

INDEPENDENT BRANDS LIMITED

("INDEPENDENT BRANDS") TERM OF TRADE

- 1. NATURE AND SCOPE OF TERMS OF TRADE**
- 1.1 These terms of trade ("Terms") form a contract that applies between Independent Brands and the Customer in respect of supply of wine sourced by and provided to the Customer by Independent Brands and shall also apply to the supply of other goods that the parties may agree (hereafter, collectively referred to as "goods").
- 1.2 The Customer acknowledges that all orders of goods are a request by it for the provision of credit from Independent Brands and placement by the Customer of any order with Independent Brands for the supply of the goods constitutes an acknowledgment by the Customer that the contract between the Customer and Independent Brands shall be governed by these Terms.
- 1.3 From time to time, Independent Brands may issue updated or amended terms of trade. An order of goods by the Customer after Independent Brands has issued any updated or amended terms is deemed to be acceptance of such terms.
- 1.4 Independent Brands and the Customer may agree in writing on special terms and conditions that either vary or are additional to these Terms or Independent Brands may vary these terms in an order form that complies with clause 2.1 of these Terms, otherwise these Terms will apply to all transactions between Independent Brands and the Customer.
- 2. ORDERING**
- 2.1 The Customer will purchase the goods by submitting written purchase orders to Independent Brands on the order form provided by Independent Brands to the Customer or in accordance with the procedures required by Independent Brands from time to time.
- Each order form:
- (a) Is subject to these Terms except as is otherwise specified by Independent Brands in the purchase order form or separately agreed in writing by the Customer
- (b) At a minimum, must specify all of the matters on the order form
- 2.2 All purchase orders for the goods submitted by the Customer will be subject to acceptance in writing by Independent Brands (in its absolute discretion) and will not become binding on Independent Brands until such acceptance. Any variation, waiver or cancellation of any order or any amendment to terms or conditions of the order made by the Customer shall be of no effect unless accepted in writing by Independent Brands.
- 2.3 The Customer acknowledges and agrees that Independent Brands is not under any duty to accept purchase orders from the Customer.
- 2.4 Once submitted under clause 2.1, the Customer may not revoke a purchase order for 20 Business Days and once accepted under clause 2.2, the Customer may not revoke or cancel a purchase order without Independent Brands prior written consent, which may be withheld at Independent Brands sole discretion.
- 2.5 Except as set out in clause 2.1(a) any terms in any purchase order or order form that have been inserted by the Customer that are inconsistent with or in addition to these Terms are hereby rejected by Independent Brands and will be deemed null and of no effect, even if Independent Brands accepts or acknowledges such purchase order itself.
- 2.6 Independent Brands may cancel any purchase order accepted by Independent Brands, or refuse delivery of the goods under it, if the Customer:
- (a) Fails to make any payment as provided in these Terms or under the payment terms set forth in any invoice or as otherwise agreed by Independent Brands and the Customer;
- (b) Fails to meet reasonable credit or financial requirements established by Independent Brands, including any limitations on allowable credit; or
- (c) Otherwise fails to comply with these Terms or any other agreement; or
- (d) Independent Brands has reasonable grounds to doubt the Customer's solvency; and
- Any such cancellation, refusal or delay by Independent Brands does not constitute a termination of any agreement with the Customer (unless Independent Brands so advises the Customer) or breach of any such agreement or these Terms by Independent Brands.
- 3. PAYMENT**
- 3.1 The price payable by the Customer for the goods shall be the price agreed to between Independent Brands and the Customer at the time the Order is made or in the absence of such agreement the price notified to the Customer by Independent Brands on the date the goods are delivered. The onus is on the Customer to confirm prices prior to each delivery. The Customer is required to pay the purchase price in the currency stipulated by Independent Brands which is based on the final intended destination of the goods ordered as advised by the Customer.
- 3.2 Independent Brands will deliver to the Customer together with each delivery of goods, an invoice for the price of delivered goods and any other incidental charges relating to the sale of the goods.
- 3.3 Unless otherwise stipulated in an order form that complies with clause 2.1, payment of each invoice shall be made by the Customer in the same currency as the currency recorded on the invoice:
- (a) Into such bank account as Independent Brands notifies the Customer;
- (b) Free of any deduction or withholding, and with no right of set-off for on account of any taxes or other duties, currency controls or any other matter;
- (c) By the 20th calendar day of the month following the month on which the invoice was rendered by Independent Brands.
- 3.4 Notwithstanding any other provision of these Terms, Independent Brands reserves the right to change payment terms at any time (including, without limitation, requiring payment in advance or requiring the Customer to have issued an irrevocable letter of credit).
- 3.5 If the Customer fails to pay an amount due under these Terms, Independent Brands may charge the Customer:
- (a) Interest on that amount from its due date until the date of payment at 5% per annum above the default interest rate charged by Independent Brands bank; and
- (b) All legal and other costs, charges and expenses incurred in connection with the recovery of all outstanding amounts including, without limitation, Independent Brands' own solicitor/client costs and costs of any debt collection agency employed by Independent Brands;
- (c) Independent Brands' right to require payment of interest and other costs under clause 3.5 does not affect any other rights or remedies it may have relating to any failure to pay an amount due under these Terms; and
- (d) Without limiting clause 3.8, the Customer's payment obligation to Independent Brands in accordance with these Terms is unconditional, and the Customer's failure to pay any invoice on the due date shall be an automatic default of these payment terms and Independent Brands shall not be required to give the Customer any prior notice of default.
- 3.6 Independent Brands reserves the right, on giving prior written notice to the Customer, to vary the price of the goods ordered by the Customer, between the date of the Customer's order and the date of delivery to take account of things such as (but without limitation):
- (a) Any increase in labour costs, costs of materials or any related services (including without limitation freight or delivery services, packaging services or insurance); or
- (b) Changes in exchange rates.
- 3.7 Unless otherwise set out on its invoice, Independent Brands' prices are quoted exclusive of taxes, duties and other imposts which, if chargeable, are payable by the Customer whether they are imposed or brought into force before or after acceptance of the Customer's order. Unless otherwise stated, Independent Brands' prices are exclusive of Goods and Services Tax (as set out in clause 4 of these Terms) or any other charge including, if any, insurance and freight costs and any such amount that may be due is payable on the same date as payment for the goods.
- 3.8 Without prejudice to any other remedies which Independent Brands might have:
- (a) In the event of failure by the Customer to pay for goods in accordance with these Terms; or
- (b) If the Customer otherwise fails to otherwise comply with these Terms; or
- (c) If Independent Brands deems the Customer's credit to be unsatisfactory,
- Independent Brands shall be entitled to cease supply of future goods to the Customer and cancel any current orders for sale of goods. Upon such cancellation and without prejudice to any other remedies, which Independent Brands might have, all credit in favour of the Customer will cease and all payments outstanding will become immediately due and payable to Independent Brands. Independent Brands may also take possession of such items of goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner/security interest holder and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, and statute or in any other way.
- 3.9 In accepting any payments from the Customer, Independent Brands will not be bound by any conditions or qualifications or other terms, which the Customer may have attached to those payments.
- 3.10 If the Customer does not agree with an amount set out in an invoice, the Customer must:
- (a) No later than 5 Business Days after receipt of the invoice it disputes, deliver to Independent Brands a written notice setting out full details of the amount in dispute and the basis for the dispute;
- (b) Pay the undisputed amount of the invoice amount; and
- (c) Resolve the dispute in accordance with clause 13 of these Terms.
- 4. GST**
- 4.1 Independent Brands' prices referred to in these Terms and in any quotation, which may have formed the basis of an order, are exclusive of GST (unless expressly stated otherwise). The Customer shall pay GST on the goods or services the subject of these Terms, as invoiced by Independent Brands on the payment terms on that invoice and, if rendered on the same date or on the same invoice as the goods supplied, at the same time as payment for the goods to which the GST relates.
- 4.2 International orders will generally not incur Goods and Services Tax ("GST") unless the international order is undertaken for the purposes of a New Zealand based resident. The Customer making the order agrees to indemnify Independent Brands for any GST that is determined by the Commissioner of Inland Revenue (New Zealand) to be payable in respect of the order.
- 5. DELIVERY**
- 5.1 Delivery is deemed to be made:
- (a) When the Customer or the Customer's agent is given possession of the goods at Independent Brands' premises or elsewhere (loading is then at the Customer's risk); or
- (b) When the goods arrive at the Customer's premises (unloading is then at the Customer's risk); whichever is the earlier.
- 5.2 On delivery:
- (a) The goods are at the Customer's sole risk; and
- (b) Insurance is the Customer's responsibility.
- 5.3 Where the Customer requests a particular method of delivery and if Independent Brands agrees (in writing) then the Customer will cover the cost of delivery by that method from the point of dispatch of the goods or service by Independent Brands and the risk of such delivery shall be borne entirely by the Customer unless otherwise agreed by Independent Brands and the Customer in accordance with these Terms.
- 5.4 Any quotations of delivery times agreed by Independent Brands are made in good faith but are estimates and not commitments and no delay in delivery will entitle the Customer to refuse to accept delivery or cancel its order or otherwise entitle the Customer to any Damages whatsoever.

6. DELIVERY - INTERNATIONAL

6.1 Unless otherwise specified in an order form that complies with clause 2.1 of these Terms, supply shall be CIF (Cost, Insurance Freight) and Independent Brands will choose the carrier, insurer and method of transportation of the goods and ensure for the full replacement value of the goods. Independent Brands will dispatch the Customer's order for goods in one delivery or by instalments (where Independent Brands accepts an order which provides for delivery by instalments). Failure to deliver any instalment will not entitle the Customer to refuse to accept delivery or any remaining instalments. Independent Brands will obtain any required export licence and paying export taxes and fees if required.

6.2 The provisions of clause 5.2 to 5.4 of these Terms also apply to International Delivery.

7. RISK AND LOSS IN TRANSIT

7.1 Risk (including, without limitation, insurance responsibility) of any loss, damage or deterioration of or to the goods shall pass to the Customer upon the delivery of goods to the Customer.

7.2 The Customer acknowledges and agrees that Independent Brands sources its goods from third parties and shall not be liable for any claim whatsoever except for goods lost or damaged in transit.

7.3 Claims made for damage in respect of goods lost or damaged in transit must be made against Independent Brands in the following manner:

- (a) Prior to accepting the goods and acknowledging delivery the Customer must ensure that the complete consignment as per the delivery note has been received;
- (b) In the case of damage the delivery note must be endorsed by the Customer setting out in full the reasons for non-acceptance of the goods;

7.4 The liability of Independent Brands in respect of the failure to deliver due to loss in transit or damage in transit where risk has not passed to the Customer shall be limited to paying the requisite insurance proceeds to the Customer or assigning any such claim to the Customer.

7.5 Risk shall pass back from the Customer to Independent Brands only if Independent Brands repossesses the goods.

8. RETENTION OF TITLE

8.1 Notwithstanding any other provision of these Terms, title in the goods does not pass from Independent Brands until:

- (a) Independent Brands has received full payment in cleared funds for the goods (together with an amount for GST, any accrued interest and any other amounts due in respect of the goods); or
- (b) The Customer's earlier resale of those goods under clause 8.3.

8.2 Until title passes from Independent Brands:

- (a) Ownership of the goods remains with Independent Brands;
- (b) The Customer holds the goods as bailee for Independent Brands; and
- (c) The Customer must store the goods separately from any other goods and not commingle, admix the goods with other goods or otherwise add to or alter the goods in any way.

8.3 If goods which have not been paid for in full (together with an amount for GST, any accrued interest and any other amounts due in respect of those goods) ("Independent Brands goods"), are sold by the Customer, the Customer must:

- (a) Hold from the proceeds of any sale of Independent Brands goods an amount equal to the payment due to Independent Brands for those goods in a separate identifiable account as the beneficial property of Independent Brands; and
- (b) Pay such amounts to Independent Brands upon request.

8.4 If the Customer fails to pay any amount of the Customer's total indebtedness to Independent Brands under these Terms when it is due to Independent Brands or is otherwise in breach of these Terms then Independent Brands and/or any of Independent Brands Personnel may, without notice and without prejudice to any of Independent Brands other rights and remedies, recover and/or re-sell Independent Brands goods that have been delivered to the Customer and the Customer agrees Independent Brands may enter upon the Customer's premises for that purpose.

9. SECURITY - PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

9.1 The Customer grants to Independent Brands a specific security interest in the goods and the proceeds of the goods and the Customer securing the purchase money for the goods. The Customer will, if Independent Brands requests, sign any documents (including any new agreements), provide all necessary information and do anything else required by Independent Brands to ensure that Independent Brands security interest is a perfected security interest.

9.2 The Customer will not enter into any security agreement that permits any other person to register any security interest in respect of the goods or the proceeds.

9.3 If the goods are for the Customer's business use or still held by the Customer pending any sale to its customers, the Customer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation:

- (a) The Customer will have no rights under sections 114(1)(a) (to receive a notice of sale), section 117(1)(c) (relating to distribution of surplus), and section 133 (reinstating the agreement);
- (b) The Customer waives its rights under section 116 (to receive statement of account), section 119 (to recover surplus) and sections 120(2) and 121 (to receive notice of any proposal to retain the goods and object to any proposal).

9.4 The Customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement.

9.5 The Customer agrees that where Independent Brands has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

9.6 For the purpose of this clause:

- (a) "PPSA" means the Personal Property Securities Act 1999; and
- (b) The expressions "personal property", "purchase money security interest", "security agreement", "security interest", "perfected security interest", "verification statement" and "financing change statement" have the meanings given to them under, or in the context of the PPSA.

10. THE CUSTOMER'S COVENANTS AND WARRANTIES

10.1 The Customer agrees that it shall:

- (a) Not undertake or perform any act or omission which brings or is reasonably likely to bring Independent Brands the manufacturer and/or the supplier of the goods, or the goods themselves into disrepute, and without limitation, shall not cause or allow any of its employees, agents, contractors, shareholders, principals, officers or directors to engage in any activity, conduct or otherwise that shall or may prejudicially affect the reputation or goodwill of the either party or its business;
- (b) Not in New Zealand engage in any misleading or deceptive trade or any other conduct or act which breaches or may breach the provisions of the Fair Trading Act 1986 or in any place in the world engage in other unfair, misleading, deceptive or unsafe practice and shall conduct business in a manner that reflects favourably at all times on the goods and the good name, goodwill and reputation of Independent Brands and/or the manufacturer and or supplier and/or the goods.
- (c) Not make representations, warranties or guarantees to customers with respect to the goods that are inconsistent with statements, information and certificates provided by the party supplying the goods;
- (d) Promptly submit to Independent Brands complaints relating to the goods together with all available evidence and other information relating to those complaints;
- (e) Ensure that the goods and any end product which may incorporate or otherwise process the goods are at all times supplied in accordance with all relevant legislation in the country in which the goods are supplied;

10.2 The parties acknowledge the paramount importance of protecting the health and welfare of the public and the goodwill associated with goods supplied under these Terms. In this regard Independent Brands has the right to recall the goods if Independent Brands reasonably considers that health or safety of any person or if clause 10.1 of these Terms has been breached. If such recall is caused by breach of any of these Terms by the Customer, then the costs of such recall shall be borne by the Customer; otherwise such costs shall be met by Independent Brands.

10.3 The Customer shall:

- (a) maintain up-to-date and accurate records of sales including purchaser and destination of the goods to assist with the immediate recall of any goods; and
- (b) if there is a recall of goods:
 - (i) the parties shall cooperate fully and assist each other with the recall;
 - (ii) shall provide each other with any information that is relevant in respect of the recall; and co-operate in taking all reasonable steps to minimise damage to the parties goodwill and reputation in their intellectual property.

11. LIMITATION OF WARRANTY/LIABILITY

11.1 The Customer acknowledges that it acquires the goods for its own business use or supplies them to other persons for business use and all guarantees and remedies in the Consumer Guarantees Act 1993 are excluded. The Customer further agrees that the conditions, warranties and guarantees set out in the Sale of Goods Act 1908 or implied by the common law will not apply and are expressly excluded from these Terms.

11.2 The Customer acknowledges that it must rely upon its own judgment as to the nature, quality and condition of the goods supplied by Independent Brands and as to their sufficiency for any use or purpose and the Customer acknowledges that Independent Brands is under no duty to ascertain the suitability of the goods for any purpose whatsoever and that no such representation has been made by Independent Brands.

11.3 Except for any express written warranty in these Terms or otherwise provided to the Customer, Independent Brands provides no other warranty, expressed or implied, including any implied warranty of merchantability or fitness for purpose or otherwise and any warranties expressed or implied by law or statute, in respect of the goods whether in respect of quality, fitness for intended purposes or otherwise, are excluded to the extent that such law or statutes permits exclusion.

11.4 Subject to clause 7 of these Terms, the parties acknowledge and agree that in no event will Independent Brands or its officers, principals, employees, contractors or agents have any liability to the Customer arising out of or connection with these Terms or the use or performance of any goods and without limiting the foregoing, the parties agree that Independent Brands shall not in any case whatsoever be liable for:

- (a) Any special, incidental, indirect, punitive or consequential Damages; loss of profit, revenue, goodwill, use or the costs of procuring substitute goods.
- (b) Damages exceeding, in the aggregate, the value of the payments actually received by Independent Brands from the Customer under these Terms in the preceding 12 months; or
- (c) Damages in respect of any claim made:
 - (i) more than six months from the date the Customer becomes aware of the circumstances leading to that claim; or
 - (ii) more than 12 months after the relevant cause of action arise.

12. INDEMNITY

12.1 The Customer indemnifies Independent Brands from and against all liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis whether incurred by or awarded against a party) including those associated with any third party claim, and whether arising under contract, tort (including negligence) or otherwise shall Independent Brands or its directors, principals, employees, contractors or agents sustains or incurs (directly or indirectly) arising out of or resulting from:

- (a) Any breach of these Terms by the Customer;
- (b) Any contravention of applicable laws or regulations by the Customer, including export and import control laws;
- (c) Any claim by any third party arising from any act or omission of the Customer in connection with these Terms (whether negligent or not), including:

- (1) The Customer's use, marketing, distribution or other activities by the Customer under these terms or otherwise in relation to the goods; or
- (2) Any misrepresentations, warranty or agreement, express or implied made by the Customer with respect to the Independent Brands, the supplier or the manufacturer of or the goods;
- (d) Without limiting clause (b), any negligent, willful, reckless or unlawful act or omission of, or any intentional misconduct by the Customer in connection with these Terms; or
- (e) Any claim by the Customer, to the extent that such claim is beyond the scope of Independent Brands liability to the Customer under these Terms.

13. DISPUTE RESOLUTION

- 13.1 Either party may give the other party notice of any dispute arising in respect of, or in connection with, these Terms ("Dispute").
- 13.2 In the event of a notice being given pursuant to clause 13.1 above, then the parties must:
- (a) Meet at senior management level to discuss the Dispute and make a genuine effort to resolve the Dispute;
 - (b) If no resolution of the Dispute has occurred within ten (10) Business Days from the date of the giving of the notice in accordance with clause 13.1 above, then either party may require the other party to attend a mediation of the Dispute ("Mediation Request").
- 13.3 In the event of a Mediation Request the parties must:
- (a) Make any such Mediation Request in writing; and
 - (b) Agree upon the mediator.
- 13.4 If the parties cannot agree on a mediator within ten (10) Business Days from the date of any Mediation Request, then the mediator will be appointed by the President from time to time of the Auckland District Law Society or its successor organisation.
- 13.5 If the Dispute is not resolved by mediation within twenty (20) Business Days after the appointment of a mediator, then the Dispute may be referred to arbitration by either party ("Arbitration Request"). In the event of an Arbitration Request:
- (a) The arbitration will be by a single arbitrator, who will be agreed upon by the parties;
 - (b) If the parties cannot agree upon an arbitrator within ten (10) Business Days from the date of any Arbitration Request, then the arbitrator will be appointed by the President of the Auckland District Law Society from time to time or its successor organisation;
 - (c) Articles 4 and 5 of Schedule 2 of the Arbitration Act 1996 ("Arbitration Act") will not apply to any dispute and the arbitration will be conducted in accordance with the Arbitration Act.
- 13.6 Notwithstanding anything in this clause 13 or the Arbitration Act, the decision of the arbitrator will be final and binding and neither party may commence court proceedings in relation to any Dispute arising out of or in connection with these Terms that is the subject of a notice under clause 13.1 at any time.

14. GENERAL

- 14.1 To be effective, any waiver of any or all of the terms and conditions in any agreement the Customer has with Independent Brands must be in writing.
- 14.2 The Customer may not assign all or any of its rights or obligations under these Terms without the prior written consent of Independent Brands.
- 14.3 Independent Brands is not bound, unless otherwise stated in these terms, by any error or omission on any invoice, order form or other document or statement issued by Independent Brands.
- 14.4 Where Independent Brands has rights and remedies at law or otherwise in addition to the rights set out in these Terms, those rights and remedies will continue to apply.
- 14.5 Failure by Independent Brands to enforce any of the terms and conditions shall not be deemed to be a waiver of any of the rights or obligations Independent Brands has under these Terms.
- 14.6 If any of these Terms or part thereof are held to be invalid, illegal, unenforceable or void for any reason or reasons, all of the remaining Terms (or part thereof) shall remain in full force and effect.
- 14.7 These Terms are governed by the law of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

15. DEFINITIONS AND INTERPRETATION

In interpreting these Terms:

"Business Day" means any day not being a Saturday or Sunday or statutory holiday in Auckland, New Zealand.

"Damages" means all liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis) whether incurred by or awarded against a party) including those associated with any third party claim, and whether arising under contract, tort (including negligence) or otherwise.

"CIF" means Cost, Insurance and freight sale terms as defined by the Incoterms published by the International Chamber of Commerce and as may be modified by these Terms.

"GST" means Goods and Services Tax payable in accordance with the Goods and Services Tax Act 1986.