

WINE NETWORK (NZ) LIMITED
("WINE NETWORK")
TERMS OF PURCHASE BY WINE NETWORK

1. NATURE AND SCOPE OF TERMS OF TRADE

- 1.1** These terms of trade ("Terms") form a contract that applies between Wine Network and the Supplier in respect of supply of wine sourced by and provided to Wine Network by the Supplier and shall also apply to the supply of other goods that the parties may agree (hereafter, collectively referred to as "Goods").
- 1.2** Wine Network and the Supplier may agree in writing on special terms and conditions that either vary or are additional to these Terms, otherwise these Terms will apply to all transactions between Wine Network and the Supplier.

2. WARRANTIES

- 2.1** The Supplier represents and warrants, at the time an order is made by Wine Network, that:
- (a) All information in respect of the Goods given by or on behalf of the Supplier (whether by any director, agent, contractor or employee of the Supplier) to Wine Network or Buyers are and shall be accurate and complete in all material respects;
 - (b) Any Goods are or will be made and/or provided (including complying with relevant import/export laws) in accordance with all relevant New Zealand legislation and comply with all requirements detailed in the Wine Institute of New Zealand's 'Record Keeping: A Code of Practice for Licensed Grape Winemakers' and all records relevant to the Goods supplied will be made available for inspection upon reasonable notice by Wine Network in normal business hours;
 - (c) All Goods shall accord with samples and information provided by the Supplier to Wine Network;
 - (d) It carries sufficient insurance cover in respect of all of the Goods being supplied to Wine Network to cover loss of those Goods and any consequential claims and shall provide copies of all such policies to Wine Network on request and within 2 Business' Days; and
 - (e) Any information contained in a completed Wine Making and Statutory Declaration form provided by the Supplier to Wine Network is and shall be true and correct and that Wine Network may disclose this information to its own customers.

3. EVENTS AFFECTING SUPPLIER OR BUYER

- 3.1** The Supplier acknowledges that Wine Network's business includes locating Buyers for Goods and unless otherwise agreed in writing with Wine Network, Wine Network may cancel orders for Goods (without prejudice to any other rights it may have against a Buyer in default) if the Supplier or a Buyer:
- (a) Enters into a composition with its creditors, is subject to a voluntary administration, liquidation, receivership or statutory management or any similar form of management due to insolvency or statutory default;
Defaults in its performance of its obligation to Wine Network and such default is incapable of being remedied; or
 - (b) Is subject to a force majeure event of the nature described in clause 6 of these Terms.
- 3.2** Should an event of the type set out in clause 3.1 above occur in respect of a Buyer, Wine Network shall as soon as it has knowledge of the default or likely default:
- (a) Immediately advise the Supplier of a default that may give rise to an event giving rise to cancellation and provide all relevant details of it;
 - (b) use reasonable endeavours to either remedy a problem or default with its Buyer (if such is within its control) or obtain a replacement Buyer by the Date of Delivery, so it can enter a replacement contract with the Supplier on the same terms and conditions.

4. INDEMNITY

- 4.1** The Supplier indemnifies Wine Network from and against all Damages Wine Network or its directors, principals, employees, contractors or agents sustains or incurs (directly or indirectly):
- (a) Arising out of or resulting from any breach of these Terms by the Supplier; or
 - (b) Relating to any claim by the Supplier, to the extent that such claim is beyond the scope of Wine Network's liability to the Supplier under these Terms.

5. BRANDING AND INTELLECTUAL PROPERTY

- 5.1** The Supplier acknowledges that Wine Network has its own brands and Intellectual Property and unless otherwise agreed Goods purchased under this agreement may be rebranded and/or utilised by Wine Network.
- 5.2** Wine Network warrants that if it sells Goods under its own brand, it shall ensure that the geographical origins and all pertinent information provided about the wine shall be accurate and complete in all material respects.
- 5.3** Subject to clause 5.1, neither Party shall utilise the Intellectual Property of the other, without the prior written consent of the party that owns the Intellectual Property.

6. FORCE MAJEURE

- 6.1** Neither Wine Network nor the Supplier shall be liable to the other for any breach or failure to perform any of its obligations under these Terms where such breach or failure is occasioned by any cause or causes beyond the reasonable control of that party including (but without limiting

the generality of the foregoing) civil commotion, hostilities, strikes or lockouts, acts of God (including severe weather patterns that affect the production of wine sourced from any particular location) and if either party is likely to be affected by any such event it shall immediately notify the other party of the occurrence or likely occurrence of the anticipated events and to use all reasonable endeavours to overcome or mitigate the effects thereof.

7. DISPUTE RESOLUTION

- 7.1** Either party may give the other party notice of any dispute arising in respect of, or in connection with the provision of Goods that are subject to these Terms ("Dispute").
- 7.2** In the event of a notice being given pursuant to clause 7.1 above, then the parties must:
- (a) Meet at senior management level to discuss the Dispute and make a genuine effort to resolve the Dispute;
 - (b) If no resolution of the Dispute has occurred within ten (10) Business Days from the date of the giving of the notice in accordance with clause 7.1 above, then either party may require the other party to attend a mediation of the Dispute ("Mediation Request").
- 7.3** In the event of a Mediation Request the parties must:
- (a) Make any such Mediation Request in writing; and
 - (b) Agree upon the mediator.
- 7.4** If the parties cannot agree on a mediator within ten (10) Business Days from the date of any Mediation Request, then the mediator will be appointed by the President from time to time of the Auckland District Law Society or its successor organisation.
- 7.5** If the Dispute is not resolved by mediation within twenty (20) Business Days after the appointment of a mediator, then the Dispute may be referred to arbitration by either party ("Arbitration Request"). In the event of an Arbitration Request:
- (a) The arbitration will be by a single arbitrator, who will be agreed upon by the parties;
 - (b) If the parties cannot agree upon an arbitrator within ten (10) Business Days from the date of any Arbitration Request, then the arbitrator will be appointed by the President of the Auckland District Law Society from time to time or its successor organisation;
 - (c) Articles 4 and 5 of Schedule 2 of the Arbitration Act 1996 ("Arbitration Act") will not apply to any dispute and the arbitration will be conducted in accordance with the Arbitration Act.
- 7.6** Notwithstanding anything in this clause 7 or the Arbitration Act, the decision of the arbitrator will be final and binding and neither party may commence court proceedings in relation to any Dispute arising out of or in connection with these Terms that is the subject of a notice under clause 7.1 at any time.
- 8. GENERAL**
- 8.1** To be effective, any waiver of any or all of the terms and conditions in any agreement the Supplier has with Wine Network must be in writing.
- 8.2** The Supplier may not assign all or any of its rights or obligations under these Terms without the prior written consent of Wine Network.
- 8.3** Where a party has rights and remedies at law or otherwise in addition to the rights set out in these Terms, those rights and remedies will continue to apply.
- 8.4** Failure of a party to enforce any of the terms and conditions shall not be deemed to be a waiver of any of the rights or obligations a party has under these Terms.
- 8.5** If any of these Terms or part thereof are held to be invalid, illegal, unenforceable or void for any reason or reasons, all of the remaining Terms (or part thereof) shall remain in full force and effect.
- 8.6** These Terms are governed by the law of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

9. DEFINITIONS AND INTERPRETATION

In interpreting these Terms:

"Business Day" means any day not being a Saturday or Sunday or statutory holiday in Auckland, New Zealand.

"Buyers" means parties that purchase goods from Wine Network that are provided by the Supplier, provided the Buyer is disclosed to the Supplier by Wine Network and Buyer means any one of those Buyers.

"Damages" means all liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis) whether incurred by or awarded against a party) including those associated with any third party claim, and whether arising under contract, tort (including negligence) or otherwise.

"Intellectual Property" means and includes (whether invisible, electronic or any other form) all brands, contracts, goodwill, logos, formulae, techniques, know-how, specifications, designs, drawings, copyright, manufacturing processes, patents and trademarks (if any) whether registered or not, software (and source and object code), business strategies, confidential business information including market and marketing strategies, business contracts, and all other intellectual property owned by a party to these Terms.