

**THAMNUS WINES PROPRIETARY LIMITED TERMS AND CONDITIONS OF SALE ("Ts&Cs")**

**1 INTRODUCTION**

- 1.1 Thamnus Wines Proprietary Limited, a company duly registered and existing under the laws of South Africa, with registration number 2017/261366/07 ("**Seller**"), engages in winemaking and, as part of its business operations, markets, distributes and sells wine in South Africa and abroad.
- 1.2 These Ts&Cs govern the Contract including the ordering, sale and delivery of the wines sold by the Seller.
- 1.3 By ordering or purchasing wines from the Seller, the Purchaser agrees to be bound by these Ts&Cs, as amended from time to time.
- 1.4 These Ts&Cs shall, subject to 10.3, apply to the Contract (and in default of any express condition to the contrary any subsequent contract between the parties relating to wine) and prevail over any other agreement between the Parties relating to the purchase of wine, unless the Parties specifically stipulate in writing that these Ts&Cs are supplemented or amended by such agreement.

**2 QUOTATIONS**

- 2.1 Any quotation given by the Seller is not an offer by the Seller to sell the wine but constitutes an invitation by the Seller to the Purchaser to place an Order Confirmation.
- 2.2 The Seller may accept or reject in whole or in part any Order Confirmation placed by the Purchaser pursuant to the quotation.

**3 PURCHASE PRICE AND PAYMENT**

- 3.1 An Order Confirmation is accepted by the Seller on the basis that the prices charged for a relevant cultivar of wine will be those as set out in the Seller's prevailing price list in force and effect on the date of purchase.
- 3.2 The purchase price in respect of any wine sold by the Seller to the Purchaser shall be payable by the Purchaser to the Seller, at such place or into such bank account as the Seller may direct from time to time, in cash,
- 3.3 The purchase price in respect of any wine shall be paid by the Purchaser prior to shipping and delivery unless otherwise agreed between the Parties or in accordance with a Distribution Agreement.
- 3.4 The Seller reserves the right to amend the price list in its sole discretion at any time and with or without prior notice to the Purchaser.
- 3.5 The Purchaser shall not deduct or short pay on the Invoice without prior written consent from the Seller.
- 3.6 All invoices shall be issued in compliance with the tax laws relevant to the transaction and will list VAT in South African Rand (ZAR).

3.7 Selling terms are strictly EX CELLAR unless expressly agreed otherwise in writing or in accordance with a Distribution Agreement

3.8 In addition to the said purchase price, the Purchaser shall be obliged to pay to the Seller -

3.8.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force and effect after the date these Ts&Cs come into existence; and/or

3.8.2 any expenses and costs, including, but not limited to, the cost of insurance, storage of any wine, arising from transportation arranged by the Purchaser not arriving on time, or any costs arising as a result of or during the period of any delay caused by the Purchaser which prevents the Seller from delivering the wine to the Purchaser.

3.9 Any amount due by the Purchaser to the Seller shall bear interest at the rate of 2% per month or the maximum interest rate as prescribed by the National Credit Act, whichever is the lower, calculated monthly in arrear on the amount due from the date such amount is due until payment thereof. Such interest shall be payable on demand or the date the amount due is paid by the Purchaser, whichever date is the earlier.

3.10 Ownership of the wine shall not pass to the Purchaser until the purchase price as reflected on the invoice has been paid in full.

3.11 The Purchaser shall insure the wine from taking delivery thereof against all loss and damages to the wine, and if requested attend to the Seller's interests being noted against such insurance policy.

3.12 The Purchaser shall on request exhibit proof of payment of all insurance premiums and other obligations undertaken in terms of 3.11 and produce the policy document annually and when so required by the Seller.

3.13 A certificate under signature of any director, financial manager or credit manager of the Seller whose authority shall not be necessary to prove, shall be prima facie proof of the obligation of the Purchaser towards the Seller and also of the fact that the amount so stipulated is already due and payable with any interest payable thereon.

3.14 To the extent permitted by law, the Purchaser renounces the benefits of the legal exceptions, revision of accounts, non numerata pecuniae (no value received) errore calculi (mistake in the calculation of outstanding amounts), and non causa debiti (no cause of debt), the full force, meaning and effect of which the Purchaser acknowledges to know and understand.

**4 WARRANTIES AND GUARANTEE**

4.1 The quality of the wine to be delivered by the Seller to the Purchaser shall be in accordance with the minimum quality standards prescribed by the Wine and Spirits Board or any other South African authority empowered to prescribe such standards. No warranties, guarantees or representations, express or implied or tacit

whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth herein shall be binding on the Seller. The Purchaser declares that it is fully acquainted with the quality and other attributes of the wine purchased. The wine is sold and purchased "as is" and the Seller shall not be liable for any latent or patent defect in the wine.

- 4.2 The Purchaser acknowledges that the Seller shall have, to the extent permitted by law, no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the wine and whether or not occasioned by the Seller's negligence or any act or omission on its part.

## 5 DELIVERY

- 5.1 Any delivery date indicated by the Seller shall be regarded as the estimated date of delivery and shall not bind the Seller to effect delivery on or near such date.
- 5.2 The Seller shall take all reasonable precautions to ensure that the wine is properly packaged in a secure manner so as to enable to wine to reach the Purchaser in the condition the Purchaser is generally entitled to expect.
- 5.3 The wine shall be dispatched to the Purchaser in accordance with the Purchaser's delivery instructions.
- 5.4 The Purchaser is liable for the costs incidental to purchasing the wine including, without limitation, courier fees, shipping costs, custom charges, taxes and insurance cover.
- 5.5 The Purchaser shall bear the onus of proving that upon delivery any of the wine is missing, defective or damaged or that the Seller did not adhere to the terms of the sale in any other manner.
- 5.6 All risk pertaining to the wine shall pass from the Seller to the Purchaser when the wine is transported for delivery.

## 6 MARKETING AND PROMOTIONAL ITEMS

- 6.1 The Seller shall not deliver any stock to the Purchaser for ad-hoc marketing, sample or promotional requests unless expressly agreed to in writing.
- 6.2 All marketing and promotional items are determined by the Seller in its discretion and must be drawn from the stock purchased by the Purchaser.
- 6.3 The Seller shall not be liable for the costs associated with any marketing, samples, or promotional stock undertaken by the Purchaser and such costs are for the Purchaser's own account.

## 7 INSPECTION AND CERTIFICATION

- 7.1 Before delivery of the wine the Seller shall, to the extent required by law:
- 7.1.1 ensure that the wine is certified by the Wine and Spirits Board of South Africa according to their prevailing quality standards regarding wine destined for the export market; and

- 7.1.2 obtain an export certificate from the National Department of Agricultural, Directorate of Plant and Quality Control authorising the exports of the wine.

## 8 CONFIDENTIALITY

- 8.1 While providing wine, the Seller may become aware of, obtain and/or produce information about the Purchaser ("**Confidential Information**"). The Seller will generally only disclose such Confidential Information in providing the wine to the Purchaser. The Seller may disclose Confidential Information -
- 8.1.1 where required by law or an authority to do so;
- 8.1.2 where the Seller has obtained the Purchaser's written consent to do so;
- 8.1.3 to the Seller's employees, representatives and third-party service providers, to the extent strictly necessary for the purpose of performing in terms of these Ts&Cs or obtaining professional advice or conducting our business.
- 8.2 This 7 does not apply to information that is publicly available, received from a third party not in breach of a duty of confidentiality or independently developed or known by the Seller.

## 9 RELATIONSHIP BETWEEN THE SELLER AND PURCHASER

- 9.1 The Purchaser shall at all times act in the best interests of the Seller with regard to protecting its brand and shall not in any way cause the Seller reputational harm.
- 9.2 The sale of the Seller's wine to the Purchaser shall for all intents and purposes be an agreement of sale in the ordinary course.
- 9.3 The sale of the Seller's wine to the Purchaser does not, whether by any express, tacit or implied term, representation, warranty, promise or the like not recorded in these Ts&Cs, create a business relationship or distribution agreement for purposes of 10.
- 9.4 The sale of wine by the Seller to the Purchaser does not give rise to any rights or expectation that the Seller will enter into a Distribution Agreement with the Purchaser in terms of 10.

## 10 DISTRIBUTION AGREEMENT

- 10.1 Where the Purchaser carries on the business of distributing and selling wines and the Seller wishes (in its sole and absolute discretion) to appoint the Purchaser as a Distributor, the Seller shall do so in terms of a written Distribution Agreement to be signed by the Seller and the Purchaser.
- 10.2 The Distribution Agreement shall govern the relationship between the Seller and the Distributor and shall incorporate these Ts&Cs by reference.
- 10.3 In the event of any conflict between these Ts&Cs, any other document or communication (including any summary terms on invoicing) these terms shall take precedence apart from where a

Distribution Agreement is concluded between the Seller and Purchaser in which case, the terms of the Distribution Agreement shall take precedence.

## 11 DAMAGE

11.1 Notwithstanding anything to the contrary herein, and to the extent permitted by Law, the Seller shall not be liable to the Purchaser for any loss or damage, whether for loss of profit or otherwise and whether occasioned by the negligence of the Seller or its duly authorised representatives or otherwise arising out of or in connection with any act or omission of the Seller relating to the supply of the wine, resale by the Purchaser or use by any third party.

11.2 The Purchaser hereby indemnifies the Seller from any damage or Loss due to the Purchaser being in breach of these terms and conditions.

## 12 FORCE MAJEURE

The Seller shall not be liable for any delay or for any consequence of any delivery of the wine if such delay is due to fire strike, lockout dispute with workmen, flood, accident, delay in transport, embargo act or demand or requirement of any Government or any Government Department or local authority or as a consequence of war or hostilities or to any other cause whatsoever beyond the Seller's reasonable control. If any such delay occurs, then unless the cause thereof shall frustrate or render impossible or illegal performance of this contract, the Seller's period for performing its obligations shall be extended by such period (not limited to the length of the delay) as the Seller may reasonably require to complete the performance of its obligation.

## 13 INTELLECTUAL PROPERTY

13.1 The Seller's intellectual property rights are expressly reserved.

13.2 The Purchaser does not acquire any right, title or interest to the Seller's intellectual property by virtue of purchasing the wine.

13.3 The Purchaser may not use Seller's trademarks or trade names, either on their own products or in the advertising of their own products, unless they have received the prior written consent of the Seller.

13.4 The Purchaser indemnifies the Seller against all actions, claims, costs, demands, expenses and other liabilities suffered or incurred by the Seller as a result of any third-party claims initiated and / or instituted against the Seller relating to the Purchaser's unauthorised use of any intellectual property rights.

13.5 The Seller shall retain the right to pursue legal action against any person that infringes any of its intellectual property rights.

## 14 INDEMNITY AND LIMITATION OF LIABILITY

14.1 Notwithstanding any other provision of these Ts&Cs, the Seller, its officers, directors, employees, consultants, associates and agents (each a "Relevant Party") shall not be liable for any Losses that the Purchaser may suffer arising from or in connection with its purchase of wine,

save in respect of the wilful misconduct, fraud, bad faith or gross negligence of any Relevant Party.

14.2 The Purchaser hereby indemnifies the Seller against any Losses which may be suffered by itself or any third party arising in any way from the Purchaser's purchase of wine.

## 15 DISPUTES

The Parties agree to submit to the jurisdiction of the High Court of South Africa, Western Cape Division, in relation to any dispute relating to these Ts&Cs and the contents thereof.

## 16 CHANGES TO TS&CS

16.1 The Seller reserves the right to change any part of these Ts&Cs without notice to the Purchaser.

16.2 The Purchaser is deemed to accept any amendments to these Ts&Cs by purchasing the Seller's wine.

## 17 GENERAL

17.1 These Ts&Cs constitute the whole agreement between the Parties in relation to the subject matter hereof and neither Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein.

17.2 These Ts&Cs supersede and replace all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter.

17.3 No failure by any Party to enforce any provision of these Ts&Cs shall constitute a waiver of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future. No waiver shall be valid unless it is signed by the authorised representatives of both Parties in a formal written addendum.

17.4 Save as expressly provided in these Ts&Cs, the Purchaser is not entitled to cede, delegate, encumber, assign or otherwise transfer any of its rights and/or obligations in terms of, and/or interests to any third party without our prior written consent. The Seller is entitled to cede, delegate, encumber, assign or otherwise transfer any of its rights and/or obligations in terms of, and/or interest in, these Ts&Cs to any third party without the Purchaser's consent.

17.5 Each clause in these Ts&Cs is severable the one from the other and if any clause is found by any competent court or tribunal to be defective or unenforceable for any reason whatever, the remaining paragraphs or clauses shall continue to be of full force and effect.

## 18 GOVERNING LAW

These Ts&Cs shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the laws of South Africa.

## 19 COMPLIANCE WITH LAWS AND LICENSING

19.1 The Parties warrant that they shall comply with all applicable laws and regulations in exercising their

- rights and performing their obligations in terms of these Ts&Cs.
- 19.2 In accordance with 19.1, the Purchaser hereby warrants and undertakes that he has or will have at all appropriate times, all appropriate licences, permits and approvals in place required by law or regulation (including export or import licences or in terms of the Liquor Acts in South Africa or the equivalent or analogous legislation in any other jurisdiction in which these Ts&Cs may apply or to the laws of which the Purchaser may be or become subject), alternatively that it is exempted from being in possession of the relevant licence and that it is entitled to purchase liquor from the Seller and undertakes to immediately notify the Seller in writing by registered post and e-mail in the event of any claim by a third party to or any attack made on any licence or permit which it is required to have in place (such as export licence or liquor license) or to furnish the Seller with a copy of such license or proof of renewal thereof on demand. The Purchaser undertakes to see to it that all laws and regulations in regard to the validity of any license or permit it is required to have in place shall be strictly adhered to and that annual license fees shall be paid.
- 19.3 A breach by the Parties of this 19 shall be deemed to be a material breach of these Ts&Cs giving rise to an immediate right of termination.
- 20 INTERPRETATION**
- In these Ts&Cs, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, -
- 20.1 a word or an expression which denotes -
- 20.1.1 any gender includes the other genders;
- 20.1.2 a natural person includes an artificial or juristic person and *vice versa* (each a "**Person**");
- 20.1.3 the singular includes the plural and *vice versa*;
- 20.2 the following words and expressions shall bear the meanings assigned to them below and cognate words and expressions bear corresponding meanings -
- 20.2.1 "**Business Day**" - any day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 20.2.2 "**Contract**" means the sale and purchase agreement of wine which comes into existence upon the Seller's acceptance of an Order Confirmation, alternatively, any other agreement signed by the Seller and Purchaser. Accordingly, a Contract shall only come into force between the Seller and the Purchaser if the Seller confirms to the Purchaser that the Seller has accepted an Order Confirmation or if the Seller supplies, or tenders to supply the wine in question to the Purchaser, which ever event occurs the earlier;
- 20.2.3 "**Distribution Agreement**" - has the meaning ascribed in 10.1;
- 20.2.4 "**Intellectual Property**" - any intellectual property rights of any nature, including all corporate identification, trademarks (whether registered or unregistered), trade names, brand names, logos, any mark, emblems, copyright, patents, inventions, know-how, improvements, process, get-up, code, data, programmes, software, technical information or expertise;
- 20.2.5 "**Loss**" - any liability, loss, cost (including legal costs on an attorney and own client scale), expense, penalty, fee or damages (whether direct, indirect, consequential or of any other nature) and "**Losses**" shall be construed accordingly;
- 20.2.6 "**Order Confirmation**" - the placing of an order by the Purchaser to purchase Wine from the Seller on such document as the Seller may prescribe;
- 20.2.7 "**wine**" - the wine to be supplied by the Seller to the Purchaser according to the cultivar and in the quantities and packaging to the Purchaser as set out on the invoice;
- 20.2.8 "**Parties**" - collectively, the Seller and the Purchaser and "**Party**" shall mean either of them, as the context may require;
- 20.2.9 "**Purchaser**" - any person or entity ordering wine from the Seller as referred to in an Order Confirmation or in terms of any other agreement entered into between the Seller and the Purchaser;
- 20.2.10 "**South Africa**" - the Republic of South Africa;
- 20.2.11 "**VAT**" - value added tax as levied in terms of the Value-Added Tax Act No 89 of 1991;
- 20.3 any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the latest version of these Ts&Cs, and as amended or substituted from time to time;
- 20.4 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on either Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of these Ts&Cs;
- 20.5 where any term is defined within a particular clause other than this 20, that term shall bear the meaning ascribed to it in that clause wherever it is used in these Ts&Cs;
- 20.6 where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day;
- 20.7 any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, calendar months or calendar years, respectively;
- 20.8 any term which refers to a South African legal concept or process (for example, without limiting the foregoing, winding-up or curatorship) shall be deemed to include a reference to the equivalent

or analogous concept or process in any other jurisdiction in which these Ts&Cs may apply or to the laws of which a Party may be or become subject;

- 20.9 the expiry, termination or cancellation of this these Ts&Cs shall not affect those provisions of these Ts&Cs which expressly provide that they will operate after any such expiry, termination or cancellation or which of necessity must continue to have effect after such expiry, termination or cancellation, notwithstanding that such provisions do not expressly provide for this; and
- 20.10 the use of the word "**including**", "**includes**" or "**include**" followed by a specific example/s does not limit the general meaning of what came before it; and
- 20.11 the rule of interpretation which prescribes that, in the event of ambiguity, a contract should be interpreted against the party responsible for its drafting, shall not be applied in the interpretation of this Ts&Cs.