

**KINGSTON ESTATE WINES PTY LTD ABN 44 063 167 813**  
**TERMS & CONDITIONS OF PURCHASE**

**Application**

1. These terms and conditions apply to and form part of all purchase orders issued by Kingston Estate Wines Pty Ltd ("KEW") for the purchase of goods and services.

**Provision**

2. The purchase order contains essential provisions which must be complied with by the supplier of the goods and/or services ("the Supplier"). If the Supplier does not comply with an essential provision, the Supplier will be in default of its obligations to KEW. The essential provisions of the purchase order are:
  - a. An order is deemed to be accepted by the Supplier unless KEW is advised to the contrary within seven days of the date shown on the purchase order.
  - b. All prices quoted in the purchase order shall include all taxes, charges, delivery and GST, and shall not be increased, unless agreed in writing by KEW.
  - c. The Supplier warrants that the goods supplied by the Supplier shall:
    - i. be of good and merchantable quality;
    - ii. be fit in every way for the purpose for which they are intended;
    - iii. if purchased after the review of a sample, comply in all respects with the sample and shall not incorporate any modification or variation without express written approval from KEW;
    - iv. be of a good and proper standard of workmanship; and
    - v. be manufactured using only the best quality material.
  - d. The goods and/or services supplied by the Supplier shall comply with all applicable Federal and State laws and regulations relating to the product standards and safety for the goods and/or services.
  - e. The Seller must comply with the timing, method and quantity requirements for the delivery of the goods and/or supply of services ordered.
  - f. The goods supplied by the Supplier shall be suitably packed and prepared for shipment so as to secure the goods against damage, enable the lowest transport and insurance rates to be obtained, and otherwise comply with the carrier's requirements.
  - g. The goods and/or services must pass KEW's quality control inspection and the Supplier agrees to allow KEW's inspectors access to the Supplier's premises for the purposes of quality control inspection.
3. If a breach of any essential provision occurs, the Supplier will be in default and KEW can take the steps described in the terms and conditions to remedy the default.

**Remedies**

4. If the Supplier is in default, KEW can at its absolute discretion:
  - a. Where the goods delivered are found to be defective in design, function, material or workmanship, KEW shall have the right to notify the Supplier and either:-
    - i. carry out necessary repairs to the goods to correct such defect; or
    - ii. return the goods to the Supplier for a credit, repair or replacement.The costs of KEW exercising either of these options shall be at the Supplier's expense.
  - b. If the goods and/or services are not delivered within the time specified (if any) in the purchase order, the order is automatically cancelled. KEW may however, at its discretion, renew the purchase order in writing.
  - c. If the goods and/or services supplied pursuant to the purchase order are not of the standard required by KEW in the essential provisions, KEW shall, in addition to other available remedies, be entitled to cancel the balance of the order and any other orders not yet supplied and be paid compensation by the Supplier for any costs and losses involved, including the credit, replacement, repair and freight of the goods.
  - d. Call on the indemnity provided by the Supplier to KEW.
  - e. Exercise its right to damages and any other remedies available at law.

**Indemnity**

5. The Seller indemnifies KEW and keeps KEW indemnified from and against any claim, demand, cause of action, damage, loss, consequential loss, cost, expense (including legal expense on a solicitor client basis) made against or suffered by KEW arising out of or in connection with or as a result of:
  - a. the goods and/or services supplied or to be supplied under this purchase order;
  - b. a breach of the warranties provided in clause 2.c;
  - c. any actual or threatened infringement of a third party's industrial and/or intellectual property rights relating to the goods; and
  - d. KEW breaching contracts or arrangements it has entered into in reliance upon the acknowledgement and acceptance of the Supplier pursuant to clause 2a where the Supplier, for whatever reason, fails to comply with the availability or delivery conditions of the purchase order.

**Termination**

6. The purchase order may be cancelled by KEW in the event of the Supplier at any time failing or being unable to comply with any of the terms or conditions either express or implied in relation to the sale of the goods or supply of the services in any way.
7. Either party may terminate this purchase order forthwith by written notice to the other party if:
  - a. a receiver, official receiver, liquidator, provisional liquidator, official manager, agent, receiver and manager or similar officer is appointed or application is made to a court for the appointment of such a person to the other party;
  - b. the other party enters into or resolves to enter into a scheme of arrangement or composition with or assignment for the benefit of its creditors or it proposes a reorganization, moratorium or other administration involving its creditors or resolves to wind itself up or otherwise dissolve itself or give notice of intention so to resolve;
  - c. the other party is presumed to be insolvent within the meaning of the *Corporations Act, 2001*;
  - d. without the prior written consent of the party, ceases to carry on its business or threatens to do so; or,
  - e. the business of the other party is sold or otherwise comes under the control of any person other than the other party or is purported to be sold, mortgaged or otherwise alienated or encumbered.

**GST**

8. All prices quoted in the purchase order for any taxable supply must include any Goods and Services Tax (GST) payable. Notwithstanding any other conflicting provisions, KEW is not obliged to pay for any taxable supply made by the Supplier unless and until KEW receives a GST tax invoice or adjustment notice for that supply.

**General**

9. This contract is not assignable by the Supplier without the written consent of KEW.
10. No variation of the purchase order shall be binding on KEW unless made in writing and signed by a duly authorized officer of KEW.
11. The Seller and KEW agree that they shall comply with all the provisions of the *Privacy Act 1988* as amended and that they are bound by and fully comply with the National Privacy Principles dealing with the collection, use and storage of personal information about individuals.
12. The applicable law for the interpretation and enforcement of this purchase order is that of the State of South Australia and the Supplier hereby agrees to submit to the jurisdiction of the courts of South Australia for the purpose of settling any disputes hereunder.