



## CREDIT APPLICATION FOR A TRADING ACCOUNT

(Please complete and email to admin@nzcrafbrewing.com)

### BUSINESS CONTACT INFORMATION

Company name (legal entity or individual – "The Customer"):

Trading as:

Phone:

Fax:

E-mail:

Registered company address:

Postal Address (if different from above):

City:

State:

Post Code:

Year of incorporation:

Australian Business Number (ABN):

Sole Trader

Partnership:

Limited Company

Other:

### BUSINESS AND CREDIT INFORMATION

Primary business address (for delivery of goods):

City:

State:

Post Code:

How long at current address?

Name and position of accounts contact:

Telephone:

Fax:

E-mail:

Names, residential addresses and date of birth of all directors, proprietors or partners:

Full Name:

DOB:

Residential Address:

Full Name:

DOB:

Residential Address:

Full Name:

DOB:

Residential Address:

Full Name:

DOB:

Residential Address:

### AGREEMENT

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understood the **TERMS AND CONDITIONS SECURITY AND PRIVACY AGREEMENT** (attached) of New Zealand Craft Brewing Company (AU) PTY Limited (ABN 45623870020) which form part of and are intended to be read in conjunction with this Credit Application for a Trading Account and agree to be bound by these conditions. I authorise the use of my personal information as defined in the Privacy Act clause therein.

Signed by or on behalf of Director by authorised person:.....

Name:

Date:

Signed in the presence of (Witness Signature):.....

Name:

Date:

### DEED OF GUARANTEE INDEMNITY AND CHARGE

**IN CONSIDERATION** of New Zealand Craft Brewing (AU) Pty Limited (ABN 45623870020) ("NZCB"), at my/our request, agreeing to provide and/or continuing to provide credit facilities to "the Customer" as named above for the sale of goods or equipment and/or services from time to time, I/we HEREBY AGREE, (and if more than one, jointly and severally) with NZCB as follows: (continued overleaf)

1. To unconditionally guarantee to NZCB the payment by the Customer of all moneys which are now payable or may in the future become payable by the Customer to NZCB notwithstanding that I/we shall not have notice of any neglect or omission on the Customer's part to pay for such goods and/or equipment and/or services and in the event of the Customer failing to pay NZCB forthwith, I/we will pay the amount of such debt. This guarantee shall not be affected or discharged by any change in relationship that may now or hereafter exist between the Customer and myself/ ourselves.
2. To unconditionally indemnify NZCB, as a separate independent and principal obligation, immediately on demand against all claims and proceedings and all liability, loss and damage (whether or not arising from any negligence of the Customer and including, without limitation, legal costs and expenses on an indemnity basis) that NZCB may suffer or incur because of any failure by the Customer to make any payment or to perform any other obligation to NZCB, or because the Customer's payments or other obligations are not fully enforceable against or recoverable from the Customer or any of us for any reason.
3. This guarantee and indemnity shall be a continuing guarantee and indemnity to NZCB for the whole of the Customer's indebtedness or liability to NZCB in respect of goods or equipment and/or hiring charges and/ or services supplied or to be supplied to the Customer as aforesaid or upon any other account however or whenever arising.
4. NZCB shall be at liberty without discharging me/us from liability hereunder to grant time or other indulgence to the Customer in respect of goods or equipment and/or hiring charges and/or services supplied by NZCB to the Customer as aforesaid and to accept payment from the Customer in cash or by means of negotiable instrument and to treat the Customer in all respects as though I/we were jointly liable with it as debtor/s to NZCB. In order to give full effect to the provisions of this guarantee I/we HEREBY WAIVE and each of us HEREBY WAIVES all rights inconsistent with such provisions and which I/we might otherwise as sureties be entitled to claim.
5. NZCB may at any time or times at its discretion and without giving any notice whatsoever to me/us refuse further credit or hire or supply of goods or equipment and/or services to the Customer and grant to the Customer any indulgence or to any drawers acceptors or endorsers of bills of exchange, promissory notes or other securities received by NZCB from the Customer or on which the Customer may be liable to NZCB at any time or other indulgences and compound with the Customer or them respectively without discharging or impairing my/our liability under this guarantee.
6. I/we charge in NZCB's favour all of our estate and interest in any land in which I/we now have any legal or beneficial interest and any land in which I/we later acquire any such interest and any other asset or trust asset such charge to secure our obligations under this guarantee and we hereby undertake and agree as a separate obligation under this guarantee and indemnity to execute a registrable mortgage over any such real property now held or acquired by us in the future and upon request by NZCB.
7. This guarantee and indemnity shall be enforceable against me/ us jointly and each of us severally notwithstanding that any negotiable instrument or other securities referred to herein or to which it shall relate or be appropriate shall at the time of proceedings being taken against me/us or either of us by this guarantee and indemnity be outstanding, and is expressly declared that notwithstanding the fact that this instrument or guarantee may be intended or expressed to be executed and given more by more than one person the same shall, in fact, be valid and an effectual instrument of guarantee and indemnity binding against such person or persons as shall execute the same forthwith upon their execution and shall continue to be binding as against such person or persons notwithstanding the fact that any proposed or contemplated party shall not in fact subsequently execute the same.
8. I/We indemnify NZCB against all losses it sustains whatsoever as a result of any past, present or future dealing NZCB have with the Customer or any of us.
9. It is hereby further agreed that a statement in writing signed by the Credit Manager or Director of NZCB certifying the amount of moneys due or owing by the customer to NZCB at the date mentioned in any such statement shall be prima facie evidence of the amount so due or owing and covered by this guarantee and indemnity.
10. No change in the constitution of the Customer (if applicable) shall effect, impair or discharge my / our liability under this guarantee and indemnity whether past, present or future.
11. Any dividends or other payments received by NZCB on behalf of the Customer in consequence of any bankruptcy or other administration of the Customer's estates in lieu thereof under the Bankruptcy Act (as amended) or under any winding up, deed of company arrangement or scheme of arrangement or act in substitution thereof applicable to the Customer or otherwise shall be taken and applied as payments in gross and my/our right to be subrogated to NZCB shall not arise until NZCB shall have received the full amount of all claims against the Customer and this guarantee shall be a security to NZCB for the payment of any ultimate balance that may remain due to NZCB in respect of goods or equipment and/or hire charges and/or services supplied to the Customer. I / We undertake that we will not prove in the insolvency of the Customer for any amount owing by the Customer to any of us other than upon the basis that I/we will irrevocably direct that the payments or the proceeds of any such proof of debt be paid to NZCB.
12. In the event of any payment of money paid to NZCB by or on behalf of the Customer or by or on behalf of any of us being or becoming void, voidable or unenforceable by any statutory provision or otherwise I/we agree that our liability shall be deemed not to have been discharged in respect of such payment and NZCB will have the same rights and remedies against me/us as if that money had not been paid or those transactions had not occurred.
13. I/We agree that no set offs or deductions are permissible by me/us concerning the Customer's obligations.
14. I/We agree that NZCB may seek from a credit reporting agency a credit report containing personal information about me/each of us as is permitted by the provisions of the Privacy Act so as to assess whether to accept me/us as a guarantor and indemnifier for credit applied for or to be provided to the applicant. I/We further agree that this authority will be a continuing authority even after the application for credit is approved and also that this authority may only be revoked by seven days notice in writing to the credit manager of NZCB. It is further agreed that revocation of this authority cannot be made until such time as payment of all monies owing to NZCB by the Customer is made.
15. I/we agree that this guarantee and indemnity is governed by the laws of New South Wales. I/We unconditionally submit to the non-exclusive jurisdiction of the Courts of New South Wales in relation to this guarantee and indemnity, any dispute under or any of the transactions contemplated by this guarantee and indemnity.
16. I/We agree to pay to NZCB all legal costs (on an indemnity basis) incurred by NZCB in respect of any proceedings for enforcement under this guarantee and indemnity.
17. I/We hereby authorise you to undertake credit checks and reports of me/us to assess my/our credit, from both a commercial and consumer perspective.
18. I/we have read and understood this guarantee and indemnity and the "Conditions of Sale and Hire" by NZCB before signing this guarantee and indemnity.

Executed as a Deed on this Day: \_\_\_\_\_ Month: \_\_\_\_\_ Year: \_\_\_\_\_

Signature of Guarantor:.....

Full Name of Guarantor:.....

Signature of Guarantor:.....

Full Name of Guarantor:.....

Signature of Witness: .....

Full Name of Witness:.....

**TERMS AND CONDITIONS SECURITY AND PRIVACY AGREEMENT**

- 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).
  - GST has the meaning given in the GST Act.
  - GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
  - Product means any beer or spirits making product or equipment distributed by us and supplied by us to you.
  - Product Price means the purchase price payable for the sale of the Product excluding any applicable Service Fee.
  - Separate Service Contract see clause 5.
  - We, us or our, refers to the New Zealand Craft Brewing Company (AU) Limited (ABN 45623870020) entity that supplies you with a Product.

- You or your means the legal entity of 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**

1. Unless otherwise agreed in writing, you request that we supply Products to you on these Terms.
2. 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).
3. 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 and Freight**

4. You agree to pay any freight charges and fees as advised by us applicable to all Product deliveries. You acknowledge and consent to us delivering any Products to you using a subcontractor or a third party member of our distribution network.
5. 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 Product you order to you at the delivery location agreed between us and you.
6. 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 we, nor our carriers or members of our distribution network are required to collect a signature from you or other proof of delivery.
7. You cannot cancel an order once we have accepted it and you cannot refuse to accept delivery.
8. 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.
9. 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.

#### **Charges and Payment**

10. 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 freight and delivery charges or other applicable charges payable by you).
11. 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.
12. The Product price is separate and distinct from any applicable Freight charge or 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. You indemnify us for all costs we incur because of any overdue payment, including dishonour fees, collection fees or legal fees.
19. 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.

#### **Ownership & Return of Product and Equipment**

20. 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.
21. We remain the owner of any Equipment we may supply you at all times. Except for equipment purchased for resale, you must not part with possession or control of our Equipment at any time, or attempt to sell it.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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**

30. Risk in the Product and any Equipment passes to you as soon as it is delivered to you, to your premises or the place nominated by you and agreed by us.

#### **Recalls**

31. 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**

32. You must not do anything (including failing to act) that we believe is likely to adversely affect our reputation, sales or brands.
33. You must notify us in advance of any change in your ownership, shareholders, directors, registered office or business address.

### **Disputes and Claims**

34. You must inspect the Product and any Equipment within 48 hours of it being delivered to you.
35. 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.
36. 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.
37. In the absence of manifest error, certification from our authorised representative will be conclusive evidence of the amount owed for the Products.

### **Liability**

38. 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.
39. 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.
40. 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.
41. 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.
42. The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

### **Indemnity and charge**

43. 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 40 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.
44. You must pay to us all liabilities, costs and other expenses referred to in clause 44, whether or not we have paid or satisfied them.
45. You charge to us 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 by you in any capacity, on your own account or with others, now or in the future.
46. You irrevocably consent to the lodgement of a caveat or caveats over any real property in respect of any interest of ours arising from these Terms.

### **Goods and Services Tax (GST)**

47. In clauses 49 and 50 of these Terms, capitalised terms have their meanings given in the GST Act.
48. 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.
49. 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**

50. We 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.
51. We may disclose your personal information to our contractors or agents on strictly confidential terms, and you consent to such disclosure.
52. Details of privacy and information are listed below under "Collecting and Disclosing Private Information".

### **General**

53. 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.
54. You may not assign or transfer your rights and obligations under these Terms without our prior written consent.
55. 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 [www.nzcraftbrewing.com](http://www.nzcraftbrewing.com) or as otherwise notified to you.
56. 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.
57. 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.
58. Any remedies in these Terms do not limit or affect any remedies available to us in law or equity.
59. The invalidity or unenforceability of any provision of these Terms does not affect the validity or enforceability of the remaining provisions.
60. You must pay any stamp duty payable on any registration under these Terms.
61. 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.

### **COLLECTING AND DISCLOSING PRIVATE INFORMATION**

#### **What information can be disclosed?**

The Privacy Act 1988 (Part II and Part IIIA), allows the following, as well as further, information about you to be disclosed:

- details to identify you - including, name(s) and alias(es), sex, date of birth, current and 2 previous addresses, current or last known employer, and driver's licence number

- that you have applied for credit and the amount and/or that Lion Pty Ltd and its associated and related entities (the Company) is a current credit provider to you
- a credit default by you, including payments overdue for at least 60 days and details of any collection action against you
- certain information entered or recorded on the National Personal Insolvency index and/or information about a judgment of an Australian court (other than criminal proceedings) relating to credit provided to, or applied for by, an individual
- advice that payments previously notified as unpaid are no longer overdue and/or the fact that credit provided to you has been paid or otherwise discharged
- information about overdue payment(s) equal to or more than \$150
- in specified circumstances, if, in the opinion of the Company, you have committed a serious credit infringement (e.g. you have acted fraudulently)
- other specified information about your credit worthiness, credit standing credit history or credit capacity

**When can information be disclosed?**

This information can be disclosed for the purpose of:

- assessing your application for commercial credit or your credit worthiness
- continuing to supply you with credit
- notifying credit providers about the status of credit provided to you by the Company if you are in default with payments
- collecting overdue payments from you including passing such information to a debt collection agency and/or a credit reporting body
- allowing or enabling a credit reporting body to maintain a credit file about you

**Who can give or obtain information?**

The Company may:

- obtain a commercial and/or a consumer credit report containing information about you from a credit reporting body
- exchange credit information about you with a credit reporting body and other providers of credit to you named in your credit application or in a credit report from a credit reporting body

**Guarantors**

The Company may give a guarantor, or a person who is considering becoming a guarantor, credit information about you for the purpose of enabling the guarantor to decide whether to act as guarantor or to keep informed about the guarantee.

**Trade insurer**

A registered trade insurer may obtain a consumer credit report about you from a credit reporting body to assess whether to provide trade insurance to the Company in relation to your application for commercial credit.

**Marketing purposes**

The Company may use, and share with its associated and related entities, information about you for marketing it and their products with you.