

De BORTOLI

FAMILY WINEMAKERS

TRADING TERMS AND CONDITIONS

1. Definitions

- 1.1 **Company** means De Bortoli Wines Pty Limited (A.B.N. 77 000 146 672);
- 1.2 **PPSA** means the Personal Property Securities Act 2009 (Cth) as amended from time to time and any regulations made pursuant to it;
- 1.3 **Goods** means all products (including wine, wine-based products and beer) and services agreed to be supplied by the Company to the Purchaser under, and as described in, each contract, arrangement or understanding between the Company and the Purchaser (including pursuant to a quotation or letter of offer accepted by the Purchaser) and also includes proceeds and Commingled Property when the context permits. The Goods will include 'other goods' as classified under the PPSA;
- 1.4 **Conditions of Sale** means these trading terms and conditions;
- 1.5 **Guarantor** means the person whose name is endorsed on the Account Application form after the words "Guarantor's Name";
- 1.6 **GST** means Goods and Services Tax as per A New Tax System (Goods and Services Tax) Act 1999;
- 1.7 **Paid** means receipt of cash or cleared funds by the Company in full satisfaction of the Amounts Owing;
- 1.8 **Purchase price** of the goods means the price for which the Company agrees to sell the Goods to the Purchaser as ordered. Any charge imposed by the Company for freight and insurance in accordance with these Conditions of Sale does not form part of the purchase price of the goods;
- 1.9 **Purchaser** means the person, firm or corporation whose name and address is endorsed on the Account Application form after the words "Purchasing Entity's Name";
- 1.10 **WET** means Wine Equalisation Tax as per A New Tax System (Wine Equalisation Tax) Act 1999;
- 1.11 The following words have the respective meanings given to them in the PPSA: account, ADI account, commingled, control, proceeds, purchase money security interest, register, registration, security interest and verification statement.

2. Title and Security Interest

- 2.1 Title in and to the Goods shall not pass to the Purchaser until all amounts owing by the Purchaser to the Company on any account whatsoever (including the Purchase price of the goods but excluding freight and insurance) (Amounts Owing) have been Paid;
- 2.2 Without limiting the meaning of Amounts Owing, if the Purchaser makes a payment to the Company at any time whether in connection with the Conditions of Sale or otherwise the Company may apply that payment as it sees fit;
- 2.3 The Purchaser acknowledges that until title in and to the Goods passes to the Purchaser in accordance with clause 2.1, the Purchaser holds the Goods as trustee and bailee of the Company and that a fiduciary relationship exists between the Purchaser and the Company;
- 2.4 Until title in and to the Goods passes to the Purchaser in accordance with clause 2.1 the Purchaser shall store the Goods separately from other goods held by the Purchaser and in such a manner that they are clearly identifiable as the property of the Company. The Purchaser agrees that the products will be dealt with at all times by the Purchaser on a first in first out basis. 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 for the Company;
- (b) the Purchaser must hold the proceeds of the sale or such dealing as trustee for the Company;
- (c) the Purchaser must be able to separately and clearly identify such proceeds once deposited into the Purchaser's account as the property of the Company; and
- (d) if the Goods become part of a product or mass through manufacturing, processing, assembly or becoming commingled, the Company's security interest continues in that product or mass (Commingled Property) to the extent permitted by law;
- 2.5 Despite clauses 2.3 and 2.4, the Purchaser must not represent to any third parties that it is acting as agent of the Company and the Company will not be bound by any contracts with third parties to which the Purchaser is a party;
- 2.6 The Purchaser acknowledges that the Company has a security interest (for the purposes of the PPSA) in the Goods and any proceeds described in clause 2.4 until the title in and to the Goods passes to the Purchaser in accordance with clause 2.1. This security interest secures all moneys owing by the Purchaser to the Company (including the Purchase price of the goods) under any contract or otherwise;
- 2.7 The Purchaser acknowledges that each security interest over Goods (or their proceeds) arising under this clause 2 is a purchase money security interest to the extent that it secures payment of the amounts owing in relation to those particular Goods;
- 2.8 The Purchaser must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods without the Company's prior written consent. The Company has a security interest in all such accounts to secure the Amounts Owing;

De BORTOLI

FAMILY WINEMAKERS

- 2.9 The Purchaser consents to the Company effecting a registration on the PPSA register (in any manner the Company considers appropriate) in relation to any security interest arising under or in connection with or contemplated by the Conditions of Sale and the Purchaser agrees to provide all assistance reasonably required to facilitate this;
- 2.10 The security interests arising under this clause 2 attach to the Goods when the Purchaser obtains possession of the Goods and the Purchaser and the Company confirm that they have not agreed that any security interests arising under this clause 2 attach at any later time.

3. Right of Entry

- 3.1 In addition to any rights the Company may have under Chapter 4 of the PPSA the Company shall be entitled at any time until the title in and to the Goods passes to the Purchaser in accordance with clause 2.1:
- (a) to demand the return of the Goods, upon which the Purchaser must immediately return to the Company those Goods;
 - (b) to the extent permitted by law, to enter (or have its representative enter) any premises occupied by the Purchaser in order to search for and remove the Goods without notice to the Purchaser and without liability to the Purchaser (including liability in relation to negligence). The Purchaser and its representatives shall provide all reasonable assistance to the Company and its representatives for this purpose; and
 - (c) to retain, sell or otherwise dispose of those Goods on any terms and in any manner it sees fit and, subject to section 140 of the PPSA, may apply the proceeds to repay any debt owed to it by the Purchaser;
- 3.2 If there is any inconsistency between the rights of the Company under clause 3.1 and its rights under Chapter 4 of the PPSA, clause 3.1 prevails to the extent permitted by law;
- 3.3 The Purchaser indemnifies the Company against any claim (including negligence) in respect of any damage to the property of, or the premises occupied by, the Purchaser or any consequential loss or pure economic loss caused by another party when searching for and removing the Goods in accordance with clause 3.1.

4. Pricing

- 4.1 The prices charged by the Company as set out in the Company's applicable price list may be altered without notice and any resulting increase will be added to the Purchase price of the goods and/or any charge for freight and insurance;
- 4.2 Prices quoted as per the Company's applicable price list is comprised of the Purchase price of the goods together with any freight and insurance charge unless otherwise stated. The charge for freight and insurance, which is included in the quoted price will not exceed 5% (five percent) of the Purchase price of the goods excluding WET and GST;
- 4.3 The Purchaser agrees that it will pay the WET and GST in addition to the Purchase price of the goods and that it will pay GST in addition to the charge for freight and insurance;
- 4.4 In the event that excise duty, WET and GST, freight and insurance charges increase between the date of order and the date of delivery, the Purchaser acknowledges that the Purchase price of the goods and/or the freight and insurance charge will be increased by the equivalent amount;
- 4.5 The Company may vary the Purchase price of the goods, the freight and insurance charge or any other condition of sale by notifying the Purchaser in writing. The Purchaser accepts those Conditions of Sale by ordering Goods from the Company;
- 4.6 Orders of four Cartons or less may be subject to an Administration and Picking fee;
- 4.7 If any inconsistency arises between these Conditions of Sale and the varied conditions of sale (other than the Purchase price of the goods or other amount payable) these Conditions of Sale prevail to the extent of the inconsistency. Otherwise, the conditions of sale arising the later in time prevails.

5. Delivery

- 5.1 Delivery will be deemed to have been made to the Purchaser at the door of the Company's premises from which the Goods are dispatched to the Purchaser;
- 5.2 Unless otherwise agreed, the Company will deliver the Goods to the Purchaser using, if the Company deems necessary, a carrier and insurer of the Company's choice. The Company's charge for this service will be included in and form part of the invoice total and be payable by the Purchaser. The Company reserves the right to refuse to use a carrier nominated by the Purchaser. Such right will not be unreasonably exercised and the Purchaser is entitled to nominate alternative carriers;
- 5.3 Pallets used to deliver the Goods to the Purchaser must be exchanged for an empty Chep pallet at the time of delivery or returned when empty at the time of the next delivery and in any case within three months of delivery. Where the Purchaser has a Chep Account a transfer docket may be completed in lieu of an exchange pallet. The Purchaser shall pay the replacement cost of any pallets that are lost, damaged or not returned.

6. Damaged or Lost Goods

- 6.1 The Purchaser agrees that such Goods will be at the sole risk of the Purchaser at all times from the point of loading for dispatch from the Company's premises. To the extent permitted by law, the Company accepts no liability (including liability in relation to negligence) for breakages or loss of the Goods in transit unless the Goods were delivered by the Company under a separate delivery contract and the Company will not be liable for

De BORTOLI

FAMILY WINEMAKERS

- 6.2 consequential loss or pure economic loss suffered by the Purchaser by reason of breakage or loss;
If the Goods are dispatched in a mixed consignment with Goods for others, the Purchaser will be liable for its share of all risk in the Goods in the consignment in proportion to the value of the Goods.

De BORTOLI

FAMILY WINEMAKERS

7. Claims

- 7.1 The Purchaser must inspect the Goods immediately once they are delivered. Short deliveries must be notified immediately. Any other claim regarding the Goods must be made to the Company in writing within 30 days of delivery;
- 7.2 The Purchaser waives all claims (including negligence) against the Company in respect of the Goods to the extent permitted by law unless made in writing and received by the Company within 30 days of the date of delivery.

8. General Lien and Right to Offset

- 8.1 In addition to any lien to which the Company may by statute or otherwise be entitled, the Company shall be entitled to a general lien on all property or goods belonging to the Purchaser in the Company's possession, (although such goods or some of them have been paid for), for the unpaid purchase price of any goods sold and delivered to the Purchaser under this or any other contract;
- 8.2 The Purchase acknowledges that the Company has a security interest (for the purposes of the PPSA) in the items referred to in clause 8.1, and the proceeds of these items, until the Purchaser has Paid in full the Amounts Owing for all the Goods supplied by the Company in accordance with this clause 8. The Purchaser consents to the Company effecting a registration on the PPSA register (in any manner the Company considers appropriate) in relation to this security interest and the Purchaser agrees to provide all assistance reasonably required to facilitate this. Despite this requirement for registration of this security interest and regardless of whether or not it is actually registered, the Company may perfect this security interest by possession of the relevant items;
- 8.3 If the Purchaser fails to pay some or all of the Amounts Owing for the Goods, the Company may offset any monies owed by the Purchaser with any monies owed to the Purchaser by the Company.

9. Late Delivery

- 9.1 The Company, to the extent permitted by law, will not be responsible nor accept any liability (including liability in relation to negligence) for delay in delivery of the Goods. If in any circumstances late delivery is tendered by the Company, the Purchaser will accept and pay for the same when tendered;
- 9.2 The Purchaser may not cancel any order for Goods or refuse to accept delivery of ordered Goods. If the Purchaser attempts to cancel an order or refuse delivery, the Company may take steps to recover the full price for the Goods (and any associated delivery costs) in addition to exercising all other rights and remedies it may have against the Purchaser. The exercise of those rights and the taking of steps referred to in this clause shall be undertaken at the Purchaser's expense;
- 9.3 The Company may accept or decline any order for Goods in whole or in part.

10. Jurisdiction

- 10.1 The contract between the Company and the Purchaser will be deemed to have made in the State in which the purchaser executes this document, regardless of where any guarantee or collateral document is executed or collateral agreement is made. These Conditions of Sale and any agreement between the Purchaser and the Company in relation to the Conditions of Sale shall be interpreted with references to the laws for the time being in force in that state;
- 10.2 Subject to the provisions of any Act or Regulation to the contrary all representations, guarantees, conditions or warranties whether expressed or implied and whether statutory or otherwise not contained herein are hereby excluded as far as the same are able to be excluded under any said Act or Regulation which may apply to this agreement;
- 10.3 To the extent that any guarantees, conditions or warranties cannot be excluded due to the provisions of any Act or Regulation, the Company's liability to the Purchaser for breach of any guarantee, condition or warranty is limited, to the extent permitted by law, in relation to the subject goods to either:
(a) replacement of the goods; or
(b) the payment of the cost of replacing the goods or of acquiring equivalent goods.

11. Return of Goods

- 11.1 The Company at its own option may accept Goods returned with freight prepaid by the Purchaser if the Company in its sole discretion is of the opinion that the Goods or any of them are out of condition and thereupon credit the Purchase price of the goods to the Purchaser;
- 11.2 The Goods returned must be in the original packaging and the Purchaser must quote the purchase invoice number. The Company reserves the right to apply earlier prices in the cases where invoice numbers are not quoted.

12. Payment and Default

- 12.1 Subject to clause 12.3 hereof, and unless otherwise agreed in writing all accounts shall be payable within 30 days of delivery, or as otherwise identified on any statement of account issued by the Company;
- 12.2 If any of the events set out in (a) to (e) below occur, the Company may at its option and in its absolute discretion withhold further deliveries or cancel the agreement without notice to the Purchaser and without prejudice to any other action or remedy which the Company has or might otherwise have had and/or open a new trading account with the Purchaser with Cash on Delivery Payment Terms:
(a) The Purchaser makes default in any payments or is unable, or states that it is unable, to pay its debts as and

De BORTOLI

FAMILY WINEMAKERS

when they fall due;

(b) The Purchaser, being an individual, commits an act of bankruptcy or has a controller or trustee appointed in respect of the Purchaser's estate or any part of the Purchaser's property or assets;

(c) The Purchaser, being a company, passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;

(d) A receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Purchaser; or

(e) The Purchaser experiences any analogous event having substantially similar effect to any of the events specified above;

- 12.3 In such circumstances all moneys owing and outstanding to the Company on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable;
- 12.4 The Purchaser shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing payment of any overdue debt owed by the Purchaser to the Company (including enforcing any security interest arising under the Conditions of Sale), including without limitation legal costs of a solicitor and own client basis and the costs charged to the Company by a debt collection agency or bailiff;
- 12.5 If title in and to the Goods has not passed to the Purchaser in accordance with clause 2.1, the Purchaser's right to sell, use or consume the Goods in its operations in accordance with the Conditions of Sale shall immediately terminate on the happening of any of the events stipulated in clauses 12.2 (a) to (e).

13. **Selling your Business, Ceasing to Trade or Vacating the Premises**

- 13.1 The Purchaser will notify the Company within seven days if they sell their Business, cease trading or vacate their premises;
- 13.2 The Purchaser will notify the Company within seven days if there is any change to any of the principals, trading name and/or licensee;
- 13.3 The Purchaser will advise the Company of forwarding addresses and contact phone numbers.

14. **Interest**

The Company reserves the right to charge interest on monies that are overdue by more than 30 days at the Overdraft Reference Rate of the ANZ Bank plus 2 percent.

15. **Recovery of Bank Costs**

The Purchaser will pay in full any bank charges or fees incurred by the Company in regard to any cheques not cleared on presentation to the Purchaser's Bank.

16. **Indemnity**

The Purchaser indemnifies the Company against any claims (including negligence) for injury to any person or loss or damage to any property or any consequential loss or pure economic loss arising out of the consumption, use or storage of the Goods.

17. **Joint & Several Purchaser**

If two or more persons are named as the Purchaser then any of the purchasers and/or each of the purchasers individually shall comply with the Conditions of Sale.

18. **Severability of Clauses**

- 18.1 Should any clause contained in these Conditions of Sale or part thereof be found to be invalid that clause is severed from the balance of these Conditions of Sale to the extent of the invalidity;
- 18.2 If any provision in these Conditions of Sale constitutes a charge or other security right requiring registration that right may be considered at the Company's option not to be a part of these Conditions of Sale. Further and in the alternative the Purchaser shall pay any stamp duty and registration fees arising as a result of that registrable charge or security right.

19. **Guarantee**

- 19.1 The Purchaser acknowledges that the Company at its option and in its sole discretion may require the Purchaser's obligations pursuant to these Conditions of Sale to be guaranteed by a third party acceptable to the Company;
- 19.2 The Purchaser acknowledges that the Company's obligations pursuant to these Conditions of Sale are contingent upon the Company satisfying itself as to the credit worthiness of the Purchaser and/or obtaining a guarantee in accordance with this clause 19;
- 19.3 "Guarantee Form (19)" is to be completed and submitted when requested by the Company.

20. **Enforcement of Security Interests**

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under the Conditions of Sale, the Purchaser agrees that the following provisions under the PPSA will not apply to the enforcement of the security interests:

- 20.1 section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Purchaser;
- 20.2 section 96 (when a person with an interest in the whole may retain an accession);
- 20.3 subsection 121(4) (enforcement of liquid assets—notice to grantor);

De BORTOLI

FAMILY WINEMAKERS

- 20.4 section 125 (obligation to dispose of or retain collateral);
- 20.5 section 128 (secured party may dispose of collateral);
- 20.6 section 129 (disposal by purchase);
- 20.7 section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Purchaser;
- 20.8 subsection 132(3)(d) (contents of statement of account after disposal);
- 20.9 subsection 132(4) (statement of account if no disposal);
- 20.10 subsection 134(1) (retention of collateral);
- 20.11 section 135 (notice of retention);
- 20.12 section 142 (redemption of collateral);
- 20.13 section 143 (reinstatement of security agreement).

21. Notices under the PPSA

- 21.1 The Purchaser waives the right to receive notice of a verification statement in relation to any registration on the PPSA register;
- 21.2 The Company does not need to give the Purchaser any notice under the PPSA unless the notice is required by the PPSA and that requirement has not been excluded;
- 21.3 Notices or documents required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.