

**IN CONSIDERATION OF Kingston Estate Wines Pty Ltd, A.B.N. 44 063 167 813 and its associated entities (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) The Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of Goods and / or Services 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. Any request from the Customer to the Company for the supply of Goods and / or Services shall constitute acceptance of these general terms and conditions.
- (ii) 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;
- (iii) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

## **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any Credit Limits set by the Company, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by the Company by any means. Unless or except specifically excluded herein, the company and the Customer retain any rights and remedies available to them in any prior or pre-existing agreement. "Collateral" and/or "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 and over which the Company may intend to register a Security Interest. "Price" shall mean the cost of the Collateral as referred to in the Company's price lists, prepared quotes and / or specific arrangements and shall be subject to change from time to time without notice.

### **1. Jurisdiction**

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

### **2. Personal Property Securities Act 2009 (PPSA)**

- a. The Customer grants and the Company may register on the Personal Property Securities Register, a security interest in all and any sale of Goods under this agreement, including but not limited to intellectual property and all other present or after-acquired property.
- b. The Customer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the Consumer Credit Act will not apply.
- c. The Customer and the Company agree to contract-out of the PPSA in accordance with section 115 of the PPSA to the extent that the section applies for the benefit of, and does not impose a burden on, the Company. The Customer waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by the Company in respect of the security interest created by these terms and conditions.
- d. The Customer agrees to execute any documents, provide all relevant information and co-operate fully with the Company to ensure that the Company has a perfected security interest in the personal property charged and, if applicable, a Purchase Money Security Interest (PMSI).
- e. The Customer agrees to notify you of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship **7 days prior** to any such change taking effect.
- f. The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other Security Interest in the Collateral.
- g. The Customer agrees to reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to registering, maintaining or releasing any financing statement or any other document in respect of any security interest under this agreement.

### **3. The Competition & Consumer Act 2010**

- a. The warranties, rights and remedies of the Customer as outlined in the Competition & Consumer Act 2010 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.

### **4. Payment Terms**

- a. At the Company's sole discretion, a deposit may be required prior to any supply.
- b. Credit Account Customers are required to pay all amounts for purchases, in full and with no deduction or set-off, on or before the 'Due Date' as stated on the invoice issued by the Company or on any quotation or order confirmation in respect of any given sale.
- 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 1.50 % per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- g. 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.
- h. 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 as a result of any cheque or electronic banking transaction being dishonored for whatever reason.

### **5. Delivery**

- a. 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.
- b. The Company's obligation to deliver shall be discharged on arrival of the Goods at the Customer's nominated delivery destination or nominated agent or carrier. If the Customer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, the Company shall be entitled to charge a fee for any delay suffered, or to arrange for storage of the Goods at the risk and cost of the Customer including all transportation, storage and other consequential costs.

### 6. Defects

- a. The Customer shall inspect the Goods upon delivery and will, within 48 hours, notify the Company of any defects, short deliveries or any failure to fulfill any quotation or order.
- b. The Customer will, within a reasonable time following delivery, grant the Company 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.

### 7. 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.

### 8. Retention of Title

- a. Title in all the Collateral 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. Until title passes to the Customer, the Customer acknowledges that these conditions create, in the Company's favor, a PPSA purchase money security interest in the Collateral and any proceeds of their sale.
- b. The Company shall retain an equitable interest in the Collateral, whether separate or co-mingled or accessioned, which shall be stored in such a manner as to be clearly identifiable as the property of the Company, until title has passed to the Customer and further, upon re-sale of the Collateral by the Customer, the Company shall have the right to trace any proceeds of sale to the extent that they relate to its Collateral which are incorporated.
- c. If payment has not been received, the Customer will transfer to the Company all of its rights in respect of the sale price.
- d. The Company may demand at any time until title has passed to the Customer that the Customer returns the Collateral or any part of them.
- e. 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.

### 9. Risk

- a. Notwithstanding Retention of Title provisions as per clause 8 hereof, the risk in Collateral purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer.
- b. If any of the Goods are damaged or destroyed prior to the title in them passing to the Customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

### 10. Cancellation

- a. The Company may cancel the delivery of Collateral 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 Collateral at any time before delivery by giving notice to the Company by any means.
- d. In the event that the Customer cancels delivery of Collateral, 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.

### 11. 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 or repair of the Goods or the amount paid or payable by the Customer in respect of the particular Goods.

### 12. 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, specified or un-specified, 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. The Customer acknowledges that all purchases are made relying solely upon the Customer's own skill and judgment.

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, to enable 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, and 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 Credit Manager, 36 Bowyer Road, Wingfield SA 5013.**