



TERMS & CONDITIONS OF TRADING

IN CONSIDERATION of The Independent Liquor Group Distribution Co-operative Ltd, A.B.N. 70 252 541 400, ("the Co-operative") providing the Deferred Payment Terms to the Member, the Member acknowledges and agrees that the:

(i) Terms and Conditions (including any additional terms on the Application for Trading Account, Member Information Form or any invoice, as specified by the Co-operative only) govern any order by the Member for the supply of Goods and Services by the Co-operative. Any request from the Member to the Co-operative for the supply of Goods or Services shall constitute acceptance of these Terms and Conditions;

(ii) Terms and Conditions are effective from the date of acceptance by the Member and may be amended or superseded from time to time by notice given by the Co-operative by any means; and

(iii) Terms and Conditions constitute a security agreement for purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA").

1.0 GENERAL

1.1 The following definitions apply:

"Application for Trading Account" means the "Application for Trading Account by a Member" form;

"Deferred Payment Terms" means the deferred payment terms set out in clause 4 of these Terms and Conditions and the Member Information Form;

"Goods" and/or "Collateral" shall mean all goods supplied by the Co-operative to the Member (or on account of the Member), or ordered by the Member but not yet supplied, pursuant to these Terms and Conditions and includes goods described on any quotation, invoice, purchase order or any other document provided by the Co-operative to the Member;

"Member" means the member nominated on the relevant Application for Trading Account form;

"Member Information Form" means the member information form included in the "ILG membership pack";

"Services" means all services supplied by the Co-operative to the Member and includes services described on any quotation, invoice, purchase order or any other document; and

"Terms and Conditions" or "Trading Conditions" shall mean these terms and conditions as may be subsequently deleted, altered or amended from time to time by the Co-operative.

1.2 A certificate signed by a Director, Secretary or Manager of the Co-operative, stating the amount due and owing by a Member to the Co-operative at the date of the certificate shall be conclusive evidence against the Member that the amount so stated is due and owing as at that date.

1.3 A certificate signed by a Director, Secretary or Manager of the Co-operative, stating the Trading Conditions of the Co-operative in force at the date of such certificate shall be conclusive evidence against the Member that such trading conditions are the Trading Conditions in force as at that date.

1.4 Notices in writing to either party may be served personally or by being delivered to the party's address shown in the "Application for Trading Account" or by being posted by ordinary pre-paid mail addressed to such party at such address. In the case of service by post the notice shall be deemed to have been served two days following the date of posting.

1.5 All contracts shall be deemed to have been entered into at the Co-operative's offices in the State of New South Wales, and shall be governed by and construed in accordance with the

laws of the State of New South Wales and, where applicable, the Commonwealth of Australia, and the Member submits to the non-exclusive jurisdiction of the State of New South Wales.

1.6 Headings are for ease of reference only and shall not affect the interpretation of these Trading Conditions.

1.7 Except where the context otherwise requires, singular shall include the plural and vice versa. Each gender shall include the other genders and words importing a person shall extend to and include a corporation and vice versa.

1.8 Liability for accounts held in more than one name shall be joint and several.

1.9 The Co-operative accepts no responsibility for any changes in any law which may affect the supply of Goods or Services.

1.10 These Terms and Conditions constitute the entire agreement between the parties as to its subject matter.

1.11 If any provision of these Terms and Conditions is held to be illegal, unenforceable or otherwise invalid, that provision is deemed to be severed from these Terms and Conditions and the remainder of these Terms and Conditions will continue in full force and effect.

2.0 PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

2.1 The Member grants, and the Co-operative may register on the Personal Property Securities Register, a Security Interest in the Collateral and all other present or after-acquired property of the Member (and the proceeds of such property) to secure the payment by the Member to the Co-operative of all amounts owing to the Co-operative. The Security Interest shall continue until the Co-operative gives the Member a final release.

2.2 The Member warrants that all purchases under the Terms and Conditions are for commercial purposes only and, accordingly, the provisions of the National Consumer Credit Protection Act 2009 (Cth) do not apply.

2.3 The Member and the Co-operative agree to contract-out of the PPSA in accordance with section 115 of the PPSA to the extent that contracting out of section 115 applies for the benefit of, and does not impose a burden on, the Co-operative. The Member waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by the Co-operative in respect of the Security Interest created by these Terms and Conditions.

2.4 The Member agrees to execute any documents, provide all relevant information and co-operate fully with the Co-operative to ensure that the Co-operative has a perfected Security Interest in the personal property charged and, if applicable, a Purchase Money Security Interest (PMSI).

2.5 The Member irrevocably appoints the Co-operative and each director of the Co-operative jointly and severally to give effect to this clause 2.0 (only) to:

(a) sign any instrument on the Member's behalf; and

(b) do any act in the Member's name,

and the Member shall indemnify the Co-operative from any claims made by it or any third party as a result of the exercise of this appointment.

2.6 The Member agrees to notify the Co-operative of any change in the Member's name, trading name, structure or management including any sale or disposition of any part of the business of the Member, any change in directorships, shareholders or management or change in owner, partnership or trusteeship 14 days prior to any such change taking effect.

the independent liquor group distribution co-operative ltd.

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- 2.7 The Member agrees that, until all monies owing to the Co-operative are paid in full, it shall not sell the Collateral otherwise than in the ordinary course of business, grant any other Security Interest in the Collateral or otherwise encumber the Collateral without the written consent of the Co-operative.
- 2.8 The Member shall not agree to allow any person or entity to register a Financing Statement over any Collateral supplied by the Co-operative without the prior written consent of the Co-operative and will immediately notify the Co-operative if the Member becomes aware of any person or entity taking steps to register a Financing Statement in relation to the Collateral.
- 2.9 The Member agrees to reimburse the Co-operative for all costs and/or expenses incurred or payable by the Co-operative in relation to registering, maintaining or releasing any Financing Statement or any other document in respect of any Security Interest under these Terms and Conditions.
- 2.10 The Member agrees that the Security Interest has the same priority in relation to all amounts forming part of the total amount owing to the Co-operative, including future supplies of Goods.
- 2.11 In addition to clause 8.7, the Member irrevocably grants to the Co-operative the right to enter upon the Member's property or premises, without notice, and without being in any way liable to the Member or to any third party, if the Co-operative has cause to exercise any of the Co-operative's rights under the PPSA, and the Member shall indemnify the Co-operative from any claims made by any third party as a result of such exercise.
- 2.12 Where the Member makes a payment to the Co-operative in reduction of any amount owing whether in connection with the supply of the Collateral or otherwise, the Co-operative may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a Purchase Money Security Interest, in the order in which those obligations were incurred, and then obligations that are secured by a Purchase Money Security Interest in the order in which those obligations were incurred.
- 2.13 The following defined terms under this clause 2.0 take their respective meanings given to them in the PPSA:
- (a) proceeds,
 - (b) Purchase Money Security Interest;
 - (c) Security Interest;
 - (d) Financing Statement; and
 - (e) Financing Change Statement.
- 3.0 PAYMENT AND DEFAULT
- 3.1 Payments for Collateral supplied pursuant to any contract shall be due in accordance with the Deferred Payment Terms or as notified by the Co-operative on the relevant invoice or otherwise.
- 3.2 Payment for administration fees, finance fees, head office fees, merchandising fees and group fees for the Goods and Services supplied by the Co-operative ('Finance Fees' unless individually described), will be due not later than 30 days from the date of invoice unless otherwise agreed under the Deferred Payment Terms.
- 3.3 Payment for such Goods or Services shall not be deemed to have been made until every cheque or negotiable instrument given in respect of the same has been met by the drawer's bank. The Member shall be liable for, and expressly undertakes to pay, an administration fee in an amount set from time to time by the Co-operative, in addition to any fee charged to the Co-operative by any financial institution when any cheque tendered or any other electronic banking transaction by the Member is dishonoured for any reason.
- 3.4 If payment is not made by the Member by the due date in accordance with paragraph 3.1 hereof, then the Member shall pay to the Co-operative the finance fee applicable to cyclic billing accounts as quoted in the ILG Buying Guide issued by the Co-operative.
- 3.5 If payment is not made in accordance with the conditions stipulated in 3.1, 3.2, 3.3 (above) or 4.4 (below), interest may be charged at a rate of 2.5% per calendar month ("Interest Fee"), or part thereof, from the due date for payment to the date of actual payment and the Member expressly undertakes to pay all such interest. For the avoidance of doubt, if the Member fails to pay for Collateral in accordance with the Delayed Payment Terms set out in clause 4.4 below, the Interest Fee will be charged from the due date of payment to the actual day of payment for the relevant invoice.
- 4.0 CREDIT FACILITIES: DEFERRED PAYMENT TERMS
- 4.1 Upon receipt from a Member of a written application for deferred payment terms (included in the "Application for Trading Account" form and supported by such information required by the Co-operative from time to time) the Co-operative may provide deferred payment terms to such Member. The receipt from a Member of an "Application for Trading Account" form shall not imply that deferred payment terms will be granted.
- 4.2 Such deferred payment terms may be granted by the Co-operative at its sole discretion and if granted shall be subject to such terms and conditions as the Co-operative may, from time to time, impose and no deferred payment terms shall be made available until all the requirements of the Co-operative have been met to its satisfaction.
- 4.3 Where deferred payment terms have been granted by the Co-operative to a Member the Co-operative may at any time refuse to extend the deferred payment terms to a Member.
- 4.4 Deferred payment terms may be granted to the Member (at the sole discretion of the Co-operative and as notified by the Co-operative to the Member in writing subject to change). In consideration for the Co-operative granting the Member a deferred payment term, a finance fee will be applicable, and will be added to the total order value for each relevant order as set out below. Please Note. Finance Fee varies depending on deferred payment terms granted. The Co-Operative will notify the member of approved terms and finance fee applicable.
- (a) The deferred payment terms facility is subject to satisfactory credit approval.
 - (b) Other deferred payment period: deferred payment terms as notified by the Co-operative to the Member in writing.
- 4.5 The Co-operative reserves the right to change the finance fee or Interest Fee at anytime by giving 7 days' notice to the Member.
- 4.6 The Co-operative reserves the right to suspend or withdraw the deferred payment terms at any time without notice.
- 5.0 TERMINATION OF TRADING ACCOUNT
- 5.1 If:-
- (a) A Member does not pay the Co-operative for Goods supplied to it in accordance with the Trading Conditions; or
 - (b) A Member (being an individual or partnership) becomes bankrupt or commits an act of bankruptcy or brings his estate within the operation of any law relating to bankruptcy or is dissolved; or
 - (c) A Member (being a corporation) makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or suffers a receiver or receiver and manager or official manager to be appointed, or is unable to pay its debts when they fall due within the meaning of the Corporations Act 2001 (Cth) or an order is made or a resolution is effectively passed for the winding up of a Member; or

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- (d) A Member ceases to trade; or
- (e) A Member assigns its Membership of the Co-operative to another individual firm or corporation without prior written consent of the Co-operative; or
- (f) A Member persistently breaches the Trading Conditions, then, and in any one or more of such events, and notwithstanding any Deferred Payment Terms granted by the Co-operative to the Member, the Co-operative at any time thereafter shall have the right to and may, at its discretion:
- (g) Terminate the Member's trading account and refuse to supply further Goods or Services to the Member; and/or
- (h) Terminate the Member's access to the Deferred Payment Terms; and/or
- (i) Require the Member to pay for any further Goods or Services sold to the Member on a "Cash on Delivery" basis.
- Further, should it be considered necessary by the Co-operative to incur legal and/or other expenses, including any such expenses to a debt collection agency, in obtaining or attempting to obtain payment of any amount due by the Member, the Member shall be liable for such expenses. The Member further acknowledges that those expenses will be calculated on a commission basis at a percentage rate of up to 25% of the amount owing and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency. The Member further acknowledges that amounts received by the Co-operative may be applied first against interest, charges and expenses.
- 5.2 Within 7 days of the date on which it resigns its Membership of the Co-operative, a Member shall pay all monies owed by it to the Co-operative, notwithstanding any Deferred Payment Terms granted by the Co-operative to the Member.
- 6.0 LIMITATION OF LIABILITY
- 6.1 Any liability of the Co-operative howsoever arising whether by reason of any breach of any condition or warranty implied by a statute or an express condition or warranty in these Trading Conditions or of any duty in tort (including negligence), shall insofar as the same may be legally done be limited, at the Co-operative's option, as follows:
- (a) Any liability for a breach of a condition, subject to the said limitations, is limited in the case of Collateral to any one or more of the following (as selected by the Co-operative):-
- (i)-----The replacement of the Collateral or the supply of equivalent Collateral; or
- (ii)-----The repair of the Collateral; or
- (iii) ----The payment of the cost of replacing the Collateral or acquiring equivalent Collateral; or
- (iv) ----The payment of having the Collateral repaired.
- (b) In the case of Services such liability shall be limited to any one of the following (as selected by the Co-operative):-
- (i)-----The supply of the Services again; or
- (ii)-----The payment of the cost of acquiring those Services again.
- 6.2 The Co-operative shall not be liable for any indirect or consequential loss (including but not limited to loss of profits, loss of revenue, loss of business reputation) ("Consequential Loss") howsoever and whatsoever arising in connection with these Terms and Conditions, and without limiting the generality of the foregoing, the Co-operative shall not be liable for any Consequential Loss arising out of the late delivery or performance or non-delivery of the Goods or non-delivery of the Services. The Co-operative shall not be liable for any failure to fulfil any term or condition, or any loss or damage incurred by a Member, where any such failure is due in part to any cause beyond the Co-operative's control or to any strike, lock-out or other industrial dispute, act of God, compliance with the requirements of any Government, Port or International Authority, plant breakdown or failure of equipment, inability to obtain equipment, fuel, power, materials or transportation or by any circumstances whatsoever beyond its reasonable control.
- 7.0 COMPETITION AND CONSUMER ACT 2010 (CTH)
- 7.1 The warranties, rights and remedies of the Member as outlined in the Competition and Consumer Act 2010 (Cth) are not intended to be compromised in any way as a result of anything contained in the Terms and Conditions, except as permitted by that Act.
- 8.0 RETENTION OF TITLE
- 8.1 Title in all Collateral supplied shall remain vested in the Co-operative and shall not pass to the Member until all monies owed to the Co-operative by the Member (including, but not limited to, all collection, repossession and/or legal costs incurred) are paid.
- 8.2 The Co-operative hereby agrees that notwithstanding that title to the Collateral may not have passed to the Member that provided that the Member duly complies with these Trading Conditions, that the Member may in the normal course of its business sell title to the Collateral on behalf of the Co-operative to a third party.
- 8.3 The parties agree that until payment for the Collateral supplied by the Co-operative to the Member has been received in full that the Member shall hold the Collateral on trust on behalf of the Co-operative.
- 8.4 The Member agrees that until payment for the Collateral supplied by the Co-operative to the Member has been received in full the Member shall, at the expense of the Member keep the Collateral safely stored and separately from any other products held by the Member and in such a manner that the Collateral supplied by the Co-operative are clearly identifiable as the property of the Co-operative.
- 8.5 The Member agrees that until payment for the Collateral supplied by the Co-operative to the Member has been received in full the Member shall not remove, obliterate, damage or alter in any way any label or other marking placed on the Collateral by the Co-operative. For the purpose of this clause the Collateral shall include any box or other storage container used for the purpose of storing the said Collateral.
- 8.6 The Member acknowledges that it is the obligation of the Member to ensure that payment is made for the Collateral by cleared funds to the Co-operative.
- 8.7 In the event that the Member fails to make payment in full for the Goods or Services by the due date or commits any other breach of the contract or if any distress or execution shall be levied upon any of the Member's assets or if the Member offers to make any arrangement with its creditors or becomes unable to pay its debts as they fall due, or if any resolution or petition to wind up the Member (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Member's business or have the liquor licence cancelled or suspended then and in any such event any right of the Member to sell, dispose of or in any way use the Collateral in which property remains vested in the Co-operative shall cease forthwith. The Member shall immediately deliver any such Collateral in its possession or under its control to the Co-operative failing which the Co-operative and its employees or agents shall (without prejudice to any of its other rights and remedies) have the right to enter without notice upon the Member's premises or any other premises where the Collateral are known, or reasonably believed, to be stored to repossess the Collateral and for this purpose the Member

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grants, or will procure, all reasonable access rights and the Co-operative and its employees or agents shall be entitled to do all things required to secure repossession.

9.0 CAVEATABLE INTEREST

9.1 The Member hereby grants an equitable interest and a caveatable interest in all the Member's estate and interest in any land (freehold or leasehold) or other caveatable property for any unpaid money due and owing by the Member to the Co-operative.

9.2 The Member hereby consents to the lodging by the Co-operative of a caveat or caveats which notes the equitable interest of the Co-operative in or over all the Member's estate and interest in any land (freehold or leasehold) or other caveatable property.

10.0 ADDITIONAL TERMS: CONDITIONS OF SALE OF GOODS

10.1 These Terms and Conditions form part of every sale of Goods by the Co-operative and by accepting delivery of any Goods, the Member acknowledges that the Goods purchased are subject to these Terms and Conditions.

10.2 Stipulations as to time for payment in the Terms and Conditions for any invoice shall be of the essence.

10.3 Risk in the Goods: The Member shall take delivery of any Goods supplied to the Member by the Co-operative at the premises of the Co-operative and such Goods become the sole risk of the Member from the time when the Goods are loaded for dispatch at the Co-operative premises.

10.4 Delivery costs: Unless expressly otherwise agreed, the Member requests the Co-operative to arrange for the delivery of the Goods, at the Member's expense, from the Co-operative's premises to the Member's premises and agrees to pay any carrier arranged by the Co-operative all transportation, freight and delivery costs. If the Co-operative at its discretion pays any such costs, then the Member agrees to reimburse the Co-operative immediately on demand the full amount of such costs.

10.5 Insurance: The Member agrees at the Member's expense to insure the Goods under a comprehensive policy of insurance in the names of the Co-operative and the Members, for the full insurable value of the Goods against fire, accident, malicious damage and theft and such other risks as the Co-operative may from time to time require and the Member shall duly pay all premiums payable in respect of such policy upon request and produce a certificate of currency of the policy within three (3) days of any request. The Co-operative and the Member may agree in writing that the Co-operative may effect such insurance on behalf of, and at the cost of, the Member with respect to any Goods or a class of Goods. The Member shall not hold the proceeds of any insurance claim in respect of the Goods (to the extent that the Member's outstanding liability to the Co-operative on any account) in trust for the Co-operative and shall remit such proceeds to the Co-operative forthwith upon receipt of such proceeds.

10.6 Inspection of Goods: The Member shall inspect the Goods immediately upon delivery and no claims will be recognised by the Co-operative unless the claim is made in writing and received by the Co-operative within seven (7) days of delivery of the Goods or supply of the Services to the Member.

10.7 Monies Received: The Member agrees that:

- (a)----until payment for the Goods supplied by the Co-operative to the Member has been received in full by the Co-operative that in the event the Member sells the Goods to a third party that any payment as consideration for the Goods received by the Member from the third party shall be held by the Member in trust on behalf of the Co-operative; and
- (b)----any such money which becomes held by the Member

on trust for the Co-operative shall be forthwith forwarded in cleared funds by the Member to the Co-operative.

11.0 – ADDITIONAL TRADING TERMS

11.1 SIGNAGE OR OTHER JOINING COST

In the event that a member leaves the ILG Banner Group, sells or agrees to sell its licenced premises (as set out in the Application for Trading Account) ('Licenced Premises') current location approved by ILG or if a change of control event occurs with the member (being when control of 50% or more of the shareholding of the member entity changes hands) where signage or other costs were incurred as part of the joining process, the following amounts will be invoiced or deducted from rebates payable

- (a) Within 1 year period you will be required to pay 75% of the cost
- (b) Between a 1-2 year period you will be required to pay 50% of the cost
- (c) Between a 2-3 year period you will be required to pay 33% of the cost

11.2 REBATES

Rebates will be paid to bannered members, so long as the members account is within trading terms. ILG reserves the right to offset any rebate from outstanding sums owed.

- (a) Purchases made from January to June - ILG will remit in October.
- (b) Purchases made from July to December - ILG will remit in April.

Members must be an active banner participants as at June 30th or December 31st each period to be eligible for payment of the rebate. Members leaving the banner prior to these dates will not be eligible for rebates.

12.0 – USE OF TRADEMARK

12.1 ILG is the exclusive owner and registered proprietor in Australia under the Trade Marks Act 1995 (Cth) of the right, title, interest and goodwill in the trade mark associated with the ILG Banner Group of which the Member is a participant.

12.2 The Member desires to use the trade mark in connection with the promotion and supply of Goods and Services for which the trade mark is registered and ILG licences the use of the trade mark by the Member on the terms set out herein solely in respect of the ILG Banner Group of which the Member is a participant and only in respect of the Member's Licenced Premises.

12.3 The licence granted to the Member is non-exclusive and the Member acknowledges it has no interest in the trade mark other than pursuant to this licence.

12.4 The Member must comply with the requirements described in the ILG Banner Group style guide, as varied from time to time.

12.5 The Member must not use the trade mark other than as expressly authorised under this licence, without the prior written consent of ILG, and must do all things reasonably necessary to prevent the infringement of the trade mark.

12.6 The licence shall terminate immediately on the earlier of ILG serving a 30 day notice in writing to the Member, the Member agreeing to sell or selling the business it operates from the Licenced Premises or when the Member ceases to purchase Goods or Services from ILG. From the date of termination of this licence, the Member must:

- (a) Stop all use of the trade mark;
- (b) Procure all associates to stop all use of the trade mark;
- (c) If necessary do all such acts and execute all such documents required to cease the Member having any interest in the trade mark.