

WINE-XCHANGE - TERMS & CONDITIONS

1. TERMS

- 1.1 The following terms and conditions set out the respective rights and obligations of Wine Ark and registered users of Wine Ark's WINE-XCHANGE wine trading system ("WX") which operates at www.wine-ark.com.au ("Site") and other services offered through the Site.
- 1.2 Wine Ark may amend these terms and conditions at any time. Any such changes, together with their effective date, will be published on the Site or sent to you by e-mail. If such changes are not acceptable to you, you may (prior to such changes coming into effect) terminate your agreement by notifying Wine Ark through the Site or in writing.
- 1.3 These terms and conditions should be read in conjunction with the following policies and terms that are accessed through the Site. Together they form the agreement between us:
 - (a) Wine Ark's privacy policy;
 - (b) Wine Ark's settlement policy;
 - (c) Wine Ark's returns policy;
 - (d) Wine Ark's rate schedule/s and
 - (e) Wine Ark's website terms and conditions.

2. REGISTRATION

- 2.1 You warrant and represent that all the information provided by you in the course of registering is complete, accurate and up to date. You undertake to promptly notify Wine Ark of any changes to such information.
- 2.2 You may be asked to enter details of a credit, debit or charge card. You must ensure that you are fully entitled to use that card both at the time when you enter its details and when you seek to use it, and it has or will have, at all relevant times, sufficient funds or available credit to cover all charges you incur to Wine Ark.
- 2.3 You may only register if, and you warrant and represent that, you are (if an individual) over the age of 18 (or, if higher, the legal minimum age for purchasing alcohol in the country in which you reside) and if registering on behalf of a company, partnership or other business that you have the authority to enter into an agreement on these terms and conditions on behalf of such company, partnership or other business and if resident or domiciled outside Australia, that you are legally permitted to enter into such agreement.
- 2.4 Without limiting the foregoing Wine Ark may refuse to provide or to continue to provide access to WX or to provide or continue to provide other services to anyone at any time at its sole discretion.

3. OPERATION OF WINE-XCHANGE

- 3.1 Wine Ark will (subject to the rest of this Clause 3) use reasonable endeavours to ensure that WX is available 24 hours a day 365 days a year. Notwithstanding this Wine Ark shall not be responsible for or liable to any registered users for any unavailability of WX which is outside Wine Ark's control including but not limited to any failure of any hardware, software and/or any telecommunications links between registered users and the Internet.
- 3.2 Wine Ark reserves the right to close WX at any time if it believes there are compelling legal or technical reasons to do so or for general maintenance.

4. WINE ARK'S OBLIGATIONS

- 4.1 You acknowledge and accept that Wine Ark processes Sell and Buy Orders on behalf of Sellers and Buyers as agent for each Seller and Buyer. Any Trade (as defined in Clause 8 below) shall form a binding contract directly between the relevant Buyer and Seller.
- 4.2 Descriptions of goods and services included in WX are accurate to the best of Wine Ark's knowledge based upon information provided by Sellers. Wine Ark will endeavour to correct errors or omissions as quickly as practicable after being notified of them.
- 4.3 Wine Ark will use reasonable endeavours to check each case of wine offered for sale through WX to ascertain that the wine concerned corresponds with its description.

5. ADDITIONAL SELLERS TERMS

- 5.1 Each Seller acknowledges and accepts that Wine Ark will collect payments from each Buyer and will credit the account of each Seller with any payment due to it in accordance with Wine Ark's settlement policy. Any cash credit balance held on the Seller's account shall at all times be held by Wine Ark on trust for the Seller
- 5.2 Each Seller warrants and represents to Wine Ark that:
 - (a) it has and will have at all relevant times the full legal and beneficial title to, free from all liens and other encumbrances all wine offered by it for sale through WX;

- (b) the description of all wine offered by it for sale through WX is complete and accurate; and
- (c) that all wine offered for sale through WX meets the description given to it by the Seller and is of the age, type and condition described.

6. ADDITIONAL BUYERS TERMS

- 6.1 Wine Ark will maintain an account for each Buyer, against which Wine Ark will credit any payments received from the Buyer in cleared funds and debit any amounts due from the Buyer in respect of any Buy Orders. The Buyer shall settle such account in full and pay to Wine Ark (in cleared funds) any and all amounts due (in full) from the Buyer in accordance with the settlement policy which can be found on the Site. Unless otherwise agreed with Wine Ark in writing all payments made to Wine Ark shall be made by credit or charge card, direct bank transfer or cheque provided that in the case of a bank transfer or cheque the payment is made sufficiently in advance for the funds to have cleared for the settlement
- 6.2 Each Buyer shall be responsible for paying any charges that may be incurred on any wine purchased by them through WX including but not limited to any surcharge on credit or charge cards at the rate set out in the rates card

7. GST AND WET TAXES

- 7.1 You will notify Wine Ark if you are or are required to be registered for GST and provide Wine Ark with your ABN.
- 7.2 The price of wine sold on WX includes all GST and WET payable by the Seller and the Seller is solely responsible for remitting such GST and WET to the Australian government.

8. ACCEPTANCE OF A SELL ORDER

- 8.1 Where a Buyer accepts the Seller's Sell Order a trade will occur and the relevant Seller and Buyer will be deemed to have agreed to sell and buy the wine concerned
- 8.2 After a trade has occurred, Wine Ark shall notify the relevant Buyer and Seller of the sale by email and shall amend the information relating to the wine concerned on WX accordingly.
- 8.3 Title to and risk in wine sold pursuant to a Trade shall pass to the relevant Buyer when the Buyer and Seller have been notified of the relevant Trade.

9. FEES

- 9.1 In consideration for Wine Ark operating WX each Seller and Buyer shall pay Wine Ark a commission on the Selling Price at the rate set out on the rates card (plus GST) (as defined below) of each Trade. Any charges due in respect of additional services provided by Wine Ark shall be charged at the applicable advertised rate.
- 9.2 When a Trade is made, Wine Ark will charge the amount of the commission to the relevant Seller's and Buyer's account with Wine Ark.
- 9.3 For the purpose of this Clause 9, the "Selling Price" shall mean the agreed purchase price of the Trade concerned exclusive of any GST and WET.

10. DISCLAIMER

- 10.1 Save as expressly provided in these terms and conditions Wine Ark has no control over or responsibility for, nor does it give any warranties or representations in relation to:
 - (a) the quality, safety, or legality of any wine offered for sale through WX;
 - (b) the truth or accuracy of any listings or description of any wine on WX;
 - (c) the ability of Sellers to sell or the Seller's title to those goods; and
 - (d) the Buyers' ability to pay for any particular goods.

11. PASSWORDS

- 11.1 You undertake not to disclose any passwords that Wine Ark may issue to you to any person and will keep the passwords secret at all times.

12. AUTHENTICITY

- 12.1 If a batch of wine is not the correct description represented to the Buyer then the Buyer may cancel the Buy Order and seek to recover repayment from the Seller provided the Buyer does so within 3 months of the Trade being completed. Wine Ark undertakes to use reasonable endeavours in assisting the Buyer in cancelling the Buy Order and recovering monies owing by the Seller.

13. LIMITATIONS ON LIABILITY

- 13.1 You acknowledge and accept that Wine Ark is not responsible for nor liable to you in respect of any failures to provide WX or any other Wine Ark services provided through the Site or in respect of any losses or lost profit as a result of any trade or lost trade.
- 13.2 Except as set out expressly in these terms and

conditions, Wine Ark makes or gives no conditions, warranties or representations, whether express or implied, arising by statute, common law or otherwise, including but not limited to any implied terms, warranties or conditions of title, completeness, accuracy, description, satisfactory quality, merchantable quality or fitness for a particular purpose in relation to WX, any other services provided by Wine Ark, any wine offered for sale or sold through WX or as to the identity or credit worthiness of any Buyer or Seller and all such conditions, warranties or terms are hereby expressly excluded

- 13.3 Except in relation to such liability as has been expressly excluded, the maximum aggregate liability of Wine Ark whether in contract, tort, statutory duty or otherwise (even where Wine Ark 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 conditions and/or any trade conducted through WX 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 \$10,000. This limit shall also apply in the event that any exclusion or other provision is held to be invalid for any reason and Wine Ark becomes liable for loss or damage that would otherwise have been limited

14. TERM AND TERMINATION

- 14.1 Either Wine Ark or you may terminate your agreement to use WX and to receive other Wine Ark services provided through the Site at any time by either of us giving the other written notice of termination unless otherwise stated to the contrary elsewhere in this agreement.

15. ASSIGNMENT

- 15.1 Wine Ark reserves the right to assign or sub-contract any or all of its rights and obligations. If Wine Ark exercise this right, Wine Ark shall name the assignee or subcontractor on the main screen of the Site and you will be entitled (if you do not agree to such assignment or sub-contract) to terminate your agreement with Wine Ark by giving not less than 3 working days' notice to Wine Ark. You may not without the written consent of Wine Ark assign or dispose any of your rights or obligations under your agreement with Wine Ark.

16. PRIVACY

- 16.1 When you trade with Wine Ark you agree to do so subject to the terms of Wine Ark's privacy policy. Wine Ark's privacy policy forms part of the Wine Ark Terms and Conditions of trading.

17. FORCE MAJEURE

- 17.1 No party shall be deemed to be in breach of any of these terms and conditions (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, lock-out or other form of industrial action, acts of God, war, riot, fire, flood or storm) and the party concerned has acted and continues to act reasonably and prudently to prevent and to minimise the effect of such causes.

18. LAW

- 18.1 These Terms and any contract including them shall be governed by the laws of NSW and the parties hereby submit to the non-exclusive jurisdiction of the Courts of that State.

19. GENERAL

- 19.1 All communications shall be by notice in writing and sent to Wine Ark and the Seller or Buyer at their addresses, facsimile numbers and email addresses as advised from time to time. A notice shall be deemed received when the sender hand delivers it or (if by fax or email) the receiver receives confirmation of receipt and in any event within 24 hours of sending the notice.
- 19.2 These Terms and the accompanying Privacy Policy constitute the entire agreement between Wine Ark and the Seller or the Buyer relating to the Goods and services and there are no agreements understandings warranties or representations between the parties other than those contained herein.
- 19.3 No waiver or failure or delay to act by Wine Ark in respect to any default on the part of the Buyer or Seller in the performance of these Terms shall prevent actioning that or any other default by the Seller or Buyer.
- 19.4 The singular shall include the plural and vice versa, words importing any gender shall include every other gender, and where there is more than one party comprising the Seller or Buyer, they shall be bound jointly and severally.