

# ENOTRIA WINECELLARS LIMITED

## SALES TERMS

### INTERPRETATION

- 1.1 In these Terms:-  
"Buyer" means the person firm or company who accepts the Seller's quotation for the sale of Goods or whose order for goods is accepted by the Seller.  
"Goods" means the goods which the Seller is to supply in accordance with these Terms.  
"Seller" means Enotria Winecellars Limited.  
"Terms" means the standard terms of sale set out in this document to which all Contracts shall be subject and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller.  
"Contract" means the contract for the sale and the purchase of the Goods.  
"Writing" includes telex cable facsimile transmissions and comparable means of communication but not electronic mail.
- 1.2 Any reference in these Terms to any statute or any provision thereof shall be construed as a reference to that statute and/or provision as amended re-enacted or extended at the relevant time.
- 1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

### THE CONTRACT

- 2.1 Quotations are invitations to treat only.
- 2.2 All orders are accepted by the Seller only under these Terms which may not be altered except with the written agreement of a Company Director of the Seller. Any contrary or additional terms unless so agreed are excluded.
- 2.3 Orders are accepted subject to availability of Goods at the time of delivery. Substitutions for out of stock items will only be made with the Buyer's confirmation.
- 2.4 Orders which have been accepted by the Seller may be cancelled only with the written agreement of a Company Director of the Seller and on terms that the Buyer will indemnify the Seller against all losses damages costs and expenses incurred by the Seller as a result of that cancellation.
- 2.5 The Seller reserves the right:  
2.5.1 to revise or change the style of labels and packaging at any time  
2.5.2 to make any changes in the specification of the Goods which are required to conform with any applicable health, safety or other statutory and/or E.U. requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 2.6 The Seller shall not be liable in respect of any misrepresentation made by the Seller its employees or agents to the Buyer as to the condition or quality of the Goods unless the representation is:  
2.6.1 made or confirmed in writing by the Seller; and/or  
2.6.2 fraudulent.
- 2.7 Without prejudice to Clause 2.6 of the Terms while the Seller takes every precaution in the preparation of its catalogues, price lists and other literature these documents are for the guidance of the Buyer only and statements therein in the absence of fraud on the part of the Seller shall not constitute representations by the Seller and the Seller shall not be bound by them. If the Buyer requires advice in relation to the Goods a specific request for written advice should be made.
- 2.8 Any typographical, clerical or other error or omission in any sales literature, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### PRICE

- 3.1 Quotations and prices are based on costs and excise duty prevailing at the time when they are given or agreed. The price of the Goods including excise duty shall be that ruling as at the date of the delivery. All prices quoted are exclusive of delivery charges and of Value Added Tax which is payable at the rate ruling at the date of delivery unless zero rated or exempt from VAT.
- 3.2 Any discounts, deductions, allowances or rebates agreed are only available if all sums due from the Buyer to the Seller are paid by the due date.
- 3.3 Prices stated or quoted are applicable to the quantity, specification and delivery dates. If the order placed varies or delay is caused by the Buyer's instructions or lack of instructions the Seller shall be entitled to adjust the price.
- 3.4 The Buyer will reimburse the Seller the cost of all labelling, packaging and other materials purchased by the Seller for specific use with any private label product supplied.

### PAYMENT

- 4.1 The Seller shall be entitled to invoice the Buyer for the price of Goods on or at any time after the Goods are ready for collection or delivery.
- 4.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled but without any other deduction) within 21 days of the month following (or such other period as may have been agreed in writing between the Buyer and the Seller) notwithstanding that delivery may not have taken place and/or that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 4.3 Credit is granted and may be reviewed at any time at the Seller's discretion. The Seller reserves the right to refuse to execute any order or Contract if the arrangements for payment or the Buyer's credit rating is not satisfactory to the Seller.

### DELIVERY

- 5.1 Delivery shall occur when the Goods have been collected by the Buyer or have been delivered to the address agreed by the Seller.
- 5.2 If the Buyer fails to take or make arrangements to accept delivery or collect the Goods or if the Seller is unable to deliver because of inadequate access or instructions delivery shall be deemed and the Seller may do any one or more of the following (without prejudice to any other right or remedy the Buyer may have):-  
5.2.1 make additional charges for failed delivery;  
5.2.2 store the Goods at the Buyer's risk and cost;  
5.2.3 invoice the Buyer for the Goods;  
5.2.4 terminate this Contract without liability on the Seller's part; and/or recover from the Buyer all costs and losses incurred by the Seller;
- 5.3 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.
- 5.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control, or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost of the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.
- 5.5 The Seller reserves the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Any claim which the Buyer may have in respect of

- one instalment shall not affect the Buyer's liability in respect of any other instalment.
- 5.6 The Buyer will indemnify the Seller in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with the Buyer's instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to the Seller's negligence.

### RETURNS

- 6.1  
(a) Goods returned by the Buyer without the consent of the Company will not be accepted for credit.  
(b) The Company reserves the right to refuse to credit the value of any returned Goods which are not in a saleable condition.  
(c) The Company will be entitled to make an additional charge if, in its sole discretion, it agrees to accept the return of Goods at the Buyer's request.

### INSPECTION

- 7.1 The Buyer shall inspect the Goods at the place and time of loading if the Goods are collected and unloading if the Goods are delivered but nothing in these Terms shall require the Buyer to break packaging and/or unpack Goods.
- 7.2 Unless the Seller or the delivery driver is notified forthwith and written notice is received by the Seller within 2 working days of loading or unloading as the case may be of any claim apparent on reasonable inspection for loss or damage in transit, short delivery, failure to conform to the Contract the Goods will be deemed to have been delivered in accordance with the delivery documents and accepted by the Buyer and the Buyer shall not be entitled to and waives any right to reject the Goods.
- 7.3 The Seller's liability for loss or damage in transit, short delivery, failure to conform to the Contract or apparent on reasonable inspection is limited to supplying the Goods as ordered and the Seller shall not be liable for any damages whatsoever. The Buyer remains liable to pay the full invoice price of other Goods delivered in accordance with the Contract. Any other claim for damages is subject to Clause 10.

### TITLE AND RISK

- 8.1 Risk in the Goods shall pass to the Buyer when the Goods are delivered by the Seller or collected by the Buyer. If the Seller effects delivery by a carrier the risk in the Goods passes to the Buyer when the Seller delivers the Goods to the carrier.
- 8.2 The title to the Goods shall remain with the Seller until the Seller has received in cash or cleared funds payment in full of the price of the Goods and any other sums outstanding between the Buyer and the Seller whether in respect of this Contract or otherwise.
- 8.3 Until title passes the Buyer:-  
8.3.1 shall hold the Goods as the Seller's fiduciary agent and bailee;  
8.3.2 shall keep the Goods stored separately from any other goods, protected and insured, and shall not interfere with any identification marks, labels, batch numbers or serial numbers on the Goods;  
8.3.3 may sell the Goods as principal and not as the Seller's agent in the ordinary course of the Buyer's business subject to the following express conditions:  
(a) that the entire proceeds of any sale or insurance proceeds received in respect of the Goods are held in trust for the Seller and not mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as the Seller's money;  
(b) that the Buyer will at the Seller's request and at the Buyer's expense assign to the Seller all rights the Buyer may have against its customer; and  
(c) that the Buyer's right to sell the Goods may be withdrawn by Seller on notice at any time and will automatically cease in the event of the Buyer becoming Insolvent as defined in Clause 13.
- 8.4 The Seller shall be entitled at any time to recover any or all of the Goods to which it has title and for that purpose the Seller its employees or agents may with such transport as is necessary enter upon any premises occupied by the Buyer or to which the Buyer has access and where the Goods may be or are believed to be situated.
- 8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Seller, but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 8.6 Without prejudice to the foregoing none of the Goods are supplied on a "sale or return" basis.

### RETENTION OF TITLE

- 9.1 Until the Company has received payment in full (in cash or cleared funds) for the Goods and any other goods or services whatsoever that the Company has supplied at any time to the Buyer or to any 'holding company' or 'subsidiary' of the Buyer as defined by section 1159 of the Companies Act 2006 or to any 'associate' of the Buyer as defined by section 435 of the Insolvency Act 1986.  
(a) The Goods shall remain the Company's property and title in the Goods shall not pass to the Buyer.  
(b) The Buyer shall store the Goods separately from all other goods held by the Buyer and/or keep them in such a way that they can be readily identified as being the property of the Company. The Buyer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods.  
(c) The Buyer shall maintain the Goods in satisfactory condition and keep them insured against all risk for their full price from the date of delivery.  
(d) The Buyer shall give the Company such information relating to the Goods as the Company may require from time to time.  
(e) The Buyer shall notify the Company immediately if it becomes subject to any of the events listed in Clause 13.1.  
(f) The Buyer shall hold the Goods on a fiduciary basis as the Company's bailee.  
(g) The Buyer is permitted to use or sell the goods in the ordinary course of its business.

If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the matters set out in Clause 13.1, or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time revoke the Buyer's power of sale and require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to retrieve them.

The Company may maintain an action for the price of the Goods notwithstanding that ownership of them has not passed to the Buyer.

## RESPONSIBILITIES

- 10.1 Nothing in these Terms shall exclude or restrict the Seller's liability for death or personal injury resulting from the Seller's negligence.
- 10.2 If the Goods are sold under a Consumer Transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Terms.
- 10.3 The Buyer and Seller acknowledge that Goods of the type sold by the Seller retain their quality for different periods of time and subject to this acknowledgement and to the following provisions the Seller warrants that taking account of the type and quality of the Goods as at the time of the Contract of the Goods will at the time of delivery correspond with any specification provided by the Buyer and be of satisfactory quality for a reasonable period.
- 10.4 Subject to Clauses 10.1 and 10.2 the above warranty is given by the Seller subject to the following conditions:-
- 10.5.1 the Seller shall be under no liability in respect of any defect in the Goods that would have been apparent on a reasonable inspection in accordance with Clause 7 of these Terms unless the Buyer gives the Seller notice as required by Clause 7;
- 10.5.2 the Seller shall be under no liability in respect of any defect in the Goods arising from any specification provided by the Buyer;
- 10.5.3 the Seller shall be under no liability in respect of any defect in the Goods unless the defect is discovered within a reasonable period taking account of the type of Goods concerned and their quality at the time of the Contract and the Seller is notified within 10 working days of the discovery of the defect;
- 10.5.4 the Seller will be under no liability for any defect in the Goods if the defect arises from the Buyer's negligence or handling or storage of the Goods or failure to follow any instructions or guidance given by the Seller whether oral or in writing;
- 10.5.5 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
- 10.6 Subject to Clauses 10.1 and 10.2 and as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.7 Where a valid claim in accordance with this Clause 10 is notified to the Seller in accordance with these Terms, the Seller may at its sole discretion replace the Goods (or the part in question) free of charge or return to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller will have no further liability to the Buyer.
- 10.8 Subject to Clauses 10.1 and 10.2 the Seller shall not be liable for misrepresentation (unless fraudulent) or in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof whether the negligence of the Seller, its employees or agents or otherwise arising out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or in their use or resale by the Buyer for:
- (a) any loss of profit, business, contracts, revenues or anticipated savings; and/or
- (b) any special, indirect or consequential loss or damage, costs, expenses of any nature whatsoever.
- 10.9 The Buyer will unconditionally fully and effectively indemnify the Seller against all losses, damages, penalties, costs on an indemnity basis and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim by any third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such losses, damages, penalties, costs and expenses are due to the Seller's, its employees or agent's negligence.
- 10.10 Without prejudice to any other provisions of these Terms in any event the Seller's total liability for any one claim or for the total of all claims arising from any one act of default on the Seller's part (whether arising from its negligence or otherwise) shall not exceed the amount received by the Seller for the claim under its insurance policy covering such risks.

## PROTECTION

- 11.1 If the Buyer is an individual or a group of individuals the Buyer agrees that the Seller may:
- 11.2 Seek, hold and process any information obtained about the Buyer from the Buyer or third parties for the purpose of and as a result of any applications or agreements the Buyer has with the Seller. This will include a search with a licensed credit reference agency which will keep a record of that search.
- 11.3 Use this information for credit assessment purposes including assessing the Buyer's credit limit and to administer and operate the credit account granted to the Buyer and analyse the conduct of that credit account. This may include further searches with licensed credit reference agencies.
- 11.4 Disclose any information the Seller holds about the Buyer to licensed credit reference agencies; other suppliers and creditors to help the Seller and others make credit decisions; to help prevent or detect fraud or other crimes; to trace debtors; to provide trade references; on a confidential basis to the Seller's agents and sub-contractors; to insurance companies for the purposes connected with insurance products that relate or might relate to the Buyer's credit account; to any person to whom the Seller proposes to transfer its rights and/or responsibilities under this Contract and to the extent the Seller is required or permitted to do so by law.
- 11.5 Hold and use this information during and for 6 years after the trading relationship and thereafter destroy the information except for a record of credit limits and date of and grounds for account closure.
- 11.6 If the Buyer is a body corporate or incorporate the Seller may process information as above relating to the Buyer's directors, shareholders or members including searches with licensed credit reference agencies.

## INTERNATIONAL SALES

- 12.1 In this Clause 12: "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. "International Sales" includes export sales from the United Kingdom (UK) and cross border/triangulation sales from non-UK countries to all destinations.
- 12.2 This Clause 12 applies to International Sales.
- 12.2 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter will prevail.
- 12.4 The provisions of this clause shall (subject to any special terms agreed in writing between the Buyer and Seller) apply notwithstanding any other provisions of these Terms.
- 12.5 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties or taxes on them.
- 12.6 The Buyer must advise the Seller in writing of any product, labelling, packaging or specification requirements applicable to the country of destination otherwise Goods will be supplied to the Supplier's specification.
- 12.7 Unless otherwise agreed in Writing the Buyer shall be responsible for arranging for testing and inspection of the Goods before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods or failure to comply with any agreed specification which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

- 12.8 The Seller will not be liable for any claim for damages under Clause 12 of these Terms unless the Seller receives written notice within 21 days of the arrival of the Goods at the delivery address.  
Where the Seller's invoices are exclusive of UK tax and excise duty the Buyer will supply evidence of shipment satisfactory to UK/EU statutory authorities such as HMC&E within 30 days of exportation. The Seller reserves the right to debit the Buyer with any costs and charges including any liability for VAT, any other UK tax or excise duty if such evidence is not provided.

## DEFAULT & TERMINATION

- 13.1 "Insolvent" means the Buyer becoming unable to pay its debts within the meanings of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act 1986 or the Buyer ceasing to pay its debts in the ordinary course of business or being unable to pay its debts as they become due or the Buyer ceasing or threatening to cease to carry on its business or the Seller reasonably apprehends that any of the events above is about to occur.
- 13.2 "Associated Company" means the Buyer's subsidiary or holding company as defined in Section 736 and Section 736A of the Companies Act 1985 or a subsidiary of such holding company, or any company over which the Buyer's, directors or shareholders have control as defined in Section 840 of the Income and Corporation Taxes Act 1988.
- 13.3 If the Buyer fails to pay any invoice or any sum due to the Seller under any contract on the due date or the Buyer's credit limit is exceeded or any trade credit insurance is withdrawn from the Buyer or the Buyer or any Associated Company becomes Insolvent or there is a material change in the Buyer or any Associated Company's constitution or the Buyer commits a material breach of this Contract and fails to remedy that breach after being requested to do so all sums outstanding between the Buyer and the Seller under this and any other contract shall become immediately due and payable and the Seller shall be entitled to do any one or more of the following (without prejudice to any other right or remedy the Seller may have):-
- (a) require payment in cleared funds in advance of further deliveries of Goods;
- (b) charge interest on the monies outstanding at the rate of 4 per cent above Barclays Bank Plc Base Rate in force from time to time from the due date until the date of payment after as well as before judgment;
- (c) suspend or cancel any further deliveries of Goods to the Buyer under any contract without liability on the Seller's part;
- (d) without prejudice to the generality of Clause 9 of these Terms exercise any of the Seller's rights pursuant to that Clause; and/or
- (e) terminate this or any other contract with the Buyer or any Associated Company without liability on the Seller's part.
- 13.4 Should any cheque provided by the Buyer to the Seller (whether drawn on the Buyer's account or not) be dishonoured on presentation the Seller shall be entitled to charge the Buyer a fee of £25.00 (exclusive of VAT) in respect of each and every occurrence and such fee shall be in addition to and not in substitution for any interest payable under these Terms.
- 13.5 Without prejudice to Clause 13.4 the Buyer shall reimburse the Seller's costs including without limit legal costs on an indemnity basis which the Seller incurs in enforcing the Seller's rights under this Contract including but not limited to recovery of any sums due.

## GENERAL

- 14.1 This Contract shall be governed and interpreted according to the Law of England and Wales and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.
- 14.2 The Seller shall not be liable for any breach of contract delay or failure to perform any of the its obligations if the breach delay or failure was due to any cause beyond the Seller's reasonable control including without limit industrial action or trade disputes whether involving employees of the Seller or of a third party.
- 14.3 The waiver by the Seller of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 14.4 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.
- 14.5 No person may enforce any of these Terms under the Contracts (Rights of Third Parties) Act 1999.
- 14.6 Any notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office, or principal place of business, or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be deemed to have been received:
- 14.7 if sent by first class post: 2 working days after posting exclusive of the day of posting;
- 14.8 if delivered by hand: on the day of delivery;
- 14.9 if sent by facsimile transmission: at the time of confirmation of transmission of the entire fax.