

PART 2 - TRADING TERMS

1. DEFINITIONS: In this document **insolvent** means insolvent (as defined in the Companies Act 1993), in receivership, in receivership and management, in liquidation, in provisional liquidation, administration, wound up, subject to any arrangement, assignment or composition or protected from any creditors under any statute or dissolved (other than to carry out a reconstruction while solvent). **payable** in relation to an amount means an amount which is currently payable or will or may be payable in the future. **person** includes firm, partnership, committee, and incorporated and unincorporated bodies. **we, us** or **our** means Accolade Wines New Zealand Limited (Company No. 4661159) trading as Accolade Wines and its successors and assigns. **customer** means the person or persons named on the front of this document as the customer and if there are more than one, means each of them separately and every two or more of them jointly. **goods** means all products and services supplied by us to the customer under any contract or arrangement between us and the customer. **document** means this document comprising the invoice and these trade terms. The singular includes the plural and vice versa. A reference to anything includes the whole or each part of it.

2. GENERAL: These terms and conditions shall prevail over any terms of the customer unless the contrary is expressly agreed by us in writing signed by an authorised manager or solicitor acting for us.

3. PRICE: All prices given by us are effective as at the date on which the price is given and are subject to alteration without notice to the customer. Unless otherwise specified, all prices are inclusive of any delivery costs (including freight, loading and insurance) and government charges which, if applicable, will be for the customer's account. We shall charge fees for performance of services including, without limitation, a management fee to administer transit insurance, an account management fee following a default by the customer or administration fee following dishonour of a cheque. Details of fees are available upon request.

4. PAYMENT: All monies in connection with goods acquired by the customer in any month are payable on the last business day in the immediately following month. Payment is to be made to the place for payment provided in our tax invoice and if none is provided to our address set out in the schedule. We may charge interest at our discretion on any monies on any account whatsoever that are overdue, calculated at the corporate overdraft reference rate offered by HSBC as at the first business day of each month. Any costs, fees (including cheque dishonour fees) and expenses including any legal or debt collection agency costs incurred by us in connection with any overdue amount shall be recoverable as a debt immediately due to us by the customer and in the case of legal costs on a full indemnity solicitor-client basis. The customer shall not set off or rely on any equitable right of set off with respect to any amount payable to us. We may in our discretion deduct from, set-off against and/or otherwise reduce or deem satisfied any obligation it may have to the customer to the extent of any obligation that the customer may have to us (whether present or future, certain or contingent, ascertained or sounding only in damages) on any account whatsoever.

5. DEFAULT: The customer shall be in default if any money is not received when due or there are reasonable grounds for us to form the opinion that the customer is insolvent or will not perform its obligations on any account whatsoever. In that event the customer shall be taken to have requested and we shall automatically suspend further trade. In the event of default we may also, at our discretion, withhold any delivery, enter any premises and seize any goods that are reasonably believed to be our property and sell them to pay any money payable or damages and/or by written notice terminate any or all contracts with the customer.

6. CHANGE IN PARTICULARS: The customer agrees that it must promptly notify us of any sale of its business, cessation of trade, the vacation of premises of the business or commencement of business at new premises. The customer must also advise of any change to its address or contact phone numbers. If the customer is a company then it must notify us of any change in control of the customer. Upon any notification of change of ownership of the business or a change of control of the customer either the customer or us may terminate this document by notice in writing to the other but without prejudice to the customer's obligation to pay to us all monies payable.

7. CLAIMS: It is the responsibility of the customer to verify goods received are in all respects in accordance with the customer's order and suitable for intended use. Any claim for incorrect supply of goods must be notified by the customer to us within 7 days of receipt of the goods. Within 14 days thereafter full particulars and substantiation of the claim must be made by the customer in writing to us. Any claim which the customer does not notify or substantiate within such time (time being of the essence) shall be deemed to have been absolutely waived.

8. IMPLIED TERMS: All conditions and warranties are hereby expressly excluded to the full extent permitted by law. Any condition or warranty that cannot be lawfully excluded is limited to, at our option, the replacement or rectification of the goods or supply of equivalent goods or the cost of replacing or rectifying the goods or of acquiring equivalent goods.

9. INDIRECT LOSS: So far as the law permits we shall not be liable in any way whatsoever for any loss of profit or indirect or consequential loss including but not limited to any such loss because of delay, defect, fault, failure, negligence or any act, matter or thing done or not done by us.

10. DELIVERY: Any time or date stated by us for availability of goods is an estimate only and the customer shall not be relieved of any obligation to accept or pay for the goods by reason of any delay. If we determine that we are or may be unable to supply within a reasonable time or at all the contract may be cancelled by us and in that event the customer shall have no claim against us whatsoever.

11. PROPERTY IN THE GOODS: Ownership of goods in each delivery passes to the customer only when all of the goods in that delivery are paid for in full and when all of the goods in all other deliveries are paid for in full. Until then all legal and beneficial title to the goods shall remain with us, the customer holds the goods as our fiduciary, bailee and agent and the goods must be kept separate and readily identifiable as our goods. If any goods belonging to us are sold or otherwise disposed of then the customer shall hold the proceeds on trust for us.

12. SECURITY INTEREST: In this clause 12, "PPSA" means the Personal Property Securities Act 1999. For the purpose of this clause 12, words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the PPSA.

The customer grants to us a Security Interest in the goods and their Proceeds as security for all amounts owing to us and the performance of the customer's obligations under this document. The customer acknowledges receipt of this document and agrees that it will execute all documents required by us to maintain, register and enforce our Security Interest in respect of the goods. If we register the Security Interest created by this document under the PPSA, the customer waives its rights to receive a copy of the verification statements in terms of section 148 of the PPSA and also waives its rights under sections 120, 121 and 131 of the PPSA. We and the customer also contract out of Part 9 of the PPSA to the extent that the rights and obligations contained in sections 114, 116, 117, 119, 125, 129, 132, 133 and 134 of that part of the PPSA do not apply as between us and the customer. The customer agrees that:

- a) the customer will, upon receiving a written request from us and at its own cost and expense, promptly deliver all or any of the goods to us. If the customer fails to deliver the goods upon request, we may at any time enter into any place where the goods are located and remove the goods;
- b) we may sell all or any of the goods without giving prior notice of the sale to the customer;
- c) it shall immediately notify us of any change in the customer's name, address or contact person details.

The customer waive any right it may have to receive from us copy of any Financing Statement, Financing Change Statement or Verification Statement that is registered, issued, or received at any time in relation to this document. The customer will pay all of our costs and expenses in relation to compliance with any demand given by it under section 162 of the PPSA, or in relation to any application for, or the obtaining of, a court order to maintain any registration in respect of any of the Security Interests created by this document and serving any such court order on customer or the Registrar of Personal Property Securities.

13. RISK: Unless otherwise agreed in writing, risk in the goods shall pass to the customer upon delivery of the goods to the customer or its agent or to a carrier commissioned by the customer.

14. BULK AND COMMERCIAL PURCHASES: Sale of bulk grape juice, bulk wine, concentrate and cleanskins are additionally governed by any written agreement signed by the parties in respect of those goods.

15. PERFORMANCE & REPRESENTATIONS: The customer acknowledges there have been no representations or conduct giving rise to any understanding other than have been expressly recorded in writing. The customer agrees that it is not reasonable for it to (and it will not) rely on any representation or conduct that is not acknowledged in writing.

16. WAIVER: Any waiver by us under this document must be in writing and signed by us. No failure, delay or the like by us shall affect our legal rights under this document.

17. CERTIFICATES: A certificate of our General Manager, Credit Manager or any other of our employees fulfilling a like function shall in all Courts be admissible and be accepted as prima-facie evidence of any debt owed to us and/or any fact circumstance or thing stated therein that is relevant to any rights with respect to the customer.

18. MISCELLANEOUS: This document is subject to the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of that place. The rights and obligations of the parties will not merge on completion of any transaction under these terms & conditions. We may amend these terms and conditions by written notice to you.