



Credit Application

PART A – (ALL APPLICANTS MUST COMPLETE)

APPLICANT:			
FULL TRADING NAME:			
TRADING ADDRESS:		STATE:	POSTCODE:
REGISTERED OFFICE:		STATE:	POSTCODE:
POSTAL ADDRESS:		POSTCODE:	
TYPE OF BUSINESS:		HOW LONG ESTABLISHED:	
BANK:		BRANCH:	
TRADE REFERENCES (firms from whom goods are obtained on credit):			
1.	NAME:	E-mail:	TEL:
2.	NAME:	E-mail:	TEL:
ACCOUNTS PAYABLE OFFICER:			TEL:
ACCOUNTS EMAIL ADDRESS:			

PART B - (TO BE COMPLETED BY SOLE TRADERS & PARTNERSHIPS)

FULL TRADING NAME:		ABN NO:
FULL NAME OF SOLE TRADER OR 1 ST PARTNER:		
ADDRESS:		POSTCODE:
DATE OF BIRTH:	DRIVER'S LICENCE NO:	OCCUPATION:
EMAIL:		
FULL NAME OF 2 ND PARTNER:		
ADDRESS:		POSTCODE:
DATE OF BIRTH:	DRIVER'S LICENCE NO:	OCCUPATION:
EMAIL:		

PART C - (TO BE COMPLETED BY COMPANIES)

FULL COMPANY NAME:		ACN:
DATE OF INCORPORATION:		ABN:
DIRECTOR/S FULL NAMES AND ADDRESSES:		
1.	
2.	
3.	
4.	

Sunday Road Terms and Conditions of Supply

Background

- A. Sunday Road Brewing Pty Ltd (**Sunday Road**) produces and sells craft beer.
- B. The Customer wishes to buy and resell craft beer.
- C. Sunday Road agrees to supply, and the Customer agrees to acquire, Sunday Road's craft beer on the terms and conditions in this document.

1. Definitions and Interpretation

1.1 Definitions

In this document, the following words and expressions have the meaning shown unless the context requires otherwise:

Accepted Order has the meaning given in clause 3.3(a).

Business Day means any day other than a Saturday, Sunday, or a bank holiday or public holiday in New South Wales and a reference to a date which does not fall on a Business Day is to be construed as a reference to the next Business Day.

Business Hours means 9 am to 5 pm inclusive on any Business Day.

Commencement Date means the date of the first supply of Product in accordance with this document.

Credit Account means any billing arrangement Sunday Road has extended to the Customer upon Sunday Road's approval of the Credit Application.

Credit Application means an application, in the form attached to this document, for a Credit Account completed by the Customer.

Customer means the Customer that executes this document.

Delivery means the delivery of Product under an Order to the Customer.

Freight Costs means the cost to freight the Product to the Customer.

Invoice has the meaning given in clause 4.2.

Invoiced Amount has the meaning given in clause 4.2.

Legal Requirements means the requirements imposed by all applicable laws and regulations relating to the Products or the manufacture, provision or transportation of the Products.

Loss means, subject to clause 9.3, any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment and includes legal costs and expenses on a full indemnity basis.

Non-Excludable Condition has the meaning given in clause 9.3(b).

Outstanding Stock means all stock of the Products that are on hand at the date of termination or acquired in accordance with clause 10(b)(i).

Price List means the list of prices for the Product, as amended from time to time.

Product means the product of Sunday Road.

Rejected Order has the meaning given in clause 3.3(c).

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Term has the meaning given in clause 2.

1.2 Interpretation

In this document, headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word including or any other form of that word is not a word of limitation;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (d) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (e) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this document, and a reference to this document includes all schedules, exhibits, attachments and annexures to it;
- (f) a reference to \$ or dollar is to Australian currency;
- (g) this document must not be construed adversely to a party because that party prepared it or caused it to be prepared; and
- (h) a capitalised term that is defined in this document has the meaning given to that term in this document.

2. Term

This document will commence on the Commencement Date and will continue for 2 years unless otherwise extended by mutual agreement of the parties (**Term**) or terminated in accordance with clause 10.

3. Supply

3.1 Agreement for Supply and Purchase

- (a) During the Term, Sunday Road agrees to supply the Product to the Customer on the terms and conditions of this document.
- (b) This document and any Credit Account granted by Sunday Road to the Customer will govern the supply of Products by Sunday Road to the Customer. Any other terms or conditions (including terms or conditions appearing on any Order submitted by the Customer) are not part of this

Supply and Credit Terms

document or the Credit Account and are void and of no force or effect.

3.2 Orders

During the Term, the Customer may submit to Sunday Road an order for the Product (**Order**) specifying:

- (a) the number and date of the Order;
- (b) the address for delivery of the Product;
- (c) the quantity of the Product required;
- (d) the preferred date and time for the Delivery; and
- (e) any other relevant instructions or information.

3.3 Acceptance of Orders

- (a) Sunday Road may accept an Order by notifying the Customer of the acceptance (**Accepted Order**).
- (b) Sunday Road is under no obligation to accept an Order and may reject an Order, without liability, for any reason (**Rejected Order**).
- (c) If Sunday Road does not notify the Customer of an acceptance of an Order within 14 days of the date of the Order, the Order shall be deemed to be a Rejected Order.
- (d) Sunday Road may cancel an Accepted Order at any time prior to delivery for any reason without incurring any liability to the Customer.

3.4 Delivery

- (a) Unless otherwise agreed by the parties, Sunday Road shall endeavour to deliver the Product to the Customer on or before the preferred delivery date (as specified in the Order).
- (b) Sunday Road may determine, in its sole and absolute discretion, that it is necessary to engage a third party to deliver the Product to the Customer.

3.5 Risk and Title

All risk in and title to the Product supplied under each Order transfers to the Customer on Delivery.

4. Price, Invoices and Payment

4.1 Price

The price for the Product shall be that listed on the Price List, as amended from time to time by Sunday Road.

4.2 Invoice

On or after Delivery of an Order, Sunday Road must issue a valid tax invoice for the Product supplied (**Invoice**) detailing:

- (a) the number of the Order;
- (b) the quantity of the Product supplied;
- (c) the date of Delivery;
- (d) the price for the Products ordered;
- (e) any Freight Costs; and
- (f) the total price payable by the Customer for the Order (**Invoiced Amount**).

4.3 Payment

- (a) Unless Sunday Road determines otherwise (in its sole and absolute discretion), the Customer must make payment of an Invoice:
 - (i) in accordance with the terms of the Credit Account; or
 - (ii) if there is no Credit Account, immediately upon Delivery of the Product to the Customer.
- (b) The Customer shall make payment of an Invoice by paying the Invoiced Amount to the account nominated by Sunday Road.

5. Credit Account

Sunday Road may, from time to time and without notice, review the Credit Account and may, in its sole and absolute discretion, withdraw or alter the terms of the Credit Account for any reason by giving written notice to the Customer.

6. GST

6.1 Interpretation

In this clause 5, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

6.2 GST gross up

If a party makes a supply under or in connection with this document in respect of which GST is payable, the consideration for the supply but for the application of this clause 6.2 (**GST Exclusive Consideration**) is increased by an amount equal to the GST Exclusive Consideration multiplied by the rate of GST prevailing at the time the supply is made.

6.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 6.2.

7. Customer Responsibilities

During the Term, the Customer:

- (a) must adequately store and handle the Product in such a way as to maintain the quality of the Product and otherwise in accordance with all reasonable directions and instructions given to it by Sunday Road;
- (b) must not make any representations or warranties with respect to the Products except as set forth on the face of the Product labels, Sunday Road's authorised promotional and advertising material, or as expressly authorised by Sunday Road; and
- (c) must not use the trade name, trade marks, emblems or designs of Sunday Road or of the Products without first obtaining the written consent of Sunday Road.

8. Confidentiality

Each party must:

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- (a) keep strictly confidential each other's financial, technological, strategic and other business information which has been divulged or become known in the course of its business dealings with each other and which is not generally known outside their respective organisations;
- (b) only use the confidential information for the purpose for which it was disclosed; and
- (c) only disclose the confidential information to those in its organisation who need to know in connection with the purpose for which it was disclosed, and no disclosure may be made to anyone else without the consent of the owner of the information (with the exception of disclosure required by law, in which case prior notice of the disclosure must be given to the owner of the information).

9. Warranties, Liabilities and Indemnities

9.1 Customer Warranties and Indemnity

- (a) The Customer warrants and agrees that:
 - (i) if it has submitted a Credit Application, the content and information provided in the Credit Application is accurate in all material respects;
 - (ii) it is authorised and has the power to enter into this document so as to bind the Customer; and
 - (iii) it is not insolvent or bankrupt, or in liquidation, administration or receivership.
- (b) The Customer shall indemnify and hold Sunday Road harmless from and against all Loss suffered, incurred or paid by Sunday Road arising out of or in connection with:
 - (i) a breach by the Customer of this document;
 - (ii) a breach of a warranty in clause 9.1(a); or
 - (iii) any infringement of Sunday Road's intellectual property rights caused or contributed to by the Customer.

9.2 Sunday Road Warranties and Indemnity

- (a) Sunday Road warrants and agrees that:
 - (i) it is authorised and has the power to enter into this document so as to bind Sunday Road; and
 - (ii) it is not insolvent or bankrupt, or in liquidation, administration or receivership.
- (b) Subject to clause 9.3, Sunday Road must release and indemnify the Customer against any Loss suffered, incurred or paid by Sunday Road arising out of or in connection with:
 - (i) a breach by Sunday Road of this document; or
 - (ii) a breach of a warranty in clause 9.2(a).

9.3 Limitation

- (a) Notwithstanding anything to the contrary in this agreement, to the extent permitted by law, Sunday Road shall not be liable to the Customer for any:
 - (i) indirect, consequential, incidental, special or exemplary damages, expenses, losses or liabilities; or
 - (ii) loss of profits, business interruption, loss of revenue, economic loss, loss of goodwill, loss of opportunity or expectation loss or loss of production,

which is or may be suffered, incurred or paid by the Customer or any Related Body Corporate of the Customer arising out of or in connection with this document, under statute, in tort (for negligence of otherwise) or any other basis in law or equity.
- (b) Sunday Road excludes all statutory or implied conditions and warranties to the maximum extent permitted by law, except any implied term, condition, guarantee or warranty the exclusion of which would contravene any statute or cause this clause to be void (**Non-Excludable Condition**).
- (c) To the fullest extent permitted by law, Sunday Road's liability to the Customer for a breach of any Non-Excludable Condition is limited to, at the option of Sunday Road:
 - (i) the replacement of the Products or the supply of equivalent Products; or
 - (ii) the payment of the cost of replacing the Products or acquiring equivalent Products.

10. Termination

- (a) Either party may terminate this document at any time by providing written notice to the other party.
- (b) If this document is terminated:
 - (i) Sunday Road may, at its discretion, complete all outstanding Accepted Orders, in which case the provisions of this document will survive to the extent necessary for Sunday Road to complete and be paid for the outstanding Accepted Orders in accordance with this document;
 - (ii) the parties must cease using and either return or destroy the other party's confidential information;
 - (iii) the Customer shall cease to promote, market, advertise or sell the Product to Customers, other than Outstanding Stock; and
 - (iv) once the Customer has sold all Outstanding Stock, the Customer shall immediately cease to use all trade marks, trade names, brand names and any other intellectual property of Sunday Road.
- (c) Termination of this document shall be without prejudice to any rights or liabilities accrued at the date of termination.

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- (d) Clauses 1, 3.4, 3.5, 4, 5, 7, 8, 9, 10 and 11 shall survive the termination of this document.

SIGNED for and on behalf of **SUNDAY ROAD BREWING PTY LTD** by an authorised officer:

11. General

11.1 Notices

Any formal notice to or by a party to this document:

- (a) must be hand delivered, posted or emailed to any such address last notified by the party to the sender;
- (b) in the case of a corporation, must be signed by an officer of the sender; and
- (c) is taken to be received:
 - (i) if hand delivered, at the time of delivery;
 - (ii) if posted, on the third after posting within Australia or the fifth day after posting if international mail; or
 - (iii) if emailed, at the time of successful electronic transmission.

Signature

Name

Position:

Date:

SIGNED for and on behalf of

Customer:

ABN:

by an authorised officer:

Signature

Name

Position:

Date:

11.2 Assignments

Neither party may assign its rights under this document except with the prior written consent of the other party, which such consent must not be unreasonably withheld.

11.3 Severability

If anything in this document is unenforceable, illegal or void then it is severed and the rest of this document remains in force.

11.4 Variation

An amendment or variation to this document is not effective unless it is in writing and signed by the parties.

11.5 Counterparts

This document may be executed in any number of counterparts and all counterparts taken together will be deemed to be a single instrument.

11.6 Costs

Each party will pay its own costs relating to the preparation, negotiation and performance of this document.

11.7 Entire Understanding

This document contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this document and relating to any matter dealt with in this document are merged in this document and do not have any effect from the date of this document.

11.8 Governing Law

This document is governed by the laws of the State of New South Wales and each party submits to the exclusive jurisdiction of the courts of the State of New South Wales.