



TSG Franchise Management Pty Ltd  
ACN 052 370 733  
F19/25-39 Cook Road, Mitcham VIC 3132

## APPLICATION FORM

Request and Authority to debit the account named below to pay TSG Franchise Management Pty Ltd

Store Name: TSG - \_\_\_\_\_

Name/Company Name: \_\_\_\_\_

ACN/ABN: \_\_\_\_\_ - YOU

request and authorise TSG Franchise Management Pty Ltd [Debit User Identification number 328588] to arrange, through its own financial institution, for any amount TSG Franchise Management Pty Ltd may debit or charge you to be debited through the Bulk Electronic Clearing System from an account held at the financial institution identified below and paid to the Debit User, subject to the terms and conditions of the Direct Debit Request Service Agreement [ and any further instructions provided below].

Direct Debit Contact Person: \_\_\_\_\_

Direct Debit Mobile Phone: \_\_\_\_\_

Direct Debit Email: \_\_\_\_\_

Financial Institution Name: \_\_\_\_\_

Address: \_\_\_\_\_

Name Of Account: \_\_\_\_\_

BSB Number: I \_ I \_ I \_ I - I \_ I \_ I \_ I

Account Number: I \_ I \_ I \_ I \_ I \_ I \_ I \_ I \_ I \_ I

Credit Terms: 28 + 7 days maximum from date of order

Credit Limit Requested: \$ \_\_\_\_\_

Note: TSG reserves the right to hold all monthly rebate payments until failed direct debits are cleared

Please note that if you currently also have your Franchise Fees Direct Debited monthly, our system can only accommodate one bank account for direct debits. Please ensure you nominate the same account number for your TSG DDpay .

Signed for and on behalf of the Customer, by being signed by:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[full name]

\_\_\_\_\_  
[date]

## TERMS AND CONDITIONS OF SALE

### 1 Definitions

In these Terms and Conditions of Sale:

- (a) "Customer" means the person named above and, where applicable, includes any servant, agent, partner, contractor or employee of that person;
- (b) "Franchise Agreement" means a franchise agreement between the Customer (as franchisee) and TSG (as franchisor);
- (c) "goods/services" means all goods or services supplied by or on behalf of TSG to the Customer;
- (d) "TSG" means TSG Franchise Management Pty Ltd ACN 052 370 733 as trustee for the Tobacco Station Group Unit Trust and, where applicable, includes any servant, agent, contractor or employee of that company.

### 2 Orders

#### 2.1 Acknowledgement

The Customer, by ordering the goods/services, acknowledges and agrees that it is expressly contracting with TSG on these Terms and Conditions of Sale and to be bound by the Terms and Conditions of Sale, unless otherwise agreed to by TSG in writing and:

- (a) these Terms and Conditions of Sale are current as at the date on which they are delivered to the Customer;
- (b) TSG may revise these Terms and Conditions of Sale and provide updated Terms and Conditions of Sale to the Customer; and
- (c) any revisions of these Terms and Conditions of Sale will apply to orders made by the Customer after the date of notice.

#### 2.2 Procedure

- (a) The Customer must comply with the procedure set by TSG for the placing of orders.
- (b) TSG may, at its discretion, accept or refuse any order from the Customer.

### 3 Pricing and Payment

- (a) Unless otherwise agreed in writing, all sales are made at the TSG price at the time of order, including goods placed on back order which may be subject to price variations between order and delivery.
- (b) TSG may require the Customer to order a minimum quantity or value of goods per order.
- (c) The price of the goods quoted by TSG or on TSG price list will be inclusive of GST. The Customer must pay to TSG, on demand, the GST payable in respect of the supply of those goods. For the purposes of these Terms and Conditions of Sale, "GST" has the same meaning as that word is given in the A New

Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended).

- (d) Unless otherwise agreed in writing all prices are strictly net and the Customer must pay the full purchase price of the goods without deduction, set-off, withholding or counterclaim, as set out on TSG's invoice and within the period set out under the heading 'credit terms' in the credit application which forms part of these terms and condition, or as specified on each invoice (whichever is the earlier). TSG may, in its absolute discretion, require the Customer to sign a direct debit authority (or rely on a direct debit authority which has been completed in respect of the Franchise Agreement) authorising TSG to automatically debit the Customer's account in payment for the goods.
- (e) In the event that the Customer fails, refuses or neglects to pay the purchase price for the goods by the due date set out in an invoice, TSG may:
  - (i) offset the amounts due to it against any amounts that may be payable to the Customer as rebates under the Franchise Agreement (or such other agreement between the parties governing the payment of rebates); and/or
  - (ii) charge interest on all unpaid amounts at a rate of 15% per annum as and from the due date for payment. The interest charged by TSG will accrue daily and compound monthly until the Customer pays all outstanding amounts in full.

### 4

#### Delivery

- (a) The Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.
- (b) The Customer will provide reasonable and proper access to the location specified for delivery. A completed driver's manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced. If the delivery location is unattended, delivery will be deemed to have been made in accordance with the Customer's order by leaving the goods at the location with a delivery docket, at which point the Customer will be deemed to have accepted the goods.
- (c) TSG will in all cases be entitled to choose the method of transport of the goods and the Customer authorises TSG to subcontract delivery in its absolute discretion.

- (d) Where a delivery date is specified, TSG will endeavour to deliver the goods on the due date. TSG may unilaterally delay or suspend any delivery for any period or deliver the goods ordered by instalments (in which case each instalment is considered a separate agreement for sale) or cancel any agreement for sale without any liability whatsoever.
- (e) The Customer shall not be entitled to reject delivery of any goods due to a delay in their delivery or if delivered in instalments.
- (f) No purported cancellation or suspension of an order or any part by the Customer is binding on TSG after that order has been accepted by TSG.
- (g) To the extent permitted by law, the Customer must notify TSG of any incomplete deliveries within 24 hours of delivery, otherwise the Customer will be deemed to have accepted the order.

## 5 Risk and Insurance

- (a) The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately on the goods being despatched from TSG premises.
- (b) The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by TSG, whether such goods are used singularly, or in combination with other goods, substances, or any process.

## 6 Returns and Warranty

TSG warrants that the goods will be free from defects in material and workmanship but, to the extent permitted by law:

- (a) goods will only be accepted by TSG for replacement or return (if applicable) and, if the goods are not replaced, a credit to the account of the Customer for their invoice price if;
  - (i) the Customer notifies TSG within 24 hours of delivery if goods supplied were not ordered or are not of merchantable quality or not fit for the purpose required ("defective goods"); and
  - (ii) after examination by TSG, the goods are deemed to be defective goods,
 otherwise the Customer will be deemed to have accepted the order;
- (b) TSG will not accept return of, or give a credit for, any specially ordered goods;
- (c) if TSG reasonably considers that goods returned by the Customer are not defective goods, the Customer must pay for their return to the Customer;
- (d) if a dispute arises (including as to the quality of the goods), the Customer must accept and pay

for the goods in full and settle any claim with TSG at a later date; and

- (e) despite this clause, if the Customer rejects the goods then TSG will be able to sell such goods without prejudice to any claim TSG may have against the Customer for damages or any other rights or remedies of TSG.

## 7

### Liability

#### 7.1

### Exclusions

To the extent permitted by law:

- (a) any advice, recommendation, information or representation provided by TSG as to the quality or performance of the goods or their suitability for a particular purpose or otherwise in relation to the goods is given in good faith but without any liability or responsibility on the part of TSG;
- (b) the Customer acknowledges that it has not relied upon or been induced by any representation of TSG in entering into these Terms and Conditions of Sale or in placing any order for goods;
- (c) except as specifically set out in these Terms and Conditions of Sale, or contained in any warranty or statement provided with the goods, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded;
- (d) replacement or repair of the goods (at TSG's sole election) is the absolute limit of TSG's liability howsoever or wheresoever arising under or in connection with the sale, use of, storage or any other dealings with the goods by the Customer or any third party;
- (e) TSG is not liable for any indirect, consequential, special, economic or punitive losses or expenses suffered by the Customer or any third party, howsoever caused, including loss of turnover, profits, business or goodwill or any liability to any other party;
- (f) TSG will not be liable for any loss or damage suffered by the Customer where TSG has failed to meet any delivery date or cancels or suspends the supply of goods.

#### 7.2

### Subject to Law

Nothing in the Terms and Conditions of Sale is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any laws applicable to the sale of goods which cannot be excluded, restricted or modified.

#### 7.3

### Limitations

If a non-excludable term, condition, guarantee, or warranty applies to the supply of goods or services by

TSG by operation of law (including the Australian Consumer Law), then to the maximum extent permitted by law the liability of TSG for breach of such term, condition, guarantee or warranty will be limited to (at TSG's election):

- (a) in the case of goods:
  - (i) replacement of the goods or the supply of equivalent goods;
  - (ii) the cost of replacing the goods or acquiring equivalent goods;
  - (iii) the repair of the goods; or
  - (iv) the cost of having the goods repaired; and
- (b) in the case of services:
  - (i) supplying the services again; or
  - (ii) payment of the cost of having the services supplied again.

## 8 Passing of Property

### 8.1 Title

Title in the goods will remain with TSG and will not pass to the Customer until such time when the Customer pays all monies owing to TSG by the Customer in full, on all accounts (which payments are not to any extent subsequently claimed or clawed back by any person standing in the place of or representing the Customer). While the goods remain the property of TSG, the Customer agrees with TSG that:

- (a) the Customer holds the goods as fiduciary bailee and agent for TSG;
- (b) the Customer will keep the goods separate from its goods so that they are readily identifiable as the property of TSG;
- (c) the Customer will not dispose of the goods except with TSG prior written consent or in the ordinary course of the Customer's business;
- (d) the Customer will hold the proceeds of any sale of the goods on trust for TSG in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee and will pay such monies immediately on request to TSG;
- (e) the Customer will not cause the goods to lose their identifiable character or be intermingled with other goods, in any way, either by any process of its own or by a third party, except with TSG prior written consent or in the ordinary course of the Customer's business;
- (f) the money received for the sale of any intermingled goods, which contain the goods of TSG, will be held in trust for TSG (to the maximum extent that such "trust" monies represent the total outstanding debt owed to TSG on all accounts by the Customer) and the Customer will pay such monies immediately on request to TSG;
- (g) the Customer has no right or claim to any interest in the goods to secure any liquidated or

unliquidated debt or obligation TSG owes to the Customer;

- (h) the Customer cannot claim any lien over the goods;
- (i) the Customer will not create any absolute or defeasible interest in the goods in relation to any third party, except with TSG's prior written consent;
- (j) pending payment in full for all amounts owed by the Customer to TSG on all accounts, the Customer:
  - (i) must not allow any person to have or acquire any security interest in the goods;
  - (ii) must insure the goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business;
  - (iii) must not remove, deface or obliterate any identifying mark or number on any of the goods.

### 8.2 Recovery

If the Customer fails to pay for any goods within the period of credit extended by TSG to the Customer:

- (a) TSG may without notice and without incurring any liability to the Customer or any other person, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of TSG, and for this purpose the Customer irrevocably licences TSG to enter such premises and also indemnifies TSG from and against all costs, claims, demands or actions by any party arising from or in connection with such action; and
- (b) if required, the Customer will assign to TSG any rights of the Customer to payment of any outstanding money relating to the re-supply of the goods (the "**Debts**"). The Customer irrevocably appoints TSG or its nominee as its attorney to sign all documents and do all things necessary to assign the Debts to TSG under this clause, where the Customer has failed to do so within 7 days of receiving written notice to do so (sufficient proof of which shall be a statutory declaration signed by an officer of TSG), and ratifies any acts the attorney lawfully does or causes to be done with respect to any such assignment of the Debts.

## 9 Security

The Customer by entering into these Terms and Conditions of Sale and ordering the goods from TSG, grants the Security Interest to TSG and enters into the Security Agreement with TSG, in which case:

- (a) the Customer acknowledges and agrees that the goods are inventory;
- (b) the Customer must, as and within the timeframe notified by TSG, sign all documents and do all things necessary in order to:
  - (i) enable Registration with respect to the Security Interest and for that Registration to continue until such time as all of the Customer's obligations under the Security Agreement have been satisfied, including providing the Customer's details and any serial numbers required for Registration;
  - (ii) ensure that the Security Interest has priority over all other security interests in the Personal Property, whether registered, perfected or otherwise and whether created or arising before or after the creation of the Security Interest, except those security interests which TSG agrees in writing will have priority over the Security Interest or which by law have priority over the Security Interest;
  - (iii) ensure that TSG is able to Enforce the Security Interest until such time as all of the Customer's obligations under the Security Agreement have been satisfied and the Customer must not do anything which affects TSG's ability to Enforce the Security Interest;
- (c) TSG may exercise its rights in relation to the Security Interest any time after the Customer fails to comply with its obligations under the Security Agreement;
- (d) to the extent permitted by the PPSA, the Customer waives its rights to receive any notices, statements or forms required to be issued or which would ordinarily be issued, whether by TSG or any other person, to the Customer under the PPSA;
- (e) the Customer must pay to TSG on request, all TSG's expenses, including legal costs on an indemnity basis, stamp duty and registration fees, in connection with the Security Agreement and the grant of the Security Interest, Registration with respect to the Security Interest and release of the Security Interest;
- (f) where permitted under the PPSA or any other relevant law, the provisions contained in the Security Agreement will prevail over the PPSA or any other relevant law, to the extent of any inconsistency;
- (g) the Customer irrevocably appoints TSG, as its attorney to sign all documents and do all things TSG considers reasonably necessary to comply with the Customer's obligations under the Security Agreement, where the Customer has failed to do so within the timeframe required by TSG or the PPSA (sufficient proof

of which shall be a statutory declaration signed by an officer of TSG) and ratifies any acts the attorney lawfully does or causes to be done under the Security Agreement;

- (h) in these Terms and Conditions of Sale, unless the context otherwise requires:
  - (i) "Enforce" means exercise all of TSG's rights, under the Security Agreement or otherwise, in relation to the Security Interest;
  - (ii) "Personal Property" if the PPSA applies, means all the Customer's present and after-acquired Personal Property and includes all of the Collateral and any other assets, property and rights over which the Security Interest is permitted by law, and, where applicable, includes the proceeds from the sale of any of the Personal Property;
  - (iii) "PPSA" means the Personal Properties Securities Act 2009 (Cth) and the Personal Property Securities Regulations 2010 (Cth);
  - (iv) "Registration" means registration of the Security Interest on the Register to enable the Security Interest to have priority in accordance with the Security Agreement;
  - (v) "Security Agreement" means the agreement between the Customer and TSG that creates or evidences the Security Interest, including these Terms and Conditions of Sale;
  - (vi) "Security Interest" means a "security interest" (as defined in the PPSA) granted by the Customer in the Customer's Personal Property to TSG under the Security Agreement to secure payment of all money by the Customer and performance of all the Customer's obligations under the Security Agreement and, includes a purchase money security interest; and
  - (vii) "Customer" includes the meaning given to "grantor" under the PPSA;
- (i) words and phrases not defined in these Terms and Conditions of Sale will have the meaning given to them in the PPSA.

## 10 Default

If the Customer:

- (a) fails to make any payment in accordance with these Terms and Conditions of Sale by the date it falls due 2 or more times;
- (b) fails to comply with any of these Terms and Conditions of Sale;
- (c) being an individual, becomes bankrupt, dies or becomes mentally or physically incapable of managing their affairs;

- (d) being a corporation, passes a resolution for winding up or liquidation or enters into any composition or arrangement with creditors or if a receiver including a provisional receiver, or receiver and manager, trustee or administrator is appointed for any property or assets or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up;
- (e) has execution levied against it; or
- (f) ceases or threatens to cease carrying on a business,

then the Customer will be in default under these Terms and Conditions of Sale and TSG may, without prejudice to any other remedy available to it under these Terms and Conditions of Sale or in law or equity do one or more of the following:

- (g) charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic), calculated daily, for the period from the due date until the date of payment in full;
- (h) immediately recover possession of any goods not paid for in full (and the Customer authorises, or will procure relevant authority for, TSG or its agents;
- (i) charge the Customer for, and the Customer must indemnify TSG from, all costs and expenses (including without limitation all legal costs and disbursements on an indemnity basis) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;
- (j) cease or suspend for such period as TSG thinks fit, supply of any further goods to the Customer;
- (k) by notice in writing to the Customer, suspend or terminate any contract with the Customer so far as unperformed by TSG;
- (l) require the payment of cash before or on delivery of any further goods;
- (m) require that all money owing to TSG, regardless of the due date, become immediately due and payable; and/or
- (n) sue the Customer for breach of contract, without effect on the accrued rights of TSG under any contract.

## 11 Miscellaneous

- (a) The termination of any contract between TSG and the Customer will not:
  - (i) relieve the Customer of their obligations to pay any money due under these Terms and Conditions of Sale; or
  - (ii) affect any provision contained in these Terms and Conditions of Sale which expressly or by implication is to become

operative or continue to operate after the contract is terminated.

- (b) The Customer agrees that all contracts made with TSG will be deemed to be made in the State of Victoria and the Customer agrees to submit to the jurisdiction of appropriate courts and tribunals in that State.
- (c) The provisions of these Terms and Conditions of Sale will be separate and severable from each other to the extent that if any provision or provisions are unenforceable they will be read down so as to be enforceable or, if it cannot be so read down, they will be severed from these Terms and Conditions of Sale without affecting the enforceability of the remaining terms.
- (d) Failure by TSG to enforce any of these Terms will not be construed as a waiver of any of TSG's rights.
- (e) All notices, requests, consents, approvals, reports, offers or other communications (Communications) given under these Terms and Conditions of Sale must be in writing and:
  - (i) delivered personally, by prepaid post, email or facsimile transmission to the party's last known street or postal address, email address or facsimile number; and
  - (ii) will be considered to have been received if:
    - (A) delivered personally, on delivery;
    - (B) sent by prepaid post, on posting, notwithstanding that it may subsequently be returned through the Post Office unclaimed;
  - (iii) sent by facsimile transmission, on production of a transmission control report indicating transmission without error; or
  - (iv) sent by email, on receipt by the sender of confirmation on its computer that the message has been delivered.
- (f) Unless the context indicates otherwise, a reference in these Terms and Conditions of Sale to:
  - (i) the singular includes the plural and vice versa;
  - (ii) any agreement, warranty, representation or obligation which binds or benefits 2 or more persons, binds or benefits those persons jointly and severally;
  - (iii) a person includes corporations all bodies and associations corporate or unincorporated and vice versa;
  - (iv) "includes" means "includes without limitation" or "including" means "including without limitation";
  - (v) "\$" or "dollars" is a reference to the lawful currency of Australia.

- (g) No agent, employee or representative of TSG will have any authority whatsoever to bind TSG to any affirmation, representation, warranty or condition concerning the goods sold under these Terms and Conditions of Sale unless such affirmation, representation, warranty or condition is specifically included in writing within these Terms and Conditions of Sale.

## 12 Privacy

- (a) TSG is bound by the Privacy Act 1988 and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to TSG in accordance with the Privacy Act.
- (b) TSG requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by TSG in connection with these Terms and Conditions of Sale.
- (c) TSG may give information about the Customer and/or the Guarantors to a credit reporting agency, for the following purposes:
  - (i) To obtain a consumer credit report, and/or,
  - (ii) To allow the credit reporting agency to maintain a credit information file containing information about the Customer and/or the Guarantor.
- (d) The information provided to the credit reporting agency may include:
  - (i) Identity particulars of the Customer (e.g. name, sex address and the previous two addresses, date of birth, name of employer, and drivers' license number).
  - (ii) These terms and conditions and details of the credit provided to the Customer;
  - (iii) The fact that TSG is a current credit provider to the Customer.
  - (iv) Details of any payments which are overdue by more than 30 days, and for which debt collection action has started.
  - (v) Advice that payments are no longer overdue in respect of any default that has been listed.
  - (vi) Information that, in the opinion of TSG the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with its credit obligations).
  - (vii) Dishonoured cheques.
  - (viii) That credit provided to the Customer by TSG has been paid or otherwise discharged.

- (e) The Customer and the Guarantor each hereby acknowledge and agrees that TSG:
  - (i) has informed it that it may give certain personal information about it to a credit reporting agency;
  - (ii) may obtain information about it from a business which provides information about commercial credit worthiness of persons for the purpose of assessing any credit advanced to the Customer under these Terms and Conditions;
  - (iii) may obtain a credit report containing information about it from a credit reporting agency;
  - (iv) may exchange information with any credit reporting agency, or any credit provider named in a credit report relating to the Customer and/or Guarantor for the purposes of:
    - (A) assessing whether to extend credit to the Customer under these Terms and Conditions;
    - (B) notifying other credit providers of any default by the Customer;
    - (C) exchanging information as to the status of any credit account; or
    - (D) to assess general credit worthiness.