

TERMS AND CONDITIONS OF SUPPLY - DOMAINE WINE SHIPPERS PTY LTD

1 General

These terms and conditions ("Terms") plus any implied terms which cannot be excluded are the whole agreement between the applicant named in the Credit Application ('Customer' or 'you/your') and Domaine Wine Shippers Pty Ltd ACN 007 035 949 ABN 23 007 035 949 ('we/us/our' or 'DWS'). 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. After you have received a copy of these Terms, if you place an order for the supply of all or a portion of goods supplied under these Terms ('Goods') or accept delivery of the Goods, you will be deemed to have accepted these Terms and they will apply to the exclusion of all other written agreements with us.

2 Credit Terms

- 2.1 Payment is due on or prior to the fifteenth day of the month following the date of the invoice unless we tell you in writing otherwise at the time you place the order.
- 2.2 At our sole discretion, we may require payment of a deposit prior to supply of the Goods.
- 2.3 If we don't receive payment on the due date, we may:
 - 2.3.1 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; and
 - 2.3.2 Suspend or discontinue supply of the Goods to you and/or cancel your account with us.
- 2.4 We may revoke our express or implied approval for giving you credit at any time.
- 2.5 We can set-off against any money owing to you amounts owed to us by you on any account whatsoever.
- 2.6 You are not entitled to set off against, or deduct from the price payable for the Goods, any sums owed or claimed to be owed to you by us, or to withhold payment of any invoice because part of that invoice is in dispute.
- 2.7 Receipt by DWS of any form of payment (other than cash) shall not be deemed payment until that form of payment has been honoured, cleared or recognised.
- 2.8 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.
- 2.9 You are liable for all reasonable expenses (including but not limited to internal administration fees, DWS contract default fees, bank dishonour fees and 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.
- 2.10 All sums outstanding become immediately due and payable by you to us if you make default in paying any sums due to us, you become bankrupt, or commit any act of bankruptcy, compound with your creditors, have 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.

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 the order. Subject to clause 20, we reserve the right to increase the prices, however, we will not change any prices for an existing order that has been accepted by us; the prices that apply to the order are the prices that applied at the time you placed the order. A quotation shall not constitute an offer and will only remain valid for the period stated in the quotation or otherwise for a period of thirty (30) days from the date of the quotation. A quotation is subject to variation without notice to you prior to your acceptance of the quotation. You are responsible for ensuring the accuracy of all specifications, details, sizes and quantities which form the basis of a quotation. We do not accept any responsibility for any errors in such specifications, details, sizes and quantities and shall fulfil the order in conformity with the information supplied by you.
- 3.2 We reserve the right to charge you a surcharge fee for eftpos, MasterCard or Visa payments.
- 3.3 Documents requiring signature may be signed in electronic form and are binding from the time a person affixes a signature on your behalf.
- 3.4 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.
- 3.5 You shall pay any variations in the invoice or contract price as a consequence of currency fluctuations.
- 3.6 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.

4 Delivery and Supply

- 4.1 We shall not be liable for delay in delivery/supply. If we quote a time for delivery/supply, it's an estimate only. We can stop supply/delivery if you fail to comply with these Terms.
- 4.2 We may refuse to supply any order in our absolute discretion (except where these Terms constitute a small business contract for the purposes of the Australian Consumer Law ('ACL') which is Schedule 2 to the Competition and Consumer Act 2010 (Cth) ('Small Business Contract')) and may make acceptance of an order conditional upon receiving a satisfactory credit assessment of the Customer.
- 4.3 We may cancel any order to which these Terms apply or cancel delivery of Goods at any time before the Goods are delivered to you, by giving you written notice of the cancellation. On giving such notice, we will repay to you any money paid by you for the Goods. Aside from this, we shall not be liable for any loss or damage arising from such cancellation.
- 4.4 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 notwithstanding the staggered deliveries; and (3) such action shall be deemed to be delivery to you.
- 4.5 You are deemed to accept delivery of the Goods when they are either delivered to your premises (even if you are not present at the address) or when we notify you that the Goods are available for collection.
- 4.6 If you tell us to leave the Goods outside our premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at your sole risk.
- 4.7 If you are unable or fail to accept delivery of the Goods, we may deliver them 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.
- 4.8 Subject to clause 4.1, 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.

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5 Property

5.1 Until full payment has been made for all Goods, and any other sums in any way outstanding from you from time to time:

5.1.1 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.

5.1.2 You must not sell, dispose or otherwise part with possession of the Goods other than in the ordinary course of business and for market value.

5.1.3 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, except where clause 6.8 applies.

5.1.4 You must not charge or grant an encumbrance over the Goods or grant or otherwise give away any interest in the Goods.

5.1.5 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.

5.1.6 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.

5.2 In addition to any lien to which we may, by statute or otherwise, be entitled, 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 Personal Property Security Interest

6.1 You grant a security interest in the Goods and the proceeds (as defined in the Personal Property Securities Act 2009 (Cth) ('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.

6.2 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.

6.3 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.

6.4 You must not register a financing change statement (as defined in the PPSA) in respect of a security interest over the Goods without our prior written consent.

6.5 You must immediately advise us of any material change in your business practices relating to selling Goods, which would result in a change in the nature of proceeds derived from such sales.

6.6 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.

6.7 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.

6.8 Subject to clause 5.1.3, 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.

6.9 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.

6.10 Pursuant to section 115(7) of the PPSA, which allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and you 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.

6.11 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.

6.12 You must unconditionally ratify any actions taken by us in relation to PPSR registrations.

7 Availability of Stock

7.1 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 due to product unavailability.

7.2 All Goods are packed in "Standard Pack" quantities, which our experience has shown to be the most convenient and suitable. An additional charge may be made for Goods to be specifically packed and labelled.

8 Online Ordering

8.1 You may wish to place an online order for Goods. However, we do not guarantee our website or platform's performance, or the availability of our Goods for online ordering.

8.2 There are inherent hazards in electronic distribution and as such, we cannot warranty against delays or errors in transmitting data between the Customer and DWS including online orders. The Customer agrees that, to the maximum extent permitted by law, DWS will not be liable for any loss which the Customer suffers as a result of online ordering not being available or for delays or errors in transmitting online orders.

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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 the Goods through the Internet or the mail without prior written authorisation from us; (2) you are prohibited from selling the Goods on the international market without our express written consent; and (3) we do 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 we deem necessary to adequately cover the market.

10 Freight

Subject to clause 3.4 and unless otherwise agreed, we will ship by the least expensive route and carrier to all points. If you choose 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 shall not return any Goods to us without obtaining prior authorisation from us. Unauthorised returns will not be accepted. 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 the Customer's name and address must also be enclosed. All Goods must be returned in the original packaging and you shall be responsible for all damage incurred during return shipment. Subject to any rights you may have under the ACL, 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.

11.2 Change of mind - A request to return Goods for change of mind must be made within 7 days of delivery. Freight charges must be paid by you for all change of mind returns. We will issue a credit note/refund 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. All Goods returned for change of mind 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.

11.3 Cancellation - 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 direct loss, without limitation. Cancellation will not be accepted on Goods that are made to the Customer's specifications or that are not regular stock which are already being prepared or ready for shipment.

11.4 Complaints - Subject to any rights you may have under the ACL, 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 supply of the Goods. We may issue a refund or credit note in respect 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 including but not limited to a trade bureau ('Credit Reporting Agency') 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 and other information in relation to your commercial credit activities, and (3) to give to a Credit Reporting Agency 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

14.1 Under applicable State, Territory and Commonwealth law (including, without limitation the ACL) certain statutory implied guarantees and warranties (including without limitation the statutory guarantees under the ACL) may be implied into these terms and conditions ('Non-Excluded Guarantees'). Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, DWS makes no warranties or other representations under these Terms including but not limited to the quality or suitability of the Goods. Our liability in respect of these warranties is limited to the fullest extent permitted by law.

14.2 If you are a consumer for the purposes of the ACL ('Consumer'), our liability for a breach of a condition or warranty is limited to:

14.2.1 The repair of the Good(s) or the cost of repairing the Good(s) if we determine that there has been a minor fault; or

14.2.2 If it is not possible to repair the Good(s), or if we determine that there has been a major fault (which may include multiple minor faults), the replacement of the Good(s) or refund of the price paid for the Good(s), as determined by you; or

14.2.3 If a minor fault prevents the Good(s) from being used for their intended purpose within 30 days after purchase, the replacement of the Good(s) or refund of the price paid for the Good(s) as determined by you.

14.3 If the Goods are returned in accordance with this clause 14, you are responsible for returning the Goods to our premises. If the Goods are confirmed to have a minor fault or major fault, you may recover reasonable postage or transportation costs from us and no handling fee is payable by you.

14.4 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, except if you are a Consumer or these Terms are deemed to be a Small Business Contract.

14.5 Subject to the ACL, we shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

14.5.1 You using the Goods for any purpose other than that for which they were designed; or

14.5.2 You failing to follow any instructions or guidelines provided by us.

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14.6 You warrant to us that:

14.6.1 you are purchasing Goods as the principal and not as an agent;

14.6.2 you have the power to enter into this agreement and have obtained all necessary authorisations to allow you to do so;

14.6.3 you are not insolvent; and

14.6.4 this agreement creates binding and valid legal obligations on you.

15 Limitation of Liability

15.1 Our total liability arising under or in relation to this agreement or in connection with the performance or breach of our obligations under this agreement, whether such liability is based in contract, indemnity, warranty, tort or otherwise (including negligence of any kind), shall not exceed the higher of \$10,000,000, or the total amount paid by you to us for the Goods.

15.2 To the maximum extent permitted by the law and notwithstanding any other clause in these Terms, we shall be under no liability whatsoever to you for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by you arising out of a breach by us of these Terms.

16 Termination

We may terminate this Agreement if you do any of the following, which is not remedied within 7 days of written notice given by us:

16.1 Committing a material breach of these Terms which includes but is not limited to the failure to make payment for our Goods by the due date;

16.2 Becoming bankrupt, or committing any act of bankruptcy, compounding with your creditors, having judgment entered against you in any court or, being a company, having a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.

17 Intellectual Property

17.1 All intellectual property rights in relation to the Goods (including all rights resulting from intellectual activity and including copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such rights and interests), including those developed during the supply of the Goods remain our sole property at all times.

17.2 If we terminate this agreement, we may immediately reclaim any material incorporating our intellectual property and you grant us an irrevocable licence to enter upon your premises to reclaim such material without incurring liability to you or any other person.

18 Force Majeure

We shall be released from our obligations in the event of an act of God, strike, lockout or other industrial disturbance or labour difficulty, national emergency, war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, pandemic, lightning, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties renders provision of the Goods impractical, where all money due to us shall be paid immediately and, unless prohibited by law, we may elect to terminate the Agreement.

19 Equitable Charge

19.1 You as beneficial owner and/or registered proprietor now charge 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 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.

19.2 The Customer irrevocably appoints DWS and each director of DWS as the Customer's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause 19 including, but not limited to, signing any document on the Customer's behalf.

20 Variation

20.1 We may vary these Terms by providing written notice to you (by email, conventional mail or by posting the amended terms on our website).

20.2 If you are a Consumer, or this agreement is deemed to be a Small Business Contract, and you do not deem the variation acceptable, you may elect not to proceed with the purchase of the Goods ordered before the date of the variation but which are intended to be subject to the variation.

20.3 Subject to clause 20.2, you agree that the variation applies from the date of receiving notice of the varied Terms. You will be taken to have accepted the varied Terms if you make a further request for us to provide Goods to you and/or take receipt or delivery of Goods after the effective date.

21 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.

22 Legal Construction

22.1 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.

22.2 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.