

GROUP TERMS OF PURCHASE**1 Introduction and Definitions**

1.1 In these terms and conditions the following words shall have the following meanings unless the context requires otherwise:

"**Agreement**" means the contract for the supply of the Work by the Supplier to the Customer, comprising the Order, these terms and conditions and any other documents attached to or referred to in the Order.

"**Customer**" means the company within the Group that has entered into the Agreement.

"**Group**" means Accolade Wines Holdings Europe Limited (No. 5185971) and any company which is a subsidiary (as defined in s1159 Companies Act 2006) of that company for the time being.

"**Location**" means the place at which the Work is to be delivered or performed in accordance with the Order or any alternative location notified to the Supplier by the Customer from time to time.

"**Order**" means the order submitted by the Customer to the Supplier

"**Supplier**" means the person, firm or company supplying the Work to the Customer.

"**Work**" means the goods and/or services as detailed in the Order.

1.2 This Agreement is made between the Customer and the Supplier under which the Customer agrees to purchase the Work on the terms and conditions set out below.

1.3 No variation or addition to these terms and conditions will form part of this Agreement unless made or specifically accepted by the Customer in writing. These terms and conditions will override and take the place of any oral or other arrangements made between the Customer and the Supplier and any other terms and conditions contained in the Supplier's quotation, acceptance, correspondence or elsewhere or implied by law, trade, custom, practice or course of dealing.

1.4 The benefit (subject to the burden) of an Order placed by the Customer may be taken by any company in the Group and these terms and conditions may be enforced by any of them, in each case as either principal or as the duly authorised agent for any of the other companies. This is done to assist the effective processing and administration of each Order and does not in any way affect any of the Supplier's rights.

2 Payment

2.1 The price for the Work as set out in the Order is fixed and exclusive of VAT but inclusive of all other levies, duties, taxes, charges and expenses (including packaging, carriage and insurance, attendance at meetings and other disbursements) unless specifically agreed otherwise, save that if the Supplier quotes or offers to a third party lower prices or better terms for goods and services of similar quality, quantity or description to the Work (or the items comprised in it), the Customer shall be entitled to purchase the Work (or the relevant items comprised in it) on the same terms and shall be entitled to a refund of the amount of the difference in respect of all such Work supplied after whichever is the earlier of the first quotation or the first supply at the lower price. The price is inclusive of delivery to the Location.

2.2 The Supplier may invoice the Customer for the Work at any time after the later of the due date for completion of the supply of the Work and the actual date of such completion and payment shall be made within 75 days from date of invoice.

3 Delivery

3.1 The Work shall be provided in the quantities, by the times and at the Location strictly in accordance with the Order unless otherwise agreed with the Customer. The Customer shall not be obliged to accept any incomplete delivery or any Work in excess of the amounts ordered. If the Work requires the carrying out of tests or the installation of goods after receipt by the Customer, delivery shall not be deemed to be complete until such tests have been passed or any goods installed to the Customer's satisfaction and the Supplier shall provide the Customer upon request with copies of all test reports and all data derived as a result of testing.

3.2 Time for provision of the Work shall be of the essence. The Supplier shall deliver the Work on the date specified in the relevant Order or, if no such date is specified, within 28 days of the date of the relevant Order (in either case, the "**Due Date**"). The Supplier shall notify the Customer if any delivery or performance is likely to be delayed beyond the Due Date. If any delivery specified in the Order is not met by the Due Date, or the Supplier notifies the Customer that it cannot meet any delivery by the Due Date, the Customer may in its sole discretion: (a) cancel the Agreement in whole or in part without incurring any liability to the Supplier; (b) refuse to accept any subsequent delivery of goods or services comprised in the Work; (c) purchase substitute goods or services elsewhere; and/or (d) hold the Supplier accountable for any loss and additional costs incurred as a result. The Customer may cancel any Order (for all or part only of the Work thereunder) by giving written notice to the Supplier at any time before delivery, in which case the Customer shall pay the Supplier the price for the cancelled Work, less any reduction in costs incurred by the Supplier by reason of the cancellation.

3.3 In addition to any other right the Customer may have under this Agreement or any other contract between the Customer and the Supplier, the Customer shall be entitled to postpone the date of delivery for whatever period the Customer thinks fit upon giving notice in writing to the Supplier provided that the Customer pays the Supplier the Supplier's reasonable additional charges as the Customer acting reasonably shall in its discretion think fit in the circumstances.

3.4 The Supplier must ensure all goods delivered as part of the Work are suitably packaged and the Customer shall not be obliged to return any packaging materials for any goods whether or not they are accepted by the Customer.

3.5 If the Work is delivered or performed in instalments, the Agreement shall be treated as a single contract and not severable.

3.6 The Supplier shall provide to the Customer access to the Work at all key stages in its development. The Supplier shall not depart from the Order for the Work unless the Supplier has obtained the Customer's written approval. The Supplier shall make all and any amendments to the Work required by the Customer and unless agreed in writing by the Customer, any such amendments shall not increase the price.

3.7 If an inspection by the Customer at any time after delivery establishes that all or any part of the Work supplied does not comply with all the requirements of the Agreement the Customer may (without limitation) reject the Work supplied, return it to the Supplier and require a replacement or rectification, or require reperformance of the Work and in each case recover its loss, costs and expenses from the Supplier.

3.8 If the Customer is required to install any Work supplied to it, the Supplier shall supply in advance of delivery a functional description of each part of the Work, together with sufficient drawings and instructions to allow the Customer to install, operate and maintain the Work including details of any special environmental controls required to ensure that the Work meets any relevant specification.

3.9 The Supplier shall remit a certificate of conformance with any relevant specification confirming conformance with all appropriate regulatory approvals and health and safety requirements.

4 Variations

4.1 The Supplier shall accept any reasonable variation in scope, specification, quantity or delivery in relation to the Work requested by the Customer. The price shall be adjusted and agreed in writing by the Customer to reflect the variation having regard to the rates and prices used in the Agreement or, where these are not relevant, to what is fair and reasonable.

4.2 Neither party shall be bound by any variation to the Order unless and until it is confirmed by an official Order amendment issued by the Customer.

5 Risk

5.1 The risk in any goods which form all or part of the Work shall pass to the Customer when delivered in accordance with the terms of the Order provided delivery is acknowledged by an authorised member of the Customer's staff.

5.2 Ownership of any goods which form all or part of the Work shall pass to the Customer on completion of delivery (including off-loading) in accordance with the terms of the Order, except that if the goods are paid for before delivery then ownership shall pass to the Customer once payment has been made. The passing of ownership in the goods is without prejudice to any right of rejection to which the Customer may be entitled under the Agreement or otherwise.

6 Intellectual Property

6.1 All intellectual property rights (including without limitation copyright in any software delivered) which are created for the Customer as part of the Work shall be and become the Customer's exclusive property with effect from their creation unless specifically agreed otherwise and the Customer shall have full and free right to use those intellectual property rights and any matters to which they relate as the Customer sees fit. The Supplier may use those intellectual property rights only as properly and reasonably required in connection with the supply of the Work for the Customer.

6.2 The Supplier grants the Customer a non-exclusive, royalty-free licence in respect of all intellectual property rights (including without limitation copyright in any software) in the Work which do not belong to the Customer under clause 6.1 for use by the Customer in relation to the Work.

6.3 The Supplier shall and shall procure that its agents, employees and sub-contractors shall execute any documents or do anything else reasonably required by the Customer to obtain, maintain, defend, enforce and secure full and free right to use those intellectual property rights referred to in clause 6.1 and to secure the licence referred to in clause 6.2.

6.4 The Supplier will indemnify and hold the Customer harmless against any damages (including costs) that may be awarded or agreed to be paid in respect of any claim or action that any goods supplied by the Supplier infringe any patent, copyright, registered design, trade secret, trade mark or any other proprietary right of a third party.

7 Hazardous Goods

7.1 If any Work to be supplied under any Order contains any hazardous substances or requires any special precautions to be taken to ensure safety in handling, transport, storage or use, the Supplier shall prior to delivery furnish the Customer with written details of the nature of those substances and the precautions to be taken and shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked or securely attached to any containers into which they are packed.

8 Warranties

8.1 The Supplier warrants that all of the Work supplied by it:

- (i) will be of satisfactory quality, in full accordance with any specification in the Order or which the Customer may provide the Supplier with from time to time and will be fit for any purpose stated by the Customer prior to or in the Order or held out by the Supplier;
- (ii) will be free from all defects in design, material and workmanship;
- (iii) will correspond with any samples provided;
- (iv) will not infringe any intellectual property rights or other rights of any third party anywhere in the world; and
- (v) will conform with all standards referred to on any part of any goods supplied by the Supplier as part of the Work and in any product packaging and/or documentation in, with or in relation to which the goods is supplied.

GROUP TERMS OF PURCHASE

- 8.2 Any services supplied by the Supplier as part of the Work will be performed by appropriately qualified and trained personnel with all due skill, care and diligence and to such high standards of quality stated in the Order or (if none are so stated) as it is reasonable for the Customer to expect.
- 8.3 The Work will comply with all applicable laws, standards, codes of practice (whether voluntary or mandatory), statutory requirements or other regulations.
- 8.4 The provisions in this clause 8 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Agreement and shall extend to any replacement, repaired, substitute or remedial Work provided by the Supplier.
- 8.5 The Customer's rights under the Agreement are in addition to the statutory terms implied in favour of the Customer by the Sale of Goods Act 1979 and any other statute.
- 9 Indemnity**
- 9.1 The Supplier shall indemnify and hold the Customer harmless against any claim, demand, proceeding, investigation or other like action from time to time made against the Customer and all losses, liabilities, damages, costs, claims or expenses suffered, made or incurred by the Customer as a consequence of:
- (i) any breach by the Supplier of the Agreement, or any representation, warranty or condition (express or implied) given by the Supplier;
 - (ii) any act or omission of the Supplier (including the Supplier's employees, agents and sub-contractors) in supplying the Work;
 - (iii) any liability which the Customer may incur whether by court proceedings or by a bona fide out-of-court settlement as a result of a claim against it under the Consumer Protection Act 1987 (as replaced, amended, consolidated or re-enacted from time to time) in respect of an alleged defect in the Work; and
 - (iv) any negligent performance or failure or delay in performance of the Work by the Supplier
- 9.2 The Supplier shall not be liable to the Customer for any damage or injury to the extent that the same is caused by or arises out of the Customer's acts or omissions.
- 10 Insurance**
- 10.1 The Supplier shall maintain with an insurance company of good repute insurance (including product liability and/or professional indemnity insurance where appropriate) providing cover consistent at least with the best industry practice of suppliers of work of the type to be supplied by the Supplier to the Customer and in an amount of not less than £1,000,000 for any claim or series of related claims.
- 11 Cancellation**
- 11.1 The Customer may terminate all or any part of the Order without any liability immediately by notice to the Supplier, and without limitation in the following circumstances:
- (i) if the Supplier breaches any term of the Agreement and (where in the Customer's reasonable opinion the breach can be remedied without any delay to the time for supply under Clause 3) fails to remedy the breach by that time for supply or (if earlier) within 7 days of the Customer so requiring; or
 - (ii) if the Supplier ceases to or threatens to cease to carry on business, has a receiver or administrative receiver appointed over all or part of its assets, compounds with its creditors, becomes subject to an administration order or a bankruptcy order or goes into liquidation or suffers similar proceedings under any competent jurisdiction;
- 11.2 Clauses 6, 9, 10 and 12, shall survive termination or completion of all or any Order.
- 11.3 If this Agreement is terminated for any reason all rights granted under this Agreement will terminate except for the Customer's continued right to use the Work supplied under this Agreement and the rights granted pursuant to clause 6 of these terms and conditions.
- 12 Confidentiality**
- 12.1 The Supplier shall keep confidential and not use save in performance of the Customer's Orders all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature (the "**Confidential Information**") obtained by the Supplier in connection with the Order. The Supplier shall inform its employees, agents and sub-contractors of the requirement of confidentiality and indemnify the Customer against any unauthorised use or disclosure by any of them of such Confidential Information.
- 13 Force Majeure**
- 13.1 The Customer shall have no liability to the Supplier, or be deemed to be in breach of this Agreement, and/or may defer the date of delivery or payment, or cancel the Agreement or reduce the quantity of Work ordered, as a consequence of any of the following events:
- (a) flood, storm, severe weather conditions or other natural events;
 - (b) war, terrorist action, hostilities, revolution, riot or civil disorder;
 - (c) any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, materials (including any computer hardware or software or any records) unless by an act or omission of the Customer's employees, agents or sub-contractors;
 - (d) the introduction of, or any amendment to, a law or regulation, or any change in the interpretation or application by any authority;
 - (e) any strike, lockout or other industrial action;
 - (f) any obstruction of any public or private highway or road or any event which prevents or obstructs access to the Location;
 - (g) any breach of contract or default by, or insolvency of, a third party (including an agent or sub-contractor); or
 - (h) any other event outside the Customer's reasonable control, whether similar or not to any of the foregoing.
- 14 VAT and taxes**
- 14.1 All sums payable are exclusive of any VAT chargeable on the supplies for which such sums (or any part of them) are the whole or part of the consideration for VAT purposes.
- 14.2 Where any party makes a supply to any other party (**Recipient**) for VAT purposes and VAT is or becomes chargeable on that supply for which the supplying party is required to account to the relevant tax authority, the Recipient shall, subject to the receipt of a valid VAT invoice, pay the supplying party (in addition to, and at the same time as, any other consideration for that supply) the amount of such VAT.
- 14.3 Where any party is required to reimburse or indemnify any other party for any cost or expense, that first party shall, subject to the other party providing a valid VAT invoice, reimburse or indemnify the other party for the full amount of the cost or expense, including any VAT on that amount, except to the extent that the other party is entitled to credit or repayment for that VAT from any tax authority.
- 14.4 All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase or import of the Work shall be the responsibility of, and for the account of, the Supplier.
- 14.5 Any reference in this clause 14 to any party shall, at any time when such party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).
- 15 General**
- 15.1 The Customer engages the Supplier as an independent contractor. Nothing in this Agreement shall create a partnership or the relationship of principal and agent or employer and employee.
- 15.2 If any provision of this Agreement is found by any court or administrative body or competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this Agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.
- 15.3 A waiver of the Customer's rights shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, power or remedy available to that party and the rights, powers and remedies shall be cumulative.
- 15.4 The Supplier shall not transfer this Agreement or any of its rights, liabilities or obligations nor shall the Supplier sub-contract any of its obligations under it, whether in whole or in part, without first obtaining the Customer's prior written consent. Such consent, if granted, shall not release the Supplier from any of its obligations and liabilities which may exist under this Agreement from time to time.
- 15.5 All notices which are required to be given under this Agreement shall be in writing and shall be sent to the registered office of the recipient or such other address as the recipient may designate by notice given in accordance with the provisions of this clause.
- 15.6 Notices should be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched.
- 15.7 Headings to clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 15.8 For the purposes of Section 1(2) of the Contracts (Rights of third Parties) Act 1999 the parties state that they do not intend any term of this Agreement to be enforced by third parties, save that any company in the Group shall be entitled to enforce the rights granted to the Customer.
- 15.9 Any forecasts of requirements which may be given by the Customer to the Supplier will be given in good faith, but are for information purposes only. In no circumstances should a forecast be considered an Order and any advance manufacture or procurement shall be at the Supplier's sole risk.
- 15.10 This Agreement and any non-contractual obligations in relation to it shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts.