

## 1 DEFINITIONS

For the purpose of these Conditions, the following definitions apply:

- (a) **"Affiliate"** means any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;
- (b) **"Commencement Date"** means the date on which the Supplier receives the deposit (as stipulated in the Supplier's Order Confirmation) from the Customer in full and cleared funds;
- (c) **"Conditions"** means the terms and conditions set out in this document;
- (d) **"Confidential Information"** means any and all proprietary information labelled as "confidential" or which a reasonable person would know constitutes proprietary information.
- (e) **"Contract"** means the contract between the Supplier and the Customer for the supply of Goods including these Conditions, as set out in the Order Confirmation;
- (f) **"Customer"** means the person or firm or other organisation which orders or purchases the Goods from the Supplier;
- (g) **"Delivery Location"** means the location set out in the Order or such other location as the parties may agree;
- (h) **"Due Date"** means the date for payment set out in the Order;
- (i) **"Goods"** means the goods (or any part of them) set out in the Order;
- (j) **Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- (k) **"Order"** means the Customer's order for the supply of Goods, as set out in the Supplier's order confirmation;
- (l) **"Order Confirmation"** **"Supplier's Order Confirmation"** each mean the Supplier's written confirmation of (i) the final agreed details of the Goods being sold to the Customer and (ii) the final agreed terms and conditions of sale;
- (m) **"Price"** means the price for the Goods including value added tax;
- (n) **"Specification"** means the written specification for the Goods issued by the Supplier and referred to in the Order Confirmation;
- (o) **"Supplier"** means Itasca Wines Limited (Technical Services Division);
- (p) **"Supplier's Address"** means the Supplier's contact details (including email) provided on the Order Confirmation; and
- (q) **"Warranty Period"** means the warranty period specified in the Order Confirmation or Specification or, if none, the period of 12 months from the date of collection / delivery of the Goods.

## 2 BASIS OF CONTRACT

- 2.1 The Contract will come into existence only upon (1) issue of the Supplier's Order Confirmation and (2) payment by the Customer of the deposit (in full and cleared funds) as stipulated in the Supplier's Order Confirmation.
- 2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate,

or which are implied by trade, custom, practice or course of dealing. They are not for sales to consumers (individuals acting for purposes that are wholly or mainly outside their trade, business, craft or profession). Due to printing lead times, the terms and conditions in hard copy form may not reflect the most recent change. The most up to date terms and conditions can be found on the Supplier's homepage at: [www.itascaWines.com](http://www.itascaWines.com) and the Contract is made using the most recent version of those terms and conditions. The Customer is advised to check [www.itascaWines.com](http://www.itascaWines.com) before entering into this Contract.

## 3 COLLECTION / DELIVERY

- 3.1 Unless the parties have agreed that the Supplier will deliver the Goods to an address nominated by the Customer, and the delivery charge has been paid by the Customer in advance, the Goods will be available for collection by the Customer from the manufacturer's premises (in or outside of the United Kingdom) at any time after the Supplier notifies the Customer that the Goods are ready.
- 3.2 Any dates quoted for collection / delivery / installation of the Goods are approximate only.
- 3.3 If the Customer fails to collect the Goods within a reasonable time, it will be liable for storage charges until date of collection in addition to the price if the price is still unpaid.
- 3.4 If the Customer has agreed to unload the Goods at the Delivery Location, delivery shall be complete upon arrival. The Customer must immediately inspect the Goods for damage. No claim for damage will be accepted without clear photographic evidence. Unloading of undamaged Goods must take place promptly after inspection.
- 3.5 The Customer shall pay all taxes, permits and duties and other connected payments regarding the delivery of the Goods to the Delivery Location.
- 3.6 Where the Supplier has agreed to install the Goods, installation shall be deemed to be completed on the earlier of (i) written acceptance from the Customer's representative and (ii) 30 days from the date the Supplier considers as the date of completion.
- 3.7 If the Customer considers that the installation is not complete, it must notify the Supplier in writing within the 30-day period referred to in clause 3.6. Thereafter any issue will be treated as a warranty claim, to be dealt with under clause 4.
- 3.8 If at delivery either (i) the Customer's personnel are not available or ready with suitable equipment for unloading (where unloading is to be carried out by the Customer or (ii) the Customer's premises have not been prepared for unloading and or installation (including with electricity, gas, water, infrastructure), the Supplier reserves the right to remove the Goods and charge the Customer for redelivery at a later date.

## 4 WARRANTY

- 4.1 The Supplier warrants that at collection / delivery and during the Warranty Period the Goods shall:
  - 4.1.1 conform in all material respects with their description;
  - 4.1.2 be free from material defects in design, material and workmanship; and
  - 4.1.3 be of satisfactory quality.
- 4.2 If the Customer (i) gives notice in writing during the Warranty Period and within five Business Days of discovery that the Goods do not comply with the warranty set out in clause 4.1 and (ii) gives the Supplier a reasonable opportunity of examining the Goods, the Supplier if it accepts that there has been a breach of the Warranty shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Thereafter the Supplier shall have no further liability to the Customer.
- 4.3 The Customer acknowledges that the warranty set out in clause 4.1 does not apply to any defect in the Goods:

**Terms and Conditions for (non-consumer) Sales of Goods**

- 4.3.1 If the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2;
- 4.3.2 where the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 4.3.3 where the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- 4.3.4 arising from fair wear and tear;
- 4.3.5 arising from willful damage, abnormal storage or working conditions, accident, negligence by the Customer or by a third party;
- 4.3.6 arising from any alteration or repair by the Customer or by a third party who is not one of the Supplier's authorised repairers.

4.4 The terms of Conditions 4.1 to 4.3 above shall apply to any repaired or replacement Goods supplied by the Supplier save that the Warranty Period for them shall not extend beyond 15 months from delivery.

4.5 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.6 The Customer acknowledges that the Supplier will not be liable to the Customer for any defect in the Goods which arise after the Warranty Period. Repair of any defect which arises after the Warranty Period would be subject to a separate Contract for relevant services.

4.7 Attendance by the Supplier at the Customer's premises, at the request of the Customer after delivery of the Goods, does not of itself constitute an admission by the Supplier as to a breach of Warranty.

4.8 If the Customer requests that the Supplier undertakes any inspection or maintenance work during the Warranty Period, the Supplier reserves the right to charge the Customer for all costs and expenses where it is discovered that there is no fault with the Goods.

**5 TITLE AND RISK**

5.1 The risk in the Goods shall pass to the Customer when the Supplier notifies the Customer in writing that the Goods are available for collection from the manufacturers or Supplier's premises. The Customer is advised that to minimise risk of loss it should at that stage immediately take out insurance cover in respect of the value of the Goods. The Customer is also advised that liability limits for shippers and carriers are normally significantly less than the value of the goods concerned and that the Customer should investigate and arrange both additional limits with the shipper or carrier and suitable insurance cover.

5.2 The provisions above as to risk shall apply irrespective of whether the Customer collects the Goods or the Supplier agrees separately to arrange delivery from the manufacturer's or Supplier's premises.

5.3 Title to the Goods shall not pass to the Customer until the Supplier has received payment (in cash or cleared funds) of the price in full (unless the Supplier has agreed in writing a specific lesser portion by way of part payment for title to pass) for the Goods and any other money due to the Supplier.

5.4 Until title to the Goods has passed to the Customer, the Customer shall:

- 5.4.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 5.4.2 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 5.4.3 hand back the Goods if so demanded by the Supplier in either of the circumstances set out in clauses 9.1.5 and 9.1.6; and

5.4.4 notify the Supplier immediately if it becomes subject to any of the events listed in clauses 9.1.3 - 9.1.6.

5.5 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clauses 9.1.3 - 9.1.6, the following shall apply:

- 5.5.1 the Customer's right to possess or resell the Goods shall cease immediately; and
- 5.5.2 the Supplier may enter any premises of the Customer or of any third party where the Goods have been installed and/or stored, in order to recover them.

**6 CUSTOMER'S OBLIGATIONS**

6.1 The Customer shall:

- 6.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- 6.1.2 ensure that it takes out appropriate insurance for the Goods once they are ready for collection;
- 6.1.3 where the Supplier has agreed to arrange delivery of the Goods, provide sufficient access for arrival and immediate unloading of the Goods;
- 6.1.4 provide the Supplier with access to the Customer's premises and all power, light, water, drainage, personal protective equipment and any other facility reasonably required by the Supplier to unload and install the Goods;

6.2 The Customer acknowledges that liquids/consumables are to be provided to the Supplier for testing purposes. The Customer shall be liable for all costs associated with the use of any liquids/consumables during the installation and testing/commissioning of a machine.

6.3 Before the Supplier undertakes unloading or installation work, the Customer shall provide the Supplier with any necessary information, including, but not limited to the following:

- 6.3.1 concealed electricity, gas, water conduits or similar installations; or
- 6.3.2 any other obstruction or hazard which may give rise to danger or personal injury.

6.4 The Customer shall bear all costs or losses sustained or incurred by it arising directly or indirectly from its failure to comply with clause 6.3.

6.5 The Customer shall be liable for and indemnify the Supplier for all costs, expenses, damages and other losses incurred by the Supplier in the event of the Customer breaching any of its obligations herein.

**7 PRICES AND PAYMENT**

7.1 Any deposit or other prepayment by the Customer is non-refundable, including but not limited to (a) where the Customer purports to cancel the Order after the order Confirmation or (b)

- the Customer fails to collect/accept delivery of the Goods when available for collection/delivery or (c) on the occurrence of any of the circumstances mentioned in clauses 9.1.1 to 9.1.6 below.
- 7.2 The Supplier reserves the right to:
- 7.2.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- 7.2.1.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in shipping, transport, labour, materials and other manufacturing costs);
- 7.2.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- 7.2.1.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 7.3 If the Customer fails to make any payment (without deduction) due to the Supplier under the Contract by the Due Date, then (without limiting any other right) the Supplier may in its discretion do any one or more of the following:-
- 7.4 suspend delivery of any Goods
- 7.5 charge (a) an administration fee of £250 plus value added tax to cover its costs and (b) interest on the overdue amount at the rate of 8% above the base rate of the Bank of England from the Due Date to the date of payment;
- 7.6 sell the Goods for their then market price and credit the proceeds, net of the Supplier's costs and expenses, to the Customers' account and claim the balance outstanding.
- 8 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 8.1.1 death, personal injury or fraud;
- 8.1.2 breach of the terms implied by section 12 of the Sale of Goods Act 1979 and by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- 8.1.3 defective products under the Consumer Protection Act 1987.
- 8.2 Subject to clause 8.1:
- 8.2.1 the Supplier shall not be liable to the Customer for the following types of
- 8.2.1.1 loss of profits;
- 8.2.1.2 loss of sales or business;
- 8.2.1.3 loss of agreements or contracts;
- 8.2.1.4 loss of anticipated savings;
- 8.2.1.5 loss of use or corruption of software, data or information;
- 8.2.1.6 wastage or spillage of the Customer's liquid and other products or damage to cans, labels, packaging, the Customer's equipment etc. caused during commissioning, testing, repair or maintenance of the Goods;
- 8.2.1.7 loss of or damage to goodwill; and
- 8.2.1.8 indirect or consequential loss.
- 8.3 Subject to clauses 8.1 and 8.2, the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract is limited to:
- 8.3.1 £10,000 in respect of property damage; and
- 8.3.2 in respect of all other loss or damage, the replacement of the Goods or, at the Supplier's option, the refund or cancellation of the Price for the relevant Goods.
- 8.4 The Customer acknowledges that if the Supplier installs part of a production system/line or modifies or updates a production process, that the Supplier is not responsible/liable for making the remainder of the production line or system operational, unless the Supplier has been contracted and paid to do so.
- 8.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.6 The Customer is responsible for making its own arrangements for the insurance of any excess losses it may suffer over and above those for which the Supplier is liable.
- 8.7 This clause 8 shall survive termination of the Contract.
- 9 TERMINATION**
- 9.1 The Supplier shall have the right to suspend deliveries or terminate the Contract with immediate effect and claim damages for all its costs, losses and expenses if:
- 9.1.1 the Customer fails to pay any amount due under this Contract on the Due Date (or any other date agreed by the Supplier to the Customer in writing) for payment, whether before or after the date for delivery of any Goods; or
- 9.1.2 breaches any of the terms of the Contract without, in the case of a remediable breach, remedying the same within 14 days;
- 9.1.3 the Customer (being an individual) is the subject of a bankruptcy petition or order; or
- 9.1.4 the Customer (being a company) enters into an arrangement with its creditors or goes into liquidation or administration or equivalent under any relevant jurisdiction;
- 9.1.5 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 9.1.6 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10 CONSEQUENCES OF TERMINATION**
- 10.1 On termination of the Contract under clause 9.1:

10.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

10.1.2 the Customer shall return any Supplier materials in its possession and all of the Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

10.1.3 the Customer shall be liable for damages in respect of the Supplier's losses arising in connection with the termination; and

10.1.4 the Supplier shall be entitled (but not required) as agent to sell any of the Goods then in its possession but owned by the Customer and to set off the net proceeds of sale against monies due to the Supplier.

10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

10.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

**11 USE OF PERSONAL INFORMATION**

11.1 The parties acknowledge that each of them is a controller for the purposes of the data protection legislation. Both parties will comply with all applicable requirements of such legislation, meaning (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or domestic UK law.

11.2 The Customer acknowledges and agrees that personal data of its agents and employees will be processed by and on behalf of the Supplier in connection with the Order.

11.3 The Supplier may use and retain the personal data provided by the Customer to provide the Goods and process payment for such Goods.

11.4 The Customer agrees to provide real, current and accurate information, including a valid and current email address, at all times. The Customer shall inform the Supplier as soon as possible if any of their details change, so that the Supplier can keep their records up to date.

**12 INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

12.1 The Supplier explicitly retains ownership of all Intellectual Property Rights in the Goods.

12.2 All data and/or information provided by the Supplier to the Customer must be returned at the Supplier's first request.

12.3 The parties agree that they will each, at all times, keep strictly private and confidential any and all Confidential Information that they acquire from each other as a consequence of contracting with each other under these terms and conditions, except for disclosing any such information (i) which they may be (and then only to the extent they are) entitled or bound to disclose under compulsion of law or where requested by any regulatory agency or (ii) to their professional advisers where reasonably necessary for the performance of their professional services.

**13 GENERAL**

13.1 No variation of the Contract shall be effective unless it is agreed in writing and signed by the Supplier.

13.2 The Supplier shall not be liable to the Customer for any delay or failure to perform its obligations under this Contract for reason of any event beyond its reasonable control, including but not limited to acts of God, flood, drought, earthquake or other natural disaster; current or future epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts, interruption or failure of utility service; and shortage of materials and breakdown of machinery. In such circumstances the Supplier shall be entitled to a reasonable extension of the time for performing such obligations.

13.3 The Supplier may (but the Customer may not) assign the Contract or any part of it to any other party.

13.4 The Customer may with the prior written consent of the Supplier assign the benefit of the Contract to an Affiliate of the Customer, in which case the Customer and Affiliate shall be jointly and severally liable for any non-performance of the Customer obligations.

13.5 Any claim for damages by the Customer must be commenced within 6 months of collection / delivery of the Goods.

13.6 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default.

13.7 Failure or delay by a party in exercising any right or remedy under the Contract shall not be construed as a waiver of any of its right under the Contract.

13.8 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.9 The Contract is made for the benefit of the Supplier and Customer only and cannot be enforced by anyone else.

13.10 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

13.10.1 delivered by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

13.10.1.2 sent by email to the address normally used by the receiving party.

13.10.2 Any notice shall be deemed to have been received:

13.10.2.1 if sent by post as above or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; and

13.10.2.2 if sent by email, at the time of transmission.

13.10.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13.11 This Contract, and any dispute or claim arising out of it or in connection with it, shall be governed by, and construed in accordance with English law.