

Accolade Wines Australia Limited
ABN 86 008 273 907

Purchase Terms
for the Purchase of Goods and Services



Purchase Terms

1. Definitions and Interpretation

1.1 Definitions

In these Purchase Terms and the Purchase Order, the following words have the following meanings:

Accolade Wines means Accolade Wines Australia Limited ABN 86 008 273 907 trading as Accolade Wines.

Accolade Wines Parties means Accolade Wines and the respective directors, officers, employees, consultants, subcontractors and agents of Accolade Wines.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or bank holiday in the place where an act is to be performed or a payment is to be made.

Goods means the items, raw materials, packaging and finished goods specified in the Purchase Order or the Schedule (as the case may be).

GST has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations made under it.

Premises means the premises of Accolade Wines specified on the Purchase Order or the Schedule (as the case may be).

Purchase Order means any form of order for the supply of Goods or performance of Services placed with the Supplier by Accolade Wines

Services means the services specified in the Purchase Order or the Schedule (as the case may be).

Special Conditions means the special conditions (if any) contained in the Schedule to the Purchase Terms.

Purchase Terms means the terms and conditions contained in this document as varied by the Special Conditions.

Specification means the specification:

- (a) contained in the Purchase Order or the Schedule (as the case may be); and
- (b) otherwise as advised by Accolade Wines to the Supplier from time to time.

Supplier means the party specified as the supplier on the Purchase Order or the Schedule (as the case may be) and includes the Supplier Parties as the context requires.

Supplier Parties means the Supplier, its related bodies corporate and their respective directors, officers, employees, consultants, subcontractors and agents.

1.2 Interpretation

In these Purchase Terms, unless the contrary intention appears:

- (a) words denoting the singular include the plural and vice versa;
- (b) a reference to any one of an individual, corporation, partnership, joint venture, association, authority, trust or government includes (as the context requires) any other of them;
- (c) headings are for convenience only and do not affect interpretation;
- (d) a reference to any instrument (such as a deed, agreement or document) is to that instrument (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time and from time to time;
- (e) a reference to a party is a reference to a party to the Contract and includes that party's executors, administrators, successors and permitted assigns;
- (f) a reference to a clause, Schedule or Annexure is to a clause (including sub-clause, paragraph, sub-paragraph or further subdivision of a clause), Schedule or Annexure of or to these Purchase Terms, and a reference to a paragraph is to a paragraph in a Schedule;
- (g) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or substitution for, and any subordinate legislation under, that legislation or legislative provision;
- (h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (i) the Schedules and Annexure form part of these Purchase Terms; and
- (j) including and similar expressions are not and must not be treated as words of limitation; and
- (k) words which have a particular meaning in the GST law (as defined in the GST Act) or any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires.

2. Formation of Contract

2.1 Components of a Contract

These Purchase Terms and Schedules (if any) apply to any Purchase Order and together with the Purchase Order, constitute a contract between the Supplier and Accolade Wines ("**Contract**").

2.2 Exclusion of Supplier terms and conditions

No terms and conditions of the Supplier which vary or are in any way inconsistent with the Contract will be incorporated into the Contract. The acceptance of, or payment for Goods or Services by Accolade Wines shall not constitute acknowledgement or acceptance of the Supplier's terms and conditions.

2.3 Entire agreement

The Contract shall constitute the entire agreement between the Supplier and Accolade Wines on the subject matter of the Contract and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing, except to the extent to which they contain details relating to the Purchase Order which are required or necessary in order to give effect to the Contract and which do not vary and are not in any way inconsistent with the Contract.

2.4 Interpretation of Contract – Order of precedence

The Contract must be read in the following order of precedence:

- (a) the Purchase Order; then
- (b) the Schedule (if applicable); and then
- (c) the Purchase Terms.

2.5 Revocable offer

Where Goods and Services are to be procured via submission of a Purchase Order by Accolade Wines, the Purchase Order constitutes a revocable offer to purchase the Goods or Services from the Supplier on the terms of the Contract. Accolade Wines will not be liable for any order or commitment unless it is issued or confirmed by a Purchase Order.

2.6 Acceptance of offer to supply

The Supplier's engagement under the Contract is deemed to be accepted by the Supplier upon the earlier of:

- (a) where the Goods or Services are specified in the Schedule, the signing of the Purchase Terms;
- (b) where the Goods or Services are specified in a Purchase Order, the Supplier's written acknowledgement of receipt of this document and of the Purchase Order, or, if the Supplier has previously signed an acknowledgment of receipt of the Purchase Terms, under the Supplier's written or verbal acknowledgment of the Purchase Order;
- (c) the Supplier commencing to supply the Goods or perform the Services; or
- (d) any other conduct on the part of the Supplier which is, in the reasonable opinion of Accolade Wines, consistent with acceptance by the Supplier of the Contract.

2.7 Commencement of Contract

The Contract commences on the date ("**Commencement Date**") on which the Supplier is deemed to have accepted engagement under the Contract in accordance with clause 2.6 and concludes on the date specified in the Schedule or if no date has been specified, on the date

on which the Goods have been supplied or the Services performed (as applicable) to the satisfaction of Accolade Wines in accordance with the Contract, subject to clause 15.

2.8 Purchase Terms may be updated from time to time

- (a) Accolade Wines may update, vary or replace the Purchase Terms from time to time.
- (b) Accolade Wines must send a notice (“**notice**”) to the Supplier setting out the updated, varied or replacement Purchase Terms (“**Revised Terms**”).
- (c) Accolade Wines Revised Terms shall form the Contract on and from the date the Supplier next supplies Goods or Services after receipt of the Revised Terms.

3. Goods – delivery, title and risk

3.1 Delivery

Delivery of the Goods to Accolade Wines (“**Delivery**”) takes place when the Goods are fully unloaded at the Premises. In all cases where the Contract specifies the unit of measurement of the Goods to be supplied, the unit of measurement as shown by Accolade Wines shall be conclusive.

3.2 Passing of risk and retention of title

Unless otherwise specified in the Contract or as otherwise agreed in writing by the parties, title and risk in the Goods and any product of the Services shall pass from the Supplier to Accolade Wines upon Delivery, except that if the Goods and/or any product of the Services are paid for before Delivery then title shall pass to Accolade Wines once payment has been made. Any retention of title by the Supplier is expressly excluded.

3.3 Paperwork to accompany delivered Goods

All Goods must be accompanied by the necessary shipping documents (including, without limitation, any documentation required by law and export licenses, certificates of origin or permits) and including any information that Accolade Wines requires and notifies to the Supplier. All applicable fees, taxes, duties (including without limitation, any import or export duties or both) and charges must be paid by the Supplier prior to Delivery, unless otherwise agreed in writing. Accolade Wines must be given every assistance by the Supplier in obtaining any other documents relating, directly or indirectly, to the Goods to be supplied which Accolade Wines may reasonably require, whether such documents are in the possession, custody and control of the Supplier or a third party.

3.4 Packing

Goods must be properly packed by the Supplier or otherwise prepared for transportation in such a way as to avoid damage to the Goods.

3.5 Partial supply

If the Supplier is unable to supply Accolade Wines' total order as set out in the Purchase Order or Schedule (as the case may be), Accolade Wines may, at its discretion, accept partial supply and the Contract will apply to the Goods or Services supplied. Accolade Wines reserves the right to refuse to accept liability for any Goods delivered in excess of the quantity

ordered or not in accordance with any delivery schedule referred to in the Purchase Order or Schedule.

4. Inspection and Testing

4.1 Inspection and testing of Goods and Services

Accolade Wines reserves the right, on giving reasonable notice to the Supplier, to inspect, and where practicable test the Goods or their manufacturing process or both and any Services at any reasonable time. Such inspection may occur at the Supplier's premises and Accolade Wines may for this purpose enter upon the premises of the Supplier or its subcontractors from time to time. The Supplier must procure that its subcontractors allow Accolade Wines to enter upon the subcontractors' premises for the purpose of conducting inspections under this clause. Any such inspection shall not relieve the Supplier of its obligations under the Contract.

4.2 Unsatisfactory Goods and Services

All Goods and all Services shall, notwithstanding the acceptance of delivery or performance (as the case may be), or payment of all or part of the agreed price, be subject to inspection and testing by Accolade Wines. If, after any inspection, the Goods or Services are found to be unsatisfactory, defective or not in accordance with the Contract or any warranty implied by statute, Accolade Wines may, without prejudice to any rights or remedies available to Accolade Wines under the Contract or at law, reject the Goods or Services and in its absolute discretion:

- (a) return the Goods to the Supplier at the Supplier's cost and expense; or
- (b) require the Supplier to re-perform the Services at the Supplier's cost and expense and/or acquire replacement Services from an alternative supplier,

whereupon the Supplier shall upon demand by Accolade Wines, reimburse Accolade Wines for any amount paid by Accolade Wines to the Supplier for the Goods or Services (as the case may be) and for the costs and expenses incurred by Accolade Wines in returning the Goods or acquiring replacement Services.

4.3 Inspection without prejudice to rights or remedies

Any inspection, whether before or after Delivery or performance or any approval by Accolade Wines of any specifications, drawings, samples or other descriptions in relation to the Goods or Services prepared by the Supplier, is without prejudice to any rights or remedies that accrue to Accolade Wines under the Contract or at law or otherwise.

5. Delay, refusal or failure to supply Goods or perform Services

5.1 Time of the essence

Time is of the essence in respect of each obligation of the Supplier under the Contract.

5.2 General consequences of delay

If the Supplier does not supply the Goods or perform the Services at the time or times specified in the Contract then, without prejudice to any rights or remedies that accrue to

Accolade Wines under the Contract or at law or otherwise, Accolade Wines may terminate the Contract immediately by giving written notice to the Supplier.

5.3 Supplier obligation to notify delay

Notwithstanding any other provision of the Contract, the Supplier must give reasonable notice to Accolade Wines in writing if, for any reason, the Supplier anticipates that the performance of all or any of its obligations under the Contract may or will be delayed beyond any date specified in the Contract or as otherwise agreed between the parties. The Supplier acknowledges and agrees that if it fails to notify Accolade Wines, Accolade Wines may terminate the Contract immediately by giving written notice to the Supplier.

5.4 Limitation of liability

If Accolade Wines terminates the Contract pursuant to this clause 5, the Supplier acknowledges and agrees that the Accolade Wines Parties will have no liability on any basis, including, without limitation, in respect of any costs or loss (including financial loss or damages) incurred or suffered by the Supplier Parties, arising directly or indirectly as a result of the termination.

5.5 Alternate Supply

If the Supplier fails or refuses to deliver Goods or provide Services in compliance with the terms and conditions of the Contract, Accolade Wines may arrange an alternate supply of the relevant Goods or provision of the relevant Services on such terms and conditions as Accolade Wines sees fit.

6. Prices and terms of payment

6.1 Content requirement for tax invoices

- (a) The price for the Goods or Services will be as stated in the Purchase Order or Schedule (as the case may be) and exclude GST (where chargeable under GST legislation).
- (b) The Supplier must give a tax invoice to Accolade Wines for the Goods or Services and, unless otherwise agreed by the parties, the price stated on the tax invoice includes all ancillary costs associated with supplying the Goods or performing the Services including, without limitation the cost of labour and materials, delivery and packaging costs, insurance costs and all applicable fees, taxes, duties (including, without limitation, any import or export duties or both) and charges. No additional charges other than these in the Schedule or PO will be paid unless agreed by Accolade Wines in writing in advance.

6.2 Payment period

Unless otherwise specified in the Purchase Order or Schedule (as the case may be), payment must be made by Accolade Wines on the first business day following 60 days from the end of the month of invoice.

6.3 Delivery condition

Unless otherwise agreed by the parties, the Supplier must invoice Accolade Wines following the supply of the Goods or Services. All payments are contingent on the Goods conforming with the Contract or the Services being performed in accordance with the Contract and the receipt of complete and accurate tax invoices and documentation.

6.4 Sending a tax invoice

All tax invoices must be sent by the Supplier by email to ap@accolade-wines.com in accordance with the processes stipulated by Accolade Wines.

6.5 Tax invoice format

The Supplier must ensure that all tax invoices include:

- (a) where applicable, the Accolade Wines Purchase Order number and the date of the Purchase Order;
- (b) the specific nature of the Goods supplied or Services performed;
- (c) the date of supply of the Goods or performance of the Services;
- (d) the price excluding GST and other taxes, the amount of GST and other taxes, and the total including GST and other taxes; and
- (e) any other data or information that Accolade Wines may reasonably request in writing.

6.6 Further assurances

Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with the Contract.

6.7 Payment on account

The making of a payment by Accolade Wines to the Supplier is not to be taken as evidence that any of the Goods have been delivered or Services have been performed properly in accordance with this Contract or at all, and shall not prejudice Accolade Wines' right:

- (a) to make claims against the Supplier; or
- (b) to recover any amount paid to the Supplier by mistake of fact or law.

6.8 Set-Off

Without limiting any other right Accolade Wines may have under the Contract or otherwise at law, Accolade Wines may deduct or set-off from payments to the Supplier any amounts which:

- (a) the Supplier must reimburse Accolade Wines;
- (b) Accolade Wines pays on the Supplier's behalf;
- (c) the Supplier owes to Accolade Wines; or

- (d) relate to a claim to money which Accolade Wines may have against the Supplier whether for damages or otherwise.

7. Supplier's Obligations

7.1 General requirement

The Supplier agrees to supply the Goods and to perform the Services at the Premises in accordance with the Contract to the satisfaction of Accolade Wines.

7.2 Documents and procedures

The Supplier must familiarise itself with and at all times observe and comply with:

- (a) all safety and working practices guidelines (by whatever name called) or instructions issued by Accolade Wines as amended from time to time, whether written, verbal or displayed on the Premises; and
- (b) all applicable laws.

7.3 Conditions for supply of Goods

Without limiting any other provision of the Contract, the Supplier must ensure the Goods and any product of the Services supplied to Accolade Wines are:

- (a) free from risks to health and safety or, where that is not reasonably practicable, the risks have been minimised to the lowest level reasonably practicable;
- (b) compliant with all relevant occupational health and safety legislation and relevant occupational health and safety ("OH&S") regulations, OH&S codes of practice and relevant Australian Standards; and
- (c) clearly and durably labelled in a manner that identifies the Goods and provides all necessary information in relation to the proper and safe use, maintenance and storage of the Goods.

7.4 Information applicable to use, storage and maintenance

The Supplier agrees to supply the Goods with all relevant information pertaining to the use, storage and maintenance of the Goods and any relevant technical information, including health and safety information, in a manual or similar in hard copy or machine-readable format.

7.5 Hazardous goods

If the Goods supplied are hazardous substances or hazardous materials, radiation substances or biological substances, the Supplier agrees to supply the Goods with clear and durable labelling and copies of all relevant technical information sheets including material safety data sheets, radiation safety data sheets and information data sheets (respectively).

7.6 Supplier obligations

The Supplier must at all times:

- (a) exercise due care, skill, diligence and judgment and at all times act in an honest and ethical manner and in accordance with the highest professional principles and standard;
- (b) not, without the prior written consent of Accolade Wines, make or permit any change in the composition, characteristics or origin of the Goods or Services, including ingredients, additives and use of processing aids, compared with previous supplies to Accolade Wines by the Supplier, whether the change is made by the Supplier or earlier participants in the supply chain;
- (c) employ or engage a sufficient number of suitably trained, qualified, skilled and experienced personnel to properly and efficiently comply with its obligations under the Contract;
- (d) ensure the Services are undertaken safely and that any risks to health and safety in connection with the Services are eliminated or, where that is not reasonably practicable, minimised to the lowest level reasonably practicable;
- (e) ensure the Services are carried out at the Premises in compliance with requirements of any relevant OH&S legislation and OH&S regulations, OH&S codes of practice and Australian Standards;
- (f) to the extent the Services are provided at the Premises;
 - (1) identify all reasonably foreseeable hazards arising from the Services and with respect to each hazard, assess the risks arising from the hazard and minimize those risks as far as reasonably practicable;
 - (2) ensure that all the Supplier's contractors and employees involved in the provision of the Services at the Premises are provided with sufficient information. Instruction, training and supervision to ensure their health and safety while at the Premises;
- (g) act in good faith in its dealings with Accolade Wines;
- (h) supply the Goods or perform the Services in a timely manner and within the agreed timeframes;
- (i) comply with the directions and protocols as notified by Accolade Wines from time to time regarding the use of the intellectual property of Accolade Wines;
- (j) prepare and submit, in the form required by Accolade Wines and within such reasonable time as may be stipulated by Accolade Wines and notified to the Supplier, such progress or other accurate reports on the performance by the Supplier and any subcontractor of its obligations under the Contract, as required by Accolade Wines;
- (k) not represent that it is associated with Accolade Wines; and
- (l) not do or be involved in anything which may impair or prejudicially affect the reputation or intellectual property of Accolade Wines.

7.7 Supplier Subcontractors

- (a) Except in accordance with clause 7.7(b), the Supplier must not subcontract or delegate the performance of any part of the Services or any other of its obligations under this Contract to any person without Accolade Wines' prior written consent.

- (b) The Supplier may subcontract without Accolade Wines' prior written consent to the persons listed in item 11 of the Schedule (**Permitted Subcontractors**).

8. Access to Premises

8.1 General right of access

If the Contract requires the Supplier to supply the Services at the Premises, Accolade Wines will provide the Supplier with sufficient access to the Premises to enable the Supplier to commence and perform the Services.

8.2 Restrictions on access

Accolade Wines:

- (a) may from time to time impose necessary restrictions on access to the Premises; and
- (b) will not, and will not be obliged to, provide the Supplier with access to the Premises unless the Supplier has provided to Accolade Wines evidence in accordance with clause 11 that all insurances that the Supplier is required to effect pursuant to these Purchase Terms before commencing the Services at the Premises have been effected and continue to be maintained.

8.3 Supplier's obligations in relation to access

The Supplier must, and must ensure that the Supplier Parties:

- (a) when present at the Premises or using any of Accolade Wines' facilities, equipment or resources, become familiar with and comply with all rules, policies, standards, codes of conduct, directions and procedures of Accolade Wines, including those related to the environment, workplace health and safety and appropriate use of information technology in a like manner as if they were employees of Accolade Wines.
- (b) promptly report to Accolade Wines any accidents, dangerous occurrence, hazardous condition, security threat or other incident or potential incident on the Premises of which it becomes aware in accordance with Accolade Wines' Incident Reporting Procedure; and
- (c) take all measures to protect people, property and equipment;
- (d) avoid unnecessary interference with the passage of people and vehicles;
- (e) prevent nuisance and unreasonable noise and disturbance;
- (f) do not interfere with or interrupt the operations of Accolade Wines and the work of Accolade Wines other contractors at the Premises by the performance of the Services; and
- (g) do not damage, interfere with or interrupt any utility services connected with the Premises during the performance of the Services.

8.4 Supervision and Induction

The Supplier must ensure that the Supplier Parties:

- (a) are adequately supervised to ensure their health and safety and that of other persons on the Site at all times while involved in the provision of Services under this Contract.
- (b) are provided with clear and detailed instructions by the Supplier concerning their role and responsibilities concerning the provision of the Services;
- (c) undertake at no additional cost to Accolade Wines, any induction program or other training that Accolade Wines reasonably requires be undertaken at the Site from time to time, including, without limitation, training on Accolade Wines' emergency procedures, incident reporting procedures and risk assessments; and
- (d) undertake, at no additional cost to Accolade Wines, any training required by law or which is necessary to ensure the safe performance of the Supplier's obligations under this Contract.

8.5 Occupational Health and Safety Plan

- (a) Accolade Wines may, at its discretion, require the Supplier to provide Accolade Wines with a risk assessment in respect of the Supplier's provision of Services under this Contract
- (b) Accolade Wines may, but is not obliged to, monitor the Supplier's compliance with the OH&S requirements including, but not limited to:
 - (i) conducting audits of the Supplier's performance;
 - (ii) requiring the Supplier to provide it with whatever documents and other information Accolade Wines requires regarding the Supplier or the Supplier Parties in relation to:
 - A. certification of insurances;
 - B. licences of the Supplier Parties;
 - C. registration of any vehicles; and
 - (iii) any other matter which it considers appropriate.
- (c) The Supplier must cooperate with any monitoring undertaken by Accolade Wines under this clause and must provide any documents or information requested by Accolade Wines from time to time.

9. Supplier warranties

9.1 Warranties

The Supplier undertakes and warrants that:

- (a) the Supplier has the right to sell the Goods or perform the Services, and that the Goods are free from any charge or encumbrance;
- (b) where the Goods or Services are supplied by reference to a sample, the Goods or Services will correspond with the sample in quality;

- (c) the Goods and Services will satisfy Accolade Wines stated requirements in all respects and comply with the specifications and with any other specifications which Accolade Wines has made known to the Supplier in connection with the Contract;
- (d) the Goods and Services will comply with or be performed in accordance with all applicable laws and regulations, including any relevant licensing and registration requirements;
- (e) the Goods and Services will be supplied by the Supplier in accordance with any timeframes specified in the Contract or, if no timeframes are specified, within a reasonable timeframe;
- (f) the Goods will be of merchantable quality, free from all defects and fit for any purpose which Accolade Wines has made known to the Supplier whether expressly or by implication;
- (g) the Goods will be free from foreign bodies, contamination and, in the case of food, feeding stuffs or their ingredients, will be wholesome and fit for human consumption;
- (h) the Goods and Services will be supplied to Accolade Wines in accordance with all relevant standards, including the relevant engineering and safety standards of Accolade Wines as advised to the Supplier from time to time;
- (i) the Services will be supplied with all due care and skill;
- (j) it is qualified to provide the Services and will provide evidence of such qualification if requested by Accolade Wines;
- (k) it has the power and has obtained at its own risk and expense all permits, licences, consents and authorizations required or necessary to enter into and observe its obligations under the Contract;
- (l) it will ensure that all of the Supplier Parties engaged in the performance of the Contract comply with the Contract;
- (m) it will do all things necessary to supply the Goods or perform the Services to the satisfaction of Accolade Wines;
- (n) it will comply with all lawful directions of Accolade Wines in carrying out its obligations under the Contract;
- (o) it has no professional or contractual obligations which currently or may during the term of the Contract conflict with or adversely affect its ability to carry out its obligations under the Contract; and
- (p) it has the necessary expertise, skill, knowledge and resources to enable it to comply with its obligations under the Contract.

9.2 Suspension

- (a) If, at any time during the supply of the Services, Accolade Wines is of the opinion that the Supplier is in breach of its obligations under the Contract in relation to health and safety, Accolade Wines may direct the Supplier to suspend the supply of the Services in whole or in part.

- (b) The Supplier must immediately thereafter suspend the supply of the Services to the extent directed by Accolade Wines and rectify the breach at its own expense.
- (c) If the Supplier fails to comply with its obligation to rectify the breach Accolade Wines may, in addition to its other rights and remedies, have the obligation performed by others. The costs incurred in doing so will be a debt due and payable by the Supplier.

9.3 Supplier acknowledgement

The Supplier acknowledges that it has fully acquainted itself with all conditions of the Contract affecting the supply of the Goods and performance of the Services. Any failure by the Supplier to acquaint itself with any condition affecting the supply of the Goods or performance of the Services will not relieve the Supplier from responsibility for performing its obligations under the Contract.

9.4 Extent of warranties

- (a) The warranties set out in this clause 9 will survive indefinitely after the expiration or termination of the Contract (as the case may be).
- (b) These warranties are in addition to all applicable statutory warranties and apply for the benefit of Accolade Wines and its successors and assignees.

10. Liability

10.1 Supplier indemnity

The Supplier indemnifies, and will keep indemnified and hold harmless, each of the Accolade Wines Parties from:

- (a) all liabilities incurred by any of the Accolade Wines Parties, all losses incurred by any of the Accolade Wines Parties, and all costs actually payable by any of the Accolade Wines Parties to their own legal representatives (whether or not under a costs agreement) and other expenses incurred by any of the Accolade Wines Parties in connection with any and all actions, claims, demands, or other proceedings (including mediation, compromise, out of court settlement or appeal) arising directly or indirectly as a result of or in connection with:
 - (1) any breach by any of the Supplier Parties of any term of the Contract;
 - (2) the death of, any injury to, or loss of property of, any person as a result of or in connection with the performance of the Services or delivery of the Goods in or on any premises at which the Services are performed or Goods manufactured or to which the Goods are delivered;
 - (3) any negligent or wilful act or omission of any of the Supplier Parties;
 - (4) any breach of any warranty, promise or representation made by any of the Supplier Parties; and
 - (5) the Goods supplied or Services performed by the Supplier infringing or allegedly infringing any intellectual property rights of any third party.

- (b) Accolade Wines' rights at law and under the Contract including its right to be indemnified under this clause, are not affected by termination of the Contract, or Accolade Wines accepting the Supplier's repudiation of the Contract; or any other matter, fact or thing.

10.2 Non compliance by Supplier Parties

The Supplier acknowledges that it is responsible for any non-compliance with the Contract by any of the Supplier Parties.

11. Insurance

11.1 Insurance required

- (a) The Supplier must effect and maintain on and from the Commencement Date with an insurer approved by Accolade Wines appropriate liability insurance cover and such other insurance cover (including, without limitation, professional indemnity insurance cover) as is specified in the Schedule, or reasonably requested by Accolade Wines at the time of submitting the Purchase Order to the Supplier.
- (b) If the insurance maintained is a "claims made" policy, the insurance must be maintained for a period of six (6) years following termination or expiry of this Contract.
- (c) The insurance premiums and all excess payments applicable to the insurances shall at all times be the responsibility of the Supplier.

11.2 Evidence of insurance

- (a) The Supplier must, upon request by Accolade Wines from time to time, provide to Accolade Wines a copy of each policy of insurance and insurance certificates in respect of the insurances required to be maintained by the Supplier under clause 11.1.
- (b) The Supplier must immediately notify Accolade Wines of the cancellation or lapse of any insurance required to be maintained by the Supplier under clause 11.1.

11.3 Supplier Parties

It shall be the Supplier's responsibility to ensure that any agent or sub-contractor engaged by it in accordance with the Contract effects and maintains all insurances required by law and all other insurances as the Supplier may consider necessary. Any deficiencies in the cover or policy limits of insurance of agents and sub-contractors shall be sole responsibility of the Supplier.

11.4 No limitation

The effecting of insurance as required by this clause 11 shall not in any way limit the responsibilities, obligations or liabilities of the Supplier under other provisions of this Contract.

12. Intellectual property rights

12.1 Defined term

In this clause, Intellectual Property (“**Intellectual Property**”) includes, but is not limited to, ideas, designs, patents, trademarks, copyright and designs, whether registered or unregistered, software developments, computer programs, security codes, know-how, inventions and improvements in procedures made or discoveries conceived.

12.2 Supplier warranty – Third Party Intellectual Property rights

The Supplier warrants to Accolade Wines that it will not infringe any Intellectual Property rights of any third party in the course of or in connection with the supply of the Goods, the performance of the Services or the carrying out of its obligations under the Contract and further warrants that the use or enjoyment of such Goods or Services by Accolade Wines will not infringe the Intellectual Property rights of any third party.

12.3 Supplier undertaking – Intellectual Property created in performance of Contract

The Supplier agrees:

- (a) that Intellectual Property developed, created or conceived by the Supplier as a result of the performance of Supplier’s obligations under the Contract is and will be the sole and exclusive property of Accolade Wines;
- (b) that full right, title and interest in and to copyright works created by the Supplier in consequence of the performance of Supplier’s obligations under the Contract will vest in Accolade Wines immediately on creation;
- (c) to assign to Accolade Wines, full right title and interest in all other Intellectual Property created by the Supplier in consequence of the performance of Supplier’s obligations under the Contract; and
- (d) to promptly:
 - (1) assign to Accolade Wines, full right title and interest in; and
 - (2) execute all documents and do all things necessary to vest or assign to Accolade Wines, full right, title and interest in;

all Intellectual Property developed, created or conceived by the Supplier in consequence of the performance of Supplier’s obligations under the Contract.

12.4 Intellectual property of Accolade Wines

- (a) The Supplier acknowledges that the Intellectual Property of Accolade Wines provided to the Supplier will remain the exclusive property of Accolade Wines and Accolade Wines expressly reserves all of its intellectual property rights in its Intellectual Property.
- (b) The Supplier may only use any Intellectual Property owned by Accolade Wines with the prior written consent of Accolade Wines and for the sole purpose of complying with its obligations under the Contract. If Accolade Wines consents to the Supplier using any of the Accolade Wines Intellectual Property then it may only use such Intellectual Property in the manner required and on the terms specified by Accolade Wines from time to time. Any written consent by Accolade Wines to the Supplier to

reproduce any of the Accolade Wines Intellectual Property on any Goods or materials is solely for the purposes of the Contract and will expire upon the termination or cancellation of the Contract whichever occurs first.

12.5 Moral Rights

The Supplier must obtain from each individual who is involved in the provision of the Goods or performance of the Services all necessary written unconditional and irrevocable consents and waivers permitted by applicable law to any act or omission by Accolade Wines and any other person authorised by Accolade Wines, that would otherwise infringe any of their moral rights in the works or subject matter, whether occurring before or after a consent or waiver is given.

12.6 Survival

The obligations and warranties set out in this clause 12 will survive the expiration or termination of the Contract.

13. Confidentiality

13.1 Restriction

Each party undertakes that it will not disclose any Confidential information to any other person (save that Accolade Wines may disclose such information to the Accolade Wines Parties) except:

- (a) with the consent of the other party and for the purpose of or in connection with the performance of the first party's obligations under the Contract;
- (b) as required by law; or
- (c) where such Confidential information can be demonstrated to have been in the public domain at the time of the disclosure other than as a result of a breach of the Contract.

13.2 Extent of confidential information

- (a) For the purposes of this clause 13 "Confidential Information" means:
- (b) the terms of this Contract;
- (c) marketing information, customer lists, commercial relationships, contact lists or prospect lists;
- (d) pricing methods, the cost price of products and profit margins;
- (e) all information relating to the internal management, structure, personnel, policies, strategies, clients, suppliers or affairs of a party;
- (f) all information comprised in or relating to any intellectual property rights of a party;
- (g) all information relating to the financial position or reputation of a party and in particular, any information relating to the assets or liabilities of a party or any other matter that does or may affect the financial position or reputation of a party;
- (h) all product Specifications, formulas, operational procedures, processes; or

- (i) any other information relating to a party which has been disclosed to or learned by the other party under or in connection with the Contract.

13.3 Related bodies corporate

- (a) In this clause 13.3, a reference to a party includes each of its related bodies corporate.
- (b) Each party is responsible for any unauthorised disclosure made by any of its related bodies corporate and its and their respective directors, officers, employees, consultants, agents or subcontractors and must take all reasonable precautions to prevent such disclosures.

13.4 Confidentiality agreement

If requested by Accolade Wines, the Supplier must execute, and ensure that each of the Supplier Parties engaged in the performance of the Contract have executed a confidentiality agreement in a form approved by Accolade Wines.

13.5 Use of trademarks or names

The Supplier must not use the name, trademarks or trade names of Accolade Wines or any deceptively similar names or marks nor refer to its business connection with Accolade Wines at any time, whether before, during or after the term of the Contract without prior written consent from Accolade Wines.

13.6 Use of data

The Supplier acknowledges and agrees that any data (including without limitation personal data) owned by the Supplier and provided to Accolade Wines in the course of or in connection with the Contract may be lawfully stored, processed and utilised by Accolade Wines or by a third party engaged by Accolade Wines.

14. Privacy

14.1 Obligations

If the Supplier collects or has access to personal information in order to provide the Services the Supplier must:

- (a) not use personal information other than for the purposes of the supply of the Services, unless required or authorised by law;
- (b) not disclose personal information without the consent of Accolade Wines, unless required or authorised by law;
- (c) not transfer personal information outside of Australia without the consent of Accolade Wines;
- (d) ensure that access to personal information is restricted to those of its employees and officers who require access in order to perform their duties;
- (e) ensure that its officers and employees do not access, use or disclose personal information other than in the performance of their duties;

- (f) ensure that its sub-contractors who have access to personal information comply with obligations the same as those imposed under this clause;
- (g) fully co-operate with Accolade Wines to enable Accolade Wines to respond to applications for access to, or amendment of, a document containing an individual's personal information and to privacy complaints; and
- (h) comply with such other privacy and security measures as Accolade Wines reasonably advises the Supplier in writing from time to time.

14.2 Notification of breach

The Supplier must immediately notify Accolade Wines on becoming aware of any actual, potential or suspected breach of clause 14.1.

15. Termination

15.1 Termination by Accolade Wines

- (a) Accolade Wines may, at its option, by written notice terminate the Contract in whole or in part with respect to any undelivered Goods or any Services not fully performed. If the Supplier is not in default under the Contract, the only liability of Accolade Wines for terminating the Contract in accordance with this clause 15.1 will be:
 - (1) where the Goods have been shipped or Services fully performed prior to termination, subject to proper delivery of the Goods and without limiting the terms of the Contract, to pay for the shipped Goods or Services at the agreed price;
 - (2) where Goods are not yet completed for delivery or Services not yet fully performed, to pay for the direct and proven reasonable costs actually incurred by the Supplier up to the date of termination;
 - (3) where it is proven that the Goods are completed in accordance with the Contract and prior to the termination notice, subject to delivery and the Contract, to pay the agreed price or the completed Goods but only where the Supplier is not able to readily dispose of the Goods elsewhere.
- (b) The total payment upon termination will not exceed the agreed price and Accolade Wines will have no liability on any basis, including, without limitation, in respect of any costs or loss (including financial loss or damages) incurred or suffered by the Supplier Parties arising directly or indirectly as a result of or in connection with the termination of the Contract.

15.2 Mutual rights of termination

- (a) Either party may terminate the Contract in whole or in part with immediate effect by giving notice in writing to the other party if there is a material breach of the Contract by that other party, which that other party has not remedied within fourteen days of being given notice to do so (or such greater time as is specified in such notice).
- (b) Either party may terminate the Contract in whole or in part with immediate effect by giving notice in writing to the other party if the other party:

- (1) becomes an externally-administered body corporate, insolvent, bankrupt or subject to any deed of assignment or arrangement or composition with their creditors or a winding up or administration order, enters into a scheme of arrangement with its creditors, enters into voluntary administration, has a receiver or liquidator appointed in respect of itself or some or all of its assets, is unable to pay its debts as and when they become due, has a controller (as defined in the Corporations Act 2001) appointed, or passes a resolution for its winding up; or
- (2) ceases to carry on business or threatens to cease to carry on business.

15.3 Change in control

Accolade Wines may immediately terminate the Contract by giving notice in writing to the Supplier if there is any change in the ownership or control of the Supplier which could, in the reasonable opinion of Accolade Wines, materially affect the interests of Accolade Wines.

15.4 Consequences of termination

- (a) On termination of the Contract for whatever reason, the Supplier must refund advance payments in respect of Goods which have not been supplied and Services which have not been performed as at the date of termination or Goods or Services which have been rejected by Accolade Wines on or before the date of termination.
- (b) Each party agrees to take due care of and not dispose of property (including, without limitation, Intellectual Property) belonging to the other and will keep it readily identifiable as the others property.
- (c) Each party will at any time and on request return any property belonging to the other, except that, if the Supplier is in default, Accolade Wines may continue to hold and use any of the Supplier's property, which will be returned or paid for in due course.
- (d) Accolade Wines may and the Supplier will procure that Accolade Wines may retake possession of its property at any time by entry into any premises where it is kept.

16. Miscellaneous

16.1 Documentation

The Supplier must keep and produce on request by Accolade Wines all documentation relating to the Goods supplied or Services performed as reasonably required by Accolade Wines including such documents necessary for tracing the Goods or any part thereof for a minimum period of five years following Delivery and will procure that its suppliers do the same. The Supplier must, at its own cost, fully co-operate with and render all necessary assistance to Accolade Wines in the event of any actual or anticipated (in the reasonable opinion of Accolade Wines) product recall where the product recalled or anticipated to be recalled contains part or all of any Goods supplied by the Supplier.

16.2 Assignment or novation

- (a) No assignment or novation of the whole or any part of the benefit of or its obligations under the Contract by a party is permitted without the prior written consent of the other party (not to be unreasonably withheld or delayed), save that Accolade Wines may by notice to the Supplier at any time assign or novate the whole or any part of the benefit of or its obligations under the Contract to any related body corporate at its sole discretion.

- (b) In addition to the warranties under clause 9, the Supplier agrees to assign to Accolade Wines the benefit of any warranties or guarantees in connection with the Goods and Services that the Supplier is granted by third parties. The Supplier must not sub-contract or otherwise delegate the performance of the whole or any part of its obligations under the Contract without the prior written approval of Accolade Wines.

16.3 Amendment or variation to be in writing

An amendment or variation to the provisions of the Contract is not effective unless it is in writing and signed by the parties.

16.4 Waiver

A provision of or a right created under the Contract may not be waived except by a document signed and dated by the party granting the waiver. The waiver of a provision of or a right created under the Contract by a party does not preclude:

- (a) its future exercise; or
 - (b) the exercise of any other provision of or right created under the Contract,
- by that party.

16.5 Jurisdiction

The Contract shall be subject to the laws of the State of South Australia and all disputes arising in connection with the Contract shall be submitted to the non-exclusive jurisdiction of the courts of South Australia and of the Commonwealth of Australia.

16.6 Severance

If any provision of the Contract is held invalid, unenforceable or illegal for any reason, the Contract remains otherwise in full force apart from such provision which will be deemed deleted.

16.7 Survival of terms

The covenants, warranties, conditions and provisions of the Contract which are capable of having effect after the expiration or termination of this Contract remain in full force and effect following the expiration or termination of this Contract.

16.8 PPSA

No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where required under section 275(7) of the PPSA) and the parties agree not to authorise the disclosure of such information at any time.

The Supplier agrees:

- (a) not to provide or procure the provision of any notice or direction to any customer of Accolade Wines; and
- (b) not to make contact with any customer of Accolade Wines at any time.

Nothing in sections 120, 126, 128 or Division 6 of Part 4.3 of the PPSA applies to this Contract or any security interest under this Contract.

17. Notices

17.1 Form of notice

Any legal notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this Contract:

(a) must be in legible writing and in English addressed to the parties as follows:

(1) If to Accolade Wines:

Procurement Manager

Accolade Wines Australia Limited

Reynell Road

Reynella SA 5161

Fax: (08) 8392 2122

With a copy to:

General Counsel

Accolade Wines Australia Limited

Reynell Road

Reynella SA 5161

Fax: (08) 8392 2122

(2) If to the Supplier:

To the contact details specified in the Purchase Order or Schedule (as the case may be).

(b) is regarded as being given by the sender and received by the addressee:

(1) if by delivery in person, when delivered to the addressee;

(2) if by post, 3 Business Days from and including the date of postage/on delivery to the addressee; or

(3) if by facsimile transmission, whether or not legibly received, when transmitted to the addressee, but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and

(c) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

17.2 Transmission of notice by facsimile

A facsimile transmission is regarded as legible unless the addressee telephones the sender within 24 hours after the transmission is received or regarded as received under clause 17.1(a) (2) and informs the sender that it is not legible.

17.3 Addressee

In clause 17.1 (b), a reference to an addressee includes a reference to an addressee's officers, agents or employees or any person reasonably believed by the sender to be an officer, agent or employee of the addressee.

Schedule – Contract Details

ITEM	DESCRIPTION
1) Supplier	Name: ABN: Address:
2) Commencement Date 3) Contract End Date	
4) Premises	
5) Goods	See Annexure A
6) Services	See Annexure B
7) Specification	See Annexure C
8) Delivery Schedule	See Annexure D
9) Price and Payment Terms	
10) Insurance	Product and Public liability insurance against Liability for death or injury to persons and damage to Property (cover: \$20M) Motor Vehicle Third Party Insurance in relation to all vehicles used in carrying out the services Workers compensation insurance as required by law
11) Permitted Subcontractors	(if applicable)
12) Special Conditions	

EXECUTION

Executed in accordance with section 127 of the *Corporations Act 2001* by **Accolade Wines Australia Limited:**

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed in accordance with section 127 of the *Corporations Act 2001* by **the Supplier:**

Director Signature

Director/Secretary Signature

Print Name

Print Name