

CONDITIONS OF SALE FOR GOODS SOLD IN AUSTRALIA

- 1 (All Orders subject to these Conditions) By accepting delivery of any of the goods or the provision of any services from the seller from time to time, the purchaser agrees to be bound by these Conditions of Sale. The seller may accept any order for the supply of goods or services in whole or in part, or decline any order. Where the seller delivers only part of an order, these Conditions of Sale apply to the goods or services delivered. The seller shall be under no liability to the purchaser in respect of those goods and services that it is unable to supply to the purchaser.
- 2 (These conditions prevail) Unless otherwise agreed in writing by the seller, these Conditions of Sale prevail over the terms of any order, even if the terms of any order provide otherwise.
- 3 (a) (Property in goods) Property in goods does not pass to the purchaser until:
 - (i) the purchaser has paid the purchase price of the goods in full and there is no purchaser's debt in relation to the goods outstanding to the seller; or
 - (ii) the goods are sold in accordance with clause 10(a).(b) (PPS Act) The purchaser agrees that:
 - (i) from commencement of the PPS Act, the seller will have a purchase money security interest in goods, which secures the obligation of the purchaser to pay the purchase price of the goods to the seller, and a purchase money security interest in any equipment (which, for the purposes of the PPS Act, will be subject to one or more PPS Leases);
 - (ii) the seller may register one or more financing statements in relation to goods or equipment, with such expiry dates as the seller determines in its absolute discretion. The purchaser will provide such information, documents or other assistance as may be required by the seller to enable such registrations, or other actions required by the seller to perfect any security interest in goods or equipment;
 - (iii) other than the existence of a security interest in goods or equipment, and details of the collateral, all other information relating to this document or any related agreement is subject to a duty of confidentiality, and may not be disclosed to any party (other than to a related entity, advisor, employee, banker, auditor or other consultant of the seller, to a potential assignee of the seller, or as required by law, other than the PPS Act, or by any Government Body or stock exchange); and
 - (iv) to the extent permitted by the PPS Act, the seller is not obliged to provide any notices to the purchaser under the PPS Act.
- 4 (Storage of goods) Until property in goods passes to the purchaser, the purchaser must, as bailee of the goods, keep the goods stored separately and in a manner which enables them to be identified and cross-referenced to particular invoices.
- 5 (Delivery) In respect of goods supplied by the seller to the purchaser, the seller at its sole discretion may either:
 - (i) effect delivery of the goods to the purchaser from the seller's premises. In such case, unless the purchaser expressly provides to the contrary, the purchaser requests the seller to deliver the goods to the purchaser using, if necessary, a subcontractor to make the actual delivery. The purchaser shall pay the seller on demand the freight, delivery and other charges described in any invoice in respect of such delivery. The purchaser agrees that such goods will be at the sole risk of the purchaser from the time the goods are loaded for despatch from the seller's premises; or
 - (ii) effect delivery of the goods to the purchaser at the purchaser's premises. In such case, the seller shall deliver the goods to the purchaser using, if necessary, a subcontractor or agent to make the actual delivery. The purchaser shall pay to the seller on demand the freight, delivery and other charges described in any invoice in respect of such delivery. The purchaser agrees that such goods will be at the sole risk of the purchaser from the time the goods are delivered to the purchaser's premises.The seller shall notify the purchaser of its election in respect of its preferred method of delivery of the goods (or of particular types of goods), but shall be deemed to have supplied the goods in accordance with clause 5(i) if it otherwise fails to provide such notice to the purchaser.
- 6 (Payment) The purchaser will pay the seller by cash, cheque, electronic funds transfer (or other payment method approved in writing by the seller), the purchase price of the goods or services described in any invoice within the time provided in any invoice or statement (or if no time is specified, on demand by the seller). In the absence of manifest error, a statement signed by an authorised representative of the seller in respect of goods or services ordered or supplied or in respect of any amount owing by the purchaser, shall be conclusive evidence of such matters.
- 7 (No liability for delays) The seller will make reasonable efforts to have goods delivered to the purchaser on the date agreed, but the seller shall be under no liability whatsoever should delivery not be made on or within a reasonable period of such date.
- 8 (GST)
 - (a) If GST is imposed on any supply of goods or services made under or in accordance with these Conditions of Sale, the purchaser must, in accordance with clause 6, pay to the seller the purchase price (as defined) of the goods or services supplied, subject to the seller issuing a valid tax invoice in respect of the supply.
 - (b) If an adjustment event arises in respect of a taxable supply, the amount payable under clause 8(a) will be recalculated to reflect the adjustment event and a payment will be made by the seller or purchaser as the case requires.

- 9 (Seller's liability) The purchaser agrees that:
 - (a) all implied conditions and warranties on the part of the seller in relation to any goods or services to be supplied by the seller hereunder are excluded to the maximum extent permitted by law;
 - (b) to the maximum extent permitted by law, in respect of any liability which the seller cannot exclude, the seller's liability is limited, at its option, to the replacement, repair or resupply of the goods or services, or a refund of the cost of the goods or services; and
 - (c) subject to any non-excludable rights conferred on the purchaser by legislation, no claims in respect of any goods or services supplied by the seller shall be recognised by the seller unless made in writing and notified by the purchaser to the seller within 7 days of delivery of the goods or the supply of the services to the purchaser. Unless the seller is required to do so by law, no goods may be returned or exchanged by the purchaser without the seller's prior written consent (which consent may be exercised at the seller's absolute discretion).
- 10 (a) (Authority to deal with goods) Unless the seller directs otherwise, the purchaser is authorised to sell the goods pursuant to any bona fide transaction in the normal course of the business of the purchaser and the purchaser assigns the proceeds of such sale to the seller absolutely and not by way of security. The proceeds of sale of any goods owned by the seller received by the purchaser shall be deposited by the purchaser on trust for the seller separate from any other fund or monies until such time as the purchaser has paid for the goods in full. The purchaser acknowledges that the sale of the goods by an administrator or receiver shall not be a sale in the ordinary course of the purchaser's business.
 - (b) (Failure to pay) If:
 - (i) the purchaser fails to pay the purchaser's debt to the seller as and when due and payable or otherwise fails to comply with its obligations under these Conditions of Sale;
 - (ii) a receiver, receiver and manager, liquidator, provisional liquidator or official manager, administrator, controller or trustee in bankruptcy is appointed over all or any of the assets of the purchaser or a scheme of arrangement is proposed or approved in respect to the purchaser; or
 - (iii) a petition is presented for the winding up or bankruptcy of the purchaser;the seller may at its option exercise all or any of the following rights (notwithstanding any prior failure to exercise such rights):
 - (A) demand payment of the whole of the purchaser's debt then outstanding, and the purchaser agrees to pay the same immediately;
 - (B) take possession of all goods title to which has not passed to the purchaser (and for that purpose the purchaser authorises the seller to enter any premises where the goods may be situated and to take possession of them); and/or
 - (C) with or without taking possession of the goods, sell the goods by public auction or by private treaty by retail or wholesale for cash or on terms and generally as the seller thinks fit and apply the proceeds actually received by the seller after defraying expenses of sale and enforcement towards reduction of the purchaser's debt.
 - (c) (Interest) If payment is not made by the purchaser by the due date in accordance with clause 6, then the purchaser must pay to the seller interest on the purchaser's debt computed from the due date until payment is made at the rate then fixed by the *Penalty Interest Rates Act 1983 (Vic)*.
 - (d) (Default costs) The purchaser will pay on demand to the seller the seller's costs and expenses of legal advisers, mercantile agents and other agents acting on the seller's behalf in respect of any recovery or attempted recovery of the purchaser's debt.
- 11 (a) (Equipment) Property in equipment, including any pallets supplied with goods will not pass to the purchaser. The purchaser is entitled to hold the equipment on behalf of the seller only for the purposes of the consumption of the liquid content or its resale or such other purpose permitted in a related agreement. Subject to the seller's prior agreement (and provided that the pallets are in good order and condition), pallets supplied by the seller may be exchanged with the purchaser's pallets or a pallet dehire arrangement may operate. All empty pallets will be returned to the seller at the purchaser's cost. Where delivery is arranged by the seller, the purchaser is to retain these items in good order and condition until collected by the seller or its authorised agent. If pallets are not returned, exchanged or dehiired, a fee equivalent to the cost of the pallets or the pallet hiring charge plus GST and any other expenses incurred by the seller may be invoiced to the purchaser.
 - (b) The purchaser warrants that any equipment is not, and will not become, a fixture, and further agrees to allow the seller to do such things as it considers necessary to ensure that equipment will not become a fixture (including un-affixing equipment). Where required by the seller, the purchaser will procure consents from the landlord and any freehold mortgagee of premises in which any equipment is located, in a form reasonably required by the seller, to ensure that seller's rights to any equipment are protected.
- 12 (No mixing of goods) Goods supplied by the seller and intended by the purchaser for consumption on licensed premises shall not be mixed with other liquids or substances except at the express request of a consumer for the purposes of consumption.
- 13 (a) (Goods sold for resale in Australia) Unless otherwise agreed in writing by the seller, the seller sells the goods to the purchaser for resale in Australia only. The purchaser must not sell or otherwise supply the goods:
 - (i) outside Australia; or
 - (ii) in Australia where the purchaser knows, believes or ought reasonably suspect that the goods are intended for resale outside Australia.

- (b) (Goods sold for resale outside Australia) If the seller sells goods to the purchaser for sale outside Australia, the purchaser must not sell or otherwise supply the goods:
 - (i) inside Australia; or
 - (ii) outside Australia where the purchaser knows, believes or ought reasonably suspect that the goods are intended for resale inside Australia.
 - (c) (Consequences of breach) The purchaser must indemnify the seller and keep the seller indemnified against all actions, claims, proceedings or demands which may be brought against it, arising out of any breach of this clause 13 by the purchaser. Furthermore, if the purchaser breaches this clause, in addition to any other rights the seller may have, the purchaser will forfeit any discounts, allowances or rebates.
- 14 (Definitions) In these Conditions of Sale, unless the contrary intention appears:

"goods" means any and all goods or items supplied by the seller to the purchaser for resale by the purchaser;

"equipment" means any and all equipment or items supplied by the seller to the purchaser, under this agreement or any related agreement (but does not include goods).

"purchaser" means the person, firm or company placing an order with the seller for the supply of goods or services;

"purchaser's debt" means any moneys which the purchaser may owe to the seller in respect of the supply of goods. For the purposes of clause 3(a), in respect of wine and cider products, "purchaser's debt" does not include amounts owing by the purchaser to the seller for freight and/or delivery charges or any surcharge imposed on the purchaser for using a credit card (or any other payment method) to pay for such goods supplied by the seller;

"purchaser's premises" means the place nominated by the purchaser to be the place where goods are consigned from the seller to the purchaser;

"purchase price" means the price (including (if applicable) GST, Wine Equalisation Tax and also includes any other applicable taxes, levies, duties or charges in respect of goods or services supplied by the seller) stated in this invoice or any statement of account in respect of goods or services or, if no such price is stated therein, the seller's normal selling price applicable to the goods or services as notified by the seller to the purchaser from time to time. For the purposes of clause 3(a), in respect of wine and cider products, "purchase price" does not include amounts owing by the purchaser to the seller for freight and/or delivery charges or any surcharge imposed on the purchaser for using a credit card (or any other payment method) to pay for such goods supplied by the seller;

"related agreement" means any agreement between the purchaser and the seller (or any related body corporate of the seller)

"PPS Act" means the *Personal Property Securities Act 2009 (Cth)*

"seller" means Treasury Wine Estates Australia Limited (ABN 78 145 321 320) or any of its related bodies corporate described or indicated as the seller in any invoice (or on any document attached or relevant to these Conditions of Sale) and which supplies any goods or services to the purchaser in its own right or as agent for a third party (whether or not the fact of agency is disclosed to the purchaser);

"seller's premises" means the place from where goods are consigned by the seller to the purchaser;

Words and expressions which are not defined in this document but which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999*, or in the PPS Act have that same meaning.
- 15 (Waiver and amendment) No failure or delay in exercising any right of the seller under these Conditions of Sale shall operate as a waiver of such right. The seller reserves the right to amend these Conditions of Sale from time to time. Such amended Conditions of Sale shall supersede all Conditions of Sale previously issued by the seller.

* Notes on agreeing to the Conditions of Sale:

- 1) If this agreement is entered by an authorised officer of the Customer, the officer warrants that he or she has the authority to enter this agreement on behalf of the Customer.
- 2) If the Customer is a trustee of any trust, it warrants that it has the power to execute this application and enter into every transaction in relation to the trading account with the Seller (and has a corresponding right under the trust to be indemnified out of the trust assets in respect of these matters) and executes this application in its personal capacity and in its capacity as trustee of each trust.
- 3) By submitting this form, the Customer acknowledges that the Seller collects the information above to assess trade and credit applications, to conduct transactions, deliver goods, directly market, develop marketing strategies and for related purposes. By providing the information the Customer consents to the Seller using the information for those purposes and agree that the Seller may disclose the information to organizations which help it perform these functions. The Seller will store, use and disclose the information in accordance with its privacy policy, which is available by contacting the Seller's Privacy Hotline on 1300 651 650 or on the web at <http://www.tweglobal.com/privacy-policy/>.



TREASURY WINE ESTATES

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