

GROUP TERMS OF SALE**1. Definitions**

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

"Customer" means the person, firm or company placing an order with the Supplier.

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

"Products" means all those Products and materials which are the subject of any Customer's order and which are to be supplied to the Customer by the Supplier under these Terms of Sale.

"Supplier" means the company within the Group that has entered into the Contract.

- 1.5 **"Contract"** means a contract for the supply of Products formed by the Supplier's acceptance (which, however made or communicated, shall be deemed made subject to these Terms of Sale) of any Customer's order.

2. Formation of Contract

- 2.1 All Products sold by the Supplier are sold subject to these Terms of Sale. The Customer's order to purchase any Products constitutes an offer by the Customer to purchase the Products specified in the order on these Terms of Sale; the execution and return of written acknowledgement of such order by the Supplier, or (if earlier) the Supplier's delivery of all or any part of the Products pursuant to such order, shall establish a contract for the supply and purchase of those Products on these Terms of Sale. Terms and conditions on the Customer's order form or other similar document shall not be binding on the Supplier and the placing of an order for or the acceptance of the Products by the Customer shall indicate unqualified acceptance of these Terms of Sale.
- 2.2 No representative, agent or sales person has authority to vary, amend or waive any of these Terms of Sale on behalf of the Supplier and no amendment or addition to any of these Terms of Sale shall be deemed to have been accepted unless accepted in writing by the Supplier.
- 2.3 These Terms of Sale supersede all previous oral or written representations, undertakings and agreements relating to the Products. All information contained in the Supplier's sales literature or correspondence is provided for guidance only and does not form part of the Contract. The Supplier's employees and agents are not authorised to make representations or give undertakings relating to the Products or the meaning of these Terms of Sale. The Supplier may vary any Product specification without notice.
- 2.4 An order placed with a Supplier may be accepted, processed or fulfilled by any company in the Group and these Terms may be enforced by any of them, in each case either as principal or as the duly authorised agent for one of the other companies. This is done to ensure the effective processing and administration of orders and does not in any way affect any of the Customer's rights under these Terms.

3. Orders and delivery

- 3.1 Orders are accepted by the Supplier subject to the availability of Products for delivery. The quantity and description of the Products shall be set out in the Supplier's quotation or acknowledgement of order.
- 3.2 Unless otherwise agreed in advance the vintages of wines will follow on when stock of the previous vintage is exhausted. In other cases the Supplier shall notify the Customer of any non-availability and may substitute alternative Products or cancel the order in respect of the Products which are not available and refund any monies paid for those Products.
- 3.3 The Supplier is entitled to reject an order or make an additional charge if it contains a request for Customer specific packaging or labelling or if the volume of Products ordered is less than 250 units of sale.
- 3.4 Delivery shall take place when the Supplier or its carrier unloads the Products at the Customer's premises (if the Supplier arranges transport within the United Kingdom at the Customer's request) or when the Customer or its carrier or agent collects the Products from the Supplier's premises or, in the case of Free on Board orders, when the Supplier or its carrier hands over the container to the Customer or its carrier at the port of departure. The Customer will comply with the Supplier's reasonable delivery instructions.
- 3.5 The Products are not sold on a sale or return or exchange basis and the Supplier does not supply Products on approval. Products may only be returned with the Supplier's prior written authorisation, in their original condition and packaging, with no additional price marking, within date and carriage paid, for credit and subject to the Customer reimbursing all the Supplier's costs relating to the Contract.
- 3.6 Although the Supplier will use all reasonable efforts to meet delivery dates, any and all delivery dates provided are estimates only and the Supplier shall not be liable to the Customer for any loss or damage, whether direct, indirect or consequential if it is delayed or prevented, in whole or in part, from delivering the Products nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 3.7 If the Customer refuses or fails to take delivery of the Products on the date of delivery, the Supplier will be entitled at its discretion to store the Products at the risk of the Customer and the Customer shall in addition to the price payable under clause 5 pay all costs and expenses of such storage and any additional costs of carriage incurred.
- 3.8 The Supplier reserves the right to deliver in instalments at its discretion.
- 3.9 The Supplier may during any periods of shortage due to causes beyond its control, supply Products on a pro rata basis among its customers in such a manner as may be deemed equitable in the sole judgement of the Supplier and without liability therefor.
- 3.10 The Customer shall inspect the Products on delivery. Products which on delivery are damaged, out of date or short or in excess by more than 5% may be rejected only if the Customer retains for inspection all packaging, endorses any delivery document with details of any obvious loss or damage and informs the Supplier and the Supplier's carrier in reasonable detail and in writing by the end of the third day after delivery. The Customer may not reject any other Products in a delivery. The Customer may not reject short or excess deliveries which are within a margin of 5% of the quantity ordered. The Supplier will adjust the price pro rata. The Customer shall notify the Supplier of any total failure to deliver within seven days after the date of the Supplier's invoice. Unless rejected or notified as not delivered in accordance with this clause, Products shall be deemed accepted and the Contract shall be treated as affirmed. The Supplier shall not be liable for Products which are lost, damaged in transit or out-of-date unless they are notified to it in accordance with this clause.

4. Risk

- 4.1 Without prejudice to the retention of title set out in clause 8 and save as otherwise provided in these Terms, the risk of loss or damage to the Products shall pass to the Customer upon delivery or attempted delivery of the Products in accordance with clause 3.4.

5. Price

- 5.1 The price payable for the Products shall be as stated in the Supplier price list current at the date the order is accepted by the Supplier unless otherwise stipulated in writing by the Supplier. Where the Products are supplied for export from the United Kingdom, the Supplier's published export price list shall apply. All prices quoted are valid for 14 days only or until earlier acceptance by the Customer, after which time the Supplier may alter them without giving notice to the Customer.
- 5.2 The prices of Products stated in the Supplier's general or any Customer specific price list are subject to alteration without prior notice and will be reviewed at least once in each calendar year. In particular (and without limiting the foregoing) prices are subject to alteration to immediately reflect changes in duty, taxes, levies, foreign exchange rates and variations in the pricing of the Supplier's suppliers.
- 5.3 Other than Free on Board pricing, the price of the Products includes standard Supplier packaging and delivery in mainland UK but excludes any special Customer specific labelling requirements, inspection or delivery requirements, any additional transportation costs imposed by law and incurred by the Supplier, export duties and value added tax all of which shall be for the account of the Customer.
- 5.4 Free on Board pricing is for full container loads of Product sourced from their country of origin unless specifically agreed otherwise in advance with the Supplier.

6. Credit accounts

- 6.1 The Supplier may, at its sole discretion, establish a credit account for the Customer. A credit account shall only become operational after the Supplier has confirmed in writing that such a facility will be available to the Customer. The Supplier shall be entitled, at its sole discretion, to refuse or at any time withdraw or alter a credit account without giving reason.

- 6.2 In accepting the offer of a credit account the Customer agrees that the Supplier may make periodic searches with credit reference agencies and fraud prevention agencies to manage the Customer credit account, to take decisions regarding credit, including whether to make available or to continue or to extend existing credit. The Supplier shall not disclose any information obtained carrying out such searches to any third party without the Customer's consent except as may be required at law.

7. Payment

- 7.1 The Supplier shall invoice the Customer on despatch of the goods.
- 7.2 If the Customer has a credit account the Customer shall make payment for the Products in pounds sterling within 30 days of the date of invoice unless otherwise agreed in writing with the Supplier.
- 7.3 Notwithstanding Clause 7.2 the Customer shall settle invoices for Product in the following categories as follows, unless specifically agreed otherwise in advance with the Supplier:-
(i) Europe Ex-Cellar deliveries – 30 days from date of collection;
(ii) Outside Europe Free on Board deliveries – 60 days from date of bill of lading.
- 7.4 If the Customer does not have a credit account with the Supplier, the Customer shall make payment for the Products in pounds sterling in cleared funds prior to receipt of the Products.
- 7.5 If payment is not made when due then the Supplier may, without prejudice to its other rights, charge interest at an annual rate of 4% above the then current base rate of Barclays Bank plc to be calculated on a day to day basis on the balance outstanding until payment is made in full.
- 7.6 The Customer shall not purport to set off or withhold any payments claimed or due to the Supplier under this or any other contract.
- 7.7 Any discounts from list price are given on the basis that payment is made on or before the date specified in clause 7.2. In the event of late payment the Supplier shall be entitled to remove any discounts (including on any other orders with the Customer) and re-invoice the Customer for the Products at the full price stated in its then current price list.
- 7.8 In addition to any other remedy available to it the Supplier may charge £20 for each cheque unpaid by the Customer's bank, and for each direct debt or cheque returned marked "please re-present". The Customer shall indemnify the Supplier fully against all fees, costs and expenses incurred in seeking to recover sums payable by the Customer or in repossessing Products belonging to the Supplier.
- 7.9 Where a Customer's cheque is returned marked "refer to drawer" the Supplier reserves the right to cancel any accounts and terms quoted and to request a bankers draft or cash with each order.
- 7.10 If the Supplier at its sole discretion agrees to the return of the Products before any payment has been made by the Customer the Customer shall be liable to pay the Supplier a handling charge equal to 10% of the full purchase price of the Products. If the Supplier has agreed to the return of the Products when the Customer has made only part payment, the Supplier shall return the part payment after deducting a handling charge equal to 15% of the unpaid balance of the purchase price of the Products.
- 7.11 If payment is to be made by instalments the failure of the Customer to pay any instalment in due time shall entitle the Supplier to treat such failure as a repudiation of the whole Contract by the Customer and to recover damages for breach of Contract and the full balance outstanding on any account between the Supplier and the Customer shall become immediately payable.
- 7.12 The Supplier reserves the right to defer without penalty delivery of any Products which have been ordered by the Customer for so long as any amounts remain overdue for payment or any credit limit is exceeded.
- 7.13 The Supplier reserves the right at any time to set off any sum due from it to a Customer against any invoice rendered to it by such Customer.
- 7.14 The Supplier reserves the right at any time at its discretion to demand security, or suitable guarantee, or to vary the terms or method of payment before continuing with or delivering Products in satisfaction of any order notwithstanding any subsisting agreement to provide credit to the Customer.
- 7.15 In the absence of fraud, the Customer shall not be entitled to dispute any invoice issued by the Supplier unless the Customer has given notice to the Supplier of such dispute within 12 months of the date of invoice.

8. Title and lien

- 8.1 The Supplier shall retain title to and ownership of all Products until it has received payment in full of all sums due from the Customer. If payments received from the Customer are not stated to refer to a particular invoice the Supplier may allocate such payments to any outstanding invoice.
- 8.2 Until property in the Products passes to the Customer it may use or resell the Products in the ordinary course of its business provided always that the Customer shall hold in trust and pay to the Supplier on demand the proceeds of any such sale to the extent that any monies are owed by the Customer to the Supplier on any account. The Customer shall not be the agent of the Supplier in relation to any resale. Until their use or resale the Customer shall hold the Products as the Supplier's bailee, keep them secure, insured, separate from any other products and identifiable as the Supplier's property and shall not charge, pledge or deal with them or allow any lien or other interest to arise over them.
- 8.3 If the Customer fails to make any payment to the Supplier when due, compounds with its creditors, enters into a voluntary arrangement or scheme with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Supplier has reasonable cause to believe that any of these events is likely to occur, the Supplier shall have the right, without prejudice to any other remedies, to:-
(a) enter without prior notice any premises where Products owned by it may be, and to repossess and dispose of any Products owned by it so as to discharge any sums owed to it by the Customer under this or any other contract and the Customer grants the Supplier an irrevocable licence to enter the Customer's premises for such purposes;
(b) require the Customer not to resell, use or part with possession of any Products owned by the Supplier until the Customer has paid in full all sums owed by it to the Supplier under this Contract or any other contract;
(c) withhold delivery of any undelivered Products and stop any Products in transit. Unless the Supplier expressly elects otherwise, any Contract between it and the Customer for the supply of Products shall remain in existence notwithstanding any exercise by the Supplier of its rights under this clause 8.
- 8.4 The Products shall, once the risk has passed to the Customer in accordance with clause 4 or otherwise, be and remain at the Customer's risk at all times unless and until the Supplier has retaken possession of them, and the Customer shall insure accordingly.
- 8.5 The Customer shall acquire no title to casks, kegs, pallets, returnable bottles and cases and gas cylinders (in this clause 8.5, all "containers") referred to in any invoice. Certain containers such as returnable bottles and cases will carry a deposit charge which will be refunded on their return. When empty all containers should be made available for collection by the Supplier or its agent. The Supplier shall not be liable for any storage, handling or other charges for containers awaiting collection. Containers are at the Customer's risk from the point of delivery until they are collected by the Supplier or its agent. The Supplier reserves the right to charge for any containers which are not returned or are returned in a poor or unusable condition or after an unreasonable delay.

- 8.6 Pallets used for the delivery of the Products are the property of the Supplier's pallet provider. At the time of delivery the Customer must exchange with the carrier's driver an equal number of empty pallets as the number of laden pallets delivered. If the Customer does not have available sufficient number of empty pallets then the Customer shall provide to the carrier's driver the Supplier's pallet provider's pallet control voucher stating the shortfall and the Customer shall arrange for a collection date for the carrier's driver to collect the shortfall of pallets.
- 8.7 Where any dispense equipment for draught products has been supplied to the Customer at the Supplier's expense then the Customer shall ensure that such equipment is regularly cleaned and is maintained in good working order. The Customer will be responsible for any damage caused by or to the equipment as a result of the Customer's negligence or failure to follow guidelines regarding its use. The Customer shall notify the Supplier immediately if the Customer ceases to use such equipment for the dispensing of the Supplier's products. The Supplier shall retain title to and ownership of such dispense equipment. The Supplier shall with prior notice have the right to enter the Customer's premises within 90 days of the end of the Contract to remove such dispense equipment; and during the term of the Contract to update or replace the dispense equipment. If during the Contract the Customer intends to dispose of its interest in any outlet it shall give the Supplier a minimum of 30 days' notice so that the Supplier may remove the dispense equipment from the outlet.
- 9. Warranty**
- 9.1 Subject to clause 2.3 the Supplier warrants that the Products will correspond with any description given in its price list or specification and be of satisfactory quality and will comply with all applicable UK legislation governing the sale of the Products and the Supplier will at its option refund the purchase price of, or replace free of charge, any Products which its examination confirms are defective provided:-
- (i) the Customer has inspected the Products on delivery and notifies the Supplier immediately of any defects which it discovers in accordance with clause 3.10;
 - (ii) the Customer has stored the Products in a suitable environment and at the appropriate temperature; and
 - (iii) the Products are either made available to the Supplier for inspection or returned to the Supplier at the Customer's own expense in their original condition and packaging, as the Supplier may request.
- 9.2 Where the Supplier has refunded or replaced a Product in accordance with clause 9.1, the Supplier shall have no further liability for breach of the warranties in clause 9.1 in respect of such Products.
- 9.3 In no circumstances shall the Supplier's liability to the Customer for any breach of warranty exceed the price paid for the Products with respect to which the claim is made.
- 9.4 Except as provided for in these Terms of Sale, the Supplier makes no warranties, express or implied, of fitness for a particular purpose, or of any other kind except as to title. In particular, all terms and warranties which would otherwise be implied by statute or under common law are hereby excluded to the fullest extent permitted by law.
- 9.5 No refund, credit or replacement will be given for out of date Products unless they are validly rejected for being out of date in accordance with clause 3.10.
- 10. Liability**
- 10.1 The Supplier shall under no circumstances be liable for any indirect, special or consequential loss or for any loss of anticipated profit or third party claims howsoever arising either from breach or non-performance of any of its obligations under the Contract or from the supply of or intended use of the Products, even if the Supplier has been advised of the possibility of such potential loss. The Supplier shall be liable without limit for loss arising from death or personal injury resulting from the proven negligence of the Supplier and nothing in these Terms of Sale shall have the effect of excluding or limiting liability under the Consumer Protection Act 1987 to a person who has suffered damage caused by a defective product, or to a dependent or relative of such person.
- 10.2 The Supplier will not be liable for any loss, damage, claim, cost or expense arising from the Customer's failure to comply with the Supplier's instructions relating to the keeping, handling, use and storage of the Products or from any error in or absence of bar-code printing on the Products or their packaging.
- 11. Use and Disclosure of Personal Data**
- 11.1 The Customer consents to the processing by or on behalf of the Supplier of personal data (as defined by the Data Protection Act 1998) supplied by the Customer or held by the Supplier for the purposes of administering the Customer's credit account and processing any orders.
- 11.2 Unless the Customer notifies the Supplier in writing, the Customer consents to the use of such personal data for direct marketing purposes and disclosure by the Supplier to third parties for marketing purposes. The Customer's statutory rights under the Data Protection Act 1998 shall remain unaffected.
- 12. Termination**
- Should the Customer make default in any payment or otherwise be in breach of its obligations to the Supplier under a Contract or under any other contract with the Supplier and, if the breach is capable of remedy, fails to remedy it within 30 days of a written request to do so, or under any other contract with the Supplier or compound with or execute an assignment for the benefit of its creditors or commit any act of bankruptcy or being a company enter into voluntary or compulsory liquidation or suffer a receiver or administrative receiver or administrator to be appointed over all or any part of its assets or take or suffer any similar action in consequence of debt or become insolvent or should the Supplier have reasonable cause to believe that any of these events is likely to occur, the Supplier may, by notice in writing to the Customer, without prejudice to any other rights, immediately suspend or cancel any uncompleted part of the Contract or stop any Products in transit or require payment in advance or satisfactory security for further deliveries under the Contract.
- 13. Force Majeure**
- The Supplier shall not be liable to the Customer for any loss or damage caused to or suffered by the Customer as a direct or indirect result of the supply of the Products by the Supplier being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of the Supplier including, without limitation, circumstances affecting the provision of all or any part of the Products by the Supplier's usual source of supply or delivery or by the Supplier's normal route or means of delivery.
- 14. VAT and taxes**
- 14.1 All sums payable are exclusive of any VAT chargeable on the supplies for which such sums (or any part of them) are the whole or part of the consideration for VAT purposes.
- 14.2 Where, any party makes a supply to any other party (Recipient) for VAT purposes and VAT is or becomes chargeable on that supply for which the supplying party is required to account to the relevant tax authority, the Recipient shall, subject to the receipt of a valid VAT invoice, pay the supplying party (in addition to, and at the same time as, any other consideration for that supply) the amount of such VAT.
- 14.3 Where any party is required to reimburse or indemnify any other party for any cost or expense, that first party shall, subject to the other party providing a valid VAT invoice, reimburse or indemnify the other party for the full amount of the cost or expense, including any VAT on that amount, except to the extent that the other party is entitled to credit or repayment for that VAT from any tax authority.
- 14.4 All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase or import of the Work shall be the responsibility of, and for the account of, the Customer.
- 14.5 Any reference in this clause 14 to any party shall, at any time when such party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).
- 15. Waiver**
- The failure of the Supplier to insist upon the strict performance of any of the terms and Terms of the Contract shall not be construed as a waiver of any such term or condition and shall in no way affect the Supplier's right to enforce such provision later.
- 16. Severability**
- If any of the terms and Terms of the Contract (or part thereof) shall be found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability of such term or condition (or part thereof) shall not affect any other term or condition (or the other part of the term or condition of which such invalid, ineffective or unenforceable part forms part) and all terms and Terms (or parts thereof) not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.
- 17. Contracts (Rights of Third Parties) Act 1999**
- For the purposes of section 1(2) to the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any term of condition in these Terms of Sale to be enforced by third parties save that any company in the Group shall be entitled to enforce the rights granted to the Supplier.
- 18. Miscellaneous**
- 18.1 The Customer is responsible for its stock control and rotation of stock. The Customer shall store, handle, use and sell the Products in accordance with any instructions from the Supplier and all applicable laws and regulations and undertakes to the Supplier to indemnify the Supplier against any loss, liability, damage, expense, action or claim arising from its failure to do so.
- 18.2 The Customer shall be responsible for checking and verifying the suitability for its requirements of the Products and any bar-coding on the Products.
- 18.3 If requested by the Supplier, the Customer shall give all reasonable assistance in locating and recovering any defective Products and preventing their sale to third parties, and, in particular shall comply with any product recall procedures adopted by the Supplier and shall use all reasonable endeavours to ensure that its customers co-operate in a similar manner.
- 18.4 Any materials supplied by the Customer to the Supplier shall be at the Customer's risk while they are in the possession of the Supplier or in transit to or from the Customer and the Customer shall insure them accordingly. The Customer warrants that it has authority to supply any materials, designs and specifications provided by it to the Supplier and that any Products produced using or based on the same will not infringe any third party rights. The Customer shall indemnify the Supplier in full against any loss, claim, cost and expense arising from any breach of this warranty.
- 18.5 The Supplier reserves all intellectual property rights in the Products and any associated merchandise or documentation, including but not limited to copyright, registered and unregistered design rights, patents and patent applications, registered and unregistered trade marks and confidential know-how. Save for the honest use of any trade marks to identify the Products (strictly in accordance with any guidelines or other directions notified to the Customer by the Supplier), the Customer may not use any such rights without the Supplier's express prior written consent.
- 18.6 If the Products are exported outside the United Kingdom, the Customer shall be responsible for complying with all laws and regulations governing their importation, handling, use and re-sale in the country of destination. Unless agreed otherwise in writing, the Customer shall bear all risks in export Products after they leave the Supplier's premises and Section 32(3) of the Sale of Goods Act 1979 shall not apply. For the purposes of Sections 44, 45 and 46 of that Act, any carrier or United Kingdom port used to export the Products shall be deemed to be an agent of the Supplier.
- 18.7 This Contract may not be assigned or transferred by the Customer without the Supplier's express prior written consent.
- 18.8 Any notices to be served under this Contract shall be given in writing and delivered personally or sent by first class pre-paid post or facsimile transmission to the addressee at its registered office for the time being or as subsequently notified by the addressee to the other in writing in accordance with this Clause 18.8. Notices given in accordance with this Clause 18.8 shall be treated as served when delivered if delivered personally, two days after posting if sent by pre-paid first class post and at the time of transmission if sent by facsimile transmission and confirmation of successful transmission obtained.
- 19. Governing law**
- The construction, validity and performance of the Contract and any non-contractual obligations relating to it shall be governed by English law and by entering into the Contract the parties submit to the jurisdiction of the English courts. However, the Supplier shall be permitted to bring legal proceedings in any other court of competent jurisdiction. Legal proceedings commenced in any one or more jurisdictions shall not preclude legal proceedings being commenced in any other jurisdiction, whether by way of substantive action, ancillary relief, enforcement or otherwise.