

# TERMS & CONDITIONS - MANAGED CELLARAGE V2019/5

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms and Conditions ("conditions") unless the context otherwise requires:
- (a) "Cases" means storage containers, cartons or devices used for the storage of Goods at any of the Facilities;  
"Client" means the person who deposits Goods for storage and/or Nominated Services at any of the Facilities;  
"Facilities" means any premises that Wine Ark's has control of or access to, that is suitable to store Goods;  
"Goods" means property of the Client including wine, alcohol or other Goods deposited with or placed in the custody of Wine Ark, which are deemed acceptable for storage at the Facilities;  
"Cellar Records" means the inventory of Goods stored within the Facilities by the Client  
"Deposit Documents" means the receipts issued to the Client by Wine Ark for all Goods deposited at the Facilities  
"Managed Cellarage means secure storage areas within the Facilities only accessible by Wine Ark staff members.  
"Wine Ark" means Wine Ark Pty Ltd (ACN 090 902 686, ABN 52 090 902 686);
- (b) reference to Wine Ark includes, where applicable, its officers, employees, agents and sub-contractors;
- (c) words importing the singular number import the plural number and vice-versa;
- (d) words importing a particular gender import the other genders; and
- (e) headings and highlighting are for convenience only and do not effect the interpretation of these conditions.

## 2. ACCEPTANCE OF GOODS

- 2.1 Goods are only accepted by Wine Ark for storage at any of the Facilities on these conditions.
- 2.2 Wine Ark shall not be bound by any variation to these conditions unless the variation is in writing, signed on behalf of Wine Ark by its duly authorised officer.
- 2.3 All Goods shall be stored at the Facilities and carried by Wine Ark at the Clients risk in all things.

## 3. CLIENT'S WARRANTIES

- 3.1 The Client warrants, represents and undertakes to Wine Ark and to any person claiming or in the right of Wine Ark that:
- (a) the Client will check Goods are fully, adequately and truly described on all Deposit Documents at the time of receipt
- (b) the Client will be the owner of the Goods or will otherwise lawfully be entitled to store Goods at any of the Facilities;
- (c) Goods will not be subject to any encumbrance or right of any third party which would or might prevent the Client storing them at the Facility on these conditions during any period of storage;
- (d) all customs, excise, duties and tax ("Taxes") will be paid in full in relation to Goods before they are deposited with Wine Ark for storage and Wine Ark shall not be liable for any failure to pay taxes in relation to Goods;
- (e) the Client has made their own inquiries as to the suitability and fitness of Wine Ark for their purposes and have not relied upon any representations made by Wine Ark,
- (f) Goods will not be or include illegal, dangerous, inflammable, corrosive, explosive, volatile, offensive or aerosol items or substances containing more than 20% alcohol (collectively "Dangerous Goods"); and
- (g) the Client will keep Wine Ark advised of the Clients current credit card details, postal address, telephone and fax numbers, drivers license number and email address at all times
- 3.2 The Client indemnifies Wine Ark against any claim, action, damage, loss, liability, cost or expense which Wine Ark incurs or is liable for in connection with:
- (a) any damage, loss, injury or death of any person caused or contributed to by the Client;
- (b) any damage to the property of Wine Ark or third parties caused or contributed to by the Client; any default by the Client under these conditions; and
- (d) any breach by the Client of the warranties set out in condition 3.1

## 4. INSURANCE

- 4.1 Wine Ark shall maintain an industrial special risks insurance policy in respect to the Goods stored in the Facilities.

- 4.2 Unless otherwise agreed in writing, all Goods stored within the Managed Cellarage part of the Facilities will be automatically included under this policy.
- 4.3 Goods are not insured unless all storage and insurance invoices have been paid in full by their due date.
- 4.4 Clients who elect to arrange their own insurance, must provide Wine Ark with written confirmation of this and a current certificate of currency on request.
- 4.5 All insurance claims are subject to the basis of settlement & sub-limits.

## 5. ACCESS TO THE FACILITIES

- 5.1 A client shall have no right to enter the secure area of the Facilities without Wine Ark's consent and then only in accordance with the access and security procedures published by Wine Ark from time to time.

## 6. CELLAR RECORDS

- 6.1 Wine Ark agrees to maintain a record of Goods held at the Facilities by Clients using the Managed Cellarage service,
- 6.2 Wine Ark shall provide a Client with a copy of these records via the website [www.wine-ark.com.au](http://www.wine-ark.com.au) or upon written request.
- 6.3 The Client indemnifies Wine Ark against any claim, action, damage, loss, liability, cost or expense for typographical, data entry or cataloguing errors made within the Cellar Records and/or Deposit Documents.

## 7. SECURITY AND INSPECTION OF GOODS

- 7.1 Subject to these conditions and to any express or implied instructions by the Client to the contrary from time to time, all Cases deposited in Managed Cellarage will be opened and the Goods checked by Wine Ark for their suitability of storage.
- 7.2 Despite anything contained in the preceding condition, where circumstances require, in the exercise of its absolute discretion, Wine Ark shall be entitled to open any sealed Case in which Goods are placed and peruse any document accompanying or associated with Goods to determine the nature, condition or ownership of the Goods.

## 8. DANGEROUS AND REPACKING OF GOODS

- 8.1 If in Wine Arks opinion Goods are or are liable to become Dangerous goods, Wine Ark may at any time destroy, dispose of, abandon or render the Goods harmless without liability or compensation to the Client and without prejudice to Wine Ark's right to any charges under these Conditions.
- 8.2 If Cartons are damaged or otherwise require replacement from time to time, Wine Ark may, in the exercise of its absolute discretion, repackage Goods in new Cartons at the Clients expense.

## 9. DELIVERY AND PICK UP OF GOODS

- 9.1 Wine Ark is not a common carrier and in the exercise of its absolute discretion, may at any time refuse the transport or carriage of Goods for any person or the transport or carriage of any class of Goods or any particular Goods.
- 9.2 Despite any specific instructions given by the Client as to the mode of carriage of goods, in the exercise of its absolute discretion Wine Ark may carry Goods or have them carried by sub-contractors and by any means.
- 9.3 Delivery charges shall be considered earned whether or not Goods are delivered to any nominated consignee and whether damaged or otherwise.
- 9.4 If: (a) a consignee named in the Client's delivery instructions is not in attendance at the address specified  
(b) Wine Ark arrives to effect delivery at a consignee's premises and for any reason outside Wine Ark's control Wine Ark is delayed in effecting prompt delivery  
Wine Ark will be entitled to charge the Client an additional charge for every call made for delivery purposes or for the time.

## 10. PAYMENT OF ACCOUNTS

- 10.1 The Client shall pay storage, insurance, trading, delivery, pick up and other charges in accordance with Wine Ark's Rate Schedule as published from time to time.
- 10.2 Unless Wine Ark otherwise agrees in writing, Wine Ark accounts are payable within 7 days of the invoice date.

- 10.3 If the Client fails to pay any Wine Ark accounts by the due date then a late fee will be charged.
- 10.4 In addition, the Client shall pay interest on overdue accounts at the rate from time to time payable by virtue of the Penalty Interest Rates Act 1983 with effect from the time the accounts are payable.
- 10.5 If the Client has given Wine Ark authority to charge payments to the Client's credit card, Wine Ark may charge its accounts to the Clients credit card as when they fall due.
- 10.6 If any credit card authorisation is declined, Wine Ark shall not be obliged to seek further authorisation and may charge late fees and interest at the rate set out in Condition 10.4 from the time the credit card authorisation was declined until the outstanding account has been paid in full.

## 11. LIMITATION OF LIABILITY

- 11.1 Wine Ark shall not be liable for any loss or damage to the Goods arising out of their packing, storage or handling, whether in transit or otherwise.
- 11.2 To the full extent allowed by law, Wine Ark shall not be liable in any way to any person for and is expressly released by the Client from any liability for:
- (a) any loss, deterioration, contamination or evaporation of or any damage to goods while in Wine Ark's possession or control;
- (b) any failure to deliver Goods at a time or to a place specified by the Client or at all; and
- (c) any consequential loss suffered by any person arising out of the matters referred to in paragraphs (a) and (b) even if the alleged liability arises out of Wine Arks negligence or any breach of contract by Wine Ark.
- 11.3 To the full extent allowed by law, any conditions or warranties which are imposed or implied by any Law in relation to the storage or carriage of Goods which are adverse to Wine Ark are hereby excluded and to the extent that they cannot be excluded, then Wine Ark obligations shall be limited to the supply of its services again or payment for the supply of those services.
- 11.4 If by operation of law, Wine Ark is held liable in any way to any person for any of the matters referred to in conditions 11.1 and 11.2, Wine Ark's liability shall be limited to \$250 / case in total in respect of the whole of the Client's Goods irrespective of the number of individual Cases stored or carried by Wine Ark or the actual value of the Goods.

## 12. LIEN

- 12.1 Wine Ark shall have a lien on all Goods and any documents relating to them for all sums payable by the Client to Wine Ark and for that purpose Wine Ark shall have the right to sell Goods by public auction or private treaty on giving not less than 14 days notice to the Client.

## 13. GENERAL

- 13.1 Without derogating from any other method of service allowed by law, any notice, demand or other communication sent to the Client by post to the last address given to Wine Ark in writing by the Client shall be deemed to be received by the Client in the ordinary course of post.
- 13.2 The waiver by Wine Ark of the Clients warranties, representations or obligations shall not prevent the subsequent enforcement of those warranties, representations or obligations and shall not be deemed to be a waiver of any subsequent breach.
- 13.3 If for any reason any provision of these conditions shall conflict with any mandatory provision of any Law, then the conflicting condition shall be severed or modified to the extent necessary to bring it within the provisions of the Law and so modified, these conditions shall continue in full force and effect.
- 13.4 The proper law of these conditions is the law of the State where the respective Facility is located and unless otherwise agreed by Wine Ark, the Courts of that State have exclusive jurisdiction to deal with all matters arising out of these conditions.
- 13.5 Provided a party is not in breach of these conditions, they may end the agreement at any time by giving 30 days prior written notice to the other party.
- 13.6 Wine Ark reserves the right to terminate this agreement at any time.

## 15. ASSIGNMENT

- 15.1 The rights of the Client cannot be assigned without the written consent of Wine Ark.

### Acceptance

I request Wine Ark to provide storage services, logistics, deliveries and other services as instructed by me in accordance with the Terms & Conditions above & Rate Schedule/s as published from time to time. I understand that this agreement will commence upon the date signed and continue until otherwise advised in writing by either party.

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_