

Rep/Mobile _____
CCA USE ONLY

## TRADE ACCOUNT APPLICATION FORM

REGISTERED NAME:	CO. NUMBER:
PARTNERSHIP/OTHER NAME:	
OWNERSHIP COMMENCEMENT DATE:	
"TRADING AS" NAME:	GST NUMBER:

Business Status: PLEASE TICK  SOLE PROPRIETOR  LTD CO.  PARTNERSHIP  INC. SOCIETY  TRUST

Delivery Address: Which is: <input type="checkbox"/> Owned <input type="checkbox"/> Rented/Leased			
No. & Street:	Suburb:	Town:	Postal Code:
Postal Address: No. & Street:			
Suburb:		Town:	
Postal Code:			
Office Phone:		Mobile:	
Fax:			
Contact Name:		Email:	
DDI:			
Accounts Payable:		Email:	
DDI:			
Nature of Business:		Equipment on Site Yes <input type="checkbox"/> No <input type="checkbox"/>	
Other Accounts with Coca-Cola Amatil (N.Z.) Ltd:		Liquor Licence No: _____ Expires: _____	
Are you applying for a Charge Account <input type="checkbox"/> or a Cash Account <input type="checkbox"/>		Est Monthly Requirements \$ _____	

**DIRECTOR'S/PROPRIETOR'S NAMES:** (Please insert ALL Owner(s) / Director(s) / Partner(s) / Trustee(s) names in full - Please use additional sheet of paper if required)

1. First Names:			Middle Name:	Last Name:		Date of Birth:
Address: No. & Street:			Suburb:	Town:		Postal Code:
Home Phone:			Email:			
NZ Driver's Licence No: (5A)			& 5(B)		Please include a photo copy	
					Male / Female	
2. First Names:			Middle Name:	Last Name:		Date of Birth:
Address: No. & Street:			Suburb:	Town:		Postal Code:
Home Phone:			Email:			
NZ Driver's Licence No: (5A)			& 5(B)		Please include a photo copy	
					Male / Female	

**ACCEPTANCE OF GENERAL TERMS AND CONDITIONS OF TRADE** (Please tick)

- I am/we are duly authorised to complete this New Trade Account Application on the customer's behalf.
- I/we certify that the information in this New Trade Account Application is true and correct and that no information has been withheld of which Coca-Cola Amatil (N.Z.) Limited should be aware of when considering this application.
- I/we have read and accept the General Terms and Conditions of Trade - set out at <http://www.mycca.co.nz/terms>
- I/we acknowledge that Coca-Cola Amatil (N.Z.) Limited has advised the customer to seek independent legal advice in respect of the Customer's obligations under the General Terms and Conditions of Trade and the customer has either obtained such advice or elected not to obtain such advice.
- I/we authorise Coca-Cola Amatil (N.Z.) Limited to undertake credit checks on the customer and me/us personally.

**GUARANTEE**

In Consideration of Coca-Cola Amatil (N.Z.) Ltd supplying the customer with goods on credit, I/we agree as follows:

- I/we guarantee the due performance of the customer of the terms and conditions set out in the General Terms as Conditions of Trade and I/we personally provide the guarantee set out in clause 12 of the General Terms and Conditions of Trade.
- This guarantee is a continuing obligation to Coca-Cola Amatil (N.Z.) Ltd for all debt whatsoever and whensoever contracted by the Customer with Coca-Cola Amatil (N.Z.) Ltd.

**SIGNED AS GUARANTOR**

PRINT NAME	DESIGNATION (Please Circle)	SIGNED	DATE
1	Owner / Director / Partner / Trustee		
2	Owner / Director / Partner / Trustee		

OFFICE USE ONLY

OUTLET NO: _____
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CREDIT NO: _____
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FEB2016

# Coca-Cola (N.Z.) Limited - General Terms & Conditions of Trade

## 1. General Terms & Conditions

- 1.1 **Application of Terms:** These Terms and Conditions of Trade (the Terms) apply to a sale of Products, and the loan of Equipment, by Coca-Cola Amatil (N.Z.) Limited (CCA, we or us), whether by ordered online, via telephone or otherwise.
- 1.2 **Please read the Terms:** We recommend that you carefully read these Terms. You represent and warrant that you are over 18 and have the legal capacity to contract in New Zealand or that you are the Customer's authorised representative and have the ability to bind the Customer to these Terms. If you do not agree to these Terms, you should not order Products or loan Equipment from us, or permit us to place Vending Machines in your Premises.
- 1.3 **Changes to Terms:** From time to time, we may need to change these Terms to reflect our changing business. We may also need to change these Terms if we are required by law, for security reasons or for technical or infrastructure reasons. We may change the Terms at any time by posting the changed Terms on this site.

## SECTION 1: SALE AND PURCHASE OF PRODUCTS

### 2. Products and Ordering

- 2.1 **Products:** A list of our current beverage products (the Products) is available (the Product List). We only sell and deliver Products in New Zealand.
- 2.2 **Alcoholic Products:** We will only supply Products that are alcoholic beverages where you hold the appropriate licence to sell such alcoholic beverages under the Sale and Supply of Alcohol Act 2012.
- 2.3 **Placing Orders:** When ordering Products from us online or otherwise you are responsible for correctly entering all requested order information. If incorrect information is entered, it may result in you receiving and being liable to pay for unwanted Products. You may be issued with an order confirmation or receipt for orders you place via this website or by e-mail. Issue of an order confirmation or receipt does not mean that your order has been accepted by us or that we will be able to complete the order in whole or in part.
- 2.4 **Responsibility for Orders Placed:** It is your risk and responsibility to obtain every necessary or prudent authorisation to buy, possess, and/or resell the Products and to ensure that Products are purchased by an authorised person. You are liable for every order made by you or on your behalf.
- 2.5 **Minimum Orders:** Orders of Products with a net value of less than \$200.00 will not be accepted.
- 2.6 **Stock Availability:** We will use reasonable efforts to ensure that we have in stock the Products shown in the Product List. However, we do not guarantee the availability of any Products, and we will not be liable for any loss, damage or costs incurred by you or any other person if we are unable to provide you with Products shown in the Product List.
- 2.7 **Orders not binding:** Orders will not be binding on us until we have delivered the order to your nominated address and you have accepted the order by signing the delivery docket.
- 2.8 **No on-selling:** You agree that the Products are to be sold by you in the ordinary course of business. Unless authorised by us, in writing, you must not, under any circumstance, sub-deal, on-sell or in any way supply the Products for the purpose of resale or redistribution by third parties.

### 3. Delivery

- 3.1 **Despatching Orders:** We will use our best endeavours to despatch orders no later than two Business Days after the day your order is received by us and you have received confirmation of your order from us via email or equivalent.
- 3.2 **Delivery:** We will, at our cost, deliver the Products to the Premises (provided the Premises are in New Zealand) by whatever methods and route we consider to be the most expedient. You agree to accept delivery of the Products at any time between 9.00am to 3.00pm on a Business Day.
- 3.3 **Delivery by Instalments:** We may deliver the Products in instalments and you must pay an amount for an instalment as notified by us in the Invoice. If we fail to deliver any instalment you must still accept and pay for the balance of the Products delivered.
- 3.4 **Late Delivery:** You agree that time is not of the essence in relation to delivery and that you must accept and pay for the Products even if they are delivered after a requested time. We will not be liable for any loss or damage arising from late delivery.
- 3.5 **Failure to Deliver:** We will not be liable for any failure to perform our obligations under these Terms if such failure is due to Force Majeure.
- 3.6 **Delivery Completion:** Delivery is complete when the Products reach the address you have specified for delivery. We will be responsible for arranging the delivery of Products unless you arrange otherwise with us. You also acknowledge that, in New Zealand, it is against the law to leave restricted Products, such as alcohol, unattended at an address. You must ensure that your representative is available to take delivery at the designated time for delivery because we will not leave the Products unattended.
- 3.7 **Inspection on Receipt:** You must inspect the Products on or immediately after delivery. Order shortages or damage in transit must be notified to our customer services team within 48 hours of the delivery.
- 3.8 **No Returns:** Nothing in these Terms entitles you to return the Products as being surplus to your needs, or for any other reason other than set out in these Terms.
- 3.9 **Pallets:** Any pallets used for the delivery, storage or display of the Products are not included in the Purchase Price unless otherwise specified and will remain the property of their owner. You must promptly return or exchange the pallets in your custody on the day of delivery (unless otherwise agreed with CCA) or reimburse us for the cost of replacement or repair of lost or damaged pallets.

### 4. Price and Payment Terms

- 4.1 **Purchase Price:** Products will be charged at the Purchase Price applying on the date on which they are delivered to you. Any applicable taxes (including GST) will be added to the Purchase Price.
- 4.2 **Payment:** Subject to clause 4.3, you must pay the Purchase Price in advance of, or in cash or by credit card on, delivery. If you are paying by credit card, you represent and warrant that the credit card is issued in your personal name (or, if the Customer is not an individual, in the Customer's name) and that the Customer will pay to the issuer all charges incurred through the use of such means of payment.
- 4.3 **Payment on Credit Terms:** If you have obtained a credit facility from us under the Credit Terms, and you are entitled, in accordance with the Credit Terms, to the benefit of a Period of Credit, you must pay the Purchase Price within the Period of Credit. Payment by cheque or other bill of exchange is not made until the cheque or bill of exchange is honoured in full.
- 4.4 **Failure to Pay:** If the Purchase Price is not paid in full when due, we may exercise our rights under clause 4.8 and, in addition, may charge you a late payment fee on the unpaid amount for the period from its due date until it is paid, together with all legal (solicitor and own client) costs, debt recovery agents' fees, and other costs and expenses incurred by or on behalf of us in enforcing our rights. The late payment fee will be calculated on a daily basis at a rate which is equal to 4% above the then current base rate for business lending published by Westpac Banking Group at [www.westpac.co.nz](http://www.westpac.co.nz) on the overdue amount (calculated on a daily basis until the account is paid in full). You must pay such amounts to us on demand. For the avoidance of doubt, where you have entered into a direct debit arrangement with CCA, you authorise us to deduct, from your nominated account, any amount payable to us under to this clause 4.4.
- 4.5 **No Deductions:** You must make all payments due to us in full without any deductions, whether by set-off, counter-claim, or any other equitable or legal claim.
- 4.7 **Satisfaction of Debts:** Where you owe any money to us, we will be entitled, at our discretion, to accept any payment received and apply it towards satisfaction of any such indebtedness.
- 4.8 **Repossession of Products:** If you fail to pay in full the Purchase Price for the Products we may, at your cost, retake possession of the Products title to which has not passed to you. We, for that purpose, may enter any Premises where those Products are held and remove those Products.

### 5. Risk and Title

- 5.1 **Risk:** Risk of any loss, damage or deterioration of, or to, the Products passes to you on delivery. You will insure the Products for their full insurable value.
- 5.2 **Title:** Legal and beneficial ownership to the Products does not pass from us to you until you pay in full the Purchase Price and all other monies payable or owing but not paid to us by you on any account.

- 5.3 **Dealing with Products:** Until title to the Products passes to you, you acknowledge and agree:
  - 5.3.1 that the Products supplied and not resold are held by you as a bailee for us;
  - 5.3.2 you may resell the Products;
  - 5.3.3 if the Products have been resold by you, you will hold so much of the proceeds of sale as do not exceed the outstanding monies on trust for us immediately when they are receivable or received;
  - 5.3.4 when the proceeds held in trust for us under clause 5.3.3 are received they must either be paid immediately to us or held in a separate bank account as trustee for us and they must not be used by you in any other way whatsoever; and
  - 5.3.5 the authority conferred on you by clause 5.3.2 may be revoked by written notice from us at any time if we deem your credit to be unsatisfactory or if you are in default in the performance of your obligations under these Terms or any other agreement between you and us.

### 6. Warranties and Liability

- 6.1 **Statutory Warranties Excluded:** Subject to clause 3.7, all warranties, conditions and liabilities, whether implied by law, trade, custom or otherwise, and whether relating to the quality or fitness of any Products, merchantability, suitability for purpose, or otherwise (other than any warranties, conditions or liabilities which by legislation cannot be excluded) are hereby expressly excluded.
  - 6.2 **Customer Warranties:** You warrant that you:
    - 6.2.1 have and will continue to have any permit, government authorisation or licence required for you to carry on your business and, in particular and without limitation, if the Products include alcoholic beverages, that you will continue to have the requisite retail liquor licence required under any relevant laws;
    - 6.2.2 will handle and store the Products at all times as directed by us or, in the absence of such direction, in accordance with prevailing industry standards for the particular Products; and
    - 6.2.3 have product safety procedures in place which conform with the requirements of all relevant laws of New Zealand.
  - 6.3 **Consumer Guarantees Act not apply:** You acknowledge and agree that you are not a "Consumer", as defined in the Consumer Guarantees Act 1993, and the provisions of the Consumer Guarantees Act 1993 will not apply.
  - 6.4 **Limitation of Liability:** Except as expressly provided in these Terms, to the extent permitted by law, we will have no liability to you, however arising and under any cause of action or theory of liability, in respect of loss of profit (whether direct or indirect), loss of business opportunity, or any special, indirect or consequential damages.
- ### 7. Product Quality and Recalls
- 7.1 **Warnings about Product Quality:** If we or you become aware of any defect, fault or other condition, actual, potential or threatened, in any Products (a Quality Issue) of which you have taken possession such that they should not be offered for sale to the public having regard to the nature and the extent of the threat, then that party must immediately give notice to the other of the Products affected by reference to product descriptions, batch codes, best before/used by date codes, item code numbers, quantities supplied, date of possession and any other unique identifier.
    - 7.2 **Recalls:** You agree to co-operate to the fullest extent possible to diminish any risk to the public from the Quality Issue, which includes the following:
      - 7.2.1 removing the Products that may be affected by the adverse experience from offer for sale to the public;
      - 7.2.2 complying with all laws, regulations and notice requirements in relation to product recalls;
      - 7.2.3 complying with any directions and corrective action required by CCA in relation to the Quality Issue;
      - 7.2.4 recalling the Products that may be affected by the Quality Issue where they have been sold;
      - 7.2.5 disseminating information that has been approved by us and which in our opinion is necessary or desirable to limit any harm, loss or damage that maybe.

## SECTION 2: CREDIT TERMS

### THIS SECTION ONLY APPLIES TO YOU IF YOU APPLY FOR AND ARE GRANTED A TRADE FACILITY FROM US.

#### 8. Setting up a Credit Facility

- 8.1 **Credit Terms:** The Terms set out in clauses 8 to 12 are the Credit Terms.
- 8.2 **Credit subject to credit checks:** We will only supply you with Products on credit when we have obtained a credit check satisfactory to our requirements.
- 8.3 **Trade Application:** If you seek a credit facility from us you must complete a "Commercial Credit Account Application" (Trade Application).
- 8.4 **Guarantee and Indemnity:** If a guarantee and indemnity are being provided on behalf of the Customer, the relevant terms are set out in clause 12.

#### 9. Credit Information

- 9.1 **Authorisation:** You authorise us to:
  - 9.1.1 make such enquiries and collect such personal information so as to enable us to assess your creditworthiness and to obtain credit reports, including history, standing or capacity, character references and credit statements;
  - 9.1.2 obtain any personal information from any bank, financial institution, credit reporting agency, employer or other person;
  - 9.1.3 disclose any personal information to any third party authorised to seek information;
  - 9.1.4 report any overdue payments you owe to us to other credit providers or credit reporting agencies; and
  - 9.1.5 use any personal information in connection with the Terms, and/or for marketing and customer service activities.
- 9.2 **Failure to supply authorisation:** You understand that failure to authorise the obtaining of personal information from any third party may result in the declining or cancelling credit terms to you and that there is a right of access to, and correction of, personal information which is held by us.
- 9.3 **Privacy Policy:** If you are an individual, we recommend that you read our Privacy Policy.

#### 10. Trade Information Warranty

- 10.1 **Applicant Warranty:** You warrant:
  - 10.1.1 that all information given to us, in a Trade Application or otherwise, is true and correct;
  - 10.1.2 if the Customer is a natural person, that the credit to be provided under the credit facility will be applied wholly or primarily for business purposes and not for personal, domestic or household purposes; and
  - 10.1.3 that if you provide us with personal information about another person who is an individual (for example, a referee), you are authorised to do so, will inform that person that we may use their information in order to assess this application and further that they can gain access to the information we hold about them by contacting us.
- 10.2 **Authorisation to Bind:** Each signatory to a Trade Application warrants that, where there is more than one Customer, or where the Customer is a corporation, that he or she is authorised to sign on behalf of all Customers or the corporation, as appropriate.

#### 11. Credit Terms

- 11.1 **Our Rights:** You acknowledge that we may, in our discretion:
  - 11.1.1 request further information, including financial statements from the Customer in order to assess the Trade Application;
  - 11.1.2 decline the Trade Application;
  - 11.1.3 determine the number of days within which, from the date of delivery of Products, the Customer is to pay for Products (the Period of Credit);
  - 11.1.4 determine the maximum amount of credit to be provided to the Customer at any time (the Credit Limit);
  - 11.1.5 suspend or withdraw the credit facility;

- 11.1.6 vary the Period of Credit or vary the Credit Limit; or
- 11.1.7 vary the Credit Terms.
- 11.2 **Period of Credit/Credit Limit:** If we accept a Trade Application submitted by you, you will be notified of the Period of Credit and any Credit Limit. Any subsequent order of Products placed by you and accepted by us will have the benefit of the Period of Credit except:
- 11.2.1 where, pursuant to the Credit Terms, the credit facility is withdrawn and we give you notice that all monies owing by you to us are immediately due and payable; or
- 11.2.2 where, in accordance with clause 11.3, the provision of credit in respect of the Purchase Price would cause the Credit Limit to be exceeded.
- 11.3 **Exceeding the Credit Limit:** If we determine that a Credit Limit is to apply to the credit facility provided to you, an order placed by you will not have the benefit of the Period of Credit if the Purchase Price for that order, when added to the Purchase Prices already subject, at that time, to the benefit of the credit facility, would cause the Credit Limit to be exceeded. If, by operation of this clause, an order is not entitled to the benefit of the Period of Credit and if, through inadvertence including because of a mistaken belief that the Period of Credit was available to you, the Products are delivered without the Purchase Price having been paid in advance of, or in cash on, delivery, the Purchase Price must be paid immediately on demand made by us.

## 12. Guarantee and Indemnity

- 12.1 **Acceptance:** If the Customer is a company or trust, the director(s) or trustee(s) (the Guarantor(s)) must indicate their agreement to provide a guarantee and indemnity in the Trade Application, in consideration for us agreeing to supply Products and Equipment and granting credit to the Customer at its request.
- 12.2 **Guarantee and Indemnity:** The Guarantor(s):
- 12.2.1 irrevocably and unconditionally guarantee to us the due, proper performance by the Customer of its obligations to us; and
- 12.2.2 jointly and severally personally undertake as principal debtors to us the payment of any and all monies now or in the future owed by the Customer to us and indemnify us against non-payment by the Customer.
- 12.3 **No release of Customer:** Any personal liability of the Guarantor(s) will not release the Customer in any way whatsoever from its liabilities and obligations to us or in any way prejudice or affect the liability of the Customer to us. The Guarantor's obligations to us may be enforced by us without our having to take steps against the Customer, or to make or file any claim for bankruptcy or liquidation of the Customer or any other party, or to take any action against the Customer, or to resort to any other security or guarantee or any other means of payment.

## SECTION 3: LOAN OF EQUIPMENT (OTHER THAN VENDING MACHINES)

### THIS SECTION ONLY APPLIES TO YOU IF YOU ARE LEASING EQUIPMENT FROM US.

#### 13. Provision and Installation of Equipment

- 13.1 **Lease Terms:** The Terms set out in clauses 13 to 18 apply to all Equipment leased by us to you.
- 13.2 **Installation:** We will install the Equipment in the Premises at the site selected by us and approved by you. You will provide an accessible RCD protected electrical connection and power necessary to operate the Equipment. Once installed at the site, the Equipment must only be removed or relocated by our representative, except in the case of an emergency.
- 13.3 **No Modifications:** You must not modify or alter the Equipment including any labels, trademarks, advertising or other markings on the Equipment. We may affix, modify or remove any labels, trademarks, advertising or other markings on the Equipment from time to time.

#### 14. Use, Care and Insurance of Equipment

- 14.1 **Use of Equipment:** All Equipment must be used:
- 14.1.1 in accordance with all applicable laws;
- 14.1.2 in your normal course of business;
- 14.1.3 for the purposes for which it was designed; and
- 14.1.4 solely for dispensing the Products unless we agree otherwise.
- 14.2 **Responsibility for Equipment:** You must:
- 14.2.1 take reasonable care of the Equipment and protect it against theft, vandalism or unauthorised interference;
- 14.2.2 not part with possession or control of the Equipment;
- 14.2.3 make the Equipment available to us for collection in an undamaged condition (fair wear and tear excepted) on request; and
- 14.2.4 insure the Equipment against loss, damage or destruction by fire, theft, accident or malicious damage.
- 14.3 **Care of and Cleaning Equipment:** You must:
- 14.3.1 thoroughly clean and/or fill the Equipment on a regular basis;
- 14.3.2 permit us or our representatives to enter the Premises to service, inspect and/or test, the Equipment and to carry out any repairs to the Equipment on Business Days;
- 14.3.3 operate the Equipment strictly in accordance with all instructional manuals and other information provided by us.

#### 15. Maintenance and Replacement of Equipment

- 15.1 **Maintenance:** We will, at our expense, maintain the Equipment in a good working order. You will notify our customer services team promptly upon becoming aware of any damage, modification, defect, interference, fault, malfunction, breakdown or failure in performance of the Equipment. Necessary service calls will be actioned within 48 hours in a normal working week, excluding weekends and holidays, but reasonable endeavours will be made to service the Equipment with minimal inconvenience to you.
- 15.2 **Customer not to repair:** You will ensure that no person other than our representative takes any action to repair, modify or interfere with the Equipment. You agree that nothing in this clause 15.2 affects your obligations under Health and Safety legislation, including, but not limited to, periodic test and tag procedures.
- 15.3 **Replacement Equipment:** You will comply with a direction from us to return any Equipment to us in substitution for any replacement Equipment provided by us. Where replacement Equipment is provided, these terms and conditions will continue to apply in all respects to the replacement Equipment. If the Equipment breaks down, to the extent it is irreparable on site and needs to be removed from the Premises, we may (at our discretion) provide you with replacement Equipment, at no additional cost to you, until such time as the repairs have been completed. This excludes damage or faults that are a result of operator or user error, mistreatment, vandalism, or damage in excess of fair wear and tear, rather than an equipment malfunction, and repair of such faults will be charged at our then current service and parts rates.
- 15.4 **Rent:** You will pay rent and a service administration charge (if applicable) in respect of the Equipment of an amount and at the intervals notified by CCA to you. We may from time to time vary the rent (if applicable) by giving 30 days written notice to you provided that if you object to the new rent you may within 14 days of receipt of the rent variation notice terminate the lease by giving 30 days written notice to CCA.
- 15.5 **Costs:** Where the Equipment is damaged as a result of operator or user error, mistreatment, vandalism, or damage in excess of fair wear and tear, rather than an equipment malfunction, we will repair such damage and you will be charged for such services and parts at our then current service and parts rates.

#### 16. Risk and Ownership

- 16.1 **Risk:** From the date of delivery until collection by us, risk of loss or damage to the Equipment will remain with you.
- 16.2 **Ownership:** Notwithstanding the passing of risk, the Equipment will at all times be and remain the property of CCA. You must not remove, interfere with, obscure or alter the identification plate attached to the Equipment. You must not represent to any third party that it has any right, title or interest in the Equipment and must not dispose of, charge, encumber or otherwise deal with the Equipment.

#### 17. Term and Termination

- 17.1 **Term:** The Equipment will be supplied to you on a leased basis for an initial period of 12 months. The term of the lease will be extended automatically for successive periods of 12 months unless either of us gives notice of termination to the other at least 30 days' written notice of a desire to terminate the lease.
- 17.2 **Termination:** We may also terminate the lease of Equipment at any time if:
- 17.2.1 you vacate the Premises where the Equipment is installed or cease to carry on business at the premises;

- 17.2.2 you sell or otherwise transfer your business;
- 17.2.3 we determine, in our discretion, that the continued placement of the Equipment at the Premises is not financially viable or would expose the Equipment to unreasonable risk of damage;
- 17.2.4 you fail to comply with these Terms and you fail to remedy that non-compliance within 10 days of receipt of notice from us to that effect.
- 17.3 **Right to Enter:** If the lease of Equipment is terminated under this clause 16, then we are entitled to enter directly or by our contractors, without notice, the Premises or any other location where we believe the Equipment may be located and reclaim the Equipment without being liable for any loss or damage incurred as result of a seizure, repossession or removal of the Equipment from any Premises or other location.
- 17.4 **Liability:** You agree to pay damages to us (as determined by us, acting reasonably) arising as a result of your non-compliance with the Terms. For the avoidance of doubt, where you have entered into a direct debit arrangement with CCA, you authorise us to deduct, from your nominated account, any amount payable to CCA pursuant to this clause 17.4.

## 18. Assignment and Cessation of Business

- 18.1 **No assignment:** You must not assign or transfer the lease relating to the Equipment without our prior written consent. If the Customer is a company then, for the purpose of this clause, any change in effective control or ownership of the Customer constitutes an assignment of the Customer's rights under these Terms.
- 18.2 **Notice if vacating Premises:** You must notify us at least 30 days in advance if you intend to vacate the Premises where the Equipment is installed or if you are selling or otherwise disposing of the business carried on at the Premises. Such notification will give us a reasonable period of time to remove the Equipment prior to your cessation of business.
- 18.3 **Binding your transferee:** If you have been unable, due to reasons of emergency, to provide us with the 30 day prior notification, you must obtain the agreement of the person or entity to whom you are transferring your interests in the Premises, or the business, to hold themselves bound by the Terms as though they were an original party of them.

## SECTION 4: PERSONAL PROPERTIES SECURITY ACT 1999

### THIS SECTION APPLIES TO YOU IF YOU ARE BUYING PRODUCTS AND/OR LEASING EQUIPMENT FROM US.

#### 19. Security Interests and the Personal Property Securities Act 1999

- 19.1 **Creation of a Security Agreement:** You acknowledge and agree that:
- 19.1.1 the Terms constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 (PPSA); and
- 19.1.2 a first ranking perfected security interest is taken over all present and after acquired Products (being, for the avoidance of doubt, all your present personal property and after-acquired property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by us to (or for the account of) you) to secure the payment by you to us of all sums due to us and/or which we are entitled to charge under these Terms; and
- 19.1.3 a first ranking perfected security interest is taken in any Equipment leased by us to you.
- 19.2 **Ensuring a Perfected Security:** You will do everything, at your cost, that we reasonably require to ensure that we have a perfected security interest and a purchase money security interest in each part of the Products and, where applicable, the Equipment, and generally to obtain, maintain, register and enforce our security interests in accordance with the PPSA.
- 19.3 **Specific Obligations:** You undertake to:
- 19.3.1 sign any further documents and provide any further information which we may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- 19.3.2 indemnify us for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any item charged thereby;
- 19.3.3 give us not less than 14 days' prior written notice of any proposed change in the Customer's name or any contact details; and (v) waive your right to receive a verification statement in accordance with section 148 of the PPSA.
- 19.4 **No consent or subordination:** Nothing in these Terms will be construed as:
- 19.4.1 an agreement to subordinate the security interest or the charge under these Terms in favour of any person;
- 19.4.2 consent by CCA to any other security interest attaching to (as "attach" is used in the context of the PPSA), or any other security subsisting over, any Products or Equipment; or
- 19.4.3 consent by CCA to any property that is not Equipment becoming an accession to any Equipment.
- 19.5 **Reinstatement of s 109(1):** If, at any relevant time, we do not at that time have priority over all other secured parties in respect of any part of the Products and, where applicable, the Equipment, then you and we will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between us and only to the extent of that part of the Products and, where applicable, the Equipment, and the operation and application of the PPSA, section 109(1) (but amended only by the deletion of the words 'with priority over all other secured parties') is reinstated and contracted back into.
- 19.6 **Non application of certain sections:** Nothing in sections 114(1) (a), 133 and 134 of the PPSA will apply to these Terms and Conditions of Sale, or the security under these terms and conditions, and waives the Customer's rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 19.7 **Survival:** This section five survives the termination of the arrangements and agreement between you and us.

## SECTION 5: DEFINITIONS

### 20. Definitions: In these Terms:

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Auckland, New Zealand or, for deliveries of Products, at the place of delivery.

**Credit Limit** has the same meaning as in the Credit Terms.

**Credit Terms** means those Terms set out in Section 2.

**Customer** or **you** means any person who submits an order for Products to us and/or to whom we lease Equipment. In relation to Vending Machines, you are the licensor of the site where we place our Vending Machine(s).

**Force Majeure Event** means any event or circumstance outside our control, including acts of God or nature, acts of war, terrorism, sabotage, riot, flood, fire, store, slide, earthquake, hurricane, cyclone, power failure, breakdown of plant or machinery, shortage of raw materials, any order or direction of a regulatory authority, industrial action, strikes, lock-outs, defaults of suppliers, theft, any other criminal act, or any other similar event or circumstance.

**Equipment** means all merchandising, coffee and other hot beverage dispensing, fountain dispensing, equipment, and other equipment and accessories provided by us.

**GST** means Products and services tax and penalties that a person may be liable to pay under the Products and Services Tax Act 1985 and includes any applicable tax, excise and duty.

**Invoice** means the document provided by the Supplier to the Customer upon delivery of the Products describing those Products and the Purchase Price.

**Period of Credit** has the same meaning as in the Credit Terms.

**Premises** means the premises, site or location from which the Customer operates his/her/its retail or other business for the purposes of these Terms.

**Products** means products of a kind which we make available for sale and may include alcoholic and non-alcoholic beverages.

**Purchase Price** means the price to be paid for the Products calculated by reference to the Supplier's price list current at the time of delivery and is the price stated as the Purchase Price in the Invoice. The Purchase Price includes GST and/or other impost on the sale of the Products, delivery and packing for delivery.