

TERMS AND CONDITIONS

1 General

These terms and conditions ("Terms") plus any implied terms which cannot be excluded are the whole agreement between applicant named in the Credit Application ('Customer or you/your') and Sante Wines Pty Ltd ABN 50 134 498 945 ('we/us/our'). No other contractual terms of a Customer (such as on a purchase order or otherwise) apply and, if provided, they don't constitute a counteroffer. If you accept delivery or supply of all or a portion of goods and/or services supplied under these Terms ('Goods/Services'), you will be deemed to have accepted these Terms and they will apply to the exclusion of all others. We may vary these terms by providing written notice to you.

2 Credit Terms

- 2.1 Payment is due on or prior to fourteen (14) days from the date of invoice unless we tell you in writing otherwise.
- 2.2 If we don't receive payment on the due date, we may charge interest (as liquidated damages) at the rate of two percent (2%) above the rate of interest fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983.
- 2.3 If credit terms are applied and approved, we may offer credit for up to 30 days from the invoice date, noting that it may take up to 3 working days for the credit application to be approved.
- 2.4 Accounts that are new businesses, or unable to provide suitable trade references, may be sent stock on a Cash on Delivery ("COD") basis for a period of up to 3 months until a suitable trading history has been established. Once a trading history has been established, the account may be able to access our normal credit terms.
- 2.5 We may revoke our express or implied approval for giving you credit at any time.
- 2.6 We can set-off against any money owing to you amounts owed to us by you on any account whatsoever.
- 2.7 Any payments received from you on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs, and then to principal.
- 2.8 You are liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by us for enforcement of obligations and recovery of monies due from you to us.
- 2.9 All sums outstanding become immediately due and payable by you to us if you default in paying any sums due to us, you become bankrupt, or commit any act of bankruptcy, compound with your creditors, has judgment entered against you in any court or, being a company, have a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 2.10 We reserve the right to place your account on "hold" if you breach any of the credit terms and conditions. No further orders will, or can, be placed by, or delivered to, you while your account is on hold until the account is brought back to terms. A payment plan may be negotiated or agreed between you and us during this period to assist you with the process. Your account may be brought back to the normal credit terms once payment(s) is (are) made on the outstanding invoices.
- 2.11 We reserve the right to charge an additional fee for any dishonoured cheques or payments to cover the associated administration costs.

3 Quotations and Pricing

- 3.1 Prices charged will be according to a current quotation or determined by us by reference to our standard prices in effect at the date of delivery (whether notified to you or not and regardless of any prices contained in the order). We will use our best endeavours to notify you of price changes but bear no liability in respect of this.
- 3.2 A quotation shall not constitute an offer and will remain valid only for three (3) days from the date of the quotation. Documents requiring signature may be signed in electronic form and are binding from the time a person affixes a signature on your behalf.
- 3.3 Prices in quotations don't include (unless specified): (1) Any statutory tax, including any GST, duty or impost levied in respect of the Goods and not allowed for by us in calculating the price; or (2) Costs and charges in relation to insurance, packing (other than our standard packing), crating, delivery (whether by road, rail, ship or air) and export of the Goods.
- 3.4 You shall pay any variations in the invoice or contract price as a consequence of currency fluctuations.
- 3.5 This agreement shall not be affected by any impositions or alterations of customs duties or by decisions of the Customs Department with regard to either classification or value of duty or landing charges. Any such impositions shall be payable by you.
- 3.6 If we have not specified the price to be charged to the Customer when the Customer places its order, the price charged to the Customer shall be the price ruling as at the date of delivery. The Customer acknowledges that our prices are subject to alteration from time to time.

4 Minimum Order Value

For an order of less than a dozen (12) bottles, we reserve the right either to not accept an order or to charge you a handling fee.

5 Delivery and Supply

- 5.1 We shall not be liable for failure to deliver/supply, or for delay in delivery/supply. If we quote a time for delivery or supply, it's an estimate only. You will not be relieved of any obligation to accept or pay for Goods because of any failure to delivery or supply. We can stop supply/delivery if you fail to comply with the Terms.
- 5.2 We may refuse to supply any order in our absolute discretion and may make acceptance of an order conditional upon receiving a satisfactory credit assessment of the Customer.
- 5.3 If you tell us to deliver the Goods over different times or to different addresses from those specified in the Credit Application, then you: (1) shall be liable for any additional cost, charge and expense incurred by us in complying with your direction; (2) shall pay for the whole of the invoiced value of the Goods pursuant notwithstanding the staggered deliveries; and (3) such action shall be deemed to be delivery to you.
- 5.4 You are deemed to accept delivery of the Goods where it is either delivered to your premises or when we notify you that the Goods are available for collection.
- 5.5 If you are unable or fail to accept delivery of the Goods, we may deliver it to a place of storage nominated by you and, failing such nomination, to a place determined by us. Such action shall be deemed to be delivery to you. You shall be liable for all cost, charge and expense incurred by us on account of storage, detention, double cartage/delivery or similar causes.
- 5.6 Subject to Clause 5.1, you agree that you will be obliged to and shall pay for the Goods on the due date notwithstanding that delivery is made after the agreed delivery date, and notwithstanding that the Goods may not yet be delivered.

6 Property

- 6.1 Until full payment has been made for all Goods, and for any other sums in any way outstanding from you from time to time:
 - 6.1.1 Title to the Goods shall not pass to you and you shall hold the Goods as bailee for us (returning the same to us on request). The Goods shall nevertheless be at your risk from the time of delivery/supply and you must insure the Goods from the time of delivery/supply.
 - 6.1.2 You are only authorised to sell the Goods (or any portion of them) to third parties as our fiduciary agent provided that there shall be no right to bind us to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by you for the Goods (or any portion of them) shall be held on trust for us pursuant to the fiduciary relationship.
 - 6.1.3 If you incorporate or transform the Goods (or any portion of them) into any other goods or products produced by you (or a third party), then you must hold a proportion of any payment ('relevant proportion') received by you for such goods or products on trust for us. You expressly acknowledge that the relevant proportion shall be equal to the dollar value of the Goods incorporated or transformed.
 - 6.1.4 We are irrevocably authorised to enter any premises where the Goods are kept, and to use your name and to act on your behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.
- 6.2 At all times, we retain the right of possession of any pallets used for delivery of the Goods and you agree to indemnify us in respect of any pallets not returned to us in good order and condition (as determined by us) within fourteen (14) days of delivery of the Goods.
- 6.3 Any portable magazines in which Goods are delivered, and for which a hire charge is made, remain our property.
- 6.4 In addition to any lien to which we may, by statute or otherwise, be entitled to, we shall in the event of your insolvency, bankruptcy or winding up, be entitled to a general lien over all property or goods belonging to you in our possession (although all or some of such property or goods may have been paid) for the unpaid price of any Goods sold or delivered to you under this or any other contract.
- 6.5 You agree to inform us in writing of any change of ownership within 7 days of such change, and agree to indemnify us against any losses or damages incurred by a failure to notify.

7 Personal Property Security Interest

- 7.1 You grant a security interest in the Goods and the proceeds (as defined in the Personal Property Securities Act 2009 ('PPSA')) to secure the obligation to pay the purchase price of the goods and other of your obligations to us under this agreement (together the "Indebtedness"). You warrant that the Goods are not purchased for personal, domestic or household purposes.
- 7.2 Where the Goods and/or proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Indebtedness, the security interest shall also extend to all the Goods present and after acquired by the Customer, of which the Goods form part, to the extent required to secure the Indebtedness.
- 7.3 You waive any right to receive notice in relation to any registration or amendment to a registration on the Personal Property Security Register ('PPSR'). At your own expense, you will provide all reasonable assistance and relevant information to enable us to register on the PPSR and generally to obtain, maintain, register and enforce the security interests created by this agreement.

7.4 Any payments received from you shall be deemed to be made and applied by us in the following order (unless we otherwise determine): (1) to any obligation owed by you which is unsecured, in the order in which the obligations were incurred; (2) to any obligations that are secured, but not by a purchase money security interest ('PMSI'), in the order in which those obligations were incurred (3) to obligations that are secured by a PMSI, in the order in which those obligations were incurred.

7.5 Until you have paid all money owing to us, you must at all times ensure that (1) all Goods, while in your possession, can be readily identified and distinguished, and/or (2) all proceeds (in whatever form) that you receive from the sale of any of the Goods are readily identifiable and traceable.

7.6 Subject to clause 6.1.2, if the Goods are held by you as inventory (as defined in the PPSA), then you may sell or lease the Goods in the ordinary course of business. Otherwise until you have paid all money owing to us you must not sell or grant a security interest in the Goods without our written consent.

7.7 To the extent permissible by law, you agree that the following provisions of the PPSA will not apply and you will have no rights under them: Section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notice to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; section 143.

7.8 Section 115(7) of the PPSA allows for the contracting out of provision of the PPS Act, the following provisions of the PPS Act will not apply and the Customer will not have any rights under them: section 127; section 129(2),(3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

7.9 Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. You waive any right you may have, or but for this clause may have had under section 275(7)(c) of the PPSA, to authorise the disclosure of the above information.

8 Availability of Stock

Any order that cannot be fulfilled on its receipt will automatically be back ordered and processed when stock becomes available unless it is your stated standard policy not to accept back orders or you specifically mark your order, "Do Not Back Order". Deliveries at any time are subject to availability of stock and we will not be liable for any charges caused by product unavailability.

9 Restrictions

You acknowledge and accept that we sell our goods only through persons who have been authorised by us to sell specific product categories at specific locations and who comply with our Terms and Conditions. Subject to the provisions of the *Competition and Consumer Act 2010*: (1) under no circumstances may you sell Goods through the Internet or the mail without prior written authorisation from us; (2) you are prohibited from selling Goods on the international market without our express written consent; and (3) does not grant to you the exclusive right to sell our Goods. We reserve the right to authorise and/or supply additional retailers in any market area that it deems necessary to adequately cover the market.

10 Freight

Subject to Clause 3.3 and unless otherwise agreed, we will ship by the least expensive route and carrier to all points. If the purchaser chooses a route with a higher charge than the route of our choice for shipment, we will charge the difference to you.

11 Returns, Cancellations and Claims

11.1 You must not return any Goods to us without obtaining our prior authorisation. No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and your name and address must also be enclosed.

11.2 Freight charges must be paid by you unless the Goods are returned through our approved carrier. All Goods must be returned in the original packaging and you shall be responsible for all damage incurred during return shipment. We will issue a credit note only after Goods returned are either collected by our authorised representative or agent or returned to us as set out above. You must not deduct the amount of any anticipated credit from any payment due to us but must await receipt of a credit note.

11.3 All goods returned must be of merchantable and reasonable quality such that the goods are complete in their original packaging, not shop-soiled, are not price ticketed and are still listed in the current price list.

11.4 If we accept the return of any Goods that have been ordered, we may charge you fifteen per cent (15%) of the invoice price as a handling fee with freight costs and risk remaining your responsibility.

11.5 We will not accept cancellations or partial cancellation of an order unless we have first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by us, will indemnify us against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.

11.6 All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with your purchase order must be submitted to us in writing within seven (7) business days of the date of the invoice rendered for the supply of the Goods. Otherwise, you are deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with your purchase order.

12 Privacy Act 1988 ('Privacy Act')

12.1 To enable us to assess your application for credit, you authorise us: (1) to obtain from a credit reporting agency/body a consumer or commercial credit

report containing personal information about you and any guarantors; and (2) to obtain a report from a credit reporting agency/body and other information in relation to your commercial credit activities, and (3) to give to a credit reporting agency/body information including identity particulars and application details.

12.2 You authorise us to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency/body information about your credit arrangements. You understand that this information can include any information about your credit worthiness.

12.3 You understand that information can be used for the purposes of assessing your application for credit, assisting you to avoid defaulting on your credit obligations, assessing your credit worthiness and notifying other credit providers and credit reporting agencies of a default by you under these Terms.

13 Notification

You must notify us in writing within seven (7) days of: (1) Any alteration of your name or ownership; (2) the issue of any legal proceedings against you; (3) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to you; and (4) Any change in the ownership of your business name. You agree that you shall be liable to us for all Goods supplied to the new owner by us until notice of any such change is received.

14 Warranties

No warranties except those implied and that by law cannot be excluded are given by us in respect of Goods supplied. Where it is lawful to do so, our liability for a breach of a condition or warranty is limited to the repair or replacement of the Goods, the supply of equivalent Goods, the payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods, as determined by us.

14.1 You acknowledge and warrant that you have relied on your own skill and judgment or, alternatively, on the skill and judgment of tradesmen and professional advisers retained by you to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, you shall indemnify us from and against any suit, claim, demand or compensation which, but for these Terms, you may have had against us.

14.2 You warrant to us that you are purchasing Goods as the principal and not as an agent.

15 Force Majeure

We shall be released from our obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible, where all money due to us shall be paid immediately and, unless prohibited by law, we may elect to terminate the Agreement.

16 Equitable Charge

You as beneficial owner and/or registered proprietor now charges in favour of us all of your estate and interest in any real property (including but not limited to any applicable land owned by you or described as the your Street Address in the Credit Application if applicable) ('Land') to secure payment of accounts rendered by us to you for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by us and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

17 Failure to Act

Our failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or our failure to exercise any right or remedy available under these Terms or at law, or our failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of our right to demand timely payment of future obligations or strict compliance with the Terms.

18 Legal Construction

18.1 These Terms shall be governed by and interpreted according to the laws of Victoria and the parties consent and submit to the jurisdiction of the Courts of Victoria.

18.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.