

THE BEVERAGE FOOD GROUP

The Beverage Food Group Pty Ltd ABN 33 079 121 529
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The Beverage Food Group Pty Ltd ABN 33 079 121 529
TRADING TERMS AND CONDITIONS

NOTE: Unless otherwise stated in writing, the Customer is deemed to have accepted these Terms and Conditions by accepting delivery of the goods.

In these terms and conditions the Supplier means The Beverage Food Group Pty Ltd ABN 33 079 121 529, a company duly incorporated in the State of Victoria and having its offices situated at 47 Yale Drive, Epping in the State of Victoria, and the Customer means the purchaser whose details are set out in the attached Quotation or Tax Invoice or a person or entity whose offer to purchase the Supplier's goods is accepted by the Supplier.

1. ACCEPTANCE OF CUSTOMER'S ORDER

These terms and conditions apply to every order for goods and/or services ('Order') between the Supplier and the Customer and any terms and conditions of the Customer's Order deviating from or inconsistent with these terms and conditions are expressly excluded, obviated and rejected by the Supplier. This exclusion and rejection includes any statement by the Customer that the Customer's terms and conditions shall prevail notwithstanding any stipulation by the Customer regarding the manner of declaring such rejection. A contract is only concluded between the Supplier and Customer for the supply of goods and/or services when the Order has been accepted by the Supplier. The terms of this Clause apply to every quotation or offer by the Supplier for the supply of goods and/or services.

2. PRICES

All prices are exclusive of insurance or delivery/freight charges and the Supplier may invoice the goods sold at the Supplier's price relevant to the goods ordered at the date of delivery of each Order. Where the Supplier publishes or discloses a price list, this list is an invitation to treat only and the Supplier reserves the right to accept or reject in its absolute unfettered discretion any Order which may be received by it.

The Customer acknowledges that the price of the goods and services may change from time to time without notice and it is the Customer's responsibility to confirm the price at the time the Order is placed. The Customer is otherwise taken to have accepted the price that is applicable at the time as shown on the Quotation or Tax Invoice issued by the Supplier.

Where the Customer varies the Order in any way whatsoever resulting in the supply of further goods and/or the provision of further services and/or the incurring of further expenses on the part of the Supplier, the Customer shall be charged a fee in addition to the initial quoted or invoiced fee, such fee to be calculated at the Supplier's standard fees for the time being.

Where the Supplier provides a quotation to the Customer, the quotation shall be exercisable for one (1) calendar month unless otherwise stipulated in writing.

3. PROPERTY & RISK

The risk in the goods sold pass to the Customer when all or part of the goods are loaded for consignment at the Supplier's premises whether by carrier employed or engaged by the Supplier or the Customer.

The Supplier will take out a blanket marine insurance policy to cover all goods shipped by a carrier chosen by the Supplier to the destination point.

Where the customer chooses the carrier the insurance risk lies with the customer.

Notwithstanding anything contained herein, property in and legal title to the goods does not pass to the Customer until payment for all debts owing to the Supplier by the Customer has been received by the Supplier. Until such payment has been received by the Supplier, the Customer will store the goods separately and apart from its own goods and those of any other person or company. The Supplier is entitled to re-take possession of all goods delivered until all debts owing to the Supplier by the Customer have been paid in full.

These provisions apply despite any arrangement under which the Supplier provides credit to the Customer and these provisions will prevail to the extent of any inconsistency between these provisions and any other agreement or arrangement entered into by the Customer and the Supplier. In addition, the Supplier may recover the purchase price of the goods sold to the Customer by legal proceedings and may file an application for the appointment of a liquidator to the Customer notwithstanding that property in the goods has not been passed to the Customer.

4. SPECIAL ORDERS

Where the Customer places an Order in writing with the Supplier for non-stock items, the Supplier will not accept return of non-stock items unless the manufacturer agrees to accept return from the Supplier. The Supplier may deduct transport, insurance, handling and restocking charges from the credit due to the Customer where any such items are returned to the Supplier and their return has been accepted by the Supplier in writing.

5. SUBSTITUTION

The Supplier reserves the right to substitute some other make or brand with similar specifications if any item ordered by the Customer is not available. The Customer is deemed to have accepted substitution where it does not object to same within seven (7) days of the date of delivery of the goods (unless a longer period is imposed by law). If the Customer is not satisfied with the substituted goods, the goods may be returned to the Supplier for credit.

6. CATALOGUE/WEBSITE AND SAMPLES

The Customer acknowledges, agrees and accepts that there may be variations in the colour and/or finish and/or texture of any actual products supplied to the Customer:

- (a) from those as appearing in the Supplier's catalogue;
- (b) from those as appearing in the Supplier's website; or
- (c) from any samples held by the Supplier.

7. PAYMENT

The Customer agrees to and will pay in accordance with the tax invoice rendered by the Supplier namely either by:

- (a) payment in full prior to delivery of the goods and/or ;
- (b) cash on delivery; or
- (c) terms as stated.

If the Supplier extends trading terms to the Customer, payment for all goods and/or services under any Order provided will be one of the following:

- (a) within thirty (30) days after the end of the month of the date of tax invoice;
- (b) within sixty (60) days after the end of the month of the date of tax invoice;
- (c) electronic funds transfer within seven (7) days after the end of the month of the date of tax invoice; or

(di) electronic funds transfer within fourteen (14) days after the end of the month of the date of tax invoice.

Interest is payable by the Customer, immediately on demand by the Supplier, on all amounts overdue to the Supplier from the date of provision of goods and/or services until payment at the rate of eighteen (18) per centum per annum, however all interest charges will be waived by the Supplier in the event that payment is made to the Supplier within the time stipulated by the Supplier. Where payment is not made by the due date, the Customer shall, in addition to any other obligations imposed hereunder, pay to the Supplier on demand all costs of the Supplier (including but not limited to storage, delivery, collection, obsolescence and legal costs on a full indemnity basis).

All payments received by the Supplier shall be applied as follows:

- (aii) first, towards any costs of the Supplier referred to above (or any part thereof);
- (bii) second, towards any interest payable as set out above (or any part thereof); and
- (cii) third, towards any other amounts payable by the Customer to the Supplier.

Time of payment for any goods and/or services under any Order provided to the Customer is an essential term of any Order between the Supplier and the Customer.

8. CANCELLATION

Cancellation of any Order between the Customer and the Supplier requires an approval in writing from the Supplier otherwise the goods will be delivered to the Customer and the Supplier will be entitled to payment from the Customer.

The Customer must notify the Supplier of any cancellation within seven (7) days of placement of the Order.

The Supplier is not obliged to supply goods in relation to any Order and may cancel the Order at any time if:

- (a) there is a breach of any term of any Order between the Supplier and the Customer; or
- (b) the Customer has provided any false or misleading information to the Supplier including information set out in any application for credit or to open an account with the Supplier; or
- (c) the Customer commences to be wound up or is placed under official management, or a receiver, or a receiver and manager or voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrance by itself or by an agent, takes or purports to take possession of the Customer's undertaking or property or any part thereof; or
- (c) The Supplier is unable to supply goods as a result of the failure of any supplier of the Supplier to deliver goods or provide services which are required in order for the Supplier to supply the goods to the Customer.

9. SCOPE OF SERVICES

The Services we will provide to you are those requested in your Order. You authorise us to perform such Services (including related Services) which in our reasonable opinion are necessary to fully carry out the terms of your Order, even if you have specified all the particular Services in your Order.

10. ACCEPTANCE AND CLAIMS

Acceptance of the goods shall be deemed for all purposes to have taken place immediately upon transfer of possession. You will be deemed to have accepted the Goods and/or the provision of the Services (as the case may be) free of defects or other non conformity with your Order unless we receive a substantial written claim as to any defects or other non conformity within 7 days from the completion of the Commissioning period.

The Supplier's liability for a breach of any conditions or warranty implied by Division 3 of Part V of the *Trade Practices Act 1974* (other than a condition or warranty implied by Section 69 of the Act) is limited to such one or more of the following as the Supplier decides:

- (a) the replacement of the goods or the supply of equivalent goods; or
- (b) the repair of the goods; or
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

To the extent permitted by law, the Supplier is not under any liability to the Customer or to any other person in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise either directly or indirectly in respect of the supply of the goods or any ancillary services or advice or the failure or omission on the part of the Supplier to comply with its obligation hereunder.

Except as expressly provided to the contrary in these terms and conditions, all terms, conditions, warranties, undertakings, inducements or representation whether express, implied, statutory or otherwise are excluded to the extent permitted by law, including but not limited to the United Nations Convention on Contracts for the International Sale of Goods.

11. INTELLECTUAL PROPERTY

All Intellectual property rights, such as trade marks copyright and designs, subsisting in goods supplied to, or produced for, the Customer, unless agreed otherwise in writing by us, remains at all times the property of the Supplier.

12. FORCE MAJEURE

If delivery is prevented or delayed, in part or all, by reason of Act of God, or the consequence thereof including, but not limited to fire, flood, typhoon, earthquakes, or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, lockouts, labour disputes, boycotting of goods, ship shortage, manufacturer's bankruptcy, delays or damage in transportation or other causes beyond the Supplier's control, the Supplier may, at its option, perform the Order or the unfulfilled portion thereof within a reasonable time from the removal of the cause preventing or delaying performance, or rescind unconditionally and without liability this contract or the unfulfilled portion thereof.

13. EXCLUSIONS AND LIMITATIONS

These terms and conditions do not exclude, restrict or modify the application of any statutory provision (including a provision of the Trades Practices Act 1974) where to do so would:

- (a) contravene that statute; or
- (b) cause any part of these terms and conditions to be void.

The Supplier excludes all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this cause to be void ('Non-excludable Condition').

To the extent permitted by law, our liability to you for breach of any Non-excludable Condition (other than an implied warranty of title) is limited, at our option, to refunding the price of the Goods and/or Services in respect of which the breach occurred or to providing, replacing or repairing those Goods and/or providing those Services again.

Except for liability for breach of any Non-excludable Condition and to the extent permitted by law:

- (a) we exclude liability for loss of profits or consequential or indirect loss or damage;
- (b) our total liability to you (including any breach of any provision of a contract between us) arising directly or indirectly in relation to the provision of any Goods and/or Services, is limited to the amount paid by you to us for those Goods and/or Services; and
- (c) in circumstances where paragraph (b) above cannot legally operate, our total liability to you (including any breach of any provision of a contract between us) arising directly or indirectly in relation to the provision of any Goods and/or Services, is limited to the agreed price of those Goods and/or Services.

14. WARRANTY

Goods produced and sold will have the benefit of any warranty, as may be provided from time to time, given by the Supplier provided that the return of the goods or any part of them is in accordance with the Supplier's warranty; but the Supplier shall not be liable for any loss or damage either direct or consequential arising out of any defects arising from the design and use of the goods.

The Supplier guarantees the materials and workmanship of equipment supplied for up to twelve (12) months from the date of delivery.

The warranty DOES NOT APPLY to wear parts, electrical items not already covered by a manufacturers warranty and other consumable items or defects arising out of material provided or design specification by the Customer.

Components of other manufacturers, incorporated into Cellar Plus product, are guaranteed to the extent offered by the original manufacturer.

The Supplier will repair or replace defective parts, after investigation and inspection, that have **not** been subject to improper maintenance or extraordinary wear and tear due to use other than originally intended or specified.

All exposed electrical controls, switchgear and motors have been protected to international Standards IP55 (Hose proof) or better. Damage or deterioration by water due to excessive hosing or operator abuse is expressly **excluded** from Warranty.

You warrant that any distribution of the goods outside Australia on your behalf will not give rise to any claims against or liabilities, such as parallel import violations, to us or our officers, employees or agents.

15. CLERICAL ERRORS

Clerical errors, typing errors or other errors in computations, catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of the Supplier shall be subject to correction by the Supplier.

16. MODIFICATION

All modifications and amendments to these provisions or any approvals hereunder shall be in writing by a duly authorised signatory of the Supplier, and if otherwise, shall not be binding upon the Supplier.

17. DELIVERY

The Supplier may deliver the goods by instalments or partial shipment and the Customer will accept each such delivery. Unless otherwise agreed by the parties, delivery by the Supplier within seven (7) days shall constitute delivery by the due date. Requirements of the Customer are not a condition or of the essence of the contract. The Supplier is under no liability for either direct or consequential loss or damage to the Customer arising from delay or postponement in delivery

18. GOODS AND SERVICES TAX ("GST")

(a) All amounts expressed or described in any Order between the Customer and Supplier are GST exclusive amounts unless expressly stated otherwise.

(b) Subject to **Clause 15(a)**, if any GST (within the meaning of the *A New Tax System (Goods and Services) Act 1999* as amended from time to time, '**GST**') is payable by any party ('**Supplier**') in respect of the supply of any goods, ('**Customer**'), then the amount expressed or described in any Order ('**Original Amount**') is to be increased so that the Supplier receives an amount ('**Increased Amount**') which, after subtracting the GST liability of the Supplier on that Increased Amount, results in the Supplier retaining the Original Amount after payment of that GST liability.

(c) The Supplier will do all things reasonably available to it to assist the Customer to claim on a timely basis any input tax credits (if any) the Customer may be entitled to claim for purchase of goods. This includes the Supplier maintaining its registered status for GST purposes, and issuing tax invoices for supplies made under this Agreement on a timely basis as reasonably requested by the Customer.

19. AUTHORITY TO OBTAIN AND EXCHANGE CREDIT INFORMATION

(a) In accordance with section 15K(1)(b) of the Privacy Act 1988 you authorise us to obtain from a credit reporting agency a credit report containing personal credit information about you in order to assess whether we will provide or continue to provide credit to you.

(b) You authorise us to contact any of the contacts or references provided by you and make any such enquiries as are necessary and reasonable to give proper consideration to your application for credit.

(c) We reserve the right to suspend the supply of further Goods and/or Services on credit to you without prior notice of such action to you.

20. JURISDICTION

All contracts between the Supplier and the Customer shall be governed by the laws of the State of Victoria and the parties shall submit to the non-exclusive jurisdiction of the courts of the State of Victoria (and any courts which can hear appeals from such courts).

21. EXECUTION

Any contract between the Supplier and the Customer may be executed on behalf of the Customer by any agent or employee of the Customer and the Customer shall be bound by these terms and conditions irrespective of whether any such execution was unauthorised or fraudulent.

22. INDEMNIFICATION

(a) The Customer acknowledges and agrees to defend, indemnify and hold harmless the Supplier from and against any and all claims, actions, demands, proceedings, suits, penalties, fines, judgements, costs, losses, damages, omissions, injuries and expenses, including legal fees (on a solicitor-own-client basis) and expenses, which are related to, in connection with or arise out of or incidental to the provision by the Supplier to the Customer of any goods sold or delivered.

(b) In the event that the Customer neglects and/or fails and/or refuses to defend, indemnify or hold harmless the Supplier, the Customer acknowledges and agrees:

(i) to being joined by the Supplier as a party to any proceeding as contained in Condition 20(a) initiated against the Supplier

(ii) to pay to the Supplier all legal and other costs (on a solicitor own client basis) associated or in connection with the joinder of the Customer;

(iii) waive and forever abandon any rights which the Customer may have against the Supplier to claim or seek payment of any costs orders which may be made against the Supplier in favour of the Customer in connection with any proceedings initiated as a consequence of Condition 23(a) herein.

23. DIRECTORS GUARANTEE

Any Customer who is a company shall cause to be executed by one or more of its directors, a Guarantee and Indemnity provided by the Supplier in a form as determined by the Supplier.

24. INTERPRETATION

In these terms and conditions, unless the contrary intention appears:

(a) a reference to a person (including a party) includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency;

(b) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(c) a reference to a document (including these terms and conditions) includes any variation of it;

(d) the singular includes the plural and vice versa;

(e) the words "include", "including" or "such as" are not used as, nor are they to be interpreted as words of limitation;

(f) if a payment or other act must (but for this clause) be made or done on a day which is not a business day in Melbourne, then it must be made or done on the business day in Melbourne;

(g) this document must not be construed adversely to a party solely because that party was responsible for preparing it.