

SCHEDULE 1

Terms and Conditions

DEFINITIONS

In this Application:

"Application" means this document, including the application form, this Schedule 1 containing the Terms and Conditions (Parts A and B), and the Guarantee and Indemnity in Schedule 2.

"Asahi" means Asahi Beverages Pty Ltd (ACN 004 243 994)

"Business Day" means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Victoria.

"Equipment" means any and all equipment or items supplied by Us to You (but does not include Goods).

"Goods" means any goods supplied by us to you.

"Guarantee" means a Guarantee and Indemnity in the form set out in Schedule 2 to this Application.

"Guarantor" means any person who has executed a Guarantee and Indemnity in the form set out in Schedule 2 to this Application.

"Portal" means the website located at www.albconnect.com.au

"Trading Account" means a commercial credit account with Us pursuant to this Application.

"Us", "We" "Our" means Asahi and includes Our employees and authorised agents.

"You", "Your", "Customer" or "Applicant" means the person or company on whose behalf the Application is made.

PART A – CREDIT APPLICATION TERMS

1 Additional Information

The Applicant must promptly provide Us with such documents and information as We may request from time to time (in the format required by Us) for the purpose of assisting Us in assessing this Application or determining whether to continue to provide credit. If the Applicant does not provide Us with such documents and information, then We may not be able to assess this Application or provide credit.

2 Consent and Privacy Agreement

- 2.1 The Applicant and all signatories to the Application consent to Us undertaking relevant credit searches for the purpose of this Application and acknowledge and agree to the matters set out in this clause 2.
- 2.2 The Applicant consents to Us collecting and using personal information of or relating to the Applicant and any Guarantor(s) (if applicable) for the purpose of:
- (a) assessing this Application and the credit worthiness of the Applicant and Guarantor(s);
 - (b) to the maximum extent permitted by law, assisting Us in the exercise of our rights against the Applicant and any Guarantor(s), including the right to enforce payment of any amount payable by the Applicant or the Guarantor(s) to us whether in relation to this Application or otherwise; and
 - (c) any other purpose set out in the Asahi Privacy Policy. A copy of this policy can be provided on request and is available at asahi.com.au. We may disclose details of this Application and personal information provided as part of this Application to any person considered reasonably appropriate by Us to achieve any such purpose, including disclosing such information to a credit reporting agency.

2.3 The Applicant understands and agrees that:

- (a) Its personal information and the personal information of its directors, partners and/or Guarantor(s) may be disclosed to a credit reporting agency to obtain a consumer credit report to assess this Application and to create or add to a consumer credit information file.
- (b) We may obtain information about the Applicant from credit providers, including information about the Applicant's credit worthiness, credit standing, credit history and credit capacity;
- (c) We may disclose personal information to anyone nominated by the Applicant as a Guarantor for the purpose of deciding whether to become a Guarantor;
- (d) if I am applying for credit in my own name, this information may include my identity particulars, the amount of credit, and the status of the credit account;
- (e) We collect personal information to assess trade and credit applications, to conduct transactions, deliver goods, directly market, develop marketing strategies and for related purposes. Generally, We only disclose this information to organisations which help Us perform these functions and to Our related companies.
- (f) We allow individuals to gain access to the personal information We hold about them.
- (g) We will disclose the content of this clause 2 to any individual whose personal information is provided in this Application.

3 Requirement for Guarantee and Indemnity

- 3.1 If the Applicant is a company then provision of a Trading Account pursuant to this Application is subject to and conditional upon each of the Applicant's directors executing a Guarantee and Indemnity in the form set out in Schedule 2 (unless otherwise agreed in writing by Us).
- 3.2 If the Applicant is a sole trader, partnership or entity other than a company, then We may in our absolute discretion require the provision of a Guarantee (or Guarantees) in the form set out in Schedule 2. We may refuse to provide a Trading Account if the Applicant fails to provide the required Guarantee(s).

4 Notification by Applicant

The Applicant must immediately notify Us in writing as soon as it becomes aware of any matter or thing which renders or may render any information disclosed to Us as part of this Application incomplete, untrue, incorrect, misleading or deceptive.

5 Warranties

The Applicant represents and warrants that:

- 5.1 as at the date this Application is submitted to Us and as at each day that credit is provided to the Applicant, the contents of this Application and any documents and information provided by or on behalf of the Applicant are complete, true and correct in every particular, are not misleading or deceptive in any way, and that all material facts have been disclosed to Us;
- 5.2 A director or principal of the Applicant has never been made bankrupt and are all solvent and able to pay their debts as and when they fall due and have not made any compromise or arrangement with their creditors and no application has been made or proposed to summon a meeting of their creditors or any class of them;

- 5.3 the Applicant (if a corporation) is solvent and able to pay its debts as and when they fall due and is not in liquidation or being wound up and no meeting has been called or resolution has been passed or order made for such purposes and no receiver or manager has been appointed in respect of the Applicant and the Applicant has not made any compromise or arrangement with its creditors or any class of them and no application has been proposed or made to any court for any order summoning a meeting of its creditors or any class of them; and
- 5.4 If the Applicant is a trustee of any trust it has the power to execute this Application and enter into every transaction in relation to the Trading Account with Us (and has a corresponding right under the trust to be indemnified out of the trust assets in respect of these matters) and executes this Application in its personal capacity and in its capacity as trustee of each trust.

6 Acceptance or rejection of Application

We may in our absolute discretion accept or reject this Application and to the maximum extent permitted by law, We are under no obligation to provide reasons for any such rejection.

7 No guarantee of continuing credit

- 7.1 The Applicant acknowledges and agrees that We may in our absolute discretion, withdraw or withhold credit from the Applicant or alter the Applicant's credit limit by providing the Applicant with written notice of such withdrawal or withholding in the following circumstances:
- (a) any payment the Applicant is required to make to Us in connection with the Applicant's Trading Account remains unpaid beyond its due date;
 - (b) the Applicant breaches a material term of this document;
 - (c) any person who has guaranteed the Applicant's obligations under this Application withdraws their guarantee;
 - (d) the Applicant enters or threatens to enter into bankruptcy, liquidation or other form of external administration, management or receivership or the Applicant enters into any scheme or arrangement with its creditors;
 - (e) the Applicant attempts to make payment to Us by dishonoured cheque; or
 - (f) We were induced by a misrepresentation on your part to accept this Application.

8 Credit restriction

The Applicant must not use any credit provided to it by Us for predominantly personal, domestic or household use.

9 Acknowledgment of Terms and Conditions of Sale

The Applicant acknowledges having received, read and understood the Terms and Conditions of Sale set out in Part B of this Application and as amended by Us from time to time and agrees to be bound by those terms in all dealings between the parties where credit is extended by Us.

10 Change of Details

The Applicant must notify Us immediately of any material change to the Applicant's business or contact details, including (without limitation) any change of address, trading name, ownership or effective control. The Applicant indemnifies Us against any loss, damage, cost or expense as a direct result of the Applicant's failure to promptly notify Us of such changes.

PART B: TERMS AND CONDITIONS OF SALE

11 ORDERS & ACKNOWLEDGEMENT

- 11.1 A quotation by Us (or price list) does not constitute an offer and we reserve the right to withdraw or revise it prior to acceptance of Your order.
- 11.2 By ordering the Goods You acknowledge and agree that:
- (a) upon acceptance by Us the order is bound by these Terms and Conditions (**Supply Contract**); and
 - (b) the Terms and Conditions will apply to the exclusion of any other terms unless We expressly agree otherwise in writing.
- 11.3 We reserve the right to accept or reject in our absolute discretion any orders we may receive for any reason, including, without limitation, the rejection of Your application for credit, You failing to pay for other Goods that you have ordered, the unavailability of Goods, an error in the price or the description of Goods, or an error in the order placed by you.

12 VARIATION

- 12.1 Once a Supply Contract is formed between You and Us, the terms and conditions of that Supply Contract can be amended or varied by written agreement between You and Us. We may also, acting reasonably, vary the terms of a Supply Contract by giving you 14 days' written notice specifying the variation. We reserve the right to amend these Terms and Conditions from time to time. Such amended Terms and Conditions shall supersede all Terms and Conditions previously issued by Us. If the variation would result in material detriment to You, You have the right to terminate the relevant Supply Contract by providing Us with 14 days' written notice to this effect. If a Guarantor has entered into a Deed of Guarantee and Indemnity ensuring your compliance with these Terms and Conditions, You agree to notify the Guarantor of any variation to these Terms and Conditions before the variation takes effect.
- 12.2 We may change the specifications or ingredients of any Goods from time to time and We are not required to notify You of such a change provided that in Our reasonable opinion the change will not result in material detriment to You.

13 PRICING AND PAYMENT

- 13.1 All sales are made at the current price at the time of delivery as set out in Our price list, including Goods placed on back order which may be subject to price variations between order and delivery.
- 13.2 You must pay Us within the period set out in Our invoice, unless otherwise set out in the Portal Terms. Payment must be made by cash, cheque or electronic funds transfer (or other payment method approved in writing by Us).
- 13.3 You must pay Us the full amount set out in Our invoice without deduction, withholding, set-off, discount or abatement.
- 13.4 If an amount is payable by You to Us, we are entitled to set-off that amount against any amount payable by Us to You.
- 13.5 You agree to pay Us any reasonable surcharge we may impose appearing on any invoice or statement for using a credit card (or any other payment method) to pay for goods or services supplied by Us.

- 13.6 If payment is not made by the due date set out in Our invoice, You must pay to Us interest on the overdue amount calculated from the due date until and including the date on which payment is made at the rate then fixed by the *Penalty Interest Rates Act 1983 (Vic)*.

14 TAXES

14.1 Definitions

The following definitions apply in this clause 14, unless the context requires otherwise:

"Applicable Laws" means all laws, by-laws, rules, regulations, orders, guidelines, policies, notices, directions, administrative practices, or other requirements of any governmental authority applicable to a party's obligations under this Agreement.

"Cider Product" means any Goods that satisfies the definition of 'wine' under the WET Act.

"Excise Duty" means excise duty imposed under the Excise Law.

"Excise Law" includes the *Excise Act 1901 (Cth)*, *Excise Tariff Act 1921 (Cth)* and any associated regulations and by-laws.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

"Tax" or **"Taxes"** means any and all excise duty, sales, goods and services, value added, withholding, use or other transfer taxes, any and all other taxes (other than those imposed on the income or capital of a Person) whatsoever, duties, fees, levies, imposts, and any similar charges, in each case in the nature of a tax, imposed under the Applicable Laws, including any and all assessments, interest, fines and penalties, whether disputed or not, made or imposed (as a result of any audit or otherwise) in connection with the payment or collection of any such taxes, duties, fees, levies or similar charges.

"WET" means the Wine Equalisation Tax.

"WET Act" means the *A New Tax System (Wine Equalisation Tax) Act 1999 (Cth)*.

"Wine Tax Law" has the meaning set out in section 33-1 of the WET Act.

14.2 GST

- (a) In this clause 14.2, words or expressions which are not defined in this Application, but which have a defined meaning in the GST Act, have the same meaning as in the GST Act.
- (b) Unless stated to the contrary, and otherwise as provided in this clause, any consideration payable under this agreement shall be exclusive of GST. Unless otherwise provided, all prices in Our price list are quoted exclusive of GST.
- (c) If a party makes a supply pursuant to this agreement, and GST is payable on that supply, the consideration for the supply (GST Exclusive Consideration) is increased by an amount equal to the GST Exclusive Consideration multiplied by the rate of GST prevailing at the time the supply is made (Additional GST Amount), except where the recipient of the supply is liable under the GST law to pay the GST on that supply.
- (d) The Additional GST Amount must be paid at the same time and in the same manner as the GST Exclusive Consideration.
- (e) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by an amount equal to any input

tax credit the other party is entitled to in respect of the loss, cost or expense, and then increased in accordance with clause 14.2(c) where applicable.

- (f) A party need not make a payment for a taxable supply made pursuant to this Application or a Supply Contract until it receives a tax invoice for the supply to which the payment relates.
- (g) If for any reason (including, without limitation, the occurrence of an adjustment event) the amount of GST payable on a supply made under or in connection with this Application or a Supply Contract varies from the Additional GST Amount payable by You under clause 14.2(c):
 - (i) We must provide a refund or credit to You, or You must pay a further amount to the Us, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by Us in accordance with the GST Act;
 - (iii) We will notify You of the refund, credit or further amount within 10 Business Days after becoming aware of the variation to the amount of GST payable;
 - (iv) If appropriate, we will provide any refund or credit to You at the same time as providing the notification under clause 14.2(g)(iii);
 - (v) If appropriate, You must pay any further amount to Us within 5 Business Days after receiving notification under clause 14.2(g)(iii); and
 - (vi) If there is an adjustment event in relation to the Supply, the requirement for Us to notify You will be satisfied by Us issuing an adjustment note under this clause 14.2(g).
- (h) If the consideration for a supply under this agreement is calculated by reference to the consideration for other supplies, in making that calculation, the consideration for those other supplies excludes any amount in respect of GST payable on those supplies. This clause 14.2(h) does not apply in relation to any calculations under clause 13.6.

14.3 Wine Equalisation Tax

- (a) In this clause 14.3, words or expressions which are not defined in this Application, but which have a defined meaning in Wine Tax Law, have the same meaning as in the Wine Tax Law.
- (b) Unless otherwise provided, all prices in Our price list are quoted exclusive of WET.
- (c) Subject to clause 14.3(e), You must pay to Us any WET payable by Us in respect to assessable dealings made in respect to the Cider Products delivered under a Supply Contract (Additional WET Amount).
- (d) Payment of the Additional WET Amount is required to be made at the same time and in the same manner as payment for the Goods is required to be made under the Supply Contract.
- (e) Cider Products will be supplied to you free of any WET where the assessable dealing is exempted from WET because you have grounds for quoting and have issued a quote in the approved form.
- (f) If Cider Products are supplied to You free of any WET, You are responsible for ensuring, and You warrant, that You have grounds for quoting Your Australian Business Number

for the purposes of exempting from WET any assessable dealings made in respect to the Cider Products.

- (g) You shall indemnify Us for any WET liability, penalties and ancillary charges payable by Us as a result of You making an invalid quote.

14.4 Excise

- (a) In this clause 14.4, expressions which are not defined, but which have a defined meaning in Excise Law, have the same meaning.
- (b) Products will be supplied to You free of any Excise Duty where a movement permission has been granted pursuant to the Excise Law.
- (c) You are responsible for ensuring, and warrants, that movement permissions remain valid and that the Product is moved in accordance with any conditions of the movement permission. If requested by Us, You must provide copies of movement permissions it has obtained and relied upon for transporting the Products under bond.
- (d) You shall indemnify Us for any Excise Duty liability, penalties and ancillary charges payable to the applicable Taxing Authority as a result of the invalid use or expiring of a movement permission.

15 DELIVERY

- 15.1 You will be responsible for all costs associated with delivery of the Goods, which will be notified to you in advance and payable within the period set out in Our invoice. You must provide reasonable and proper access to the location specified for delivery. In all cases We are entitled, at our discretion, to choose the method of transport for the Goods and to subcontract delivery.
- 15.2 Where a delivery date is requested in an order received by Us, We will use reasonable endeavours to deliver the Goods on the requested date in the ordered quantities. If we are unable to do so, we will work with You to minimise the impact to You.
- 15.3 You must notify Us of any shortages or defects in orders within 7 days of delivery, or such other period set out in the Portal Terms, otherwise You will be deemed to have accepted the order.
- 15.4 If You reject the Goods then We may sell such Goods without prejudice to any claim or other rights or remedies We may have against You.

16 PROPERTY AND RISK

- 16.1 Property in the Goods will remain with Us and will not pass to You until we have received payment in full for the Goods and for all sums owing on all of your other accounts with Us or under any contract made with Us. While the Goods remain Our property, You agree:
 - (a) to hold the Goods as fiduciary bailee for Us;
 - (b) the Goods will be readily identifiable as Our property; and
 - (c) You will not dispose of the Goods except in the ordinary course of Your business.
- 16.2 Risk to the Goods passes to You on delivery to You or Your nominated person or place of delivery.
- 16.3 If You fail to pay for any Goods within the period of credit extended by Us:

- (a) We may recover possession of all Goods (in which property has remained with the Us); and
- (b) if required, You will assign to Us any of Your rights to any outstanding money relating to Your re-supply of the Goods.

16.4 Property in Equipment, including kegs, casks, barrels and/or reusable drums and any pallets supplied with Goods will not pass to You. You are entitled to hold the Equipment on Our behalf only for the purposes of the consumption of the liquid content or its resale or such other purpose permitted in a related agreement. Subject to Our prior agreement (and provided that the pallets are in good order and condition), pallets supplied by Us may be exchanged with Your pallets or a pallet dehire arrangement may operate. All empty kegs, reusable drums and pallets will be returned to Us at Your cost. Where We arrange delivery, you must retain these items in good order and condition until collected by Us or Our authorised agent. If pallets are not returned, exchanged or dehired, a fee equivalent to the cost of the pallets or the pallet hiring charge plus GST and any other expenses incurred by Us may be invoiced to the You.

16.5 You warrant that any Equipment is not, and will not become, a fixture, and further agree to allow Us to do such things as We consider necessary to ensure that Equipment will not become a fixture (including un-affixing equipment). Where required by Us, You will procure consents from the landlord and any freehold mortgagee of premises in which any Equipment is located, in a form reasonably required by the seller, to ensure that Our rights to any Equipment are protected.

17 BRANDED TAPS

17.1 Unless We otherwise agree in writing, Goods supplied by Us and intended by You to be dispensed for consumption on licensed premises shall be dispensed from taps and other devices bearing Our product name or other logo associated with the product. No Goods shall be dispensed for consumption from:

- (a) a tap or device bearing a name or logo unless the Goods relate to that name or logo; or
- (b) an unbranded tap.

18 NO MIXING OF GOODS

18.1 Goods supplied by Us and intended by You for consumption on licensed premises shall not be mixed with other liquids or substances except at the express request of a consumer for the purposes of consumption.

19 GOODS SOLD FOR RESALE

19.1 Unless We otherwise agree in writing, Goods are supplied to You for resale in Australia only. You must not sell or otherwise supply the goods:

- (a) outside Australia; or
- (b) in Australia where You know, believe or ought reasonably suspect that the Goods are intended for resale outside Australia.

19.2 If We sell Goods to You for sale outside Australia, You must not sell or otherwise supply the Goods:

- (a) inside Australia; or
- (b) outside Australia where You know, believe or ought reasonably suspect that the Goods are intended for resale inside Australia.

- 19.3 You agree to indemnify Us and keep Us indemnified against all actions, claims, proceedings or demands which may be brought against Us, arising out of any breach of this clause 19 by You. Furthermore, if You breach this clause, in addition to any other rights We may have, You will forfeit any future discounts, allowances or rebates not yet accrued as at the date of the breach.

20 LIQUOR LICENCE

Alcoholic Goods are supplied on condition that You have a current liquor licence which permits the purchase and acceptance of the Goods to the premises directed. You must notify Us if Your liquor licence is suspended or cancelled or supply of the Goods will not comply with Your licence. You agree to provide proof of Your licence on request. We may refuse to supply Goods where you do not provide proof or we have reason to believe that supply will not comply with Your licence.

21 OUR LIABILITY

- 21.1 To the fullest extent permitted by law, we exclude Our liability in respect of any loss, damage or defect, or non-compliance with a condition or warranty, in respect of the Goods and if Our liability cannot be excluded, we limit it, subject to law (at Our election) to the:

- (a) replacement of the Goods or the supply of equivalent goods; or
- (b) cost of replacing the Goods or of purchasing or acquiring equivalent goods.

- 21.2 We will not be liable for:

- (a) any consequential loss or damage arising from a Supply Contract including any advice, recommendation, information, service or recall in relation to that Supply Contract;
- (b) any loss, expense, claim or damage arising out of the unavailability of Goods or any delay or failure in delivery of the Goods other than where such loss, expense, claim or damage is caused or contributed to by Our wrongful act or Our material breach of the relevant Supply Contract.

- 21.3 You acknowledge that You do not rely, and it is unreasonable for you to rely, on our skill or judgment as to whether the Goods supplied are reasonably fit for any purpose for which You are acquiring them.

- 21.4 Nothing in these Terms and Conditions operates to limit or exclude liability that cannot by law be limited or excluded.

22 DEFAULT

- 22.1 You will be in default of a Supply Contract if You:

- (a) fail to make any payment in accordance with these Terms and Conditions and remain in default for more than 7 days after receiving written notification from Us;
- (b) fail to comply with any material term of these Terms and Conditions and remain in breach for more than 7 days after receiving written notification from Us;
- (c) being an individual, commit any act of bankruptcy, die or become mentally or physically incapable of managing Your affairs;
- (d) being a corporation, pass a resolution for winding up or liquidation;
- (e) enter into any composition or arrangement with creditors or if a receiver including a provisional receiver, or receiver and manager, trustee or administrator is appointed for any property or assets;

- (f) become liable to be wound up by reason of insolvency or if any petition is presented for Your winding up; or
- (g) cease or threaten to cease carrying on a business.

22.2 Where You are in default, We may do one or more of the following by providing written notice to You:

- (a) suspend or terminate any Supply Contract;
- (b) require the payment of cash before or on delivery of any further Goods;
- (c) suspend any further deliveries and immediately recover possession of any Goods held by You;
- (d) require that all money owed, regardless of the due date, be due and payable;
- (e) issue proceedings against You;
- (f) recover from you any legal costs associated with debt recovery; and
- (g) appoint a receiver, manager or administrator under the Corporations Act 2001.

22.3 We will be in default of a Supply Contract if We:

- (a) fail to comply with a material term of these Terms and Conditions and remain in breach for more than 7 days after receiving written notification from You notifying Us of such breach;
- (b) become bankrupt, go into liquidation, are under external administration or any other event which is indicative of insolvency.

22.4 Where We are in default, you may terminate any Supply Contract by providing written notice to Us.

23 PERSONAL PROPERTY SECURITIES ACT

In this clause:

"Financing Statement" has the meaning given to it by the PPSA;

"Financing Change Statement" has the meaning given to it by the PPSA;

"PPSA" means the Personal Property Securities Act 2009 (Cth);

"PMSI" means a Purchase Money Security Interest within the meaning of the PPSA;

"Security Agreement" means the security agreement under the PPSA created between You and Us by these Terms and Conditions;

"Security Interest" has the meaning given to it by the PPSA and includes the PMSI created by these terms and conditions.

23.1 You agree that this Agreement constitutes a Security Agreement for the purposes of the PPSA and creates a security interest in:

- (a) all goods previously supplied by Us to the You (if any);
- (b) all goods that will be supplied in the future by Us to You; and

(c) the proceeds of sale of the goods referred to above.

23.2 We will have a PMSI in:

- (a) Goods, which secures Your obligation to pay the purchase price of the Goods to Us; and
- (b) in any equipment (which, for the purposes of the PPSA, will be subject to one or more PPS Leases).

23.3 We may register one or more Financing Statements in relation to Goods or equipment as it determines in its absolute discretion.

23.4 You will promptly provide any further documents, sign any such further documents or provide any further information which We may reasonably require to register any security interest in the goods or equipment or other document required under the PPSA.

23.5 You will:

- (a) pay all costs, expenses and other charges associated with the registration of any Security Interest;
- (b) not register anything in respect of any Security Interest without Our prior written consent;
- (c) immediately advise Us of any material change in Your business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales; and
- (d) notify Us of any changes to the Customer's name or other details (including address, telephone number and email).

23.6 You will allow Us to register a security interest over any goods disposed of to third parties so far as the law allows.

23.7 You will not allow Security Interests to be created or registered over the Goods in priority to the Security Interest held by Us.

23.8 You waive any right to receive:

- (a) any Financing Statement;
- (b) any notices dealing with the goods and default as far as the law allows; and
- (c) a verification statement in accordance with section 157 of the PPSA.

24 Charges

24.1 If We accept the Applicant's Application, each Applicant hereby as beneficial owner charges by way of fixed charge in Our favour all the estate and interest of that Applicant in all freehold and leasehold land in which that Applicant shall have any beneficial interest now or at any time up until the later of the termination of the Trading Account and the time at which We shall have received 100 cents in the dollar in respect of any moneys, interest or damages due to Us or by the Applicant.

24.2 Each Applicant in consideration for Us accepting this Application, hereby irrevocably appoints Us and each of our directors, secretaries, managers and attorneys severally as that Applicant's true and lawful attorney (with power to appoint and at pleasure remove a substitute or substitutes) to execute any instrument of mortgage of all or any of the property referred to in Clause 24.1 and/or to exercise any powers exercisable by that Applicant in respect of the

property referred to in Clause 24.1 including transferring the same and procuring the registration of any such mortgage or transfer whether executed by such attorney or that Applicant personally.

25 GENERAL

- 25.1 In the event of a product recall over Goods you have acquired from Us, you shall give Us such assistance as we reasonably require in relation to that recall.
- 25.2 You may not assign or otherwise deal with a Supply Contract without our prior written consent (such consent not to be unreasonably withheld). We may only assign or otherwise deal with a Supply Contract without your prior written consent:
- (a) in connection with any internal restructure; or
 - (b) if We enter into an agreement with a third party for the sale of all or part of Our business and/or assets, provided that the acquiring entity has the ability and willingness to perform the obligations under this Supply Contract or Your ability to exercise your rights under this Supply Contract is not affected.
- 25.3 These Terms and Conditions and all Supply Contracts are governed by the laws of Victoria and You agree to submit to the exclusive jurisdiction of the courts of Victoria including, for the avoidance of doubt, the Federal Court of Australia sitting in Victoria. We may at Our option bring proceedings or other judicial action in any Australian court.
- 25.4 The provisions of these Terms and Conditions will be separate and severable from each other and any provision or provisions are severed to the extent that they are void or unenforceable. The remaining provision or provisions will be binding on and enforceable by the parties.
- 25.5 In the event of any conflict or inconsistency arising between the terms of this Application, the terms and conditions on the Portal (**Portal Terms**) and any supply agreement between us and the Applicant (**Supply Agreement**), the following order of priority (with (a) having the highest priority and (c) having the least) will prevail: (a) Supply Agreement; (b) Portal Terms; and (c) this Application.
- 25.6 No failure or delay in exercising any of Our rights under these Terms and Conditions shall operate as a waiver of such right.