

WINE & WOOD PTY LTD

Terms and Conditions

DEFINITION AND INTERPRETATION

1. For the purposes of this agreement, except for the context otherwise requires:-

“Charges” means the Company’s quota charges for storage calculated under its rate schedule or other agreed rates and is determined by the Company prior to the acceptance of goods, the Charges in paragraph 6 hereof and any tax including any goods and services tax levied directly on a transactional supply under these conditions.

“Company” means Wine & Wood Pty Ltd ACN 100 858 071 and its Related Bodies Corporate within the meaning of the Corporations Act 2001.

“Goods” means the goods accepted by the Company from the Storer with any container, packaging or pallet supplied by or for the Storer.

“Storage” means the whole of the storage operations and services undertaken by the Company for the Goods but does not include collection of the Goods or their re-delivery when taken out of Store.

“the Storer” means the party named and described in Item 1 of the Schedule hereto.

STORAGE BASIS

2.

The Company may reasonably refuse to carry out storage of the goods at its discretion

Subject to paragraph 11, the Goods are stored entirely at the risk of the Storer and the Company accepts no liability for the Goods whatsoever or whensoever unless the Company directly causes the damage or loss.

The Company relies on the details of description, items, pallet space, quantity, weight, quality, value and measurement supplied by the Storer but the Company cannot verify and does not admit their accuracy.

Unless otherwise agreed, the Company will not exchange any pallets with any person and the Storer must not transfer any pallets to any Account the Company may have with the pallet hirer.

STORER'S OBLIGATION

3. The Storer must:-

not tender for storage any volatile or explosive goods or goods which are or may become dangerous, inflammable or offensive (including radioactive material) which are or may become liable to damage any person or property without first presenting to the Company a full written description disclosing the nature of those goods.

notify the Company of any changes in its address.

unless otherwise agreed, give at least thirty (30) clear days notice to the Company of any intention to collect the Goods or have them collected or redelivered, and

if the Company gives twenty one (21) days prior notice to the Storer requiring the Storer to remove the Goods or any part from Storage, pay any Charges outstanding and then remove the Goods or that part within (7) days of the date of notice.

at all times during the term of this Agreement and whilst the Goods are in Storage with the Company:-

ensure that it is registered as an employer under the Workers Rehabilitation and Compensation Act 1986 (the **Act**) and that it shall pay all monthly levies due thereunder in respect of its employees engaged or upon the Demised Premises;

immediately effect and keep current in respect of the Goods a public liability insurance policy for an amount of not less than Ten Million Dollars (\$10,000,000.00) per claim (or such other amount as the Company may reasonably require from time to time and notify the Storer in writing) in the joint names of the Company and the Storer and for their respective rights and interests with an insurance office approved by the Company which approval shall not be unreasonably withheld;

immediately effect and keep current a policy insuring the Goods to their full insurable value against loss or damage by fire burglary theft lightning explosion tempest earthquake

riot impact of vehicles earthquake damage by aircraft or articles dropped therefrom water damage flood consequential loss and such other insurable risks as the Company may reasonably require from time to time;

not to permit or suffer to be done any act matter or thing in or on the Premises where the Goods are stored whereby any insurance in respect of the Goods may be vitiated or rendered void or voidable or whereby the rate of premium on any insurance payable by the Company in relation to the Premises where the Goods are stored shall be liable to be increased;

insure and keep insured the Goods to their full insurable value by way of a Marine transit Insurance Policy on such terms and conditions as may be reasonably required for the Goods and as may be reasonably approved by the Company;

provide to the Company as at the date of commencement of this Agreement, and on each anniversary of the date of commencement of this Agreement, and at other times within fourteen days of demand, with a copy of the relevant Certificates of Currency of such insurance required to be undertaken pursuant to Clause 3.5 hereof.

STORERS, WARRANTIES AND INDEMNITIES

4. The Storer warrants:-

it has fully and adequately described the Goods, their nature, weight and measurements and complied with all applicable laws and regulations (including the Australian Code with the transport of dangerous goods by road and rail, Civil Aviation Regulations and the International Maritime Dangerous Goods Code) about the notification, classification, description, labeling, transport, packaging and storage of the Goods, and given their nature the Goods are packed in a proper way to withstand the ordinary risks of storage.

the person delivering the Goods to the Company for storage is authorized to do so and to sign the Storage Contract or any other documents required by the Company for the purposes of the Storage.

it is either the owner or the authorized agent of the owner of the Goods and it accepts these conditions for itself and for any other person having an interest in the Goods.

neither it nor any other person or make any allegation or claim against the Company or any other person about the storage of the Goods;

and the Storer indemnifies the Company howsoever and whensoever from any loss, damage, expense, penalty, fine or liability arising from a breach of these warranties, the Storer's obligations or these conditions unless any damage is caused directly by the Company.

COMPANY'S RIGHTS AND ENTITLEMENTS

5.

If any Charge is unpaid for fourteen (14) days the Company may at any time require the Storer to remove the Goods at the Storer's cost in all things.

If in the Company's opinion the Goods are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the Company may at any time, and on giving notice to the Storer, at the Storer's cost in all things, destroy, dispose of, abandoned or render them harmless without compensation to the Storer and without prejudice to the Company's rights to any charges.

If the Storer instructs the Company to use a particular method of storage, the Company will give priority to that method, but if the Company cannot conveniently adopt it, the Company may use any other method of storage.

Unless or until all charges have been paid, a receipt is signed by or on behalf of the Storer and the person applying for redelivery, if not the Storer tenders a proper authority signed by the Storer the Company does not have to make the goods available to any person.

If any identifying document or mark is lost, damaged, destroyed or defaced, the Company may open any document, wrapping, package or other container which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.

The Company may consolidate the Goods with others and as principal or agent may arrange the search of the goods by any sub-contractor on any terms.

The Company may lease, hire or use any container or pallet in which or on which the Goods may be placed or packed and subject to the terms of any bill of lading, hire lease agreement, equipment, handover agreement, interchange receipt or other contract and give any receipt for any container or pallet.

CHARGES

6. The Storer must:-

unless otherwise agreed to pay the Company the Charges in Australian Dollars within thirty (30) days of the date of the Company's invoice.

pay the Company any charges or expenses non recouped out of the proceeds of sale of the Goods under Clause 8.2 hereof.

pay the Company's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority or other person.

if any of the Goods are under customer control, pay all customs duty, excise duty and costs (including any final penalty) which the company becomes liable to pay or pays.

supply or pay for labour or machinery or both to load or unload the goods as set out in the Company's regular published pricing schedule.

pay the cost, expense or loss to the Company of destruction or disposal under Clause 5.2 or of opening or inspecting under Clause 5.5.

compensate the Company for any cost, expense or loss to the Company's property or any person caused by the Goods.

if any charges are not paid on the date for payment, pay interest on the unpaid charges at a rate equal to that rate charged by the Commonwealth Bank of Australia for an overdraft facility of any amount under One Hundred Thousand Dollars (\$100,000.00) and pay any charge or amount owing to the Company under any contract with the Company.

if the Goods are at any time re-quantified, reweighed or re-measured pay any proportion or additional charges as may be identified in the Company's regular published pricing schedule.

the Company's Charges are earned as soon as the Goods are delivered to the Company and whether re-delivered to the store or not, and whether damaged or not.

UNDERCHARGES

7.

The Company will not refund any payment for charges under any circumstances.

The Company's quoted Charges represent the exclusive value of the supply for GST purposes.

LIEN

8.

The Company has a general lien on the Goods and on any other goods of the Store if all Charges due or which become due on any account whether for Storage of the Goods or any other goods or any other service provided by the Company.

If the Charge is not paid when due or the Goods are not collected when so required or designated, the Company may, without notice and, in the case of perishable goods immediately:-

remove all or any of the Goods and store them as the Company seems fit at the Storer's risk and expense in all things, or

open and sell all or any of the Goods if the Company thinks fit and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss or damage cause.

The Company may deduct or set off from any monies due from the Company to the Storer under any contract, debts and monies due from the Storer to the Company these conditions or under any contract.

CLAIMS

9.

If the Company is liable for damages to or loss of the Goods or any part of the Goods, no claim for the loss or damage may be made unless notice of the claim is lodged in writing within seven (7) days from the date of removal of the Goods.

The Failure to notify a claim within the time under Clause 9.1 is evidence of satisfactory performance by the Company of its obligations.

Despite any other condition except Clause 10 hereof, the Company will be discharged from any liability for loss or damage or the storage of the Goods unless an action is brought within six (6) months of the date of removal of the Goods from storage.

EXCLUSION OR LIMITATIONS

10.

Subject to Clause 11, the Company excludes from these conditions all conditions, warranties and terms implied by statute, general law or custom.

Subject to Clause 11, the Company unless otherwise hereinafter stated excludes all liability to any person, including the Storer, for acts or omissions of the Company in tort (including negligence) , contract, bailment or otherwise for the loss of, damage to or deterioration or contamination of the Goods, or any delay or other failure arising out of the storage or these conditions.

Subject to Clause 11, the Company excludes all liability for, and the Storer releases and indemnifies the Company against all loss, damage, costs and expenses from any claim by any person in tort (including negligence), contract, bailment or otherwise for loss or damage to any property, injury to, or death of any person arising out of any actions or omissions of the Company or any or all of the Goods, storage, any delay or other failure to supply the storage or these conditions.

The exclusions, releases and indemnities in Clause 10.2 and 10.3 extend to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if the Company knows they are possible or otherwise foreseeable.

These conditions apply in all circumstances arising from a fundamental breach of contract or breach of a fundamental term.

The Company, in addition to acting for itself, also acts as agent of and trustee for each of its servants, agents and sub-contractors so they are entitled to the full benefit of these conditions, including any exclusions or limitations of liability, to the same extent as the Company.

Even if the Company breaches a storage contract or any of these conditions, or the rights, immunities and limitations of liability in these conditions continue to have their full force and effect in all the circumstances.

TRADE PRACTICES ACT

11. These conditions are subject to any applicable implied warranty in the Trade Practices Act 1974 which cannot be excluded, restricted or modified and where such warranties apply, are limited only to the extent of the cost of the Storage.

LAW

12. These conditions are governed and must be construed under the laws of the State of South Australia.

SEVERABILITY

13. If a condition or part is unenforceable the unenforceability does not affect or any other part of the condition or any other condition.

VARIATIONS AND WAIVER

14.

The Company is not bound by any waiver, discharge or release of the condition or any agreement which varies these conditions unless it is in writing and signed for the Company by an authorized office.

If the Company waives a breach of a condition the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.

NOTICES

15. Any notice required to be given hereunder by either party to the other shall be given in writing and either personally served on a responsible officer or the party to whom it is given or mailed, posted, prepaid or sent by facsimile transmission or email as follows:-

The Company

Address: PO Box 27 Salisbury SA 5108

Fax: 08 8280 8601

Email: mmerc@mercorella.com.au

GOODS AND SERVICES TAX

16. The Storer must pay any goods and services tax in relation to any charges herein.