

TERMS & CONDITIONS OF SALE

Trading Terms

These Trading Terms apply to every supply of goods and services by Winequip Pty Ltd (ABN 78 958 709 226) (**Winequip, we, us**) to a customer (**Customer, you**). By placing an order, accepting a quotation or taking delivery, you agree to these Trading Terms. Terms in your purchase order or other documents do not apply unless we agree to them in writing. Capitalised words are defined in clause 22.

AT A GLANCE*A summary only. The clauses below apply.***QUOTES**

Valid 45 days unless stated

CARD FEES

No surcharge on eftpos, Visa or Mastercard

RETURNS

Change of mind by approval only, 10% restocking

PAYMENT

COD, or 30 days EOM on approved credit

CLAIMS

Shortages and visible damage within 7 days

SPECIAL ORDERS

Non-cancellable; deposit may apply

1. Orders and quotations

- 1.1 A quotation is only valid if it is in writing. Unless it states otherwise, a quotation is open for acceptance for 45 days from its date and is then withdrawn automatically.
- 1.2 You may accept a quotation in writing, including by email, signed quotation, purchase order or through our customer portal. We may withdraw or change a quotation at any time before you accept it.
- 1.3 A Contract is formed when we receive your acceptance of a quotation or, where there is no quotation, when we accept your order (in writing or by supplying the goods or services). We may decline any order in whole or in part, for example where goods are unavailable.
- 1.4 Once a Contract is formed you may only cancel it with our written agreement. If we agree, you must pay any costs we reasonably incur because of the cancellation, including supplier cancellation charges and freight.
- 1.5 **Special order goods.** Goods that are made, imported or configured to your order, or that we do not hold as regular stock (**Special Order Goods**), cannot be cancelled or returned for change of mind once ordered from our supplier. We may require a deposit before ordering Special Order Goods. The deposit is applied to the Price.

2. Prices

- 2.1 Prices are in Australian dollars and exclude GST, freight and insurance unless stated otherwise. The Price is the price in the accepted quotation or, where there is no quotation, our list price at the time we accept your order.
- 2.2 Our list prices may change without notice, but a change does not affect a Contract that has already been formed.
- 2.3 We may charge for additional costs caused by you, including changes you request to an order, delays in accepting delivery or giving site access, or incorrect information you provide.

- 2.4 Product information in our catalogues, website, price lists and other materials is provided in good faith, but it may contain errors. We will correct an obvious pricing or typographical error before a Contract is formed.

3. Payment

- 3.1 Unless you hold a Credit Account, payment is due before dispatch or on delivery (cash on delivery), as we advise. We may require payment in full or a deposit before we process an order.
- 3.2 If you hold a Credit Account, payment is due 30 days from the end of the month of the invoice date, or as otherwise agreed in writing.
- 3.3 You may pay by electronic funds transfer or credit or debit card. We do not charge a surcharge on eftpos, Visa or Mastercard payments. Payments by American Express may attract a surcharge, which will not exceed our cost of accepting that card and will be disclosed before payment.
- 3.4 **Payment security.** We will never change our bank account details by email alone. Before paying to any new or changed account details, you must confirm them by phone with our accounts team on a number you already hold for us. We are not responsible for payments you make to an account that is not ours.
- 3.5 Payment is only made when we receive cleared funds. Unless the law requires otherwise, you may not withhold or set off any amount against an invoice. If you dispute part of an invoice, you must tell us in writing within 14 days and pay the undisputed amount by the due date.

4. Credit accounts

- 4.1 Credit is offered at our discretion after we approve your application for a Credit Account. Your Credit Account is also subject to the terms in that application.

- 4.2 We may set, review or reduce your credit limit. We may suspend or close your Credit Account on reasonable notice, or immediately if an Event of Default occurs. Closing an account does not affect amounts already owing.
- 4.3 You must tell us in writing within 14 days of any change in the ownership, control, legal structure, name or contact details of your business.

5. Late payment and default

- 5.1 If an amount is not paid by its due date, we may charge interest on the overdue amount from the due date until it is paid, calculated daily at the rate fixed from time to time under the *Penalty Interest Rates Act 1983* (Vic).
- 5.2 You must pay our reasonable costs of recovering overdue amounts, including reasonable debt collection agency and legal costs.
- 5.3 If an Event of Default occurs, and to the extent permitted by law, we may do any one or more of the following:
- (a) suspend or stop supply, including deliveries under existing Contracts;
 - (b) require payment in advance for any further supply;
 - (c) declare all amounts owing to us immediately due; and
 - (d) exercise our rights under clause 8.

6. Delivery

- 6.1 Delivery dates are estimates only. We will use reasonable efforts to meet them and will tell you promptly about any expected delay, but we are not liable for loss caused by a delay. If a delay is significant, either of us may cancel the affected part of the order by written notice and we will refund any amount you have paid for goods not delivered.
- 6.2 We may deliver by instalments and invoice each instalment separately.
- 6.3 Delivery occurs when the goods are delivered to the address in your order (where we arrange freight), when you or your carrier collects them, or when they are handed to your nominated carrier.
- 6.4 You must provide safe access for delivery and suitable unloading facilities. If you do not accept delivery when the goods are ready, we may store them at your risk and cost.

7. Risk

- 7.1 Risk in the goods passes to you on delivery under clause 6.3. Where we arrange freight, we bear the risk of loss or damage in transit until delivery.
- 7.2 Where you collect the goods or nominate your own carrier, the goods travel at your risk and you are responsible for any transit insurance.

8. Retention of title and PPSA

- 8.1 Title in the goods does not pass to you until all Amounts Owing have been paid in full. Until then:
- (a) you hold the goods as bailee for us, and must insure them, store them safely and keep them identifiable as ours;
 - (b) you may use or sell the goods in the ordinary course of your business, but you hold the proceeds of any sale on trust for us to the extent of the Amounts Owing; and
 - (c) our interest continues in any product the goods become part of through processing, assembly or commingling, to the extent permitted by law.

- 8.2 If an Event of Default occurs, you must return the goods on request, and you authorise us to enter the premises where the goods are kept, on reasonable notice and during business hours, to recover them. We may then sell or otherwise deal with the goods and apply the proceeds to the Amounts Owing.

- 8.3 These Trading Terms create a security interest in the goods and their proceeds for the purposes of the PPSA. You consent to us registering that interest on the PPSR and will provide any information we reasonably require to do so. You waive your right to receive a verification statement.

- 8.4 To the extent the law allows, you agree that sections 95, 96, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply, and that neither of us will disclose information of the kind referred to in section 275(1) of the PPSA, except as section 275(7) permits.

- 8.5 We may apply any payment you make first to amounts that are not secured, then to secured amounts, in the order in which they were incurred. You must not grant any other security interest over the goods while Amounts Owing remain unpaid.

9. Inspection and claims

- 9.1 You must inspect the goods on delivery. You must tell us in writing within 7 days of delivery of any shortage, incorrect item or visible damage, with photographs where possible. Otherwise the goods are treated as delivered complete and undamaged.
- 9.2 Clause 9.1 does not limit your rights for defects that are not reasonably apparent on inspection, or your rights under the Australian Consumer Law. You must notify us of any such defect promptly after you become aware of it.

10. Returns

- 10.1 Faulty, damaged or incorrectly supplied goods will be dealt with under clauses 9 and 11. We will pay the reasonable cost of returning them and no restocking fee applies.
- 10.2 Change-of-mind returns are at our discretion and must be approved in writing beforehand, with a return authorisation number. If we approve, the goods must:
- (a) be regular stock items (not Special Order Goods, chemicals, consumables or perishable products, opened products, or goods made or cut to size);
 - (b) be unused, in their original condition and packaging, and returned within 14 days of delivery; and
 - (c) be returned at your cost, with proof of purchase and the return authorisation number.
- 10.3 An approved change-of-mind return attracts a restocking fee of 10% of the invoice value, or the supplier's restocking charge if higher, together with any freight we incurred. We will issue a credit to your account once the goods have been received and inspected.

11. Warranties and the Australian Consumer Law

- 11.1 Nothing in these Trading Terms excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term, implied or imposed by the *Competition and Consumer Act 2010* (Cth) (including the Australian Consumer Law) or other legislation that cannot lawfully be excluded, restricted or modified (**Non-Excludable Rights**).
- 11.2 Where the goods or services are not of a kind ordinarily acquired for personal, domestic or household use, and to the extent permitted by law, our liability for breach of a Non-Excludable Right is limited, at our option, to replacing or repairing the goods, paying the cost of doing so, or supplying

the services again or paying the cost of doing so.

- 11.3 Where goods carry a manufacturer's warranty, we will pass the benefit of that warranty on to you and help you make a claim under it. Warranty does not cover fair wear and tear, misuse, neglect, accident, incorrect installation or operation, use outside the manufacturer's specifications, or repairs or modifications by anyone other than us or our authorised agents.
- 11.4 Except for Non-Excludable Rights and any express warranty we give in writing, all other warranties, conditions and representations are excluded to the extent permitted by law.

12. Limitation of liability

- 12.1 Subject to clause 11.1 and to the extent permitted by law:
- (a) neither of us is liable to the other for any loss of profit, revenue, production or product (including wine or other beverages), or for any indirect or consequential loss, however caused; and
 - (b) our total liability arising out of or in connection with a Contract is limited to the Price of the goods or services that gave rise to the claim.
- 12.2 Clause 12.1 does not limit liability for death or personal injury caused by negligence, or for fraud or wilful misconduct.
- 12.3 You indemnify us against loss, damage, cost or liability we incur because of your breach of these Trading Terms, or your negligent or unlawful act or omission, except to the extent that we caused or contributed to it.

13. Suitability and use of goods

- 13.1 You are responsible for deciding whether goods are suitable for your intended use, and for their correct installation, operation, cleaning and maintenance in line with the manufacturer's instructions and any applicable laws, standards and food safety requirements.
- 13.2 Technical information, specifications and performance data are based on manufacturer information and typical or laboratory conditions. Actual results may vary with your process, fruit, product, site and operating conditions. Any recommendation we give is in good faith, but you should confirm it is suitable for your circumstances, including trials where appropriate.
- 13.3 Unless we agree otherwise in writing, goods are supplied for use in Australia. You are responsible for compliance with the requirements of any other country in which you use or export them.

14. Installation, commissioning and services

- 14.1 Where we provide installation, commissioning, servicing, repairs, training or other services, we will do so with due care and skill. The scope, price and timing will be set out in our quotation.
- 14.2 You must provide safe and timely access to your site, suitable services (such as power, water, air and drainage), and any site inductions and safety information we need. Delays or extra work caused by site conditions or a lack of access may be charged at our standard rates.
- 14.3 Equipment left with us for repair or service that is not collected within 90 days after we notify you that it is ready may be disposed of, after we give you a further 14 days' written notice, to the extent permitted by law.

15. Intellectual property

- 15.1 All intellectual property in our quotations, drawings, designs, specifications, software and documentation remains with us or our suppliers.
- 15.2 You may use that material only for the purpose of buying, installing, operating and maintaining the goods. You must not copy it for any other purpose, use it to make or source similar goods, or give it to a third party (other than your own advisers and contractors) without our consent.

16. Force majeure

We are not liable for any delay or failure to perform caused by events beyond our reasonable control. Such events include natural disasters, bushfire, flood, pandemic, industrial action, shipping or supply chain disruption, supplier failure and government action. We will tell you as soon as practicable, and either of us may cancel the affected order if the event continues for more than 60 days. Any amount you have paid for goods or services not supplied will be refunded. This clause does not excuse a payment obligation.

17. Privacy

We collect, use and disclose personal information in line with the *Privacy Act 1988* (Cth) and our Privacy and Credit Reporting Policy, available at winequip.com.au. This includes using personal information to process orders, manage accounts and assess and collect credit.

18. Taxes

Unless stated otherwise, amounts are exclusive of GST. If GST applies to a supply, you must pay the GST in addition to the Price at the same time, and we will issue a tax invoice. You must also pay any other duties, levies or charges imposed on the supply of the goods or services.

19. Changes to these Trading Terms

We may update these Trading Terms by giving you at least 30 days' written notice, including by email or through our customer portal. Updated terms apply only to orders placed after they take effect. If you do not agree with a change, you may close your Credit Account by written notice before the change takes effect, without penalty, after paying any Amounts Owed.

20. Disputes

If a dispute arises, either of us may give the other written notice of it, and senior representatives of each party must meet, in person or online, within 14 days to try to resolve it in good faith. Neither of us may begin court proceedings until 30 days after the notice, except to seek urgent relief or to recover a debt that is not genuinely disputed.

21. General

- 21.1 **Governing law.** These Trading Terms are governed by the laws of Victoria, Australia, and both of us submit to the non-exclusive jurisdiction of its courts.
- 21.2 **Entire agreement.** The Contract is the entire agreement about its subject matter. If there is any inconsistency, the documents apply in this order: the accepted quotation, then the Credit Account application (if any), then these Trading Terms.
- 21.3 **Notices and electronic communication.** Notices may be given by email to the address last notified by the other party, or through our customer portal. Electronic acceptance and electronic signatures are binding.
- 21.4 **Severance.** If any provision is void, unenforceable or unfair under law, it is read down or severed to the extent necessary, and the rest of these Trading Terms continue to apply.

21.5 **Waiver.** A waiver is effective only if it is in writing. A delay or failure to exercise a right does not operate as a waiver.

21.6 **Assignment.** You may not assign your rights under a Contract without our written consent.

22. Definitions

Amounts Owing means all amounts you owe us on any account, including the Price, interest and recovery costs.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Contract means a contract for the supply of goods or services formed under clause 1.3, which includes the accepted quotation (if any), the Credit Account application (if any) and these Trading Terms.

Credit Account means a credit facility we have approved for you.

Event of Default means any of the following: (a) you fail to pay an amount within 7 days after we give you written notice that it is overdue; (b) you breach a material term of these Trading Terms and do not remedy the breach within 14 days after we give you written notice; (c) you cease to carry on business; or (d) an Insolvency Event occurs, to the extent permitted by law.

GST has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means you become bankrupt, enter into an arrangement with creditors, or have a liquidator, administrator, receiver or similar officer appointed.

PPSA means the *Personal Property Securities Act 2009* (Cth), and **PPSR** means the register established under it. Terms used in clause 8 that are defined in the PPSA have the same meaning.

Price means the price payable for goods or services under clause 2, including delivery and other charges invoiced under a Contract.

Special Order Goods has the meaning given in clause 1.5.

Contact

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