

TERMS AND CONDITIONS OF TRADE



Following are the Terms and Conditions of Trade (“**Trading Terms**”) for **TAMBAVALE (QLD) PTY LTD (ACN 109 550 218)** including, but not limited to Liquid Specialty Beverages, Suncoast Wholesale Liquor, Suncoast Wholesale Liquor and any related body corporate, any subsidiary or associated entity and as trustee of any trust from time to time, of 15 Walter Crescent, Lawnton in the State of Queensland (individually and together called “**Tambavale**”)

1. **Payment:** The Customer must pay for all purchases within 7 days from the date on which the invoice is generated, or within any alternative credit period granted in writing by Tambavale. Amounts payable by the Customer under these Credit Terms must be paid in full without deduction, retention or set-off of any kind and for any reason.
2. **Interest and Administration fee:** Tambavale is entitled to charge the Customer:
 - (a) interest on amounts not paid within the credit period specified by Tambavale at a rate equivalent to 3% p.a. above the annual business overdraft interest rate of its principal banker, as determined and calculated by Tambavale, in its discretion; and
 - (b) if any account remains unpaid at the end of the second month after the invoice is generated, an immediate amount the greater of \$20.00 or 10.0% of the amount overdue for administration fees, which sum shall become immediately due and payable. The Customer acknowledges that this fee is a genuine pre-estimate by Tambavale of the loss, costs and expenses which shall be incurred by reason of the Customer’s default in payment and the recovery thereof.
3. **Tax and other duties:** Each amount payable by the Customer under these Trading Terms in respect of a Taxable Supply by Tambavale is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. “Taxable Supply” and “GST” have the meanings set out in the A New Tax System (Goods and Products and services) Act 1999 (Cth). Further, the Customer agrees and acknowledges that it is liable to pay any tax, duty, charge or other impost or levy made at any time by any local, state or Commonwealth government in connection with the Goods or this Agreement (including, without limitation) the Wine Equalisation Tax.
4. **Withdrawal or Variation of Credit:** Tambavale may at any time, without the need to provide a reason, vary or withdraw any credit granted to the Customer. Where the Customer completes a further Application for a Commercial Trading Account, that Application will not be in derogation of but in addition to any previous general Trading Terms existing except as notified by Tambavale (or any of its related entities, subsidiaries and assigns and as Trustee of any Trust) in writing.
5. **Charge over Customer’s Property:** As security for payment to Tambavale of all moneys payable by the Customer and for the Customer’s obligations generally under these Trading Terms, the Customer charges in favour of Tambavale the whole of the Customer’s undertaking, property and assets (including without limitation all of the Customer’s interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired. The Customer irrevocably appoints each Officer as the Customer’s attorney to do all things necessary to create and register each such charge. Upon demand by Tambavale, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to Tambavale to further secure payment of the money payable by the Customer. If the Customer fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Customer acknowledges that Tambavale may execute such mortgage or other instrument as the Customer’s attorney pursuant to the appointment of Tambavale as the Customer’s attorney set out in these Trading Terms.
6. **Suspension or Ceasing of Supply:**
 - (a) Tambavale may in Tambavale’s complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Trading Terms.
 - (b) Without limiting clause 6(a), if an Event of Default occurs, Tambavale may, without prejudice to Tambavale’s other rights, call up moneys owed to Tambavale by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.
7. **Liability of Tambavale:** Tambavale will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by Tambavale, its employees, contractors or agents.
8. **Certification:** A statement signed by an Officer certifying the amount of any moneys payable by the Customer, or identifying any products and services, as being “unpaid for” is, in the absence of manifest error, conclusive and binding on the Customer.
9. **Notification of Change of Details:** The Customer will provide written notice to Tambavale of any change in the Customer’s structure or management, including any change of director, shareholder, partnership, trusteeship or address within 7 days of the change.

10. Continuing Guarantee: All guarantees under or related to these Trading Terms will be continuing guarantees and will terminate only with Tambavale's written agreement.

11. Set-Off: Tambavale may at any time set-off amounts owed by Tambavale to the Customer against amounts owed by the Customer to Tambavale.

12. Property:

(a) Where Products are to be supplied by way of sale, property in the Products shall not pass until the Customer has paid all money owing to Tambavale in full. Risk in the Products passes to the Customer at the time of delivery.

(b) The Customer holds the Products as fiduciary bailee and agent for Tambavale and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by Tambavale until payment of all moneys owed by the Customer to Tambavale. If an Event of Default occurs, then without prejudice to Tambavale's other rights, Tambavale may, without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products.

(c) If the Customer sells any of the Products supplied while money is owed to Tambavale, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.

(d) If the Products are resold, or goods and/or services using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for Tambavale. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to Tambavale at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without Tambavale's prior written consent.

(e) If the Customer uses the Products in some manufacturing process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing process as relates to such Products in trust for Tambavale. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Tambavale and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.

13. Personal Property Securities Act (Cth) 2009 ("PPSA"):

The Customer grants to Tambavale (under clause 6.1) a "Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA.

(a) In consideration of Tambavale supplying the Products to the Customer at the request of the

Customer, the Customer by signing these Trading Terms:

(i) grants to Tambavale a "Purchase Money Security Interest" ("PMSI") in all Products supplied by Tambavale to the Customer from time to time as security for payment of the purchase price of the Products;

(ii) grants to Tambavale a "Security Interest" ("SI") in all of its present and after-acquired property and in all of its present and future rights in relation to any personal property (as defined in the PPSA) from time to time as security for payment of any amount owed by the Customer to Tambavale and as security for the performance by the Customer of the obligations set out in these Credit Terms;

(iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Trading Terms will come into existence subject to the PMSI and SI granted herein and these Trading Terms without the need for any further action or agreement by any party;

(iv) acknowledges that the Customer has received valuable consideration from Tambavale and agrees that it is sufficient;

(v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by Tambavale to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.

(b) Tambavale reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Trading Terms.

(c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by Tambavale at Tambavale's complete discretion, and may, where applicable, be charged to the customer's credit account with Tambavale.

(d) The Customer must promptly, on request by Tambavale, execute all documents and do anything else reasonably required by Tambavale to ensure that the PMSI and SI created under these Trading Terms constitutes a perfected security interest.

(e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which Tambavale has any PMSI and/or SI without the prior written consent of Tambavale and will immediately notify Tambavale if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products.

(f) The Customer must not allow the Products to become accessions or commingled with other goods unless Tambavale has first perfected any PMSI or SI that Tambavale has in relation to the Products.

(g) If Tambavale perfects any PMSI and/or SI that Tambavale has in relation to the Products, the Customer must not do anything that results in

Tambavale having less than the security or priority granted by the PPSA that Tambavale assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.

- (h) The Customer irrevocably grants to Tambavale the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Tambavale has cause to exercise any of Tambavale's rights under Chapter 4 of the PPSA, and the Customer will indemnify Tambavale for any claims made by any third party as a result of such exercise.
- (i) The Customer acknowledges and agrees that: -
 - (i) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Trading Terms;
 - (ii) The Security Agreement created by these Trading Terms may only be reinstated on the terms considered appropriate by Tambavale at its complete discretion.
- (j) The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Trading Terms, and the Customer waives its right to: -
 - (i) not have goods damaged or be inconvenienced any more than necessarily incidental if Tambavale removes an accession under s.92 PPSA;
 - (ii) to receive notice of any intention to remove an accession under s.95(1)(a);
 - (iii) to apply to the Court for an order postponing the removal of the "accession" or to determine the amount payable to Tambavale for the retention of the accession under s.97 PPSA
 - (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
 - (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA
 - (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
 - (vii) to receive a Statement of Account if no disposal under s.132(4) PPSA; and
 - (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
 - (ix) to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Trading Terms under s.157 PPSA.

14. Effect of Other Terms: These Trading Terms are supplemented by the Trading Terms on Tambavale's website at www.australiantradepartners.com.au from time to time, and are in no way affected or amended by any other express or implied terms. No terms of the Customer apply to any agreement between the Customer and Tambavale.

15. Expenses: The Customer must pay to Tambavale any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by Tambavale in connection with the entry into these Trading Terms, the exercise or attempted exercise of any power, right or remedy under these Trading Terms and/or the failure of the Customer to comply with these Trading Terms.

16. Service of Notices and Documents: All notices or documents required to be given to Tambavale for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by Tambavale to the Customer for the purposes of the PPSA or for any other purposes will be effectively 'given', 'served' and 'delivered' if sent by Tambavale to the Customer by pre-paid ordinary post to any one of the following addresses: -

- (a) the last address for the Customer known to Tambavale;
- (b) if the Customer is a Company, the registered office or principal place of business; or
- (c) if the Customer trades under a registered business name, any address contained on a current business extract for that business name.

17. Transactions: The Customer will be liable for all transactions and expenses involving the Customer's credit account including any fraudulent use of the account by the Customer or any person authorised by the Customer to use the account or the Customer's employees, agents or contractors. The Customer will also be liable for any fraudulent use of the Customer's credit account which is directly or indirectly caused or contributed to by the Customer's negligence.

18. Application of Moneys Received: If Tambavale receives or recovers money in respect of a debt of the Customer, Tambavale may use the money to pay off whichever debt or part of a debt Tambavale chooses and is not compelled to apply the money as directed by the Customer or any other person.

19. Indemnity:

- (a) The Customer will indemnify Tambavale in relation to any direct or indirect loss, liability or damage suffered by Tambavale or any other person as a result of the Customer's negligence or breach of these Trading Terms.
- (b) In addition to all other indemnities set out in these Terms of Sale, the Customer indemnifies Tambavale, its employees, agents and contractors:
 - (i) against any claims made against Tambavale by any third party in respect of any loss, damage, death or injury to any person, except to the extent the liability arises out of an act or omission of Tambavale, its employees, contractors or agents;
 - (ii) in respect of any cost, loss, damage or liability (including consequential loss, loss of profits or pecuniary or special damages) incurred by Tambavale resulting from any claim arising from or in connection with any design, the installation or use of Products. The Customer accepts full responsibility and liability for any

design, installation and use of Products including, in respect of the design for the infringement of any patent, registered design or other similar matters; and

- (iii) against all losses and expenses which Tambavale may suffer or incur due to the failure of the Customer to fully observe its obligations under these Trading Terms.

20. Trusts: These Trading Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.

21. Joint and Several: If the Customer consists of more than one person, the obligations of each person are joint and several.

22. Severance: Each clause, subclause and part of these Trading Terms is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.

23. Waiver: Any waiver by Tambavale must be in writing signed by Tambavale. In the event that Tambavale elects not to exercise any of Tambavale's rights arising in connection with these Trading Terms, Tambavale's election will not constitute a waiver of any rights relating to any other breach of these Trading Terms.

24. Amendments: These Trading Terms may only be amended with Tambavale's express written agreement.

25. Assignment: The Customer may not assign any agreement under these Trading Terms without Tambavale's prior written consent.

26. Application of Laws: These Trading Terms are governed by the laws of the state as determined by Tambavale in its sole discretion. The Customer submits to and consents to the laws of the state (as determined by Tambavale in its sole discretion) having jurisdiction over these Trading Terms.

27. Time for Delivery:

- (a) Any date quoted for delivery ("**the quoted date**") is an estimate only and unless a guarantee is given by Tambavale in writing (which guarantee may be provided at Tambavale's absolute discretion) that provides for liquidated damages for any failure to deliver by the quoted date.
- (b) Tambavale shall not be liable to the Customer for any loss or damage howsoever arising even if arising out of the negligence or any act or omission of Tambavale for failure to deliver on or before the quoted date. The customer shall accept and pay for Products in accordance with these Trading Terms if and when tendered notwithstanding any failure by Tambavale to deliver by the quoted date.
- (c) Written advice to the Customer that Products are ready for delivery, whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- (d) Tambavale shall not be liable to any Customer or any other party for direct or indirect or consequential injury, loss or damage whatsoever by reason of any delay in delivery, whether the same is due to the negligence or any act or

omission of Tambavale or any other party, strike or any industrial action, be it of Tambavale or other party or any other cause whatsoever.

(e) Tambavale reserves the right to deliver by instalments. If delivery is made by instalments the Customer shall not be entitled:

- (i) to terminate or cancel the contract; or
- (ii) to any claim, loss or damage howsoever arising in relation to the failure by Tambavale to deliver any instalments on or before the quoted date.

(f) The Customer agrees that Tambavale shall not be responsible for the delay in delivery caused by, or in any way incidental to an act of God, war, fire, breakages of machinery, strikes or arising out of any other unexpected exceptional cause, or any cause beyond the reasonable control of Tambavale.

28. Risk in Products and Customer Obligations:

(a) All Products purchased by the Customer are at the risk of the Customer from the time the Products are placed on the vehicle which is to effect delivery (from Tambavale's store or warehouse) to the Customer or its nominated agent. Delivery is deemed to occur when the Products are delivered to the carrier, whether Tambavale arranges, procures or effects the transport of the Products at the request of the Customer or otherwise. The Customer must insure the Products (with Tambavale's interest noted on the policy) from the date of delivery until title passes to the Customer or the Products are sold in accordance with these Trading Terms;

(b) The Customer must inspect all Products delivered to the Customer or its nominated agent within 24 hours (or such other time period for perishable, dry, security or other Products as notified by Tambavale from time to time) of delivery to the relevant Premises ("**Inspection Period**") in order to ensure that Products delivered are as ordered by the Customer and are not delivered in a damaged state. The Customer must notify Tambavale within the Inspection Period if Products are found to be other than as ordered by the Customer or have been delivered in a damaged state.

(c) The Customer acknowledges that any Products damaged by the Customer or the Customer's transport company remains the responsibility of the Customer and/or their carrier, and that Tambavale is in no way liable for damages sustained in transit.

(d) Subject to these Trading Terms, if the Customer has not notified Tambavale within the Inspection Period that Products delivered were not as ordered by the Customer, or that Products were delivered in a damaged state, then the Products will be deemed to have been delivered in good condition and as ordered by the Customer.

(e) The Customer must inspect all invoices relating to the Products delivered and notify Tambavale in writing of any alleged discrepancy in the invoice within the Inspection Period. All claims for ullages

and short deliveries must be submitted within the Inspection Period, advising the nature of the claim and invoice number, by faxing or emailing the relevant advice (credit returns and shortages) to Tambavale. For the avoidance of doubt, invoices will be deemed to be accurate if the Customer does not notify Tambavale of any discrepancy within the Inspection Period.

- (f) The Customer acknowledges that credits to the Customer will only be applied at the discretion of Tambavale, and no credits will be accepted without prior inspection and authorisation by an Tambavale representative.
- (g) Products supplied by Tambavale are resold by the Customer in the same consequential order as the Products have been supplied by Tambavale. All Products of the same type as the Products supplied by Tambavale will be deemed to have been supplied by Tambavale unless the Customer proves to the contrary at the time Tambavale claims to be entitled to possession of such Products.
- (h) The Customer must sell the Products in the original packaging as supplied by Tambavale. The Customer must not alter or interfere in any way with the Products or remove any labelling or instructions provided with the Products.
- (i) The Customer must not make any representation or give any warranty in relation to the Products not expressly authorised by Tambavale in writing.
- (j) To the extent permitted by law, if the Customer is in breach of this Agreement, Tambavale may (without prejudice to any other rights) repossess the Products and the Customer licences Tambavale and its employees and agents to enter its premises at any time without notice for such purpose, with all related costs of Tambavale to be paid by the Customer on demand.
- (k) The Customer indemnifies Tambavale and each of Tambavale's officers, employees and agents in respect of all loss, damages and expenses relating to, or arising out of a breach of these Trading Terms.
- (l) The Customer agrees to exchange pallets that accompany the Products supplied with pallets of an identical brand and condition. If the Customer is unable to (or does not for any reason) exchange the pallets as described, the Customer agrees to be charged for the cost of the pallets at a rate equivalent to the replacement cost of new pallets.

29. Liability: The Customer acknowledges and agrees that: -

- (a) **Non-excludable Rights:** The parties acknowledge that there are statutes which may imply certain terms, conditions and warranties in these Trading Terms and also avoid or prohibit the exclusion, restriction or modification of the application of, or rights arising under, those terms, conditions or warranties ("Non-Excludable Rights").
- (b) **Exclusion of implied Terms, Conditions and Warranties:** All conditions, warranties, undertakings, inducements or representations

whether express, implied, statutory or otherwise relating in any way to the Products and/or Services supplied under the Contract are excluded to the full extent permitted by law.

(c) **Limitation of liability for Non-Excludable Rights:** To the extent permitted by law, the liability of Tambavale for any breach of any Non-Excludable Right is limited, at the option of Tambavale, to:-

- (i) the replacement of the Products or the supply of equivalent Products; or
- (ii) the payment of the cost of replacing the Products or of acquiring equivalent Products.

(d) **Losses:** Subject to these Trading Terms, Tambavale is not liable to the Customer in contract, tort including without limitation, negligence or breach of statutory duty, or to otherwise compensate the Customer, for:-

- (i) any death, injury, loss or damage to any person;
- (ii) any damage to property or the Products;
- (iii) any loss of profit, penalties, expenditure, damages or losses (including without limitation any consequential, special, incidental or indirect loss or damages) of the Customer or a third party;

caused, directly or indirectly, as a result of: -

- (iv) any advice given by its employees in connection with the Products supplied by Tambavale;
- (v) any delay in delivery of the Products or completion of the work;
- (vi) any inaccuracies in weights, measurements, capacities and other particulars of Products specified by Tambavale;
- (vii) an act or omission (including negligent acts or omissions) of Tambavale or any of Tambavale's employees, contractors or agents, or in any other way caused by any fault or negligence by Tambavale, its employees, agents or subcontractors in performing the work; or
- (viii) any failure or omission on the part of Tambavale to comply with its obligations under the contract.

(e) **Force Majeure:** Tambavale is not liable for any failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:

- (i) circumstances outside Tambavale's control;
- (ii) any failure of a supplier to Tambavale.

30. Claims: Tambavale shall not be liable for any loss or damage whatsoever and however arising whether direct or indirect or consequential in respect of any claim whenever and however made for any loss, damage, deterioration, deficiency or any other fault or harm related to the Products provided by or on behalf of or in any arrangement with Tambavale, or occasioned to the Customer or any third party or to his or their property or interest, whether or not due to the act, omission or negligence of Tambavale or its servants or agents. Notwithstanding the foregoing:

- (a) As soon as the Customer any facts or matters which form (or may form) part of any claim or complaint whatsoever become known to the Customer, the Customer shall within seven (7) days notify Tambavale in writing of the same.
- (b) Tambavale shall not be liable in any circumstances for any:
 - (i) Defects or damages caused in whole or in part by misuse, abuse, neglect, improper application, repair or alteration (other than by Tambavale) or accident;
 - (ii) Any transport, labour or other costs; and
 - (iii) Details in Products not manufactured by it but Tambavale will endeavour to pass on to the Customer the benefit of any claim made by Tambavale and accepted by the Customer and the benefit of any claim made by Tambavale and accepted by the manufacturer of such Products under a warranty given by the manufacturer of such Products, provided that nothing contained in these Trading Terms shall limit the rights of the customer to proceed against Tambavale pursuant to any relevant legislation.

31. Returns: The Customer acknowledges that Tambavale may (at its discretion) accept the return of Products where the Customer complies with the following procedure:

- (a) The Customer must advise of the proposed return within the Inspection Period, and will be credited in full provided that the Products are in their original packaging and in a saleable condition. Tambavale will issue the Customer with a credit note upon return and inspection of the goods;
- (b) The Customer must provide the following information to Tambavale prior to the acceptance of return of any Products by Tambavale: invoice number, invoice date, date delivered, stock code, reason for return and quantity returned.
- (c) The costs of returning the Products and administration fees payable to Tambavale will be paid by the Customer including, but not limited to an administration return processing fee (of not less than \$5.00) and a per carton warehouse re-shocking fee (payable per carton or part thereof at not less than \$1.00 per carton).
- (d) Any Products incorrectly supplied by Tambavale will be returned to Tambavale at no charge to the Customer.
- (e) The original invoice price for goods returned will apply to credits unless otherwise stated.
- (f) Tambavale may, at its absolute discretion, accept returns outside of the Inspection period. Any returns not notified within the Inspection Period will incur a 20% restocking fee on all Products returned.
- (g) Tambavale retains the right to reject any returns which do not comply with these Trading Terms.

32. Cancellations: The Customer acknowledges that cancellations of orders (or parts thereof) will only be accepted by Tambavale (in its absolute discretion)

where the Customer complies with the following procedure:

- (a) The Customer must advise of any cancellation within two hours of the order being placed and prior to the order being loaded onto a delivery vehicle. Tambavale may (at its absolute discretion) charge the Customer a 10% restocking fee.
- (b) Orders advised for cancellation by the Customer more than two hours after the order was placed, but prior to the order being loaded onto a delivery vehicle will incur a 10% restocking fee payable by the Customer.
- (c) Orders advised for cancellation by the Customer that have been loaded onto a delivery vehicle will incur a 20% restocking fee payable by the Customer.

33. Minimum Orders: Tambavale may (at its absolute discretion) require and/or enforce minimum order values and/or quantities of Product per delivery region.

34. Liquor Licensing Obligations & Warranties: At each time the Customer places an order for liquor products and each time such order is filled by Tambavale, the Customer warrants that:

- (a) it holds a valid and current licence to order, purchase, sell and distribute Licensed Goods in the conduct of its business ("Licence") under and in accordance with all applicable laws; and
- (b) it is not in breach of, nor has it had the terms of its, License revoked, varied or restricted and no condition has been imposed on the Licence which prohibits it from ordering, purchasing, selling or distributing the Licensed Goods in the conduct of its business

35. Definitions & interpretation: In these Trading Terms unless the context requires otherwise:

- (a) **"Trading Terms"** means these Terms and Conditions of Trade.
- (b) **"Credit-related information"** includes "credit information", "credit reporting information", "credit eligibility information" and/or "regulated information" (as the context permits) within the meaning of those terms in the Privacy Act.
- (c) **"Customer"** means the customer whose details appear in the Application for a Commercial Trading Account and the Customer's subsidiaries, holding companies and other related entities;
- (d) **"Event of Default"** means any of the following events:
 - (i) the Customer fails to pay for any Products and Services and/or the Customer breaches these Trading Terms;
 - (ii) the Customer ceases or threatens to cease carrying on business;
 - (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is

appointed, or the Customer goes into liquidation or makes an assignment or an arrangement or composition with the Customer's creditor, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Customer under administration;

- (e) "**Inspection Period**" means within 24 hours of delivery of Products to the relevant Premises (or such other time period for perishable, dry, security or other Products as notified by Tambavale from time to time)
- (f) "**Officer**" means each director, secretary, credit manager and authorised representative of Tambavale; and
- (g) "**Privacy Act**" means the *Privacy Act 1988 (Cth)* as amended from time to time.
- (h) "**Products**" includes all Products and Services supplied by Tambavale to the Customer.

36. Interpretation:

- (a) In these Trading Terms, unless the context requires otherwise, all references to a party include the party's successors and permitted assigns.
- (b) No provision of these Trading Terms will be construed adversely against a party solely because the party was responsible for drafting the provision.