

GROUP TERMS OF SALE**1. Definitions**

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

"Business Day" means a day other than a Saturday, Sunday or public holiday on which banks in London, England are open for business.

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

"Contract" means a contract for the supply of Products by the Supplier to the Customer, comprising these Terms of Sale and any Order.

"Data Controller" has the meaning given to it in the GDPR.

"Data Subject" has the meaning given to it in the GDPR.

"Data Protection Laws" means all laws and regulations applicable to the Processing of Personal Data under the Contract, including the GDPR and other laws and regulations of the UK, the European Union, the EEA and their member states relating to data protection.

"GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation).

"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.

"Order" means any Customer order for Products that is deemed to have been accepted by the Supplier in writing in accordance with clause 2.2 of these Terms of Sale.

"Personal Data" has the meaning given to it in the GDPR.

"Process" has the meaning given to it under the GDPR, and "Processing" and "Processed" shall be construed accordingly.

"Products" means all those products and materials which are set out in an 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.

"Terms of Sale" means these terms and conditions.

"VAT" means value added tax or any other tax of a similar nature.

2. Formation of Contract

- 2.1 All Products sold by the Supplier are sold subject to 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 by the Customer of these Terms of Sale.
- 2.2 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 be deemed acceptance of such Customer order by the Supplier and shall establish a contract for the supply and purchase of those Products subject to these Terms of Sale. Any quotation issued by the Supplier shall not constitute an offer capable of acceptance.
- 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 an authorised representative of the Supplier.
- 2.3 These Terms of Sale set out the entire agreement between the Customer and the Supplier and override and supersede all previous oral or written representations, undertakings, arrangements and agreements between the Customer and the Supplier relating to the subject matter of these Terms of Sale and the Products. All information contained in the Supplier's sales literature or correspondence and any samples are provided for guidance only and do not form part of the Contract or have any contractual force. 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 to reflect changes in law and regulatory requirements or to implement minor technical adjustments and improvements. The Supplier may vary any Product specification for any other reason on giving you no less than 30 days' notice before the changes take effect, and you may then contact us to terminate an Order and obtain a refund for any Products paid for but not received if those Products will be affected by the proposed variation.
- 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 An Order constitutes an offer by the Customer to purchase Products in accordance with these terms and conditions and no Contract is formed unless and until accepted by the Supplier in accordance with clause 2.2. The quantity and description of the Products comprised in an Order shall be set out in the Supplier's quotation or acknowledgement of the Customer's order.
- 3.2 Unless otherwise agreed in advance the vintages of wines comprised within an Order will follow on consecutively when stock of the previous vintage is exhausted without further notice to the Customer. In other cases of non-availability of Products, provided that the Supplier has not rejected the order pursuant to clause 3.3, 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 at the Customer's discretion.
- 3.3 The Supplier is entitled to reject any Customer order or make an additional charge in its sole discretion if:
- the Products that are the subject of the Customer's are not available or are not available in the requested volumes;
 - the order contains a request for Customer specific packaging or labelling; or
 - 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 as specified on the Order or otherwise agreed in writing (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 time is not of the essence. The Supplier shall not be liable to the Customer for any loss or damage resulting from any delayed delivery of Products, and the Customer shall have no right to rescind or terminate the Contract on the basis of a delayed delivery of Products, unless such delay exceeds 180 days from the estimated delivery date (in which case any Supplier liability will be subject to the limitations set out in clause 11).
- 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 by the Supplier. If the Customer has not taken delivery of the Products within five Business Days of the Supplier's first attempted delivery, the Supplier may resell or otherwise dispose of the Products and charge the Customer the shortfall in the price payable by the Customer and the price obtained by the Supplier (in addition to the storage and additional costs and expenses described above).

- 3.8 The Supplier reserves the right to deliver in instalments at its discretion. Any delay in delivery or defect in one instalment does not give the Customer any right to cancel or vary any other instalments.

- 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.

- 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 and in such circumstances the Customer's sole and exclusive remedy is that 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.

- 3.11 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.

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 by or behalf of the Supplier 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 of the Order unless otherwise stipulated in writing by the Supplier (including in the Supplier's quotation). Where the Products are supplied for export from the United Kingdom, the Supplier's published export price list current at the date of the Order shall apply unless otherwise stipulated in writing by the Supplier (including in the Supplier's quotation). All prices quoted by the Supplier are valid for 14 days only or until earlier written 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 by the Supplier without prior notice and may be reviewed at least once in each calendar year. In particular (and without limiting the foregoing) prices are subject to alteration immediately on written notice by the Supplier, including after a Contract has been formed provided such notice is given no less than five Business Days prior to the due date for delivery, to 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, all taxes, charges, levies, duties, assessments and other fees of any kind imposed on the purchase, export or import of the Product, which shall all be the responsibility of, and for the account of, the Customer.
- 5.4 Free on Board pricing is applicable to an Order if specified as such on that Order. 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. Such credit account arrangements will be subject to the Supplier's relevant standard terms as applicable from time to time. 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 If the Customer has a credit account the Supplier may invoice the Customer at any time after despatch of any Products and 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.
- 7.2 Notwithstanding clause 7.1 the Customer shall settle invoices for Product in the following categories as follows, unless specifically agreed otherwise in advance with the Supplier in writing:
- Europe Ex-Cellar deliveries – 30 days from date of collection; and
 - Outside Europe Free on Board deliveries – 60 days from date of bill of lading.
- 7.3 If the Customer does not have a credit account with the Supplier, the Customer shall make payment for the Products in full in cleared funds prior to despatch of the products.
- 7.4 If payment is not made when due then the Supplier may, without prejudice to its other rights and remedies, charge interest at an annual rate of 4% above the then current base rate of HSBC plc to be calculated on a day to day basis on the balance outstanding from the due date for payment until payment (including of any accrued interest) is made in full and in cleared funds.
- 7.5 The Customer shall not purport to set off or withhold any payments claimed or due to the Supplier under this or any other contract.
- 7.6 Any discounts from list price are given on the basis that payment is made on or before the due date specified in this clause 7. 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.
- 7.7 In addition to any other remedy available to it the Supplier may charge £20 for each direct debt returned. 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.
- 7.8 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.
- 7.9 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 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.
- 7.10 If payment is to be made by instalments the failure of the Customer to pay any instalment when due entitles 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.

- 7.11 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.
- 7.12 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.
- 7.13 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.
- 7.14 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, maintain them in good condition, keep them secure, insured in accordance with clause 8.4, store the Products separate from any other products and identifiable as the Supplier's property (and to that end the Customer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Products) 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, provisional 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 Customer shall notify the Supplier of such event or circumstance in writing immediately, and the Customer's right to resell, use or part with possession of any of the Products owned by the Supplier ceases immediately until the Customer has paid in full all sums owed by it to the Supplier under this Contract or any other contract. The Supplier shall have the right, without prejudice to any other remedies, to:-
- receive such information from the Customer about the Products in the Customer's possession but to which the Supplier retains title on request;
 - 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; and
 - withhold delivery of any undelivered Products and stop the delivery of 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 the Products against all risks 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 all containers are empty the Customer shall notify the Supplier accordingly and such 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 the Customer an amount equivalent to the replacement cost 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 risk of loss of or damage to such dispense equipment shall reside with the Customer from delivery of the dispense equipment to the Customer until collection by the Supplier. 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 at all times. The Supplier may on giving the Customer prior notice 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 or if the Customer notifies the Supplier that the dispense equipment is no longer required. 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 prior to the disposal.
- 9. Customer risks and responsibilities**
- 9.1 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 (including but not limited to international and domestic anti-trafficking and forced labour, anti-bribery and related laws), standards, codes of practice (whether voluntary or mandatory), statutory requirements or other regulations and the Global Anti-Corruption Policy as updated from time to time and published on Supplier's website (<http://www.accolade-wines.com/wp-content/uploads/2018/04/AW-Anti-Corruption-Policy-V1-Jan-2018.pdf>).
- 9.2 The Customer shall indemnify the Supplier against any loss, liability, damage, expense, action or claim arising from any breach of clause 9.1.
- 9.3 The Customer shall notify the Supplier in writing as soon as possible after it becomes aware of any actual or potential breach of clause 9.1(ii) or any investigation, formal complaint, allegation or claim relating to any actual or potential breach of clause 9.1(ii).
- 9.4 The Customer shall promptly provide all such information as the Supplier may request regarding the Customer's compliance with clause 9.1(ii).
- 9.5 The Customer shall be responsible for checking and verifying the suitability for its requirements of the Products and any bar-coding on the Products.
- 9.6 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.
- 9.7 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.
- 9.8 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 by the Supplier 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.
- 10. Warranty**
- 10.1 Subject to clause 2.3 the Supplier warrants that on delivery and for a period of three months the Products will:
- correspond with the description set out in its quotation or, if no such description is given, given in its price list or specification;
 - be free from material defects in design, material and workmanship;
 - be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - comply with all applicable legislation in England and Wales governing the sale of the Products.
- 10.2 If following examination of any Product the Supplier confirms that it is not compliant with any of the warranties given at clause 10.1, the Supplier will at its option refund the purchase price of, or replace free of charge, the affected Products provided:
- 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;
 - the Customer has stored the Products in a suitable environment and at the appropriate temperature at all times since delivery; and
 - the Products are either made available to the Supplier at the Customer's premises for inspection or returned to the Supplier at the Customer's own expense in their original condition and packaging, as the Supplier may request to enable the Supplier to conduct its own inspection.
- 10.3 The Supplier shall not be liable for any Product's failure to comply with the warranties at clause 10.1 where the non-compliance arises from:
- the Customer's failure to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or good trade practice regarding the same;
 - the Supplier following any specification or instruction of the Customer;
 - the Customer altering or repairing or attempting to alter or repair any Product without the written consent of the Supplier;
 - wilful damage, negligence or abnormal storage or working conditions; or
 - changes made to ensure that the Products comply with applicable laws.
- 10.4 Where the Supplier has refunded or replaced a Product in accordance with clause 10.2, such refund or replacement shall be the Customer's sole and exclusive remedy and the Supplier shall have no further liability for breach of the warranties in clause 10.1 in respect of such Products.
- 10.5 In no circumstances shall the Supplier's liability to the Customer for any breach of warranty exceed the price paid for the specific Products with respect to which the claim is made.
- 10.6 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, including sections 13 to 15 of the Sale of Goods Act 1979, are hereby excluded to the fullest extent permitted by law.
- 10.7 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.
- 11. Liability**
- 11.1 Subject to clause 11.3, the Supplier and the Group shall under no circumstances be liable to the Customer, whether in contract, tort or otherwise, for:
- any indirect, special or consequential loss or for any direct or indirect loss of actual or anticipated profit or loss of business or any third party claims howsoever arising, even if the Supplier has been advised of the possibility of such potential loss; or
 - any loss, damage, claim, cost or expense arising from the Customer's failure to comply with the Supplier's or any member of the Group'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.
- 11.2 Subject to clause 11.3, the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract in respect of any Order, whether in contract, tort (including negligence), or otherwise, shall in no circumstances exceed the greater of 50% of the price of the Products comprised within the relevant Order and the price paid to the Supplier in respect of the relevant Order.
- 11.3 Nothing in these Terms of Sale shall limit or exclude the Supplier's liability:
- in respect of death or personal injury resulting from the negligence of the Supplier;
 - 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; or
 - for fraud or for statements made fraudulently.
- 12. Use and Disclosure of Personal Data**
- 12.1 Controllers of the Personal Data that they each provide to one another under the Contract. Each party shall be responsible for complying with the obligations imposed upon a Data Controller by the Data Protection Laws.
- 12.2 The Customer acknowledges that the Supplier Processes the Personal Data provided to it by the Customer (**Customer Personal Data**) for the purpose(s) set out in the Supplier's privacy policy as updated from time to time and as set out at <http://www.accolade-wines.com/privacy-policy/>, including for direct marketing (**Supplier Privacy Policy**). Prior to providing the Supplier with any Customer Personal Data, the Customer shall inform its Data Subjects that the Supplier may Process their Personal Data, and shall direct all its Data Subjects to the Supplier Privacy Policy.
- 12.3 The Customer shall assist the Supplier in connection with acquiring and managing any consents as required under Data Protection Laws to enable the Supplier to Process the Customer Personal Data for direct marketing.
- 13. Suspension and termination**
- 13.1 Without limiting the Supplier's other rights or remedies, should the Customer
- make default in any payment due to the Supplier under a Contract;
 - 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;
 - suspend or threaten to suspend or cease or threaten to cease to carry on all or a substantial part of its business, become unable to pay its debts when they fall due, or take any step or action in connection with compounding or executing an assignment for the benefit of its creditors or committing any act of bankruptcy or entering into voluntary or compulsory liquidation or suffering 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 otherwise become insolvent;
 - or the Customer's stock or goods be the subject of a track n trace request, audit or any other similar request from HMRC; and/or
 - should the Supplier have reasonable cause to believe that any of these events in (i) to (iv) is likely to occur,

then the Supplier may, by notice in writing to the Customer, (without prejudice to any other rights the Supplier may have):

- (a) immediately suspend and/or cancel any uncompleted part of the Contract and/or any Order;
- (b) terminate any Contract in part or in its entirety with immediate effect;
- (c) stop any Products in transit to the Customer; or
- (d) require payment in advance or satisfactory security for further deliveries under the Contract.

13.2 The Supplier may terminate this Contract at its sole discretion with immediate effect and without notice if it considers that the Customer has not complied with clause 9.1(b), clause 9.3 or clause 9.4 to the Supplier's satisfaction.

13.3 On the termination of any Contract, any and all outstanding and unpaid invoices shall be paid by the Customer to the supplier immediately.

13.4 On the termination of any Contract, any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

14. Confidentiality

14. The Customer shall keep strictly confidential and shall not use, save as strictly necessary to obtain the benefit of its rights under this Contract, any technical or commercial know-how, specifications, inventions, processes, initiatives, or other information of or disclosed by the Supplier which are of a confidential nature (the "Confidential Information") obtained by the Customer in connection with this Contract or any Order. The Customer shall inform its employees, agents and sub-contractors of the requirement of confidentiality, be responsible for their acts and omissions in relation to the Confidential Information and indemnify the Supplier against any unauthorised use or disclosure by any of them of such Confidential Information.

14.2 This clause survives the expiry or earlier termination of this Contract.

15. Force Majeure

The Supplier shall have no liability to the Customer or be deemed to be in breach of the Contract for any failure or delay in performing its obligations under the Contract as a consequence of any of the following events:

- (i) flood, storm, severe weather conditions or other natural events;
- (ii) war, terrorist action, hostilities, revolution, riot or civil disorder;
- (iii) any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, materials (including any computer hardware or software or any records) unless by an act or omission of the Supplier's employees, agents or sub-contractors;
- (iv) the introduction of, or any amendment to, a law or regulation, or any change in the interpretation or application by any authority;
- (v) any strike, lockout or other industrial action;
- (vi) any event affecting the provision or delivery of all or any part of the Products or their source materials to the Supplier, the manufacture of the Products or their delivery by the Supplier's normal route or means of delivery;
- (vii) any breach of contract or default by, or insolvency of, a third party (including an agent or sub-contractor); or
- (viii) any other event or circumstance outside the Supplier's reasonable control, whether similar or not to any of the foregoing.

16. VAT and taxes

16.1 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.

16.2 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.

16.3 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.

16.4 All taxes, charges, levies, duties, assessments and other fees of any kind imposed on the purchase or import of the Product shall be the responsibility of, and for the account of, the Customer, and to the extent payable to any taxation or similar authority by the Supplier, shall be promptly reimbursed by the Customer.

16.5 Any reference in this clause 16 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).

17. Waiver

Waivers must be in writing. The failure or delay of the Supplier to insist upon the strict performance of any of the terms of this Contract to exercise any right, power or remedy shall not be construed as a waiver of any such term or condition or that right, power or remedy, and shall in no way affect the Supplier's right to enforce such provision later. A waiver of any of a party's rights, powers or remedies in respect of a breach shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, power or remedy available to that party and the rights, powers and remedies shall be cumulative.

18. Severability

If any of the terms of Contract (or part thereof) is found by any court or administrative body or competent jurisdiction 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 of this Contract (or the other part of the term or condition of which such invalid, ineffective or unenforceable part forms part). Such provision shall be deemed modified but only to the extent necessary to make valid and enforceable and all terms (or parts thereof) not affected by such invalidity, ineffectiveness or unenforceability shall remain in full force and effect.

19. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Contract has no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce rights or benefits under this Contract, save that any company in the Group shall be entitled to enforce the rights granted to the Customer.

20. General

21.1 The Supplier is engaged as an independent contractor. Nothing in this Contract shall create a partnership or the relationship of principal and agent or employer and employee.

21.2 This Contract may not be assigned or transferred by the Customer, and the Customer shall not otherwise deal with this Contract nor any of its rights, liabilities or obligations hereunder, without the Supplier's express prior written consent.

21.3 All notices which are required to be given under this Contract shall be in writing and shall be sent to the registered office of the recipient, the email address specified below or such other address as the recipient may designate by notice given in accordance with the provisions of this clause.

21.4 Notices should be delivered personally or by first class pre-paid letter or facsimile transmission email as a pdf attachment to: contracts@accoladewines.com and shall be deemed to have been served: (i) if by hand before 5pm on a Business Day when delivered and, if not, on the next Business Day, (ii) if by first class post two Business Days after posting, and (iii) if by email as a pdf attachment sent before 5pm on a Business Day when despatched and, if not, on the next Business Day.

21.5 Headings to clauses are for ease of reference only and shall not affect the interpretation or construction of this Contract.

21.6 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.

21.7 The English courts will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract, 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.