

IN WINE DISTRIBUTION PTY LTD - TERMS & CONDITIONS OF SALE

1. By accepting delivery of the goods, in whole or in part, the purchaser acknowledges having agreed to purchase the goods subject to the conditions of sale hereafter set out.
 2. Risk in the goods shall pass to the purchaser upon delivery of the goods to the purchaser or collection of the goods by the purchaser's agent.
 3. Legal title to the goods shall not pass to the purchaser until payment in full is received from the seller and the purchaser shall:
 - a) hold the goods as bailee for the seller
 - b) store the goods which have not been paid for separately and clearly identifiable as the property of the seller
 - c) keep separate records in relation to the proceeds of the sale of any goods which have not been paid for, and is authorized to act as agent for the seller on any sub-sales for the account of the seller. The proceeds of such sub-sales shall be held as a fiduciary, be banked into a separate account and immediately remit such funds to the credit of the seller, and
- If the purchaser does not pay for any goods on the due date specified in the agreement, commits an act of bankruptcy, a receiver is appointed or goes into liquidation the seller is hereby authorized by the purchaser to enter the purchaser's premises)or any premises under the control of the purchaser or as agent of the purchaser if the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the purchaser whatsoever. PROVIDED ALWAYS that the right of, and/or any demand for, repossession of the goods precedes the passing of property to any sub-purchaser.
4. The Purchaser agrees (at the purchaser's expense) to insure the goods under an enforceable comprehensive policy or policies of insurance in both the seller's and purchaser's names for an amount equal to the full insurable value of the goods against fire accident malicious damage and theft and such other risks as the seller may from time to time require and the purchaser shall pay on the due date all premiums payable in respect of such policy or policies of insurance and upon request produce proof of payment to the seller within seven (7) days of such date PROVIDED THAT by written agreement between the purchaser and the seller with respect to any goods or any class of goods such insurance may be arranged by the seller for a consideration to be agreed upon.
 5. The purchaser shall pay to the seller the purchase price of the goods or services within the time provided in any invoice or statement in respect of the goods or services. The purchaser shall not be entitled to make any deduction from the price of the goods in respect of any set-off or counter claim.
 6. Where the seller requires the purchaser covenants with the seller that it shall comply with the terms and conditions upon which the grant is made.
 7. The purchaser agrees that-
 - i. all implied conditions and warranties on the part of the seller in relation to any goods or services to be supplied by the seller hereunder are excluded to the maximum extent permitted by law to the intent that so far as legally possible the Conditions of Sale shall comprise the entirety of the rights and obligations of the seller and the purchaser; and
 - ii. subject to any non-excludable rights conferred on the purchaser by legislation, no claims in respect of any goods or services supplied by the seller shall be recognized by the seller unless made in writing and notified to the seller by the purchaser within 7 days of delivery of the goods or the supply of the services to the purchaser.
 - iii. Where so permitted the liability of the seller for a breach of a condition or warranty that cannot be excluded is limited at the seller's option to the replacement or the supply of equivalent goods or the cost of replacing the goods.
 8. As security for the performance of the purchaser's obligations the purchaser irrevocable appoints the seller as the purchaser's true and lawful attorney to recover any proceeds from any sub-purchaser and/pr to exercise the purchaser's rights under any contract between the purchaser and any sub-purchaser and including rights of repossession and resale of the goods.
 9. (a) The purchaser is at liberty, subject to this clause to supply and deliver goods to a sub-purchaser pursuant to any bona fide transaction in the normal course of the business of the purchaser.
 - (b) On the happening of any one or more of the following events, namely;
 - i. the purchaser fails to pay to the seller as and when due and payable any moneys comprised in the purchaser's debt (such moneys being due and payable at the time expressly agreed between the purchaser and the seller and in default of such agreement according to the normal terms of trade of the seller or, in respect of amounts not covered by the seller's ordinary terms of trade, on demand by the sell):
 - ii. a receiver and manager liquidator provisional liquidator or official manager is appointed over all or any of the assets of the purchaser or a scheme of arrangement is proposed or approved with respect to the purchaser:
 - iii. a petition is presented for the winding up of the purchaser
- the seller may at its option exercise all or any of the following rights (notwithstanding any prior failure to exercise such rights):
- A) demand payment of the whole of the purchaser's debt then outstanding, and the purchaser agrees to pay the same accordingly;
 - B) take possession of all goods title to which has not passed to the purchaser and for that purpose the purchaser authorizes the seller by its servants or agents to enter any premises where the goods may be situated and to take possession thereof:
 - C) with or without taking possession of the goods sell the same by public auction or by private treaty by retail or wholesale for cash or on terms and generally as the seller thinks fit and apply the proceeds actually received by the seller after defraying expenses of sale and enforcement in or towards reduction of the purchaser's debt.
- (c) The purchaser (other than a Queensland purchaser shall pay interest at 2% over the NAB commercial loan reference rate per annum on such part of the purchaser's debt as is overdue and payable but unpaid.
- (d) The purchaser shall pay to the seller the costs and expenses incurred by the seller of solicitors, legal advisers, mercantile agents and other agents acting on the seller's behalf in respect of any recovery or attempted recovery of the purchaser's debt.
10. Pallets supplied with the goods are not sold and do not become the property of the purchaser. Pallets shall be held by the purchaser and kept in good order and condition for collection by the seller or its authorized agent.