Contract must be specified in writing and signed by an authorised officer of Lion.

43. Lion reserves the right to review any of the terms of the Contract at any time and from time to time. If, following any such review, there is to be any change to any such terms, that change will take effect from the date on which Lion notifies the Customer of such change.

44. Each Related Company (as that term is defined in the Companies Act 1993) of Lion is entitled to the benefit of the Contract in accordance with the Contracts (Privacy) Act 1982 and, in addition, Lion is entitled to enforce the Contract on behalf of any Related Company of Lion. However, the consent of Related Companies is not required to any variation, amendment or discharge of the Contract.

45. Lion Nathan Pty Limited and each of its related bodies corporate in Australia (as defined in the Australian Corporations Act 2001) may secure or collect any of Lion's debts or enforce Lion's rights under this Contract or otherwise in connection with any amount due by the Customer to Lion at any time or any security, guarantee, indemnity, assurance or undertaking in connection with such amount.

#### WORDS USED IN THE CONTRACT

46. "Lion" means Lion – Beer, Spirits & Wine (NZ) Limited and each of its related companies (as defined in the Companies Act 1993) including without limitation, Lion Liquor Retail Limited, or any one of them.

"Claim" includes any claim:

- (a) for loss of profits; or
- (b) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:
  - (i) any breach of Lion obligations under the Contract; or
  - (ii) any cancellation of the Contract; or
  - (iii) any negligence, misrepresentation or other act or omission by Lion or its employees, agents or contractors; or
  - (iv) for compensation, demand, remedy, liability or action.

"Contract" means these terms and conditions of sale themselves together with the Customer's Account Application Form and any and every invoice or other documents evidencing or describing, whether by item or kind or otherwise, any Goods.

"Customer" means the Applicant described on the first page of this Contract.

"Directors" means the directors of the Customer described in part A of this Contract.

"Partners" means the partners comprising the customer described in part B of this Contract, in their personal capacity.

"Event of Default" means an event where:

- (a) the Customer fails to comply with the terms of the Contract or any other contract with Lion; or
- (b) any of the Goods are at risk; or
- (c) the Customer commits an act of bankruptcy; or
- (d) the Customer enters into any composition or arrangement with its creditors; or
- (e) if the Customer is a company:
  - (i) the Customer does anything which would make it liable to be put into liquidation; or
  - (ii) a resolution is passed or an application is made for the liquidation of the Customer; or
  - (iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets.

"Goods" means all beer and other liquor and associated products and services and all other goods or other property which, in each case, are supplied by Lion to the Customer and, for the avoidance of doubt, in each case includes all such goods and property so supplied whether or not described by item or kind that enables them to be identified.

"Person" includes a corporation, association, firm, company, partnership or individual.

"PPSA" means the Personal Property Securities Act 1999.

"Price" means the purchase price of the Goods and any costs payable by the Customer under the Contract relating to transportation, storage and insurance, including any deposits.

The terms "after-acquired property", "at risk", "inventory" "perfected", "personal property", "proceeds" "purchase money security interest", "rights", "security interest", "sell" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA.



LION