



Supply Terms (Australian Distributors)

Version 1 October 2016

1 Definitions and interpretation

1.1 Definitions

In these Terms:

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

Business Day means a day that is not a Saturday, Sunday or public holiday in South Australia.

Customer means the person identified in an Order as the customer or on whose behalf an Order is placed.

Distribution Agreement means the agreement between the Supplier and Customer under which the Customer is appointed as distributor for certain products in a specific territory and any replacement or supplementary written agreement between the parties regarding distribution, exclusivity or negotiated pricing.

Event of Default means an event of default described in clause 14.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trademarks, patents and registered designs.

Loss means any loss, damage, cost, liability or expense however incurred (including loss of profit and legal costs on a full indemnity basis).

Order means a purchase order for Products placed by a Customer in accordance with clause 3(a).

Products means any goods or ancillary services provided by the Supplier.

Purchase Price means the applicable purchase price for Products under clause 6.

Supplier means Tim Adams Wines Pty Ltd ACN 008 008 053 and any related entity notified to the Customer from time to time.

1.2 Interpretation

In these Terms, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (d) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (e) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (f) the words 'including', 'for example' and 'such as' (and any other forms of those words) are to be construed without limitation; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing must be done on the next Business Day.

2 Application of Terms

These Terms apply to all transactions relating to the supply of Products by the Supplier to the Customer (including any quotations, Orders or variations). These Terms will prevail over any other terms or conditions provided by the Customer, including any standard terms attached to or incorporated into an Order.

- (a) Any variation or waiver of a provision of these Terms is ineffective unless in writing and signed by a manager or director of the Supplier.

- (b) The Supplier may update or vary these Terms at any time by giving prior notice to the Customer or by publishing revised Terms on its website at least 7 days before the new Terms will apply.

3 Orders

- (a) The Customer may order Products by submitting a written purchase order clearly identifying the requested Products and delivery address, in a form reasonably acceptable to the Supplier (**Order**). The Supplier may, in its absolute discretion, decide whether to accept an Order or supply Products to the Customer.
- (b) The Supplier may accept an Order by providing written acknowledgement (which may be issued in the form of a tax invoice) (**Order Confirmation**) or on delivery of the Products, whichever occurs first.
- (c) The placement of an Order by the Customer or the acceptance or delivery of any Products signifies unconditional acceptance by the Customer of these Terms (as varied from time to time), regardless of whether or not the Customer has acknowledged or signed these Terms.
- (d) These Terms, any Order Confirmation and any Distribution Agreement constitute the entire agreement between the Customer and the Supplier with respect to an Order for Products. These Terms do not limit any obligations of the Customer under a Distribution Agreement, however, to the extent of any inconsistency between these Terms and a Distribution Agreement (other than in respect of negotiated pricing, consignment or payment terms), these Terms will prevail.
- (e) An Order cannot be cancelled or varied without the prior written consent of the Supplier. If an Order is cancelled or varied without consent, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation.

4 Delivery

- (a) The Supplier will use reasonable endeavours to have the Products delivered to an agreed Australian delivery address on the date (during normal business hours) requested by the Customer on an Order or within a reasonable period after the Order has been accepted.
- (b) The Supplier is entitled to assume that anyone at the delivery address or warehouse has authority to receive the Products as the Customer's agent and any costs incurred by the Customer's failure to accept delivered Products will be paid by the Customer.
- (c) Delivery and despatch dates are estimates only, subject to Products being in stock, and the Supplier does not accept liability for any delays or events beyond its control.

5 Returns and substitutions

- (a) The Supplier may, but is not obligated to, accept Products returned by the Customer (but this does not limit the Customer's other rights under these Terms in respect of damaged or defective Products).
- (b) If a Product is out of stock or no longer available the Supplier may substitute an equivalent item, but will notify the Customer before doing this.

6 Pricing

- (a) The Purchase Price for the Products is:
 - (i) the current wholesale price list provided to the Customer from time to time or published on the Supplier's website, less any discount agreed in writing; or
 - (ii) where applicable, the purchase price, agreed or calculated in accordance with the terms of any applicable Distribution Agreement.
- (b) Unless otherwise stated, the Purchase Price and any other quoted prices, are exclusive of GST and Wine Equalisation Tax (WET) or any other transaction taxes or duties (**Taxes**). If any Taxes are payable in respect of a supply under these Terms the Customer must pay an additional amount equal to the applicable Taxes in addition to the Purchase Price.

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- (c) The Supplier reserves the right to amend any pricing errors which may occur and if the Supplier charges an incorrect price for Products it will credit or debit the Customer (as applicable) the difference between the invoice price and the correct price as soon as practicable after becoming aware of the error.

7 Invoicing and payment

- (a) The Supplier may invoice the Customer for Products and any applicable Taxes on or after the date of delivery.
- (b) Unless the Supplier has notified the Customer that cash on delivery terms apply, or other terms have been expressly agreed under a Distribution Agreement, the Customer must pay invoices issued by the Supplier:
 - (i) for purchased goods, within 60 days of the last day of the month in which the tax invoice is issued; and
 - (ii) for goods which the Supplier has agreed will be provided on a 'consignment basis' following sale, within 45 days from end of month.
- (c) The Supplier may, but is not required to provide the Customer with credit, and may at any time impose or vary any credit limit applicable to its trading account, or notify the Customer that payment for future supplies must be made in full on delivery.
- (d) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Products until overdue amounts are paid in full.
- (e) The Customer must make all payments under these Terms in full when due without set-off, deduction or counterclaim and the Supplier may in its absolute discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (f) The Customer must pay the Supplier, on demand, interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily and compounded monthly.
- (g) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these Terms.
- (h) The Customer and the Supplier agree to comply with their obligations in relation to Products and Services Tax (GST) under the *A New Tax System (Products and Services Tax) Act 1999* (Cth) and any other applicable legislation governing GST.

8 Inspection and acceptance

The Customer must promptly inspect any Products and advise the Supplier within 2 business days of delivery if the Products appear to be damaged or defective. Any damaged or defective Products must be returned within 14 days of delivery and a claim made in writing within 30 days of delivery. If the Customer fails to make a claim within the required time, the Customer is deemed to have accepted the Products, and to the extent permitted by law, waives any claim against the Supplier in respect of the Products.

9 Storage and insurance

Until all Products have been paid for in full, the Customer must:

- (a) store and transport the Products using reasonable care and in accordance with good wine industry practice in Australia; and
- (b) insure the Products against usual risks normally insured against by a prudent person carrying on a similar business to the Customer for full reinstatement value.

The Customer will provide evidence of its compliance with this clause if requested by the Supplier.

10 Retention of Title

10.1 Title to Products

- (a) The risk of loss of, or damage to, the Products will pass to the Customer on delivery to the Customer or its nominated agent. The Products will be delivered to the named destination "Free In Store" (FIS) with the Customer responsible for unloading and any associated risks.
- (b) Title to any Products delivered to the Customer will not pass to the Customer until the Customer has paid all amounts that it owes to the Supplier in full.
- (c) The Supplier only consents to the Customer selling or otherwise disposing of the Products in the ordinary course of the Customer's ordinary business to unrelated third parties on arm's length terms, while no Event of Default is subsisting.

10.2 Dealings with Products

- (a) The Customer must keep the Products separately stored and marked as the property of the Supplier.
- (b) The Customer must not do any of the following in relation to any of the Products except where expressly permitted by these Terms:
 - (i) create or allow any interest in, or dispose or part with possession of, the Products;
 - (ii) allow the Products to be taken outside Australia;
 - (iii) allow the Products to become an accession to or commingled with any other property; or
 - (iv) grant any security interest in respect of accounts owed to it in relation to the Products, without the Supplier's prior written consent.
- (c) The Customer must notify the Supplier if anything mentioned in clause 10.2(b) occurs immediately upon becoming aware of it.

10.3 Proceeds

If the Customer sells or disposes of any Products, the Customer will hold the proceeds of sale or disposal on trust for the Supplier to secure payment of any amounts the Customer owes the Supplier for the Products. The Supplier must pay all monetary proceeds, up to the amount owed, into a separate account until they are paid over to the Customer, and must not mix them with any other amount or use them to pay a debt.

10.4 Right of entry

The Customer grants the Supplier and its representatives an irrevocable licence to enter any land or premises for the purpose of inspecting, seizing or otherwise enforcing the Supplier's rights in respect of Products under these Terms and indemnifies the Supplier for any claims for damage to property or personal injury as a result of exercising those rights. If the Customer seizes or retakes possession of any Products, it may deal with them as it thinks fit.

11 Personal Property Securities Act

11.1 Definitions

In clause this clause 11:

- (a) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (b) words and phrases that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.

11.2 Consent to registration

- (a) These Terms are a security agreement for the purposes of the PPSA. The Customer acknowledges that it has granted the Supplier a security interest in the Products and their proceeds which is a purchase money security interest to the extent that it secures payment all or part of the purchase price for particular goods.

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- (b) The Customer consents to the Supplier perfecting any security interest arising in connection with these Terms by registering a financing statement on the Personal Property Securities Register and any other applicable security registers. The Customer agrees to do anything the Supplier reasonably asks to ensure that the security interest:
 - (i) is enforceable, perfected and otherwise effective; and
 - (ii) has priority over all other security interests.

11.3 Waiver of notices and information requests

- (a) To the extent permitted by law, the Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent the Supplier from giving a notice under the PPSA.
- (b) The Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA. However this does not limit the Customer's rights to request information other than under section 275 of the PPSA.
- (c) Neither the Customer nor the Supplier will disclose any information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies.

11.4 Enforcement of security interest

- (a) To the extent the law permits, the Supplier need not comply with, and the Customer may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of.
- (b) If the Supplier exercises a right, power or remedy in connection with these Terms or a security interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

11.5 Changes in Customer's details

- (a) The Customer must notify the Supplier at least 14 days before it:
 - (i) changes its name;
 - (ii) changes its place of registration or incorporation;
 - (iii) changes or applies for an ACN, ABN, ARBN or ARSN under which an interest in any of the Products is or will be held.
- (b) The Customer must notify the Supplier if anything mentioned in clause 11.5(a) occurs immediately upon becoming aware of it.

12 Intellectual Property Rights

- (a) Unless otherwise agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in connection with the Products vest in and remain the property of the Supplier.
- (b) Provided that no Event of Default is subsisting, the Supplier grants to the Customer a non-exclusive licence to use Intellectual Property Rights in connection with the Products solely for the purpose of promoting and selling the Products subject to any express requirements of a Distribution Agreement.

13 Assignment

- (a) The Customer must not assign, transfer or otherwise deal with any of its rights or obligations under these Terms without the prior written consent of the Supplier.
- (b) For the purposes of this clause the Customer will be deemed to have assigned its rights and obligations under these Terms if there is a direct or indirect change in control (as defined in section 50AA of the *Corporations Act 2001* (Cth)) of the Customer or if the Customer sells all or a material part of its assets or business.

14 Default

- (a) Each of the following occurrences constitutes an Event of Default:
 - (i) the Customer breaches or is alleged to have breached these Terms for any reason (including, but not limited to, defaulting on any payment due under these Terms) and fails to remedy that breach within 7 days of being given notice by the Supplier to do so;
 - (ii) the Customer, or any person who has guaranteed the obligations of the Customer under these Terms:
 - (A) becomes an externally-administered body corporate within the meaning of the *Corporations Act 2001* (Cth);
 - (B) has any step taken for its winding up or dissolution;
 - (C) holds a meeting of directors which considers a resolution that an administrator should be appointed;
 - (D) is insolvent within the meaning of the *Corporations Act 2001* (Cth), or being taken or presumed to be insolvent;
 - (E) commits an act of bankruptcy within the meaning of section 40 of the *Bankruptcy Act 1966* (Cth);
 - (F) has distress, attachment or other execution levied or enforced over any of its property,
 or any similar or analogous event occurs in any jurisdiction;
 - (iii) the Customer purports to assign, transfer or deal with its rights or obligations other than in accordance with clause 13; or
 - (iv) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an Event of Default occurs, the Supplier may at its election and without prejudice to any other rights under these Terms or at law:
 - (i) declare any amounts owing to the Supplier on any account are immediately due and payable;
 - (ii) terminate these Terms and any Distribution Agreement;
 - (iii) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (iv) refuse to deliver Products;
 - (v) enforce its security interests, including seizing, repossessing and re-selling any Products delivered to the Customer (including any stock or related property provided on a consignment basis); or
 - (vi) retain (where applicable) all money paid on account of Products or otherwise.

15 Australian Consumer Law

The Products are subject to certain overriding and non-excludable consumer guarantees under the Australian Consumer Law. Nothing in these Terms (including clause 16 below) is intended to exclude operation of the Australian Consumer Law.

16 Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Products is at the Customer's risk. To the maximum extent permitted by law, including the Australian Consumer Law, the Supplier makes no warranties or representations about the Products and excludes any terms which may be implied by law.
- (b) All information, specifications and samples provided by the Supplier in relation to the Products are approximations only and, subject to any guarantees under the Australian



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Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Products will not entitle the Customer to reject the Products upon delivery, or to make any claim in respect of them.

- (c) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Products is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (d) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Products, or otherwise arising out of the provision of Products, whether based on contract, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (e) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Products, to the replacement or repair of the Products or the costs of resupply or replacement of the Products or with respect to services, to the supply of services again or cost of re-supplying the services again.

17 Resupply

- (a) The Customer acknowledges that the Products are not for personal, domestic or household purposes and the Customer has held itself out to the Supplier as acquiring the Products solely for the purpose of resupply to retailers or businesses in trade or commerce.
- (b) The Customer must sell the Products in the original packaging provided by the Supplier and must not alter or interfere in any way with the Products or remove any labelling, without the prior written agreement of the Supplier.

18 Indemnity

The Customer indemnifies the Supplier against any claim or loss in connection with:

- (a) an Event of Default;
- (b) the Customer's breach of these Terms; or
- (c) the Supplier enforcing, or attempting to enforce, its right under these Terms.

This provision survives the termination of these Terms.

19 Small Business Contract

If these Terms are a 'Small Business Contract' (as defined in Schedule 2, Section 23 of the *Competition and Consumer Act 2010* (Cth)) then the Supplier must act reasonably in exercising any right or giving any direction under clauses 2(b), 3(e) and 8 and any obligation of the Customer to indemnify the Supplier under these Terms will be reduced proportionately to the extent that the Supplier's breach or negligence contributed to the loss or damage.

20 Force majeure

- (a) If circumstances beyond the Supplier's reasonable control prevent or hinder its provision of the Products or Services, the Supplier is free from any obligation to provide the Products while those circumstances continue. The Supplier may elect to terminate these Terms or keep these Terms on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's reasonable control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war,

acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

21 Confidentiality

The Customer acknowledges that each Distribution Agreement and any pricing arrangements in relation to these Terms is confidential information and must not be disclosed without the prior consent of the Supplier, unless required by law.

22 Guarantee

- (a) The Customer acknowledges that the Supplier at its option and in its sole discretion may require the Customer's obligations pursuant to these Terms to be guaranteed by a third party acceptable to the Supplier.
- (b) The Customer acknowledges that the Supplier's obligations pursuant to these Terms are contingent upon the Supplier satisfying itself as to the creditworthiness of the Customer and/or obtaining a guarantee in form and substance acceptable to the Supplier.

23 Other matters

- (a) These Terms are governed by the laws of South Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
- (b) These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (c) In entering into these Terms, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms.
- (d) If any provision of these Terms at any time is or becomes void, voidable or unenforceable, the provision must be read down to the extent necessary to avoid that result, or otherwise severed, and the remaining provisions will continue to have full force and effect.
- (e) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (f) A notice or other communication to the Customer may be given in writing to the Customer's postal or email address shown on an Order.
- (g) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the sixth Business Day after posting; or if sent by facsimile or e-mail before 4 pm on a Business Day at the place of receipt, on the day it is sent, and otherwise on the next Business Day at the place of receipt.
- (h) If the Customer enters into these Terms as trustee of any trust, it represents and warrants that it is validly appointed as sole trustee of the trust; no action has been taken or proposed to remove it as trustee of the trust or to terminate the trust; no vesting date has occurred under the trust; it has the right to be fully indemnified out of the trust fund for obligations incurred by it under these Terms; and its entry into these Terms is for a proper purpose and the benefit of the beneficiaries of the trust.