

Melville Hill Estate

*New Generation A New Beginning
Ph: 02 6760 9309*

Application for a Commercial Credit Account

() COMPANY () BUSINESS/PARTNERSHIP () SOLE TRADER () OTHER(Trust Ltd)
() NAME OF LICENSED PREMISES

TRADING NAME

ABN

TRADING ADDRESS

.....

POSTAL ADDRESS

.....POSTCODE.....

PHONE: () FAX:

EMAIL ADDRESS: MOBILE NO:

HOW LONG ESTABLISHED:

ACCOUNT NAME

BANK:

BSB: ACCOUNT NO

FULL NAME OF ALL DURECTOR(S)/PARNTER(S)/SOLE TRADER(S) & ALL APPLICANTS

1 SURNAME

2 SURNAME

.....
GIVEN NAME

.....
GIVEN NAME

DRIVER'S LIC NO..... DOB.....

DRIVER'S LIC NO..... DOB.....

3 SURNAME

4 SURNAME

.....
GIVEN NAME

.....
GIVEN NAME

DRIVER'S LIC NO..... DOB.....

DRIVER'S LIC NO..... DOB.....

ESTIMATE MONTHLY CREDIT REQUIREMENTS: \$

TRADE REFERENCES

1. Contact Name Business Name
 Phone: Office Mobile

2. Contact Name Business Name
 Phone: Office Mobile

To be completed by Melville Hill Estate Credit Reference Check

1.	Date	Name	Remarks
	Time		
2.	Date	Name	Remarks
	Time		

Signature
 Melville Hill Estate

.....

Should the seller RC & G Upadyaya trading as Melville Hill Estate (hereinafter called the seller) agree to an account in my/our name.

I/we agree that the following terms and conditions will apply: -

1. All goods are supplied at process ruling at date of delivery.
2. Settlement to be effective within thirty (30) days from statement date of delivery.
3. In the event of any amount being unpaid after the expiration of thirty (30) days following the months of purchase of the goods. I/we agree to pay a service fee to the company at the rate of one and a quarter per centum (1.25%) per month such amount to be calculated from thirtieth day after delivery of the goods. The company shall have the rights to vary the service fee to be charged from time to time by a service fee shown by on the company invoices, which notice shall be deemed to be given by the endorsement by the company of such variation in service fee rate on my monthly statement of account.
4. The company shall be entitled to sue for and recover against me any service fee charge on my account as liquidated demand and I/we agree that in the event of default I/we will pay all reasonable costs, charges, legal expenses, and any other collection costs necessary and incidental to recovering monies recovered under this agreement and further I/we agree that for the purpose of this agreement it shall be deemed to be made in the state of New South Wales and I/we consent to any action being commenced within that district for the purpose of the agreement.
5. I/we understand and acknowledge that this application is for a commercial credit account.
6. I/we acknowledge that the company has the right to terminate this agreement and the commercial credit account if it remains unused for a period of twelve (12) months.
7. In addition to the above general conditions I/we agree that for the purpose of proceedings my/our application agreement that the company may seek consumer credit information (section 18k (1) (b) Privacy act 1988). If the company considers it relevant to assessing my/our application for commercial credit, I/we agree to the company obtaining from a credit reporting agency a credit report containing personal credit information about me/us in relation to commercial credit provided by the company. Exchanging information with other credit providers (section 18k (1) (b) Privacy act 1998) I/we agree to the company obtaining personal information about me/us from the credit providers, whose names I/we have provided for the company or that may be named in credit report for the purpose of assessing my/our application for commercial credit, make to the company.
8. I/we hereby undertake to be bound by the attached Terms and Conditions of Sale and any variations thereto from time to time without notice.

IMPORTANT NOTICE TO APPLICANTS FOR CREDIT (SECTION 18(C) PRIVACY ACT 1988)**PLEASE READ CAREFULLY**

The supplier may give information about you to a credit reporting agency, but only limited kinds of information allowed under section 18E(1) of the Privacy Act 1988 (Commonwealth). This includes:

- Identity details – this only includes your name, date of birth, sex, current known address, previous know address, your current or last known employer, and your driver's licence number.
- The fact that you have applied for credit and the amount.
- The fact that the supplier is a credit provider to you.
- Payments overdue for at least 60 days and for which collection action has commenced.
- Advice that payments are no longer due.
- Cheques drawn by you that have been dishonoured more than once.
- In specified circumstances that I the opinion of RC & G Upadyaya trading as Melville Hill Estate you have committed a serious credit infringement.
- That credit provided to you by RC & G Upadyaya trading as Melville Hill Estate has been paid or otherwise discharged.

STATEMENT BY APPLICANT(S) FOR CREDIT

Please read carefully before signing. Where more than one applicant both applicants sign.

1. Giving information to a Credit Reporting Agency (section(8)(c) Privacy Act 1988): RC & G Upadyaya trading as Melville Hill Estate.
Has informed me that it may give certain personal information about me to a credit-reporting agency.
2. Access to Commercial Credit information (section 18L (4) Privacy Act 1988):
In order to assess my application for commercial credit, I/we agree to RC & G Upadyaya trading as Melville Hill Estate obtaining a report about my commercial credit worthiness of persons.
3. Access to Consumer Credit Information (section 18K(1)(b) Privacy Act 1988):
In order to asses my application for commercial credit, I/we agree to RC & G Upadyaya trading as Melville Hill Estate obtaining from a credit reporting agency a credit report containing personal credit information about me/us in relation to commercial credit provided by RC & G Upadyaya trading as Melville Hill Estate.

I/we hereby apply to establish credit facilities with RC & G Upadyaya trading as Melville Hill Estate and I agree to abide by the attached Terms and Conditions of Sale. I/we understand that a credit check will be undertaken as part of this application and that I/we have read and understood the acknowledgement and authority regarding the privacy protection of information.

Applicant Name 1 (please print)

Residential Address

Signature

Date

Applicant Name 2 (please print)

Residential Address

Signature

Date

TERMS AND CONDITIONS OF SALE

1. Interpretation

Unless inconsistent with the context:

“**Agreement**” shall mean and include the terms and conditions herein and on the following pages

“**Customer**” means and includes any natural person, company, partnership or other entity which enters into this Agreement with the Seller

“**Goods**” means the goods and/or service supplied by the Seller pursuant to this Agreement

“**GST**” means goods and/or services tax.

“**Supplier**” shall mean and include RC & G Upadyaya trading as Melville Hill Estate

2. Exclusion of inconsistent terms

Any terms and conditions of the Customer’s order deviating from or inconsistent with these terms and conditions (including any statement by the Customer that the Customer’s terms and conditions shall prevail) are expressly excluded. Subject to Clause 14, this Agreement constitutes the entire agreement between the parties.

3. Formation of Contract

A contract shall only be or be deemed to have been entered into between the Seller and the Customer for the sale of Goods when, upon an order having been placed with the Seller for Goods, that order has been accepted by the Seller either in writing or by conduct.

4. Price

4.1 “Price” means, unless the contrary intention appears, the Price for which a good (or goods) is sold pursuant to the Terms and Conditions and is the amount payable by the customer, inclusive of any GST payable by the Seller in respect of the sale.

4.2 The Customer shall unless otherwise agreed pay the cost of delivery or freight.

4.3 Prices are subject to change without notice.

5. Payment

5.1 Unless otherwise agreed by the Seller in writing, payment for all goods shall be made on or before the thirtieth day after delivery of the goods the following month in which the goods are invoiced (“the due date for payment”). Punctual payment is agreed to be the essence of this agreement.

5.2 Breach by the Customer of Clause 5.1 shall entitle the Seller to: -

- (a) Require immediate payment of all invoices rendered by the Seller to the Customer’
- (b) Terminate this Agreement (without notice) without prejudice to any antecedent rights accruing to the Company;
- (c) Recover liquidated damages on any amount outstanding of an amount equal to two per cent (2%) of that amount for each month or part of a month from the due date until the date of payment in full;
- (d) Add to the Customer’s account and require payment of all expenses incurred as a consequence of the actions taken by the Seller to recover outstanding monies from the Customer;
- (e) Charge a monthly interest rate of (1.25%) per month such amount calculated from the thirtieth day after delivery of the goods.

5.3 In respect of any proceedings in any Court of competent jurisdiction, a Certificate signed by the Credit Manager of the applicable business name of the Seller stating the quantum of the debt owed by the Customer to the Seller shall be deemed to be conclusive proof of the quantum of the debt owed by the Customer to the Company.

6. Supply and Delivery

6.1 The Seller reserves the right to: -

- (a) With hold supply to the Customer where: -
 - 1) The Seller has insufficient goods to fulfil the order;
 - 2) The goods ordered have been discontinued;
 - 3) The Seller has determined in its absolute discretion that credit should no longer be extended to the Customer;
- (b) Deliver by instalments and such right shall not entitle the Customer to: -
 - 1) Terminate or cancel this agreement;
 - 2) Claim any loss or damage howsoever arising.

6.2 The goods shall be at the Customer’s risk from the time of delivery to the Customer or its agent.

6.3 Claims for shortages in delivery or damage to goods may only be made within two business days from the date of delivery.

7. Proper Law

The contract between the Seller and the Customer shall be governed and construed according to the Laws of New South Wales and the Customer agrees to submit to that jurisdiction.

8. Indemnity

The Customer shall indemnify and keep indemnified the Seller from and against all losses, claims, proceedings, damages, costs and expenses in respect of or arising directly or indirectly from:-

- (a) The goods or their use;
- (b) From any advice given to the Customer by the Seller save and except as provided for in paragraph 14;
- (c) Any breach by the Customer of the terms of this agreement

9. Severance

If for any reason any part of these terms and conditions would render the Agreement ineffective, void, voidable, illegal or unenforceable, that part shall, without in any way affecting the validity of the remainder of the Agreement, be severable herefrom and the Agreement shall be read and construed and take effect for all purposes as if that part were not contained herein.

10. Ownership of Goods

10.1 All goods supplied by the Seller to the Customer shall remain the property of the Seller until all monies have been paid in full (including all charges made in accordance with clause 5) and all cheques and all other negotiable instruments have been cleared. Pending legal and beneficial ownership of the goods passing to the Customer, the Customer must not encumber the Goods in any way.

10.2 Until the payments referred to in clause 10.1 above are received by the Company, the Customer shall hold the Goods as fiduciary bailee and agent of the company, and as an incident of the said fiduciary, bailment and agency relationship, but without limiting the generality of the foregoing, the Seller’s representatives shall be entitled to enter upon premises owned or occupied by the Customer to inspect the Goods.

10.3 If the Customer –

- (a) Makes default in any payment due under this Agreement under which payment is due to the Seller in respect of the supply of goods;
 - (b) (in the opinion of the Seller's Credit Manager or equivalent officer) is, or is likely to become, bankrupt or insolvent;
 - (c) Had a receiver, administrator, trustee or similar officer appointed over its property;
 - (d) Disposes of, or threatens to dispose of, its assets other than in the ordinary course of business
- The Seller's representatives may (without prejudice to any other rights of the Company), with or without notice, and forcibly if necessary, enter upon any premises owned or occupied by the Customer where the Seller's Credit Manager or equivalent officer reasonably believes the Goods may be stored and recover, and do all things necessary to recover the Goods.

10.4 The Customer -

- (a) Hereby irrevocably authorises the exercise of the Seller's powers under Clause 10.3 above and agrees that the Seller shall not be liable for any loss, damage, expense or cost whatsoever suffered or incurred by the Customer as a result of the Seller or its agents exercising the powers conferred on the Seller under Clause 10;
- (b) Agreed that it shall not subject the Seller or the Seller's agents to any claim or action whatsoever, whether tortious or otherwise, in instances where the Seller takes possession of goods owned by the Customer in the reasonable belief that such goods are the Goods. Upon receipt of evidence from the Customer which satisfies it that the relevant goods are not the Goods, the Seller shall make the goods available for collection by the Customer.

10.5 Where the Goods are part of a product line that is also comprised of goods that are owned by the Customer (for example, because other suppliers also supply the Customer with that product line) the Customer confirms that it will not deal with the Goods in any way that is inconsistent with the Seller's ownership of the Goods and acknowledge the applicability of the following legal principals if, at the time when the Seller seeks to recover the Goods, the Goods have nevertheless been commingled with other goods in the same product line –

- (a) If there is sufficient stock of the product line to satisfy in full the interest of both the Seller and the Customer, the principal that the Seller and the Customer become tenants in common of the stock in that product line in portion to their respective contributions;
- (b) If the residual stock of the product line is insufficient to satisfy in full the interests of both the Seller and the Customer, the legal principal that, as an incident of the Customer's obligations as fiduciary bailee and agent in respect of the Goods, the Customer will be presumed to have disposed of that part of the product line that is comprised of its own goods prior to disposing of the Goods.;

This Clause 10.5 does not purport to confer on the Seller any contractual rights but serves as confirmation of the Seller's rights at law and in equity.

10.6 It is not intent by the Seller or the Customer by supplying or accepting Goods on the conditions of this Clause 10 to create a charge, mortgage or other mere security interest over any Goods supplied.

11. Waiver

The waiver by the Seller of any breach by the Customer of any term of this Agreement shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any other or subsequent breach.

12. Returns

- 12.1 The Seller reserves the right in its complete discretion to refuse to accept any returns whatsoever.
- 12.2 If the Seller for any reason elects to take back any of the Goods, such return shall be on such terms as the Seller is willing to accept and a re-stocking fee of not less than 5% of invoice value (including GST) shall apply.
- 12.3 Goods returned shall be at the Customer's expenses.
- 12.4 Goods returned must have been purchased from the Company, be in original packages and saleable condition and the relevant invoice number supplied.
- 12.5 No credit will be issued for goods returned after 14 days from receipt or for goods supplied specially to the Customer's requirements.
- 12.6 The Customer shall be deemed to have been given notice under Clause 16 of any change to the Seller's returns policy.
- 12.7 Unless the Customer notifies the Seller in writing prior to the return of the goods that the Customer does not wish to accept the following terms:

- (a) The Customer agrees to:
 - 1) Not to issue tax invoices in respect of those supplies.
 - 2) Acknowledge it is registered for GST.
 - 3) Notify the Seller if GST registration is ceased.
- (b) The Seller agrees to:
 - 1) Acknowledge it is registered for GST.
 - 2) Acknowledge it will notify the Customer if it ceases to be registered for GST.

13. Sample

Any sample, catalogue or brochure shown to the Customer is solely for the purpose of enabling the Customer to judge the normal commercial quality of the Seller's products and not so as to constitute a sale by sample or a sale by description nor does the Seller warrant or agree that the bulk of the Goods sold conform with any such sample or description.

14. Implied terms

14.1 Except as required by statute and including the Trade Practices Act 1974), all implied conditions and warranties are hereby excluded. Subject to the extent that such conditions and warranties cannot be excluded under statute (including the Trade Practices Act), the Customer's sole and exclusive remedy for any breach of a condition, warranty or undertaking hereunder (whether direct, indirect, special or consequential) shall be limited at the sole discretion of the Seller to any one of the following:

- (a) In the case of goods: -
 - 1) The replacement of goods or supply of equivalent goods;
 - 2) The repair of the goods;
 - 3) The payment of the cost of replacing or of acquiring equivalent goods; or
 - 4) The payment of the cost of having the goods repaired; and
- (b) In the case of service: -
 - 1) The supply of the services again; or
 - 2) The payment of the cost of having services supplied again.

- 14.2 Except as required by statute (including the Trade Practices Act 1974) the Seller does not accept liability for any direct, indirect or consequential loss of damage caused to the Customer or any other person which arises out of the negligence or carelessness of the Seller or any of its employees, servants or agents. For the purpose of the foregoing "consequential loss" shall include, but not be limited to, loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of goods or services.
- 14.3 Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to the Agreement of all or any of the provisions of Part V of the Trade Practices Act 1974 (am amended), Section 6 of the Manufacture's Warranties Act 1974 of the State of South Australia or Section 7 of the law Reform (Manufacturer, Warranties) Ordinance of the Australian Capital Territory or any other relevant Act which by law cannot be excluded restricted or modified.
15. **Changes to the particulars of the proprietors or the business.**
The Customer hereby undertake to advise the Seller within 7 days by certified mail of any actual or proposed change in: -
- (a) The address of the business and the address at which the Goods will be located (if it differs to the business address);
 - (b) The trading name of the business;
 - (c) The person(s), the Directors, the Trustee or the partnership conducting the business;
 - (d) The proprietorship of the business in that the business is converted into a trust or Seller or is sold to a trust or company.
- The Customer further accept and agree that where such a change occurs the Seller will require that a new application for credit facilities.
16. **Notices**
All notices between the Seller and the Customer shall be considered to have been sufficiently delivered if mailed in the ordinary course of post or facsimile to the last known address of the Seller or the Customer, whichever may apply. Notices shall be deemed to have been delivered two (2) days after mailing; and in the case of facsimile upon completion of the transmission. The customer hereby charges all of his/her or its property both real and personal with the amount of any indebtedness to the Seller and such charge is separate and distinct from the reservation of title to the Goods referred to above.

Melville Hill Estate

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Ph: 02 6760 9309

DECLARATION BY DIRECTOR GUARANTOR

I, (declarant)

Of

DO SOLEMNLY SWEAR AND SINCERELY DECLARE AS FOLLOWS:

- 1. I am the Guarantor named in the application for a Commercial Credit Account between "Customer"
And RC & G Upadyaya trading as Melville Hill Estate
"Supplier" relating to the purchase of wine.
- 2. I have been given the opportunity to receive independent legal advice regarding the Application for a commercial credit
- 3. After receiving that advice I have freely and voluntarily signed the following documents:
 - a) Application for a Commercial Credit Account
 - b) Directors Guarantee
 - c) Notice pursuant to section 18 (c) Privacy Act 1988;
 - d) Terms and Conditions of Sale

AND I MAKE THE SOLEMN DECLARATION conscientiously believing the contents to be true and by virtue of the Oaths Act 1990.

MADE AND SUBSCRIBED by

The said declarant at)

The (signatory)

.....2005

Before me:

.....

A Justice of the Peace/Solicitor

Melville Hill Estate

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DECLARATION BY THIRD PARTY GUARANTOR

I, (declarant)

Of

DO SOLEMNLY SWEAR AND SINCERELY DECLARE AS FOLLOWS:

- 1. I am the Guarantor named in the application for a Commercial Credit Account between "Customer"
And RC & G Upadyaya trading as Melville Hill Estate
"Supplier" relating to the purchase of wine.
- 2. I have been given the opportunity to receive independent legal advice regarding the Application for a commercial credit
- 3. After receiving that advice I have freely and voluntarily signed the following documents:
 - a) Application for a Commercial Credit Account
 - b) Personal Guarantee
 - c) Notice pursuant to section 18 (c) Privacy Act 1988;
 - d) Terms and Conditions of Sale

AND I MAKE THE SOLEMN DECLARATION conscientiously believing the contents to be true and by virtue of the Oaths Act 1990.

MADE AND SUBSCRIBED by

The said declarant at)

The (signatory)

.....2005

Before me:

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A Justice of the Peace/Solicitor

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