

## **General Terms and Conditions of Sale and Supply**

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### **SUPPLY AGREEMENT**

**IN CONSIDERATION** OF Wine In A Glass Pty Ltd, A.B.N. 26 164 348 083 (**hereinafter referred to as ‘the Company’**) providing commercial credit facilities to the party completing the application (**hereinafter referred to as ‘the Customer’**) annexed to these conditions:-

- (i) Credit facilities may be withdrawn by the Company at any time and without notice.
- (ii) Liability for accounts held in more than one name shall be joint and several.
- (iii) The Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of goods by the Company and that these General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Customer.
- (iv) The Customer hereby charges in favor of the Company all its estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which it now has any legal or beneficial interest or in which it later acquires any such interest with payment of all monies owed by the Customer and consents to the lodging by the Company of a caveat or caveats which note its interest in or over any such land or other caveatable property;

### **TERMS**

These terms and conditions, including any Credit Limits set by the Company, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by the Company by any means.

#### **1. Interpretations**

- a. “Price” shall mean the cost of the Goods as agreed between the Company and the Customer subject to clause 4 hereunder.
- b. “Goods” shall mean all goods and/or services supplied by the Company to the Customer, or ordered by the Customer but not yet supplied and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice.

#### **2. Jurisdiction**

- a. This agreement shall be construed in accordance with laws of the State of Victoria and, where applicable, The Commonwealth of Australia and the Customer submits to the non-exclusive jurisdiction of the courts of Victoria.
- b. The Company shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

#### **3. Offer and Acceptance**

- a. Any request from the Customer to the Company for the supply of goods shall constitute acceptance of these general terms and conditions.

#### **4. Price**

- a. All prices shall be those referred to in the Company’s price lists and / or arrangements and shall be subject to change from time to time without notice.

#### **5. Payment Terms**

- a. At the Company’s sole discretion, a deposit may be required prior to the supply of any goods.
- b. Credit Terms are payment within 7 days or date of invoice.
- c. In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms.
- d. Should it be considered necessary by the Company to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses. The Customer acknowledges that those expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency.
- e. Amounts received by the Company may be applied first against interest, charges and expenses.
- f. Interest on overdue amounts may be charged at a rate of 2.0 % per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- g. Any Customer having an overdue account will be precluded from participating in any special deals, discounts, bonus payments, redemptions, rebates and other incentive programs until their account is no longer overdue.
- h. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer’s indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.

#### **6. Statement of Debt**

- a. A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of the Company shall be prima facie evidence of the amount of indebtedness of the Customer to the Company.

#### **7. Delivery**

- a. The Customer shall be responsible for providing correct delivery details and for making all necessary delivery arrangements.
- b. The Company shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver goods, either whole or in part, due to circumstances beyond its control.
- c. The failure of the Company to deliver shall not entitle either party to treat the contract as cancelled.
- d. Should the Customer leave it to the Company to arrange carriage for delivery of goods, then all and any additional costs associated with that delivery shall be added to the Price and shall be due and payable in accordance with the Payment Terms.
- e. The Company’s obligation to deliver shall be discharged on arrival of the goods at the Customer’s nominated delivery destination, nominated agent or carrier or the address appearing on the invoice.
- f. The Company may make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these General Terms.

#### **8. Defects**

- a. The Customer shall inspect the goods upon delivery and notify the Company within 7 days of any defects, short deliveries or any failure to fulfill any quotation or order.
- b. The Company will, within a reasonable time following delivery, be given access to the goods in order to inspect for any alleged defects.
- c. Should the Customer fail to notify the Company within the specified period then the goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

#### **9. Warranty**

- a. The Company warrants that goods supplied shall be of merchantable quality.
- b. The Company does not warrant that the goods are fit for a particular purpose and, except or unless otherwise stated herein, warranties relating to title, defects or conformity of the goods are expressly excluded.
- c. Any costs associated with the return of goods for the purpose of a warranty claim shall be the responsibility of the Customer.

#### **10. Dishonoured Cheques**

- a. The Customer shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Company) for all costs incurred for any cheque being dishonoured for whatever reason.

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### **11. Retention of Title**

- a. Property in all the goods supplied shall remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and / or legal costs incurred, have been paid in full.
- b. The Company may demand at any time until title has passed to the Customer that the Customer returns the goods or any part of them.
- c. In the event that the Customer defaults in the payment of any monies owing, the Company and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the goods are known to be stored to repossess the goods and for this purpose the Customer shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession.

### **12. Risk**

- a. Notwithstanding Retention of Title provisions as per clause 11 hereof, the risk in goods purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer.

### **13. Cancellation**

- a. The Company may cancel the delivery of goods at any time before delivery by giving notice to the Customer by any means.
- b. The Company shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.
- c. The Customer may cancel the delivery of goods at any time before delivery by giving notice to the Company by any means.
- d. In the event that the Customer cancels delivery of goods, the Customer shall be liable for any costs incurred by the Company up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by the Company.

### **14. Limitation of Liability**

- a. The liability of the Company to the Customer for any reason related to the performance of goods under this agreement shall be limited to the replacement of the goods or the amount paid or payable by the Customer in respect of the particular goods.

### **15. The Commonwealth Trade Practices Act 1974**

- a. The warranties, rights and remedies of the Customer as outlined in the Commonwealth Trade Practices Act 1974 are not intended to be compromised as a result of anything contained in these terms and conditions, except to the degree permitted by the Act.

### **16. Ownership**

- a. This agreement is made in respect of the owners and/or Directors of the Customer as at the date of application. The Customer agrees to notify the Company in writing within seven (7) days of any change whatsoever in ownership structure and, further, indemnifies the Company against any loss or damage that may result from the Customer's failure to notify the Company of any such change.

### **17. General**

- a. The Company accepts no responsibility for changes in any law which may affect the supply of goods.
- b. Neither the Company nor the Customer shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war or any other occurrence beyond the control of either party.
- c. The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- d. Clerical errors are subject to correction and do not bind the Company.
- e. Headings are for ease of reference only and do not form part, or affect the interpretation, of these general terms and Conditions.

The Company is committed to protecting your privacy. Its policy is to comply with the National Privacy Principles for the handling of personal information as set out in the Privacy Act, 1988. In accordance with those principles, and with the Company's Privacy Policy, persons will be given access to their personal information upon request. The Company uses the types of personal information collected, including considering and assessing applications for employment, enabling it to supply customers with its products and services and for assessing Applications for Commercial Credit, managing accounts and, if necessary, assessing its risk in collecting debts. This information may be disclosed to the Company's associated or related entities, parties related to the Customer's employment (e.g. referees and others as set out in the Privacy Policy) contractors, other credit providers, whether or not an account is overdue and, if necessary, its risk insurers, debt collectors and credit reporting agencies. If all or part of the information requested is not provided, the Company may not be able to consider any application or to provide credit facilities. Customers who have any concerns about the Privacy Policy are requested to direct them to the General Manager, 119 Pianta Road, Echuca, VIC 3564.