

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

**Definitions**

'Agreement' means these terms of trade together with the Credit Application. 'Credit Application' means the document entitled "Credit Application" to which these terms are annexed. 'Goods' means any wine or other products of any kind provided by KEW to a Purchaser. 'KEW' means Kingston Estate Wines Pty Ltd. 'Purchaser' means the entity identified as the purchaser in the Credit Application, and if more than one of them, each jointly and severally.

**These Terms**

1. These terms apply in any contract of supply of Goods by KEW to the Purchaser and prevail over any terms put out by the Purchaser. KEW may at any time change these terms effective immediately upon giving notice to the Purchaser. No employee, agent or contractor of KEW may cancel, vary or add to these terms without the written authority of KEW's general manager.

**Goods**

2. KEW may alter the range of Goods on offer at any time. Orders for Goods offered ex-inventory are subject to prior sale to other buyers.

**Orders**

3. Any order from the Purchaser may be accepted or rejected by KEW in its absolute discretion.
4. KEW's acceptance of the Purchaser's order must be by an authorised employee of KEW.
5. KEW reserves the right to supply an order in full or only in part.
6. The Purchaser may not cancel an order, nor delay delivery, once KEW has accepted the order unless KEW agrees in writing.

**Prices**

7. The price payable by the Purchaser for any Goods will be:
  - (a) on the basis of the list prices prevailing at the time the Purchaser places the order; or
  - (b) the price quoted by an authorised representative of KEW at the time the Purchaser places the order; or
  - (c) such other price as an authorised representative of KEW may advise to the Purchaser at or before the time KEW accepts the Purchaser's order, as determined by KEW in its sole discretion.
8. KEW may alter the list prices at any time without notice.
9. The prices quoted do not include any federal, state or local taxes or levies (including but not limited to GST). If any tax is or becomes payable by KEW on a supply of Goods under this Agreement (including but not limited to GST), the Purchaser must pay to KEW an amount equal to the tax payable on the supply at the time of payment for those Goods. An amount payable under this clause must be paid at the same time as the payment for those Goods. If the Purchaser fails to pay such amount when due, KEW may recover it from the Purchaser as a debt.

**Payment**

10. The Purchaser must pay to KEW the price of Goods as calculated by KEW on or before the due date shown on KEW's invoice (or if no due date is shown within 14 days of invoice) in respect of the Goods unless a credit facility has been agreed in writing by KEW, whether or not Goods have been delivered.
11. If the Purchaser defaults in payment of any monies owing to KEW under this Agreement, the Purchaser must pay to KEW compounding interest on all outstanding amounts at a rate of 1.5% per month or the maximum provided by law for invoice amounts that are past due, accruing from the date of default until KEW receives payment. In addition, if payment is overdue KEW may cancel or suspend delivery of other Goods yet to be delivered to the Purchaser.
12. No deductions can be made to the price by way of set off, counterclaim or otherwise.

**Credit Terms**

13. Credit facilities are subject to credit approval and/or credit insurance approval as determined by KEW. KEW may grant the Purchaser credit on the basis of the Credit Application Form completed by the Purchaser (and/or such other documents as may be required by KEW).
14. Where credit facilities are granted by KEW, payment must be made on or before the due date on the invoice or as specified in the quotation or the order confirmation.
15. If the Purchaser does not pay KEW on time, KEW may:
  - (a) require that all future dealings be on the basis of cash payments at the time of placement of an order;
  - (b) charge interest on any amounts overdue at a rate of 1.5% per month, accruing from the due date until payment;
  - (c) without notice to the Purchaser withdraw or vary any credit facilities KEW has previously provided to the Purchaser; and
  - (d) where delivery is by instalment, KEW may withhold indefinitely any further instalments until full payment for prior instalments has been made.
16. In these terms the words "cash payments" exclude cheques which have not been cleared by a bank prior to the delivery of Goods.
17. If the Purchaser does not pay KEW on time, the Purchaser is not entitled to use any credit facility extended to the Purchaser by KEW until the Purchaser makes a new application, which application may be refused.
18. KEW may withdraw or vary a credit facility at any time without notice to the Purchaser, and if withdrawn, payment must be made on or before the due date.
19. If the Purchaser does not place an order with KEW for 6 months, the credit facility may be withdrawn by KEW and may only be reinstated on the basis of a new credit application form completed by the Purchaser and accepted by KEW.
20. The Purchaser must pay all debt collection and legal (on a solicitor-client basis) costs incurred in respect of the Purchaser's default.

**Freight, Delivery and Insurance**

21. All prices are F.O.B. to KEW's dock or point of shipment or as otherwise stated.

22. Delivery of Goods to KEW's dock or point of shipment constitutes delivery to the Purchaser.
23. All risk of loss or damage in transit and all other risk in the Goods passes to the Purchaser at the point of delivery.
24. The Purchaser may make claims for loss or damage to Goods sustained while in transit only against the carrier.
25. Although KEW will reasonably endeavour to deliver Goods in accordance with the Purchaser's requested date for delivery, no undertaking or warranty is given by KEW that Goods will be delivered on the nominated date or any other date. KEW is not liable for any claim or liability relating to any delay or failure to deliver any Goods.
26. The Purchaser must effect all insurance of Goods for the full insurable value of Goods.
27. The Purchaser is solely responsible for the collection of all Goods.

**Claims**

28. KEW is not liable for a claim or liability for shortage or damage unless a claim in writing is received by KEW within 14 days after delivery of the Goods plus reasonable road, air or sea stage transit time. This clause does not derogate from or otherwise affect the operation of any other provisions of this Agreement.

**Title**

29. All Goods remain KEW's property until the Purchaser pays to KEW in full all monies owed to KEW on any account. Until that time, the Purchaser holds all Goods for KEW as owner and the Purchaser must store all Goods in a way that they can be identified as KEW's Goods. If the Purchaser makes new or other goods from or with Goods, then those goods are Goods for the purpose of this Agreement.

**Liabilities and Indemnity**

30. KEW expressly excludes all warranties, conditions and representations, whether express or implied, and whether contained in statute or common law. To the extent to which such warranties, conditions and representations cannot be legally excluded or restricted, this Agreement will be read subject to those warranties.
31. Where such statutory provisions apply, KEW's liability for breach of a condition or warranty of supply is limited at its option to the replacement of the Goods or the supply of equivalent Goods or paying to the Purchaser the cost of such replacement or resupply.
32. KEW will not in any circumstance be liable for any personal injury (including death), special or consequential damage (including without limitation loss of profits, loss of opportunity or business interruption) or expense sustained or incurred by the Purchaser or any other person in consequence of or resulting directly or indirectly out of the supply of Goods by KEW, the use of Goods, any breach by KEW of any provision of any contract incorporating these terms or the negligence of KEW.

**Remedies**

33. If the Purchaser breaches any obligation under this Agreement, breaches any obligation under any other contract with KEW, or becomes insolvent, KEW may (in addition to its other rights):
  - (a) withhold deliveries of Goods under this Agreement;
  - (b) cancel any order;
  - (c) terminate this Agreement;
  - (d) suspend or terminate any other contract with the Purchaser by giving written notice; and/or
  - (e) reserve and/or exercise its rights as seller under the Sale of Goods Act 1895 of South Australia or any other equivalent or similar legislation.
34. Where KEW exercises its rights under the previous clause, the Purchaser must:
  - (a) pay KEW for all Goods already delivered under this Agreement immediately; and
  - (b) pay to KEW the greater of:
    - (i) 50% of the Price which otherwise would have been due to KEW for any outstanding orders; and
    - (ii) the amount which is equal to KEW's actual loss (direct and indirect) arising as a result of the breach or insolvency of the Purchaser, as determined by KEW in its sole discretion (and the Purchaser acknowledges and agrees that the amount calculated under this subclause is a genuine and reasonable pre-estimate of KEW's loss and is not a penalty).Nothing in this clause affects any other remedy that may be available to KEW.

**Miscellaneous**

35. KEW is not liable for any failure to perform its obligations under this Agreement arising from circumstances beyond its reasonable control including (without limitation) climatic conditions, industrial disputes, strikes, lockouts and delays by suppliers to KEW. KEW may suspend this Agreement at its option for the duration of such event or events by written notice to the Purchaser.
36. The termination or expiry of this Agreement does not affect those provisions of this Agreement which KEW determines from time to time ought to survive such termination or expiry.
37. If and to the extent that a provision of this Agreement would, but for this clause, be unenforceable, the provision must be read down and, if the provision cannot be read down, it must be severed without affecting the validity and enforceability of the remainder of this Agreement.
38. This Agreement is governed by the law in force in the State of South Australia.
39. This Agreement binds the parties and their respective successors and permitted assigns.
40. The Purchaser must not assign or novate its interest in this Agreement without the prior written approval of KEW. KEW may assign or novate its interest in this Agreement at any time by notice to the Purchaser and the Purchaser must do all things required to give effect to such assignment or novation.