



CREDIT APPLICATION FOR A TRADING ACCOUNT

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

BUSINESS CONTACT INFORMATION

Company name (legal entity or individual – “Buyer”):

Trading as:

Phone:

Fax:

E-mail:

Registered company address:

Postal Address (if different from above):

City:

Post Code:

Year of incorporation:

Co. incorporation number:

Sole Trader

Partnership:

Limited Company

Other:

BUSINESS AND CREDIT INFORMATION

Primary business address (for delivery of goods):

City:

Post Code:

How long at current address?

Name and position of accounts contact:

Telephone:

Fax:

E-mail:

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

Full Name:

DOB:

Residential Address:

Full Name:

DOB:

Residential Address:

Full Name:

DOB:

Residential Address:

Full Name:

DOB:

Residential Address:

AGREEMENT

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

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

Name:

Date:

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

Name:

Date:

DEED OF GUARANTEE AND INDEMNITY

TO: NEW ZEALAND CRAFT BREWING COMPANY LIMITED (Beneficiary)

IN CONSIDERATION of any Beneficiary, at the request of each Guarantor, supplying goods to or providing services or advancing monies to the Buyer and/or any Beneficiary agreeing for a period of one day not to sue the Buyer for monies owed to that Beneficiary, each Guarantor undertakes and agrees (if more than one, jointly and severally) as follows: (continued overleaf)

1. Each Guarantor hereby guarantees the due and punctual payment to each Beneficiary by the Buyer, in the manner and at the times agreed upon between the relevant Beneficiary and the Buyer, or in the event that no times shall have been agreed then upon demand, of all monies which are presently owing or which may in the future become owing to the Beneficiaries or any of them by the Buyer, in relation to goods supplied or services performed or for loans or credits given by a Beneficiary, or which may otherwise become payable by the Buyer to a Beneficiary.
2. This guarantee and indemnity ("Guarantee") is a continuing guarantee and indemnity and shall be irrevocable and shall remain in full force and effect until the Beneficiaries shall grant a written release of each Guarantor from liability under this Guarantee
3. Any Beneficiary may at any time or times at its discretion and without obtaining the consent of, or giving any notice to any Guarantor, refuse credit to the Buyer.
4. Each Guarantor agrees to be bound as a principal debtor so that the liability of each Guarantor under this Guarantee shall not be released by any delay or other indulgence or concession which the Beneficiaries or any of them may grant to the Buyer or any compromise which may be reached or variation which may be agreed with the Buyer or any Guarantor by the Beneficiaries or any of them, or by any other act, matter, circumstance or law whereby any Guarantor would but the provision of this clause have been released from liability under this Guarantee.
5. Each Guarantor agrees not to compete in any way with any Beneficiary for payment in the event of the bankruptcy or liquidation of the Buyer.
6. Each Guarantor acknowledges that this Guarantee is in addition to, and not in substitution for, any other security or rights which the Beneficiaries or any of them may presently have or may subsequently acquire, and this Guarantee may be enforced against any Guarantor without having recourse to any such securities or rights and without making demand or taking proceedings against the Buyer or any other Guarantor.
7. This Guarantee shall bind each Guarantor's respective personal representatives.
8. Each Guarantor acknowledges that this guarantee and indemnity is intended to confer benefits on, and be enforceable by each of the Beneficiaries pursuant to the Contracts (Privacy) Act 1982.
9. Each Guarantor also hereby agrees (if more than one, jointly and severally) independently of the foregoing guarantee to Indemnify each Beneficiary against all losses, costs and expenses which any Beneficiary may suffer or incur as a result of any failure by the Buyer to make due and punctual payment of the monies mentioned in clause 1, whether or not the liability of the Buyer is or has become void or unenforceable for any reason and whether or not the foregoing guarantee shall be void or unenforceable against any Guarantor for any reason.
10. Each Guarantor agrees that the Beneficiaries and their agents may obtain information about them from any person (including any credit or debt collection agencies) in the course of any of the Beneficiaries' business, including credit assessment, debt collecting and its marketing activities, and the Guarantor consents to any person providing any of the Beneficiaries or their agents with such information.
11. Each Guarantor agrees that any of the Beneficiaries may use any information it has about them relating to their credit worthiness and give that information to any other person, (including any credit or debt collection agency) for credit assessment and debt collection purposes. Each Guarantor agrees that any other information collected by any of the Beneficiaries about them may be accessed or collected for the use of any of the Beneficiaries in the course of any one of the Beneficiaries business, including their marketing activities. The covenants and consents of each Guarantor in clause 10 and this clause 11 are given by those persons in their personal capacity and are directly enforceable against them in that capacity.
12. Each Guarantor (if the Guarantor is an individual (i.e. a natural person)) has rights under the Privacy Act 1993 to access and request the correction of any personal information which any of the Beneficiaries (or their agents) holds about them.

Dated on this Day:

Month:

Year:

Signature of Guarantor:

Full Name of Guarantor:

Signature of Guarantor:

Full Name of Guarantor:

Signature of Witness:

Full Name of Witness:

TERMS AND CONDITIONS OF TRADE

APPLICATION

1. The Contract forms the basis on which NZ Craft Brewing Co. supplies and sells Goods to the Customer. Each such supply and sale shall be effected pursuant to the terms of this Contract (unless in any specific case specifically agreed otherwise in writing). Any invoice or other document evidencing or describing any Goods is incorporated into and forms part of the Contract. Any variation to the Contract must be in writing and signed by a representative of NZ Craft Brewing Co..

PRICE AND FREIGHT

2. The Customer must pay the price for Goods indicated on the invoice (or other similar document) which is provided by NZ Craft Brewing Co. for those Goods. NZ Craft Brewing Co. can alter prices without notice and prices charged may be different from prices provided at the time of order.
3. The price shall be increased by the amount of any GST and other applicable taxes and duties if such taxes are not expressly included in the price. The Customer is bound to pay the price from the time that NZ Craft Brewing Co. accepts the Customer's order. An order is not binding on NZ Craft Brewing Co. until it is accepted by NZ Craft Brewing Co..
4. The Customer shall pay delivery and freight charges as set out in the invoice or NZ Craft Brewing Co.'s price list. Alterations to NZ Craft Brewing Co.'s price list shall be effective from the date specified by NZ Craft Brewing Co. at the time of giving notice to the Customer.

PAYMENT

5. Payment is due on or prior to delivery unless NZ Craft Brewing Co. has agreed in writing to provide the Customer with credit in which case payment is due in accordance with the payment date in the invoice.
6. NZ Craft Brewing Co. can vary the terms of any credit it provides to the Customer at any time. If NZ Craft Brewing Co. considers the credit worthiness of the Customer is unsatisfactory then it can require security for payment, in addition to that already provided for in this Contract, before it supplies any more Goods to the Customer.
7. NZ Craft Brewing Co. may impose a credit limit at its discretion, and alter the credit limit without notice. Where the credit limit is exceeded, NZ Craft Brewing Co. can refuse to supply Goods to the Customer.
8. The Customer cannot withhold payment or make any deductions from any amount owing by the Customer without NZ Craft Brewing Co.'s prior consent.

DELIVERY

9. NZ Craft Brewing Co. will use all reasonable efforts to deliver the Goods to the Customer on any delivery date specified. NZ Craft Brewing Co. may deliver the Goods by instalments, and each instalment shall be treated as a separate contract. NZ Craft Brewing Co. can impose minimum delivery requirements from time to time. Any time stated for delivery is an estimate only. NZ Craft Brewing Co. is not liable for any delay in delivery.

RISK AND SECURITY INTEREST

10. Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery (or from the time the Customer fails to accept the Goods or requests delayed delivery). The Customer must ensure that the Goods are insured (for their full insurable value) with NZ Craft Brewing Co.'s interest noted on the policy.
11.
 - (a) In the event Goods are damaged or partially lost during transit the Customer must, within 48 hours of delivery of the relevant Goods, provide NZ Craft Brewing Co. written notice giving reasonable particulars of any such alleged damage or partial loss. The Customer acknowledges and agrees that no claim whatsoever shall be accepted by NZ Craft Brewing Co. (or any of its agents) for any damage to, or partial loss of, Goods which occurred during transit of the Goods where written notice is not provided to NZ Craft Brewing Co. within this period.
 - (b) If you dispute an item on the invoice (item price and/or discounts) you must provide NZ Craft Brewing Co. written notice within 48 hours from the invoice date failing which you waive all claims rights relating to the item price and discount.

12. The Customer grants a security interest to NZ Craft Brewing Co. in all present and after acquired Goods and proceeds thereof as security for payment of the Goods and for any other amounts owing by the Customer to NZ Craft Brewing Co. from time to time, and for the performance by the Customer of all the Customer's other obligations to NZ Craft Brewing Co. from time to time, ("Customer's indebtedness and obligations"). For the purposes of section 36 (1) (b) of the PPSA, and to ensure maximum benefit and protection for NZ Craft Brewing Co. by virtue of section 36 (1) (b) (iii) of the PPSA, NZ Craft Brewing Co. confirms and agrees that the Customer intends to and does grant to NZ Craft Brewing Co., as security for the Customer's indebtedness and obligations, a security interest in all of the Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property"):
- in or to which the Customer has rights; and
 - which has not been supplied by NZ Craft Brewing Co. to the Customer, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by the NZ Craft Brewing Co. to the Customer.
13. While the Goods continue to secure the Customer's indebtedness and obligations the Customer must store the Goods separately and clearly identify the Goods as belonging to NZ Craft Brewing Co..
14. NZ Craft Brewing Co. authorizes the Customer in the ordinary course of its, the Customer's, business to use or sell for full consideration any Goods that are comprised in the Customer's inventory. This authority is revoked from the time that:
- an Event of Default occurs; or
 - NZ Craft Brewing Co. notifies the Customer in writing that this authority is revoked.
15. The Customer must advise NZ Craft Brewing Co. immediately of any Event of Default or any action by third parties (including any of its creditors) affecting NZ Craft Brewing Co.'s security interest in the Goods.
16. The Customer agrees to do anything that NZ Craft Brewing Co. reasonably requires to ensure that NZ Craft Brewing Co. has a perfected security interest in all of the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.
17. NZ Craft Brewing Co. may allocate amounts received from the Customer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.
18. The Customer agrees to reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to registering, maintaining or releasing any financing statement or any document, in respect of any security interest under the Contract.
19. No consent or subordination: Nothing in these terms and conditions shall be construed as:
- an agreement to subordinate the security interest created by these terms and conditions in favour of any person;
 - a consent by NZ Craft Brewing Co. to any other security interest attaching (as that term is used in the context of the PPSA) to, or any other security interest subsisting over, any of the Goods; or
 - a consent by NZ Craft Brewing Co. to any property that is not Goods becoming an accession to any Goods or consent that any Goods become an accession to any property that is not Goods.

CONTRACTING OUT OF THE PPSA

20. The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Contract.
21. The Customer:
- agrees that nothing in sections 114(1) (a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the Customer's rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and
 - agrees that where NZ Craft Brewing Co. has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.

WARRANTIES

22. NZ Craft Brewing Co. only warrants that the Goods (but not including services for this purpose) are of the agreed quality and that any services are provided with due care and skill.
23. If the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 ("CGA") does not apply. If the Customer on-sells the Goods then it must be a term of the sale contract that the CGA does not apply if the Goods are being acquired for business purposes.
24. The Customer indemnifies NZ Craft Brewing Co. against any liability or cost incurred by NZ Craft Brewing Co. under the CGA as a result of any breach by the Customer of the obligations contained in the Contract.
25. The following terms apply wherever the CGA does not apply, or where the following terms are not inconsistent with the CGA:
- defective Goods or Goods which do not comply with the Contract shall at NZ Craft Brewing Co.'s discretion be repaired, replaced or repeated, or the price refunded;
 - any right which the Customer may have to reject non-conforming or defective Goods shall only be effective if the Customer notifies NZ Craft Brewing Co. in writing within five days following delivery and NZ Craft Brewing Co. is given the opportunity to inspect the Goods;
 - NZ Craft Brewing Co. accepts no liability for any Claim by the Customer or any other person, including without limitation any Claim relating to or arising from:
 - any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise;
 - any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by NZ Craft Brewing Co. in writing, and the Customer agrees to indemnify NZ Craft Brewing Co. against any such Claim. In any event, NZ Craft Brewing Co.'s liability under any Claim shall not exceed the price of the Goods.
26. Nothing in these terms is intended to have the effect of contracting out of the provisions of the CGA except to the extent permitted by the CGA, and these terms are to be modified to the extent necessary to give effect to that intention. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

DEFAULT

27. If an Event of Default occurs, NZ Craft Brewing Co. may suspend or terminate the Contract.
28. If the Customer does not pay the Price by due date:
- NZ Craft Brewing Co. may (without prejudice to NZ Craft Brewing Co.'s other rights and remedies in respect of non-payment or late payment) charge a default penalty at a rate per annum equal to 4% above the retail lending base rate of NZ Craft Brewing Co.'s banking provider as varied from time to time and calculated on a daily basis on the unpaid portion of the price from due date until payment in full, plus any GST; and
 - any discounts may be disallowed.
29. If an Event of Default occurs, all amounts owing by the Customer shall immediately become due and payable notwithstanding that the due date has not arisen.
30. NZ Craft Brewing Co. is entitled to recover from the Customer all legal, accounting and other costs incurred by NZ Craft Brewing Co. arising from the collection of any amount owing by the Customer or in relation to maintaining or releasing any financing statement in respect of any security interest under the Contract. If any payment tendered by the Customer is dishonoured or is required to be presented or actioned again by NZ Craft Brewing Co., NZ Craft Brewing Co. may, at its sole discretion require the customer to pay NZ Craft Brewing Co. an administration fee of \$25 (excluding GST if any).
31. NZ Craft Brewing Co. can also terminate any services provided to the Customer by giving the Customer seven days' notice of termination.
32. At any time after an Event of Default, NZ Craft Brewing Co. may:
- enter on any land or premises where the Goods may be situated and take possession of the Goods;
 - sell or dispose of the Goods in such manner and generally on such terms and conditions as NZ Craft Brewing Co. thinks fit; and
 - whether or not NZ Craft Brewing Co. has exercised any other right, appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.

USE OF INFORMATION

33. The Customer, Directors and Partners each agree that NZ Craft Brewing Co. and its agents may obtain information about them from the Customer or any other person (and each of its related Companies ("Companies") and any credit or debt collection agencies) in the course of NZ Craft Brewing Co.'s business, including credit assessment, debt collecting and its marketing activities, and the Customer, Directors and Partners consent to any person providing NZ Craft Brewing Co. or its agents with such information.

34. The Customer, Directors and Partners agree that NZ Craft Brewing Co. may use any information it has about them relating to their credit worthiness and give that information to any other person, including any credit or debt collection agency and any of the Companies, for credit assessment and debt collection purposes. The Customer, Partners and Directors agree that any other information collected by NZ Craft Brewing Co. about them may be accessed or collected for the use of NZ Craft Brewing Co. or the Companies in the course of their business, including their marketing activities. The covenants and consents of the Directors and Partners in clause 31 and this clause 32 are given by those persons in their personal capacity and are directly enforceable against them in that capacity.
35. The Directors, Partners and the Customer (if the Customer is an individual (i.e. a natural person)) has rights under the Privacy Act 1993 to access and request the correction of any personal information which NZ Craft Brewing Co. (or its agents) holds about them.

BRANDS AND PACKAGING

36. NZ Craft Brewing Co., its suppliers or licensors, are the owners of all rights to the brands of Goods supplied to the Customer. The Customer can only use these brands for promotional purposes with NZ Craft Brewing Co.'s prior consent.

CUSTOMER TO NOTIFY NZ CRAFT BREWING CO. WHEN TRADING CEASES OR WHERE OWNERSHIP OF BUSINESS CHANGES ETC

37. The Customer must give written notice to NZ Craft Brewing Co. within 7 days of any of the following events
- (a) the Customer ceases trading;
 - (b) the Customer assigns or disposes of any of the assets of its business (other than in the ordinary course of trading) or any part of its interest in the business; or
 - (c) there is proposed to be a Change of Control of the Customer (if the Customer is a Company or Incorporated Body).

OTHER GENERAL TERMS

38. These terms and conditions of sale are paramount, and, to the extent that there is any conflict between any provision of them and any invoice or other document evidencing or describing any Goods (whether in writing, verbally or by Electronic Data Interchange (EDI)), these terms and conditions of sale will prevail. Further, if there is any other document or arrangement which conflicts with the Contract, the Contract shall prevail.
39. The Customer authorises NZ Craft Brewing Co., to apply (without notice or demand) any sum paid by the Customer to any of the Companies against any amounts owing by the Customer to any other of the Companies.
40. If NZ Craft Brewing Co. exercises or fails to exercise any right or remedy available to it, this shall not prejudice NZ Craft Brewing Co.'s right in exercising that right or any other right or remedy. Waiver of any term of the Contract must be specified in writing and signed by an authorised officer of NZ Craft Brewing Co..
41. NZ Craft Brewing Co. reserves the right to review any of the terms of the Contract at any time and from time to time. If, following any such review, there is to be any change to any such terms, that change will take effect from the date on which NZ Craft Brewing Co. notifies the Customer of such change.
42. Each Related Company (as that term is defined in the Companies Act 1993) of NZ Craft Brewing Co. is entitled to the benefit of the Contract in accordance with the Contracts (Privity) Act 1982 and, in addition, NZ Craft Brewing Co. is entitled to enforce the Contract on behalf of any Related Company of NZ Craft Brewing Co.. However, the consent of Related Companies is not required to any variation, amendment or discharge of the Contract.
43. NZ Craft Brewing Co. and each of its related bodies corporate in Australia (as defined in the Australian Corporations Act 2001) may secure or collect any of NZ Craft Brewing Co.'s debts or enforce NZ Craft Brewing Co.'s rights under this Contract or otherwise in connection with any amount due by the Customer to NZ Craft Brewing Co. at any time or any security, guarantee, indemnity, assurance or undertaking in connection with such amount.

WORDS USED IN THE CONTRACT

44. "NZ Craft Brewing Co." means New Zealand Craft Brewing Company Limited and each of its related companies (as defined in the Companies Act 1993) or any one of them.
45. "Claim" includes any claim:
- (a) for loss of profits; or
 - (b) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:
 - (i) any breach of NZ Craft Brewing Co. obligations under the Contract; or
 - (ii) any cancellation of the Contract; or
 - (iii) any negligence, misrepresentation or other act or omission by NZ Craft Brewing Co. or its employees, agents or contractors; or
 - (iv) for compensation, demand, remedy, liability or action.

"Contract" means these terms and conditions of sale themselves together with the Customer's Account Application Form and any and every invoice or other documents evidencing or describing, whether by item or kind or otherwise, any Goods.

"Customer" means the Applicant described on the first page of this Contract.

"Directors" means the directors of the Customer described in part A of this Contract.

"Partners" means the partners comprising the customer described in part B of this Contract, in their personal capacity.

"Event of Default" means an event where:

- (a) the Customer fails to comply with the terms of the Contract or any other contract with NZ Craft Brewing Co.; or
- (b) any of the Goods are at risk; or
- (c) the Customer commits an act of bankruptcy; or
- (d) the Customer enters into any composition or arrangement with its creditors; or
- (e) if the Customer is a company:
 - (i) the Customer does anything which would make it liable to be put into liquidation; or
 - (ii) a resolution is passed or an application is made for the liquidation of the Customer; or
 - (iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets.

"Goods" means all spirits and beer making supplies and equipment, beer and other liquor and associated products and services and all other goods or other property which, in each case, are supplied by NZ Craft Brewing Co. to the Customer and, for the avoidance of doubt, in each case includes all such goods and property so supplied whether or not described by item or kind that enables them to be identified.

"Person" includes a corporation, association, firm, company, partnership or individual. "PPSA" means the Personal Property Securities Act 1999.

"Price" means the purchase price of the Goods and any costs payable by the Customer under the Contract relating to transportation, storage and insurance, including any deposits.

The terms "after-acquired property", "at risk", "inventory", "perfected", "personal property", "proceeds", "purchase money security interest", "rights", "security interest", "sell" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA