



## TERMS AND CONDITIONS OF SALE

1. These terms and conditions shall apply in respect of all contracts entered into by Bacchus Wine Merchants Trust ("the Company") as the seller of wine and any other products ("the products") unless they are specifically varied by an instrument in writing signed by and on behalf of both the Company and the purchaser of the products.
2. Stipulations as to time in any contract shall be of the essence of the contract.
3. References herein to amounts owing to the Company for products and services, and payment in respect, therefore, include all Government taxes and imposts in respect of such products and/or services levied from time to time, including but not limited to Goods and Services Tax, Wine Equalisation Tax and excise duty at the rates so legislated.
4. The purchaser agrees that it is not entitled to any credit facilities until it receives notice in writing ("the notice") from the Company stating that credit facilities have been given. Until the purchaser receives such notice in writing from the Company any goods that are supplied by the Company to the purchaser shall be on the basis of cash upon delivery.
5. The parties agree that in the event of the Company, prior to approving credit, granting to the purchaser time to pay for any goods supplied then such supply shall not amount to a waiver by the Company of any of these terms and conditions nor be construed or be taken either directly or by implication as a granting by the Company of credit facilities to the purchaser and no credit facilities shall be granted unless so stated in writing.
6. Notwithstanding any other provisions of the contract, or of these terms and conditions, risk in the products shall pass to the purchaser upon delivery of the products to the purchaser. Delivery shall be deemed to have occurred either upon the purchaser collecting the products from the Company's premises or upon the Company delivering the products to the purchaser's usual place of business noted on this application or at such other destination as directed to the Company by the purchaser in writing. In the case of FOB/FOR contracts, delivery shall be deemed to have occurred when the products are loaded upon the vehicle, aircraft or other vessel designated for transportation of the products.
7. In consideration of the Company granting credit facilities to the purchaser then the following terms shall apply:
  - (i) All accounts are to be settled in full within 30 days of invoice date.
  - (ii) That should the purchaser default in the payment of any monies due under a contract then all monies due to the Company shall immediately become due and payable and shall be paid by the purchaser within seven (7) days of the date of demand and the Company shall be entitled to charge interest at the rate of 2.5% per month and all invoice discounts will be removed on all overdue accounts from the date of due payment until the date of actual payment.
  - (iii) Any expenses, costs or disbursements incurred by the Company in recovering any outstanding monies including debt collection agency fees and solicitor's costs shall be paid by the purchaser.
  - (iv) The Company shall be entitled at any stage during the continuancy of these terms and conditions to request such security or additional security as the Company shall in its discretion think fit and shall be entitled to withhold supply of any goods or credit arrangements until such security or additional security shall be obtained.
8. Notwithstanding any other provisions of the contract, or of these terms or conditions, property in and ownership of the products shall not pass to the purchaser until the Company has received cleared funds in full payment for the products.
9. Until the Company has received cleared funds in full payment for the products the purchaser shall hold the products on a fiduciary basis only and as bailee for the Company and thereby shall, inter alia, have the following obligations:

- (a) At its own expense to keep the products in good condition, properly and safely stored, and by reference to the relevant contract, separately from any other products held by the purchaser, and otherwise marked in such a way that they are clearly identifiable as the property of the Company.
  - (b) To not sell or agree to sell or pledge, charge or encumber the products, or any part thereof, or attempt to do so other than as agent for the Company (and then only subject to the provisions of the contract).
  - (c) In the event that the purchaser sells the products, or any part thereof, as agent for the Company, all monies paid by the buyer to the purchaser shall be held by the purchaser on trust for the Company, and forthwith on receipt thereof the purchaser shall pay such moneys to the Company. Only after the Company has received cleared funds in full payment of products supplied the balance proceeds so received by the purchaser upon resale may then be retained.
10. In the event that the purchaser:
- (i) fails to pay for the products in full by the due date,
  - (ii) commits any other breach of the contract,
  - (iii) suffers any distress or execution to be levied on any of its assets,
  - (iv) offers to make any arrangements with its creditors,
  - (v) becomes unable to pay its debts as they fall due,
  - (vi) has a resolution or summons to wind up (other than for the purpose of amalgamation or reconstruction without insolvency) passed or issued, or
  - (vii) has a receiver, manager or administrator appointed over the whole or any part of its business or assets, then and in any such event, at the election of the Company:
    - (a) it may, at its election, withdraw all credit facilities.
    - (b) the right of the purchaser to sell, dispose of, deal or in any way use the products in which property remains vested in the Company shall cease forthwith.
    - (c) the purchaser shall immediately deliver any such products in its possession or under its control to the Company.
    - (d) the Company shall have the right (without prejudice to any of its other rights and remedies) to take possession of the products in whatever manner it might think fit, and for that purpose may by itself, its servants or agents enter upon any building, vehicle, aircraft or other vessel or other place at which the products are reasonably thought to be located; and
    - (e) if the purchaser has, by some form of chemical or other treatment, changed the character or condition of the products, the Company shall have the right, at the cost of the purchaser, to restore the products to their former character and condition.
11. In the case of a Trust Company, we acknowledge that the Trustee shall be liable on the account and that in addition the assets of the trust shall be available to meet payment of the account.
12. Where a delivery date has been agreed, the Company will make all reasonable efforts to have the products delivered by the agreed date, but the Company shall not be under any liability to the purchaser should this not occur.
13. In the event that the Company is unable to supply all or any part of the products which are the subject of a contract for any reason, it will supply so much thereof as if they were the subject of a separate contract. The Company shall be under no liability to the purchaser in respect of those products that it is unable to supply to the purchaser.
14. The Company will not accept claims for credit in relation to the products, including breakages, unless such claims are made in writing and received by the Company within three (3) working days of delivery. In the event that the Company notifies a purchaser that it will consider a claim, the purchaser must first return to the Company, initially at the purchaser's cost, the products the subject of such claim in their original packaging with supporting purchase invoice numbers. Unless provisions of this clause are observed in all respects any dealings with the products shall be entirely at the purchaser's risk.
15. The liability of the Company to the purchaser for breach of contract, negligence or otherwise in respect of the products or the supply thereof or otherwise arising out of the contract shall be absolutely limited in quantum to the purchase price of the products. In any case where the limit of liability is reached the Company may in its discretion elect to either replace the products, supply equivalent products or refund the purchase price, and in any case where the Company elects one

or other of these options the purchaser is obligated to return the products originally supplied to the Company. The Company shall not under any circumstances be liable to the purchaser for any consequential loss or damage, however that loss or damage is suffered or incurred by the purchaser.

16. If any provision of the contract or of these terms and conditions is held invalid or unenforceable for any reason or for any purpose, such invalidity or unenforceability shall not affect the remaining provisions if on deletion of the offending provision the remaining provisions of the contract can be given effect in line with the basic intention of the parties, and to this end any offending provision is declared to be severable.
17. The Company and the purchaser agree that the proper law of the contract shall be that of the State of New South Wales, and the parties agree to submit to the non-exclusive jurisdiction of the Court of that State.
18. The Applicant and each guarantor hereby charges in favour of the company with payment of all monies owing including costs and interest from time to time by the Applicant to the company all interest in any land which any of them now owns or which they may become the owner.
19. I/We, as Director(s), Partners, Sole Trader agree that if I/we sell the business, cease to trade or vacate the premises, I/we will notify you in writing prior to the settlement, or immediately upon ceasing to trade or vacating the premises. I/we will also advise you of forwarding addresses and contact phone numbers, receipt of this information will be confirmed in writing by Bacchus Wine Merchant. I/we agree that if I/we do not notify you in writing, and I/we don not have acknowledgment in writing that I/we will become personally liable for all outstanding monies owned to Bacchus Wine Merchant by our company/business. I/we understand that Bacchus Wine Merchants Trust requires this information so that it may take possession of its stock under Retention of Title.