

## **General Terms & Conditions – Trade and Commercial Customers (February 2014)**

*Wine Home Pty Ltd* (ACN 167 805 727) trading as *Winehome* provides International delivery services to wineries, wine retailers and purchasers of New Zealand and Australian wine.

In these Terms and Conditions ("Terms") we refer to Commercial users of our services (wineries & wine retailers) as "you" or "your" and *Wine Home Pty Ltd t/a Winehome* as "us", "we" or "our".

By using Winehome international delivery services you are deemed to have accepted and agreed to the terms and conditions as outlined within this document.

### **1. GENERAL**

1.1 These Terms apply to and govern all International delivery and export transactions submitted to the *Winehome* website.

1.2 We may change these Terms from time to time using the process set out in clause 17.

1.3 These Terms are important. You should ensure that you have read them thoroughly prior to proceeding with using our International delivery and export services.

1.4 Where applicable, these Terms are to be read in conjunction with the Export Agency Agreement between you and us.

### **2. DEFINITIONS**

2.1 In these Terms unless the context otherwise requires:

"information" means all information supplied by you to us via the website or otherwise and includes, for example, your name, the customer or recipient's name, contact details, credit card details and your payment and transactions history;  
"GST" means goods and services tax chargeable or for which a person may be liable under the *A New Tax System (Goods and Services Tax) Act 1999*(Cth);

"services" means all export services provided by us and our website;

"website" means our website, accessible via the [www.nzwinehome.co.nz](http://www.nzwinehome.co.nz) domain name;

"WET" means wine equalisation tax as defined under the *A New Tax System (Wine Equalisation Tax) Act 1999* (Cth).

### **3. ORDER SUBMISSION**

3.1 In submitting orders to us, you agree that:

(a) you are providing a warranty to us that the receiver is legally entitled to receive deliveries of alcohol in the form of wine under the local laws of the destination country.

(b) you indemnify us against any liabilities and issues that result from a wine delivery that is received and misused by someone under the age of the local alcohol laws of their destination country.

(c) we are not liable or responsible for any costs associated with failed delivery due to age issues.

3.2 All wine prices submitted must be the actual, genuine, transaction price that the customer has paid and you warrant that this is the case.

3.3 We are not liable for any Customs issues or matters (Australian or Destination) that relate to false or incorrectly declared wine prices.

### **4. PRICE**

4.1 Our international delivery service fees are as shown on our website from time to time and include a fixed fee component, a variable fee component (10%) and as appropriate a producer contribution component (5%). Our fees are zero rated for GST. We will make every effort to keep our listed prices (as shown on our website) updated and current. However, we shall not be liable for any additional costs incurred by you as a result of any change to the listed prices or failure to keep the website updated and current.

4.2 We reserve the right to vary our prices and where possible we will provide prior notice.

4.3 Prices for wine sold to customers and the international delivery service fees you collect on our behalf (including destination taxes) must be zero rated for Australian GST and WET. Zero rating of these services is covered by Section Section 38.185 of *A New Tax System (Goods and Services Tax) Act 1999*(Cth), Sections 171-173 of the Wine Equalisation Tax Ruling WETR 2009/1 and *A New Tax System (Wine Equalisation Tax) Act 1999*(Cth).

4.4 During the online order submission process wine values are entered as an equivalent of the GST inclusive Australian price. Our website then automatically calculates the correct zero rated price.

4.5 We reserve the right to make price amendments subsequent to receiving the online order submission. In particular, incorrect calculations of destination taxes and oversized bottles may require price amendments. We will endeavour to contact you for approval prior to making any price amendments. If unsuccessful in the communication process we will proceed using our best judgment and you agree to accept such price amendments made.

### **MISTAKES IN PRICE ARISING FROM COMPUTER ERROR**

4.6 In the event that computer error results in a material misstatement of the price of your order we may, prior to your receipt of the order or at any time thereafter, require that you pay us the difference between the amount actually paid by you in respect of your order and the correct amount payable.

4.7 In the event that we become aware of any misstatement prior to delivery, we will make reasonable endeavours to contact you and advise you accordingly.

### **5. INTERNATIONAL DELIVERY & TRANSIT**

5.1 We will use our best endeavours to deliver within our advertised delivery time frames. We are not responsible for any failure to deliver or delay in delivery caused by any event outside of our reasonable control.

5.2 Delivery is deemed to be complete when the order is received at the address you have specified for delivery. You are required to notify us within 10 days from the date of delivery if you are concerned about the quality or condition of the delivered product.

## 6. PAYMENT TERMS & INVOICING

### Two Payment Options

a) Direct Debit where a direct debit authority has been received from the Supplier. Payment will be processed at the point the exported wine leaves the country. A confirmation email advice will be sent advising of the payment processing, which will also include a copy of the tax invoice covering the payment period.

b) Credit Card Payment processed on a monthly basis at the point where the exported wine leaves the country. Credit card details will be securely held by NAB using their online payment processing facility. Visa or MasterCard will attract a 1% surcharge and American Express will attract a 3% surcharge in addition to the Price under Clause 4.

6.2 Credit card holders agree to indemnify us against any default by the credit card company.

6.3 Generally our system will debit the nominated credit card or direct debit authority once, for the entire value of the transaction. We reserve the right to apply further fees against the nominated credit card or direct debit authority if price amendments are required. Details of 'price amendment' procedures are contained within clause 4 of these Terms.

### CREDIT CARD SECURITY

6.4. No card or wallet data is available to, retained or used by us as the merchant and we will not be responsible for any lost or stolen credit card details or information provided to us in accordance with the Terms. You will be issued with a receipt number at the end of your transaction.

### REMEDIES FOR NON-PAYMENT

6.5 We will charge you interest at the rate of 10% per month if for whatever reason your account is unpaid after the due date. Interest will accrue on a daily basis and will continue to be due and payable until payment is received in full, even if we obtain a court judgment.

6.6 We reserve the right to recover any outstanding costs by applying a lien on any orders within our control.

6.7 We may take action to recover any unpaid amounts and we will charge you for all costs associated with recovery and collection of any unpaid amounts.

## 7. CUSTOMS & EXPORT COMPLIANCE

7.1 You will at all times be responsible for compliance with the requirements for the legislative permit exemption granted to the export of "small quantities of wine" in accordance with the Australian Customs and Border Protection Service Export Control (Volume 12), *Wine Australia Corporation Act 1980*, *Wine Australia Corporation Regulations 1981* and *Customs Act 1901*.

7.2 You agree and acknowledge that a "small quantity of wine" is defined in Regulation 6(3) of the *Wine Australia Corporation Regulations 1981* as the consignment of Australian grape products:

- From one exporter to one consignee; and
- On one ship or aircraft to a single port of discharge; and
- Of a total quantity of no more than 100 Litres.

7.3 You agree and acknowledge that you, as an exporter of Australian grape products, must be licensed by Wine Australia under the *Wine Australia Corporation Act 1980* and that you currently hold or will hold at the time of exporting any Australian grape products, all necessary approvals, licences and permits required to export the Australian grape products under these Terms.

7.4 You agree to indemnify us in full against any breach or act of non-compliance in respect of Clause 7.

## 8. INSURANCE

8.1 Our advertised delivery prices include insurance that covers the events of breakage, or loss/non delivery once we take receipt of your wine at our nominated warehouse facility. All other risk remains with you. Lost or damaged wine (by breakage) during the delivery process will be replaced or the value refunded by mutual agreement.

8.2 Our insurance does not cover any real or perceived damage/stress to wine quality due to heat or temperature issues. We use every care during the delivery procedure to reduce the risk of heat or temperature damage including specialist packaging, temperature controlled storage (where possible) and rapid movement through transit points. At our sole and absolute discretion we may cover the cost of refunding or replacing wine that we are satisfied has incurred genuine heat damage or stress during delivery.

## 9. CANCELLATION AND RETURN

9.1 After you have submitted your order you may not cancel the order without our consent.

9.2 We will not consent to cancellation if we have processed the order beyond Australia's borders.

## 10. USE OF YOUR INFORMATION

10.1 Your use of our website will generate certain information that will be recorded electronically by us. Information of this type may include, for example, your IP address and your usage statistics. We may record your contact details, credit information and any related personal details that you supply or that we obtain independently and we may disclose your personal information to any Australian regulatory authorities when and as required by law.

10.2 You acknowledge that we, our employees, carriers, contractors and agents may use or disclose any of the information identified in the previous paragraph for purposes connected with the supply of our services to you. Examples of purposes connected with our services include:

- a. Administration of your account;
- b. Data provided to Australia and destination Customs authorities;
- c. Information provided to debt collection and credit reference agencies; and
- d. Enforcing these Terms.

10.3 You may request access to, update or correct your personal information held by us and you may request that we not provide you with further promotional or marketing communications by contacting us. If your contact details change, it is your responsibility to notify us of the change.

10.4 We will not solicit to your customers or supply your information to any unauthorized 2nd or 3rd parties without your consent.

10.5 Unfortunately, no data transmission over the internet can be guaranteed as totally secure. Whilst we strive to protect such information, we do not warrant, and cannot ensure complete security of any information which you transmit to us. Accordingly, any information which you transmit to us is transmitted at your own risk. Nevertheless, once we receive your transmission, we will take all reasonable steps to preserve the security of such information.

10.6 We are bound by the National Privacy Principles in the Privacy Act 1988.

#### 11. CONSENT TO RECEIPT OF ELECTRONIC MESSAGES

11.1 You agree that you expressly consent to your inclusion in our direct marketing database and accept that you may, as a result, receive regular electronic communications and promotional communications from us. You have the right to ask us at any time to stop sending online communications and promotional offers to you.

#### 12. INTELLECTUAL PROPERTY RIGHTS

12.1 We own, control or have the right to use and provide the website and all content on the website, including text, images, articles, photographs, illustrations, audio and video clips. You may electronically reproduce and store the content of the website solely for the purposes of viewing, using the services or saving website content, for your own personal use. You may not display or distribute the content of any part of the website or its content in public, including any reproduction in any form on the Internet, without our express written permission.

12.2 Any infringement of our intellectual property rights will be fully enforced under the laws of Australia.

#### 13. EXCLUSION OF LIABILITY

13.1 Except as expressly provided in these Terms, under no circumstances will we, our employees or our agents be liable to you in contract, tort, equity, statute, regulation or otherwise for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by you, or by any other third party, whether direct or consequential (including, but without limitation, any economic loss or other loss of turnover, profits, business or goodwill) arising out of the services supplied by us pursuant to an order placed with us, whether on our website or otherwise. If you are using the website and our services for a business purpose, you agree that the (relevant Australian consumer guarantee) does not apply. All other warranties, descriptions, representations and conditions as to fitness, suitability for any purpose or specific conditions, even though such conditions may be known to us, whether express or implied, and whether statutory or otherwise, are expressly excluded to the maximum extent permitted by law.

#### 14. OTHER TERMS

##### NO WAIVER

14.1 No delay, neglect or forbearance in taking enforcement action in relation to any provision of these Terms will be a waiver, or in any way prejudice any right, of that party.

##### SEVERABILITY

14.2 If any part of these Terms is held to be invalid, illegal or unenforceable, that part will be severed and the remainder of the Terms will remain in full force and have full effect.

##### JURISDICTION

14.3 These Terms have been prepared in accordance with and are governed by Australian law and you agree that the Courts of Australia have non-exclusive jurisdiction.

#### 15. ASSIGNMENT

15.1 You may not assign any rights under these Terms except with our prior written consent.

15.2 We may assign our rights under these Terms without seeking your prior consent.

#### 16. NOTICES

16.1 We will send all notices and related correspondence under these Terms to the email address that you have nominated. It is your responsibility to ensure that you keep us informed of any changes to your contact details.

16.2 You will be deemed to have received a notice at the time that we send the email.

#### 17. AMENDMENTS

17.1 We may change these Terms at any time. Where possible we will send you notice ("amendment notice") to that effect by your preferred contact method and supplying you with the amended Terms. Your continued use of our website and our services shall be deemed to constitute acceptance of the amended Terms.