

Rogue Wines Pty Ltd (ACN 128 037 801)

TERMS AND CONDITIONS OF AGREEMENT

Definitions

1. In this Agreement the following definitions apply.
 - (a) **Company** means **Rogue Wines Pty Ltd (ACN 128 037 801)** and where applicable any subsidiaries or related companies as defined in the *Corporations Act 2001* (Cth) and their servants or agents.
 - (b) **Customer** means any person, firm, corporation, government, semi-government or local government department or authority, its successors, assignees, trustees, administrators or liquidators, to whom or to which Goods are provided by the Company.
 - (c) **Force Majeure** includes strike, industrial dispute, raw material shortage, supplier issue, natural disaster, collision, accident, contamination or radiation, crime, civil unrest, act of terrorism, embargo, government sanction, war or event outside the control of the Company.
 - (d) **Goods** means goods or services provided by the Company to the Customer at any time including any wine or other alcoholic beverages provided by the Company to the Customer at any time and may include branding and marketing material associated with wine or other alcoholic beverages including but not limited to printed marketing material, wine lists, brochures, menu lists and posters.
 - (e) **Indemnity** whenever it is herein provided that the Customer must indemnify the Company, then the indemnity to be provided must be a full and complete indemnity from and against liability in respect of all claims, demands, action, suits, proceeds and costs.
 - (f) **Invoice** includes account, payment or monies paid in accordance with the Company's systems.

General Terms

2. The Customer must pay all invoices due and owing to the Company on or before 30 days from the date of invoice unless prior written arrangements have been made with the Company. Failing to pay an invoice within 30 days of the date of invoice constitutes and event of default by the Customer ('**Default**').
3. The Company may at any time without notice, terminate or suspend the Customer's right to receive Goods from the Company on credit and is not liable for any damages, costs, penalties or charges incurred by the Customer as a result of the non-supply of Goods by the Company.
4. All outstanding invoices become immediately due and payable in the event of Default on payment by the Customer of any invoice or account, regardless of whether or not some invoices may not otherwise have become due for payment.
5. Any amount that remains unpaid for 60 days from the date of invoice incurs interest at the rate of 2.5% per month or part thereof as an administration charge. The Customer agrees that this is a fair and reasonable charge and is directly relevant to the likely damage that the Company might suffer as a result of non payment by the Customer. Interest will be calculated on all outstanding amounts from the date of issue of the invoice.
6. Any unpaid amounts that may from time to time be overdue to the Company and any interest charged is recoverable by the Company from the Customer as a liquidated debt.

7. Payment must be made by the Customer to the Company without any set off or deduction against any other amount whatsoever.
8. In the event of default on payment by the Customer, the Customer will be liable for all losses, liabilities, costs and expenses (including but not limited to debt recovery and legal expenses, including commission charged by debt recovery agents and solicitor's costs) on a full indemnity basis or on a solicitor and own client basis whichever is the higher, incurred by the Company seeking to recover the default amount, the Customer hereby charges its interest in any and all land registered in its name as security for payment of monies it owes the Company.
9. In accordance with s.18E(8)(c) of the *Privacy Act 1988*, the Customer acknowledges that the Company has informed it that certain items of personal information about the Customer contained in/or relating to the Customer's Application for Credit and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, the Customer agrees, in accordance with s.18H(3), s.18K(1)(b), s.18K(1)(c), s.18K(1)(h) and s.18N(1)(b) of the *Privacy Act 1988* that use by the Company of the relevant information referred to in those sections may occur for the purpose of assessing the Customer's credit application.

Jurisdiction

10. This contract is deemed to have been entered into in the State of Queensland. Any legal action arising out of, or in respect of the contract and/or the interpretation thereof must be brought only in the State of Queensland. The parties further agree to issue any proceedings in the Brisbane registry of the appropriate Court having monetary jurisdiction over the matter.

Compliance

11. Title in the Goods pass from the Company to the Customer on completion of the work to be performed as agreed between the Company and the Customer and full payment by the Customer to the Company.
12. The Company gives no warranty condition or representation express or implied as to the capacity or fitness of the Goods for any particular purpose, unless that particular purpose was specified to the Customer at the time of quotation by the Company.
13. The Company reserves the right to amend rates and/or terms and conditions from time to time without prior notice to the Customer. These amendments will be published from time to time on the Company's website.
14. The Customer irrevocably authorises, permits and consents to the Company entering any premises to retrieve and recover possession of any Goods which the Company may have provided to the Customer or any other such items to which the Company has the title of the right to exclusive or sole possession. This irrevocable authority allows the Company to use such force as is reasonably required to open doors or any other entrances even if the use of such force would damage the door or entrance. The Customer agrees that the presence of the Company or its agents or servants at the premises and the use of such force and the occasioning of damages will not vest the Customer with any cause of action whatsoever against the Company and the Company may refer to this clause should any right or entitlement of the Company be called into question.
15. Where Goods are used by the Company, its legal liability arising from the use of the Goods is covered by third party property damage cover and public liability cover.

Duties and Charges

16. Unless otherwise stated, all rates, charges and/or prices are quoted exclusive of GST, duty, taxes or any other statutory charge or fee payable in connection with the provision of Goods.
17. If the Goods are damaged or destroyed due to Force Majeure the Customer agrees the Company is not liable for any repair, replacement or delivery costs of the Goods or for any loss or damage the Customer incurs as a result whether caused directly or indirectly by the Force Majeure.

Security interest and charge

18. This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPS Law").
19. References to PPS Law in this Agreement include references to amended, replacement and successor provisions of it.
20. The Company is at liberty to register its security interest as a purchase money security interest under the PPS Law ("PMSI"). The Customer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of:
 - (a) ensuring that the Company's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling the Company to gain first priority (or any other priority agreed to be the Company in writing) for its security interest; and
 - (c) enabling the Company to exercise rights in connection with the security interest.
21. The Company may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees.
22. The rights of the Company under this document are in addition to and not in substitution for the Company's rights under any other law (including PPS Law) and the Company may choose whether to exercise rights under the PPSA, enforce the terms of these terms and conditions, and/or under other law, as it sees fit.
23. To the extent that Chapter 4 of the PPS applies to the security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied:
 - (a) section 95 (notice of removal of accession to the extent it requires the Company to give notice to the Customer);
 - (b) section 96 (retention of accession);
 - (c) section 121(4) (notice to grantor);
 - (d) section 125 (obligations to dispose of or retain collateral);
 - (e) section 130 (notice of disposal to the extent it requires the Company to give notice to the Customer);
 - (f) section 129(2) and 129(3);
 - (g) section 132(3)(d) (contents of statement of account after disposal);
 - (h) section 132(4) (statement of account if no disposal);
 - (i) section 135 (notice of retention);
 - (j) section 142 (redemption of collateral); and
 - (k) section 143 (reinstatement of security agreement).
24. The following provisions of the PPS Law confer rights on the Company:
 - (a) section 123 (seizing collateral);
 - (b) section 126 (apparent possession);
 - (c) section 128 (secured party may dispose of collateral);

- (d) section 129 (disposal by purchase); and
- (e) section 134(1) (retention of collateral).

the services, the delivery fee will not be included in the composite invoice price.

- 25. The Customer agrees that in addition to those rights, the Company shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that the Company may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 26. The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 27. The Company and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply to it. The Agreement in this sub-clause is made solely for the purposes of allowing the Company the benefit of section 275(6)(a) and the Company shall not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this sub-clause.

Security interests

- 28. The Customer must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Goods other than with the express written consent of the Company.
- 29. The Customer must take all steps including registration under PPS Law as may be required to:
 - (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling the Customer to gain (subject always to the rights of the Company) first priority (or any other priority agreed to by the Company in writing) for the security interest; and
 - (c) enabling the Company and Customer to exercise their respective rights in connection with the security interest.
- 30. The Company may recover from the Customer the cost of doing anything under this clause, including registration fees.

Delivery, inspection and acceptance

- 31. Unless otherwise advised by the customer in writing, delivery will be provided by the Company.
 - (a) Delivery costs are included in the composite quoted price and are met by the Company on behalf of the customer, and where applicable, will be charged to the customer's account.
 - (b) Delivery is the subject of a separate but optional contract between the Company and the customer.
 - (c) Where the Customer contracts for the goods, a delivery fee will be charged to the customer's account and included in the composite invoice price.
 - (d) When the goods are delivered by the Company to the customer, the delivery fee charged to the customer's account will be equal to 7.5% of the Wholesale price + GST.
- 32. Where the customer decides not to take up the Company's offer to perform the delivery services, the customer needs to advise the Company at the time of the order, so that arrangements can be made for reasonable access to be given for the customer to pick up goods from the Company's warehouse or arrange for an alternative supplier to transport the goods.
 - (a) Where the customer elects not to acquire

- 33. The Customer may inspect the Goods on delivery or receipt and must provide notice to the Company within forty-eight (48) hours of delivery if the Customer alleges that the Goods do not fit the description of the Goods provided in the Proposal.

Cancellation

- 34. The Customer does not have a right to cancellation unless agreed in writing between the Company and the Customer. If agreed in writing, the Customer must exercise its right to cancellation not later than seven (7) days prior to the estimated date of provision of Goods to the Customer. On cancellation, any deposit paid by the Customer to the Company is forfeited by the Customer to the Company.
- 35. If any Goods have already been purchased, prepared or provided by the Company to the Customer at the time the Customer has made a cancellation, the Customer is liable for the full cost of the Goods already incurred by the Company at the time of cancellation.
- 36. Where the Customer has caused any delay or cancellation, the Customer agrees that any deposit paid by the Customer to the Company is not to be refunded to the Customer.

Default

- 37. In the event of default on payment by the Customer, the Customer will be liable for all losses, liabilities, costs and expenses (including but not limited to all debt recovery and legal expenses) on a full indemnity basis or on a solicitor and own Customer basis whichever is the higher, incurred by the Company seeking to recover the default amount.
- 38. Payment shall be made by the Customer to the Company without any set off or deduction against any other amount whatsoever.
- 39. If the Customer defaults on paying the full amount due and owing to the Company for the provision of Goods, the Customer irrevocably authorises, permits and consents to the Company:
 - a) Registering its security interest in the Goods as a purchase money security interest under the PPS Law ("PMSI"). The Customer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of:
 - (i) ensuring that the Company's security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (ii) enabling the Company to gain first priority (or any other priority agreed to by the Company in writing) for its security interest; and
 - (iii) enabling the Company to exercise rights in connection with the security interest.The Company may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees;
 - b) Registering an interest in any and all land registered in the Customer's or its Directors' names as security for payment of monies it owes the Company; and

Acknowledgement

By placing an order with Rogue Wines you further acknowledge that you have read understand and agree to the above terms and conditions.

This agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.