



# Supply Terms Agreement & Trading Account Application

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## Terms & Conditions

### 1. Application

- (a) By placing an order for Products from Marnong Estate you agree to be bound by these terms.
- (b) Each order you place will be deemed to incorporate these terms.
- (c) These terms will prevail to the extent of any inconsistency with any other terms and conditions in place with Marnong Estate.
- (d) Marnong Estate may at its discretion decline to accept any order placed by you.

### 2. Producing the Products (Production Customers)

- (a) Subject to these terms, Marnong Estate will produce the Products substantially in accordance with recipes, formulations and specifications provided by you.
- (b) You must promptly provide Marnong Estate with any raw materials, packaging or any other item or assistance required by Marnong Estate to enable Marnong Estate to produce the Products.
- (c) When you order Products, Marnong Estate will provide you with an estimated time for delivery. Subject to these terms, Marnong Estate will use its reasonable endeavours to deliver the Products to you by that time, however it is not liable if for any reason it does not do so.

### 3. Payment

- (a) Unless otherwise agreed in writing, payment must be made to Marnong Estate within 30 days of the date of an invoice being rendered, or as stipulated on page 2 of this document (whichever is higher).
- (b) If you do not pay for any Products when due:
  - (i) Marnong Estate may immediately cease producing any other Products for you;
  - (ii) Interest will accrue on any overdue moneys at the rate set by the Penalty Interest Rates Act 1983 (Vic);
  - (iii) Marnong Estate will charge you for storage of any Products that remain in Marnong Estate possession (Production customers);
  - (iv) Marnong Estate may destroy any Products in its possession (Production customers);
  - (v) Marnong Estate may without notice and without incurring any liability to you or any other person, enter any premises where Marnong Estate suspects the Products may be and remove them, notwithstanding that they may have been attached to other goods not the property of Marnong Estate, and for this purpose you irrevocably licence Marnong Estate to enter such premises and also indemnify Marnong Estate from and against all costs, claims, demands or actions by any party arising from or in connection with such action; and
  - (vi) If required, you must assign to Marnong Estate any rights you have to payment of any outstanding money relating to the re-supply of the Products (Debts). You irrevocably appoint Marnong Estate or its nominee as its attorney to sign all documents and do all things necessary to assign the Debts to Marnong Estate under this clause, where you have failed to do so within 7 days of receiving written notice to do so (sufficient proof of which shall be a statutory declaration signed by an officer of Marnong Estate), and ratifies any acts the attorney lawfully does or causes to be done with respect to any such assignment of the Debts (Production customers).

### 4. Retention of Title

- (a) Title in the Products remains with Marnong Estate and will not pass to you until you have paid all monies owing to Marnong Estate in full.
- (b) Risk in the Products passes to you on delivery.



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### 5. Your Obligations

For so long as title in the Products remains with Marnong Estate;

- (a) You hold the Products as fiduciary bailee and agent for Marnong Estate;
- (b) You must keep the Products separate from other goods so that they are readily identifiable as the property of Marnong Estate;
- (c) You must not dispose of the Products except with Marnong Estate's prior written consent or in the ordinary course of your business;
- (d) You hold the proceeds of any sale of the Products on trust for Marnong Estate in a separate account and will pay such monies immediately on request to Marnong Estate;
- (e) You must not cause the Products to lose their identifiable character or be intermingled with other goods, in any way, either by any process of its own or by a third party, except with Marnong Estate's prior written consent or in the ordinary course of your business;
- (f) You cannot claim any lien over the goods; and
- (g) You will not create any absolute or defeasible interest in the Products in relation to any third party;
- (h) Any money received for the sale of any goods that are intermingled with or which contain or include Products purchased from Marnong Estate must be held in trust for Marnong Estate (to the maximum extent that such "trust" monies represent the total outstanding amount owed to Marnong Estate and you must pay such monies immediately on request to Marnong Estate; and
- (i) You have no right or claim to any interest in the Products to secure any liquidated or unliquidated debt or obligation that Marnong Estate owes or may owe to you or any other person.

### 6. The Products

Pending payment in full of all amounts owed by you to Marnong Estate you:

- (a) Must not allow any person to have or acquire any Security Interest in the Products;
- (b) Must insure the Products for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where you carry on business; and
- (c) Must not remove, deface or obliterate any identifying mark or number on any of the Products.

### 7. PPSR

Pending payment in full of all amounts owed by you to Marnong Estate you:

- (a) By ordering Products from Marnong Estate you acknowledge and agree that the Products goods are inventory.
- (b) You must not do anything which affects Marnong Estate's ability to Enforce its Security Interest;
- (c) Marnong Estate may exercise its rights in relation to the Security Interest, including by Enforcing it, any time after you fail to comply with your obligations under these terms;
- (d) To the extent permitted by the PPSA:
  - (i) You waive your rights to receive any notices, statements or forms required to be issued or which would ordinarily be issued, whether by Marnong Estate or any other person, to you under the PPSA;
  - (ii) Marnong Estate need not comply with, and you may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of.
- (e) You must pay to Marnong Estate on demand, all of Marnong Estate's expenses, including legal costs on an indemnity basis, stamp duty and registration fees, in connection with the registration and/or Enforcement of Marnong Estate's Security Interest.



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### 8. Your Warranties (Production Customers)

You warrant to Marnong Estate that:

- (a) Any recipes, formulations and specifications you provide to Marnong Estate comply with all applicable laws; and
- (b) Marnong Estate will not by producing, selling or distributing the Products infringe the intellectual property rights of any third party.

You must indemnify Marnong Estate from and against any claim, suit, action, demand, cost, liability, damage or expense that arises out of or in connection with a breach of these warranties.

### 9. Liability

- (a) To the maximum extent permitted by law:
  - (i) Marnong Estate makes no warranty whatsoever about the Products;
  - (ii) Marnong Estate is not liable to you for any loss, including loss of profits or for damage to property, arising directly or indirectly out of or in consequence of the manufacture, production, sale or supply of any of the Products by Marnong Estate to you or by you to any other person;
  - (iii) Marnong Estate is not liable to you for any consequential, or indirect loss or special or exemplary damages, including without limitation loss of profits, loss of opportunity or loss of bargain; and
  - (iv) Marnong Estate's maximum liability to you in connection with the production and/or supply of the Products will be an amount equivalent to the price paid by you for the Products.
- (b) This clause should not be taken to limit the operation of the Australian Consumer Law.
- (c) You indemnify Marnong Estate from and against any claim, suit, action, demand, cost, liability, damage or expense that arises out of or in connection with:
  - (i) Any defect in the Products not caused by Marnong Estate;
  - (ii) Your breach of these payment and supply terms; and
  - (iii) Any claim by any third party in relation to the Products, except where caused by Marnong Estate.

### 10. Guarantee

#### 10.1 Guarantee

In consideration for Marnong Estate agreeing to supply Products to the Customer, the Guarantor unconditionally:

- (a) Guarantees to Marnong Estate payment of all money payable by the Customer, and due and prompt observance and performance of all the Customer's obligations, under these terms;
- (b) Indemnifies Marnong Estate from and against all loss, damage, costs and expenses suffered or incurred by Marnong Estate arising out of or in connection with any failure by the Customer to make any payment or perform any of its obligations under these terms or of any provision of these terms being void or unenforceable against the Customer (Guarantee and Indemnity).



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### 10.2 Not Affected

The Guarantee and Indemnity is not affected by:

- (a) Any part payment of money or performance of obligations by the Customer;
- (b) Marnong Estate granting any time, credit or indulgence to the Customer;
- (c) The liability of the Customer ceasing due to any cause;
- (d) The release of the Customer or any Guarantor;
- (e) Any change to these terms;
- (f) The death of the Customer or any Guarantor;
- (g) The bankruptcy or insolvency of the Customer or any Guarantor;
- (h) The transfer or sale of the Customer's business or any shares in the Customer;
- (i) Any lack of power or defect in execution of these terms by any Guarantor;
- (j) The availability to the Customer of any defense at law or in equity in respect of its liability to Marnong Estate; or
- (k) Marnong Estate for any reason not exercising all or any of its rights or powers against the Customer, or in respect of any other security or surety against which Marnong Estate may claim to satisfy any liability of the Customer.

### 10.3 Scope & Extent

The Guarantee and Indemnity:

- (a) Is a principal obligation of the Guarantor;
- (b) Is in addition to any other rights which Marnong Estate may have or otherwise at law or in equity;
- (c) Remains in force until all the Guarantor's obligations under these terms have been satisfied.

### 10.4 Guarantor's Rights Subrogated

Until the Customer has paid all money and performed all its obligations to Marnong Estate, the Guarantor will not:

- (a) Prove in or against, or enforce any security held by the Guarantor against the Customer's estate or assets in competition with Marnong Estate; or
- (b) Deprive Marnong Estate of any dividend or money it may receive or be entitled to receive as a creditor of the Customer.



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### 11. Interpretation

In these payment and supply terms:

- (a) Marnong Estate is the supplier;
- (b) Credit Application means the Application for a Trading Account which these terms of trade are attached to;
- (c) Enforce means exercise all of Marnong Estate's rights in relation to these terms;
- (d) Customer means the person, persons or entity named in the Supply Terms agreement & Trading Account Application who has applied for credit from Marnong Estate;
- (e) Guarantor means the person or persons who sign these terms on behalf of the Customer (and if more than one, all of them jointly and severally);
- (f) PPSA means the Personal Properties Securities Act 2009 (Cth) and the Personal Property Securities Regulations 2010 (Cth);
- (g) Products means any products or services supplied to you by Marnong Estate;
- (h) Security Interest means a "security interest" (as defined in the PPSA), and includes a security interest granted by you in the Products, and proceeds of sale of the Products, to secure payment of all money by you;
- (i) You means the person, persons or entity who places an order or request to purchase Products from Marnong Estate

### Monthly Statements

Please note that Monthly Statements of Account will be sent to you via email.

If you have any queries regarding the above, please do not hesitate to contact your Wine Sales Team or our office on:

Tel: (03) 9216 3300

Email: [wine.sales@marnongestate.com](mailto:wine.sales@marnongestate.com)