



ABN 11 144 818 548
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CLB CREDIT APPLICATION FORM & AGREEMENT

Please read carefully and ensure all sections are correctly completed.

EFT payment or CREDIT CARD payment is required for all orders until a Credit Facility is established in accordance with this Agreement.

Application To: Capital Liquor & Bev Pty Ltd

The Customer requests Capital Liquor & Bev Pty Ltd to process this Credit Application Form for the supply of Goods and/or services from time to time on credit. Approval for a Credit Facility for the Customer with Capital Liquor & Bev Pty Ltd is always at the absolute discretion of Capital Liquor & Bev Pty Ltd.

The Customer agrees that upon acceptance of this application, the Customer will be bound by this Agreement which includes the attached Terms and Condition of Trade which will apply to all transactions and dealings between the Customer and Capital Liquor & Bev Pty Ltd. The Customer agrees that if the Customer is a private company, **all** directors of the Customer will be Guarantors.

1. Customer Details

The Customer is a: _____
Company, Sole Trader, Partnership or Trust

Full name of Customer: _____
(Individual or Company name or Trust and type of trust)

If Individual:	Name:
	ABN:
	Trading Name (if different):
	Email:
	Delivery Address:
	Postal Address:
	Mobile:
	Type of Business:
	Business Start Date:
If Company:	Name:
	ACN/ABN:
	Trading Name (if different):
	Contact Person:
	Email:

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	Delivery Address:
	Postal Address:
	Mobile:
	Type of Business:
	Business Start Date:
If Trust:	Name of the Trust:
	ABN:
	Name of the Trustee:
	ACN:
	Trading Name (if different):
	Contact Person:
	Email:
	Delivery Address:
	Postal Address:
	Mobile:
	Type of Business:
	Business Start Date:

Full names and addresses of each company director, shareholder, partner or sole trader:

Surname:		Given Names:	
Personal Address:			
Telephone:	DOB:	Driver Licence #:	

Surname:		Given Names:	
Personal Address:			
Telephone:	DOB:	Driver Licence #:	

Surname:		Given Names:	
Personal Address:			
Telephone:	DOB:	Driver Licence #:	

Surname:		Given Names:	
Personal Address:			
Telephone:	DOB:	Driver Licence #:	

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2. Purchasing / Liquor Licence Details

Credit period from date of invoice: **7 DAYS**

Liquor Licence No: _____

Licensee: _____

Address of Licensed Premises: _____

Expiry Date of Licence: _____

Estimated weekly purchases: _____

3. Trade References

Business Name:
Contact Name:
Phone Number:
Relationship with Customer:
Business Name:
Contact Name:
Phone Number:
Relationship with Customer:
Business Name:
Contact Name:
Phone Number:
Relationship with Customer:

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4. Customer Acknowledgement

1. The Customer acknowledges receiving a copy of the attached Terms and Conditions of Trade (which, together with the Credit Application Form, form **the Agreement**), and has read and understood them.
2. The Guarantor/s acknowledge receiving a copy of the attached Terms and Conditions of Trade (and in particular, clause 19 Guarantee & Indemnity) and has read and understood them, and agrees to them.
3. The Customer acknowledges that prices for Goods are set by the Price List.
4. The Customer agrees to:
 - a. comply with the Terms and Conditions of Trade; and
 - b. make all payments owing to Capital Liquor & Bev Pty Ltd by the due date specified in invoices supplied to the Customer from time to time.
5. The Customer agrees that if the Customer is a private company, then **all company directors** shall execute and be bound by the personal Guarantee and Indemnity as set out in the Agreement.
6. The following persons are authorised to sign the Agreement on behalf of the Customer:
 - a. for a Sole Trader, the individual trader;
 - b. for Joint Customers/Partnerships, by all customers/partners;
 - c. for a Private Company, by two directors, a director and a secretary, or a sole director/secretary (where applicable) on behalf of the company.

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Customer Execution

This Credit Application Form & Agreement (incorporating the Terms and Conditions of Trade) is **executed** by the Customer and each Guarantor jointly and severally.

Dated: _____

CUSTOMER

Option 1: Company Execution

Executed by the Customer in accordance with section 127(1) of the Corporations Act by authority of its directors:

Signature of director

Signature of director/company secretary

Name of director (print)

Name of director/company secretary (print)

Option 2: Individual Execution

Signed, Sealed and Delivered by the **Customer** in the presence of:

Signature of witness

Signature of Customer

Name of witness (print)

Name of Customer (print)

Signed, Sealed and Delivered by the **Customer** in the presence of:

Signature of witness

Signature of Customer

Name of witness (print)

Name of Customer (print)

Signed, Sealed and Delivered by the **Customer** in the presence of:

Signature of witness

Signature of Customer

Name of witness (print)

Name of Customer (print)

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GUARANTOR

Signed, Sealed and Delivered by the **Guarantor** in the presence of:

Signature of witness

Signature of Guarantor

Name of witness (print)

Name of Guarantor (print)

Signed, Sealed and Delivered by the **Guarantor** in the presence of:

Signature of witness

Signature of Guarantor

Name of witness (print)

Name of Guarantor (print)

Signed, Sealed and Delivered by the **Guarantor** in the presence of:

Signature of witness

Signature of Guarantor

Name of witness (print)

Name of Guarantor (print)

CLB Execution

Executed by **Capital Liquor & Bev Pty Ltd ACN 144 818 548** in accordance with section 127(1) of the Corporations Act by authority of its directors:

Signature of director

Signature of director/company secretary

Name of director (print)

Name of director/company secretary (print)

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Terms and Conditions of Trade

By submitting a completed Credit Application Form and ordering Goods from Capital Liquor & Bev Pty Ltd, which is further attested by the execution of the Agreement, you (“**the Customer**”) agree that the following Terms and Conditions of Trade (“**Terms and Conditions**”) shall apply to the supply of Goods. These Terms and Conditions replace any previous Terms and Conditions of sale. The Customer agrees and acknowledges that the Terms and Conditions create a Security Interest in favour of Capital Liquor & Bev Pty Ltd for the purposes of PPSA.

1. DEFINITIONS

1.1 In these Terms and Conditions and the Agreement:

“**Agreement**” means this agreement between CLB and the Customer for or in relation to the sale and purchase of Goods, and specifically includes the Credit Application Form and these Terms and Conditions of Trade, with reference to the Price List;

“**CLB**” means Capital Liquor & Bev Pty Ltd ACN 144 818 548;

“**CLB’s Security**” means the security interests granted to CLB by the Customer under clause 10.1;

“**Commencement Date**” means the earlier of: the date of this Agreement; the date of the first order for Goods signed by the Customer; and the date of the first tax invoice served on the Customer for Goods ordered by the Customer;

“**Corporations Act**” means the *Corporations Act 2001* (Cth);

“**Credit Application Form**” means the first six (6) pages of this Agreement, duly completed and executed by the Customer and Guarantor (if applicable);

“**Credit Facility**” means the credit facility provided by CLB to the Customer from time to time in accordance with the terms of this Agreement;

“**Credit Limit**” means the amount notified to the Customer as their credit limit by CLB in writing.

“**Customer**” means the person, firm or corporation to whom CLB provides a credit facility, as described on the Credit Application Form;

“**Delivery Place**” means the Customer’s delivery address as noted in the Credit Application Form, unless an alternate address is specified by the Customer in an order form;

“**Goods**” means any item of whatsoever nature which is sold or to be sold by CLB to the Customer;

“**Guarantor**” means that person or entity named as Guarantor under this Agreement, whether one or several;

“**Other Property**” means all present and after-acquired property of the Customer and Guarantor that is not PPSA Personal Property;

“**Party**” means a party to this Agreement and “**Parties**” has the corresponding meaning;

“**Purchase money security interest**” has the meaning given in section 14 of the PPSA;

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth);

“**PPSA Security Interest**” has the meaning given under the PPSA, and specifically includes a purchase money security interest;

“**PPSA Personal Property**” means:

- (a) all of the Customer’s and the Guarantor’s present and after-acquired property in which the Customer and Guarantor can be a grantor of a PPSA Security Interest including property in which the Customer or Guarantor has, or may in the future have, rights or the power to transfer rights;
- (b) proceeds; and
- (c) PPSA retention of title (as that term is defined in the Corporations Act);

“**PPS Register**” means the personal property securities register established under section 146 of the PPSA; and

“**Price List**” means the price list provided to the Customer by CLB for Goods, that may be updated by CLB from time to time.

1.2 This Agreement governs the Credit Facility. This Agreement cannot be varied without the written consent of CLB.

1.3 This Agreement applies to all transactions between CLB and the Customer.

1.4 The Customer must give CLB at least 1 month’s notice of any change in the trading entity, the names of its principals, trading name, or liquor licence. If CLB does not consent to any such change in writing, CLB may terminate the Credit Facility with immediate effect by notice in writing to the Customer.

2. PRIVACY ACT 1988

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- 2.1 The Customer and Guarantor each:
- a. acknowledge that it has been informed by CLB that its personal information may be held by CLB;
 - b. expressly consents and approves to CLB holding its personal information;
 - c. acknowledges that it has been informed that personal information about it may be disclosed by CLB to a credit reporting agency or a similar entity, and that CLB may acquire personal information relating to the Customer from one or more credit reporting agencies or a similar entity;
 - d. expressly consents and approves for CLB to obtain, or disclose, its personal information to, or from, one or more credit reporting agencies, or a similar entity, which includes, but not limited to CLB obtaining one or more credit reports from time to time, for the purpose of assessing the Credit Application Form and the Customer's ongoing credit worthiness until the termination of this Agreement;
 - e. expressly consents and agrees that CLB may, from time to time, contact any references provided in the Credit Application Form or otherwise made available to CLB for the purpose of assessing the Credit Application Form and the Customer's ongoing credit worthiness until the termination of this Agreement;
 - f. expressly consents and agrees to CLB receiving from any other credit provider or providing to any credit provider, any information whether by way of report record or otherwise relating to credit worthiness for the purposes of exchange of information, assessing credit worthiness and notification of default at any time whether now or in the future;
 - g. expressly consents and agrees that in the event of the circumstances described under clause 12.1 arising, CLB may disclose all information in relation to its account to its nominated debt collection agency for the purpose of receiving all or part of the amounts due under the Credit Facility;
 - h. is aware of its right to access its personal information held by CLB, in accordance with the National Privacy Principles exacted under the Privacy Act 1988;
 - i. may obtain access to its personal information held by CLB or have more information about the way that CLB manages the Customer's personal information by contacting CLB; and
 - j. expressly agrees that CLB has satisfied all obligations under the *Privacy Act 1988* (Cth) required of CLB in dealing with the personal information of the Customer and Guarantor.

3 TERM

- 3.1 The Agreement commences on the Commencement Date.
- 3.2 The Agreement will expire upon either Party's written termination in accordance with the terms of this Agreement.

4 SUPPLY AND PURCHASE OF GOODS UNDER CREDIT FACILITY

- 4.1 CLB agrees to:
- a. supply the Goods to the Customer; and
 - b. accept payment for the Goods supplied under the Credit Facility,
- in accordance with the terms of this Agreement.
- 4.2 The Customer agrees to:
- a. purchase the Goods from CLB; and
 - b. make payment for the Goods (in accordance with the Price List) supplied under the Credit Facility,
- in accordance with the terms of this Agreement.
- 4.3 Unless otherwise written in this Agreement, the Customer must pay for anything that the Customer agrees to do under this Agreement.

5 CREDIT LIMIT

- 5.1 The Credit Limit will be notified to the Customer by CLB in writing if the Customer's credit application is accepted.
- 5.2 CLB may increase or decrease the Credit Limit at any time with immediate effect by notice in writing to the Customer. Any such change will not apply to orders placed by the Customer which have already been accepted by CLB.
- 5.3 CLB may refuse to accept an order from the Customer if the value of the Goods specified in the order exceeds the Credit Limit. In these circumstances, CLB may either reject the entire order or accept a portion of the order (for Goods to the value of the Credit Limit).

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- 5.4 CLB may, in its sole discretion, allow the Customer to order Goods with a value in excess of the Credit Limit on occasion. The granting of such a concession by CLB applies only to that particular transaction and does not increase the Credit Limit on a permanent basis.

6 INVOICES AND PAYMENT

- 6.1 CLB will invoice the Customer for Goods purchased using the Credit Facility.
- 6.2 The Customer's payment terms will be notified to the Customer in writing by CLB. These payment terms may be amended by CLB at any time with immediate effect by notice in writing to the Customer. Any such change will not apply to orders placed by the Customer which have already been accepted by CLB. The Customer must pay invoices issued by CLB in accordance with the Customer's current payment terms.
- 6.3 CLB may charge interest at the rate of 12% per annum on all overdue amounts, calculated and payable daily from the date of the default until the date of payment.
- 6.4 The Customer must not deduct from any amount owed to CLB any set-off, counterclaim or other sum without the written consent of CLB.
- 6.5 A certificate signed by a director of CLB stating the amount payable to CLB by the Customer (whether for the price of Goods, interest, expenses incurred by CLB or as otherwise provided in these terms) will be conclusive evidence for all matters against the Customer in the absence of manifest error.

7 ACCEPTANCE OF GOODS

- 7.1 The Customer is deemed to have collected and accepted the Goods as being in good order and condition when either:
- CLB serves a written notice on the Customer, confirming that the Goods have been delivered to the Delivery Place; or
 - the Customer or their representative has collected the Goods.
- 7.2 Risk in the Goods:
- remains with CLB until the Goods have been delivered to or collected by the Customer or their representative; and
 - passes to the Customer once the Goods have been delivered to or collected by the Customer or their representative, **but** the title in the Goods:
 - remains with CLB until the Goods have been fully paid for as per clause 6; and
 - passes to the Customer only once the Goods have been fully paid for as per clause 6.

8 INSURANCE

- 8.1 The Customer must insure the Goods (with CLB's interest noted on the relevant insurance policy) from the date of delivery of Goods until title passes to the Customer or the Goods are sold in accordance with clause 9.
- 8.2 If CLB requests it, the Customer must provide copies of its insurance policies in accordance with clause 8.1.

9 RETENTION OF TITLE

- 9.1 Title in and to the Goods shall not pass to the Customer until all amounts owing by the Customer to CLB is paid in full.
- 9.2 The Customer acknowledges that until title in and to the Goods passes to the Customer, the Customer holds the Goods ("**Bailed Goods**") as trustee, agent and bailee of CLB and that a fiduciary relationship exists between the Customer and CLB.
- 9.3 The Customer acknowledges that if it sells or otherwise deals with the Goods before title in and to the Goods has passed to the Customer in accordance with clause 9.1:
- it does so as trustee and agent for CLB;
 - it must hold the proceeds of the sale or such dealing of the Bailed Goods as trustee and agent for CLB; and
 - it must be able to separately and clearly identify such proceeds of the Bailed Goods once deposited into the Customer's account as the property of CLB.
- 9.4 The Customer grants to CLB a purchase money security interest (as defined in the PPSA) in the Bailed Goods and any proceeds of sale of the Bailed Goods ("**PMSI**") to secure the purchase price of the Bailed Goods.
- 9.5 The costs of registering a financing statement will be paid by the Customer and may be debited against the Credit Facility.
- 9.6 The Customer agrees not to do or permit anything to be done that may result in the PMSI granted to CLB ranking in priority behind any other PPSA Security Interest.

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- 9.7 The Customer will take such further steps (including obtaining consents, supplying information, signing forms or executing documents) which may be reasonably required by CLB to take further or better security under the PPSA in respect of the Bailed Goods and proceeds of sale of the Bailed Goods or to maintain the effectiveness or priority of any PPSA Security Interest.

10 SECURITY INTEREST

- 10.1 To secure the payment for Goods under the Credit Facility by the Customer, the Customer and the Guarantor grant to CLB:
- a PPSA Security Interest and charge over all PPSA Personal Property; and
 - a fixed charge over all Other Property.
- 10.2 The Customer and the Guarantor acknowledge that, for the purposes of section 20(2)(b)(ii) of the PPSA, the security interests granted to CLB over all the PPSA Personal Property is taken in all of the Customer's and the Guarantor's present and after-acquired property.
- 10.3 The moneys secured under this clause are the moneys secured by CLB's Security and neither these terms nor CLB's Security are in any way secondary to the other and CLB shall be entitled to enforce either terms herein or CLB's Security without any reference to the other
- 10.4 The Customer and the Guarantor agree to do all things necessary and execute all documents reasonably required to register the PPSA Security Interest granted by the Customer and the Guarantor under this Agreement and to ensure that the CLB acquires a perfected PPSA Security Interest in the Goods.
- 10.5 The Customer agrees not to change the Customer name or undertake any changes to any documents that CLB has registered, requires to be registered or that are capable of being registered without the prior written consent of CLB.
- 10.6 The Customer will, upon demand, pay all of CLB's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of CLB's Security and all other costs associated with protection and enforcement of CLB's Security created by this Agreement or by undertaking an audit under the provisions of the PPSA, or the repossession of Goods pursuant to clause 12.2 or the exercise, enforcement or preservation of any right or interest under this Agreement or any other agreement that the CLB has with the Customer.

11 CONTRACTING OUT OF THE PPSA

- 11.1 The Customer and the Guarantor agree that nothing in sections 125, 132(3)(d), 135, 142 and 143 of the PPSA shall apply to this Agreement, or the security under this Agreement and to the extent permitted by the PPSA, agree to waive and contract out of its rights to receive any notice or statement or otherwise do as follows:
- receive a notice of intention of removal of an accession (s.95 of the PPSA);
 - receive a notice that CLB has determined to enforce its security interest in accordance with land law (s.118 of the PPSA);
 - receive a notice of enforcement action against liquid assets (s.120 and s.121 of the PPSA);
 - receive a notice of seizure of collateral (s. 123 of the PPSA);
 - receive a notice of disposal of collateral by CLB purchasing the Goods (s.129 of the PPSA);
 - receive a notice to dispose of the Goods (s.130 of the PPSA);
 - receive a statement of account following disposal of the Goods (s.132(2) and s.132(3)(d) of the PPSA);
 - receive a statement of account if there is no disposal of the Goods, on a six-monthly basis (s.132(4) of the PPSA);
 - receive notice of any proposal by CLB to retain the Goods (s.135(2) of the PPSA);
 - object to any proposal by CLB to either retain and dispose of the Goods (s.137(3) of the PPSA);
 - redeem the Goods (s.142 of the PPSA);
 - reinstate the security agreement (s.143 of the PPSA); and
 - receive a notice of any verification statement (s.157(1) and s.157(3) of the PPSA).
- 11.2 The Parties also contract out of each other provision of Part 4.3 of the PPSA, under sections 115(7) and 116(2), but only to the extent that the provision imposes obligations on CLB.
- 11.3 The Parties will not disclose information of the kind mention in section 275(1) of the PPSA, unless required by law (other than section 275(1) of the PPSA).

12 TITLE TO GOODS

- 12.1 The Customer's right to possession of Goods still owned by CLB under this Agreement shall cease if:

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- a. the Customer being an individual, commits an act of bankruptcy;
 - b. the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer enters into a Deed of Company Arrangement;
 - c. the Customer ceasing or threatening to cease conducting business in the normal manner or applying for deregistration or receives a deregistration notice;
 - d. any cheque the Customer provides to CLB is dishonoured for payment;
 - e. the Customer fails to comply with any demand for payment issued by CLB; or
 - f. the Customer breaches any of the Terms and Conditions contained in this Agreement and/or is in default of any other agreement between CLB and the Customer.
- 12.2 In the event that the circumstances described under clause 12.1 arise, the Customer expressly and irrevocably agrees that CLB is entitled to enter any premises where the Goods supplied by CLB are located to repossess, remove and sell such Goods. The Customer and its successors and assigns, including any external manager or administrator, shall not object to CLB or its agents entering any premises for the purpose of this clause and agrees to indemnify and keep CLB indemnified in respect of any claims, actions and costs that may arise against CLB in relation to the removal, repossession and sale of the Goods pursuant to this Agreement including any claims brought by third parties.
- 12.3 The Customer agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to CLB by the Customer, as is equivalent to CLB's estimation of the market value of the Goods as it is at the date of repossession, and the repossession and retention will immediately extinguish any rights for interest CLB has on the value of the Goods recovered.
- 12.4 Until ownership of the Goods passes, the Customer must not give CLB a written demand or allow any other person to give CLB a written demand requiring CLB to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.

13 DEFAULT AND TERMINATION

- 13.1 CLB may terminate the Credit Facility with immediate effect by notice in writing to the Customer if any one of the following events occur:
- a. the Customer fails to make a payment by the due date or breaches any of its obligations under this Agreement;
 - b. the Customer becomes insolvent, an insolvent under administration or an externally administered body corporate (as defined in the Corporations Act) or an application is lodged or a resolution is passed for the winding up or bankruptcy of the Customer (or, if the Customer is a partnership, if any of these events occur in relation to a partner);
 - c. CLB notifies the Customer of having reasonable grounds for suspecting that an event in clause 13.1b has occurred or will occur, or that the Customer will not pay for Goods on the due date; or
 - d. the Customer has breached any warranty set out in this Agreement.
- 13.2 If CLB terminates the Credit Facility, all amounts owing from the Customer to CLB will become immediately due and payable.
- 13.3 Termination of the Credit Facility is effective immediately and any order by the Customer which has already been accepted by CLB will only be supplied to the Customer on a cash-on-delivery basis only.

14 TERMINATION BY THE CUSTOMER

- 14.1 Subject to clause 14.2, either Party may terminate this Agreement for any reason on 30 days' written notice to the other Party.
- 14.2 The Customer may only terminate this Agreement in accordance if:
- a. there are no outstanding supplies of Goods to be made to the Customer;
 - b. there are no outstanding payments owed to CLB by the Customer; and
 - c. the Customer agrees to pay any cancellation charge, being a genuine pre-estimate of CLB's loss, as determined and specified by CLB.

15 WARRANTIES AND INDEMNITY

- 15.1 Without limiting any conditions or warranties implied by law, the Customer warrants that:

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- a. the information contained in the Credit Application Form is true and accurate and the Customer knows that CLB will rely on this information in deciding whether to grant credit facilities to the Customer;
 - b. there is no other material circumstance or event which, if known by CLB, would be likely to affect any consideration as to whether or not to grant any credit facilities to the Customer;
 - c. at the time of entering into this Agreement, it is not insolvent or bankrupt and knows of no circumstances that would entitle any creditor to appoint a receiver or administrator or to petition for winding up or bankruptcy or to exercise any other rights over or against its assets; and
 - d. it has the authority to agree to these terms.
- 15.2 The Customer indemnifies CLB and its employees, agents and successors from all claims, demands, costs, expenses and losses arising out of a breach of these terms (including the warranties set out in clause 15.1 above) by the Customer.

16 CONFIDENTIALITY

- 16.1 The Customer and the Guarantor must not disclose the provisions of this Agreement to any person except:
- a. as a media announcement in the form agreed between the Parties acting reasonably;
 - b. with the written consent of CLB;
 - c. to its officers, employees and professional advisers; or
 - d. as required by an applicable law, after first consulting with the other party about the form and content of the disclosure, and must use its best endeavours to ensure all permitted disclosures are kept confidential, other than the media announcement or a disclosure to a recognised stock exchange.

17 DISPUTE RESOLUTION

- 17.1 If a dispute arises (including a breach or an alleged breach) under this Agreement, which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, the Party concerned about the dispute must notify the other Parties.
- 17.2 In the first instance the Parties agree to use reasonable commercial efforts to resolve by negotiation any identifiable dispute.
- 17.3 No Party may resort to legal proceedings unless the process set out in this clause has been exhausted, except if it necessary to seek an urgent interim determination.
- 17.4 This clause 17 is a condition precedent to any Party to this Agreement commencing legal proceedings in relation to any matter that arises directly or indirectly out of the performance or termination of this Agreement.
- 17.5 Should the Parties fail to reach a solution in accordance with clause 17.2 within 5 business days (or such other time frame agreed between the Parties), the Parties may agree to mediation. The mediator will be agreed between the Parties within 10 business days of written notice of the referral by the referring Party to the other Parties, or, failing agreement, as appointed by the President of the Law Society of the Australian Capital Territory.
- 17.6 Unless prevented by the nature of the dispute, the Parties will continue to perform this Agreement while attempts are made to resolve the dispute.

18 OTHER CONDITIONS

- 18.1 These terms are governed by the laws of the Australian Capital Territory and the Parties submit to the non-exclusive jurisdiction of the Courts of the Australian Capital Territory in respect of any proceedings relating to these terms.
- 18.2 A waiver by CLB of a breach of these terms is only effective if in writing and does not constitute a waiver of any other breach.
- 18.3 A provision of these terms must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed.
- 18.4 This Agreement and the Price List form the entire agreement between the Parties regarding the Credit Facility and the supply of Goods from CLB to the Customer.
- 18.5 If the Customer comprises more than one person, each of those persons is jointly and severally liable under these terms.
- 18.6 The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

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- 18.7 The Parties acknowledge and agree that nothing in this Agreement prevents CLB from supplying the Goods, or providing the Credit Facility to any third party on any terms in its discretion.
- 18.8 CLB is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under this Agreement.

19 GUARANTEE & INDEMNITY

- 19.1 In consideration of CLB entering into this Agreement at the request of the Customer, the Guarantor (and if more than one, then each Guarantor acts both jointly and severally), unconditionally and irrevocably guarantees to CLB:
- the punctual performance and observance by the Customer of all its obligations under this Agreement; and
 - the punctual payment of all payments owed to CLB by the Customer pursuant to this Agreement and the Credit Facility.
- 19.2 As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies CLB against all liabilities or losses arising from, and any Costs, charges or expenses incurred in connection with, a breach by the Customer of this Agreement including a breach of the obligations to pay any monies. It is not necessary for CLB to incur expense or make payment before enforcing that right of indemnity.
- 19.3 In the event of any breach by the Customer covered by this guarantee, CLB may proceed to recover the amount claimed as a debt or as damages from the Guarantor without having instituted legal proceedings against the Customer and without first exhausting CLB's remedies against the Customer.
- 19.4 The Guarantor agrees to pay amounts due under this indemnity on demand from CLB.
- 19.5 CLB may treat the Guarantor as a principal debtor jointly and severally with the Customer.
- 19.6 Each of the guarantees and the indemnities in this clause is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the monies payable by the Guarantor.
- 19.7 This Agreement does not merge with or adversely affect, and is not adversely affected by, any of the following:
- any other guarantee, indemnity, or encumbrance, or other right or remedy to which CLB is entitled; or
 - a judgment which CLB obtains against the Guarantor, the Customer or any other person in connection with any monies due or any other due obligations under this Agreement.
- CLB may still exercise its rights under this Agreement as well as under the judgment or right or remedy.
- 19.8 Until the Guarantor has no further liability under this Agreement in respect of the any monies due or any other due obligations under this Agreement, the Guarantor may not, without CLB's consent:
- reduce its liability under this Agreement by claiming that it or the Customer or any other person has a right of set-off or counterclaim against CLB;
 - claim, or exercise any right to claim, to be entitled (whether by way of subrogation or otherwise) to the benefit of another guarantee, indemnity (or another assurance against loss similar to a guarantee or indemnity):
 - in connection with this Agreement including any monies due or any other due obligations under this Agreement; or
 - in favour of a person other than CLB in connection with any obligations of, or any other amounts payable, by the Customer to, or for the account of, that other person;
 - claim an amount from the Customer, or another guarantor of any monies due or any other due obligations under this Agreement, under a right of indemnity or contribution; or
 - claim an amount in the insolvency of the Customer or of another guarantor of any monies due or any other due obligations under this Agreement.
- 19.9 If CLB requests, the Guarantor agrees to notify any relevant person of the terms of this clause and other parts of this Agreement that may be relevant. The Guarantor also authorises CLB to do so at any time in its discretion and without first asking the Guarantor to do it. This applies despite anything else in this Agreement.
- 19.10 This clause continues after this Agreement ends, until all money payable to CLB under this Agreement is paid in full.
- 19.11 The Guarantor agrees not to exercise a right of proof after an event occurs relating to the insolvency of the Customer or another guarantor of any monies due or any other due obligations under this Agreement.
- 19.12 If a claim that a payment or transfer to CLB in connection with this Agreement or this guarantee and indemnity is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or

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compromised then CLB is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment or transfer had not occurred.

- 19.13 The Customer must give to CLB immediate notice of the death, bankruptcy, insolvency or winding up, of a Guarantor, and, if so required by CLB, within 28 days of that notice, to procure, another person, approved by CLB, to execute a guarantee in respect of the Customer's obligations contained in this Agreement in the form set out in this clause.
- 19.14 A director of CLB may give the Guarantor a certificate about an amount payable or other matter in connection with this Agreement. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.
- 19.15 The Guarantor agrees to do anything CLB reasonably asks (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):
- a. to bind the Guarantor and any other person intended to be bound under this Agreement; or
 - b. to show whether the Guarantor is complying with this Agreement.