

# BURLEIGH HEADS CANNABIS - TERMS AND CONDITIONS OF TRADE

## 1. INTERPRETATION

In the interpretation of this Contract:

- (a) each of the Parties hereto to may be referred to individually as a "Party", and collectively as the "Parties";
- (b) references to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (c) words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or Contracts also mean those documents or Contracts as changed, novated or replaced, and words denoting one gender include all genders;
- (d) grammatical forms of defined words or phrases have corresponding meanings;
- (e) the Parties must perform their obligations on the dates and times fixed by reference to the Gold Coast, Queensland;
- (f) reference to an amount of money is a reference to Australian Dollars;
- (g) if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (h) references to a Party are intended to bind their executors, administrators and permitted transferees; and
- (i) obligations under this Contract affecting more than one Party bind them jointly and each of them severally.

## 2. ORDERING PROCESS

- (a) The Applicant is required to place an order for goods (Goods) in writing with the Supplier by using the Supplier's order form and submitting all other documents specified by the Supplier, including but not limited to any relevant prescription documents, and such shall constitute a request to vary this contract to include the provision of those goods and/or services by the Supplier as a term of this contract (Order).
- (b) The Supplier may either accept or reject the Order.
- (c) If the Supplier accepts the Order, then the Order shall be taken to constitute a written variation to this Contract on the following terms:
  - (i) The Supplier agrees to provide the Goods described in the Order to the Applicant; and
  - (ii) The Applicant agrees to pay the price for the Goods stated in the Order to the Supplier.

## 3. CREDIT LIMIT

- (a) The Supplier may, at its own unfettered discretion, impose a monetary limit on the amount of credit that it will provide to the Applicant (Credit Limit) by notify the Applicant of that Credit Limit in writing. This may differ from the Requested Credit Limit on the Application.
- (b) If the Credit Limit exceeds the amount of Twenty Thousand Dollars (\$20,000.00), then the Supplier may, at its sole discretion, require the Applicant's Directors/Secretary/Partner (as applicable) to provide personal guarantees to the Supplier for the Applicant's obligations under this agreement in accordance with Clause 2 of this Agreement.
- (c) If the Applicant places an Order which would result in the amount of credit supplied to the Applicant by the Supplier exceeding the Credit Limit, then the Supplier may, at its own unfettered discretion, accept or reject that Order. If the Supplier accepts an Order under this clause, any amount payable by the Applicant to the Supplier for that Order which exceeds the Credit Limit must be paid to the Supplier by the Applicant before the Supplier is obligated to deliver the Goods to the Applicant.

## 4. TITLE TO GOODS

Until all Moneys are paid in full:

- (a) the ownership of and title to the Goods remains at all times with the Supplier;
- (b) the Applicant:
  - (i) holds the Goods as the Supplier's fiduciary agent and bailee;
  - (ii) must properly store the Goods separately from any other goods and in a manner which clearly shows the Supplier as the owner of the Goods;
  - (iii) must insure the Goods;
  - (iv) must account to the Supplier for all proceeds of the Goods, including insurance proceeds;
  - (v) must permit the Supplier reasonable access to the Applicant's premises at any time to inspect the Goods; and
  - (vi) may sell the Goods as fiduciary agent for the Supplier; and
  - (vii) shall, as bailee for the Supplier, hold any proceeds (as that term is defined in the *Personal Property Securities Act 2009* (Cth) (PPSA)) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods in trust for the Supplier and shall pay the proceeds into a separate fiduciary account to be held in trust for the Supplier until accounted for to the Supplier at the demand of the Supplier;
- (c) for the avoidance of doubt, for the purposes of the PPSA, it is the intention of the Parties by this clause 4 that there is created for the benefit of the Supplier a Purchase Monies Security Interest in the Goods;
- (d) the Applicant agrees that the Supplier may register any personal property security interest created by this Contract on the Personal Property Securities Register and the Applicant waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by the Supplier in respect of any personal property of the Applicant. The Parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Applicant or place an obligation on the Supplier, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that the Supplier otherwise agrees in writing; and
- (e) if a Default Event occurs, the Supplier is entitled and permitted to, at its discretion:
  - (i) by its servants or agents enter into the Applicant's premises and/or retake possession of the Goods and sell them; or
  - (ii) seek and sue for recovery of the moneys owing in respect of the Goods.

## 5. RISK

- (a) Despite any other terms of this Contract, risk passes to the Applicant on delivery of the Goods.
- (b) The Applicant agrees that it is the Applicant's responsibility to:
  - (i) inspect Goods delivered immediately upon delivery and to carry out any tests that a prudent person would carry out;
  - (ii) give written notice to the Supplier of any alleged irregularities in quantity or description or any faults or defects in respect of any within five (5) working days of delivery.

## 6. PAYMENT

- (a) The Supplier may provide the Applicant with a delivery notice for each delivery which particularises the goods delivered and the amount payable for those goods.
- (b) On the last day of each month, the Supplier will issue an invoice for all goods supplied to the Applicant within that month.
- (c) The Applicant must pay any amount owing under any invoice within five (5) business days of receipt of that invoice.
- (d) The Applicant agrees to pay interest on any amounts that remain owing after they have fallen due.
- (e) Interest accrues from day to day on the balance of overdue amount on a compounding basis at a rate being five per cent (5%) higher than the cash rate set by the Reserve Bank of Australia at the relevant time.

## 7. DEFAULT

- (a) A Default Event occurs if:
  - (i) any amounts are unpaid after they fall due;
  - (ii) at any time the debit balance of the Account exceeds the Credit Limit;
  - (iii) the Applicant is unable to pay its debts as they fall due;
  - (iv) the Applicant ceases or suspends conduct of its business, or threatens to;
  - (v) The Applicant's financial circumstances change in a way which, in the reasonable opinion of the Supplier, will affect the Applicant's ability to comply with its obligations under this Contract;
  - (vi) an administrator, liquidator, provisional liquidator, receiver and/or manager or any other form of insolvency administrator or controller is appointed to the Applicant or over all or part of the Applicant's assets;
  - (vii) the Applicant goes into bankruptcy, dies, or commits any act of bankruptcy or, if the Applicant is a partnership, the partnership is dissolved;
  - (viii) execution is levied on any of the Applicant's assets.
- (b) If a Default Event occurs:
  - (i) The Supplier may, at its sole discretion, suspend or terminate the supply of goods and/or services on credit;
  - (ii) all unpaid amounts become immediately due and payable;
  - (iii) the Supplier may exercise its rights to retake possession of any Goods under clause 4(e);
  - (iv) The Applicant is liable to pay to the Supplier and the Supplier may recover in full from the Applicant a default fee (Default Fee), such Default Fee being an amount that is calculated at a rate up to 12% of the current amount owing to by the Applicant to the Supplier as at the time of the Default Event but the Default Fee may not exceed \$750.00. It is acknowledged that the purpose of the Default Fee is to defray expense and cost that will be incurred by the Supplier as a result of the Default Event, including by the Supplier exercising or enforcing or seeking to exercise or enforce a right under these Terms. Such Default Fee may be collected by the Supplier as a liquidated debt;
  - (v) In addition to the Default Fee, the Applicant is liable to pay to the Supplier and the Supplier may recover in full from the Applicant all legal costs and disbursements on a full indemnity basis incurred by the Supplier arising from or as a result of the Supplier exercising or enforcing or seeking to exercise or enforce a right under these Terms.
- (c) The Parties acknowledge that the Supplier's rights under this clause may be subject to restrictions pursuant to clause 415D of the *Corporations Act 2001* (Cth).

## 2. GUARANTEE

- (a) The Guarantor/s (as defined in the Applicant Information) unconditionally and irrevocably guarantee to the Supplier the due and punctual payment by the Applicant of all monies at any time actually or contingently owing to the Supplier by the Applicant, either alone or jointly or severally with others on any account, including without limitation monies payable for goods and/or services provide by the Supplier, interest, costs and charges, and indemnity or damages incurred by the Supplier.
- (b) If the Applicant defaults in payment of any amounts payable under the Contract, the Guarantor/s shall pay those monies immediately upon demand by the Supplier in order to discharge the debt owed by the Applicant in full.
- (c) The Guarantor/s agree that a written demand for payment from the Supplier or their legal representative shall be deemed adequate evidence of the existence of a debt owed by the Applicant to the Supplier.
- (d) In the event of any liquidation, provisional liquidation, receivership, voluntary administration, deed of company arrangement, scheme of arrangement or other administration in insolvency of the Applicant, the Guarantor/s agree that they will not take any enforcement action or claim any security interests against the Applicant that are in conflict with the interests of the Supplier.
- (e) Each Guarantor hereby charges and creates in favour of the Supplier a security interest in all of the Guarantor's present and future beneficial interests in real property and all of the Guarantor's present and after-acquired property (Charged Property). For the avoidance of doubt, each Guarantor irrevocably consents to the Supplier registering a caveat over each property owned by the Guarantor, whether personally, in a trust, or in a company of which the Guarantor is an officer. Each Guarantor further agrees that on demand by the Supplier, the Guarantor will immediately execute such caveat, mortgage, personal property security

registration or other instrument of security as required by the Supplier, and in the event that a Guarantor fails to do so within a reasonable time, the Guarantor hereby appoints the Supplier's solicitor to act as its true and lawful attorney to execute and register such security instrument. No Guarantor will object to the lodgement of a caveat noting the Supplier's security interest pursuant to the terms of this Contract. The Guarantor indemnifies the Supplier for all costs, losses and damages (including legal fees and registration fees) associated with registering a security interest under this clause.

### 3. INDEMNITY & CHARGE

The Applicant hereby charges and creates in favour of the Supplier a security interest in all of the Applicant's present and future beneficial interests in real property and all of the Applicant's present and after-acquired property (**Charged Property**). For the avoidance of doubt, each Applicant irrevocably consents to the Supplier registering a caveat over each property owned by the Applicant, whether personally or a trust. The Applicant further agrees that on demand by the Supplier, the Applicant will immediately execute such caveat, mortgage, personal property security registration or other instrument of security as required by the Supplier, and in the event that the Applicant fails to do so within a reasonable time, the Applicant hereby appoints the Supplier's solicitor to act as its true and lawful attorney to execute and register such security instrument. The Applicant will not object to the lodgement of a caveat noting the Supplier's interest pursuant to the terms of this Contract. The Applicant indemnifies the Supplier for all costs, losses and damages (including legal fees and registration fees) associated with registering a security interest under this clause.

### 4. PRIVACY ACT DECLARATION

- (a) The Applicant, and any directors, partners or authorised persons of the Applicant (Relevant Person/s), acknowledge and understand that the Supplier abides by the National Privacy Principles established under the *Privacy Act 1988* (Cth) ("the Privacy Act") and that the Supplier's Privacy Policy is available via its website at: <https://www.burleighheadscannabis.com/privacy-policy>.
- (b) The Applicant and any Relevant Persons acknowledge and agree that they are informed (by the reading of the text of this Declaration and Authority) in accordance with s18E(8)(c) of the Privacy Act, that certain items of personal information about the Applicant and any Relevant Persons contained in this application, or which may be subsequently obtained and permitted to be kept on a credit information file in accordance with s18K(1)(b) or s18K(1)(h) of the Privacy Act might be disclosed to a credit reporting agency by the Supplier. This information includes, among other things, particulars such as identity, the fact an application for credit was made by the Applicant and the amount of credit sought, details of current providers of credit and details of any credit at least sixty (60) days overdue, cheques dishonoured and serious credit infringements.
- (c) To assist in the processing of this Application, the provision of credit and/or the recovery of any overdue account, the Applicant and any Relevant Persons hereby authorise the Supplier, its successors and/or assigns to:
  - (i) obtain information about their personal or commercial credit worthiness from their bank and any other credit provider and credit reporting agency for the purposes of assessing the application, the provision of credit and/or the recovery of any overdue account, or in connection with any guarantee;
  - (ii) use, disclose or exchange with other credit providers information about their personal or commercial credit arrangements in order to assess the application (including whether to accept as a guarantor any person submitting the application), and collect overdue accounts;
  - (iii) disclose the contents of the credit report by a credit reporting agency to the Supplier's solicitors or mercantile agents.
- (d) The Applicant and any Relevant Persons agree that if the Supplier approves this Application, this authority remains in force until any credit facility granted as a result of this application ceases in accordance with s18K(1)(C) of the Privacy Act.
- (e) By completing and returning this Application to the Supplier, the Applicant and any Relevant Persons confirm their written consent to the above requirements in accordance with the Privacy Act.

### 5. METHOD OF PAYMENT

- (a) All payments to be made under this Contract by the Applicant must be made by electronic transfer in clear funds to an account nominated by the Supplier, on or before the relevant due date, without any setoff, counterclaim or deduction for or on account of any income or other taxes, imposts, deductions or other withholdings of any kind.
- (b) For the avoidance of doubt, the Supplier may agree to accept payment in an alternative method.

### 6. BILLING AND INTEREST

The Applicant hereby agrees that if the Applicant defaults on payment of our amounts due and owing, the Supplier may list information about that default with a credit reporting agency, pursuant to section 18E(1)(b) of the Privacy Act.

### 7. TERMINATION

- (a) Either Party may terminate this Contract on thirty (30) days' written notice.
- (b) The Supplier may terminate this Contract immediately if a Default Event occurs.
- (c) Should this Contract be terminated at any time, the Applicant remain liable for the fees and costs up until termination.
- (d) If the Applicant does not pay monies in accordance with the Contract, the Supplier may suspend work and may cease acting for the Applicant.
- (e) The Applicant will be required to pay the Supplier's professional fees, fees for other items and expenses and disbursements up to the date of termination.

### 8. PRIVACY PROTECTION

- (a) In the course of providing goods and/or services under this Contract, the Supplier may collect personal information about the Applicant and the Applicant's representatives and employees. This personal information will only be disclosed and used for the purposes of carrying out this Contract or otherwise in accordance with the Applicant's instructions.
- (b) Personal information about the Applicant, provided by the Applicant and other sources, is protected under the Privacy Amendment (Private Sector) Act 2000 (Cth). Disclosure of such information may be compelled by law (e.g. under the Social Security Act 1991 (Cth)).
- (c) Except where the Applicant has otherwise agreed or otherwise direct the Supplier, the Supplier can also disclose the fact that it has supplied the Applicant in any of its tender or marketing or business documents.
- (d) The Applicant may have rights under the Privacy Act 1988 (Cth) to obtain access to the personal information the Supplier has about the Applicant. The Applicant may ask the Supplier not to send direct marketing materials to the Applicant by contacting the Supplier.

### 9. WARRANTIES

- (a) If any Relevant Person is signing and agreeing to these Terms as a director or trustee of a private corporation or a trust, the Relevant Person acknowledges that he/she:
  - (i) is signing and agreeing on behalf of each and every director or trustee of the Entity and is binding the Applicant and every director of the Applicant to these Terms and, in doing so, warrant to the Supplier that he/she acting as the authorised agent with actual authority on behalf of the Applicant to do so; and
  - (ii) guarantee to the Supplier the performance by the Applicant of these Terms and indemnify the Supplier in the failure by the Applicant to perform any of these Terms, including in particular as to payment of any fees, charges and expenses due and owing to the Supplier.
- (b) The Supplier may also require the Directors of the Applicant to provide a personal guarantee or other security for the Supplier's fees, charges and expenses including but not limited to a legal or equitable mortgage, legal or equitable charge, lien, consent or caveat over any property in which the Applicant has a legal or equitable interest. The cost of providing such security will be at the Applicant's expense.

### 10. LIMITATION OF LIABILITY

- (a) To the maximum extent permitted by law, the Supplier excludes all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied statutory or otherwise, relating to this Contract.
- (b) The maximum liability of the Supplier for a breach of their obligations under this Contract shall be limited to the cost of replace or repairing (at the Supplier's sole discretion) the goods, or in the case of services, the supplying of the services again.

### 11. FORCE MAJEURE

No Party hereto will be liable nor deemed to be liable to the other Party for failure or delay in meeting any obligation hereunder due to strikes and/or lockouts (whether of their own employees or those of others and whether or not the Party against whom such action is taken could have avoided the same by acceding to the demands of the employees responsible for such action) Acts of God war fire flood embargo litigation acts of government or any agency instrumentality or any political subdivision thereof or any other cause beyond the control of the Party which had the duty to perform. In any such event, the time for performance of the obligations under this Contract will be extended by the same period or periods (as the case may be) for which performance is delayed. The Party so affected will use its best endeavours to avoid or remove such causes of non-performance and will continue performance hereunder with the utmost despatch as soon as such causes are removed provided that nothing in this clause will be construed as requiring the affected Party to settle any industrial dispute.

### 12. SEVERANCE

In the event that any provision of this Contract is deemed invalid, illegal or unlawful, or is otherwise incapable of enforcement, all other provisions of this Contract shall nevertheless prevail and remain in full force and effect.

### 13. WAIVER

A waiver by a Party of any right hereunder shall only be effective if provided in writing by the Party. Failure by the Party to condone the delay or failure to comply with any of the terms or conditions of this Contract shall not be deemed a waiver of the right to do so and shall not affect the Party's ability to exercise such right or pursue its remedies hereunder in respect of such delay or failure as and when the Party sees fit.

### 14. NOTICES

A communication required by this Contract, by a Party to the other Party, must be in writing and may be given to them by being:

- (a) delivered personally; or
- (b) posted to their address specified in this Contract, or as later notified by them, in which case it will be treated as having been received on the second (2nd) business day after posting; or
- (c) sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

### 15. ASSIGNMENT

This Contract is personal to the Parties and cannot be transferred, assigned, charged or otherwise dealt with by the Applicant.

### 16. JURISDICTION

This Contract is governed by the laws of Queensland, and the Parties submit to the non-exclusive jurisdiction of the Courts of Queensland and the Commonwealth of Australia