

## **TERMS & CONDITIONS**

The following terms and conditions shall be incorporated into the contract between the customer/purchaser and Fine wine supplies Ltd for the supply by Fine Wines Supplies Ltd of goods and services and any ancillary products and/or all services supplied by Fine Wine Supplies Ltd.

### **1. DEFINITIONS**

In these conditions of trading the following terms shall have the meaning ascribed to them: "The Company" means Fine Wine Supplies Ltd "Purchaser" means any person, persons or companies which purchase the goods and services of the company "Supplier" means Fine Wine Supplies Ltd "Terms" means these terms and conditions of sale "Contract" means these terms themselves together with any and every invoice or other document evidencing or describing whether by item or kind or otherwise, any goods. "Goods" means all Yeasts, wine finings, wine additives, oak barrels, oak products and all other goods or other property which, in each case, are supplied by the supplier to the purchaser and, for the avoidance of doubt, in each case includes all such goods and property so supplied: (A) whether or not described by item or kind that enables them to be identified; (B) which are or comprise inventory of the purchaser.

### **2. INTERPRETATION**

"The supplier" and "the customer" means, where appropriate, the executors, administrators, successors and permitted assigns of the supplier and customer. "The guarantor" means, where appropriate, the executors, administrators and successors of the guarantor. Where the context requires or admits, words imparting the singular shall impart the plural and vice versa.

### **3. ACCEPTANCE**

Your order, or request for supply is accepted by the company entirely on the terms and conditions referred to herein and these conditions are paramount unless any variation thereto is specifically agreed to by the company in writing.

### **4. DELIVERY**

The company shall not be liable for non-delivery (except to refund any monies paid on account at the purchase price), for delay in delivery on the part of the company from whatsoever cause, and shall not in any event be liable for any direct or indirect or consequential loss or damage arising from such non-delivery or delay or from any other act or omission by or on behalf of the company. All goods supplied leave Fine Wine Supplies Ltd in good condition. Should any loss or damage be evident upon receipt of these goods it is your responsibility to register a claim with the carrying company immediately. Unless such claim is registered within seven working days of your receipt of these goods you are deemed to have waived any rights that you may have against Fine Wine Supplies Ltd relating to such loss or damage. Nothing in this clause shall be construed to imply that you have any rights against Fine Wine Supplies Ltd in respect of any loss or damage.



## **5. PRICING**

All prices other than those quoted in a written quotation, valid for a specific period, are subject to change without notice.

## **6. ALTERATION TO SPECIFICATION**

In the event of any alteration by the manufacturer in the design or specification of any goods the Company shall be entitled to deliver goods conforming to the altered design or specification in fulfillment of this agreement.

## **7. AVAILABILITY OF GOODS**

The company shall not be bound to import goods to fulfill any contract, and if at the time of delivery, the company has no or insufficient goods in stock in New Zealand and for reasons beyond its control shall not be able to obtain sufficient goods within a reasonable time the company shall be excused from performance and the purchaser shall be entitled to a refund of any monies paid on account of the purchase price.

## **8. EXCHANGE VARIATIONS**

Where the goods the subject of a purchaser's order are sourced by the company from overseas and the suppliers of such goods to the company reserve the right to change their prices without notice then the price of such goods given by the company are based on the applicable exchange rates at the date hereof and the company shall be at liberty to increase or decrease the price of the goods by a sum equal to the increase or decrease of the price of those goods in New Zealand currency to the company.

## **9. WARRANTY AND CONDITIONS**

The only warranty on the part of the company in respect of any new goods is that the goods shall be of acceptable quality only and such warranty is to the exclusion of all other warranties, conditions and liabilities whether by statute or common law whatsoever expressed or implied or whether arising in contract, tort or by statute or otherwise. No representation in relation to the goods shall be binding on the company unless in writing and signed by the company's manager. Without limiting the generality of the foregoing provisions the company shall not be liable for any personal injury, property damage consequential or contingent or any loss or damage whatsoever caused through the negligence or otherwise of the company, its servants or agents. If the goods are acquired by the Purchaser for business purposes, the Purchaser agrees that the Consumer Guarantees Act 1993 does not apply. If the goods are not acquired by the Purchaser for business purposes, the Company reserves the right to repair or replace any goods which fail to comply with any guarantee contained in the Consumer Guarantees Act 1993.

## **10. USED GOODS**

The company does not give any express or implied warranty regarding the condition and/or state of repair, acceptable quality or any other warranty whatsoever in respect of used goods sold by the company and the Purchaser specifically acknowledges that it has purchased such goods in reliance on its own skill and judgment and on the basis of caveat emptor.



## **11. PASSING OF RISK**

All goods shall remain at the risk of the company until such goods shall leave the premises of the company. Thereafter all goods shall be at the sole risk of the Purchaser.

## **12. SECURITY INTEREST**

The purchaser grants to the company a security interest in the goods as security for payment of the amount owing and any other monies owing by the purchaser to the company from time to time, whether in relation to this contract or any other contract or on any other account whatever ("customers indebtedness") and for the performance by the purchaser of all the purchaser's other obligations from time to time to the company. The purchaser agrees to do anything that the company requires to ensure that the company has a perfected security interest in the goods. The purchaser waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this contract. Prior to acquiring the property in the goods the customer may dispose of the goods to a third party in the ordinary course of business and in such event shall sell the goods on behalf of the supplier and shall hold the proceeds of such sale on Trust for the supplier. In cases where any period of credit extended to the customer by the supplier has expired at the time of such sale, the customer will immediately pay the proceeds of such sale to the supplier but in cases where such period of credit has not then expired, the customer will hold an amount equal to the proceeds of sale in its general funds upon Trust for the supplier until the period of credit has expired (whether by passing of time or pursuant to a notice) at which time the customer will forthwith pay such proceeds of sale to the supplier. The customer shall hold such monies in a separate and identifiable account for such purpose and shall keep a good and proper record of all dealings relating to the supplier's goods and the parties acknowledge that a fiduciary relationship is hereby created between the parties. If prior to acquiring the property in the goods the customer shall intermingle such goods with any other goods or such goods shall become a constituent part of any other goods the property in the goods shall nevertheless remain vested in the supplier until the whole of the price has been paid to the supplier or in cases where the period of credit has not yet expired the customer shall hold the proceeds of sale of the goods on trust for the supplier. The customer hereby charges all intermingled goods in favor of the supplier until the supplier's goods and services have been paid for in full. Until payment in full has been received the supplier shall be entitled to retake possession of the goods. To allow the supplier to do that, the customer grants the supplier an irrevocable right to enter at any time any premises or place where the goods are thought to be held and remove the goods, and the purchaser shall indemnify the supplier in all respects to such entry. The supplier may then resell the goods and retain the proceeds of such sale. Any shortfall shall be a debt owed by the purchaser to the supplier. The supplier may allocate amounts received from the purchaser in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any goods.

### **13. TERMS OF PAYMENT**

Unless otherwise stated by the company, or agreed in writing, payment is to be made in full by the 20th of the month following the date of dispatch of goods. In the event that the purchaser does not pay all the monies due and payable under this contract note within the agreed period the purchaser shall pay to the company a further sum being two per cent of such sum or sums as may be outstanding from time to time under this contract note for each and every month or part thereof such monies may remain unpaid to the company. Where any costs are incurred in action in breach of terms of this contract, such costs will be added to the amount owed. This will include costs of enforcement both in collection and/or legal action. The Company reserves the right to cease the supply of goods to any purchaser that exceeds these trading terms.

### **14. RETURNS**

Goods cannot be returned to the supplier without prior agreement. Goods returned for credit may incur a re-stocking fee.

### **15. CHANGE OF OWNERSHIP**

The purchaser shall notify the company within 7 days and in writing in the event of a change to the information supplied in this application including any change of ownership.

### **16. SCOPE OF CONDITIONS**

This agreement sets forth the entire agreement and understanding of the parties and supersedes all prior agreements (whether written or oral) including, but not limited to, the customer's purchase forms, order forms or requisitions. No variations or waiver of these terms and conditions of sale shall be recognized or binding on the company unless that variation or waiver is in writing and signed by the supplier.

### **17. PATENTS**

The company shall not be liable to the purchaser otherwise for any infringement or unauthorized use of any patent, trademark, design, copyright or any other industrial property right arising out of the performance of this contract. In case any dispute or claim is made in respect thereof the company may terminate this contract by notice in writing to the purchaser without any liability on the part of the company.

### **18. GUARANTEE**

The guarantor hereby unconditionally and irrevocably guarantees to Fine Wine Supplies Ltd the due and punctual payment by the purchaser to the company in the manner and at the time agreed upon between the purchaser and the company and failing agreement upon demand of all monies which are now or may hereafter from time to time be owing by the purchaser to the company. The purchaser and the guarantor confirm that they have read this agreement and understand its contents. The guarantor acknowledges that independent legal advice on the nature and extent of the obligations imposed on the guarantor by terms of this agreement is recommended.

