

CELLAR LINK PTY LTD

ABN 45 132 635 842

Published date: 10 February 2009

TERMS AND CONDITIONS OF TRADE

Table of Contents

1.	Application of Terms	1
2.	Definitions and interpretation	2
3.	Website terms of use	5
4.	Availability of the Global Wine Management Portal.....	9
5.	Privacy	9
6.	Credit reporting agency	10
7.	Information or advice given by Cellar Link	12
8.	Purchase Orders.....	13
9.	Payment.....	13
10.	Taxes and expenses.....	15
11.	GST, WET, VAT and duty	15
12.	Late payment and non-payment	16
13.	Title and risk.....	17
14.	Insurance.....	17
15.	Delivery of Products on sale	18
16.	Returns and refunds	18
17.	Storage	19
18.	Collection and delivery of Products from storage.....	20
19.	Sale of the Customer's Products through Cellar Link.....	22
20.	Limitation of Cellar Link's liability – the Global Wine Management Portal	24
21.	Limitation of Cellar Link's liability - general	24
22.	Termination	25
23.	General	26

1. Application of Terms

- 1.1 Words and phrases which are defined in clause 2 have the same meaning when used elsewhere in these Terms. Defined terms are generally indicated by the use of a capital letter.
- 1.2 The supply of Products and Services by Cellar Link, and business undertaken by Cellar Link, is in all cases subject to these Terms. No statement, act or omission by any person acting or purporting to act on behalf of Cellar Link has effect to waive, add to or vary these Terms, unless the waiver, addition or variation is in writing and signed by a duly authorised representative of Cellar Link.
- 1.3 The use of a Customer's own terms and conditions is no derogation from these Terms. In particular, Cellar Link will not be bound by any terms attaching to or accompanying any Customer order, and the Customer agrees that all such terms are excluded.
- 1.4 These Terms include and should be read in conjunction with the following policies and terms that are accessed through the Website:

- (a) Cellar Link's privacy policy;
- (b) Cellar Link's how to order and pay policy;
- (c) Cellar Link's rate schedule/s and
- (d) Cellar Link's website terms and conditions.

1.5 Cellar Link may add to or amend these Terms at any time by giving notice to the Customer by e-mail or post or by placing a copy of the Terms as amended on Cellar Link's website. Such addition or amendment will take effect 30 days after notice is given, or later in accordance with its terms. Without limitation, continued placement of orders by the Customer with Cellar Link after the notice has been given will be conclusive evidence that the Customer has accepted the terms as added to or amended.

2. Definitions and interpretation

2.1 In these Terms the following definitions apply:

- (a) **"ATO Determination"** means the Australian Tax Office determination *A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No. 1) 2000* and other applicable determinations in force from time to time.
- (b) **"Auto pay"** means payment by electronic, automated means from a credit card account or by direct debit from a bank account.
- (c) **"Business Day"** means any day other than a Saturday, Sunday or public holiday in Sydney.
- (d) **"Case"** includes case, box, carton or other storage container used for the storage of Products.
- (e) **"Cellar Link"** means Cellar Link Pty Ltd ABN 45 132 635 842 and, where the context permits, includes its officers, employees, agents and contractors.
- (f) **"Cellar Link Account"** means an account opened by the Customer with Cellar Link for access to or for the purchase or sale of Products or Services;
- (g) **"Cellar Link Fees"** include but are not limited to the following:
 - (i) **"Administration Fee"** which means Cellar Link's fee charged per invoice if the Customer pays for storage with Cellar Link on a quarterly basis.
 - (ii) **"Bank Transfer Charge"** which means Cellar Link's fee for transferring funds to an overseas bank account.
 - (iii) **"Case Handling In Fee"** which means Cellar Link's fee for transferring Cases into the Storage Facility.
 - (iv) **"Case Handling Out Fee"** which means Cellar Link's fee for transferring Cases out of the Storage Facility.
 - (v) **"Default Notice Fee"** which means Cellar Link's fee charged when payment by credit card or direct debit is declined, or a cheque payment is dishonoured.
 - (vi) **"Late Fee"** which means the sum charged by Cellar Link as a result of non-payment of an invoice by the due date.

- (vi) **"Listing Fee"** means Cellar Link's charge per bottle of wine which is offered for sale on the Global Wine Management Portal.
- (viii) **"Sales Commission"** which means the commission payable by the Customer to Cellar Link upon sale by Cellar Link of a Product listed for sale by the Customer.
- (ix) **"Storage and Insurance Rates"** which means Cellar Link's charges for storage and insurance.
- (x) **"Subscription Fee"** which means Cellar Link's fee for subscription to an applicable Cellar Link Account.
- (h) **"Claim"** includes any claim, demand, action, proceedings, suits, liability, loss, damages, cost (including legal costs) or expense suffered or incurred whether in contract or tort, under statute or otherwise.
- (i) **"Contribution"** means any tasting notes, comments, photos, data, or other information or materials that the Customer Uploads to the Website and is either displayed solely to the Customer or publicly. "Customer owned Contribution" means a Contribution that the Customer, rather than a third party, owns.
- (j) **"Customer"** includes:
 - (i) a person with whom any contract for the provision of Products or Services is made by Cellar Link; and
 - (ii) a person to whom Cellar Link provides Products or Services;and, where the context permits, his officers, employees, agents or contractors other than Cellar Link.
- (k) **"Deposit Receipt"** means the receipt issued to the Customer by Cellar Link for all Products deposited by the Customer at the Storage Facility.
- (l) **"Global Wine Management Portal"** means Cellar Link's secure website for wine collection management.
- (m) **"GST"** means the goods and services tax as provided for by the GST Law.
- (n) **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) (as amended) or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.
- (o) **"GST Law"** means the GST Act and associated legislation including without limitation delegated legislation.
- (p) **"Intellectual Property Rights"** includes all rights in respect of copyright, trade marks, patents, designs, protection of confidential information, circuit layouts, and any other intellectual or industrial property rights whether arising under statute or otherwise.
- (q) **"Market Price"** means the price paid to Cellar Link by the buyer.

- (r) **"Password"** means a secret word or phrase that a Customer uses to gain admittance or access to services or information on the Website.
- (s) **"Product"** means any wine or other goods of any kind whether supplied by Cellar Link to a Customer, delivered to Cellar Link by or on behalf of a Customer or offered for sale on the Global Wine Management Portal or the Website.
- (t) **"Product List"** means the list of products available for sale by Cellar Link, published on the Website.
- (u) **"Provenance Guarantee"** means Cellar Link's assurance of the source and quality of a Product supplied to the Customer by Cellar Link.
- (v) **"RCTI"** means a recipient created tax invoice issued under and in compliance with the ATO Determination.
- (w) **"Registration"** means registration by the Customer on the Website for either a Cellar Link shopping account or to receive Cellar Link's newsletters by email and **"Register"** has a corresponding meaning.
- (x) **"Sale Cost"** means and includes each fee, charge, cost and expense (whenever incurred) of and incidental to the storage, preparation, transport, marketing, advertising, sale and disposal of Products, including (without limitation) the following and other costs as applicable:
- Marine transit insurance at market rates from time to time
 - Freight charges at market rates from time to time
 - UK duty at the rate applicable from time to time
 - WET as applicable from time to time
 - GST on all sales as applicable from time to time
 - Auction house listing fees as applicable from time to time
 - Case handling fees as applicable from time to time
 - Listing Fees as disclosed in Cellar Link's Schedule of Fees and Charges
 - Advertising costs for local advertising of the customer's products for sale, on line and by traditional media
 - Auction house commissions as disclosed in the schedule of fees and charges
 - Auction house loss and damage waiver (in the UK 1.5% of Value + VAT)
 - Credit card merchant fee surcharges
 - All other fees, duties, taxes and levies as applicable and levied by any statutory authority in the country of sale.
- (y) **"Schedule of Fees and Charges"** means the schedule of Cellar Link Fees and Cellar Link's charges for the Services, as published by Cellar Link from time to time.
- (z) **"Service"** means any storage, delivery, trading or other service provided or performed by Cellar Link for a Customer.
- (aa) **"Storage Facility"** means a suitable facility for storage of the Products as determined from time to time by Cellar Link in its discretion.
- (bb) **"Storage Record"** means the inventory of the Customer's Products stored within the Storage Facility.

- (cc) "**Subscription**" means subscription by the Customer on the Website for a Cellar Link Account and access to the Global Wine Management Portal and "**Subscribe**" has a corresponding meaning.
- (dd) "**Tax**" includes any tax, levy, duty, excise or impost, including, but not limited to, GST, VAT and WET, which apply to the supply, import, export, purchase or sale of or payment for any Product or the performance of or payment for any Service.
- (ee) "**Terms**" means these terms and conditions and Cellar Link's policies referred to in clause 1.4, each as varied from time to time in accordance with clause 1.5.
- (ff) "**Upload**" means to post, enter, or otherwise provide to the Website or the Cellar Link software.
- (gg) "**VAT**" means value added tax payable under applicable legislation of the United Kingdom or any other value added tax, goods and services tax, consumption tax or tax of similar effect levied from time to time.
- (hh) "**Website**" means Cellar Link's World Wide Web site at the internet address www.cellarlink.com.au
- (ii) "**WET**" means the wine equalisation tax levied under the *A New Tax System (Wine Equalisation Tax) Act 1999* (Commonwealth) (as amended) or any tax of similar effect levied from time to time.

2.2 Except where the context otherwise requires, in these Terms:

- (a) the singular includes the plural and vice versa;
- (b) words importing one gender include other genders;
- (c) the words "written" and "in writing" include any communication by letter, facsimile or email;
- (d) a reference to an individual includes a partnership, body corporate, government authority or agency and vice versa;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (f) if a party consists of 2 or more individuals, these Terms apply to all of them jointly and each of them severally;
- (g) headings are for convenience only and do not affect the interpretation of these Terms; and
- (h) any expression used that is defined in the GST Law has that defined meaning.

3. Website terms of use

3.1 Registration on the Website provides the ability to store frequently used information such as Product queries and personal information used to speed check-out, as well as access (where subscribed) to Cellar Link software, auction prices and premium third-party content licensed by Cellar Link. The Customer warrants and represents that all the information provided by the Customer in the course of registering and/or subscribing on the Website is

complete, accurate and up to date. The Customer undertakes to promptly notify Cellar Link of any changes to such information.

- 3.2 A person may only register and/or subscribe and remain registered and/or subscribed on the Website if he can enter into legally binding contracts under Australian law and if his registration and/or subscription is/are and will remain permitted under the law of the person's country of domicile or residence, if other than Australia. A person can only register and/or subscribe on the Website if, and the Customer represents and warrants that:
- (a) (if the Customer is an individual or a group of individuals) the Customer is or all members of the group are over the age of 18 (or, if higher, the legal minimum age for buying alcohol in the state in which the Customer resides or requires delivery); and
 - (b) (if the Customer is the representative of a company, partnership, trust or other organisation) the Customer has authority to place orders on behalf of such company, partnership, trust or other organisation and that the Customer is legally permitted to enter into each contract that results from acceptance of the Customers orders.
- 3.3 Upon registration and/or subscription, the Customer must provide a working email address and a password and all other relevant address and contact details required by Cellar Link. The Customer, or the Customer's authorised representative, must ensure that Customer's email address and password remain confidential at all times and agrees that the Customer is solely and entirely responsible for all activities which occur using the Customer's email address and password. The Customer must notify Cellar Link immediately if the Customer becomes aware of any unauthorised use of the Customer's email address and password. Each Customer email address and password must be used by a single user and/or the Customer's authorised representative(s) and is not transferable. Cellar Link may suspend or terminate access to an account if it suspects unauthorised or improper use.
- 3.4 It is the Customer's responsibility to inform Cellar Link of any change to his email address and other relevant address and contact details. If any communication from Cellar Link to the Customer is returned to Cellar Link as undelivered, the Customer's account may be deemed to be temporarily closed (at Cellar Link's discretion). The Customer's account will remain temporarily closed until the Customer notifies Cellar Link of the Customer's correct email address, physical address and contact details (as the case requires). While the Customer's account is temporarily closed, Cellar Link will not send the Customer any communications. Cellar Link shall not be liable to the Customer for any direct, indirect or consequential loss, damage, cost or expense suffered by the Customer on account of the temporary closure of the Customer's account, including without limitation any change in value or any loss of opportunity, market or profit.
- 3.5 If the Customer is issued with a password by Cellar Link, the Customer agrees to take responsibility for the safekeeping of the Customer's password and will not disclose it to anyone. The Customer is liable if an unauthorised person uses the Customer's password. The Customer agrees to release and forever indemnify Cellar Link in relation to any liability howsoever arising out of the unauthorised use of the Customer's password.
- 3.6 A valid credit, debit or charge card with associated the Customer's name, billing address, and phone number is required when making a purchase. The Customer may maintain this information, as well as other information such as shipping addresses, on the My Account page of Cellar Link's site. All personal information provided to Cellar Link will be treated in accordance with the Cellar Link's Privacy Policy. The Customer must ensure that the Customer is fully entitled to use that credit, debit or charge card both at the time when the Customer enters its details and when the Customer seeks to use it, and that the card has

or will have, at all relevant times, sufficient funds or available credit to cover all charges the Customer incurs to Cellar Link.

- 3.7 The Customer acknowledges that Cellar Link or its associates or related corporations own or are licensed to use all Intellectual Property Rights in the Website (including, but not limited to, any images, photographs or text which appear on the Website). The Customer agrees that the Customer will make no representation to the contrary, and that the Customer must not use or copy the Website in any manner which is inconsistent with the rights of the owner or licensee of such Intellectual Property Rights.
- 3.8 As a condition of use of the Website, the Customer expressly agrees not to use the Website, the Cellar Link software, or other internet services provided by Cellar Link for any purpose that is unlawful or prohibited by these Terms. The Customer agrees to abide by all applicable local, state, national, and international laws and regulations. The Customer agrees that the Customer is solely responsible for all acts or omissions that occur using the Customer's account, including the content of transmissions through Cellar Link's service.
- 3.9 Without Cellar Link's prior written consent the Customer may not reproduce, distribute, modify, create or display derivative works based on, repost or otherwise use the content of the Website. Nothing contained herein shall be construed as conceding any licence or right under any copyright or other intellectual property right.
- 3.10 The Customer acknowledges that any trade marks or logos which appear on the Website are owned by or licensed to Cellar Link or its associates or related corporations, and that the Customer must not do anything to prejudice the rights of the trade mark owner or licensee to such trade marks or logos.
- 3.11 The Customer agrees not to:
 - (a) attempt to access the Website or any of its content if the Customer is under the legal drinking age of the jurisdiction from which the Customer accesses the Website;
 - (b) Upload, post or otherwise transmit through or to the Website any content that:
 - (i) is unlawful, abusive, threatening, harmful, obscene, lewd, offensive, defamatory or otherwise objectionable;
 - (ii) might infringe the intellectual property rights, privacy rights, rights of publicity, or other proprietary rights of others;
 - (iii) contains any virus, Trojan horse, time bomb, or any other harmful program or element;
 - (c) disrupt, place unreasonable burdens or excessive loads on, interfere with or attempt to gain unauthorised access to any portion of the Website, its computer systems, servers or networks;
 - (d) provide false information about the Customer to Cellar Link, impersonate any other person, or otherwise attempt to mislead others about the Customer's identity or the origin of any content, message or other communication;
 - (e) transmit junk mail, chain letters, or other unsolicited bulk email or duplicative messages;

- (f) collect information about other visitors to Cellar Link website(s) without their consent or otherwise systematically extract data or data fields, including without limitation any financial data or email addresses;
 - (g) sell access to or the use of the Website, including any content contained on, downloaded or accessed from the Website, except as specifically permitted in writing by Cellar Link;
 - (h) redistribute any content, including reviews, provided by Cellar Link in any manner whatsoever including by means of printed publication, fax broadcast, web pages, email, web newsgroups or forums, or any other electronic or paper-based service or method;
- 3.12 Cellar Link reserves the right to monitor, review, retain, and/or disclose any information necessary to satisfy any applicable law, regulation, legal process or legitimate governmental request.
- 3.13 By Uploading any Contribution, the Customer represents and warrants that the Customer has the right to Upload that Contribution. The Customer will not Upload any Contribution that the Customer does not have the right to Upload.
- 3.14 Cellar Link will provide a means by which the Customer may disclose that a Contribution is not a Customer-owned Contribution. The Customer will make all such disclosures appropriately and accurately; in the absence of such disclosure, Cellar Link may rely upon the Customer's warranty that the Contribution is a Customer-owned Contribution.
- 3.15 The Customer grants Cellar Link an irrevocable, perpetual, worldwide, fully-paid, non-exclusive licence to create derivative works of each Customer-owned Contribution and to use, reproduce, modify, adapt, publish, perform and display the Customer-owned Contribution and its derivative works, so long as the Customer is not identified as the source thereof; provided, however, that if the Customer authorises Cellar Link to identify the Customer as the source, then the Customer will be so identified. The Customer represents and warrants that the Customer has the right to grant the foregoing licence.
- 3.16 The Customer acknowledges that Cellar Link has no obligation to screen, and does not screen, Contributions when they are Uploaded. Cellar Link, in its sole discretion, may, but will have no obligation to, maintain and utilise Contributions even if the Customer deletes, edits or removes any Contribution, irrespective of whether any user or third party claims that such Contribution violates these Terms or any rights of such user or third party. Cellar Link may, but under these Terms will have no obligation to, investigate any such claim.
- 3.17 Cellar Link does not monitor or review statements made by persons other than Cellar Link on the Website. Third parties may post statements or information on some portion of the Website from time to time. Cellar Link makes no representations to the Customer in relation to the accuracy, quality, legality, ownership or other aspect of any third party posted material.
- 3.18 Cellar Link has not reviewed all of the sites that are linked to the Website and is not responsible for the content of any off-site pages or any other sites linked to the Website. The Customer's linking to any other off-site pages or other sites is strictly at the Customer's own risk.
- 3.19 The Customer agrees that the entire risk arising out of use or performance of the Website lies with the Customer. To the extent permitted by law, the Customer releases and discharges Cellar Link and its associates and related corporations from all forms of direct, special, indirect or consequential loss or damage (including loss of profits, loss of data or

loss or damage that may reasonably be supposed to be in the contemplation of the parties at any time) arising out of or in connection with the Website, including, without limitation, loss or damage caused by the negligence of Cellar Link or its associates or related corporations.

- 3.20 Any third party products, services and information offered for sale or advertised which are accessible from the Website via a hyperlink to a third party website are not produced or endorsed by Cellar Link and the Customer's legal relationship is with the third party supplier.

Cellar Link does not check, represent nor warrant the accuracy or completeness of the information or the suitability or quality of the products and services of any third parties.

The Customer must make the Customer's own enquiries with the relevant third party supplier direct before relying on the third party information or entering into a transaction in relation to the third party products and services accessible from the Website via a hyperlink to the third party website.

Cellar Link may receive fees and/or commissions from third parties whose products and services are displayed or made available from the Website via a hyperlink to the third party. The Customer acknowledges and consents to Cellar Link receiving such fees and/or commissions.

- 3.21 Cellar Link may add to, delete, or otherwise change any of the terms, conditions, and notices under which the Website is offered, including but not limited to the charges associated with the use of the Website. Cellar Link will notify the Customer of any substantial changes to these terms & conditions as provided in clause 1. The Customer's use of the Website after notice will constitute the Customer's deemed acceptance of such changes.

4. Availability of the Global Wine Management Portal

- 4.1 Cellar Link will (subject to the remainder of this clause 4) use reasonable endeavours to ensure that the Global Wine Management Portal is available 24 hours a day 365 days a year. Notwithstanding this, Cellar Link shall not be responsible for or liable to any Customer for any unavailability of the Global Wine Management Portal which is outside Cellar Link's control, including but not limited to any failure of any hardware, software and/or any telecommunications links between Customers and the internet.
- 4.2 Cellar Link reserves the right to close the Global Wine Management Portal at any time if it believes there are compelling legal or technical reasons to do so or for general maintenance.
- 4.3 Without limiting the foregoing Cellar Link may refuse to provide or to continue to provide access to the Global Wine Management Portal or to provide or continue to provide other services to anyone at any time at its sole discretion.

5. Privacy

- 5.1 The Customer acknowledges that Cellar Link may collect, store, use and disclose information about the Customer for the following purposes:
- (a) performance by Cellar Link of its obligations and enjoyment by Cellar Link of its rights under these Terms;

- (b) (unless the Customer has requested that it not receive such information) to provide the Customer with marketing materials and information about products and services which Cellar Link or any affiliated organisations provide which may be of interest to the Customer;
- (c) complying with Cellar Link's obligations under relevant laws; and
- (d) should Cellar Link (in its discretion) decide to extend credit to the Customer:
 - (i) to assess an application by the Customer for such credit;
 - (ii) to notify other credit providers or credit reference agencies of any default by the Customer in complying with the terms upon which such credit is extended; and
 - (iii) to exchange information with other credit providers as to the status of the credit provided by Cellar Link where the Customer is in default.

5.2 The information which Cellar Link may collect, store, use and disclose under clause 5.1(d) can include any information about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act 1988 (Commonwealth)*.

5.3 Cellar Link will not discuss or amend any of the Customer's account information or account details nor accept any trading instruction without prior confirmation of the Customer's account identification, password and/or other security details (at Cellar Link's discretion).

6. Credit reporting agency

6.1 Before, during or after the provision of credit to the Customer, Cellar Link may give information about the Customer to a credit reporting agency for the following purposes:

- to obtain a consumer credit report about the Customer; and/or
- to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

6.2 The information that Cellar Link may give to a credit reporting agency is limited to:

- identity particulars - the Customer's name, sex, address (and the previous two addresses) date of birth, name of employer, and driver's licence number;
- the Customer's application for credit or commercial credit - the fact that the Customer has applied for credit and the amount;
- the fact that Cellar Link is a current credit provider to the Customer;
- loan repayments which are overdue by more than 60 days, and for which debt collection action has started;
- advice that the Customer's loan repayments are no longer overdue in respect of any default that has been listed;

- information that, in the opinion of Cellar Link, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once; and
- information that credit provided to the Customer by Cellar Link has been paid or otherwise discharged.

6.3 The Customer agrees as follows:

- (a) that Cellar Link has informed the Customer that Cellar Link may give certain personal information about the Customer to a credit reporting agency;
- (b) that Cellar Link may obtain information about the Customer from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing the Customer's application for consumer credit;
- (c) that Cellar Link may obtain a consumer credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
- (d) that Cellar Link may exchange information with credit providers named in the Customer's application for credit or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - to assess an application by the Customer for credit;
 - to notify other credit providers of a default by the Customer;
 - to exchange information with other credit providers as to the status of the Customer's credit with Cellar Link where the Customer is in default with other credit providers;
 - to assess the Customer's credit worthiness;

and the Customer understands that the information exchanged can include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act;

- (e) that Cellar Link may obtain from a credit reporting agency a consumer credit report containing information about the Customer for the purpose of assessing whether to accept the Customer as a guarantor for credit applied for by, or provided to, other person(s). The Customer agrees that this agreement commences from the date the other person(s) apply for or are granted credit and continues until the credit covered by the other person's(s') application ceases;
- (f) that Cellar Link may give to a person who is currently a guarantor, or whom the Customer indicated is considering becoming a guarantor, a credit report containing information about the Customer for the purpose of the prospective guarantor deciding whether to act as a guarantor, or to keep an existing guarantor informed about the guarantee. The Customer understands that the information disclosed can include anything about the Customer's credit worthiness, credit standing, credit history or

credit capacity that credit providers are allowed to disclose under the Privacy Act, and includes a credit report.

7. Information or advice given by Cellar Link

7.1 The Customer acknowledges as follows:

- (a) Cellar Link does not warrant the accuracy of information contained in the Product List. The Customer is solely responsible for verifying the details of all Products received from Cellar Link before consuming or otherwise dealing with them.
- (b) Descriptions of third parties' goods and services included in the Website are accurate to the best of Cellar Link's knowledge, based upon information provided by those third parties. Cellar Link will endeavour to correct errors or omissions as quickly as practicable after being notified of them.
- (c) Cellar Link will use reasonable endeavours to check each Case of Products offered for sale through the Website by third parties to ascertain that the Products concerned correspond with their description.
- (d) Despite paragraphs (b) and (c) of this clause, Cellar Link has no control over, it does not give any warranty or representation in relation to and it disclaims all responsibility for:
 - (i) the quality, safety or legality of any Product offered for sale through the Website by third parties;
 - (ii) the truth or accuracy of any listing or description of any Product offered for sale through the Website by third parties; and
 - (iii) the ability of any third party to sell or any third party's title to any Product offered for sale through the Website.
- (e) Any information or advice given by Cellar Link by telephone, fax, email, and marketing material or via the Website (including, without limitation, any valuation) was or will be current at the date of posting, but may have become or may become out of date. Any valuation given by Cellar Link is indicative only. Any advice given by Cellar Link about buying or selling Products is purely an opinion and the decision to buy or sell rests solely with the Customer at all times. The Customer can obtain further information about the Products and Services referred to on the Website by telephoning Cellar Link.
- (f) Any information or advice given by Cellar Link by telephone, fax, email, marketing material or via the Website was or will be prepared without consideration of the Customer's personal objectives, financial situation or needs. Before acting on the information or advice, the Customer should consider whether it is appropriate to the Customer's objectives, financial situation and needs. The Customer should consider each Product carefully before deciding whether to acquire, continue holding or sell the Product.
- (g) Any information on the Website about the taxation consequences of buying and selling Products is general information only; is based on current tax laws as understood by Cellar Link from time to time; is for guidance only; does not constitute tax advice; and should not be relied upon by the Customer. The Customer's individual situation may differ and the Customer should obtain independent professional tax advice on all taxation matters.

- (h) Cellar Link has recommended that the Customer should obtain independent financial and investment advice from the Customer's appropriately qualified financial advisor as to the preferred mechanism for acquisition or disposal of the Customer's Products and also regarding the likely tax consequences of disposal for the Customer.
- (i) Cellar Link will act on the Customer's behalf as instructed by the Customer in his instruction and/or by the Customer's representative. Any market valuation that has been or is provided by Cellar Link is/will be a reflection of past sales (by country/method of sale). Where a market valuation has been or is provided, it is not a reserve price and the Products may be sold for more or less than that valuation. Any market valuation is exclusive of all Sale Costs.

8. Purchase orders

8.1 A purchase order placed by the Customer, by whatever means, with Cellar Link:

- (a) may not be cancelled without Cellar Link's consent in writing; and
- (b) may be wholly or partially accepted or rejected by Cellar Link in its absolute discretion.

Acceptance of a purchase order by Cellar Link is not effective until it is confirmed by Cellar Link to the Customer in writing.

8.2 Without limiting clause 8.1, Cellar Link may in its sole discretion reject or elect to partially supply any purchase order placed by the Customer if there is not a sufficient quantity of Products available to Cellar Link or if the terms upon which such Products are available are not acceptable to Cellar Link.

8.3 Subject to clauses 8.1 and 8.3, a contract for the sale and purchase of Products offered for sale by Cellar Link or a contract for the supply of Services will come into effect upon receipt by Cellar Link of:

- (a) the Customer's purchase order; and
- (b) payment for the Products or the Services (as the case may be).

9. Payment

9.1 The price payable by the Customer for any Products or Services ordered by the Customer and supplied by Cellar Link will be:

- (a) the price quoted by Cellar Link at the time the Customer places the order; or
- (b) the Market Price; or
- (c) such other price as Cellar Link may advise to the Customer at or before the time Cellar Link accepts the Customer's order.

9.2 Subscription Fees and Listing Fees are invoiced annually in advance for each calendar year and are payable in advance at the time of opening a Cellar Link account or listing Products on the Global Wine Management Portal and in advance on the first Business Day in January each subsequent year so long as the Customer has a Cellar Link account or has Products listed on the Global Wine Management Portal.

- 9.3 Charges for storage and insurance are either:
- (a) invoiced annually in advance for each calendar year and are payable in advance at the time of opening a Cellar Link account or listing Products on the Global Wine Management Portal and in advance on the first Business Day in January each subsequent year so long as the Customer has Products in the Storage Facility; or
 - (b) invoiced quarterly in advance for each calendar quarter as the Customer elects and are payable in advance at the time of placing an order for storage or insurance and in advance on the first Business Day in each subsequent calendar quarter so long as the Customer has Products in the Storage Facility.
- 9.4 No adjustment is made to Subscription Fees, Listing Fees or charges for storage and insurance for any period during a year during which a Service is not used by the Customer.
- 9.5 The Customer is not entitled to a refund of any fee paid in respect of any period during which a Service is not used by the Customer.
- 9.6 Payment in full for Products and Services ordered by a Customer, together with any Taxes or expenses payable by the Customer under clause 10 or clause 11, must accompany the Customer's order and must be made in cash or in such other form as Cellar Link agrees to accept from time to time. Any variation in the price notified by Cellar Link pursuant to clause 9.1(c) will (if a reduction) be refunded by Cellar Link to the Customer at the time the Products or Services are delivered by Cellar Link or (if an increase) must be paid by the Customer to Cellar Link upon notification by Cellar Link.
- 9.7 The Customer must pay:
- (a) all delivery, storage, insurance, collection, redelivery and other charges in accordance with Cellar Link's Schedule of Fees and Charges; and
 - (b) all expenses, including legal fees, incurred by Cellar Link in the enforcement of these Terms and collection of overdue sums due to Cellar Link.
- 9.8 Unless otherwise agreed by Cellar Link, payment process for all Cellar Link Fees and other fees and charges shall be by Auto pay only.
- 9.9 The first drawing under a bank account debit authorisation will occur on the date nominated on the direct debit authorisation.
- 9.10 Cellar Link will give the Customer at least 14 days' notice in writing or by telephone before any change is made to the initial terms of a bank account debit authorisation.
- 9.11 The Customer must give notice in writing to Cellar Link before the Customer makes any change to a bank account debit authorisation, including (without limitation):
- (a) deferring a debit; or
 - (b) altering the schedule of debits; or
 - (c) stopping an individual debit; or
 - (d) suspending the bank account debit authorisation; or
 - (e) cancelling the bank account debit authorisation.

- 9.12 Any credit, debit or charge card or bank account debit authorisation that is declined, and any cheque payment that is dishonoured will attract a fee as set out in Cellar Link's Schedule of Fees and Charges.
- 9.13 If the Customer gives Cellar Link authority to debit sums due to Cellar Link to the Customer's credit, debit or charge card or bank account, Cellar Link may charge its accounts to the Customer's credit, debit or charge card or bank account as and when they fall due.
- 9.14 The Customer is solely responsible for notifying Cellar Link of any alleged error in debiting the Customer's credit, debit or charge card or bank account.
- 9.15 If any credit, debit or charge card or bank account debit authorisation is declined, Cellar Link shall not be obliged to seek further authorisation and may charge late fees and interest at the rate set out in clause 12.1 from the time the credit, debit or charge card or bank account debit authorisation is declined until the outstanding account is paid in full.

10. Taxes and expenses

10.1 Except as otherwise provided in these Terms, Taxes:

- (a) will be borne by Cellar Link, if the price at which Cellar Link supplies a Product or Service is expressed to be inclusive of the particular Taxes; and
- (b) in every other case, must be borne by the Customer.

10.2 The Customer must pay on demand, and must indemnify Cellar Link in full against:

- (a) any agent's fees, costs of handling and delivery or other expenses incurred as a result of delivery of any Product to an address other than the Storage Facility; and
- (b) any Taxes which are to be borne by the Customer under clause 10.1, together with any fine, penalty or interest paid or payable by Cellar Link because of a default by the Customer in paying such amounts.

11. GST, WET, VAT and duty

11.1 The Customer will notify Cellar Link if the Customer is or is required to be registered for GST and, if so, will provide Cellar Link with the Customer's Australian Business Number.

11.2 The price of wine sold to Cellar Link by the Customer includes all GST and WET (if any) payable by the Customer and the Customer is solely responsible for remitting such GST and WET to the Australian government.

11.3 The price of wine sold to Cellar Link includes all VAT and duty (if any) payable by the Customer and the Customer is solely responsible for remitting such VAT and duty to the government of the United Kingdom.

11.4 If and so long as the Customer, in the course of carrying on an enterprise for which the Customer is registered for GST, supplies wine to Cellar Link for resale by retail sale, brokerage or auction, then on and by virtue of the making and acceptance of each such supply, the Customer and Cellar Link agree as follows:

- (a) this clause relates to the supply by the Customer to Cellar Link, as a taxable supply, of wine for resale by retail sale, brokerage or auction;

- (b) Cellar Link warrants that it is registered for GST and agrees that it will notify the Customer promptly if it ceases to be registered for GST;
- (c) the Customer warrants that it is registered for GST and agrees that it will notify Cellar Link promptly if it ceases to be registered for GST or if it fails to comply with any of the requirements of the ATO Determination;
- (d) Cellar Link warrants that it will reasonably comply with its obligations under the taxation laws;
- (e) subject to paragraph (i), Cellar Link will issue RCTIs to the Customer within 28 days after Cellar Link determines the value of the wine by reselling it by retail sale, brokerage or auction;
- (f) the Customer will not issue tax invoices in respect of the wine resold by Cellar Link by retail sale, brokerage or auction;
- (g) in case of any subsequent adjustment being required, Cellar Link will issue an adjustment note to the Customer within 28 days of the adjustment;
- (h) Cellar will retain copies of all RCTIs and adjustment notes that it issues to the Customer; and
- (i) Cellar Link will not issue any document that would otherwise be an RCTI to the Customer on or after the date on which Cellar Link becomes aware that the Customer has failed to comply with any of the requirements of the ATO Determination.

12. Late payment and non-payment

- 12.1 If any amount is due and payable to Cellar Link by a Customer but remains unpaid, Cellar Link may (without the need for further notice or demand and without prejudice to any other rights or remedies which may be available to it) do any one or more of the following:
- (a) charge and recover a late fee;
 - (b) charge and recover interest on the outstanding amount, calculated daily at the rate of 1.5% per month;
 - (c) off-set the amount owed against any money that Cellar Link owes to the Customer; and
 - (d) cancel any outstanding order placed by the Customer and apply any amount paid in respect of such order to the payment of amounts owing to Cellar Link.
- 12.2 In addition Cellar Link shall have a lien on all Products, any other goods held in the Storage Facility on the Customer's behalf and any document relating to them for all sums payable by the Customer to Cellar Link. If any amount due and payable to Cellar Link by the Customer is not paid in full within six (6) weeks of the due date, Cellar Link may, without further notice, take any or all of the following actions: dispose of and/or sell the Products or other goods by public auction or private treaty on such terms as Cellar Link may determine. Cellar Link may also require payment of default action costs, including any costs associated with the seizure of the Customer's Products. Any excess moneys recovered by Cellar Link on disposal will be returned to the Customer.

13. Title and risk

- 13.1 Title to Products sold by Cellar Link will pass to the Customer when (and only when) all amounts outstanding in respect of the Products and otherwise owing by the Customer to Cellar Link (whether on account of Products, Services or otherwise) have been paid in full to Cellar Link.
- 13.2 Products sold by Cellar Link will be at the risk of the Customer from the time of actual delivery of the Products to the Customer or of deemed delivery pursuant to clause 15.4, whichever is earlier. Subject to clause 14, it is the Customer's responsibility to arrange such insurance as the Customer deems necessary or appropriate in the circumstances to protect against loss of or damage to the Products.
- 13.3 Subject to clause 11, the Customer:
- (a) stores Products at the Storage Facility solely at his own risk; and
 - (b) bears all responsibility for any and all direct or consequential loss, damage or destruction of any kind to the Products whilst in possession or control of Cellar Link or otherwise, howsoever caused including but not limited to theft, deterioration, contamination, evaporation, breakage, spoilage, mildew, flood, fire, leakage or overflow of water, heat, storm, earthquake, explosion, accident, interruption to or failure of gas, water, electricity and other services, industrial disputes, war, removal or delivery of goods, pests, vermin or any other reason whatsoever including acts or omissions, deliberate, negligent or otherwise, by Cellar Link.

14. Insurance

- 14.1 Cellar Link will ensure that there is in effect at all times a policy of insurance which covers the Products for their replacement or the payment of their cost of replacement (as determined in accordance with the policy) against the risks of physical loss, destruction and damage arising from causes specified in the policy, at all times from actual receipt of the Products into the Storage Facility until they are made available for collection or dispatched in accordance with clause 18. Such policy of insurance:
- (a) will be subject to maximum limits in the aggregate and for each loss or series of losses as set out in the policy terms and conditions;
 - (b) will be subject to exclusions, limitations and other terms as set out in the policy terms and conditions; and
 - (c) will be subject to an excess on each and every claim of three hundred and fifty Australian dollars (\$A350.00).
- 14.2 Cellar Link will promptly provide to a Customer on whose behalf Cellar Link holds or has at any time held Products in the Storage Facility a copy of the terms and conditions of the insurance policy taken out pursuant to clause 14.1.
- 14.3 The liability of Cellar Link to the Customer in respect of any Products insured pursuant to clause 14.1 is limited to the proceeds actually recovered by Cellar Link under such policy of insurance, less:
- (a) any excess paid or payable by Cellar Link in respect of the claim; and
 - (b) any other costs (including, but not limited to, legal and administrative costs) incurred by Cellar Link in making or pursuing such claim,

and, in the case of a claim also involving property of a customer or customers of Cellar Link other than the Customer, will be the same proportion of the insurance proceeds recovered (net of the expenses referred to in clauses 14.3(a) and 14.3(b)) as the value of the property of the Customer which has been lost, destroyed or damaged bears to the value of all of Cellar Link's customers' property which has been lost, destroyed or damaged.

- 14.4 Insurance cover arranged by Cellar Link will not indemnify the Customer for loss due to variation in temperature, packing or handling.
- 14.5 Despite the foregoing, the Customer's Products will not be insured during any period when any sum payable by the Customer to Cellar Link has not been paid in full by its due date.

15. Delivery of Products on sale

- 15.1 All Products ordered by the Customer from Cellar Link will be delivered to the Customer's nominated delivery address.
- 15.2 Although Cellar Link will make every effort to deliver Products ordered by the Customer in accordance with the Customer's requested date for delivery, no warranty is given by Cellar Link that the Products will be delivered on the nominated or any other date. Cellar Link is not liable for any Claim arising from or relating to any delay or failure to deliver any Products.
- 15.3 If, following acceptance of the Customer's order, any Product specified therein becomes unavailable for any reason, Cellar Link will use its best endeavours to offer an alternative Product to the Customer. Cellar Link will refund to the Customer:
- (a) the difference between the amount paid for the unavailable Product and any alternative Product which the Customer agrees to take; or
 - (b) the amount paid in respect of the unavailable Product, if the Customer does not choose to purchase the alternative Product.

Any additional amount payable in respect of an alternative Product must be paid by the Customer at the time of agreeing to purchase the alternative Product.

- 15.4 Cellar Link is deemed to have delivered Products when, in the ordinary course of events, the Products would have arrived at the Customer's nominated delivery address.

16. Returns and refunds

- 16.1 Cellar Link will endeavour to assess the condition of any Product it sells (including by physical inspection), but Cellar Link cannot know and accepts no liability for the complete provenance of every Product, especially older vintages. If the Customer requests information that Cellar Link has regarding the provenance and condition of Products that Cellar Link sells, Cellar Link will share that information with the Customer. Cellar Link's Provenance Guarantee only applies to stock originally sourced and supplied from within Cellar Link's own cellars.
- 16.2 If the Customer is not satisfied with Products he purchases from Cellar Link, or if Cellar Link makes an error with the Customer's order, the Customer must email Cellar Link immediately at customerservice@cellarlink.com.au explaining the reasons for the Customer's dissatisfaction. Each situation will be reviewed on an individual basis in light of the facts and circumstances of that case and will be resolved promptly.

16.3 If Cellar Link requires the Customer to return questionable Products (including both opened and unopened ones) to Cellar Link for evaluation and for possible return to Cellar Link's supplier, such Products must have the Cellar Link-generated barcode label attached as proof that the Products were supplied by Cellar Link. If (in its sole discretion) Cellar Link accepts responsibility, Cellar Link will either exchange the Products or issue a credit (including return shipping charges) towards future purchases. All requests to return wine are subject to Cellar Link's investigation, review and final evaluation of the relevant facts and circumstances. Unless otherwise agreed by Cellar Link, only the following reasons for return will be considered:

- (a) The wine is corked or flawed, providing the wine is returned in its original condition to Cellar Link within 7 days of receipt together with proof of purchase and all remaining bottles of the Product supplied at the same time as the defective wine; or
- (b) The wrong wine was sent (e.g., different vintage from the one ordered); or
- (c) An error was made during shipment of the wine.

17. Storage

17.1 Products delivered into the Storage Facility will be stored until the Customer arranges to collect them. The Customer will pay for storage of the Products at the rates stated in Cellar Link's Schedule of Fees and Charges applicable from time to time in advance.

17.2 Cellar Link can and will open any Case containing Products and can and will open and peruse any document accompanying or associated with Products for the purpose of cataloguing the Products, determining the nature, condition or ownership of the Products and for any other purpose Cellar Link believes necessary.

17.3 If, in Cellar Link's opinion, any Product is or is liable to become dangerous, Cellar Link may at any time destroy dispose of, abandon or render harmless the Product without liability or compensation to the Customer and without prejudice to Cellar Link's right to any charges under these Terms.

17.4 If a Case is damaged or otherwise requires replacement from time to time, Cellar Link may, in the exercise of its absolute discretion and at the Customer's cost, repackage Products in new Cases.

17.5 The Customer may not enter the secure area of the Storage Facility without Cellar Link's consent nor except in accordance with the access and security procedures specified by Cellar Link from time to time.

17.6 The Customer warrants:

- (a) that the Customer has made his own inquiries as to the suitability and fitness of Cellar Link for the Customer's purposes and has not relied upon any representations made by Cellar Link;
- (b) that the Customer is or will be the owner of Products and/or is or will be entitled at law to deal with Products delivered into the Storage Facility in accordance with these Terms;
- (c) that the Products are not and will not be subject to any encumbrance or right of any third party which would or might prevent the Customer storing them at the Storage Facility under these Terms;

- (d) that the Customer or his representative will check that Products delivered to the Storage Facility by or on behalf of the Customer are fully, adequately and truly described on all Deposit Receipt at the time of receipt;
- (e) that all Taxes will be paid in full before the Products to which they relate are delivered for storage in the Storage Facility, unless (in the case of Storage Facilities in Australia only):
 - (i) the Customer intends to export the Products from Australia within 60 days of purchase; and
 - (ii) the Customer delivers a completed WET quoting form to Cellar Link before or at the time of delivery of the Products to the Storage Facility;
- (f) that no Products delivered to the Storage Facility by on behalf of the Customer will be or include any illegal, dangerous, inflammable, corrosive, explosive, volatile, offensive or aerosol items or substances nor contain more than 20% alcohol; and
- (g) that the Customer will keep Cellar Link informed of the Customer's current postal address, telephone numbers, fax number, email address, drivers licence number or passport number and credit, debit or charge card or bank account details at all times.

17.7 The Customer will indemnify Cellar Link against all Claims whatsoever and howsoever arising out of any breach of these Terms, including any breach of the warranties set out in clause 17.6.

17.8 The Customer acknowledges and agrees to comply with all relevant laws, including Acts and Ordinances, Regulations, By-laws and Orders, as are or may be applicable to the use of the Storage Facility and its services. The liability for any and all breaches of such laws rests absolutely with the Customer and includes any and all costs resulting from such a breach.

17.9 If Cellar Link believes that the Customer is not complying with the law, Cellar Link may take any action it considers necessary including contacting, cooperating with and submitting Products to the relevant authorities and/or immediately disposing of Products or removing the Products at the Customer's expense. The Customer consents to Cellar Link taking this action at any time, even where Cellar Link could have but did not act earlier.

17.10 The Customer indemnifies Cellar Link and will keep Cellar Link indemnified from and against all Claims for any loss, injury or damage to or destruction of property of or personal injury to or death of Cellar Link, other customers or third parties caused or contributed to by the Customer including any resulting from or incidental to the Customer's use of or access to the Storage Facility.

17.11 Cellar Link will catalogue all Products delivered for storage at the Storage Facility. Unless Cellar Link, in its absolute discretion otherwise decides, all Products will be catalogued and bottle and case barcode labels applied. If an exception is made, for cataloguing purposes the contents of a Case will be assumed to be as marked on the Case. Cellar Link accepts no responsibility for the actual contents of any Case.

17.12 Cellar Link will make access to the Storage Record available to the Customer via the Global Wine Management Portal. The Customer indemnifies Cellar Link against any Claim for any typographical, data entry or cataloguing error in any Deposit Receipt or the Storage Record.

18. Collection and delivery of Products from storage

- 18.1 Cellar Link is under no obligation to accept Products into the Storage Facility nor to make Products available for collection from the Storage Facility until the Customer has complied with all these Terms and has paid to Cellar Link all amounts owing to Cellar Link in respect of purchase of the Products, their storage and any other amounts then owing to Cellar Link by the Customer.
- 18.2 At least 5 Business Days' notice in writing of collection, specifying the particular Products to be collected, the name of the person/carrier who is to collect them and the date and estimated time for collection, must be given by the Customer to ensure that those Products will be available for collection by or on behalf of the Customer.
- 18.3 Cellar Link may agree to dispatch the Products (or particular Products specified by the Customer in writing) to the Customer or to an address, on an approximate date and at an approximate time nominated by the Customer in writing, but the costs of so dispatching the Products, and any other expenses of delivery will be the sole responsibility of the Customer.
- 18.4 Cellar Link is not a common carrier and may at its discretion refuse to transport or carry Products for any person or to transport or carry any class of Products or any particular Product.
- 18.5 Despite any specific instructions given by the Customer as to the mode of carriage of Products, in the exercise of its absolute discretion Cellar Link may carry Products or have them carried by contractors and by any means.
- 18.6 Charges where applicable shall be considered earned whether or not Products are delivered to any nominated consignee and whether damaged or not.
- 18.7 Despite clause 18.6, if a consignee named in the Customer's instruction for delivery of Products is not in attendance at the specified address at the time of delivery, Cellar Link will be entitled to charge the Customer an additional charge for each attempted delivery and for the time involved in any delay in effecting delivery and the Customer will pay those charges on demand.
- 18.8 Despite the foregoing, Cellar Link shall be entitled to presume that anyone at the address specified for delivery who receives the Products is authorised to receive the Products on the Customer's behalf. Cellar Link may request that the person who receives the Products provide satisfactory proof of his age. Cellar Link will refuse to deliver the Products if the person receiving the Products is unable or unwilling to provide proof of his age. The Products will not be delivered to persons under the age of eighteen (18) years or to persons who fail to provide proof of age satisfactory to Cellar Link that the person is aged eighteen (18) years or over.
- 18.9 By making Products available to the Customer (or to a person who Cellar Link in good faith believes to be authorised by the Customer to collect the Products) for collection or (if instructed by the Customer) dispatching the Products in accordance with clause 18.3, Cellar Link discharges all of its obligations under this clause 18. Cellar Link is not responsible for any Claim which arises after the Products are made available for collection or dispatched.
- 18.10 Cellar Link shall not be liable for any failure to carry the Customer's instructions, nor for any direct or consequential loss or damage whatsoever resulting from such failure, if:
 - (a) Cellar Link receives less than 5 Business Days' notice of delivery of Products to or collection of Products from the Storage Facility or of a request for delivery of Products

to another location; or

- (b) Cellar Link is unable to carry out any of the Customer's instructions due to reasons or circumstances outside Cellar Link's control.

18.11 The Customer understands that, by arranging removal of the Customer's Products from the Storage Facility where they are held at the time of the Customer's instruction, the Customer relinquishes any remaining prepaid storage and insurance coverage for those Products.

19. Sale of the Customer's Products through Cellar Link

If the Customer instructs Cellar Link to sell any of the Customer's Products, the following terms apply.

- 19.1 (a) The Customer's instruction will be deemed to replace and supersede all other instructions previously given by the Customer to Cellar Link in relation to those Products. The instruction will be irrevocable unless otherwise agreed in writing by Cellar Link.
- (b) The Customer will be deemed to have authorised Cellar Link to accept and act on all instructions given to Cellar Link by the Customer's representative, whether by telephone, mail, fax or email and to pay all money due to the Customer or to the Customer's representative or to the Customer's nominated bank account.
- (c) The Customer's representative's instructions will take precedence in case of conflict with any other instruction given by the Customer.
- (d) Unless otherwise agreed with the Customer, Cellar Link shall sell the Customer's Products:
- (i) by means of brokerage, retail or auction markets, or a combination of those methods, as Cellar Link sees fit;
 - (ii) for the best price(s) that Cellar Link can reasonably achieve in the market(s) it selects at the time(s) when it sells the Customer's Products; and
 - (ii) without setting a reserve price.
- (e) The Customer authorises Cellar Link to ship (at the Customer's expense) the Customer's Products to anywhere in Australia, Asia, the United Kingdom, the United States of America or Europe for the purpose of sale.
- (f) The Customer agrees to be bound by Cellar Link's terms and conditions of business and by each auction house's terms and conditions of sale as applicable from time to time. The Customer acknowledges that the Customer has and will have had the opportunity to review those terms on the applicable company's website.
- 19.2 The Customer represents and warrants to Cellar Link that, with respect to all Products which the Customer instructs Cellar Link to sell:
- (a) the Customer has and will have at all relevant times the full legal and beneficial title to such Products, free from all liens and other encumbrances;
 - (b) the Customer's description of such Products is and will be complete and accurate; and

- (c) that such Products meet and will meet the Customer's description of them and are and will be of the age, type and condition described.
- 19.3 The Customer indemnifies Cellar Link and will keep Cellar Link indemnified from and against all Claims for any loss, injury or damage arising out of or in consequence of any breach of the representations and warranties in clause 19.2.
- 19.4 The Customer's instruction to Cellar Link to sell the Customer's Products shall operate as an irrevocable offer to sell the relevant Products to Cellar Link, which may only be released by written notice from Cellar Link to the Customer.
- 19.5 In offering the Customer's Products for sale, Cellar Link shall act as a principal and not as agent of the Customer.
- 19.6 Cellar Link's notice to the Customer that it has sold some or all of the Customer's Products shall operate as acceptance of the Customer's offer to sell the relevant Products to Cellar Link. Title and risk in the relevant Products shall pass to Cellar Link when and only when Cellar Link gives such notice to the Customer.
- 19.7 The price which Cellar Link shall pay to the Customer for the Products which Cellar Link buys from the Customer shall be:
- (a) If the Customer is registered for GST and/or any other relevant Tax:
 - (i) the Market Price; less
 - (ii) the GST and any other relevant Tax for which Cellar Link is liable; less
 - (iii) all Sale Costs incurred by Cellar Link; less
 - (iv) Cellar Link's Sales Commission; plus
 - (v) the amount of any input tax credit and/or any other relevant Tax credit to which Cellar Link is entitled; and
 - (b) If the Customer is not registered for GST or any other relevant Tax:
 - (i) the Market Price; less
 - (ii) the GST and any other relevant Tax for which Cellar Link is liable; less
 - (iii) all Sale Costs incurred by Cellar Link; less
 - (iv) Cellar Link's Sales Commission.
- 19.8 The Customer shall promptly pay and indemnify Cellar Link against all Sale Costs incurred by Cellar Link in connection with the attempted or actual sale of the Customer's Products, to the extent that they are not recovered by Cellar Link out of the Market Price of the Products.
- 19.9 The Customer shall promptly pay Cellar Link's Sales Commission, to the extent that it is not recovered by Cellar Link out of the Market Price of the Products.
- 19.10 The Customer agrees to pay Cellar Link interest on all sums due to Cellar Link at the rate of 1.5% per month from the due date until the date of payment in full.

- 19.11 The Customer agrees that Cellar Link has a lien on the Customer's Products for all unpaid Sale Costs, Sales Commission and interest due to Cellar Link at any time and all Sale Costs incurred by Cellar Link in connection with the Customer's Products, including (without limitation) in relation to the purchase, storage, preparation, storage, marketing, advertising, sale, disposal of the Customer's Products.
- 19.12 Cellar Link will credit the Customer's account with all sums due to the Customer in accordance with these Terms. Any cash credit balance held on the Customer's account shall be held by Cellar Link on trust for the Customer.
- 19.13 Subject as otherwise provided in these Terms, Cellar Link will account to the Customer once per quarter for the balance of funds held by Cellar Link arising from sales by the Customer in accordance with this clause.
- 19.14 The Customer agrees that Cellar Link may sub-contract, transfer or assign all or any of its rights and obligations under the Customer's agreement with Cellar Link, including the Customer's instruction, to any other person.

20. Limitation of Cellar Link's liability – the Global Wine Management Portal

- 20.1 The Customer acknowledges and agrees that Cellar Link is not responsible for, nor liable to the Customer in respect of, any failure to provide the Global Wine Management Portal or any other Service provided through the Website or in respect of any loss or lost profit as a result of any sale or purchase or lost sale or purchase of Products through the Global Wine Management Portal and Website.
- 20.2 Except as set out expressly in these terms and conditions, Cellar Link makes or gives no condition, warranty or representation, whether express or implied, arising by statute, common law or otherwise, including but not limited to any implied term, warranty or condition of title, completeness, accuracy, description, satisfactory quality, merchantable quality or fitness for a particular purpose in relation to the Global Wine Management Portal, any other Service provided by Cellar Link, any Product offered for sale or sold through the Global Wine Management Portal and Website, warranties and terms are hereby expressly excluded.
- 20.3 Except in relation to such liability as has been expressly excluded, the maximum aggregate liability of Cellar Link whether in contract, tort, statutory duty or otherwise (even where Cellar Link has been advised of the possibility of such loss or damage) for any loss or damage whatever arising from or in relation to these Terms and/or any sale or purchase effected through the Global Wine Management Portal and Website shall, in respect of any one or more events or series of events (whether connected or unconnected) taking place within any twelve month period, be limited to \$5,000. This limit shall also apply in the event that any exclusion or other provision is held to be invalid for any reason and Cellar Link becomes liable for loss or damage that would otherwise have been limited.

21. Limitation of Cellar Link's liability - general

- 21.1 The Customer acknowledges that Cellar Link supplies the Products and the Services as they are, without making any representation or warranty as to their suitability for any purpose, and that the nature of the Products is such that Cellar Link cannot and does not warrant:
- (a) the provenance, quality, drinkability, fitness for use or purpose or freedom from defect or deterioration of the Products, either at the time of delivery or deemed delivery under clause 15 or at the time of collection or dispatch under clause 18;

- (b) the market value or appreciation in value of the Products; or
- (c) that the Products comply with any description of them in any marketing materials or packaging or the information on any label, or that the Products will comply with any sample.

21.2 Without limiting clause 21.1, and to the fullest extent permitted by law:

- (a) Cellar Link expressly excludes all warranties, conditions and representations, whether express or implied, and whether contained in statute or common law. To the extent to which such warranties, conditions and representations cannot be excluded or restricted, these Terms will be read subject to those warranties, conditions and representations;
- (b) subject to clause 14.3, Cellar Link's liability is limited, at its option:
 - (i) in the case of Products – to replacing the Products or resupplying equivalent products, or paying to the Customer the cost of such replacement or resupply; and
 - (ii) in the case of Services – to supplying the Services again or paying to the Customer the cost of having the Services supplied again.

21.3 Cellar Link shall not in any circumstances be liable for any direct, indirect or consequential loss or damage arising from loss, wastage, spoilage, evaporation, contamination or deterioration of or damage to any Products, the loss of market for any Products, decline in the value of any Products or for any other damages arising from or attributable to any cause, including the wilful or negligent act or omission of Cellar Link. Further, Cellar Link shall not in any circumstances be liable to repurchase the Products or to effect any future sale of the Products.

21.4 Cellar Link shall not be liable in any way to any person for and is expressly released by the Customer from and indemnified by the Customer against any Claim for any loss or damage to the Products arising out of their packing, storage or handling, whether in transit or otherwise, or for any failure to deliver Products at any time or to any place specified by the Customer or at all.

21.5 To the full extent allowable at law Cellar Link shall not be liable in any way to any person for and is expressly released by the Customer from and indemnified by the Customer against any liability arising from any direct or consequential loss suffered by any person arising out of the matters referred to above in clause 17.2 and 17.3 even where the alleged liability arises out of Cellar Link's negligence, deliberate act or breach of contract.

21.6 If by operation of law, Cellar Link is held liable in any way to any person for any of the matters referred to in clause 17.2, Cellar Link's liability shall be limited to the market value of the Products as determined by Cellar Link's valuers.

22. Termination

22.1 Once any initial fixed period of storage of the Customer's Products has ended either party may terminate the parties' agreement for storage of the Products by giving the other party 5 Business Days' written notice. If the Customer gives less than the requisite amount of notice Cellar Link will be entitled to charge the Customer accordingly.

- 22.2 In the event of illegal or environmentally harmful activities on the part of the Customer in relation to the use of the Storage Facility or its services, Cellar Link may terminate its obligation to store the Customer's Products immediately and without notice.
- 22.3 Upon termination of the parties' agreement for storage of the Products the Customer must remove all his Products from the Storage Facility on the date specified by the party terminating the agreement.
- 22.4 Either Cellar Link or the Customer may terminate the Customer's right to use the Global Wine Management Portal and to receive other Services at any time by giving to the other party written notice of termination.
- 22.5 Cellar Link reserves the right to terminate access to Cellar Link services and websites at any time. If this happens Cellar Link will notify the Customer. In such event: (a) the Customer will no longer be authorised to access Cellar Link websites; (b) the Customer will continue to be subject to and bound by all restrictions imposed on the Customer by these Terms; and (c) all licences granted by the Customer and all disclaimers by Cellar Link and limitations of Cellar Link's liability set out in these Terms or elsewhere on Cellar Link's websites or documentation will survive.
- 22.6 If the Customer is dissatisfied with any portion of Cellar Link's Services, or with any of these Terms, the Customer's sole and exclusive remedy is to discontinue using the Website and the Global Wine Management Portal.
- 22.7 The Customer must pay all outstanding moneys and expenses owed to Cellar Link up to the date of termination of:
- (a) the Customer's right to use the Global Wine Management Portal and to receive other Services; or
 - (b) the parties' agreement for storage of the Products; or
 - (c) the removal of the Products from the Storage Facility;
- whichever is the later date. Calculation of moneys owed will be made by Cellar Link and such calculation will be final.
- 22.8 The Customer's liability for outstanding moneys, property damage, personal injury, environmental damage and legal responsibility under these Terms continues to run beyond the termination of the parties' agreement for storage of the Products.

23. General

- 23.1 All exclusives, promotions, clearances, offers and discounted items advertised on the Website are available only while stocks last unless otherwise advertised. All terms and conditions of exclusives, promotions, clearances, offers and discounted items advertised on the Website shall apply. Promotions may not be available in all areas.
- 23.2 Due to liquor licensing restrictions certain Products will not be available for sale in the following areas; South Hedland, Kununarra, Broome, Chinatown, and Seaview. Due to a licensing accord certain Products will be unavailable for purchase during certain times in Kalgoorlie. Cellar Link reserves the right not to sell certain Products to any person to which, or in any location where, the sale of certain Products is restricted or prohibited.
- 23.3 Neither Cellar Link nor the Customer shall be deemed to be in breach of any of these Terms (other than any obligation to pay money) by reason of any delay in performance or

non-performance to the extent that such delay or non-performance is due to causes beyond its reasonable control (including, but not limited to, any strike, lockout or other form of industrial action, act of God, war, riot, fire, flood or storm) so long as the party concerned has acted and continues to act reasonably and prudently to prevent and to minimise the effect of such causes.

- 23.4 Any part of these Terms which is invalid or unenforceable will be read down or severed to the extent of such invalidity or unenforceability, without affecting the remaining provisions.
- 23.5 Cellar Link may in its discretion sub-contract the performance of any part of its obligations under these Terms and any sub-contractor's terms of business (including any lien) shall apply as if Cellar Link had entered into the sub-contract as agent of the Customer.
- 23.6 Cellar Link may in its discretion:
- (a) assign and transfer all its rights and obligations under these Terms and/or under any contract with the Customer to any other person who has the resources and expertise to fulfil those obligations and upon that person undertaking to the Customer to perform those obligations, Cellar Link shall be discharged from all further liability to the Customer; or
 - (b) offer the Customer the choice of having his contract(s) with Cellar Link transferred to another person in accordance with paragraph (a) of this clause or removing his wine from the Storage Facility and if the Customer does not remove his wine from the Storage Facility, he shall be deemed to have agreed to have his contract(s) transferred.
- 23.7 Without derogating from any other method of service allowed by law, any notice, demand or other communication sent to the Customer by post to the last address given to Cellar Link in writing by the Customer shall be deemed to be received by the Customer in the ordinary course of post.
- 23.8 The Customer may not assign the benefit of these Terms without Cellar Link's prior consent in writing.
- 23.9 Cellar Link may exercise any and all its rights under these Terms at any time and no failure to exercise or delay in exercising those rights will operate as a waiver those rights.
- 23.10 These Terms will be governed by the laws of New South Wales and the courts of that state have non-exclusive jurisdiction to hear any matter arising thereunder.