

1. Definitions

- 1.1 “SVS” means Single Vineyard Sellers Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Single Vineyard Sellers Pty Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by SVS to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between SVS and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for Goods, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with SVS’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and SVS.
- 2.3 The Client acknowledges and agrees:
 - (a) a minimum order quantity is applicable on all orders;
 - (b) a case split fee may be charged for part-case orders;
 - (c) to exchange SVS’ pallets (that accompany the Goods purchased) with pallets of equivalent brand and condition. In the event that the Client is unable to exchange the said pallets. The Client further agrees to be charged additionally for the cost of the pallets at a rate equivalent to SVS’ replacement cost of said pallets.

3. Age Restrictions

- 3.1 The Client agrees that to order, purchase and accept Delivery from SVS, the Client must be of the legal age of eighteen (18) years or over to purchase alcoholic beverages. The Client agrees not to supply any Goods purchased from SVS to anyone under the legal age for alcohol consumption. SVS reserves the rights to request formal identification to confirm the age of the Client. If the Client refuses or if SVS is not satisfied with the evidence supplied by the Client then SVS may cancel any order and provide a refund. SVS will not be held liable for any reason in the event that the Client fails to comply with this clause.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2, the Client agrees that should the Client introduce any third party to SVS as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods, and/or to request any variation thereto, on the Client’s behalf (such authority to continue until all requested Goods have been delivered, or the Client otherwise notifies SVS in writing that said person is no longer the Client’s duly authorised representative).
- 4.2 In the event that the Client’s duly authorised representative, as per clause 4.1, is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise SVS in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to SVS for all additional costs incurred by SVS (including SVS’ profit margin) in supplying any Goods, or variation/s thereto, requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Change in Control

- 5.1 The Client shall give SVS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by SVS as a result of the Client’s failure to comply with this clause.

6. Price and Payment

- 6.1 At SVS’ sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by SVS to the Client; or
 - (b) SVS’ quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of twelve (12) months.
- 6.2 SVS reserves the right to change the Price if a variation to SVS’ quotation is requested, including the increase in overseas transactions as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, which are beyond SVS’ control.
- 6.3 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by SVS, which may be:
 - (a) prior to Delivery;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by SVS.
- 6.4 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), or by any other method as agreed to between the Client and SVS.
- 6.5 Unless otherwise stated the Price does not include GST and a Federal Government Wine Equalisation Tax (“FGWET”) of twenty-nine percent (29%) of the Price (of applicable). In addition to the Price the Client must pay to SVS an amount equal to any GST and/or FGWET SVS must pay for any supply by SVS under this or any other agreement for the sale of the Goods. The Client must pay GST and/or FGWET, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery

- 7.1 Delivery of the Goods (“Delivery”) is taken to occur at the time that:

- (a) the Client or the Client's nominated carrier takes possession of the Goods at SVS' address; or
- (b) SVS (or SVS' nominated carrier) delivers the Goods to the Client's nominated address, even if the Client is not present at the address.
- 7.2 At SVS' sole discretion, any special instructions regarding Delivery outside the Sydney Metropolitan area shall incur courier charges.
- 7.3 The Client must take Delivery (by receipt or collection of the Goods) whenever the Goods are tendered for Delivery. In the event that the Client is unable to take Delivery as arranged then SVS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 SVS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time or date given by SVS to the Client is an estimate only. The Client must still accept Delivery even if late and SVS will not be liable for any loss or damage incurred by the Client as a result of Delivery being late.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, SVS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SVS is sufficient evidence of SVS' rights to receive the insurance proceeds without the need for any person dealing with SVS to make further enquiries.
- 8.3 If the Client requests SVS to leave Goods outside SVS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

9. Export Contracts

- 9.1 In the event that the Goods are exported, Delivery may be subject to either FOB Contract or CIF Contract.
- 9.2 In the event of a FOB Contract the following shall apply:
 - (a) the Goods shall be delivered to the Client by delivery on board the agreed upon mode of transport on the delivery date. SVS shall promptly notify the Client that the Goods have been delivered aboard. Title (subject to clause 10) to, and risk in the Goods shall pass to the Client upon such delivery being effected. SVS shall promptly provide the Client with a clean shipped bill of lading in respect of the Goods.
 - (b) the Client shall reserve the necessary space on board the agreed upon mode of transport and give SVS due notice of the loading berth and any revised delivery dates. The Client shall bear any costs caused due to the failure of the agreed upon mode of transport being available to load the Goods on the delivery date.
- 9.3 In the event of a CIF contract the following shall apply:
 - (a) the Goods shall be delivered to the Client by delivery on board the agreed upon mode of transport on or before the delivery date. SVS shall procure a contract of carriage and insure the Goods from dispatch until delivery on terms current in the trade for the benefit of the Client. The Goods shall be at the risk of the Client as they are loaded on board. SVS shall promptly tender to the Client a clean shipped bill of lading, the insurance policy and an invoice in respect of the Goods.
 - (b) the Client shall accept the documents tendered by SVS if they correspond to this contract and take delivery of the Goods at the port of destination and bear all other costs and charges arising out of shipment of the Goods to the port of destination.

10. Title

- 10.1 SVS and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid SVS all amounts owing to SVS; and
 - (b) the Client has met all of its other obligations to SVS.
- 10.2 Receipt by SVS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then SVS' rights and ownership in relation to the Goods, and this agreement, shall continue.
- 10.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 10.1:
 - (a) the Client is only a bailee of the Goods and must return the Goods to SVS on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for SVS and must pay to SVS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for SVS and must pay or deliver the proceeds to SVS on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SVS and must sell, dispose of or return the resulting product to SVS as it so directs.
 - (e) the Client irrevocably authorises SVS to enter any premises where SVS believes the Goods are kept and recover possession of the Goods.
 - (f) SVS may recover possession of any Goods in transit whether or not Delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SVS.
 - (h) SVS may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Client.

11. Personal Property Securities Act 2009 ("PPSA")

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by SVS to the Customer.
- 11.3 The Customer undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SVS may reasonably require to;

- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, SVS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of SVS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of SVS;
 - (e) immediately advise SVS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 SVS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by SVS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by SVS under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12. Security and Charge

- 12.1 In consideration of SVS agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies SVS from and against all SVS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SVS' rights under this clause.
- 12.3 The Client irrevocably appoints SVS and each director of SVS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 13.1 The Client must inspect the Goods on Delivery and must within seven (7) days of such time notify SVS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow SVS to inspect the Goods.
- 13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 13.3 SVS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SVS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SVS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, SVS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If SVS is required to replace the Goods under this clause or the CCA, but is unable to do so, SVS may refund any money the Client has paid for the Goods.
- 13.7 If the Client is not a consumer within the meaning of the CCA, SVS' liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by SVS at SVS' sole discretion;
 - (b) limited to any warranty to which SVS is entitled, if SVS did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 13.1; and
 - (b) SVS has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, SVS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by SVS;
 - (e) fair wear and tear, any accident, or act of God.
- 13.10 SVS may in its absolute discretion accept non-defective Goods for return in which case SVS may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 13.11 Notwithstanding anything contained in this clause if SVS is required by a law to accept a return then SVS will only accept a return on the conditions imposed by that law.

14. Goods on Consignment

- 14.1 Where Goods are supplied on consignment for promotional purposes, the following provisions apply specifically to those Goods:
- (a) the Goods shall be at the Client's risk from the time of Delivery, and the Client shall be responsible for insuring the Goods;
 - (b) the Client may retain possession of the Goods until the Client sells them, or SVS requires the return of the Goods at the end of the promotion, whichever first occurs;
 - (c) any consignment Goods shall be returned at the Client's cost;
 - (d) the Client shall notify SVS at the end of the promotional period of all consignment Goods sold during that time and shall, within fourteen (14) days following the conclusion of the promotion, make payment to SVS for all consignment Goods sold.

15. Default and Consequences of Default

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SVS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes SVS any money the Client shall indemnify SVS from and against all costs and disbursements incurred by SVS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SVS' contract default fee, and bank dishonour fees).
- 15.3 Without prejudice to any other remedies SVS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SVS may suspend or terminate the supply of Goods to the Client. SVS will not be liable to the Client for any loss or damage the Client suffers because SVS has exercised its rights under this clause.
- 15.4 Without prejudice to SVS' other remedies at law SVS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SVS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SVS becomes overdue, or in SVS' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Cancellation

- 16.1 SVS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice SVS shall repay to the Client any money paid by the Client for the Goods. SVS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by SVS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.3 Cancellation of orders for discounted Goods will definitely not be accepted once the order has been placed.

17. Privacy Act 1988

- 17.1 The Client agrees for SVS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by SVS.
- 17.2 The Client agrees that SVS may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 17.3 The Client consents to SVS being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Client agrees that personal credit information provided may be used and retained by SVS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 17.5 SVS may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.6 The information given to the CRB may include:
- (a) personal information as outlined in 17.1 above;
 - (b) name of the credit provider and that SVS is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and SVS has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of SVS, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

- 17.7 The Client shall have the right to request (by e-mail) from SVS:
(a) a copy of the information about the Client retained by SVS and the right to request that SVS correct any incorrect information; and
(b) that SVS does not disclose any personal information about the Client for the purpose of direct marketing.
- 17.8 SVS will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 17.9 The Client can make a privacy complaint by contacting SVS via e-mail. SVS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

18. General

- 18.1 The failure by SVS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SVS' right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which SVS has its principal place of business, and are subject to the jurisdiction of the North Sydney Local Court in that state.
- 18.3 Subject to clause 13, SVS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by SVS of these terms and conditions (alternatively SVS' liability shall be limited to damages which under no circumstances shall exceed the Price).
- 18.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SVS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.5 SVS may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.6 The Client agrees that SVS may amend these terms and conditions at any time. If SVS makes a change to these terms and conditions, then that change will take effect from the date on which SVS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for SVS to provide Goods to the Client.
- 18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.