

## **General Terms & Conditions – Trade and Commercial Customers - Amended September 1<sup>st</sup> 2018**

Wine Export Marketers Int Ltd (WEM) trading as; nzwinehome provides International delivery services to wineries, wine retailers and purchasers of New Zealand wine.

In these Terms and Conditions ("Terms") we refer to Commercial users of our services (wineries & wine retailers) as "you" or "your" and Wine Export Marketers Int Ltd t/a nzwinehome as "us", "we" or "our". By using nzwinehome international delivery services you are deemed to have accepted and agreed to the terms and conditions as outlined within this document.

### **1. GENERAL**

1.1 These Terms apply to and govern all International delivery and export transactions submitted to the nzwinehome website.

1.2 We may change these Terms from time to time using the process set out in clause 16.

1.3 These Terms are important. You should ensure that you have read them thoroughly prior to proceeding with using our International delivery and export services.

1.4 Where applicable, these Terms are to be read in conjunction with the Export Agency Agreement between us.

### **2. DEFINITIONS**

2.1 In these Terms unless the context otherwise requires:

"information" means all information supplied by you to us via the website or otherwise and includes, for example, your name, the customer or recipient's name, contact details, credit card details and your payment and transactions history;

"GST" means goods and services tax chargeable or for which a person may be liable under the Goods and Services Tax Act 1985;

"Excise" means current rate of Excise & ALAC tax;

"WET" means Wine Equalisation Tax as defined by the Australian Wine Equalisation Tax Act 1999

"CIF" means Cost Insurance freight, as used within standard export intercons terms

"services" means all export services provided by us and our website;

"website" means our website, accessible via the [www.nzwinehome.co.nz](http://www.nzwinehome.co.nz) domain name.

### **3. ORDER SUBMISSION**

3.1 In submitting orders to nzwinehome you agree that:

(a) you are providing a warranty to us that the receiver is legally entitled to receive deliveries of alcohol in the form of wine under the local laws of the destination country.

(b) you indemnify us against any liabilities and issues that result from a wine delivery that is received and misused by someone under the age of the local alcohol laws of their destination country.

(c) nzwinehome is not liable or responsible for any costs associated with failed delivery due to age issues.

3.2 All wine prices submitted must be the actual, genuine, transaction price that the customer has paid and you warrant that this is the case.

3.3 We are not liable for any Customs issues (NZ or Destination) that relate to false or incorrectly declared wine prices.

### **4. PRICE**

4.1 Our international delivery service fees are as shown on our website from time to time and include a fixed fee component and a variable fee component (15%). Our fees are zero rated for GST. We will make every effort to keep our listed prices (as shown on our website) updated and current.

4.2 We reserve the right to vary our prices and where possible we will provide prior notice.

4.3 Prices for wine sold to customers and the international delivery service fees you collect on our behalf (including destination taxes) must be zero rated for NZ GST. Zero rating of these services is covered by Section 11A of the Goods and Services Tax Act 1985 under the specific provision section 11A (1) (a) and (d)..

4.4 During the online order submission process wine values are entered on an equivalent of the inclusive of NZ GST price. Our website then automatically calculates the correct zero rated price.

4.5 Wines sales exported by WEM MUST be sold inclusive of the current NZ excise and ALAC tax rates. As the exporter of record WEM is the only entity entitled to claim excise. As a strict condition of service, you warrant that all wine prices submitted include the correct value for excise and ALAC; that you have paid the correct amount of excise and ALAC to NZ Customs; and that you will not submit a separate claim with Customs to recover such amount. Further, as per section 95 of the Customs and Excise Act 1996 and regulation 59 of the Customs and Excise regulations 1996 you agree to retain and provide to WEM upon request (with authority for WEM to pass onto Customs) copies of all relevant export and sales documentation, together with evidence of payment to Customs of the excise and ALAC payable in respect of each export sale for a minimum of 7 years.

4.6 Australian Non Preferential duty fees. Effective 1<sup>st</sup> Sept 2014, wine not of NZ or Australian origin, exported to Australia, is subject to payment of 5% non-preferential duty. This is calculated on the gross declared price, as received during the order submission process.

4.7 WET-All wine exported to Australia is subject to WET payment. There are several WET payment statuses, please refer to our procedure manual for details on your applicable WET status.

4.8 CIF Levy, effective 1<sup>st</sup> October 2018 CIF levy applies to wine producers exporting to ALL destinations. Please refer to our service guide for rates and application detail.

4.9 We reserve the right to make price amendments subsequent to receiving the online order submission. In particular, incorrect calculations of destination taxes and oversized bottles may require price amendments. We will endeavour to contact you for approval prior to making any price amendments. If unsuccessful in the communication process we will proceed using our best judgment and you agree to accept such price amendments made.

#### MISTAKES IN PRICE ARISING FROM COMPUTER ERROR

4.10 In the event that computer error results in a material misstatement of the price of your order we may, prior to your receipt of the order or at any time thereafter, require that you pay us the difference between the amount actually paid by you in respect of your order and the correct amount payable.

4.11 In the event that we become aware of any misstatement prior to delivery, we will make reasonable endeavours to contact you and advise you accordingly.

#### 5. INTERNATIONAL DELIVERY & TRANSIT

5.1 We will use our best endeavours to deliver within our advertised delivery time frames. We are not responsible for any failure to deliver or delay in delivery caused by any event outside of our reasonable control.

5.2 Delivery is deemed to be complete when the order is received at the address you have specified for delivery. You are required to notify us within 10 days from the date of delivery if you are concerned about the quality/condition of received product.

#### 6. PAYMENT TERMS & INVOICING

Depending upon trading levels three payment options are available

a) Payment at point of order submission by company credit card . Where applicable WET is also applied/charged directly to credit card payments.

b. Direct debit, unless you notify us with any invoicing discrepancies payment by direct debit will be processed by us on the 20<sup>th</sup> of each month, (or the closest working day) for the amount shown within your monthly invoice.

c) Invoicing/Trading Code – credit approval is required to enable monthly invoicing. (Payment history or references will be considered) Invoices will be issued by email within 7-10 days following the end of the month of export

6.1 Credit card holders agree to indemnify us against any default by the credit card company.

6.2 Generally our system will debit the nominated credit card once for the entire value of the transaction. We reserve the right to apply further fees against the nominated credit card if price amendments are required. Details of 'price amendment' procedures are contained within clause 4 of these Terms.

6.3 Payment by monthly invoicing and direct debit must be made in full by or before the 20<sup>th</sup> of the month following date of export. Late payment penalty fees of \$20 per case apply to payment received after the 21<sup>st</sup>. Late payment penalty fees will continue to compound by \$20 per case, per month for every month payment has not been received.

#### CREDIT CARD SECURITY

6.34 Payment details have the security offered by Paystation Limited, a fully AIS PCI DSS compliant Paymark Certified Solutions Provider (CSP), using 128-bit SSL encryption. Credit Card or Pago Wallet details will be sent directly to the acquiring institution for processing. No card or wallet data is available to or used by the merchant. You will be issued with a receipt number at the end of your transaction.

#### REMEDIES FOR NON-PAYMENT

6.4 We may charge you interest at the rate of 10% per month if your account is unpaid after the due date. Interest will accrue on a daily basis and will continue to be payable until payment is received in full, even if we obtain a court judgment.

6.5 We reserve the right to recover any outstanding costs by applying a lien on orders within our control.

6.6 We may take action to recover any unpaid amounts and charge you for all costs associated with collection of any unpaid amounts.

#### 7. INSURANCE

7.1 Our advertised delivery prices include insurance that covers the events of breakage, or loss/non delivery. All other risk remains with you. Lost or damaged wine (by breakage) during the delivery process will be replaced or the value refunded by mutual agreement.

7.2 Our insurance does not cover any real or perceived damage/stress to wine quality due to heat or temperature issues. We use every care during the delivery procedure to reduce the risk of heat-damage including specialist packaging, temp controlled storage (where possible) and rapid movement through transit points. At our discretion we may cover the cost of refunding or replacing wine that we are satisfied has incurred genuine heat damage or stress during delivery.

#### 8. CANCELLATION AND RETURN

8.1 After you have submitted your order you may not cancel the order without our consent.

8.2 We will not consent to cancellation if we have processed the order beyond NZ borders.

#### 9. USE OF YOUR INFORMATION

9.1 Your use of our website will generate certain information that will be recorded electronically by us. Information of this type may include, for example, your IP address, your usage statistics, etc. We may record your contact details, credit information and any related personal details that you supply or that we obtain independently.

9.2 You acknowledge that we, our employees, carriers, contractors and agents may use or disclose any of the information identified in the previous paragraph for purposes connected with the supply of our services to you. Examples of purposes connected with our services include:

- a. Administration of your account;
- b. Data provided to NZ and destination Customs authorities;
- c. Information provided to debt collection and credit reference agencies;
- d. Enforcing these Terms.

9.3 We will not solicit to your customers or supply your information to any unauthorized 2nd or 3rd parties without your consent.

9.4 Unfortunately, no data transmission over the internet can be guaranteed as totally secure. Whilst WEM strives to protect such information, we do not warrant, and cannot ensure complete security of any information which you transmit to us. Accordingly, any information which you transmit to us is transmitted at your own risk. Nevertheless, once we receive your transmission, we will take reasonable steps to preserve the security of such information.

#### 10. CONSENT TO RECEIPT OF ELECTRONIC MESSAGES

10.1 You agree that you expressly consent to your inclusion in our direct marketing database and accept that you may, as a result, receive regular electronic communications and promotional communications from us. You have the right to ask us at any time to stop sending online communications and promotional offers to you.

#### 11. INTELLECTUAL PROPERTY RIGHTS

11.1 We own, control or have the right to use and provide the website and all content on the website, including text, images, articles, photographs, illustrations, audio and video clips. You may electronically reproduce and store the content of the website solely for the purposes of viewing, using the services or saving website content, for your own use. You may not display or distribute the content of any part of the website or its content in public, including any reproduction in any form on the Internet, without our express permission.

11.2 Any infringement of our intellectual property rights will be fully enforced under New Zealand law.

#### 12. EXCLUSION OF LIABILITY

12.1 Except as expressly provided in these Terms, under no circumstances will WEM, its employees or its agents be liable to you in contract, tort, equity, statute, regulation or otherwise for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by you, or by any other third party, whether direct or consequential (including, but without limitation, any economic loss or other loss of turnover, profits, business or goodwill) arising out of the services supplied by us pursuant to an order placed with us, whether on our website or otherwise. If you are using the website and our services for a business purpose, you agree that the Consumer Guarantees Act 1993 does not apply. All other warranties, descriptions, representations and conditions as to fitness, suitability for any purpose or specific conditions, even though such conditions may be known to WEM, whether express or implied, and whether statutory or otherwise, are expressly excluded to the maximum extent permitted by law.

#### 13 OTHER TERMS

##### NO WAIVER

13.1 No delay, neglect or forbearance in taking enforcement action in relation to any provision of these Terms will be a waiver, or in any way prejudice any right, of that party.

##### SEVERABILITY

13.2 If any part of these Terms is held to be invalid, illegal or unenforceable, that part will be severed and the remainder of the terms will remain in full force and have full effect.

#### PRIVITY

13.3 Third parties may take the benefits of rights expressed to be for their benefit in accordance with the Contracts (Privity) Act 1982.

#### JURISDICTION

13.4 These Terms have been prepared in accordance with and are governed by New Zealand law and you agree that the Courts of New Zealand have exclusive jurisdiction.

#### 14. ASSIGNMENT

14.1 You may not assign any rights under these Terms except with our prior written consent.

14.2 We may assign our rights under these Terms without seeking your prior consent.

#### 15. NOTICES

15.1 We will send all notices and related correspondence under these Terms to the email address that you have nominated. It is your responsibility to ensure that you keep us informed of any changes to your contact details.

15.2 You will be deemed to have received a notice at the time that we send the email.

#### 16. AMENDMENTS

16.1 We may change these Terms at any time. Where possible we will send you notice ("amendment notice") to that effect by your preferred contact method and supplying you with the amended Terms. Your continued use of our website and our services shall be deemed to constitute acceptance of the amended Terms.