



## WINEQUIP PTY LTD TRADING TERMS

The following terms and conditions (**Trading Terms**) apply to all purchases of goods and/or services by you, (the **Purchaser**), from Winequip Pty Ltd (ABN 78 958 709 226 ) (**Winequip**). Placing an order with Winequip will constitute deemed acceptance by the Purchaser of these Trading Terms. Modifications of or deviations from these Trading Terms must be agreed in writing by Winequip. No terms and conditions contained in or deemed to be incorporated by any document of the Purchaser will apply to, override or amend in any way these Trading Terms.

### 3. Orders

- 3.1. Orders will be initiated by you making a request for stock from Winequip. When placing an order with Winequip, you will comply with any ordering procedures (including the required form of any order) notified to you from time to time by Winequip.
- 3.2. Winequip reserves the right to accept or reject any order in whole or in part for any reason, including without limitation the unavailability of any products.

### 4. Quotations

- 4.1. Quotations are not valid unless they are provided to the Purchaser in writing.
- 4.2. All quotations provided to the Purchaser by Winequip in writing are open for acceptance within the period stated in the quotation or, where no period is stated, within 45 days from the date of the quotation. Acceptance must be in writing and signed by the Purchaser within that time period.
- 4.3. If the quotation is not accepted in writing within that period the offer in the quotation will lapse.
- 4.4. Until the quotation is accepted by the Purchaser, Winequip reserves the right to withdraw the quotation or to vary or alter any part, including without limitation any price or fee specified in the quotation.
- 4.5. The Purchaser agrees to be bound by the Contract, which becomes binding on the Purchaser when Winequip receives the Purchaser's unconditional acceptance of the quotation in writing and which quotation shall constitute an invoice; or when no quotation is provided, when Winequip accepts an order for goods and/or services from the Purchaser.
- 4.6. The Purchaser cannot cancel an order after acceptance of a quotation without the written agreement of Winequip.

### 5. Data errors and omissions

Winequip makes every effort to ensure the accuracy of information shown in Winequip's documents, including without limitation its catalogues or databases. Such information may contain technical inaccuracies or typographical errors. Winequip makes no representation or warranty as to the accuracy of any information.

### 6. Pricing and payment

- 6.1. Unless specified otherwise, Winequip will invoice all orders in Australia dollars at the prices listed on Winequip's price list at the time of acceptance of the relevant order by Winequip, which may alter without notice to the Purchaser. The Purchaser agrees to pay the Purchase Price for the goods and/or services supplied to the Purchaser by Winequip.
- 6.2. All goods and/or services are supplied on a cash on delivery (**COD**) basis unless otherwise agreed in writing. The Purchase Price for goods and/or services supplied under a COD arrangement must be paid to Winequip upon delivery of the goods and/or services.
- 6.3. If requested by Winequip, payment must be received by Winequip before processing an order.
- 6.4. Payment may be made by cash, cheque, electronic funds transfer or credit card. Credit card payments made within our credit terms will not incur a surcharge, other than those made by Amex which will incur a surcharge of 2.2% applied to the whole of the amount to be charged on the credit card. Payments made by credit card for amounts overdue based on our stated terms of 30 days from end of month of invoice will incur a surcharge of 1.3% for Visa and Mastercard and 2.2% for Amex.
- 6.5. If goods and/or services are supplied to a Purchaser on credit by way of a Credit Account:
  - (a) such credit is offered based on acceptance and ratification of completed application for Credit Account form; and
  - (b) payment of the Purchase Price is strictly required 30 days from the end of the month of the date of the Invoice issued by Winequip.
- 6.6. The Purchaser is not entitled to withhold payment in whole or in part, or claim any right to set off in respect of the Purchase Price.

### 7. Interest

- 7.1. If the Purchase Price or any part of the Purchase Price remains unpaid 30 days after the payment date required by the Contract, the outstanding Purchase Price shall be subject to interest at the rate that is three percent (3%) per annum above the rate charged from time to time by Winequip's principal banker for unsecured overdrafts in excess of \$100,000.
- 7.2. Interest accrues from day to day, from the day the Invoice was issued by Winequip until and including the day the Invoice is paid in full. Any amount of interest, together with the outstanding Purchase Price is payable by the Purchaser on receipt of a written demand from Winequip. The Purchaser agrees to pay such interest levied from time to time.

### 8. Event of Default

Winequip may refuse to supply goods and/or services to the Purchaser if there is an Event of Default.

### 9. Ownership and risk

- 9.1. Where goods ordered by the Purchaser are conveyed by Winequip's carrier, risk in the goods will pass to the Purchaser when the goods are delivered to the Purchaser's nominated delivery address. Where goods ordered by the Purchaser are conveyed by the Purchaser's nominated carrier, risk in the goods will pass to the Purchaser on delivery to the Purchaser's nominated carrier.
- 9.2. Ownership of each unit of the Goods will remain with Winequip until all amounts owing by the Purchaser to Winequip on any account whatsoever (including the Purchase Price for the Goods) (**Amounts Owing**) have been paid.
- 9.3. Until the Amounts Owing have been paid, the Purchaser:
  - (a) may, subject to clause 9.4, take possession of the Goods and hold them as trustee and agent for Winequip;
  - (b) must ensure that the Goods are insured and stored or identified so that they are readily distinguishable from other goods held by the Purchaser or other persons.
- 9.4. Until the Amounts Owing have been paid, the Purchaser has the right to move, sell and otherwise use the Goods in the ordinary course of its business, subject to the following:
  - (a) the Purchaser may sell the Goods, but only as trustee and agent for Winequip; and
  - (b) the Purchaser must hold the proceeds it receives from any sale of the Goods as trustee and agent for Winequip; and
  - (c) the Purchaser must place the whole of the monetary proceeds in an account separate from its own monies and maintain proper records of that account; and
  - (d) if the Goods become part of a product or mass through manufacturing, processing, assembly or becoming commingled, Winequip's security interest continues in that product or mass (**Commingled Property**) to the extent permitted by law.
- 9.5. Despite clause 9.4(a), the Purchaser must not represent to any third parties that it is acting as agent of Winequip and Winequip will not be bound by any contracts with third parties to which the Purchaser is a party.
- 9.6. If the Purchaser fails to comply with any part of these Trading Terms in relation to the payment of any Amount Owing or otherwise, then:
  - (a) immediately on Winequip's request the Purchaser must return to Winequip any Goods acquired from Winequip on which there are outstanding Amounts Owing; and
  - (b) Winequip may enter the premises at which those Goods are stored, and seize possession of them; and
  - (c) Winequip may retain, sell or otherwise dispose of those Goods.
- 9.7. The Purchaser must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods without Winequip's prior written consent.
- 9.8. Without limiting the meaning of Amounts Owing, if the Purchaser makes a payment to Winequip at any time whether in connection with these Trading Terms or otherwise Winequip may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.
- 9.9. If Chapter 4 of the PPSA would otherwise apply to the enforcement of these Trading Terms the Purchaser agrees the following provisions of the PPSA will not apply to the enforcement of these Trading Terms: section 95 (notice of removal of accession), to the extent that it requires Winequip to give a notice to the Purchaser; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires Winequip to give a notice to the Purchaser; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 9.10. Notices or documents required or permitted to be given to Winequip for the purposes of the PPSA must be given in accordance with the PPSA.
- 9.11. The Purchaser consents to Winequip effecting a registration on the PPSA register (in any manner Winequip considers appropriate) in relation to any security interest contemplated by these Trading Terms and the Purchaser agrees to provide all assistance reasonably required to facilitate this. The Purchaser waives the right to receive notice of a verification statement in relation to any registration on the register.
- 9.12. In this clause 9:
  - (a) a reference to **Goods** means the original goods supplied as described in each Invoice and also includes proceeds and Commingled Property when the context permits;
  - (b) **paid** means receipt of cash or cleared funds by Winequip in full satisfaction of the Amounts Owing;
  - (c) **PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it;
  - (d) the following words have the respective meanings given to them in the PPSA: account, commingled, proceeds, purchase money security interest, register, registration, security interest and verification statement.

## 10. Delivery

- 10.1. Winequip makes no warranty as to time of delivery or the availability of any goods. The estimated time frame for delivery of goods as may be specified in any quotation is based on the best estimates of Winequip at the time of quotation. Winequip will use its reasonable endeavours to effect delivery by the estimated time frame, but does not guarantee that delivery will be effected by such time, and Winequip is not responsible for any delays in delivery.
- 10.2. Winequip may, by notice in writing to the Purchaser, extend the period for delivery, change the delivery schedule or cancel an order without liability to the Purchaser for any loss or damage of any kind.
- 10.3. Winequip may deliver the goods ordered by the Purchaser in part with written notice to the Purchaser. If goods are delivered in part pursuant to such notice, the Purchaser must accept the part-delivery and pay the percentage of the Purchase Price represented by the goods delivered.

- 10.4. Goods will be delivered to the address specified in the order and/or Invoice and the Purchaser will pay all delivery costs to Winequip in accordance with clause 6.
- 10.5. The delivery of any goods will be conducted at the Purchaser's sole risk. Winequip is not responsible for the destruction, damage or loss of goods in transit. It is the responsibility of the Purchaser to arrange and pay for transit insurance if required.
- 10.6. For the avoidance of doubt, the Purchaser will bear all risks in relation to the destruction, loss or damage of any goods at all times from the time any goods are dispatched by Winequip to the Purchaser.

## 11. Return of goods

- 11.1. The Purchaser must notify Winequip within 7 days of receipt of the goods by the Purchaser (**Return Period**) of any fault or defect in the delivered goods. The Purchaser will be deemed to have accepted delivered goods unless Winequip is advised of their rejection within the Return Period. The Purchaser waives any right to reject or revoke acceptance after that time.
  - 11.2. Winequip will not provide a refund for any returned goods purchased from Winequip unless required by law.
  - 11.3. The return of all goods must be approved in writing by Winequip and must:
    - (a) except for faulty or defective goods, be a standard item that Winequip has in stock on a regular basis;
    - (b) except for faulty or defective goods, be accompanied by original packaging, remain unused and in original condition;
    - (c) be accompanied by a letter signed by a duly authorised officer of the Purchaser with the original proof of purchase, Winequip's return approval reference and the reason for the return of the goods.
- Unless required by law, Winequip reserves the right not to accept the return of any goods in its absolute discretion. Where goods are returned without Winequip's prior written approval, Winequip may, in exercise of its absolute discretion, refuse to accept the returned goods and return them to the Purchaser at the Purchaser's expense.
- 11.4. To the extent permitted by law, freight to and from Winequip on all returns is to be borne by the Purchaser. Handling charges or freight for the return of goods, if not prepaid, will be deducted from the total amount of credit or refund or otherwise charged to the Purchaser. If Winequip accepts the return of goods due to the goods being faulty or defective, Winequip will reimburse the Purchaser for its reasonable delivery expenses.
  - 11.5. An inspection, handling and re-stocking charge of 10% calculated on the Invoice value of the returned goods shall apply to goods returned during the Return Period (other than goods that are determined by Winequip in its absolute discretion to be faulty, defective or incorrectly supplied goods (acting reasonably)). Winequip may increase this charge where Winequip accepts the return of goods outside the Return Period.
  - 11.6. In the case of all goods returned to Winequip, Winequip is under no obligation to issue a refund or credit note to the Purchaser if the Purchaser owes any money to Winequip.

## 12. Liability

- 12.1. To the maximum extent permitted by law, Winequip excludes:
  - (a) any guarantee, condition or warranty (including, without limitation, any implied guarantee, condition or warranty of merchantability, satisfactory quality or fitness for a particular purpose) which would otherwise apply to, or by implied in, these Trading Terms; and
  - (b) all liability in respect of all goods and services supplied by Winequip to the Purchaser.
- 12.2. To the extent that:
  - (a) any law provides for, or implies in these Trading Terms, any guarantee, condition or warranty, and that law voids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such guarantee, condition or warranty; or
  - (b) Winequip is not otherwise able to exclude liability under law,

then to the maximum extent permitted by law, Winequip's liability for any breach of such guarantee, condition or warranty, or otherwise, shall be limited, at Winequip's option, to one or more of the following:

  - (c) the replacement of goods delivered or the supply of equivalent goods; the repair of such goods; the cost of replacing such goods or of acquiring equivalent goods; or the cost of having such goods repaired; and
  - (d) the supply of any services provided again or the cost of having such services supplied again.
- 12.3. Other than specifically stated in these Trading Terms and to the maximum extent permitted by law, Winequip is not liable for and the Purchaser hereby releases and indemnifies Winequip from any Claims arising directly or indirectly out of or in connection with the Purchaser's use or application of the goods supplied to it by Winequip, including without limitation the use of the goods other than in accordance with Winequip's instructions or recommendations (except to the extent caused or contributed to by Winequip's negligence).

## 13. Purchaser's acknowledgement

- 13.1. The Purchaser acknowledges that it has the sole responsibility of satisfying itself that the goods supplied by Winequip are suitable for the use of the Purchaser or any contemplated use of the Purchaser and that it has conducted its own investigations and has not relied upon any information, statement, advice or representation by Winequip of or in relation to:
  - (a) the operating and/or performance parameters of the goods;
  - (b) the outcomes that the goods may achieve;
  - (c) the suitability of the goods to any particular application, installation or physical environment; and
  - (d) the appropriateness of the use of the goods outside Australia.
- 13.2. The Purchaser acknowledges and agrees that:

- (a) any representation as to the operating parameters of any goods by Winequip are representative of laboratory conditions;
- (b) the actual performance of the goods in situ might be affected by external factors (including without limitation environmental conditions) beyond Winequip's control;
- (c) incorrect and/or negligent application or use of the goods may cause loss of life, injury and/or damage to property; and
- (d) Winequip makes no representation, warranty or assurance as to any of the matters listed in clause 13.1 and that Winequip shall not be liable for any loss or cost arising from those matters to the maximum extent permitted by law.

#### 14. Intellectual Property and prohibited use

14.1. The Purchaser acknowledges that all Intellectual Property in all goods supplied by Winequip is the property of Winequip or its related entities.

14.2. The Purchaser must only use the goods for its own business purposes.

14.3. The Purchaser must not and must not cause, permit or assist any other person directly or indirectly to:

- (a) copy any Intellectual Property in the goods or record or replicate it by any other means;
- (b) use the goods to manufacture, or enable manufacture of, further quantities of the goods or similar goods;
- (c) sell, provide or rent for use or hire the goods to third parties, to manufacture, or enable manufacture of, further quantities of the goods or similar goods; or
- (d) copy, publish, disclose or distribute any documentation associated with the goods (including without limitation, operating instructions and manuals).

#### 15. Indemnity

The Purchaser shall be responsible for and indemnify and hold harmless Winequip from and against all Claims caused by the Purchaser's acts, omissions, negligence, breach of duty, breach of contract, or breach of the Contract.

#### 16. Taxation and Duties

Any amounts payable to Winequip are exclusive of GST unless specified otherwise. Any government charges or duties, including sales tax, GST, use or excise taxes or similar taxes, are payable by the Purchaser.

#### 17. Variation of Terms

Winequip reserves the right to change any of these Trading Terms at any time in its sole discretion, to be effective on written notice to the Purchaser. If the Purchaser does not agree to any changes, any Credit Account that the Purchaser may have with Winequip will be terminated.

#### 18. Miscellaneous

18.1. If any term of the Contract is void, voidable or unenforceable, the term will be read-down, limited or, if necessary, excluded to the extent necessary to make it not void, voidable or unenforceable, and all other terms will remain in full force and effect.

18.2. Any waiver or relaxation by Winequip partly or wholly of any provision of or right under the Contract:

- (a) is only valid if in writing and signed by Winequip;
- (b) applies to a particular occasion only;
- (c) is restricted to its written terms;
- (d) is not continuing nor of application generally unless expressed so to be; and
- (e) does not constitute a waiver or relaxation of any other term or condition.

18.3. The Contract:

- (a) constitutes the entire agreement between Winequip and the Purchaser; and
- (b) may not be varied or waived except agreed to in writing by Winequip.

18.4. No course of dealing or performance, usage of trade or failure to enforce any term will or will be construed to modify the terms of the Contract.

18.5. The Contract is governed by and construed in accordance with the law from time to time in the State of South Australia and the Purchaser agrees to submit to the non-exclusive jurisdiction of the courts of South Australia and the courts which hear appeals from them.

#### 19. Definitions

In these Trading Terms:

**Claims** means any cost or expense (including without limitation legal costs on a full indemnity basis), demand, legal proceedings, claims, actions, fines, penalties, obligation, damages, loss or liability of any nature (including without limitation indirect and consequential losses);

**Contract** means:

- (a) the quotation;
- (b) the application for Credit Account form (if any); and
- (c) these Trading Terms,

to be read as one document, the contents of which, in the case of ambiguity or inconsistency, will be given precedence in interpretation in the order of paragraphs (a) to (c) above;

**Credit Account** means the Purchaser's credit facility with Winequip;

**Event of Default** means:

- (a) the Purchaser fails to pay the Purchase Price or any part of the Purchase Price outstanding and any accrued interest within two business days of receiving a written demand from Winequip;
- (b) the Purchaser commits an act of Insolvency; or
- (c) the Purchaser ceases to carry on business;

**GST** means a tax, duty, levy, charge or deduction, imposed by GST Law and any related interest, penalties, fines or other charges;

**GST Law** means the A New Tax System (Goods and Services Tax) Act 1999, or any other act imposing a goods and services tax in Australia;

**Insolvency** means:

- (a) the Purchaser, not being a company committing an act of bankruptcy, making a proposal to its creditors for a composition or arrangement under the Bankruptcy Act or if any other act or event occurs that would entitle a petition for a bankruptcy order to be made;
- (b) the Purchaser, being a company, having a receiver or administrator appointed or doing, or omitting to do anything which would permit such an appointment to occur.

**Intellectual Property** includes the rights comprised in any patent, copyright, future copyright, design, trade mark, eligible layout, business name, brand name, trading style or similar right whether at common law or conferred by statute and includes rights to apply for registration under a statute in respect of those or like rights as well as rights to protect trade secrets, know-how, confidential information or unpatented production methods or technical information throughout the world for the full period of the rights and all renewals and extensions and all other rights with respect to intellectual property as defined in Article 2 of the July 1967 Convention Establishing the World Intellectual Property Organisation;

**Invoice** includes any invoice issued to the Purchaser for goods and/or services supplied to the Purchaser by Winequip (including without limitation an invoice in the form of a quotation that has been accepted by the Purchaser, in accordance with clause 4.5);

**Purchase Price** means the amount or amounts specified in the Invoice and includes the actual cost of delivery of the goods to the Purchaser including any additional or unforeseen costs due to any delay, misinformation or error caused or contributed to by the Purchaser and GST in relation to the goods and services supplied pursuant to the Invoice.