

BUYER'S TRADING NAME: DATE:

BUYER'S FULL or LEGAL NAME:

ALL BUYERS TO COMPLETE

Phone: Fax:

Mobile: Email:

BILLING ADDRESS: DELIVERY ADDRESS:

..... POSTCODE: POSTCODE:

Company Number: Special Delivery Instructions:

Date Established: Requested Credit Limit :

ALL BUYERS TO COMPLETE

Liquor Purchasing Contact: Accounts Payable Contact:

Phone: Phone:

Fax : Fax:

Statements to be Emailed to:

DETAILS OF OWNER (Please Circle) (if Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company)

Full Name: Full Name:

Home Address: Home Address:

..... POSTCODE: POSTCODE:

Home Phone: Home Phone:

TRADE REFERENCES (Include only referees with whom you have a credit account – Excluding credit cards, fuel suppliers, landlord, power & phone.)

Business Name 1: Business Name 2:

Address or A/C No: Address or A/C No:

Phone: Phone:

Fax: Fax:

I certify that the above information is true and correct and that I am authorised to make this application for credit. I authorise the use of my personal information as detailed in the Privacy Act clause overleaf. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf) of Cellar Ltd & Casama Group (NZ) Ltd T/A red+white cellar which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. ***I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Buyer I shall be personally liable for the performance of the Buyer's obligations under this contract.***

SIGNED: SIGNED:

Name: Name:

Position: Position:

ID: DOB: ID: DOB:

Date: Date:

**Cellar Ltd & Casama Group (NZ) Ltd T/A red+white cellar
PO Box 1316 Shortland Street AUCKLAND 1140 Ph +64 9 376 0760**

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Cellar Ltd & Casama Group (NZ) Ltd T/A red +white cellar and its successors and assigns ("the Seller") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

I/WE _____ ("the Buyer") – Legal

(also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

- GUARANTEE** the due and punctual payment to the Seller of all moneys which are now owing to the Seller by the Buyer and all further sums of money from time to time owing to the Seller by the Buyer in respect of goods and services supplied or to be supplied by the Seller to the Buyer or any other liability of the Buyer to the Seller, and the due observance and performance by the Buyer of all its obligations contained or implied in any contract with the Seller. If for any reason the Buyer does not pay any amount owing to the Seller the Guarantor will immediately on demand pay the relevant amount to the Seller.
- HOLD HARMLESS AND INDEMNIFY** the Seller on demand as a separate obligation against any liability (including but not limited to damages costs losses and legal fees(as defined hereunder in paragraph (b) hereof)) incurred by or assessed against the Seller in connection with:
 - the supply of goods and/or services to the Buyer; or
 - the recovery of moneys owing to the Seller by the Buyer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Sellers nominees costs of collection and legal costs calculated on a solicitor and own client basis; or
 - moneys paid by the Seller with the Buyer's consent in settlement of a dispute that arises or results from a dispute between, the Seller, the Buyer, and a third party or any combination thereof, over the supply of goods and/or services by the Seller to the Buyer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Seller by the Buyer and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Seller's part (whether in respect of the Buyer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Buyer's obligations to the Seller, each Guarantor shall be a principal debtor and liable to the Seller accordingly.
- If any payment received or recovered by the Seller is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Seller shall each be restored to the position in which they would have been had no such payment been made.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Buyer to the Seller.**
- I/we irrevocably authorise the Seller to obtain from any person or company any information which the Seller may require for credit reference purposes. I/We further irrevocably authorise the Seller to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Seller as a result of this Guarantee and Indemnity being actioned by the Seller.
- The above information is to be used by the Seller for all purposes in connection with the Seller considering this Guarantee and Indemnity and the subsequent enforcement of the same.
- I/we authorize red+white cellar to pass personal information to Credit Reporting Agencies for the purpose of credit checking or in the event that I/we default on your payment obligations to red+white cellar. This information will be used by Credit Reporting Agencies to update and maintain credit information files and will be accessed by the customer of the credit reporting database.

GUARANTOR-1

SIGNED: _____

FULL NAME: _____

PRESENT ADDRESS: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____ OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

GUARANTOR-2

SIGNED: _____

FULL NAME: _____

PRESENT ADDRESS: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____ OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

- Note:
- If the Buyer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
 - If the Buyer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member.

**WARNING: THIS IS AN IMPORTANT DOCUMENT
YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

Cellar Ltd & Casama Group (NZ) Ltd T/A red+white cellar – Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 "Seller" shall mean Cellar Ltd & Casama Group (NZ) Ltd T/A Red & White Cellar its successors and assigns or any person acting on behalf of and with the authority of Cellar Ltd & Casama Group (NZ) Ltd T/A Red & White Cellar.
 - 1.2 "Buyer" shall mean the Buyer (or any person acting on behalf of and with the authority of the Buyer) as described in any quotation, work authorisation or other form as provided by the Seller to the Buyer.
 - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer.
 - 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 - 1.6 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 3 of this contract.
- 2. Acceptance**
 - 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
 - 2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are binding and can only be amended with the written consent of the Seller.
 - 2.4 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer or any change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.
- 3. Price And Payment**
 - 3.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within thirty (30) days.
 - 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
 - 3.3 At the Seller's sole discretion a deposit may be required.
 - 3.4 At the Seller's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment for approved Buyers shall be made by instalments in accordance with the Seller's payment schedule; or
 - (c) payment for approved Buyer's shall be due twenty (20) days following the end of the month in which a statement is posted to the Buyer's address or address for notices.
 - 3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
 - 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
 - 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Goods**
 - 4.1 At the Seller's sole discretion delivery of the Goods shall take place when the Buyer takes possession of the Goods at the Buyer's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier).
 - 4.2 At the Seller's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Buyer's account.
 - 4.3 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
 - 4.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
 - 4.5 The Buyer shall immediately advise the Seller if Goods ordered are not received within 7 days of placement of the order.
 - 4.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
 - 4.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5. Risk**
 - 5.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.
 - 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6. Title**
 - 6.1 The Seller and Buyer agree that ownership of the Goods shall not pass until:
 - (a) the Buyer has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Buyer and the Seller.
 - 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
 - 6.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Buyer are met; and
 - (b) until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice being given the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and
 - (d) until such time that ownership in the Goods passes to the Buyer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products; and
 - (e) if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises where the Goods are situated as the invitee of the Buyer and take possession of the Goods, and the Seller will not be liable for any reasonable loss or damage suffered as a result of any action by the Seller under this clause.
- 7. Personal Property Securities Act 1999 ("PPSA")**
 - 7.1 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by the Seller to the Buyer (if any) and all Goods that will be supplied in the future by the Seller to the Buyer.
 - 7.2 The Buyer undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and
 - (d) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
 - 7.3 The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
 - 7.4 The Buyer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
 - 7.5 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
 - 7.6 The Buyer shall unconditionally ratify any actions taken by the Seller under clauses 7.1 to 7.5.
- 8. Buyer's Disclaimer**
 - 8.1 The Buyer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgement.
- 9. Defects**
 - 9.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.
- 10. Returns**
 - 10.1 Returns will only be accepted provided that:
 - (a) the Buyer has complied with the provisions of clause 9; and
 - (b) the Seller has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Buyer's cost within seven (7) days of the delivery date; and
 - (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material and brochures in as new condition as is reasonably possible in the circumstances.
 - 10.2 The Seller may (in its discretion) accept the return of Goods for credit.
- 11. Warranty**
 - 11.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 12. Consumer Guarantees Act 1993**
 - 12.1 If the Buyer is acquiring Goods for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Buyer.
- 13. Intellectual Property**
 - 13.1 Where the Seller has designed, drawn or written Goods for the Buyer, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
 - 13.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 14. Default & Consequences Of Default**
 - 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
 - 14.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
 - 14.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
 - 14.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
 - 14.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- 15. Security And Charge**
 - 15.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
 - (a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.
- 16. Cancellation**
 - 16.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
 - 16.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 17. Privacy Act 1993**
 - 17.1 The Buyer and the Guarantor/s (if separate to the Buyer) authorises the Seller to:
 - (a) collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness or marketing products and services to the Buyer; and
 - (b) disclose information about the Buyer, whether collected by the Seller from the Buyer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Buyer.
 - 17.2 Where the Buyer and/or Guarantors are an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
 - 17.3 The Buyer and/or Guarantors shall have the right to request the Seller for a copy of the information about the Buyer and/or Guarantors retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer and/or Guarantors held by the Seller.
- 18. General**
 - 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
 - 18.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of or caused by the Seller of these terms and conditions.
 - 18.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
 - 18.5 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.
 - 18.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
 - 18.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.
 - 18.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
 - 18.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
 - 18.10 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.