**Terms and conditions - wholesale customers**

Last updated 17/11/2022

These and Conditions (**Terms**) set out the terms and conditions on which the Customer can purchase Goods from Mighty Craft.

**These Terms apply to the purchase of Goods by Customers holding a valid liquor licence in a state or territory in Australia and to other Customers who are exempt from the requirement to hold a liquor licence under a specific exemption set out in liquor licensing legislation applicable to that Customer (Other Permitted Customers) provided that they are purchasing for purposes of resupply.**

**If you wish to purchase Goods for personal use, please refer to our Terms and Conditions – Retail Customers at** [***Retail T&Cs***](https://www.mightycraft.com.au/wp-content/uploads/2022/11/Mighty-Craft-retail-customer-terms-and-conditions-final-and-clean.docx)**.**

By completing and submitting a Customer Account Application, or by submitting an Order to Mighty Craft, the Customer agrees that it has read, understood and will be bound by these Terms

1. Definitions

In these Terms, the words below have the following meanings:

**Account** has the meaning given in clause 7.2(a).

**Agreement** means each Offer which is accepted by Mighty Craft under clause 2.2.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

**Brand Supplier** means a manufacturer or supplier of Goods which has either: (a) appointed Mighty Craft as its sales agent in respect of particular Goods; or (b) been approved by Mighty Craft to use the Mighty Craft sales platform to sell Goods manufactured by it in its own right.

**Brand Supplier Sale** has the meaning given in clause 2.4.

**Business Day** means any day except a Saturday, Sunday or public holiday in Melbourne, Victoria.

**Confidential Information** means all information and other content in each case of a confidential nature disclosed by Mighty Craft to the Customer and includes the prices of the Goods but excludes information that:

(a) is public knowledge or becomes available to the Customer from a source other than Mighty Craft (other than as a result of a breach of confidentiality); or

(b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

**Consequential Loss** means:

(a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of bargain, loss of expectation and loss of opportunity; and

(b) any loss beyond the normal measure of damages.

**Consumer** has the meaning provided to it in section 3 of the Australian Consumer Law.

**Customer** means the person who has agreed to be bound by these Terms by submitting an Order for purchase of Goods (or who has filled out a Customer Account Application) and who requested that Goods be supplied to it. A Customer must hold a valid liquor licence or be an Other Permitted Customer. If you do not hold a valid liquor licence and you wish to purchase Goods for your own consumption and not for purposes of re-supply please refer to our Terms and Conditions – Retail Customers at [*Retail T&Cs*](https://www.mightycraft.com.au/wp-content/uploads/2022/11/Mighty-Craft-retail-customer-terms-and-conditions-final-and-clean.docx)**.**

**Customer Account Application** means the Customer’s application to establish a credit account with Mighty Craft for the provision of Goods, if any, which is to be completed by the Customer in the form required by Mighty Craft from time to time.

**Due Date** has the meaning given in clause 3.8.

**Force Majeure Event** means an event that is beyond the reasonable control of Mighty Craft which prevents Mighty Craft from fulfilling any of its obligations under an Agreement, including Australia-wide or global pandemic, strike, lockout, fire, flood or inability to source materials, parts or labour.

**Goods** means the goods to be supplied to the Customer under an Agreement, including alcoholic beverages and other products.

1. **Insolvency Event** means:

(a) in relation to a body corporate, a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the entering into a scheme or arrangement with creditors or the occurrence of any event that has a substantially similar effect to any of these events;

(b) in relation to an individual, becoming bankrupt or entering into a scheme or arrangement with creditors or the occurrence of any event that has a substantially similar effect to any of these events; or

(c) in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control or the occurrence of any event that has a substantially similar effect to any of these events.

**Intellectual Property Rights** means any and all intellectual property rights anywhere in the world including but not limited to the rights comprised in any patent, copyright, design, trade mark or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and right to protect trade secrets and know how, throughout the world for the full period of the rights and renewals and extensions.

**Invoice** has the meaning given in clause 3.4.

**Loss** means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

**Mighty Craft** means, as the context requires, either:

* 1. Mighty Craft Operations;
  2. the Mighty Craft Subsidiary listed on an Invoice; or
  3. where clause 21 applies, the Brand Supplier.

**Mighty Craft Operations** means Mighty Craft OperationsPty Ltd ACN 120 464 182.

**Mighty Craft Subsidiary** means any entity in respect of which Mighty Craft Operations holds a 50% or greater ownership interest.

**Offer** has the meaning given in clause 2.1.

**Order** means any order the Customer submits to Mighty Craft through the Website or in any other manner approved by Mighty Craft to supply to the Customer any Goods, whether the order or request is written or verbal in the circumstances and which may have been given in response to a Quote.

**Person** means a natural or legal person;

**PPSA** has the meaning given in clause7.1.

**Purchase Price** has the meaning given in clause 3.1.

**Quote** means a quote or proposal, if any, provided by Mighty Craft to the Customer in respect of the Goods.

**Tax or Taxes** means any tax, levy, duty, charge, impost, fee, deduction or withholding (including withholding tax, excise and import duties, consumption tax, value added tax or any other taxes, levies or charges) which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of those amounts.

**Terms** means these terms and conditions.

**Trading Limit** means the value of any trading account facility granted to the Customer as part of any account created under the Customer Account Application. The Trading Limit will be periodically reviewed by Mighty Craft.

**Website** means the Mighty Craft website accessible at www.mightycraft.com.au or any other website through which Goods are made available from time to time.

1. Ordering and formation of Agreement
   1. The Customer acknowledges and agrees that by submitting an Order the Customer makes an irrevocable offer to acquire the Goods in accordance with these Terms, the Order, and the Quote (if any) (**Offer**).
   2. An Agreement will be formed between Mighty Craft and the Customer in respect of each Offer upon the earlier of Mighty Craft:
      1. notifying the Customer that it accepts the Customer’s Offer;
      2. accepting, in full or part, payment from the Customer for any Goods the subject of the Offer; or
      3. delivering the Goods the subject of the Offer to the Customer.
   3. An Agreement formed under clause 2.2 will comprise these Terms, any Customer Account Application, the Order (only to the extent that any additional terms in the Order are accepted by Mighty Craft in writing), the Quote (if any) and the Invoice.
   4. While Goods supplied to the Customer under these Terms will generally be supplied by Mighty Craft in its own right, the Customer acknowledges that, from time to time, Goods may instead be supplied:
      1. by Mighty Craft Operations on behalf of Brand Suppliers (including, for example, where Goods are sold by Mighty Craft Operations on an agency or consignment basis); or
      2. by Brand Suppliers in their own right

(each a **Brand Supplier Sale**).

* 1. In the case of a Brand Supplier Sale, the Customer agrees and acknowledges that the provisions in clause 21 (*‘Brand Supplier Sales’*) will apply to the Offer.
  2. The Customer represents and warrants to Mighty Craft that all details provided to Mighty Craft when completing the Order and the Customer Account Application are true, complete, accurate and up to date.
  3. Mighty Craft is not bound to accept any Offer and may decide not to accept any Offer in the absolute discretion of Mighty Craft.
  4. If the Customer has represented to Might Craft that it holds a liquor licence but for any reason the Customer ceases to hold a liquor licence, the Customer’s liquor license is suspended or terminated or anything else happens with respect to the Customer or its licence that is likely to impact upon its ability to lawfully purchase Goods under an Agreement, the Customer must immediately notify Mighty Craft.
  5. In addition to complying with these Terms, the Customer must also comply with Mighty Craft’s website terms of use when accessing and using the Website. [**Website T&Cs.**](https://www.mightycraft.com.au/terms-conditions/)

1. Price and payment
   1. Unless otherwise agreed by the parties, the price the Customer must pay for the Goods under each Agreement will be:
      1. the price for the Goods specified in the Quote or, if there is no Quote, the applicable price for the Goods notified by Mighty Craft from time to time; plus
      2. a delivery fee, as notified by Mighty Craft from time to time,

(**Purchase Price**).

* 1. The Customer acknowledges and agrees that if the Customer wishes to pay the Purchase Price using a credit card, Mighty Craft may charge the Customer a credit card fee to recover its costs incurred in accepting such payment.
  2. Subject to clause 16.2, unless otherwise expressly specified by Mighty Craft or in these Terms, all amounts are stated exclusive of Taxes and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods.
  3. Mighty Craft may invoice the Customer for the Purchase Price at any time following submission of an Order by the Customer (**Invoice**).
  4. If requested by the Customer, Mighty Craft may accept forward orders or requests for delivery of the Goods on a future date and will invoice the Customer for those Goods when Mighty Craft deems appropriate having regard to the proposed delivery date and payment terms (but before the proposed delivery date).
  5. Any dispute that the Customer may have in respect of the Invoice including Purchase Price set out in the Invoice must be notified to Mighty Craft in writing within 7 days of the date of the Invoice.
  6. Mighty Craft may set off any amount owing by the Customer to Mighty Craft, whether or not due for payment, against any money due for payment by Mighty Craft to the Customer under any agreement, understanding or arrangement between Mighty Craft and the Customer.
  7. Subject to clause 3.9, unless otherwise agreed in writing between the Customer and Mighty Craft, the due date for payment by the Customer to Mighty Craft of the Purchase Price (**Due Date**) is:
     1. the later of:
        1. 14 days from the date of the Invoice; and
        2. the due date agreed by Mighty Craft when accepting the Customer Account Application (if any),

but only if the value of the Invoice, combined with any outstanding amounts owed by the Customer to Mighty Craft, does not exceed any approved Trading Limit; or

* + 1. if the conditions set out in paragraph (a) are not satisfied, prior to the scheduled date for delivery of the relevant Goods.
  1. If:
     1. the Customer has previously failed to make any payment to Mighty Craft by the due date for that payment; or
     2. Mighty Craft, in its absolute discretion, considers the creditworthiness of the Customer is unsatisfactory,

Mighty Craft may require payment of the Purchase Price in full prior to delivery of the relevant Goods.

* 1. If the Customer fails to make any payment by the Due Date, breaches any term of any Agreement, is the subject of an Insolvency Event, or a person who has previously provided a guarantee in relation to the Customer’s obligations to Mighty Craft withdraws that guarantee, then, without prejudice to any other right or remedy available to Mighty Craft, and to the extent permitted by law, Mighty Craft may do any one or more of the following:
     1. suspend further deliveries to the Customer;
     2. cancel any Agreement in respect of any Goods not yet supplied to the Customer;
     3. enter the property of the Customer or any third party where the Goods are stored in order to repossess the Goods and the Customer grants Mighty Craft and its agents an irrevocable licence to do so;
     4. charge the Customer interest (both before and after any judgement) on the unpaid amount at an interest rate of 12% per annum, which interest will accrue and be chargeable from the first day on which an amount becomes overdue until Mighty Craft receives payment of all amounts (including all interest);
     5. cancel any Trading Limit or account facilities previously granted to the Customer by Mighty Craft and require payment for all future Orders made on placement of the Order; and
     6. exercise any rights which Mighty Craft may have under law, including the PPSA.
  2. The Customer may not set off or combine any amount owing by Mighty Craft to the Customer, whether or not due for payment, against any money due for payment by the Customer to Mighty Craft under an Agreement.

1. Delivery of Goods
   1. Mighty Craft will deliver the Goods to the Customer in the manner:
      1. determined by Mighty Craft; or
      2. as otherwise agreed between Mighty Craft and the Customer (which may include collection by the Customer from a location or locations notified by Mighty Craft).
   2. If Mighty Craft does not currently stock any particular Goods then:
      1. Mighty Craft may (at its discretion) place the Goods on back order and deliver the Goods once Mighty Craft has restocked those Goods;
      2. Mighty Craft will notify the Customer if any Goods are placed on back order; and
      3. the Customer may only cancel its order for Goods placed on back order if it provides notice to Mighty Craft in writing within 48 hours of Mighty Craft giving notice under clause 4.2(b).
   3. Mighty Craft will endeavour, but is not obliged, to deliver Goods or make the Goods available for collection between the hours of 9.00 am and 5.00 pm Monday to Friday at the place of delivery (excluding on any public holiday at the place of delivery).
   4. The Customer authorises and grants Mighty Craft and its agents the right to enter the address for delivery of any Goods in order for Mighty Craft or its agent to deliver the Goods and the Customer indemnifies Mighty Craft against any Loss that may be incurred or sustained by Mighty Craft, its employees or agents, in connection with the entry into those premises.
   5. If the Customer is required to collect the Goods or the parties have agreed that the Customer will collect the Goods, then the Customer must collect those Goods within 3 Business Days of being notified by Mighty Craft that the Goods are ready for collection.
   6. Mighty Craft may, from time to time, be unable to deliver to certain areas or regions and the Customer will be made aware of this after the Customer provides its delivery details.
   7. There must be a representative of the Customer present at the delivery location at the time of delivery of the Goods and such person must confirm that the quantity of Goods delivered and identified in any delivery confirmation equals the quantity to be delivered under the Agreement. Mighty Craft or its agent may rely on the representative who is at the delivery address specified in an Order and who takes receipt of Goods, as being authorised by the Customer to do so.
   8. Mighty Craft or its agent will deliver the Goods to a location within the Customer’s premises agreed by Mighty Craft and Mighty Craft is under no obligation to accept instructions from the Customer to deliver to any other location.
   9. The Customer must, prior to taking possession of the Goods, inspect the Goods and immediately notify Mighty Craft in writing if the Goods are not fit for purpose, are less than the quantity specified in the relevant order or have any defect.
   10. Mighty Craft will use its reasonable endeavours to deliver the Goods on any date specified or estimated by Mighty Craft, however the Customer acknowledges that:
       1. these dates are estimates only; and
       2. if Mighty Craft does not currently stock a Good, there may be a delay in the supply of that Good until Mighty Craft has restocked that Good.
   11. Without limiting clause 4.10, Mighty Craft may deliver or provide a portion of the Goods and may invoice or otherwise charge the Customer for that portion.
   12. If there are multiple Agreements in place at any one time, then Mighty Craft may, in its absolute discretion, determine in which order it satisfies the delivery of the Goods under the Agreements.
   13. Mighty Craft reserves the right not to deliver Goods where it determines in its absolute discretion (or in the discretion of its agents) that it is not appropriate to do so, including without limitation where:
       1. any recipient of the Goods is or appears to be under the influence of alcohol or drugs, under the age of 18 or acting on behalf of a person considered unsuitable for any reason (including because they may be under the age of 18);
       2. any request for verification (such as proof of identity or age) is not complied with; or
       3. the delivery instructions are unclear or unsuitable.
2. Return of Goods
   1. If a Good is not of acceptable quality, faulty, defective or damaged, and the Customer is a Consumer, the Customer may have rights under the Australian Consumer Law, which are not affected by this clause 5.
   2. The Customer may only return the Goods to Mighty Craft with the prior written consent of Mighty Craft and Mighty Craft will be under no obligation to accept Goods returned to it or provide any refund or other remedy in respect of any Goods returned.
   3. Any claims in respect of the Goods made by the Customer against Mighty Craft must be made by written notice to Mighty Craft within 7 days of the date of delivery of the Goods by Mighty Craft to the Customer or collection of the Goods by the Customer. The written notice must outline the reason for the claim.
   4. If the Customer gives Mighty Craft a written notice under clause 5.3, the Customer must:
      1. preserve the Goods in the state in which they were received; and
      2. at Mighty Craft’s option, allow Mighty Craft or its authorised representative to inspect the Goods, or return some or all of the Goods to Mighty Craft in the same condition as received by the Customer.
   5. The provision to the Customer of any refund or other remedy in respect of any Goods which are returned to Mighty Craft and determined by Mighty Craft to be damaged will be at Mighty Craft’s absolute discretion.
   6. If any Goods which are returned to Mighty Craft are not damaged, then Mighty Craft may, at the Customer’s cost, return those Goods to the Customer.
   7. If the Customer fails to accept any delivery of the Goods (including failure to collect the Goods) and the Customer has not provided a written notice under clause 5.3, then Mighty Craft may (in the absence of separate arrangements between Mighty Craft and the Customer for re-delivery):
      1. return those Goods for resale;
      2. charge the Customer any costs incurred for the return of Goods;
      3. refund to the Customer the Purchase Price paid by the Customer (if any) for those Goods less the costs incurred by Mighty Craft in connection with the Customer’s failure to accept delivery and resale of the relevant Goods; and
      4. treat the obligation to supply the remainder of the Goods (if any) as cancelled by the Customer.
3. Title and risk of Goods
   1. Title to, and property in any Goods supplied under an Agreement, remain with Mighty Craft and will only pass to the Customer once all moneys owing by the Customer to Mighty Craft in respect of the Agreement or any other agreement or arrangement between the Customer and Mighty Craft have been paid in full.
   2. Risk in the Goods passes to the Customer:
      1. upon delivery to the delivery address specified in the Customer’s Order; or
      2. if the Goods are to be collected by the Customer or its agent, on the earlier of:
         1. the time that the Goods are collected by the Customer or its agent; and
         2. the date which is 3 Business Days after the date on which Mighty Craft notified the Customer that the Goods are ready to be collected.
   3. The Customer is responsible for arranging, and taking out in its own name and at its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause and Mighty Craft is not obliged to give the Customer a notice referred to in section 39(3) of the *Goods Act 1958* (Vic) (or any equivalent legislation).
   4. The Customer indemnifies Mighty Craft against any Loss or damage to the Goods, however caused, occurring after risk in the Goods passes to the Customer.
   5. If the Customer is required to return any Goods to Mighty Craft, risk in the Goods passes to Mighty Craft on confirmation of receipt of the Goods by Mighty Craft.
   6. Until full title, property and ownership of the Goods passes to the Customer in accordance with clause 6.1:
      1. subject to clause 6.8, the Customer must hold the Goods as Mighty Craft’s fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Goods in any way without Mighty Craft’s prior written consent;
      2. the Customer must keep and maintain the Goods in good and substantial repair and condition and must, without limitation, ensure they are kept within any temperature range recommended by Mighty Craft from time to time;
      3. the Customer must insure the Goods for their full replacement value (which must not be less than the Purchase Price) and must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as Mighty Craft’s and referrable to a particular Invoice;
      4. Mighty Craft may enter the premises of the Customer or any third party where the Goods are stored to inspect the Goods;
      5. the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods; and
      6. the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.
   7. For the purposes of Mighty Craft exercising its rights under clauses 3.10(c) and 6.6(d), the Customer:
      1. authorises Mighty Craft and its agents to enter the delivery address specified in the Customer’s Order; and
      2. the Customer indemnifies Mighty Craft against any Loss that may be incurred or sustained by Mighty Craft, its employees or agents, in connection with the entry into those premises.
   8. Notwithstanding that title to the Goods has not passed to the Customer under clause 6.1, the Customer may, subject to obtaining Mighty Craft’s prior written approval, resell the Goods or any part of them in the name of the Customer but only as agent for Mighty Craft and may deliver any Goods so sold to the buyer of those Goods but only in the ordinary course of its business and on terms which will not prejudice Mighty Craft’s ability to obtain any amount paid or due to be paid by the buyer of Goods (**Sale Proceeds**). Any Sale Proceeds must be held by the Customer on trust for Mighty Craft and must be paid to Mighty Craft without delay in satisfaction of any amount owed by the Customer in respect of the Goods.
   9. The Customer must immediately cease the resale of any Goods under clause 6.8 if:
      1. Mighty Craft revokes any consent it has given to the Customer to resell the Goods under clause 6.8; or
      2. the Customer fails to make any payment under an Agreement by the relevant Due Date.
   10. If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by Mighty Craft, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer’s business and the proceeds of any Goods sold in those circumstances will, to the extent of any money owing by the Customer to Mighty Craft, be held on trust for Mighty Craft by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.
4. PPSA
   1. Words and expressions used in this clause 7 which are not defined in these Terms but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.
   2. Unless a Customer has paid for Goods in respect of an Agreement before they are delivered to the Customer, the Customer acknowledges that:
      1. the Agreement for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the Customer grants Mighty Craft a security interest in the Goods and over any amount owed to Mighty Craft in respect of the Goods (**Account**) to secure all monies owing by the Customer to Mighty Craft from time to time;
      2. where Mighty Craft has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
      3. Mighty Craft is not obliged to act in any way to dispose of or to retain any Goods which have been seized by Mighty Craft or any person nominated by Mighty Craft under its rights under the PPSA.
   3. Without limiting anything else in these Terms, the Customer consents to Mighty Craft effecting a registration on the PPSA register in relation to any security interest created by or arising in connection with, or contemplated by an Agreement or these Terms, including in relation to the Goods and any Account and whether in its own right or on behalf of a Brand Supplier. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, Mighty Craft’s priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
   4. The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by Mighty Craft for that purpose in relation to the Goods or the Account).
   5. Without limiting clause 7.4, the Customer must, if requested by Mighty Craft, do all things necessary to enable Mighty Craft to register a security interest in relation to the Goods where the Customer on-sells the Goods to a third party.
   6. The Customer must indemnify Mighty Craft for all expenses incurred by Might Craft relating to the enforcement of any rights arising out of any of Mighty Craft’s security interests with respect to the Customer.
   7. The Customer must keep its contact details up to date and not change its name, address or contact details without providing prior written notice to Mighty Craft.
   8. To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
   9. The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if Mighty Craft has given prior written consent.
5. Liability
   1. Nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of rights to the Customer as a Consumer under the Australian Consumer Law.
   2. If Goods supplied by Mighty Craft are faulty, damaged, incorrectly described, Mighty Craft will, at its sole discretion, provide the Customer with either a refund or replacement goods upon presentation by the Customer of proof of purchase.
   3. If the Customer makes a claim against Mighty Craft which includes a cause of action, to the extent permitted by law, Mighty Craft’s liability to the Customer is limited to an amount equal to the lower of:
      1. the cost of replacing the Goods; or
      2. the cost of obtaining equivalent Goods.
   4. Subject to this clause 8, the aggregate liability of Mighty Craft to the Customer arising out of or in connection with an Agreement (whether in contract, tort (including negligence) or otherwise) will in no event exceed an amount equal to the amount of the Purchase Price received by Mighty Craft under the relevant Agreement.
   5. Subject to clause 8.1, Mighty Craft excludes all liability for Consequential Loss however arising.
6. Notification of claims
   1. The Customer must notify Mighty Craft immediately if it becomes aware of:
      1. any claim for loss or damage or breach of any contract or law; or
      2. any death, injury or illness,

in respect of, or caused by, the Goods and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, injury or illness.

* 1. If Goods are resold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of any claim or any death, injury or illness, in respect of the Goods and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, injury or illness.
  2. The Customer must, and must impose on any third party to whom it resells the Goods for commercial use an obligation to:
     1. not, without Mighty Craft’s express written consent, make any representation to any Consumer regarding the Goods, which is in breach of the Australian Consumer Law;
     2. take all steps and do all things necessary to promptly pass on to Mighty Craft any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer’s expense, assist Mighty Craft to comply with its obligations under the Australian Consumer Law;
     3. not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of Mighty Craft any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods which is inconsistent with the Agreement under which the Goods are supplied; and
     4. not agree to settle any claim made by a Consumer without the prior written consent of Mighty Craft.

1. Recalls
   1. If the Customer becomes aware that it is or may be necessary to withdraw or recall any Goods from sale or distribution for any reason it must immediately notify Mighty Craft and provide full details.
   2. Mighty Craft will be responsible for carrying out any product recall whether arising from a notice given by the Customer under clause 10.1 or otherwise.
   3. The Customer must:
      1. provide Mighty Craft with a copy of all correspondence and material received by the Customer in respect of any product recall or circumstances giving rise to a product recall;
      2. comply with any reasonable directions of Mighty Craft in respect of the product recall; and
      3. not make or publish any undertaking, assertion, statement, admission or other representation in respect of the product recall without the prior written approval of Mighty Craft.
2. Intellectual Property

The Customer acknowledges and agrees that Mighty Craft or its related entities own or are licensed to use the Intellectual Property Rights relating to the Goods and the Website and the Customer must not make any representation to the contrary or otherwise use the Intellectual Property Rights in a manner inconsistent with the rights of the owner or licensee of the Intellectual Property Rights.

1. Privacy

Mighty Craft collects personal information from Customers when they interact with Mighty Craft, for example, in the Customer’s Customer Account Application. Mighty Craft’s Privacy Policy explains how personal information is collected, used and disclosed, how it can be accessed and how complaints are handled. By interacting with Mighty Craft, including by making an Order or an agreement, the Customer agrees to be bound by Mighty Craft’s Privacy Policy which can be found here, and agrees to ensure that any of its officers or employees who interact with Mighty Craft on the Customer’s behalf also agree to be bound by the [Privacy Policy](https://www.mightycraft.com.au/privacy-policy/).

1. Indemnity

The Customer indemnifies Mighty Craft, each of its related bodies corporate (within the meaning of the *Corporations Act 2001* (Cth)) and each Brand Supplier and holds each of them harmless from and against all Losses (including all legal costs, and any other associated fees and costs) which any of them suffers or incurs as a direct or indirect result of:

* + 1. taking steps to recover any amounts the Customer owes under an Agreement (including any fees paid to a debt collector or similar);
    2. any death, injury or illness or damage to property arising from the Customer’s unloading, storage or handling of the Goods;
    3. any breach of an Agreement or these Terms by the Customer; or
    4. any negligent or wilful act or omission by the Customer, the Customer’s employees, agents, servants or contractors.

Mighty Craft holds the benefit of this clause on trust for each of its related bodies corporate and each Brand Supplier.

1. Insurance

The Customer warrants that it holds all insurances required by law to be held by the Customer as well as public liability insurance with a limit of liability per annum of no less than $20 million per claim and in the aggregate. Mighty Craft may request that the Customer provide certificates of currency to demonstrate compliance with this clause 14.

1. Confidentiality
   1. The Customer:
      1. may use Confidential Information solely for the purposes of the relevant Agreement;
      2. must keep confidential all Confidential Information; and
      3. may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by Mighty Craft; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of Mighty Craft.
   2. The Customer must notify Mighty Craft immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.
2. GST
   1. In this clause, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act.
   2. Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by Mighty Craft under these Terms, the Customer must pay to Mighty Craft, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify Mighty Craft for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that Mighty Craft will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by Mighty Craft in respect of the reimbursement or payment.
3. Termination
   1. Without limiting Mighty Craft’s other rights under these Terms, and to the extent permitted by law, Mighty Craft may terminate any Agreement with the Customer and any trading account facility with immediate effect by written notice to the Customer if:
      1. the Customer fails to make any payment under the Agreement to Mighty Craft by the due date for that payment;
      2. the Customer is the subject of an Insolvency Event;
      3. the Customer has breached any term of the relevant Agreement and, if the breach is capable of remedy, the Customer has not remedied the breach within 2 Business Days of receiving notice requiring the breach to be remedied;
      4. a person who has previously provided a guarantee in relation to the Customer’s obligations to Mighty Craft withdraws that guarantee; or
      5. Mighty Craft or the Customer is prevented or delayed in performing its obligations under an Agreement due to a Force Majeure Event.
   2. On termination of an Agreement:
      1. the Customer must not sell or part with possession (other than as required under clause 17.2(b)) any Goods the subject of the Agreement (unless the Goods have been paid for);
      2. the Customer must, at its cost, immediately return to Mighty Craft all Goods the subject of the Agreement (unless the Goods have been paid for) and any displays and other promotional and advertising materials in relation to the Goods
      3. the Customer must return to Might Craft all hard copies of Confidential Information in its possession or control and expunge all electronic copies of Confidential Information from its systems; and
      4. all money owed by the Customer to Mighty Craft will become immediately due and payable.
   3. Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.
4. Cancellation
   1. Without limiting clause 17, Mighty Craft may cancel or suspend any Agreement at any time by giving the Customer written notice (which includes email) of cancellation or suspension where Mighty Craft believes (for any reason) that it will be unable to supply the relevant Goods to the Customer, provided that Mighty Craft will refund to the Customer any amounts already paid by the Customer for the Goods subject to a cancellation or suspension. The refund of any amounts will be the Customer’s sole remedy against Mighty Craft in respect of any cancellation or suspension under this clause 18.1.
   2. Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of Mighty Craft or in accordance with clause 4.2(b) and, without prejudice to any other rights Mighty Craft may have, the Customer will indemnify Mighty Craft immediately on written demand for any Loss incurred by Mighty Craft in connection with any cancellation.
5. Inconsistency
   1. Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 2.3, the following order of precedence will apply to the extent of the inconsistency: (1) the prices and quantity of Goods set out in the Quote or, if there is no Quote, in the Order; (2) these Terms; (3) the Customer Account Application; (4) any other terms of the Quote (if applicable); (5) the Invoice; and (6) without limiting clause 19.2, any terms in the Order which are accepted by Mighty Craft in writing.
   2. These Terms will prevail over any Customer terms and conditions, except to the extent specifically agreed by Mighty Craft in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on Mighty Craft if expressly agreed by Mighty Craft in writing.
6. Acknowledgements and representations
   1. By making an Offer, the Customer warrants and represents to Mighty Craft that the Customer has read and understood these Terms prior to making the Offer, and agrees to be bound by them in full.
   2. The Customer acknowledges that the law prohibits the sale of alcohol to persons under the age of 18.
   3. By placing an Order the Customer represents and warrants to Mighty Craft that:
      1. any representative of the Customer to whom the Goods will be delivered is 18 years of age or over and will provide proof of age to the satisfaction of Mighty Craft if requested by Mighty Craft or its agents upon delivery of the Goods;
      2. any person that the Customer obtains the Goods for, or supplies the Goods to, is 18 years of age or over;
      3. the Customer will not take, deliver or supply the Goods provided to the Customer under an Order to any area or community that alcohol is prohibited from being taken, delivered or supplied to;
      4. the Customer has all necessary regulatory approvals, licenses, permits and authorisations relating to the Goods and its dealings with the Goods, including (without limitation) in relation to liquor licensing and the export of the Goods, to the extent applicable.
   4. The Customer warrants and represents that:
      1. all statements and representations made by the Customer, and documents provided by the Customer, in connection with setting up a trading or credit account with Mighty Craft are current, true and correct;
      2. any trading or credit account set up with Mighty Craft is required for the Customer’s business or for other commercial purposes and will not be used for personal, domestic or household purposes;
      3. it has the authority to accept these Terms and enter into any Agreement.
   5. The Customer acknowledges that Mighty Craft relies on the accuracy of the warranties, representations and acknowledgments in this clause 20 in its dealings with the Customer, including in approving any trading or credit account set up for the Customer.
7. Brand Supplier Sales
   1. This clause 21 applies to any Brand Supplier Sales, being Orders where the Goods will be supplied to the Customer either:
      1. by Mighty Craft on behalf of a Brand Supplier (for example, where Goods are sold by Mighty Craft on an agency or consignment basis); or
      2. by a Brand Supplier directly.
   2. For all Brand Supplier Sales the Customer agrees and acknowledges that:
      1. subject to clauses 21.2(b) and 21.2(c), these Terms will apply as between the Customer and the relevant Brand Supplier;
      2. all references to Mighty Craft in these Terms are to be taken to be references to the relevant Brand Supplier, other than:
         1. the reference to ‘Mighty Craft’ in the definition of ‘Website’;
         2. the references to ‘Might Craft Subsidiary’; and
         3. the references to ‘Mighty Craft’ in clauses 3.1(b), 12 (‘Privacy’) and 22.7;
      3. the relevant Brand Supplier, and not Mighty Craft, will be liable to the Customer in relation to the supply or failure to supply the relevant Good; and
      4. any other amendments to the Terms that need to be made to give effect to paragraph (b) above, are considered to be made.
8. Miscellaneous
   1. In these Terms:
      1. the meaning of general words is not limited by specific examples introduced by ‘includes’, ‘including’, ‘for example’ or ‘such as’ or similar expressions;
      2. a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes and permitted assigns;
      3. no provision will be construed to the disadvantage of a party because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
      4. unless otherwise provided, a reference to payment means payment in Australian dollars.
   2. Mighty Craft will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.
   3. The Customer is responsible for any government charges or duty levied on or in connection with these Terms, an Agreement or other document relating to these Terms.
   4. Any price list, goods lists or other similar documents or catalogues issued by or on behalf of Mighty Craft do not constitute an offer by Mighty Craft to supply Goods appearing in those lists or catalogues or an offer by Mighty Craft to supply Goods at the prices set out in those lists or catalogues. Mighty Craft’s price lists and catalogues may be changed by Mighty Craft at any time without notice.
   5. The Customer must maintain and keep current and complete records of the Goods which Mighty Craft has supplied to the Customer (in sufficient detail so as to be readily identified as goods supplied by Mighty Craft), including any Goods which are sold by the Customer to a third party and must, immediately upon written request from Mighty Craft, provide Mighty Craft with access to, or copies of, those records.
   6. The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without Mighty Craft’s prior written consent, which it may withhold in its absolute discretion. Mighty Craft may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these Terms at any time in circumstances where, in the opinion of Mighty Craft acting reasonably, the assignment will not adversely affect the rights of the Customer.
   7. Mighty Craft may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective upon publication of the variation on the Website (**Variation Date**).
   8. A failure by Mighty Craft to enforce or exercise its rights or obligations under these Terms, or any delay in enforcing or exercising such rights or obligations, does not constitute a waiver of Mighty Craft’s rights or any right that it may exercise in the future, nor does it affect the obligation of the Customer to make any further payments as and when they fall due. Waiver of any rights under these Terms must be in writing.
   9. If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.
   10. The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 5, 6, 7, 8, 9, 10, 12, 15.2, 17, 19, 20 and 21.
   11. Each party must:
       1. do all acts necessary or desirable to give full effect to an Agreement; and
       2. refrain from doing anything which might prevent full effect being given to an Agreement.
   12. The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms or an Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.
   13. Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the Customer Account Application or, if none are specified, in any other part of the Agreement or as notified to the other party in writing. Notices will be deemed to have been received: by hand upon delivery; by post within four Business Days of sending for local or interstate mail; and by email one hour after the email is sent (unless the sender knows that email has failed to send).
   14. These Terms are governed by the laws in force in Victoria, and the Customer and Mighty Craft submit to the non-exclusive jurisdiction of the courts of Victoria.
   15. The *United Nations Convention on Contracts for the International Sale of Goods* *(1980)* (**The Vienna Convention**) and any acts or regulations enacting The Vienna Convention will not apply to these Terms or any Agreement and are excluded.