



ACCOUNT APPLICATION FORM GUIDE

Thank you for your application for credit with The Better Drinks Co Ltd. We look forward to doing business with you.

In order to make the processing of your account application easier and faster, please follow these guidelines:

- **Please complete all sections.**
- **Our payment terms are strictly 14 day Direct Debit, unless agreed otherwise.**
- **If you are operating as a limited liability company, each director of the company must read and sign the guarantee section at the end of this form. If this section is not completed the account will not be approved.**
- Any name(s) of previously owned companies can be provided, to assist in establishing a trading history of any person(s) involved in the person applying for credit. This is especially useful for those opening a new business, where a trading and credit history has not yet been established.
- Please ensure that you have had at least 6 months trading history with any credit referees provided.
- Utility companies, such as Telecom, Mercury Energy do not give out credit references, even when a customer number is supplied, so are not suitable referees.
- Gilmour's does not furnish credit references.
- We are also unable to accept credit references from personal friends.
- Please ensure correct phone numbers are supplied for all credit referees.
- **Please sign and mail back completed forms. Unfortunately faxed copies are not acceptable and will not be processed.**
- Please allow approximately 5 working days for your application to be processed and for trading on terms to begin. Until your account application has been processed, trading with The Better Drinks Co Limited is Cash on Delivery only.
- **Please read the attached Terms and Conditions of Trade carefully and in full. In particular, please note clause 8 (which sets out liability limitations), clause 11 (which grants security over your assets), clause 12 (which grants security over your land) and clause 16 (which grants a waiver and indemnity to The Better Drinks Co Limited).**

If you have further questions on how to complete the application form, please contact me on 09 837 6758.

Regards
Liane Telgheder

The Better Drinks Co Ltd



Payment Terms	
14 Day Direct Debit	
Other (specify)	
Signed TBDC TSM	

Application for Credit Account

Nature of Organisation:

Sole Trader Partnership Limited Liability Company Trust Other

Trade Name: _____

Legal Name: _____

Delivery Address: _____

Postal Address: _____

Telephone: () _____ Fax: () _____ Mobile: () _____

Registered Office: _____ Date of Birth: _____

Company Number: _____ Email: _____

Previous Address Details (If less than 2 years): _____

Identification Type _____ Identification Number: _____

Details of Partners (if Partnership)

1. Full Name: _____

Home Address: _____

Home Phone: _____

2. Full Name: _____

Home Address: _____

Home Phone: _____

Details of Trustees (if a Trust)

1. Full Name: _____

Home Address: _____

Home Phone: _____

2. Full Name: _____

Home Address: _____

Home Phone: _____

Details of Directors (If Limited Liability Company)

1. Full Name: _____

Home Address: _____

Home Phone: _____

2. Full Name: _____

Home Address: _____

Home Phone: _____

NOTE: If there are more than two partners, directors or trustees, please advise us accordingly in writing.

Contact Person for Accounts: _____

Name and Branch of Bank: _____

Bank Account Number: _____

Solicitor's Name & Address: _____

Accountant's Name and Address: _____

Trade References: (excluding Credit Cards, Fuel Suppliers, Landlord, Power & Phone)

1. _____ Phone No: _____

2. _____ Phone No: _____

3. _____ Phone No: _____



CERTIFICATE / ACCEPTANCE OF TERMS AND CONDITIONS OF TRADE

The applicant for credit named in this Application for Credit, hereby irrevocably and unconditionally:

- confirms, certifies and warrants that the information set out in this Application For Credit Account is true and correct and that this Application For Credit Account has been completed and signed by a duly authorised person;
- authorises any person to give information to The Better Drinks Co Limited (or its representatives) as may be required in response to credit inquiries;
- confirms, certifies and warrants that a duly authorised person has read and understood the attached **TERMS AND CONDITIONS OF TRADE**;
- agrees to be bound by the attached **TERMS AND CONDITIONS OF TRADE** (and any amendments or replacements thereto).

Signature

Print Position (i.e. partner, trustee, director)

Name of Signatory

Date

GUARANTEE AND INDEMNITY

In consideration of The Better Drinks Co Limited agreeing to supply goods to the applicant for credit, each person who is named and signs below (other than a witness) irrevocably and unconditionally guarantees by way of continuing obligation to The Better Drinks Co Limited as primary obligor, and not merely as surety, the due performance by the applicant for credit named in this Application For Credit Account of all of its obligations of any nature which are owed to The Better Drinks Co Limited from time to time and indemnifies The Better Drinks Co Limited against any loss, cost (including legal costs) or damage which The Better Drinks Co Limited may suffer as a direct or indirect result of the breach by the applicant for credit of any such obligations.

The guarantee set out above is not to be discharged, nor are the guarantor's obligations to be affected, by any matter or thing which, but for this paragraph, would or might have discharged any guarantor or affected his or her obligations, it being the intention of each guarantor that the guarantee is absolute and unconditional in all circumstances. Each guarantor's obligations under the above paragraph will remain in full force and effect until The Better Drinks Co Limited has discharged such obligations by written notice to the guarantor.

IMPORTANT - READ THIS SECTION BEFORE SIGNING

Each person who is named and signs below (other than a witness) agrees to be bound, as a guarantor, by the guarantee and indemnity set out in the immediately preceding two paragraphs, and confirms, certifies and warrants to The Better Drinks Co Limited that he or she has read, and understood the consequences of, such guarantee and indemnity, has taken independent legal advice in respect of such guarantee and indemnity (or has waived that right), and believes the guarantee and indemnity to be reasonable.

Signature of guarantor

Date

Signature of guarantor

Date

Name of guarantor

Name of guarantor

Witnessed by:

Witnessed by:

Signature of witness

Signature of witness

Name of witness

Name of witness

Occupation of witness

Occupation of witness

Address of witness

Address of witness

NOTE: Where the applicant for credit is a limited liability company, each director must write in their name, and sign above, as a guarantor. The guarantee takes effect as, and should be signed as, a deed.

The Better Drinks Co Limited – Terms & Conditions of Trade

Definitions

- 1.1 "Buyer" means the buyer of the Goods or any person acting on behalf of and with the authority of the Buyer.
- 1.2 "Default Rate" means the aggregate of: (a) the average rate as displayed on the Reuters Monitor Screen page BKBM (or any successor page displaying substantially the same information) under the heading "FRA" for 30 day bank accepted bills, at or about 10.35 am on the first day on which such rate is to be calculated; and (b) 5% per annum.
- 1.3 "Goods" shall mean all goods supplied by the Seller to the Buyer.
- 1.4 "Price" shall mean the price of the Goods.
- 1.5 "Seller" means The Better Drinks Co Limited and its successors and assigns.

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 have agreed to be bound by these terms and conditions, 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 irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Seller.
- 2.4 None of the Seller's agents or representatives are authorised to make any representations, warranties, statements, conditions or agreements not expressed by the Seller in writing, nor is the Seller bound by any such unauthorised statements.

3. Goods

- 3.1 The Goods are as described on the invoices provided by the Seller to the Buyer.

4. Price and Payment

- 4.1 The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied. For the avoidance of doubt, the Seller may change the Price at any time without notice (except in respect of Goods which have already been invoiced).
- 4.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice. If no time is stated then payment will be 14 day direct debit following date of invoice.
- 4.3 The Price shall be increased by, and the Buyer shall pay to the Seller, the amount of any GST and other taxes and duties which may be applicable.
- 4.4 All amounts payable by the Buyer to the Seller under these terms and conditions must be paid in cash in cleared and immediately available funds and free and clear from withholding, condition or set-off of any nature.

5. Delivery of Goods

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.
- 5.2 The costs of carriage and any insurance related carriage will be borne by the Seller.
- 5.3 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.4 The failure of the Seller to deliver, or delay in delivery, shall not entitle the Buyer to treat these terms and conditions as repudiated.
- 5.5 The Seller shall not be liable for any loss or damage of any nature whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.6 All orders made by the Buyer shall be irrevocable unless: (a) the order is cancelled by notice in writing to the Seller no later than two business days prior to the scheduled delivery date; and (b) the Seller has not already dispatched the Goods.

6. Risk

- 6.1 All risk for the Goods passes to the Buyer on delivery (without limiting clause 10 of these terms and conditions). The Buyer must keep the Goods fully insured from delivery until property in the Goods passes to the Buyer under clause 10.1.
- 6.2 If any of the Goods are damaged or destroyed prior to title to them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. 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.

7. Defects/Returns

- 7.1 The Buyer shall inspect the Goods on delivery and shall, within 48 hours of delivery, notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or invoice. 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 conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

- 7.2 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 provided that:
- the Buyer has complied with the provisions of clause 7.1;
 - the Goods are returned at the Buyer's cost within seven days of the delivery date;
 - the Seller will not be liable for Goods which have not been stored or used in a proper manner.

8. No Warranties and Liability Limitations/Exclusions

- 8.1 To the maximum extent permitted by law, the Seller excludes all warranties or representations, express or implied, in tort, contract, statutory or otherwise, in relation to the Goods and their use (including, without limitation, their merchantability or fitness for any particular purpose). The Buyer acknowledges that the Seller gives no such warranties or representations.
- 8.2 The Seller shall in no circumstances be under any liability of any nature whatsoever to the Buyer, and the Buyer will indemnify the Seller: (a) for any loss of revenue, loss of use, loss of profit, special loss, consequential loss, or indirect loss, suffered by the Buyer or any third party in relation to, in connection with, or arising out of, these terms and conditions or the sale of Goods to the Buyer; (b) for any and all claims, proceedings, damages, loss, cost, liability or expense arising, directly or indirectly, in relation to, or in connection with, any third party's use of the Goods.
- 8.3 Without limiting clause 8.2: (a) in the event of any breach of these terms and conditions by the Seller the remedies of the Buyer shall be limited to damages; (b) the Seller's maximum aggregate liability to the Buyer in respect of all matters arising under, in relation to, or in connection with, these terms and conditions or the sale of Goods to the Buyer (whether in contract, tort (including negligence), or otherwise) shall not in any event exceed the Price of the Goods supplied to, and paid for by, the Buyer.

9. Default, Consequences of Default and Consequences of Insolvency

- 9.1 Interest on overdue invoices shall accrue daily at the Default Rate (compounding monthly) from the date when payment becomes until the date when the relevant amount (together with all interest under this clause) is paid in full to the Seller.
- 9.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements (including legal costs on a solicitor and client basis) and all of the costs of collection incurred by any representative or appointee of the Seller.
- 9.3 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 of any nature whatsoever the Buyer suffers because the Seller exercised its rights under this clause.
- 9.4 In the event that:
- 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 the Buyer is, or is deemed to be, insolvent; or
 - 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
 - a receiver, manager, liquidator (provisional or otherwise), voluntary administrator, or similar person is appointed in respect of the Buyer or any asset of the Buyer, or if the Buyer ceases to carry on all or a material part of its business,
- then all amounts owing to the Seller shall, whether or not due for payment, immediately become due and payable (without prejudice to any of the Seller's other rights or remedies under these terms and conditions, at law, in equity, or otherwise).

10. Title

- 10.1 It is the intention of the parties that property in any and all Goods shall not pass from the Seller to the Buyer until:
- the Buyer has paid all amounts owing for the particular Goods, and
 - the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 10.2 Until such time as property in the Goods passes from the Seller to the Buyer, the Buyer must not dispose of any interest in the Goods (except for a bona fide sale of the Goods in the ordinary course of business of the Buyer), grant any charge or security over the Goods (other than a charge or security granted to a third party financier in connection with a bona fide financing arrangement, provided that such charge or security remains subordinated to the security interest granted to the Seller under clause 11.1(b)), or otherwise act in a manner which is inconsistent with the Seller's ownership of the Goods.
- 10.3 It is further agreed that:
- Until such time as property in the Goods shall pass from the Seller to the Buyer the Seller may at any time give notice in writing to the Buyer to return

the Goods or any of them to the Seller (at the Buyer's cost and risk). Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.

- (a) The Buyer grants to the Seller an unconditional and irrevocable licence for the Seller or the Seller's representatives to enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where Goods are situated and take possession of Goods which remain the property of the Seller under clause 10.1, without being responsible for any damage thereby caused (and the Buyer will indemnify the Seller in respect of any and all such damage).

11. Personal Property Securities Act 1999 ("PPSA")

11.1 The Buyer acknowledges and agrees that:

- (a) These terms and conditions constitute a security agreement for the purposes of the PPSA.
- (b) In order to secure the due and punctual performance of the Buyer's obligations under these terms and conditions, the Buyer hereby grants to the Seller a security interest 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 during the continuance of the parties' relationship. For the avoidance of doubt, the security interest granted by this sub-clause applies to the proceeds of sale of the Goods.
- (c) Without limiting sub-clause (b), in order to secure the due and punctual performance of the Buyer's obligations under these terms and conditions and all other obligations of the Buyer to the Seller from time to time, the Buyer hereby grants to the Seller a security interest in all of the Buyer's present and after acquired personal property.

11.2 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 in respect of the security interests granted under clause 11.1;
- (b) indemnify, and upon demand reimburse, the Seller for all expenses (including legal costs on a solicitor client basis) incurred by the Seller in enforcing the security interests granted under clause 11.1 or the security granted under clause 12;
- (c) not register a financing change statement or a change demand without the prior written consent of the Seller;
- (d) give the Seller not less than fourteen (14) days prior written notice of any proposed 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); and
- (e) 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.

11.3 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.

11.4 The Buyer waives its rights as a debtor under sections 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

11.5 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.

12. Security over Land

12.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever, to the extent permitted by law, where the Buyer has any interest in land, the Buyer agrees to mortgage and/or charge all of its interest in the such land to the Seller to secure the due and punctual performance of all of the Buyer's obligations under these terms and conditions and all other obligations owed by the Buyer to the Seller from time to time. The Buyer shall take all steps reasonably requested by the Seller to register such mortgage or charge. The Buyer acknowledges and agrees that the Seller shall be entitled to lodge where appropriate, a caveat, which caveat shall be released once all of the Buyer's obligations to the Seller have been satisfied in fully.

13. Intellectual Property

13.1 All intellectual property rights in the Goods and all related promotional and marketing material (including, but not limited to, trade marks, and the copyright in such materials) is the sole and exclusive property of the Seller. The Buyer will not contest, or otherwise act in a manner (or permit any act) which is inconsistent with, the Seller's ownership of such intellectual property rights.

14. Termination by the Seller

14.1 The Seller may terminate these terms and conditions at any time, or cancel delivery of Goods at any time before the Goods are delivered, by giving written notice to the Seller. The Seller shall not be liable for, and the Buyer shall

indemnify the Seller in respect of, any loss or damage whatsoever arising from such cancellation.

15. Credit Information

15.1 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; and
- (b) to 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.

15.2 For the avoidance of doubt, where the Buyer is a natural person the authorisation under clause 15.1 is an authorisation or consent for the purposes of the Privacy Act 1993.

15.3 The Buyer shall have the right to request the Seller for a copy of the information about the Buyer retained by the Seller and the right to request the Seller to correct any incorrect information about the Buyer held by the Seller.

16. Buyer's Disclaimer and Indemnity

16.1 Without limiting clause 8.1, the Buyer hereby irrevocably waives and disclaims any right to rescind, or cancel these terms and conditions, or to sue for damages, or to claim restitution, arising out of any misrepresentation made to the Buyer by the Seller or any of its representatives and the Buyer acknowledges that it has agreed to these terms and conditions, and buys the Goods, relying solely upon its own skill and judgement.

16.2 Without limiting, and in addition to, any other indemnity set out in these terms and conditions, the Buyer shall indemnify the Seller against any and all claims, proceedings, damages, loss, cost, liability or expense arising, directly or indirectly, in relation to, or in connection with, the Buyer's breach of these terms and conditions, the Buyer's negligence and/or the Buyer's intentional act or omission.

17. Contractual Remedies Act 1979

17.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) of the Contractual Remedies Act which states that nothing in the Contractual Remedies Act shall affect the Sale of Goods Act 1908, were omitted from the Contractual Remedies Act 1979.

18. Consumer Guarantees Act 1993

18.1 The Buyer acknowledges and agrees, and represents and warrants to the Seller, that it is acquiring the Goods in trade and for the purposes of business and, therefore, that the provisions of the Consumer Guarantees Act 1993 do not, and will not, apply.

19. Dispute Resolution

19.1 All disputes and differences between the Buyer and the Seller in respect of these terms and conditions which cannot be resolved by good faith discussions shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1908.

20. General

20.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 All Goods supplied by the Seller are supplied subject to the laws of New Zealand and the Seller takes no responsibility for changes in the law that affect the Goods supplied.

20.3 The Seller shall not be liable for any failure to perform its obligations due to any act of God, terrorism, war, strike, lock out, industrial action, flood, storm or other event beyond the reasonable control of the Seller.

20.4 The Buyer must not transfer or assign, directly or indirectly, any of its rights or obligations under these terms and conditions, without the Seller's prior written consent. A change in the ultimate beneficial ownership or control of the Buyer is deemed to be a transfer requiring consent for the purposes of this clause.

20.5 The Seller may assign, license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

20.6 The Seller may alter and replace these terms and conditions at any time by written notice to the Buyer, and the Buyer agrees that the amended or replaced terms will be binding on the Buyer on receipt of such notice.

20.7 These terms and conditions are not to be construed to the disadvantage of the Seller, or in favour of the Buyer, because the Seller was responsible for their preparation.

20.8 The Buyer shall keep confidential and not directly or indirectly disclose, or permit the disclosure of, these terms and conditions and any other information made available by the Seller to the Buyer, provided that the Buyer may disclose information which enters the public domain (other than as a result of a breach of this clause by the Buyer).