



MARLBOROUGH WINE
LIMITED

ACCOUNT APPLICATION FORM

BUYER NAME: “Buyer”

TRADING NAME if Different.....

POSTAL ADDRESS:

DELIVERY ADDRESS:

PHONE **FAX:**..... **e-mail**

CONTACT NAMES and email addresses

ACCOUNTS: **ORDERS:**

DIRECTORS:

ACCOUNTANT:

SOLICITORS:

BANK: **BRANCH:**

Are you a Limited Liability Company?

Company Registration Number:

Number of years in business:

Associated Businesses:

In applying for a trade account the Buyer accepts and agrees with the terms and conditions of sale attached and permits the Company, in accordance with the Privacy Act, to obtain any credit information on the Buyer or Directors that it may require while assessing this application.

SIGNED:..... **TITLE:**.....

DATE:

MARLBOROUGH WINE LTD

P.O. Box 101618 NSMC Auckland 0745 New Zealand
Tel +64 21 935 849 Fax +64 9 478 9565

Website www.toitowines.co.nz Email wine@toitowines.co.nz

MARLBOROUGH WINE LIMITED

TERMS AND CONDITIONS OF SALE

1 GENERAL.

- 1.1 These terms and conditions shall apply to and be attached to all transactions between Marlborough Wine Ltd (the “**Company**”) and any customer, person or company (the “**Buyer**”) who purchases the Company’s goods, products or services (the “**Goods**”), such transaction being entitled a “**Contract of Sale**” which is evidenced by the Buyers purchase order or request to purchase, and the Company’s acceptance of that order and **or** its commercial invoice.
- 1.2 All other conditions, guarantees, warranties, terms, undertakings and representations (express or implied) are hereby expressly excluded unless previously agreed in writing by an authorised officer of the Company.
- 1.3 In the event of any conflict or inconsistency between these Terms and Conditions and any other Terms and Conditions or any invitation to treat, order or acceptance, then these Terms and Conditions shall prevail unless expressly agreed otherwise in writing by an authorised officer of the Company.
- 1.4 The Company may at any time amend, vary or replace these terms and conditions for any future transactions between the Buyer and the Company by giving notice of such amended, varied or replacement terms and conditions to the Buyer.

2 ORDER ACCEPTANCE AND CANCELLATION.

- 2.1 Once a Buyer’s order has been received and accepted by the Company, a binding Contract of Sale has been entered into between the parties. Orders placed by a Buyer electronically through the Company’s electronic trading platform are deemed to be confirmed by the Company once transmitted to the Company. Orders are subject to availability of stocks or raw materials for the manufacture of Goods.
- 2.2 Any Contract of Sale may not be cancelled or varied, unless otherwise provided for in accordance with these terms and conditions or unless agreed in writing by an authorised officer of the Company.
- 2.3 The Company shall not be obliged to accept any return of Goods Delivered or refund any payments made under a Contract of Sale.
- 2.4 The Company shall only be responsible to comply with the laws, regulations, bylaws, codes and standards specified in these terms and conditions of sale, or in the Contract of Sale, and the Company shall be under no liability whatsoever for any failure to meet any other laws, regulations, bylaws, codes or standards.
- 2.5 If any time for Delivery of the Goods, or any part thereof, shall be stated in the Contract of Sale, such time shall be approximate only and shall not be deemed to be of the essence of the Contract of Sale.
- 2.6 The Company shall not be liable for failure to deliver the Goods, or for any delay in delivery of the Goods, where such failure or delay is occasioned by any event or cause whatsoever, including default by the Buyer, beyond the reasonable control of the Company.
- 2.7 If the manufacture, supply or delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Company may, without prejudice to its other rights and remedies, require payment by the Buyer of such portion of the purchase price as represents the extent to which the Company has performed under the Contract of Sale or carried out work required by the Contract of Sale up to the date such payment is required, together with any expenses or additional costs incurred by the Company as a result of such delay.
- 2.8 In the event of such delay continuing beyond a reasonable time, the Company may, without prejudice to its other remedies, terminate the Contract of Sale.

3 PRICE

- 3.1 The purchase price contained in the Contract of Sale shall be based upon the Company’s standard rates and prices as at the date of the Contract of Sale, or where the Contract of Sale arises from a quotation given by the Company, as at the date of the quotation. All prices are quoted exclusive of Goods and Services Tax.
- 3.2 The purchase price shall be increased by the amount of any increase in the cost of any such items or any other factors (including any change in exchange rates) affecting the cost of supply, production and/or delivery of the Goods due to circumstances beyond the control of the Company between the above mentioned date and the date of Delivery.

- 3.3 In the event of there being any changes in any regulations, bylaws, codes or standards with which the Company is obliged to comply after the date of the Contract of Sale then any additional costs in meeting any such changes shall be to the account of the Buyer.
- 3.4 The Buyer shall pay Goods and Services Tax (if applicable) and any other taxes or duties assessed to or otherwise payable by the Company in connection with the supply of Goods or services, in addition to the purchase price.

4 DELIVERY AND FREIGHT

- 4.1 Delivery is to be made at the place indicated in the Contract of Sale and if the Buyer fails or refuses to take or accept delivery, then the Goods are deemed to have been delivered when the Company was willing to deliver them. (hereafter "**Delivery and/or Delivered**"). If the Contract of Sale is silent on the place of Delivery, then the place of Delivery shall be at the Company's warehouse or factory as determined by the Company.
- 4.2 If freight is paid or payable by the Buyer then the point of Delivery shall be the Company's warehouse, unless the Contract of Sales states otherwise.
- 4.3 In the case of export sales, orders accepted on an ex factory/warehouse, FOB, C&F, CIF, DDU basis, or such other basis as agreed between the parties, shall be deemed to occur in accordance with Incoterms 2000, unless otherwise stated in the Contract of Sale.
- 4.4 The Company reserves the right to Deliver the Goods by instalments and each instalment is deemed to be a separate contract under the same provisions as the main Contract of Sale.
- 4.5 Any liability for excise tax, customs or import duties, customs clearance charges or any charges after the place of Delivery shall be for the account of the Buyer unless otherwise agreed in writing.

5 RISK AND INSURANCE.

- 5.1 Risk of loss, deterioration or damage of or to Goods shall pass to the Buyer when the Goods have been Delivered to the Buyer as defined in Clause 4. The Buyer shall be responsible for insuring the Goods after the point of Delivery.
- 5.2 Until property in the Goods passes to the Buyer, the Buyer shall keep the Goods insured in the names of the Company and the Buyer for their respective rights and interests and will produce to the Company upon demand such evidence as the Company may require to confirm the existence of such insurance. If the Buyer defaults in the performance of its obligations under this clause, the Company shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Buyer to the Company upon demand.
- 5.3 If any of the Goods are damaged or destroyed prior to the property therein passing to the Buyer, the Company shall be entitled, without prejudice to any of its other rights or remedies under the Contract of Sale to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such Goods has become payable under the Contract of Sale) and the production of the Contract of Sale by the Company shall be sufficient evidence of the Company's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with the Company.
- 5.4 Any such insurance proceeds shall be applied by the Company as follows:
a. First, in payment of the purchase price of the Goods which are damaged or destroyed, if unpaid;
b. Secondly, in payment of the outstanding purchase price of any other Goods supplied to the Buyer by the Company, whether under the Contract of Sale or otherwise;
c. Thirdly, in payment of any other sums payable to the Company by the Buyer whether under the Contract of Sale or otherwise.
d. Thereafter any balance shall be paid to the Buyer.

6 PAYMENT TERMS.

- 6.1 Payment for Goods or services supplied shall be paid in full prior to Delivery of the Goods unless **either** the Company has an approved credit account with the Buyer **or** the Company has otherwise agreed in writing alternative terms by an authorised officer of the Company.
- 6.2 In the case of export sales, payment shall be made by confirmed irrevocable letter of credit unless otherwise agreed. Letters of credit shall, unless otherwise agreed, be established through a first class bank and be irrevocable, confirmed and without recourse available for the Company's draft at sight and otherwise in a form satisfactory to the Company.
- 6.3 If payment has not been made on the due date, as indicated in the Contract of Sale or otherwise agreed, then interest shall be payable on the outstanding amount from the due date until the date of payment at 5% p.a. above the current overdraft rate which the Company has with its principal trading bank. Any failure on the part of the Buyer to make payment on the due date shall constitute a breach of the Contract of Sale for which the Buyer shall be liable to

compensate the Company by immediately making payment as liquidated damages (in addition to the amount due) of interest due.

- 6.4 If the Buyer wishes to pay by credit card then a surcharge of 3% will be charged to cover the merchant fees.
- 6.5 If the Buyer should fail to make payment of an invoice that has fallen due for payment, then all other unpaid amounts shall become due and payable immediately, and in this event the Company shall have the right to withdraw from or cancel any further orders, Delivery or contractual obligations without notice to the Buyer. In the event of non payment, the Company may send the outstanding debt for collection and any additional costs that are incurred as a result shall be added to the outstanding debt and shall be payable by the Buyer. The Buyer shall indemnify the Company for all additional collection costs incurred.
- 6.6 The Company may apportion payments made by the Buyer to outstanding accounts in such amounts and in such order as the Company may determine in its sole discretion.

7 **FORCE MAJEURE** If the Company is prevented, whether directly or indirectly, from making delivery of Goods, or performing or completing any of its obligations, whether contracted or otherwise, by reason of Acts of God, war, fire, explosion, acts of terrorism, civil unrest, strife or insurrection, trade disputes or other industrial action, breakdowns, interruptions of transport, Government or Administrative action, whether official or unofficial, or any cause whatsoever outside of the control of the Company, the Company shall be under no liability whatsoever to the Buyer and shall be entitled to cancel the contract or obligation, or extend the time of its performance by a period equivalent to that during which performance by the Company has been prevented by the circumstances referred to, or such other period as may be reasonable.

8 **LIMITATION OF LIABILITY**

- 8.1 The Company shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with this Agreement or from any cancellation of this Agreement or from any negligence on the part of the Company, its servants, agents or contractors nor shall the Company be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors customers, visitors, tenants, trespassers or other persons whomsoever (whether similar to the foregoing or not) arising as aforesaid.
- 8.2 The Buyer shall indemnify the Company against any claim by any of the foregoing persons in respect of any loss, damage or injury arising as aforesaid.
- 8.3 The Company is not liable for any loss of profits, consequential or indirect loss suffered by the Buyer arising directly or indirectly out of any failure by the Company to satisfy its obligations to the Buyer, or from any cancellation of the Contract of Sale, and the liability of the Company whether in contract, tort or otherwise shall be limited in aggregate. under all circumstances, to either a refund in full of the purchase price paid by the Buyer for the Goods to the Company or the replacement in full of the Goods supplied by the Company to the Buyer.

9 **TAXES AND AVAILABILITY** Unless expressly included in any quotation given by the Company, sales taxes, excise taxes, bonds, goods and services and other taxes or duties assessed or levied in connection with the supply of the Goods to the Buyer are not included in the price and are the responsibility of the Buyer or, where the payment of such taxes or duties is the responsibility of the Company at law, the purchase price will be increased by the amount of such taxes or duties. The Company is entitled to adjust the price at any time charged for any Goods, without prior notice to the Buyer, by reason of an increase in any Tax or Duty applicable to such Goods.

10 **QUALITY** The Company warrants that on Delivery of the Goods to the Buyer they shall be of good substance and quality and conform in all respects with all appropriate statutory regulations.

11 **NOTICES** Any notice required to be given hereunder may be given either personally or by recorded delivery or registered post, addressed by one party to the other by written notice. Such notice shall be deemed to have been served 48 hours after the same is posted and shall be in permanent readable form and shall be deemed properly addressed if addressed to the Buyer at its principal place of business or last known address, and to the Company at P.O. Box 101618, NSMC, Auckland 0745, New Zealand.

12 **JURISDICTION** These terms and conditions shall be construed and governed in all respects by New Zealand Law and the Buyer and the Company shall submit to the jurisdiction of the New Zealand Court. If any one of these terms and conditions is rendered void or unenforceable at Law, then that part shall be severable from these terms and conditions, and the other terms shall otherwise remain in full force and effect.

13 **RETENTION OF TITLE** Until such time as the Company has received payment for all amounts due from the Buyer: -

- 13.1 The Goods shall remain the Company's property and the Buyer shall store the Goods separately and keep them at a suitable temperature and in such a manner as to be readily identifiable as the Company's property and until such time the Buyer shall hold the same as the Company's Fiduciary Agent and Bailee.
- 13.2 Subject to Clause 12.3 below the Buyer shall be at liberty to sell the Goods in its ordinary course of business but shall have no authority to enter into any Contract of Sale on the Company's behalf. A sale of the Goods shall not be made by the Buyer to a Company which is its Holding Company, Subsidiary Company or of which it is a related Company as those terms are defined in the Companies Act 1993 as from time to time amended or substituted, without prior consent in writing of the Company. The proceeds of each such sale must be held by the Buyer in a separate bank account in trust for the Company and the Buyer shall be under a fiduciary duty to account to the Company for the proceeds of sale and this shall be binding on the Buyer, its agents and assigns even if the Buyer is in liquidation or receivership or similar third party financial management.
- 13.3 If the Buyer shall be in default of payment of any sum whatsoever due to the Company, the Company may revoke the Buyer's power of sale in respect of the Goods, and such power of sale shall automatically cease if any Receiver is appointed in respect to the Buyer or the Buyer goes into Liquidation or calls a meeting of or makes any arrangement or compromise or composition with its Creditors.
- 13.4 Any payment made by the Buyer for any Goods supplied by the Company shall, notwithstanding any purported appropriation by the Buyer or anything or any demand by the Company or in any Statement of Account between the Company and the Buyer, or any other matter or thing whatsoever, be appropriated first to Goods which have at the date of receipt by the Company of the payment, been disposed of by the Buyer, and the Company shall likewise be and remain entitled to appropriate any balance after such appropriation of payments received, to such other Goods supplied by it to the Buyer as it shall in its absolute discretion decide.

14 PERSONAL PROPERTY SECURITIES ACT 1999 (the "PPSA")

- 14.1 The Buyer grants to the Company a security interest in all present and after acquired Goods and their proceeds as security for all moneys payable to the Company (whether under the Contract of Sale or otherwise).
- 14.2 On the Company's request the Buyer shall promptly execute any documents and do anything else required by the Company to ensure that the security interest created under the Contract of Sale constitutes a first ranking perfected security interest over the Goods. The Buyer will also provide the Company with any information the Company may reasonably require to complete a financing statement or financing change statement.
- 14.3 The Buyer shall immediately notify the Company in writing of any change in the Buyer's name.
- 14.4 The Buyer waives any right to receive a copy of a verification statement under the PPSA.
- 14.5 The Buyer shall pay all costs incurred by the Company (including costs on a solicitor-client basis and debt collector's costs) incurred in registration of a financing statement or financing change statement, protection or preservation of its security interest or its registration, recovery or attempted recovery of outstanding moneys and the enforcement of these terms and conditions or the security interest contained in the Contract of Sale.
- 14.6 The Buyer agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to the Contract of Sale.
- 14.7 The Buyer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to the Contract of Sale.
- 14.8 The Buyer will not allow a security interest to be created or registered over the Goods in priority to the security interest held by the Company.

15 ACCEPTANCE The Company shall deem the presentation of any order or contract or confirmation of booking or any other thing requiring the Company to make or carry out any chargeable act or supply of Goods or services, by the Buyer to the Company, howsoever that form shall take, whether written or verbal, as acceptance of the above terms and conditions above all others on the part of the Buyer in respect of all or any of its dealings with the Company.

16 PRIVACY ACT

The Buyer, and in our personal capacities as the applicant, authorise the Seller:-

- 16.1 To furnish to and obtain from any credit reporting agency or Buyer's customer, and any person or Company named in the Contract of Sale, any personal information about any of us including our credit arrangements, credit worthiness and credit history and any other information permissible under the Privacy Act 1993.

- 16.2 To provide to any solicitor, agent of the Buyer, debt collection agency, credit reporting agency or other credit provider any Buyer or personal information about any of us, including default information under this agreement and collecting any overdue monies or otherwise enforcing any rights of the Seller under this Contract of Sale.
- 16.3 To send the Buyer commercial electronic messages for any purposes set out in this privacy clause;

Under the Privacy Act 1993, individuals have the rights of access to, and correction of, their personal information

Agreed and Accepted on this _____ day of _____ 20__

Signed by a duly Authorised Officer of the Buyer

Signature

Name and Designation

FOR OFFICE USE

Signed by the Company by its duly Authorised Officer

Signature

Name and Designation