

# Best Bottlers

## TRADING TERMS & CONDITIONS

Best Bottlers Pty Ltd (ABN 45 096 514 788)

### Part A : General Terms Applying

#### 1. Terms:

- 1.1. Except as Best Bottlers may otherwise expressly agree in writing, these terms shall be all of the operative terms and conditions for the sale and supply of product by Best Bottlers to the customer from time to time.
- 1.2. Time is of the essence of any date or period under these Terms.
- 1.3. The laws in Victoria govern these Terms.

#### 2. Customer to be bound:

- 2.1. Before Best Bottlers accepts any order, Best Bottlers may vary these Terms upon notice in writing to the Customer;
- 2.2. The Customer acknowledges that the placing of an order on a Customer code allocated by Best Bottlers constitutes full acceptance by it of all of these Terms, and any variation thereof;
- 2.3. Where 2 or more persons and/or bodies corporate comprise the Customer, the obligation on the part of the Customer in these Terms shall bind them jointly and severally and each of them is taken to have authority to bind the other/s in connection with these Terms;
- 2.4. Where the Customer acts in the capacity of trustee of any trust, the obligation on the part of the Customer in these Terms binds the Customer in its own right as well as in its capacity as trustee and the right of indemnity of the customer as trustee against the assets of the trust will not be abrogated.

#### 3. Severance & Interpretation:

- 3.1. Each word, phrase, sentence and clause of these Terms is severable;
- 3.2. These Terms shall not be interpreted against a party on the basis that such party prepared the Terms or any part of them.

#### 4. Glossary:

In these Terms:

- 4.1. **Best Bottlers** means Best Bottlers Pty Ltd (ABN 45 096 514 788) and Best Bottlers Packaging Pty Ltd (ABN 096 514 788) and/or any present or future subsidiary or entity associated with Best Bottlers and its successors and/or permitted assigns;
- 4.2. **Bottling run** means the manufacture or bottling by Best Bottlers of any product pursuant to the Terms.
- 4.3. **Claim** means as against any person any claim, action, proceeding, loss, damage, cost, expense or liability whatsoever incurred or suffered by, or brought or made or recovered against, that person, no matter how arising (whether or not presently ascertained, immediate, future, or contingent);
- 4.4. **Contract** means any contract that forms between Best Bottlers and the Customer for the supply of product;

- 4.5. **Customer** means any person, partnership or body corporate or other entity of whatsoever nature to whom these Terms are directed and their successors and permitted assigns;
- 4.6. **Customer's materials** means any wine, dry goods and/or proprietary materials of whatever nature supplied by the Customer to Best Bottlers or purchased by Best Bottlers on the customers behalf for the production of the products;
- 4.7. **Goods** means wines, dry goods and/or finished goods supplied by Best Bottlers to the customer pursuant to these Terms.
- 4.8. **GMO** means genetically modified organism;
- 4.9. **GST and tax invoice** have the meaning provided for in A New Tax System (Goods and Services Tax Act) 1999 as amended;
- 4.10. **PPSA** means the *Personal Property Securities Act 2009* (C'wth) as amended;
- 4.11. **Product** means any goods and/or services Best Bottlers may offer to the market from time to time;
- 4.12. **Terms** means these terms and conditions;
- 4.13. **Working day** means a day Best Bottlers is open to trade;
- 4.14. **Writing or written** include any upload of information to Best Bottlers website and/or any email or other communication received at the recipient's designated email address and/or any text message received on the recipient's designated mobile telephone.
5. **Quotes:**
- 5.1. Unless otherwise stated in writing, any quotation by Best Bottlers for the supply of any product to the customer expires after 30 working days;
- 5.2. A quotation for a stated quantity of product is not valid for any other quantity of product. Best Bottlers may vary or withdraw from a quotation before acceptance by it of any order from a Customer.
6. **Customers order:**
- 6.1. The Customers communication to Best Bottlers of acceptance of a quotation by it for the supply of product to the Customer shall constitute an order for product;
- 6.2. Each order for product (whether by acceptance of a quotation or otherwise) shall be communicated in a manner acceptable to Best Bottlers and shall be dated, signed or otherwise authenticated for or on behalf of the Customer and shall contain all such information and/or specifications necessary to enable Best Bottlers to give effect to the order;
- 6.3. Each order shall constitute a separate warranty by the Customer to Best Bottlers that it is entitled to use any copyright and/or Trade Mark being part of any customers materials supplied by it to Best Bottlers;
- 6.4. Best Bottlers shall be entitled to reject any order not communicated to it in an acceptable manner and/or not containing any of the information and/or specifications required to give effect to the order.
7. **Agreement for the supply of Product:**
- 7.1. An agreement for the supply of product arises only if and when the Customer submits to Best Bottlers a final written order in conformity with these Terms for the supply of particular product and Best Bottlers accepts the order (in full or in part) either by notifying the Customer of such acceptance and/or by executing the order.
8. **Prices and Taxes:**
- 8.1. Except to the extent stated on any quotation, the Customer is to pay Best Bottlers for each product or service supplied at Best Bottlers list price current on the day that the product or service is supplied;
- 8.2. All prices for product are subject to change by Best Bottlers without prior notice;

8.3. Unless otherwise specified on any quotation, prices stated do not include GST. Upon Best Bottlers issuing a tax invoice for any taxable supply the Customer shall pay Best Bottlers an amount equal to any GST for which Best Bottlers becomes liable such amount must be paid when the consideration for that taxable supply must be paid.

8.4. If, prior to the completion of supply of product to the customer there is imposed on Best Bottlers any new or additional government tax, levy, charge or impost then Best Bottlers may recover such from the Customer in addition to the agreed list price or price specified on any quotation.

## 9. Delivery

9.1. Best Bottlers shall use all reasonable endeavour to ensure that the product is supplied to the Customer on or before the date specified in the order, but Best Bottlers shall not be liable for any Claim arising in connection with any failure by Best Bottlers to deliver the product on or before that date;

9.2. Unless otherwise specified in writing delivery of product shall take place at Best Bottlers' premises;

9.3. Where product is to be delivered at a place other than Best Bottlers' premises, the Customer shall:

- a) be responsible for all costs and expenses incurred or to be incurred in connection with that delivery; and
- b) indemnify, keep indemnified and hold harmless Best Bottlers from all claims of whatsoever nature in connection with that delivery;

9.4. Upon delivery of the product to the Customer, the Customer shall be deemed to have accepted the product.

## 10. Customers' materials and Storage:

10.1. Subject to clauses 10.2 the Customer shall:

- a) pay all costs and expenses incurred or to be incurred by Best Bottlers in connection with the purchase of Customers' materials and the product; and
- b) indemnify, keep indemnified and hold harmless Best Bottlers from all claims of whatsoever nature in connection with any such purchase;

10.2. Best Bottlers reserves the right to charge storage fees and/or picking and/or stocktake fees in respect of product and/or customer's materials the subject of these Terms after 10 free days and the option to return all Customers' material and any product and/or bulk stock to the Customer at their cost.

10.3. If after six months from completion of the order, the customer cannot be located, Best Bottlers reserves the right to sell the Product and/or the Customer's materials and/or the Goods and assign the proceeds of any such sale in reduction of any debt owed by the Customer to Best Bottlers.

## 11. Pallets:

11.1. Where Best Bottlers supplies any pallets or bins used to transport product (including wine), Goods or the Customers' materials then:

- a) Customer is to pay Best Bottlers the cost of making up any pallets or bins damaged or not returned to it within 30 days of supply unless otherwise debited to any Customer account number with CHEP or Loscam; and/or
- b) pay all costs and expenses incurred or to be incurred by Best Bottlers in connection with the provision of such pallets or bins; and/or
- c) indemnify, keep indemnified and hold harmless Best Bottlers from all claims of whatsoever nature in connection with the provision of such pallets or bins.

## 12. Additional services

12.1. Where it is agreed by the parties that the Customer requires additional services in conjunction with, but not included in this agreement, the fees payable by the Customer to Best Bottlers for such additional services shall be as determined by Best Bottlers and agreed by the Customer prior to the provision of such services.

**13. Insurance:**

- 13.1. At all times, the Customer is to insure its property of whatever nature held at Best Bottlers at replacement values against loss or damage or deterioration while in Best Bottlers custody, and also insure any product, including bottled wine, against product liability to an adequate level.

**14. Invoice:**

- 14.1. Best Bottlers will issue the Customer with a tax invoice and/or other documents usual for that transaction on completion of supply of the product or as soon as practicable thereafter;
- 14.2. The customer waives any right to dispute the invoice and/or its contents unless within 14 days from the invoice date the customer notifies Best Bottlers of such dispute together with full particulars thereof.

**15. Payment:**

- 15.1. The Customer shall pay to Best Bottlers the full amount of its invoice on or by the due date shown thereon, unless Best Bottlers is then extending credit to the Customer the limit of which is not exceeded by that or any other outstanding invoice to the Customer;
- 15.2. The Customer shall not deduct from any payment to be made any amount by way of set-off, counter-claim, rebate (including any tax and charges) unless such deduction is first consented to in writing by Best Bottlers;
- 15.3. Best Bottlers may require payment by electronic transfer of cleared funds to a bank account nominated by Best Bottlers in writing. Payment by cheque is not deemed to have been made until the receipt of Best Bottlers in its account of cleared funds.

**16. Late Payment:**

If the full amount of an invoice is not paid within the time specified thereon or otherwise agreed in writing between the parties :

- 16.1. The Customer shall pay to Best Bottlers a late payment fee of 20% per annum on all amounts outstanding. Such late payment fee shall be calculated on a daily basis from the due date for payment until payment in full of the invoiced amount including all accrued late payment fees. Late payment fees accrued and not paid at the end of any calendar month shall be capitalised and added to the customers outstanding debt, and thereafter attract late payment fees;
- 16.2. Without liability to the Customer, Best Bottlers may cancel or suspend delivery of other product yet to be supplied under any contract with the Customer;
- 16.3. Best Bottlers may exercise any other rights it has in relation to the default.

**17. Retention of title:**

- 17.1. Best Bottlers remains the owner of the Goods supplied by it to the Customer pursuant to these Terms until the Customer pays for them in full and the customer acknowledges that it holds the Goods as a bailee and fiduciary agent for Best Bottlers until that time;
- 17.2. The Customer shall be entitled to sell the Goods in respect of which title has not passed to it as a fiduciary agent of Best Bottlers, in which case the proceeds of such sale shall be held in trust for Best Bottlers, shall not be commingled with other monies, but shall be paid into a fiduciary account and the Customer shall not be entitled to transfer any monies from that fiduciary account until payment to Best Bottlers for the Goods;
- 17.3. Notwithstanding clause 12.1, the Goods are at the entire risk of the Customer from the commencement of loading on the date of delivery.

**18. Security:**

- 18.1. Subject to any credit then being extended by Best Bottlers to the Customer, the Customer grants to Best Bottlers a general lien in respect of any Goods and any other property of the customer which are in Best Bottler's possession or control and pledges the same as security for all money due or to become due to Best Bottlers under any contract.

18.2. If a Best Bottlers invoice is not paid within 30 days after due, subject to law and without limiting its other rights and remedies under the Law or by Statute, Best Bottlers may sell any such Goods and/or property of the Customer by public auction (advertised at least twice in *The Herald Sun* newspaper, 7 days apart and at least 21 days before the auction), may itself bid at such auction, and may apply the net proceeds of any such sale towards payment of all money then due from the Customer to Best Bottlers on any account, the balance being payable to or for the benefit of the Customer.

18.3. The Customer acknowledges that the rights set out in clause 13.1 and 13.2 are in addition to and not in derogation of any other rights Best Bottlers may at any time have over any property, such as a purchase money security interest under the PPSA for the goods Best Bottlers has supplied but which have not yet been paid for by the Customer, a common law particular possessory lien over the Customer's property (and concomitant statutory power of sale under the *Worker's Liens Act 1893*), and/or a statutory lien and power of sale under the *Warehouse Liens and Storage Act 1990*.

18.4. Insofar as any of the above rights constitute a security interest under a security agreement as defined in the PPSA, then :

- a) at any time, without prior notice to the Customer but at the Customer's cost, Best Bottlers may register in relation to all or any of those rights one or more financing statements and/or financing charge statements on the register maintained under the PPSA containing information in respect of the Purchase Money Security Interest held by Best Bottlers in the Goods pursuant to these terms as specified in Table A hereto; and
- b) the Customer must, within 7 days of any request by Best Bottlers, do all things necessary and execute any document required to effect such registration(s) and/or ensure the above rights are perfected and have priority over any other security interest (present or future) over the Goods; and/or
- c) the Customer irrevocably contracts out of sections 95(1)(a), 130(1)(a), 132(4), 135(1)(a), 142, 143 and 157 of the PPSA.

#### 19. Set Off:

19.1. In addition to rights of set off under the general law, Best Bottlers may off set any debt or liability the Customer (alone or with others) owes to Best Bottlers against any debt or liability Best Bottlers owes to the Customer on any account; and

19.2. If a liability is unliquidated or otherwise unascertained, Best Bottlers may set off an amount estimated by Best Bottlers in good faith on account of such liability, without prejudice to the obligation of the parties to account for any shortfall or excess; and

19.3. Best Bottlers holds the benefit of this clause on trust for itself and for each and every related body corporate of Best Bottlers now existing or to exist.

#### 20. Product Description:

20.1. Except to the extent stated otherwise on the order, Best Bottlers description of its product accords with Australian trade usage.

#### 21. Warranties:

21.1. Where applicable, our goods come with Guarantees that cannot be excluded under the Australian Consumer Law. Where applicable, you are entitled to a replacement or refund for a major failure and for compensation for any reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

Best Bottlers further warrants that:

21.2. any dry goods or additives it supplies are fit for purpose, are GMO free, conform to any samples given and are owned by Best Bottlers free of encumbrances when used or supplied; and

21.3. in supplying a service it will use reasonable care.

#### 22. Product claims:

22.1. Subject to law and clause 21.1 hereof, Best Bottlers does not give any warranty or condition of its supply not stated in these terms.

22.2. With the exception of any claim made under clause 21.1 hereof, any claim that a product Best Bottlers supplied does not conform to the order or the contract or is otherwise defective for reasons that are Best Bottlers responsibility is not valid unless in writing given to Best Bottlers (with reasonable details) within 7 days after the Customer first knows of the alleged defect.

22.3. Within 14 days after making a claim, the Customer must in writing advise Best Bottlers what action (if any) the Customer requires to resolve the claim;

a) Best Bottlers is not liable for a claim for a defective product if the Customer does not take reasonable steps to preserve the product (or the balance of the product then under the Customer's control) pending an inspection by Best Bottlers agent, if Best Bottlers requires inspection; and

b) if a product or service Best Bottlers supplied is defective for reasons that are not Best Bottlers responsibility, Best Bottlers total liability for the defect is limited (at its election) to:

- in the case of supply of goods, the prompt replacement of the goods, or the supply of equivalent goods; and/or
- in the case of supply of services, the provision of the service again; and/or
- in any case, a reasonable reduction in the price paid.

c) If a claim is found or admitted to be without merit, the Customer is to pay all reasonable costs Best Bottlers incurs investigating the claim.

22.4. To avoid doubt, clauses 21 and 22 apply to claims as to alleged cork taint, bottle leakage, oxidation, adhesive deterioration, microbiological instability, default in packaging appearance, labelling and glass breakage.

### 23. Return of goods:

23.1. Subject to clause 21.1 hereof, damaged or defective Goods or those which do not conform to the relevant Order may only be returned to Best Bottlers in exchange for a credit for the price of those Goods if they are returned in the following manner.

- a) The goods must be returned to Best Bottlers' premises in their original condition and within 14 days of delivery; and
- b) any returned goods are to be without defect, damage or soiling having occurred since delivery to the Customer; and
- c) upon return they must be accompanied by the delivery docket stating the original invoice number, date of purchase and reason for return;

23.2. No credit will be granted until after a site inspection of the damaged Goods has occurred with responsible staff of Best Bottlers present at the direction of Best Bottlers.

### 24. Global liability limits:

24.1. Despite any other provision of these Terms but subject to law and clause 21.1 hereof, the Customer cannot claim against Best Bottlers (under common law, equity or statute) in connection with a contract, nor seek a reduction in price:

- a) for anything done or not done by Best Bottlers action upon specification or instructions or in connection with dry goods the Customer provides for the fulfilment of the order;
- b) for anything done or not done by Best Bottlers more than 24 months before the claim was first notified in writing to Best Bottlers;
- c) if the Customer notifies the claim within time but the claim has not, within 180 days after Best Bottlers received the notice, been either admitted or satisfied by Best Bottlers, compromised between the parties, determined by

an Arbitrator or referred to a Court of competent jurisdiction by the Customer instituting and serving legal proceedings against Best Bottlers in relation to the claim;

- d) to the extent the Customer is insured or would have been insured for the same matter if the Customer had maintained and made a proper claim under valid and adequate insurance normally taken out by prudent persons carrying on business similar to that of the Customer;
- e) to the extent the Customer has or had an economically feasible right of recovery or indemnity under general law, contract or otherwise for the same against a 3<sup>rd</sup> party;
- f) for total amounts exceeding 200% (including GST) of the total prices (including GST) paid or payable under the contract;
- g) for any loss of income / profit / business / anticipated savings / goodwill / value of a capital asset / reduction in share price or any other types of indirect, special or consequential loss or damage whether or not foreseeable.

The Customer releases Best Bottlers absolutely from or to the extent a claim against Best Bottlers is barred by this clause.

## 25. Third party claims

25.1. The Customer acknowledges and agrees that, subject to law and clause 21.1 hereof:

- a) Except in respect of dry goods supplied by Best Bottlers, Best Bottlers shall not be liable to any third party in respect of any of the products packaged by Best Bottlers for the Customer or for the potential failure of any of the dry goods supplied by the Customer and used to package the Customers' product by Best Bottlers; and
- b) the Customer agrees and hereby indemnifies and holds harmless Best Bottlers against any losses, costs, damages and expenses whatsoever incurred by the Customer as a result of claims, actions or proceedings by third parties against the Customer arising out of the products packaged by Best Bottlers for the Customer (except in respect of dry goods supplied by Best Bottlers) or the potential failure of any of the dry goods supplied by the Customer and used to package the Customers' product by Best Bottlers, provided that Best Bottlers have complied with and adhered to the written instructions supplied by the Customer, these Terms, all applicable health standards and all generally accepted bottling procedures and standards applied in Australia and there has been no negligence on the part of Best Bottlers or any of its employees, officers, agents, directors, contractors or subcontractors.

25.2. Best Bottlers agrees and hereby indemnifies and holds harmless the Customer against any losses, costs, damages and expenses whatsoever incurred by the Customer as a result of claims, actions or proceedings by third parties against the Customer arising out of the dry goods supplied by Best Bottlers or where Best Bottlers has failed to comply with and adhere to the written instructions supplied by the Customer, these Terms, all applicable health standards and all generally accepted bottling procedures and standards applied in Australia or where there has been negligence on the part of Best Bottlers or any of its employees, officers, agents, directors, contractors or subcontractors which has contributed to the losses, costs, damages and expenses incurred by the Customer.

25.3. Notwithstanding the above clauses, Best Bottlers will be liable for any damage to Proprietary dry goods, bulk wine or packaged product that occurs whilst such Proprietary dry goods, bulk wine or packaged product are in the possession of Best Bottlers.

## 26. Dispute Resolution

26.1. Any dispute relating to the quality of the products or any term of this agreement may be referred by either party to an independent wine industry expert nominated at the request of such party by the Chairperson or Acting Chairperson of the Australian Wine and Brandy Corporation as having skills and experience appropriate for the proper consideration of the matter requiring determination.

26.2. An expert so appointed must deliver to the parties within one month of the date of his or her appointment a statement of his or her determination.

26.3. In making such a determination, the expert is taken to be acting as an expert not as an arbitrator.

26.4. The expert's fees are to be borne equally by the parties, unless the expert decides otherwise.

26.5. The Parties will consider reasonably the expert's determination to resolve the dispute, but nothing in this clause prohibits the dispute being referred by the parties to mediation and/or the commencement of legal proceedings in a Court of competent jurisdiction.

**27. Force Majeure:**

27.1. Neither party is liable for a failure to perform a provision of these Terms to the extent their performance is prevented by a circumstance not within that party's reasonable control.

**28. Change of Control:**

28.1. The Customer must notify Best Bottlers within 10 working days:

- a) If the Customer is a partnership and if any of the partners change other than by death or dissolution of a partner; and
- b) If the Customer is a company or contracts as trustee and there is a change of control as applied to that company or trust (where **control** has its meaning in *Corporations Act 2001*, and **change of control** means:
  - if a body corporate or individual who controls, or any such persons who together control, the company/trust subsequently ceases or together cease, to control the company/trust; or
  - if a body corporate or individual acquires, or any number of such persons together acquire, control of the company/trust.

**29. Discounts:**

29.1. If Best Bottlers agrees to provide product on the basis of a discount or rebate to its current prices, during and for 12 months thereafter the Customer must not disclose that pricing to a 3<sup>rd</sup> party except as necessary to perform or enforce the contract, or as required by law.

**30. Notice and Assignment**

30.1. Any notice or communication given under these Terms to or from any party shall be in writing and is acknowledged to be notice to and from all persons or entities constituting the respective party and where necessary to the context the singular shall include the plural and vice versa;

30.2. Any notice or communication required to be given under these Terms shall be deemed to be duly and validly given or made if the same is in writing:

- a) delivered to the party at its or their usual place of business; and/or
- b) communicated electronically to the party by email or SMS at its or their last known designated email address or mobile phone; and/or
- c) sent through the post in a pre-paid envelope addressed to the party at its or their last known place of business;

30.3. Any notice or communication:

- a) which is posted shall be deemed to have been served 48 hours after the hour of posting;
- b) which is e-mailed or sent by SMS shall be deemed to have been served at 9.00am on the next business after the hour of being sent;

30.4. Except with Best Bottlers written consent, the Customer may not assign the benefit of any agreement the subject of these Terms.

30.5. Upon notice to but with the consent of the Customer, Best Bottlers may assign a contract to a person who acquires Best Bottlers business in succession to Best Bottlers.

**31. Other Remedies:**

In addition to Best Bottlers other rights under these Terms:



31.1. Best Bottlers may without liability to the Customer suspend or cancel the sale and supply of product by Best Bottlers to the customer from time to time and retain or retake possession of product not paid for by the Customer if:

- a) the Customer fails to make payment for any product on or before the due date and/or breaches any provision of these Terms; or
- b) Best Bottlers reasonably believes the Customer to be insolvent, or if the Customer is in default under any agreement with Best Bottlers; or
- c) a receiver, receiver and manager or controller is appointed in respect of all or any of the Customers assets; or
- d) An administrator is appointed in respect to the Customer; or
- e) Any resolution is passed to wind up the Customer or an application is made to the Court for the winding up of the customer; or
- f) Any action is taken which could result in the Customer becoming "an insolvent under administration" within the meaning of the Corporation Law or the Customer enters into a Deed of Compromise under the provisions the Bankruptcy Act

31.2. Upon the occurrence of any of the matters set out in Clause 31.1:

- a) All amounts owed by the Customer to Best Bottlers shall immediately become due and payable; and
- b) A certificate signed by an officer or employee of Best Bottlers stating the amount then owing by the Customer, shall be conclusive evidence of that debt; and
- c) Best Bottlers may, without notice, enter any premises occupied by the Customer with such facilities as may be necessary and remove all the product in respect of which title has not passed to the Customer and may use such force and take such action as may be necessary to gain access to the premises for the purpose of removing the product; and
- d) The Customer's right to possession of the product and the proceeds of sale of the product and to sell the product, shall cease; and
- e) The Customer is to pay all reasonable costs or expenses Best Bottlers incurs in recovering or attempting recovery of moneys owing by the Customer or in otherwise enforcing Best Bottlers rights under these Terms including legal costs on a solicitor own-client basis.

**PART B – ADDITIONAL TERMS  
FOR BOTTLING SERVICES**

**A. Customer's Inputs:**

On a timely basis, the Customer must provide Best Bottlers:

1. such information as Best Bottlers may reasonably require about any Customer's materials provided by the Customer for the purposes of any bottling run; and
2. such directions as Best Bottlers may reasonably require regarding choices yet to be made during the bottling run.

**B. Customer's goods:**

The Customer warrants that:

1. any Customer's materials it delivers to Best Bottlers for the purposes of a bottling run are on delivery to Best Bottlers, owned by the Customer free of encumbrances or, failing that, that the Customer has the owner's authority for their use of those materials during the bottling run.
2. Best Bottlers does not obtain ownership of the Customer's materials but may deal with them in accordance with the Terms;
3. It or they are the owner and/or are the authorised licensee of all trade marks, designs and intellectual property in any labels, packaging, marks or designs on or associated with the Customer's materials for use by Best Bottlers during the bottling run.
4. Any Customer supplied materials are GMO free.

**C. Bottling:**

Where Best Bottlers is to bottle wine for a Customer, then:

1. **Specification.**
  - (a) If Best Bottlers gives a recommendation or opinion on any specifications, Best Bottlers does not have a duty of care or other liability to the Customer for any such recommendation or opinion. The Customer may not vary any specifications previously agreed between the parties except by submitting to Best Bottlers consolidated specifications in writing signed or otherwise authenticated for the Customer at least 10 working days before commencement of the bottling run.
2. **Dry Goods.**
  - (a) Except to the extent otherwise stated on the order, the Customer is to provide all Customer's materials including dry goods required to be used during the bottling run.
  - (b) Where the Customer is to provide any Customer's materials for a bottling run these shall be delivered to Best Bottlers only 3 days before the due date for commencement of the bottling run in which they are to be used.
  - (c) A party required to provide any Goods or Customer's materials for a bottling run must ensure such conform to any particulars stated on the order, conform to any sample provided, are fit for purpose and are in the quantities required.
  - (d) Best Bottlers is not required to give credit for any Customer's materials ordered by the Customer as prove to be surplus to the requirements of any bottling run.
  - (e) Best Bottlers does not have a duty of care or other liability to the Customer to ensure that any Customer's materials are fit for purpose and use in any bottling run.
3. **Labels.**

- (a) The Customer shall ensure that any labels provided by the Customer provides for use during a bottling run conform to Best Bottlers quality assurance specifications, are fit for the purpose and are cured for at least 5 days prior to delivery to Best Bottlers. Any labels not so cured are used entirely at the Customer's risk.

4. **Bulk Wine.**

- (a) Unless Best Bottlers otherwise agrees, the Customer is to provide all bulk wine required;
- (b) Any wine provided by the Customer for use during a bottling run must be delivered to Best Bottlers a maximum of 7 and a minimum of 3 working days before commencement of such bottling run;
- (c) Any wine provided by the Customer for use in a bottling run must conform to any particulars stated on the order, conform to any sample provided, be GMO free, and be in the quantities required to complete the bottling run;
- (d) Any bulk wine delivered to Best Bottlers must be in a condition suitable for tank (bulk) storage;
- (e) The Customer alone is responsible for the quality of any wine stored by Best Bottlers. Stored wine is routinely analysed for dissolved oxygen and carbon dioxide, turbidity, protein and cold stability, free and total sulphur dioxide, reducing sugar, alcohol and volatile acidity. The results of such tests will be made available to the Customer.

5. **Scheduling.**

- (a) Unless Best Bottlers agrees in writing, a bottling run will not be scheduled unless at least 10 working days before the scheduled date for commencement of that bottling run the Customer has submitted and had accepted and/or approved by Best Bottlers the final order for the product and samples of any non-standard Customers materials including dry goods the Customer is to provide for use during the bottling run.

6. **Late cancellation.**

- (a) If in the 10 working days before commencement of a scheduled bottling run the Customer cancels the bottling run and does not at the same time re-schedule the run, then, in addition to any other sums to be paid by the Customer under these terms, the Customer shall pay Best Bottlers as and by way of liquidated damages for breach of the Terms a sum equal to the invoiced amount payable to Best Bottlers had the bottling run been completed and the product been delivered to the Customer.

7. **Rescheduling of bottling.**

- (a) Best Bottlers may reschedule a bottling run to a later date or dates if the Customer:
1. fails to deliver any necessary Customer materials to Best Bottlers for use in a bottling run within time specified by these Terms or as otherwise agreed in writing between the parties; and/or
  2. supplies Customer materials which are defective or otherwise do not conform to these Terms, Best Bottlers may reschedule the bottling run to a later date or dates;
- (b) In the event of any rescheduling pursuant to this clause the Customer shall pay to Best Bottlers liquidated damages being the hourly value of any down time and that amount of any additional costs Best Bottlers incurs.

8. **Extras.**

- (a) Where specified in writing or in accordance with usual industry practice, Best Bottlers shall supply such laboratory tests, additives or treatments (including temperature adjustment) to bulk wine to achieve the outcomes stated on the Customer's order.
- (b) Best Bottlers does not guarantee microbiological stability in respect of wines that are not membrane filtered on-line or have the potential for bacteriological instability, e.g. high malic acid level. Best Bottlers will otherwise filter wines during a bottling run in accordance with the Customer's requirements

9. **Pallets / bins.**

- (a) Except where specified in writing, the Customer shall provide all pallets or bins required to store or transport the product of any bottling run.
- (b) Any pallets or bins supplied by the Customer must be delivered to Best Bottlers a maximum of 7 and a minimum of 3 working days before the bottling run, conform to any particular requirements specified on the Customer's order, be fit for purpose and be in the quantities required.

10. **Storage.**

- (a) Upon completion of a bottling run, bottled wine and the Customer's materials are stored at the Customer's cost in accordance with the Terms.
- (b) Except as otherwise agreed in writing by the parties and in conformity with the Terms, within 7 days of completion of a bottling run the Customer must take delivery of the product and any remaining Customer's materials; and
- (c) In default of taking delivery of the product and/or any customer's materials, the Customer shall pay Best Bottlers storage charges in accordance with the Terms and/or at Best Bottlers list prices then current at the time for that service; and
- (d) The Customer acknowledges that Best Bottlers may cause the product and any Customer's materials to be stored off-site at the Customer's cost and risk. The customer further acknowledges that warehouse space at Best Bottler's premises is only available subject to Best Bottlers own requirements.

11. **Transport.**

- (a) Except where agreed in writing Best Bottlers shall not be liable to arrange for or undertake the transportation of the product or Customer's materials from its premises;
- (b) In the event that Best Bottlers agrees to arrange for the transportation of the product or Customer's materials from its premises Best Bottlers does not guarantee a particular delivery date or time and shall not be liable for any loss or damages of the product or the Customer's material or as a result of any delay in delivery.

12. **Indemnity.**

As a continuing obligation, except to the extent caused by Best Bottler's wilful default, the Customer indemnifies and holds harmless Best Bottlers against any claim for any loss or damage to property, any personal injury or death, or infringement of Third Party rights in connection with:

- (a) information upon a label or carton used for the bottling run and manufacture of the product;
- (b) a defect in any Customer's materials the Customer provides for the bottling run and manufacture of the product;
- (c) Best Bottlers acting upon specifications or incorporating any of the Customer's materials provided for the bottling run and manufacture of the product;
- (d) Best Bottlers using or being unable to use any Customer's materials (such as rewashed or imported bottles) provided for the bottling run and manufacture of the product; or
- (e) The Customer's or a Third party's improper storage, handling, transport, sale or consumption of any Customer's materials provided for the bottling run and of the product.