

**WINE NETWORK (NZ) LIMITED
("WINE NETWORK")
TERMS OF SALE**

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 Customer in respect of supply of wine sourced by and provided to the Customer by Wine Network and shall also apply to the supply of other goods that the parties may agree (hereafter, collectively referred to as "goods").

1.2 The Customer acknowledges that all orders of goods are a request by it for the provision of credit from Wine Network and placement by the Customer of any order with Wine Network for the supply of the goods constitutes an acknowledgment by the Customer that the contract between the Customer and Wine Network shall be governed by these Terms.

1.3 From time to time, Wine Network may issue updated or amended terms of trade. An order of goods by the Customer after Wine Network has issued any updated or amended terms is deemed to be acceptance of such terms.

1.4 Wine Network and the Customer may agree in writing on special terms and conditions that either vary or are additional to these Terms or Wine Network may vary these terms in an order form that complies with clause 2.1 of these Terms, otherwise these Terms will apply to all transactions between Wine Network and the Customer.

2. ORDERING

2.1 The Customer will purchase the goods by submitting written purchase orders to Wine Network on the purchase/sale order form provided by Wine Network to the Customer or in accordance with the procedures required by Wine Network from time to time. Each order form:

- (a) Is subject to these Terms except as is otherwise specified by Wine Network in the order form or separately agreed in writing by the Customer and Wine Network;
- (b) At a minimum, must specify all of the matters on the order form.

2.2 All purchase orders for the goods submitted by the Customer will be subject to acceptance in writing by Wine Network (in its absolute discretion) and will not become binding on Wine Network until such acceptance. Any variation, waiver or cancellation of any order or any amendment to terms or conditions of the order made by the Customer shall be of no effect unless accepted in writing by Wine Network.

2.3 The Customer acknowledges and agrees that Wine Network is not under any duty to accept purchase orders from the Customer.

2.4 Once submitted under clause 2.1, the Customer may not revoke a purchase order for 20 Business Days and once accepted by Wine Network under clause 2.2, the Customer may not revoke or cancel a purchase order without Wine Network's prior written consent which may be withheld at Wine Network's sole discretion.

2.5 Except as set out in clause 2.1(a) any terms in any purchase order or order form that have been inserted by the Customer that are inconsistent with or in addition to these Terms are hereby rejected by Wine Network and will be deemed null and of no effect, even if Wine Network accepts or acknowledges such purchase order itself.

2.6 Wine Network may cancel any purchase order accepted by Wine Network, or refuse delivery of the goods under it, if the Customer:

- (a) Fails to make any payment as provided in these Terms or under the payment terms set forth in any invoice or as otherwise agreed by Wine Network and the Customer;
- (b) Fails to meet reasonable credit or financial requirements established by Wine Network, including any limitations on allowable credit; or
- (c) Otherwise fails to comply with these Terms or any other agreement; or
- (d) Wine Network has reasonable grounds to doubt the Customer's solvency; and

Any such cancellation, refusal or delay by Wine Network does not constitute a termination of any agreement with the Customer (unless Wine Network so advises the Customer) or breach of any such agreement or these Terms by Wine Network.

2.7 The Customer acknowledges that Wine Network sources goods from third parties and unless otherwise agreed in writing with Wine Network, Wine Network may cancel purchase orders if a third party supplier:

(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;

(b) Defaults in its performance of its obligation to Wine Network and such default is incapable of being remedied; or

(c) Wine Network's own supplier is subject to a force majeure event of the nature described in clause 14 of these Terms; and

(d) The supplier defaults cannot be remedied with the supplier on or before the date the delivery is due.

2.8 Should an event of the type set out in clause 2.7 above occur, Wine Network shall:

(a) Immediately advise the Customer of the event giving rise to cancellation and provide details of it;

(b) Notwithstanding cancellation, use reasonable endeavours to obtain replacement wine acceptable to the Customer by the Date of Delivery, although Wine Network is under no obligation to provide replacement wine to the Customer where that replacement wine is of a greater cost to Wine Network than the wine originally sourced by Wine Network that was subject to a default event under clause 2.7.

3. PAYMENT

3.1 The price payable by the Customer for the goods shall be the price agreed to between Wine Network and the Customer at the time the order is made or in the absence of such agreement the price notified to the Customer by Wine Network on the date the goods are delivered. The onus is on the Customer to confirm prices prior to each delivery. The Customer is required to pay the purchase price in the currency stipulated by Wine Network which is based on the final intended destination of the goods ordered as advised by the Customer.

3.2 Wine Network will deliver to the Customer together with each delivery of goods, an invoice for the price of delivered goods and any other incidental charges relating to the sale of the goods.

3.3 Unless otherwise stipulated in an order form that complies with clause 2.1, payment of each invoice shall be made by the Customer in the same currency as the currency recorded on the invoice:

- (a) Into such bank account as Wine Network notifies the Customer;
- (b) Free of any deduction or withholding, and with no right of set-off for on or account of any taxes or other duties, currency controls or any other matter;
- (c) By the 20th calendar day of the month following the month on which the invoice was rendered by Wine Network.

3.4 Notwithstanding any other provision of these Terms, Wine Network reserves the right to change payment terms at any time (including, without limitation, requiring payment in advance or requiring the Customer to have issued an irrevocable letter of credit).

3.5 If the Customer fails to pay an amount due under these Terms, Wine Network may charge the Customer:

(a) Interest on that amount from its due date until the date of payment at 5% per annum above the default interest rate charged by Wine Network's bank; and

(b) All legal and other costs, charges and expenses incurred in connection with the recovery of all outstanding amounts including, without limitation, Wine Network's own solicitor/client costs and costs of any debt collection agency employed by Wine Network;

(c) Wine Network's right to require payment of interest and other costs under clause 3.5 does not affect any other rights or remedies it may have relating to any failure to pay an amount due under these Terms; and

(d) Without limiting clause 3.8, the Customer's payment obligation to Wine Network in accordance with these Terms is unconditional, and the Customer's failure to pay any invoice on the due date shall be an automatic default of these payment terms and Wine Network shall not be required to give the Customer any prior notice of default.

3.6 Wine Network reserves the right, on giving prior written notice to the Customer, to vary the price of the goods ordered by the Customer, between the date of the Customer's order and the date of delivery to take account of things such as (but without limitation):

- (a) Any increase in labour costs, costs of materials or any related services (including without limitation freight or delivery services, packaging services or insurance); or
- (b) Changes in exchange rates.

3.7 Unless otherwise set out on its invoice, Wine Network's prices are quoted exclusive of taxes, duties and other imposts which, if chargeable, are payable by the Customer whether they are imposed or brought into force before or after acceptance of the Customer's order. Unless otherwise stated, Wine Network's prices are exclusive of Goods and Services Tax (as set out in clause 4 of these Terms) or any other charge including, if any, insurance and freight costs and any such amount that may be due is payable on the same date as payment for the goods.

3.8 Without prejudice to any other remedies which Wine Network might have:

- (a) In the event of failure by the Customer to pay for goods in accordance with these Terms; or
- (b) If the Customer otherwise fails to otherwise comply with these Terms; or
- (c) If Wine Network deems the Customer's credit to be unsatisfactory,

Wine Network shall be entitled to cease supply of future goods to the Customer and cancel any current orders for sale of goods. Upon such cancellation and without prejudice to any other remedies which Wine Network might have, all credit in favour of the Customer will cease and all payments outstanding will become immediately due and payable to Wine Network. Wine Network may also take possession of such items of goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner/security interest holder and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way.

3.9 In accepting any payments from the Customer, Wine Network will not be bound by any conditions or qualifications or other terms which the Customer may have attached to those payments.

3.10 If the Customer does not agree with an amount set out in an invoice, the Customer must:

- (a) No later than 5 Business Days after receipt of the invoice it disputes, deliver to Wine Network a written notice setting out full details of the amount in dispute and the basis for the dispute;
- (b) Pay the undisputed amount of the invoice amount; and
- (c) Resolve the dispute in accordance with clause 13 of these Terms.

4. GST

4.1 Wine Network's prices referred to in these Terms and in any quotation which may have formed the basis of an order are exclusive of GST (unless expressly stated otherwise). The Customer shall pay GST on the goods or services the subject of these Terms, as invoiced by Wine Network on the payment terms on that invoice and, if rendered on the same date or on the same invoice as the goods supplied, at the same time as payment for the goods to which the GST relates.

4.2 International orders will generally not incur Goods and Services Tax ("GST") unless the international order is undertaken for the purposes of a New Zealand based resident. The Customer making the order agrees to indemnify Wine Network for any GST that is determined by the Commissioner of Inland Revenue (New Zealand) to be payable in respect of the order.

5. DELIVERY

5.1 Delivery is deemed to be made:

(a) When the Customer or the Customer's agent is given possession of the goods at Wine Network's premises or elsewhere (loading is then at the Customer's risk); or

(b) When the goods arrive at the Customer's premises (unloading is then at the Customer's risk); whichever is the earlier.

5.2 On delivery:

- (a) The goods are at the Customer's sole risk; and
- (b) Insurance is the Customer's responsibility.

5.3 Where the Customer requests a particular method of delivery and if Wine Network agrees (in writing) then the Customer will cover the cost of delivery (including any costs incurred by Wine Network as a consequence of the Customer not accepting physical Delivery on the date Delivery is agreed or deemed to be made) by that method from the point of dispatch of the goods or service by Wine Network and the risk of such delivery shall be borne entirely by the Customer unless otherwise agreed by Wine Network and the Customer in accordance with these Terms.

5.4 Any quotations of delivery times agreed by Wine Network are made in good faith but are estimates and not commitments and no delay in delivery will entitle the Customer to refuse to accept delivery or cancel its order or otherwise entitle the Customer to any Damages whatsoever.

6. DELIVERY - INTERNATIONAL

6.1 Unless otherwise specified in an order form that complies with clause 2.1 of these Terms, supply shall be EXW (Ex-Works) and Delivery occurs in accordance with clause 5.1. Failure to deliver any instalment will not entitle the Customer to refuse to accept delivery or any remaining instalments. Wine Network will obtain any required export licence and paying export taxes and fees if required.

6.2 The provisions of clause 5.2 to 5.4 of these Terms also apply to International Delivery.

7. RISK AND LOSS IN TRANSIT

7.1 Risk (including, without limitation, insurance responsibility) of any loss, damage or deterioration of or to the goods shall pass to the Customer upon the delivery of goods to the Customer.

7.2 The Customer acknowledges and agrees that Wine Network sources its goods from third parties and shall not be liable for any claim whatsoever except for goods lost or damaged in transit.

7.3 Claims made for damage in respect of goods lost or damaged in transit must be made against Wine Network in the following manner:

- (a) Prior to accepting the goods and acknowledging delivery the Customer must ensure that the complete consignment as per the delivery note has been received;
- (b) In the case of damage the delivery note must be endorsed by the Customer setting out in full the reasons for non-acceptance of the goods;

7.4 The liability of Wine Network in respect of the failure to deliver due to loss in transit or damage in transit where risk has not passed to the Customer shall be limited to paying the requisite insurance proceeds to the Customer or assigning any such claim to the Customer.

7.5 Risk shall pass back from the Customer to Wine Network only if Wine Network repossesses the goods.

8. RETENTION OF TITLE AND INTELLECTUAL PROPERTY RIGHTS

8.1 Notwithstanding any other provision of these Terms, title in the goods does not pass from Wine Network until:

- (a) Wine Network has received full payment in cleared funds for the goods (together with an amount for GST, any accrued interest and any other amounts due in respect of the goods); or
- (b) The Customer's earlier resale of those goods under clause 8.3.

8.2 Until title passes from Wine Network:

- (a) Ownership of the goods remains with Wine Network;
- (b) The Customer holds the goods as bailee for Wine Network; and

<p>(c) The Customer must store the goods separately from any other goods and not commingle, admix the goods with other goods or otherwise add to or alter the goods in any way.</p>	<p>10. THE CUSTOMER'S COVENANTS AND WARRANTIES</p> <p>The Customer agrees that it shall:</p>
<p>8.3 If goods which have not been paid for in full (together with an amount for GST, any accrued interest and any other amounts due in respect of those goods) ("Wine Network goods"), are sold by the Customer, the Customer must:</p>	<p>(a) Not undertake or perform any act or omission which brings or is reasonably likely to bring Wine Network the manufacturer and/or the supplier of the goods, or the goods themselves into disrepute, and without limitation, shall not cause or allow any of its employees, agents, contractors, shareholders, principals, officers or directors to engage in any activity, conduct or otherwise that shall or may prejudicially affect the reputation or goodwill of the either party or its business;</p>
<p>(a) Hold from the proceeds of any sale of Wine Network goods an amount equal to the payment due to Wine Network for those goods in a separate identifiable account as the beneficial property of Wine Network; and</p> <p>(b) Pay such amounts to Wine Network upon request.</p>	<p>(b) Not in New Zealand engage in any misleading or deceptive trade or any other conduct or act which breaches or may breach the provisions of the Fair Trading Act 1986 or in any place in the world engage in other unfair, misleading, deceptive or unsafe practice and shall conduct business in a manner that reflects favourably at all times on the goods and the good name, goodwill and reputation of Wine Network and/or the manufacturer and/or supplier and/or the goods.</p>
<p>8.4 If the Customer fails to pay any amount of the Customer's total indebtedness to Wine Network under these Terms when it is due to Wine Network or is otherwise in breach of these Terms then Wine Network and/or any of Wine Network's Personnel may, without notice and without prejudice to any of Wine Network's other rights and remedies, recover and/or re-sell Wine Network goods that have been delivered to the Customer and the Customer agrees Wine Network may enter upon the Customer's premises for that purpose.</p>	<p>(c) Not make representations, warranties or guarantees to customers with respect to the goods that are inconsistent with statements, information and certificates provided by the party supplying the goods;</p>
<p>8.5 Wine Network holds Intellectual Property rights which it licences or otherwise provides to customers as may be consented to by Wine Network. The Customer agrees to abide by the licence terms and requirements in respect of goods supplied in which Wine Network holds Intellectual Property rights at all times. In the event that a Customer is in default under these terms in respect of payment for any goods, all Intellectual Property rights licensed to the Customer by Wine Network in respect of all such goods or other property in which Wine Network claims Intellectual Property rights are immediate revoked and the Customer may only sell, utilise or deal with goods and other property in which Wine Network has such Intellectual Property rights and those Intellectual Property rights themselves with the prior consent of Wine Network.</p>	<p>(d) Promptly submit to Wine Network complaints relating to the goods together with all available evidence and other information relating to those complaints;</p> <p>(e) Ensure that the goods and any end product which may incorporate or otherwise process the goods are at all times supplied in accordance with all relevant legislation in the country in which the goods are supplied;</p>
<p>9. SECURITY - PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")</p>	<p>10.2 The parties acknowledge the paramount importance of protecting the health and welfare of the public and the goodwill associated with goods supplied under these Terms. In this regard Wine Network has the right to recall the goods if Wine Network reasonably considers that health or safety of any person or if clause 10.1 of these Terms has been breached. If such recall is caused by breach of any of these Terms by the Customer, then the costs of such recall shall be borne by the Customer, otherwise such costs shall be met by Wine Network.</p>
<p>9.1 The Customer grants to Wine Network a specific security interest in the goods and the proceeds of the goods and the Customer securing the purchase money for the goods. The Customer will, if Wine Network requests, sign any documents (including any new agreements), provide all necessary information and do anything else required by Wine Network to ensure that Wine Networks security interest is a perfected security interest.</p>	<p>10.3 The Customer shall:</p>
<p>9.2 The Customer will not enter into any security agreement that permits any other person to register any security interest in respect of the goods or the proceeds.</p>	<p>(a) maintain up-to-date and accurate records of sales including purchaser and destination of the goods to assist with the immediate recall of any goods; and</p>
<p>9.3 If the goods are for the Customer's business use or still held by the Customer pending any onsale to its customers, the Customer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation:</p>	<p>(b) if there is a recall of goods:</p>
<p>(a) The Customer will have no rights under sections 114(1)(a) (to receive a notice of sale), section 117(1)(c) (relating to distribution of surplus), and section 133 (reinstating the agreement);</p> <p>(b) The Customer waives its rights under section 116 (to receive statement of account), section 119 (to recover surplus) and sections 120(2) and 121 (to receive notice of any proposal to retain the goods and object to any proposal).</p>	<p>(i) the parties shall cooperate fully and assist each other with the recall;</p> <p>(ii) shall provide each other with any information that is relevant in respect of the recall; and</p> <p>(iii) co-operate in taking all reasonable steps to minimise damage to the parties goodwill and reputation in their intellectual property.</p>
<p>9.4 The Customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement.</p>	<p>(c) not utilise Intellectual Property owned by Wine Network or in which Wine Network has rights for any other purpose than authorised by Wine Network or utilise goods in which Wine Network's Intellectual Property resides in any fashion not consented to by Wine Network.</p>
<p>9.5 The Customer agrees that where Wine Network has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.</p>	<p>11. LIMITATION OF WARRANTY/LIABILITY</p>
<p>9.6 For the purpose of this clause:</p>	<p>The Customer acknowledges that it acquires the goods for its own business use or supplies them to other persons for business use and all guarantees and remedies in the Consumer Guarantees Act 1993 are excluded. The Customer further agrees that the conditions, warranties and guarantees set out in the Contracts and Commercial Law Act 2017 or implied by the common law will not apply and are expressly excluded from these Terms.</p>
<p>(a) "PPSA" means the Personal Property Securities Act 1999; and</p>	<p>Wine Network and the Customer agree that in respect of representations, the Customer does not rely on representations or other conduct of Wine Network, whether during negotiations prior to these Terms being entered into or at any other time and accordingly, the parties agree to contract out of sections 9, 12A, 13 and/or 14(1) (as applicable) of the Fair Trading Act 1986.</p>
<p>(b) The expressions "personal property", "purchase money security interest", "security agreement", "security interest", "perfected security interest", "verification statement" and "financing change statement" have the meanings given to them under, or in the context of the PPSA.</p>	

11.3 The Customer acknowledges that it must rely upon its own judgment as to the nature, quality and condition of the goods supplied by Wine Network and as to their sufficiency for any use or purpose and the Customer acknowledges that Wine Network is under no duty to ascertain the suitability of the goods for any purpose whatsoever and that no such representation has been made by Wine Network.

11.4 Except for any express written warranty in these Terms or otherwise provided to the Customer, Wine Network provides no other warranty, expressed or implied, including any implied warranty of merchantability or fitness for purpose or otherwise and any warranties expressed or implied by law or statute, in respect of the goods whether in respect of quality, fitness for intended purposes or otherwise, are excluded to the extent that such law or statutes permits exclusion.

11.5 Subject to clause 7 of these Terms, the parties acknowledge and agree that in no event will Wine Network or its officers, principals, employees, contractors or agents have any liability to the Customer arising out of or connection with these Terms or the use or performance of any goods and without limiting the foregoing, the parties agree that Wine Network shall not in any case whatsoever be liable for:

- (a) Any special, incidental, indirect, punitive or consequential Damages; loss of profit, revenue, goodwill, use or the costs of procuring substitute goods.
- (b) Damages exceeding, in the aggregate, the value of the payments actually received by Wine Network from the Customer under these Terms in the preceding 12 months; or
- (c) Damages in respect of any claim made:
 - (i) more than six months from the date the Customer becomes aware of the circumstances leading to that claim; or
 - (ii) more than 12 months after the relevant cause of action arise.

12. INDEMNITY

12.1 The Customer indemnifies Wine Network from and against all Damages should Wine Network or its directors, principals, employees, contractors or agents sustain or incur (directly or indirectly) arising out of or resulting from:

- (a) Any breach of these Terms by the Customer;
- (b) Any contravention of applicable laws or regulations by the Customer, including export and import control laws;
- (c) Any claim by any third party arising from any act or omission of the Customer in connection with these Terms (whether negligent or not), including:
 - (i) The Customer's use, marketing, distribution or other activities by the Customer under these terms or otherwise in relation to the goods; or
 - (ii) Any misrepresentations, warranty or agreement, express or implied made by the Customer with respect to the Wine Network, the supplier or the manufacturer of or the goods;
- (d) Without limiting clause (b), any negligent, wilful, reckless or unlawful act or omission of, or any intentional misconduct by the Customer in connection with these Terms; or
- (e) Any claim by the Customer, to the extent that such claim is beyond the scope of Wine Network's liability to the Customer under these Terms.

13. DISPUTE RESOLUTION

13.1 Either party may give the other party notice of any dispute arising in respect of, or in connection with, these Terms ("Dispute").

13.2 In the event of a notice being given pursuant to clause 13.1 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 13.1 above, then either party may pursue their remedies as they see fit.

13.3 Nothing in this clause shall prevent a party making application to a Court for an injunction or other urgent interlocutory relief.

14. FORCE MAJEURE

14.1 Neither Wine Network nor the Customer 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 clause or clauses 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.

15. GENERAL

15.1 To be effective, any waiver of any or all of the terms and conditions in any agreement the Customer has with Wine Network must be in writing.

15.2 The Customer may not assign all or any of its rights or obligations under these Terms without the prior written consent of Wine Network.

15.3 Wine Network is not bound, unless otherwise stated in these terms, by any error or omission on any invoice, order form or other document or statement issued by Wine Network.

15.4 Where Wine Network 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.

15.5 Failure by Wine Network to enforce any of the terms and conditions shall not be deemed to be a waiver of any of the rights or obligations Wine Network has under these Terms.

15.6 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.

15.7 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.

16. 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.

"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.

"ExW" or "Ex-Works" bear the same meaning as the sale terms of that name as defined by the Incoterms published by the International Chamber of Commerce and as may be modified by these Terms.

"GST" means Goods and Services Tax payable in accordance with the Goods and Services Tax Act 1986.

"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 relating to the business of all goods or services provided by Wine Network.