



TERMS AND CONDITIONS OF TRADE

I/We, the Buyer, agree to the following terms and conditions for the purchase of Product from Bundaberg Brewed Drinks Pty Ltd ACN 009 781 953 and Associated Entities:

1. DEFINITIONS

1.1 The meaning of the terms used in these Terms are set out below:

- (a) **Acceptance** means when:
 - (i) Delivery is effected;
 - (ii) the Buyer takes possession of the Product; and
 - (iii) if clause 6 applies, the Buyer does not issue a Non Conformance Notice and accepts the Product.
- (b) **Agreement** means these Terms, any other agreement or contract between BBD and the Buyer, Credit Application and the Invoice;
- (c) **Associated Entities** means all entities that are an associated entity of BBD as defined in the *Corporations Act 2001* (Cth);
- (d) **Australian Consumer Law** means the Australian Consumer Law as defined in the *Competition and Consumer Act 2010* (Cth);
- (e) **BBD** means Bundaberg Brewed Drinks Pty Ltd ACN 009 781 953 and Associated Entities;
- (f) **Business Day** means a day, other than a Saturday, Sunday or public holiday, on which banks are open for business in Brisbane, Queensland, Australia;
- (g) **Buyer** means the person, organisation, corporation, business specified in the Quote or Invoice buying the Product from BBD;
- (h) **Confidential Information** means all information disclosed by a party (**Disclosing Party**) to the other party (**Receiving Party**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure;
- (i) **Credit Application** means the Credit Application Form and Terms and Conditions – Credit Application in BBD's standard form;
- (j) **Customers** means persons, entities or organisations wishing to purchase the Products;
- (k) **Delivery** means when the Product is delivered to the Buyer and the Product is unloaded from the freight carrier, whether in part or in full, at the Delivery Address;
- (l) **Delivery Address** means the location or destination of the Buyer for Delivery;
- (m) **Delivery Date** means the date estimated or anticipated for Delivery;
- (n) **Deposit** means the deposit to be paid by the Buyer for the Order as specified in the Invoice;
- (o) **Distribute** means to market, promote, distribute, sell or otherwise supply the Products to Customers or third parties;
- (p) **Forecast** means the forecast of the Buyer's requirements for Products to be ordered in accordance with these Terms in a format notified by BBD;
- (q) **Force Majeure Event** means anything outside the reasonable control of a party, including but not limited to, acts of God, peril of the sea, fire, storm, lightening, flood, cyclone, landslide, earthquake, other adverse weather conditions, explosion, accident, national emergencies (whether in fact or law), acts of the public enemy, war, rebellion, insurrection, sabotage, pandemic, epidemic, quarantine restriction, riots, lock-outs, strikes or other industrial disturbance, uncontrollable delays in transportation, inability to

- obtain necessary materials, equipment, facilities or qualified employees, breakdown of plant, machinery or equipment or the effect of any applicable laws, orders, rules or regulations;
- (r) **GST** means the goods and services tax under the GST Act;
 - (s) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes other GST related legislation;
 - (t) **Incoterms** means the standard international trade terms known as Incoterms 2020 published by the International Chamber of Commerce;
 - (u) **Inspection** means the Buyer or Seller inspecting the Product after Delivery to assess whether the Product delivered to the Buyer at the Delivery Address reasonably complies with the Specifications, the Order, is not defective and has not been damaged or lost in transit or is Non Conforming Product;
 - (v) **Inspection Period** means within 5 Business Days after Delivery;
 - (w) **Invoice** means the tax invoice or commercial invoice issued by BBD for the Products set out in the Order and payable by the Buyer or the Buyer's agent;
 - (x) **Intellectual Property** means:
 - (i) the Trade Marks, trade mark rights and logos owned or licensed by BBD;
 - (ii) all patent rights, design rights, copyright and all other intellectual property rights owned or licensed by BBD;
 - (iii) all business names, company names and other names owned or licensed by BBD;
 - (i) any Confidential Information disclosed by BBD;
 - (y) **Leadtime** means the time from placing an Order until the Products are produced, packed and ready to be freighted, shipped or carried for Delivery as notified by BBD;
 - (z) **Non Conforming Product** means Product delivered that do not reasonably comply with the Specifications, the Order, are defective or have been damaged or lost in transit;
 - (aa) **Order** means an order placed by the Buyer to buy the Product and for the Product to be delivered by BBD to the Buyer setting out:
 - (i) the Product;
 - (ii) the quantity of Product;
 - (iii) the Delivery Address; and
 - (iv) the Delivery Date the Buyer requests for the Order to be delivered;
 - (bb) **Parties** or **Parties** means both BBD and the Buyer;
 - (cc) **Payment Terms** means the terms of how the Purchase Price is to be paid by the Buyer to BBD set out in the Invoice;
 - (dd) **PPS Legislation** means the *Personal Property Securities Act 2009* (Cth), *Personal Property Securities Act 1999* (NZ), *Uniform Commercial Code* (USA), *Law of Property Act 1925* (UK), *Companies Act 2006* (UK) and any similar legislation, regulation or rules in relation to security of interest in personal property that applies or may apply in any region, state, county or country that the Buyer is domiciled in, conducts business in or in which these Terms apply;
 - (ee) **Prescribed Terms** means any terms, conditions, guarantees or warranties which the law expressly provides may not in respect of these Terms and the Agreement be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, including any guarantee (if any) applying to the supply of Product under the Australian Consumer Law or consumer protection laws in other regions, states, counties or countries;
 - (ff) **Product** or **Products** means the product or products to be supplied by BBD to the Buyer as set out in the Invoice;
 - (gg) **Product Recall** means suspending from supply, recalling or withdrawing Products from the marketplace on the direction of BBD or any government agency for any reason, including a breach of an applicable legislation, regulation, standard or code;
 - (hh) **Purchase Price** means the total purchase price for the Product, Products or Order as set out in the Invoice;
 - (ii) **Quote** means an estimate of Purchase Price for the Buyer to buy the Product;
 - (jj) **Quote Period** means the period of 30 days from the date of the Quote or as otherwise notified by BBD;

- (kk) **Specifications** means the specifications for the Product issued by BBD and does not include any industry standard or other specifications;
- (ll) **Territory** means the area, region, state, county or country where the Buyer may Distribute the Products, as notified by BBD;
- (mm) **Terms** means these Terms and Conditions of Trade; and
- (nn) **Trade Marks** means each trade mark owned or licensed by BBD.

1.2 In these Terms, unless the context otherwise requires, references to:

- (a) headings are inserted for convenience only and do not affect the interpretation of these Terms;
- (b) legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (c) the singular include the plural and vice versa;
- (d) a person includes an individual and corporation and vice versa;
- (e) grammatical forms of defined words or phrases have corresponding meanings;
- (f) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day, and otherwise, time is a reference to time in Brisbane, Queensland;
- (g) an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia unless otherwise stated;
- (h) the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (i) anything that is to be done on a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next Business Day;
- (j) a party are intended to bind their executors, administrators and permitted transferees; and
- (k) anything, including any amount, is a reference to the whole and each part of it.

2. AGREEMENT

2.1 BBD agrees to sell the Product to the Buyer and the Buyer agrees to buy the Product from BBD on these Terms.

2.2 The Agreement is formed when the Buyer places an Order for Product and BBD accepts the Order.

2.3 In the event of any conflict or inconsistency between these Terms, any other agreement or contract between BBD and the Buyer, Credit Application and the Invoice, the order of precedence is:

- (a) agreement or contract between BBD and the Buyer, then;
- (b) Credit Application, then;
- (c) these Terms, then;
- (d) Invoice.

3. QUOTE, ORDER AND PAYMENT

3.1 BBD may provide a Quote to the Buyer.

3.2 A Quote:

- (a) is subject to these Terms;
- (b) is not an offer by BBD to sell the Products;
- (c) is valid for the Quote Period and expires at the expiration of the Quote Period; and
- (d) may be withdrawn by BBD at any time during the Quote Period by notice in writing to the Buyer.

3.3 It is the responsibility of the Buyer to satisfy itself with the Specifications and the Buyer understands, acknowledges and accepts the Specifications.

3.4 The Buyer may provide a Forecast to BBD and the Buyer acknowledges and agrees that BBD will rely on the Forecast for the purpose of planning, ordering and arranging its resources to be able to meet the requirements of the Forecast.

- 3.5 The Buyer may place an Order.
- 3.6 The Buyer will ensure that the Order meets the minimum order quantity, order requirements, shipping quantity and shipping requirements notified by BBD.
- 3.7 BBD may accept or reject the Order by notifying the Buyer in writing as soon as reasonably practicable after receiving the Order.
- 3.8 An Order is not binding on BBD until the Order is accepted by BBD.
- 3.9 BBD will issue an Invoice to the Buyer for the Order.
- 3.10 BBD may require the Buyer to pay a Deposit upon acceptance of the Order before the Products are produced, packed and are ready for Delivery.
- 3.11 The Buyer will pay to BBD the Purchase Price in accordance with the Payment Terms.
- 3.12 If the Buyer fails to pay BBD the Purchase Price in accordance with the Payment Terms, the Buyer will be in default of these Terms and the Agreement.
- 3.13 If the Purchase Price is due to be paid after Delivery:
 - (a) the Buyer must complete, sign and submit a Credit Application to BBD;
 - (b) the Credit Application must be approved by BBD; and
 - (c) the terms of the Credit Application apply to the Agreement.
- 3.14 If the Buyer disputes an Invoice, wholly or in part, the Buyer shall give notice to BBD within 3 Business Days of the date of the Invoice.
- 3.15 If the Buyer does not give notice pursuant to clause 3.14, the Buyer is deemed to have accepted the Invoice as correct.
- 3.16 The Buyer agrees to pay the Invoice in full in accordance with the Payment Terms despite:
 - (a) disputing an Invoice pursuant to clause 3.14; or
 - (b) the parties participating in the dispute resolution process pursuant to clause 9.
- 3.17 The Buyer is responsible for ensuring that the Buyer and the Products satisfy and comply with the relevant legislation, regulations and requirements in the territory that the Buyer will be distributing, selling or consuming the Products in.

4. DELIVERY

- 4.1 The Buyer acknowledges that there is a Leadtime.
- 4.2 Upon BBD accepting the Order pursuant to clause 3.7, BBD will:
 - (a) arrange production of the Products;
 - (b) arrange Delivery of the Products; and
 - (c) notify the Buyer of the Leadtime and the estimated Delivery Date.
- 4.3 Any Delivery Date is an estimate only.
- 4.4 While BBD will use its best and reasonable commercial endeavours to effect and achieve Delivery by the Delivery Date or a Delivery Date requested by the Buyer:
 - (a) BBD does not guarantee or warrant Delivery by the Delivery Date or a Delivery Date requested by the Buyer;
 - (b) BBD is not liable at all for any loss arising out of, or in connection to,:
 - (i) early Delivery before the Delivery Date or Delivery Date requested by the Buyer; or
 - (ii) delay in Delivery after the Delivery Date or Delivery Date requested by the Buyer; and
 - (c) the Buyer is not entitled to be compensated by BBD for any loss or damage arising from any delay in Delivery or early Delivery.
- 4.5 BBD may, in its absolute discretion, delay Delivery until the Buyer has paid the Purchase Price in accordance with the Payment Terms.
- 4.6 If the Product is being exported from Australia to the Buyer, BBD will provide to the Buyer within a reasonable time before shipment and after BBD has received the necessary shipping documents from BBD's freight carrier,

at BBD's cost, all documentation necessary to deliver the Product to the Delivery Address, including the necessary shipping documents, being the Invoice, packing list, declaration, certificate of origin and packing note.

- 4.7 If the Buyer requires the Delivery Date to be extended to a later date:
- (a) the Buyer must request an extension of the Delivery Date at least 5 Business Days before the earlier of the Delivery Date or 5 Business Days before the estimated shipping date notified by BBD (**Extension Request**); and
 - (b) BBD is to give notice to the Buyer within 3 Business Days of receiving the Extension Request stating:
 - (i) whether BBD approves the extension of the Delivery Date (**Extended Delivery Date**); and
 - (ii) the reasonable charges, costs, expenses, losses or interest incurred by BBD as a result of the Extension Request and Extended Delivery Date that are to be paid by the Buyer as result of the Extended Delivery Date.
- 4.8 If BBD does not approve the Extension Request pursuant to clause 4.7(b)(i):
- (a) the Delivery Date is to remain unchanged; and
 - (b) BBD will arrange Delivery of the Products in accordance with the Order and the Agreement.
- 4.9 BBD reserves the right to deliver the Products in an Order by instalments.
- 4.10 If BBD delivers the Products in an Order by instalments, the Buyer shall not be entitled to:
- (a) terminate or cancel the Order or Agreement; or
 - (b) recover from BBD any claim, loss or damage howsoever arising by BBD delivering the Products in an Order in instalments.
- 4.11 The Buyer agrees not to Distribute the Products, either directly or through an agent:
- (a) outside of the Territory; or
 - (b) to any Customer who the Buyer reasonably expects or suspects, or should reasonably expect or suspect, Distributes or resells the Products outside of the Territory,
- without the prior written consent of BBD.

5. RISK, TITLE AND OWNERSHIP

- 5.1 Risk in the Product:
- (a) remains with BBD up to Delivery;
 - (b) passes to the Buyer upon Delivery,
- unless otherwise specified in the Incoterms that may apply to the Order as nominated by BBD.
- 5.2 For the purpose of this clause, and unless otherwise specified in the Incoterms that may apply to the Order as nominated by BBD:
- (a) BBD will maintain appropriate insurance for the Product and may maintain trade credit insurance with a reputable insurer; and
 - (b) the Buyer shall within 2 Business Days do anything reasonably required by BBD or BBD's insurer to maintain the insurances.
- 5.3 Title in the Product passes from BBD to the Buyer upon the later of:
- (a) payment for all amounts owing by the Buyer to the Seller being received by BBD; or
 - (b) Acceptance.
- 5.4 If Delivery occurs before title in the Product passes to the Buyer:
- (a) the Buyer must store the Product so that the Product is identifiable as those supplied by BBD;
 - (b) the Buyer must ensure the Product is properly stored and adequately insured;
 - (c) the Buyer grants to BBD a right to enter any premises, location or building occupied by the Buyer or where the Product is located for the purpose of retaking possession of the Product;
 - (d) and if the Buyer sells or purports to sell any of the Product in which title has not yet passed to the Buyer, then:
 - (i) the Buyer does so as a fiduciary and trustee for BBD;

- (ii) the proceeds of the sale of the Product are the property of BBD to the extent of any money owed to BBD by the Buyer and are to be held on trust for BBD; and
- (iii) the Buyer must account to BBD for that portion of the proceeds of sale of the Product on demand; and
- (e) a security interest in all Product and proceeds of sale is created and clause 8 applies.

6. INSPECTION

- 6.1 Upon Delivery, the Buyer will carry out an Inspection of the Product within the Inspection Period. The Buyer must act reasonably in the Inspection.
- 6.2 If, as a result of the Inspection, the Buyer considers that the Product is Non Conforming Product, the Buyer must give written notice to BBD (**Non Conformance Notice**) within the Inspection Period that:
- (a) the Buyer is not satisfied that the Product meets the Specifications, the Order, is defective or has been damaged or lost in transit and is Non Conforming Product;
 - (b) the reason the Buyer is not satisfied with the Product and considers the Product to be Non Conforming Product; and
 - (c) the Buyer accepts or does not accept the Product.
- 6.3 If the Buyer issues a Non Conformance Notice:
- (a) the Buyer will allow BBD or an independent party the opportunity to carry out an Inspection within a reasonable time after Delivery;
 - (b) the cost of the Inspection by BBD or independent party is to be paid by:
 - (i) BBD, if, following the Inspection, BBD or the independent party declares that the Product is Non Conforming Product; or
 - (ii) the Buyer, if, following the Inspection, BBD or the independent party declares that the Product is not Non Conforming Product and does satisfy Specifications, the Order, is not defective and has not been damaged or lost in transit.
- 6.4 If, following the Inspection, BBD or the independent party declares that the Product is Non Conforming Product:
- (a) BBD will negotiate in good faith with the Buyer to remedy the issue pursuant to clause 11.1; and
 - (b) if the negotiation pursuant to clause 6.4(a) does not reach an agreement between the Buyer and BBD, BBD will:
 - (i) arrange for the Product to be returned to BBD as soon as possible or disposed of, at BBD's discretion; and
 - (ii) if the Purchase Price has been paid by the Buyer, refund the Purchase Price to the Buyer within 10 Business Days; and
 - (c) BBD's liability in relation to Non Conforming Product is limited to:
 - (i) replacing the Product; or
 - (ii) refunding the Purchase Price to the Buyer.
- 6.5 Despite clauses 6.2, 6.3 and 6.4, the Buyer will pay the Purchase Price in accordance with the Payment Terms without offset, discount or other deduction, except where both parties agree otherwise.
- 6.6 If the Buyer does not issue a Non Conformance Notice within the Inspection Period, it is deemed:
- (a) Acceptance; and
 - (b) that the Product satisfies the Specifications, the Order, is free from defect, has not been damaged or lost in transit and is not Non Conforming Product.
- 6.7 BBD will not be liable for any damage to the Product, replacement of the Product or refund of the Purchase Price if the Buyer has failed to store the Product in accordance with BBD's instructions and in a reasonably proper manner after Delivery.
- 6.8 BBD may, in its absolute discretion, accept the return of Product if BBD determines:
- (a) the Product is Non Conforming Product;
 - (b) that BBD did not comply with these Terms or the Agreement; or
 - (c) Acceptance has not yet occurred.

- 6.9 If BBD accepts the return of the Product for any reason other than clauses 6.8(a) and 6.8(b):
- (a) the Buyer shall comply with the instructions provided by BBD's logistics department for the return of the Product; and
 - (b) the Buyer shall pay to BBD a re-stocking fee as notified by BBD.

7. GOODS AND SERVICES TAX, DUTIES, CHARGES AND COSTS

- 7.1 If the supply of the Product is a taxable supply pursuant to the GST Act or any other value added taxation legislation or regulation, the Buyer will be responsible for paying GST and other value added taxation that may apply in addition to the Purchase Price to BBD.
- 7.2 If the Product is being exported from Australia to the Buyer:
- (a) the parties acknowledge that the supply of the Product for the purpose of export from Australia is GST-free under the GST Act;
 - (b) if for any reason, the supply of the Product does not satisfy the requirements for a GST-free supply pursuant to the GST Act, the Buyer will be responsible for paying GST and other value added taxation in addition to the Purchase Price to BBD; and
 - (c) the Buyer is responsible for paying any duties, charges or costs that may be payable on importing the Product.

8. PPS LEGISLATION

- 8.1 In this clause, financing statement, financing change statement, security agreement, and security interest has the meaning given to it, or similar, by the PPS Legislation.
- 8.2 The Buyer acknowledges and agrees that these Terms and the Agreement constitute a security agreement for the purposes of the PPS Legislation and creates a security interest in all Product that have previously been supplied and that will be supplied in the future by BBD to the Buyer.
- 8.3 The Buyer undertakes to:
- (a) promptly sign any documents and provide any further information (such information to be complete, accurate and up-to-date in all respects) which BBD may reasonably require to;
 - (i) register a security interest in any register established by the PPS Legislation (PPSR);
 - (ii) register any other document required to be registered by the PPS Legislation; or
 - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, BBD for all expenses incurred, including legal costs and expenses on a solicitor' client basis, and associated with:
 - (i) registering a financing statement or financing change statement on the PPSR or releasing any Product charged and registered on the PPSR;
 - (ii) enforcement or attempted enforcement of any security interest granted to BBD by the Buyer;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of BBD;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Product in favour of a third party without the prior written consent of BBD;
 - (e) immediately advise BBD of any material change in its business practices of selling the Product which would result in a change in the nature of proceeds derived from such sales.
- 8.4 The Buyer waives their right to receive notices under the PPS Legislation.
- 8.5 The Buyer consents and appoints BBD to be an interested person and authorised representative for the purposes of the PPS Legislation.
- 8.6 The Buyer must unconditionally ratify any actions taken by BBD under this clause 8.
- 8.7 Subject to any express provisions to the contrary nothing in these Terms and the Agreement is intended to have the effect of contracting out of any of the provisions of the PPS Legislation.

9. PRODUCT RECALL

- 9.1 BBD or the Buyer must notify the other party as soon as reasonably practicable in writing after becoming aware of any need for a Product Recall.
- 9.2 A Product Recall is not be initiated at any time without BBD's approval.
- 9.3 If a Product Recall is required:
- (a) the Buyer shall:
 - (i) not make, or authorize or cause to be made, any public announcement relating to the Product Recall unless it has the prior written consent of BBD;
 - (ii) provide reasonable assistance to BBD to manage and carry out the Product Recall;
 - (iii) comply with the reasonable directions and requirements of BBD or government agency in relation to the Product Recall and effecting the Product Recall;
 - (iv) consult with BBD during the Product Recall; and
 - (v) cooperate and assist BBD in investigating the cause of the Product Recall, if requested by BBD;
 - (b) BBD shall
 - (i) take all reasonable steps to effect the Product Recall; and
 - (ii) reimburse the reasonable costs of the Product Recall incurred by the Buyer up to the amount recovered by BBD's relevant insurance policy apportioned for the Buyer, upon recovery from BBD's relevant insurer and to the extent that the Product Recall was caused by or arose out of the actions or omissions of the Buyer.
- 9.4 If, after the investigation of the cause of the Product Recall, BBD reasonably determines that the Product Recall was caused by the Buyer or any of its agents, the Buyer shall reimburse BBD for reasonable costs and expenses relating to the replacement, retrieval, segregation, storage, transportation, destruction and/or disposal of affected Products, together with all insurance, legal and other professional costs of the Product Recall.

10. TRADE MARKS AND INTELLECTUAL PROPERTY

- 10.1 The Buyer acknowledges and agrees that BBD owns or is licensed to use the Trade Marks and Intellectual Property.
- 10.2 The Distributor may use the Trade Marks and Intellectual Property for the purposes of Distributing in accordance with:
- (a) these Terms and the Agreement;
 - (b) the prior written consent of BBD; and
 - (c) any instructions, direction or guidelines issued by BBD.
- 10.3 The Buyer:
- (a) acknowledges that it has no proprietary right or interest in the Trade Marks and Intellectual Property;
 - (b) will not claim any right, title or interest in, or to, or in any way question, dispute or infringe the Trade Marks and Intellectual Property;
 - (c) shall promptly return the Trade Marks and Intellectual Property to BBD and immediately cease use of the Trade Marks and Intellectual Property upon request by BBD;
 - (d) shall not copy or provide the Trade Marks or Intellectual Property to any third party without BBD's express prior written consent; and
 - (e) shall not apply to register or attempt to register anywhere in the world any trade marks or intellectual property rights that is the same, substantially or deceptively similar to the Trade Marks and Intellectual Property, nor aid or abet anyone else to do so.
- 10.4 The Buyer acknowledges and agrees that any variation, modification, derivation or improvement made to the Trade Marks and Intellectual Property, whether attributable in whole or in part to the Buyer, will become and remain the property of BBD, and the Buyer assigns to BBD any intellectual property rights in the variation, modification, derivation or improvement made to Trade Marks and Intellectual Property.

11. DISPUTE RESOLUTION

- 11.1 If a dispute or difference arises between the parties and a party requires it to be resolved, that party must give the other relevant parties written notice identifying, and giving details of, the dispute or difference (**Dispute**).
- 11.2 Within 5 Business Days of a party receiving the notice referred to in clause 11.1, the Managing Directors or appointed senior executives of each party must meet and in good faith attempt to resolve the dispute or difference.
- 11.3 If the parties cannot resolve the Dispute within 15 Business Days of the notice referred to in clause 11.1, either party may require, by written notice, the Dispute to be referred to mediation (**Mediation**).
- 11.4 The mediator to be appointed must be agreed by the parties within 5 Business Days of the written notice required in clause 11.3, but failing agreement, appointed by:
- (a) if the Dispute is about a valuation, accounting or financial issue, the President of the Institute of Certified Practising Accountants; or
 - (b) otherwise, the President of the Queensland Law Society.
- 11.5 Mediation must occur within 10 Business Days of selection or nomination of a mediator, on such procedural terms as agreed or, failing agreement, as stipulated by the mediator.
- 11.6 The costs of Mediation must be shared equally by the parties, other than their own costs of them and their advisers considering and attending.
- 11.7 Unless a party has complied with clauses 11.1 to 11.6, that party may not commence court proceedings or arbitration relating to a Dispute except where that party seeks urgent interlocutory relief in which case that party need not comply with this clause before seeking relief.
- 11.8 Despite the Dispute, the parties will continue to perform their obligations under these Terms and the Agreement unless otherwise agreed in writing.

12. DEFAULT

- 12.1 If the Buyer breaches these Terms or any term of the Agreement:
- (a) the Buyer will pay to BBD interest on any money not paid in accordance with the Payment Terms from the date of the money being due to be paid at the default interest rate published by the Queensland Law Society current as at the date of the money being due to be paid;
 - (b) BBD may take back possession of the Product and for this purpose:
 - (i) BBD may enter the Buyer's premises or any premises the Product is stored at for the purpose of taking back possession of the Product without any claim for trespass;
 - (ii) BBD may, upon demand, require the Buyer to pay:
 - (A) a re-stocking fee of 10% of the value of the Product taken back to re-supply the Product; and
 - (B) any other expenses, losses, damages and costs incurred by BBD as a result of taking back possession of the Product;
 - (c) BBD may terminate the Agreement immediately by giving written notice to the Buyer; and
 - (d) BBD may require the Buyer to pay, upon demand, any expenses, losses, damages and costs incurred by BBD as a result of the breach or terminating these Terms, the Agreement or the Order within 5 Business Days of the breach or termination of these Terms, the Agreement or the Order.
- 12.2 If BBD breaches these Terms or any term of the Agreement, other than arising out of or in connection with a Dispute and the parties are complying with clause 11, the Buyer may terminate the Agreement immediately if the breach is not remedied within 10 Business Days after the Buyer gives notice to BBD to remedy the breach.

13. LIABILITY AND INDEMNITY

- 13.1 The Buyer shall:
- (a) comply with all relevant laws, regulations and orders relating to the purchase and Distribution of the Product; and
 - (b) fully cooperate with BBD in any Product Recall or consumer protection investigation in relation to the Product.

- 13.2 To the full extent permitted by law, the Buyer is liable for and indemnifies BBD, including BBD's directors, officers, agents, employees and successors and assigns, for any loss, claim, expense and damage, whether incurred by or awarded against BBD, that BBD sustains or incurs, arising out of or in connection with these Terms or the Agreement including, but not limited to:
- (a) a breach of a term of these Terms or the Agreement by the Buyer;
 - (b) any breach of legislation by the Buyer;
 - (c) a claim by a third party arising from any act or omission of the Buyer or any of its personnel in connection with these Terms or the Agreement;
 - (d) any negligent, wilful, reckless or unlawful act or omission of the Buyer or any of its personnel in connection with these Terms or the Agreement; and
 - (e) any injury or death to any person caused by an act or omission of the Buyer or its personnel,
- except to the extent that the damages are caused by any negligent, wilful, reckless or unlawful act or omission by BBD or a material breach of a term of these Terms or the Agreement by BBD.
- 13.3 To the full extent permitted by law, BBD is liable for and indemnifies the Buyer, including the Buyer's directors, officers, agents, employees and successors and assigns, for any loss, claim, expense and damage, whether incurred by or awarded against the Buyer, that the Buyer sustains or incurs, arising out of or in connection with this Agreement including, but not limited to:
- (a) a breach of a term of these Terms or the Agreement by BBD;
 - (b) any breach of legislation by BBD;
 - (c) the Products not meeting the Specifications;
 - (d) any negligent, wilful, reckless or unlawful act or omission of BBD or any of its personnel in connection with these Terms or the Agreement; and
 - (e) any injury or death to any person caused by an act or omission of BBD or its personnel,
- except to the extent that the damages are caused by any negligent, wilful, reckless or unlawful act or omission by the Buyer or a material breach of these Terms or the Agreement by the Buyer.
- 13.4 Except as expressly set out in these Terms or the Agreement and except for liability under any Prescribed Terms, to the full extent permitted by law all conditions, warranties, guarantees, terms and obligations expressed or implied by law or otherwise relating to these Terms or the Agreement or to the performance of the obligations by BBD under these Terms, the Agreement or to the Product are excluded, except for those conditions, guarantees and warranties as to title in the Product.
- 13.5 BBD is not liable to the Buyer or to any other person for:
- (a) any loss, claim, expense or damage suffered arising out of or in relation to these Terms, the Agreement or the Product to the Buyer's property;
 - (b) any indirect, punitive, exemplary, incidental, special or consequential loss or damage suffered by the Buyer arising out of or in connection with these Terms, the Agreement, Quote, Order or Product, including but not limited to loss of profits or anticipated profits, economic loss, claims of Customers, costs of money, loss of use of capital or revenue, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:
 - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
 - (ii) the Buyer or any other person previously notified BBD of the possibility of the loss or damage.
- 13.6 To the extent permitted by law, BBD limits its liability to indemnify the Buyer in respect of any actions brought by a consumer of the Product in respect of loss or damage as a result of a breach of a condition or warranty implied by law into a contract for the supply of the Product to:
- (a) the cost of replacing the Products; or
 - (b) the cost of obtaining equivalent products,
- whichever is the lowest amount and at BBD's discretion.
- 13.7 Despite clauses 13.3, 13.4 and 13.6 **Error! Reference source not found.**, and to the extent permitted by law, if BBD is liable to the Buyer for any reason, the parties agree that the liability of BBD, howsoever arising, that in anyway relates to or in connection with these Terms or the Agreement, whether under the law of contract, tort, the Australian Consumer Law or otherwise, including all costs and expenses, shall be limited to the aggregate

total Purchase Price of the Orders over the 12 months immediately preceding the event that gave rise to the liability.

14. ASSIGNMENT

- 14.1 BBD may assign its rights and obligations under these Terms or the Agreement to an associated person, entity or organisation at any time by giving notice to the Buyer within a reasonable time after the assignment.
- 14.2 The Buyer cannot assign or sell its rights and obligations under these Terms or the Agreement to any other person, entity or organisation unless BBD consents in writing.

15. FORCE MAJEURE

- 15.1 If a party is wholly or partially unable to perform its obligations under these Terms or the Agreement directly or indirectly as a result of a Force Majeure Event, including but not limited to any delay in the Delivery Date, then:
 - (a) as soon as reasonably practicable after the Force Majeure Event arises, that party must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Agreement; and
 - (b) that party may suspend or partially suspend performance of its obligations in accordance with the Agreement for the duration of the delay arising directly out of the Force Majeure Event, up to 30 days from the termination of the Force Majeure Event.
- 15.2 BBD is not responsible for any delay in the Delivery Date that may occur as a result of a Force Majeure Event.
- 15.3 If the performance of an obligation is delayed as a result of the Force Majeure Event beyond 60 days, either party may terminate this Agreement immediately by giving notice to the other party.
- 15.4 This clause does not apply to any obligation to pay money.

16. ANTIBRIBERY COMPLIANCE

- 16.1 The parties agree to comply with all laws, regulations and policies relating to anti-bribery and anti-corruption to which either party is subject to.

17. DATA PROTECTION LAWS

- 17.1 The parties acknowledge that the Data Protection Laws governs the processing of Personal Data of citizens.
- 17.2 The parties shall take all measures to ensure that the conduct and operation of its business is in compliance with Data Protection Laws, including but not limited to:
 - (a) establishment of data protection policies and procedures concerning the collection, processing (including by third parties), use, storage, retention and security of Personal Data and have implemented or are in the process of implementing staff training, use testing, audits or other documented mechanisms to ensure and monitor compliance with such policies and procedures;
 - (b) appointment of a data protection officer if required to do so under the Data Protection Laws;
 - (c) implementation of technical and organizational measures to protect against the unauthorized or unlawful processing of, or accidental loss or damage to, any Personal Data processed by BBD or its affiliates generally, and to ensure a level of security appropriate to the risk represented by the processing and the nature of the Personal Data to be protected;
 - (d) establishment of a data breach response plan that enables the party to comply with the related requirements of the Data Protection Laws;
 - (e) compliance with all applicable requirements under the Data Protection Laws relating the disclosure or transfer of Personal Data, except as would not have a material adverse effect; and
 - (f) implementation of the registration process as required by the Data Protection Laws.
- 17.3 In this clause, the following terms have the following meaning:
 - (a) **Data Protection Laws** means all data protection and privacy laws, regulations and standards applicable to Personal Data, including but not limited to the *Privacy Act 1988* (Cth), the *Data Protection Act 2018* (UK), the GDPR, the *California Consumer Privacy Act*, the *Personal Information Protection Act*, and any other relevant local, national and international laws;

- (b) **GDPR** means the Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of Personal Data;
- (c) **Personal Data** means any information relating to an identified or identifiable individual or natural person in accordance with Data Protection Laws.

18. MODERN SLAVERY AND HUMAN TRAFFICKING

18.1 The parties agree, warrant and undertake that they shall:

- (a) comply with all applicable modern slavery and human trafficking laws, regulations and standards in force from time to time including, but not limited to, the *Modern Slavery Act 2018 (Cth)*, *Modern Slavery Act 2015 (UK)* and any other relevant local, national and international laws aimed at preventing modern slavery and human trafficking; and
- (b) take reasonable steps to ensure that there is no modern slavery and/or human trafficking in any part of their business, operations, logistics or supply chain network or any part of their sub-contractors business, operations, logistics or supply chain network;
- (c) implement due diligence procedures to identify, assess and address risks of modern slavery and/or human trafficking within any part of their business, operations, logistics or supply chain network and any part of their sub-contractors' business, operations, logistics and supply chain network;
- (d) notify each other as soon as they become aware of any actual or suspected modern slavery and/or human trafficking in their business, operations, logistics or supply chain network; and
- (e) keep records of all training offered and completed by their employees and shall make a copy of the record available to each other on request.

19. NOTICES

19.1 A notice or other communication to a party must be in writing and delivered to that party in one of the following ways:

- (a) delivered personally;
- (b) posted to the address for each party set out in the Invoice when it will be treated as having been received on the third Business Day after posting; or
- (c) sent by email to the email address for each party set out in the Invoice when it shall be taken to have been received upon the sender receiving a read-receipt, or where a read-receipt is not requested by the sender, 2 hours after the time sent (as recorded on the device from which the sender sent the email), provided that no delivery failure notification is received by the sender within 24 hours of sending such communication, however, an email taken to have been received after 5:00pm on a business day, or on a non-business day (at the place of receipt) shall be deemed to take effect at the opening of business on the next following business day in such place.

20. APPLICABLE LAW

20.1 These Terms and the Agreement are made in the State of Queensland, Australia.

20.2 These Terms and the Agreement are governed by and are to be construed in accordance with the laws in force in Queensland, Australia and the parties submit to the jurisdiction of the courts of Queensland, Australia.

21. ENTIRE AGREEMENT

21.1 These Terms and the Agreement represents the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings between the parties.

22. VARIATIONS

22.1 BBD may vary these Terms at any time and any variation shall be effective from the date of the variation and may be published on BBD's website.

23. WAIVER

- 23.1 The failure of a party to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.
- 23.2 Any waiver must be in writing and signed by the party to be bound.

24. SEVERABILITY

- 24.1 If any part of these Terms or the Agreement is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted and these Terms and the Agreement will remain otherwise in full force.

25. JOINT AND SEVERAL

- 25.1 An obligation of two or more persons under these Terms or the Agreement binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of these Terms and the Agreement will take effect for the benefit of those persons jointly and severally.

26. FURTHER ASSURANCES

- 26.1 Each party will sign and complete all further documents and do anything else that may be reasonably necessary to effect, perfect or complete the provisions of these Terms and the Agreement and the transactions to which it relates.