



TERMS AND CONDITIONS – STORAGE AND MANAGEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions ("conditions") unless the context otherwise requires:

- (a) "Cases" means storage containers, cartons or devices used for the storage of Goods at any of the Facilities;
 "Client" means the person who deposits Goods for storage and/or Nominated Services at any of the Facilities;
 "Facilities" means any premises that wine-ark's has control of or access to, that is suitable to store Goods;
 "Goods" means property of the Client including wine, alcohol or other Goods deposited with or placed in the custody of wine-ark, which are deemed acceptable for storage at the Facilities;
 "Cellar Records" means the inventory of Goods stored within the Facilities by the Client
 "Deposit Documents" means the receipts issued to the Client by wine-ark for all Goods deposited at the Facilities
 "Managed Cellarage" means secure storage areas within the Facilities only accessible by wine-ark
 "wine-ark" means Wine Ark Pty Ltd (ACN 090 902 686, ABN 52 090 902 686);
 "Wine Vaults" means the secure lockers within the Facilities used by Clients to store and manage their own Goods;
- (b) reference to wine-ark includes, where applicable, its officers, employees, agents and sub-contractors;
- (c) words importing the singular number import the plural number and vice-versa;
- (d) words importing a particular gender import the other genders; and
- (e) headings and highlighting are for convenience only and do not effect the interpretation of these conditions.

2. ACCEPTANCE OF GOODS

- 2.1 Goods are only accepted by wine-ark for storage at any of the Facilities on these conditions.
- 2.2 wine-ark shall not be bound by any variation to these conditions unless the variation is in writing, signed on behalf of wine-ark by its duly authorised officer.
- 2.3 All Goods shall be stored at the Facilities and carried by wine-ark at the Clients risk in all things.

3. CLIENT'S WARRANTIES

- 3.1 The Client warrants, represents and undertakes to wine-ark and to any person claiming or in the right of wine-ark that:
 - (a) the Client will check Goods are fully, adequately and truly described on all Deposit Documents at the time of receipt
 - (b) the Client will be the owner of the Goods or will otherwise lawfully be entitled to store Goods at any of the Facilities;
 - (c) Goods will not be subject to any encumbrance or right of any third party which would or might prevent the Client storing them at the Facility on these conditions during any period of storage;
 - (d) all customs, excise, duties and tax ("Taxes") will be paid in full in relation to Goods before they are deposited with wine-ark for storage and wine-ark shall not be liable for any failure to pay taxes in relation to Goods;
 - (e) the Client has made their own inquiries as to the suitability and fitness of wine-ark for their purposes and have not relied upon any representations made by wine-ark,
 - (f) Goods will not be or include illegal, dangerous, inflammable, corrosive, explosive, volatile, offensive or aerosol items or substances (collectively "Dangerous Goods"); and
 - (g) the Client will keep wine-ark advised of the Clients current address, telephone and fax numbers, drivers license and email address at all times
- 3.2 The Client indemnifies wine-ark against any claim, action, damage, loss, liability, cost or expense which wine-ark incurs or is liable for in connection with:
 - (a) any damage, loss, injury or death of any person caused or contributed to by the Client;
 - (b) any damage to the property of wine-ark or third parties caused or contributed to by the Client;
 - (c) any default by the Client under these conditions; and
 - (d) any breach by the Client of the warranties set out in condition 3.1

4. INSURANCE

- 4.1 wine-ark shall maintain an industrial special risks insurance policy in respect to the Goods stored in the Facilities.
- 4.2 Unless otherwise agreed in writing, all Goods stored within the Facilities will be automatically included under this policy.
- 4.3 Goods are not insured unless the respective storage and insurance fees have been paid in full by the due date.
- 4.4 Clients who elect to arrange their own insurance/s, must provide wine-ark with a certificate of currency on request.
- 4.5 All insurance claims are subject to the basis of settlement & sublimits identified within the policy.
- 4.6 wine-ark shall provide a Client with a copy of the insurance policy upon written request.

5. ACCESS TO THE FACILITIES

- 5.1 Subject to clause 5.2, a Client shall have no right to enter the secure area of the Facilities without wine-ark's consent and then only in accordance with the access and security procedures published by wine-ark from time to time.
- 5.2 Provided a Client is not in default under these conditions and follows the access procedures, they may access their own Wine Vault without being required to obtain wine-ark's prior consent.

6. CELLAR RECORDS

- 6.1 wine-ark agrees to maintain a record of Goods held at the Facilities by Clients using the Managed Cellarage service,
- 6.2 wine-ark shall provide a Client with a copy of these records via the website www.wine-ark.com.au or upon written request.
- 6.3 The Client indemnifies wine-ark against any claim, action, damage, loss, liability, cost or expense for typographical, data entry or cataloguing errors made within the Cellar Records and/or Deposit Documents.

7. SECURITY AND INSPECTION OF GOODS

- 7.1 Subject to these conditions and to any express or implied instructions by the Client to the contrary from time to time, all Cases deposited in Managed Cellarage will be opened and the Goods checked by wine-ark for their suitability of storage.
- 7.2 Despite anything contained in the preceding condition, where circumstances require, in the exercise of its absolute discretion, wine-ark shall be entitled to open any sealed Case or Wine Vault in which Goods are placed and peruse any document accompanying or associated with Goods to determine the nature, condition or ownership of the Goods.

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8. DANGEROUS GOODS AND REPACKING OF GOODS

- 8.1 If in wine-ark's opinion Goods are or are liable to become of Dangerous goods, wine-ark may at any time destroy, dispose of, abandon or render the Goods harmless without liability or compensation to the Client and without prejudice to wine-ark's right to any charges under these Conditions.
- 8.2 If Cartons are damaged or otherwise require replacement from time to time, wine-ark may, in the exercise of its absolute discretion, repackage Goods in new Cartons at the Clients expense.

9. DELIVERY AND PICK UP OF GOODS

- 9.1 wine-ark is not a common carrier and in the exercise of its absolute discretion, may at any time refuse the transport or carriage of Goods for any person or the transport or carriage of any class of Goods or any particular Goods.
- 9.2 Despite any specific instructions given by the Client as to the mode of carriage of goods, in the exercise of its absolute discretion wine-ark may carry Goods or have them carried by sub-contractors and by any means.
- 9.3 Delivery charges shall be considered earned whether or not Goods are delivered to any nominated consignee and whether damaged or otherwise.
- 9.4 If: (a) a consignee named in the Client's delivery instructions is not in attendance at the address specified in the delivery instructions during normal business hours or at a time specified for delivery by the Client; or (b) wine-ark arrives to effect delivery at a consignee's premises and for any reason outside wine-ark's control, wine-ark is delayed in effecting prompt delivery, wine-ark will be entitled to charge the Client an additional charge for every call made for delivery purposes or for the time of any delay in effecting delivery and the Client will pay those charges on demand.

10. PAYMENT OF ACCOUNTS

- 10.1 The Client shall pay storage, delivery, pick up and other charges in accordance with wine-ark's Schedule of Agreed Rates as published from time to time.
- 10.2 Unless wine-ark otherwise agrees in writing, wine-ark accounts are payable within 7 days of the invoice date.
- 10.3 The Client shall pay interest on overdue accounts at the rate from time to time payable by virtue of the Penalty Interest Rates Act 1983 with effect from the time the accounts are payable.
- 10.4 If the Client has given wine-ark authority to charge payments to the Client's credit card, wine-ark may charge its accounts to the Clients credit card as when they fall due.
- 10.5 If any credit card authorisation is declined, wine-ark shall not be obliged to seek further authorisation and interest shall be payable at the rate set out in Condition 10.3 from the time the credit card authorisation was declined until the outstanding account has been paid in full.

11. LIMITATION OF LIABILITY

- 11.1 wine-ark shall not be liable for any loss or damage to the Goods arising out of their packing, storage or handling, whether in transit or otherwise.
- 11.2 To the full extent allowed by law, wine-ark shall not be liable in any way to any person for and is expressly released by the Client from any liability for:
- (a) any loss, deterioration, contamination or evaporation of or any damage to goods while in wine-ark's possession or control;
- (b) any failure to deliver Goods at a time or to a place specified by the Client or at all; and
- (c) any consequential loss suffered by any person arising out of the matters referred to in paragraphs (a) and (b) even if the alleged liability arises out of wine-ark's negligence or any breach of contract by wine-ark.
- 11.3 To the full extent allowed by law, any conditions or warranties which are imposed or implied by any Law in relation to the storage or carriage of Goods which are adverse to wine-ark are hereby excluded and to the extent that they cannot be excluded, then wine-ark obligations shall be limited to the supply of its services again or payment for the supply of those services.
- 11.4 If by operation of law, wine-ark is held liable in any way to any person for any of the matters referred to in conditions 11.1 and 11.2, wine-ark's liability shall be limited to \$250 / case in total in respect of the whole of the Client's Goods irrespective of the number of individual Cases stored or carried by wine-ark or the actual value of the Goods.

12. LIEN

- 12.1 wine-ark shall have a lien on all Goods and any documents relating to them for all sums payable by the Client to wine-ark and for that purpose wine-ark shall have the right to sell Goods by public auction or private treaty on giving not less than 14 days notice to the Client.

13. GENERAL

- 13.1 Without derogating from any other method of service allowed by law, any notice, demand or other communication sent to the Client by post to the last address given to wine-ark in writing by the Client shall be deemed to be received by the Client in the ordinary course of post.
- 13.2 The waiver by wine-ark of the Clients warranties, representations or obligations shall not prevent the subsequent enforcement of those warranties, representations or obligations and shall not be deemed to be a waiver of any subsequent breach.
- 13.3 If for any reason any provision of these conditions shall conflict with any mandatory provision of any Law, then the conflicting condition shall be severed or modified to the extent necessary to bring it within the provisions of the Law and so modified, these conditions shall continue in full force and effect.
- 13.4 The proper law of these conditions is the law of the State where the respective Facility is located and unless otherwise agreed by wine-ark, the Courts of that State have exclusive jurisdiction to deal with all matters arising out of these conditions.
- 13.5 Provided a party is not in breach of these conditions, they may end the agreement at any time by giving 30 days prior written notice to the other party.

14. ASSIGNMENT

- 14.1 The rights of the Client cannot be assigned without the written consent of wine-ark.

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TERMS AND CONDITIONS – TRADING

1. TERMS

- 1.1 The following terms and conditions set out the respective rights and obligations of wine-ark and registered users of the wine-ark wine exchange system ("wine-xchange") which operates at www.wine-ark.com.au ("Site") and other services offered by wine-ark through the Site. wine-ark recommends that you visit the Site and consider all the information provided about what wine-ark is and how it does business and carefully read these Terms before dealing with wine-ark as a Seller or Buyer to ensure you understand the basis on which you are dealing with wine-ark. If you have any queries, you should contact wine-ark to discuss them.
- 1.2 wine-ark may amend these terms and conditions at any time. Any such changes, together with their effective date, will be published on the Site or sent to you by e-mail. If such changes are not acceptable to you, you may (prior to such changes coming into effect) terminate your agreement with wine-ark by notifying wine-ark through the Site or in writing.
- 1.3 These terms and conditions should be read in conjunction with the following policies and terms that are accessed through the Site. Together they form the agreement between us:
- (a) wine-ark's privacy policy;
 - (b) wine-ark's settlement policy;
 - (c) wine-ark's returns policy;
 - (d) wine-ark's rates card and
 - (e) wine-ark's website terms and conditions.

2. REGISTRATION

- 2.1 You warrant and represent that all the information provided by you in the course of registering is complete, accurate and up to date. You undertake to promptly notify wine-ark of any changes to such information.
- 2.2 You may be asked to enter details of a credit, debit or charge card. You must ensure that you are fully entitled to use that card both at the time when you enter its details and when you seek to use it, and it has or will have, at all relevant times, sufficient funds or available credit to cover all charges you incur to wine-ark.
- 2.3 You may only register if, and you warrant and represent that, you are (if an individual) over the age of 18 (or, if higher, the legal minimum age for purchasing alcohol in the country in which you reside) and if registering on behalf of a company, partnership or other business that you have the authority to enter into an agreement on these terms and conditions on behalf of such company, partnership or other business and if resident or domiciled outside Australia, that you are legally permitted to enter into such agreement.
- 2.4 Without limiting the foregoing wine-ark may refuse to provide or to continue to provide access to wine-xchange or to provide or continue to provide other services to anyone at any time at its sole discretion.

3. OPERATION OF WINE-XCHANGE

- 3.1 wine-ark will (subject to the rest of this Clause 3) use reasonable endeavours to ensure that wine-xchange is available 24 hours a day 365 days a year. Notwithstanding this wine-ark shall not be responsible for or liable to any registered users for any unavailability of wine-xchange which is outside wine-ark's control including but not limited to any failure of any hardware, software and/or any telecommunications links between registered users and the Internet.
- 3.2 wine-ark reserves the right to close wine-xchange at any time if it believes there are compelling legal or technical reasons to do so or for general maintenance.

4. WINE-ARK'S OBLIGATIONS

- 4.1 You acknowledge and accept that wine-ark processes Sell and Buy Orders on behalf of Sellers and Buyers as agent for each Seller and Buyer. Any Trade (as defined in Clause 8 below) shall form a binding contract directly between the relevant Buyer and Seller.
- 4.2 Descriptions of goods and services included in wine-xchange are accurate to the best of wine-ark's knowledge based upon information provided by Sellers. wine-ark will endeavour to correct errors or omissions as quickly as practicable after being notified of them.
- 4.3 wine-ark will use reasonable endeavours to check each case of wine offered for sale through wine-xchange to ascertain that the wine concerned corresponds with its description.

5. ADDITIONAL TERMS APPLICABLE TO SELLERS

- 5.1 Each Seller acknowledges and accepts that wine-ark will collect payments from each Buyer and will credit the account of each Seller with any payment due to it in accordance with wine-ark's settlement policy. Any cash credit balance held on the Seller's account shall at all times be held by wine-ark on trust for the Seller
- 5.2 Each Seller warrants and represents to wine-ark that:
- (a) it has and will have at all relevant times the full legal and beneficial title to, free from all liens and other encumbrances all wine offered by it for sale through wine-xchange;
 - (b) the description of all wine offered by it for sale through wine-xchange is complete and accurate; and
 - (c) that all wine offered for sale through wine-xchange meets the description given to it by the Seller and is of the age, type and condition described.

6. ADDITIONAL TERMS APPLICABLE TO BUYERS

- 6.1 wine-ark will maintain an account for each Buyer, against which wine-ark will credit any payments received from the Buyer in cleared funds and debit any amounts due from the Buyer in respect of any Buy Orders. The Buyer shall settle such account in full and pay to wine-ark (in cleared funds) any and all amounts due (in full) from the Buyer in accordance with the settlement policy which can be found on the Site. Unless otherwise agreed with wine-ark in writing all payments made to wine-ark shall be made by credit or charge card, direct bank transfer or cheque provided that in the case of a bank transfer or cheque the payment is made sufficiently in advance for the funds to have cleared for the settlement
- 6.2 Each Buyer shall be responsible for paying any charges that may be incurred on any wine purchased by them through wine-xchange including but not limited to any surcharge on credit or charge cards at the rate set out in the rates card

7. GST AND WET TAXES

- 7.1 You will notify wine-ark if you are or are required to be registered for GST and provide wine-ark with your ABN.
- 7.2 The price of wine sold on wine-xchange includes all GST and WET payable by the Seller and the Seller is solely responsible for remitting such GST and WET to the Australian government.

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**8. ACCEPTANCE OF A SELL ORDER**

- 8.1 Where a Buyer accepts the Seller's Sell Order a trade will occur and the relevant Seller and Buyer will be deemed to have agreed to sell and buy the wine concerned
- 8.2 After a trade has occurred, wine-ark shall notify the relevant Buyer and Seller of the sale by e-mail and shall amend the information relating to the wine concerned on wine-xchange accordingly.
- 8.3 Title to and risk in wine sold pursuant to a Trade shall pass to the relevant Buyer when the Buyer and Seller have been notified of the relevant Trade.

9. FEES

- 9.1 In consideration for wine-ark operating wine-xchange each Seller and Buyer shall pay wine-ark a commission on the Selling Price at the rate set out on the rates card (plus GST) (as defined below) of each Trade. Any charges due in respect of additional services provided by wine-ark shall be charged at the applicable advertised rate.
- 9.2 When a Trade is made, wine-ark will charge the amount of the commission to the relevant Seller's and Buyer's account with wine-ark.
- 9.3 For the purpose of this Clause 9, the "Selling Price" shall mean the agreed purchase price of the Trade concerned exclusive of any GST and WET.

10. DISCLAIMER

- 10.1 Save as expressly provided in these terms and conditions wine-ark has no control over or responsibility for, nor does it give any warranties or representations in relation to:
- (a) the quality, safety, or legality of any wine offered for sale through wine-xchange;
 - (b) the truth or accuracy of any listings or description of any wine on wine-xchange;
 - (c) the ability of Sellers to sell or the Seller's title to those goods; and
 - (d) the Buyers' ability to pay for any particular goods.

11. PASSWORDS

- 11.1 You undertake not to disclose any passwords that wine-ark may issue to you to any person and will keep the passwords secret at all times.

12. AUTHENTICITY

- 12.1 If a batch of wine is not of the age or description represented to the Buyer then the Buyer may cancel the Buy Order and seek to recover repayment from the Seller provided the Buyer does so within 3 months of the Trade being completed. wine-ark undertakes to use reasonable endeavours in assisting the Buyer in canceling the Buy Order and recovering monies owing by the Seller.

13. LIMITATIONS ON LIABILITY

- 13.1 You acknowledge and accept that wine-ark is not responsible for nor liable to you in respect of any failures to provide wine-xchange or any other wine-ark services provided through the Site or in respect of any losses or lost profit as a result of any trade or lost trade.
- 13.2 Except as set out expressly in these terms and conditions, wine-ark makes or gives no conditions, warranties or representations, whether express or implied, arising by statute, common law or otherwise, including but not limited to any implied terms, warranties or conditions of title, completeness, accuracy, description, satisfactory quality, merchantable quality or fitness for a particular purpose in relation to wine-xchange, any other services provided by wine-ark, any wine offered for sale or sold through wine-xchange or as to the identity or credit worthiness of any Buyer or Seller and all such conditions, warranties or terms are hereby expressly excluded
- 13.3 Except in relation to such liability as has been expressly excluded, the maximum aggregate liability of wine-ark whether in contract, tort, statutory duty or otherwise (even where wine-ark has been advised of the possibility of such loss or damage) for any loss or damage whatever arising from or in relation to these terms and conditions and/or any trade conducted through wine-xchange shall, in respect of any one or more events or series of events (whether connected or unconnected) taking place within any twelve month period, be limited to \$10,000. This limit shall also apply in the event that any exclusion or other provision is held to be invalid for any reason and wine-ark becomes liable for loss or damage that would otherwise have been limited

14. TERM AND TERMINATION

- 14.1 Either wine-ark or you may terminate your agreement to use wine-xchange and to receive other wine-ark services provided through the Site at any time by either of us giving the other written notice of termination unless otherwise stated to the contrary elsewhere in this agreement.

15. ASSIGNMENT

- 15.1 wine-ark reserves the right to assign or subcontract any or all of its rights and obligations. If wine-ark exercise this right, wine-ark shall name the assignee or subcontractor on the main screen of the Site and you will be entitled (if you do not agree to such assignment or sub-contract) to terminate your agreement with wine-ark by giving not less than 3 working days' notice to wine-ark. You may not without the written consent of wine-ark assign or dispose any of your rights or obligations under your agreement with wine-ark.

16. PRIVACY

- 16.1 When you trade with wine-ark you agree to do so subject to the terms of wine-ark's privacy policy. wine-ark's privacy policy forms part of the wine-ark Terms and Conditions of trading.

17. FORCE MAJEURE

- 17.1 No party shall be deemed to be in breach of any of these terms and conditions (other than any obligation to pay money) by reason of any delay in performance or non-performance to the extent that such delay or non-performance is due to causes beyond its reasonable control (including, but not limited to, any strike, lock-out or other form of industrial action, acts of God, war, riot, fire, flood or storm) and the party concerned has acted and continues to act reasonably and prudently to prevent and to minimise the effect of such causes.

18. LAW

- 18.1 These Terms and any contract including them shall be governed by the laws of New South Wales and the parties hereby submit to the non-exclusive jurisdiction of the Courts of that State.

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**19. GENERAL**

- 19.1 All communications shall be by notice in writing and sent to wine-ark and the Seller or Buyer at their addresses, facsimile numbers and email addresses as advised from time to time. A notice shall be deemed received when the sender hand delivers it or (if by fax or email) the receiver receives confirmation of receipt and in any event within 24 hours of sending the notice.
- 19.2 These Terms and the accompanying Privacy Policy constitute the entire agreement between wine-ark and the Seller or the Buyer relating to the Goods and services and there are no agreements understandings warranties or representations between the parties other than those contained herein.
- 19.3 No waiver or failure or delay to act by wine-ark in respect to any default on the part of the Buyer or Seller in the performance of these Terms shall prevent actioning that or any other default by the Seller or Buyer.
- 19.4 The singular shall include the plural and vice versa, words importing any gender shall include every other gender, and where there is more than one party comprising the Seller or Buyer, they shall be bound jointly and severally.

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