
Terms & Conditions of Trade for Credit Accounts

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "L'Atelier Fine Wines" means Distinctive Property Holdings Pty Ltd & Megalo Property Holdings Pty Ltd (In Partnership) T/A L'Atelier Fine Wines, its successors and assigns or any person acting on behalf of and with the authority of Distinctive Property Holdings Pty Ltd & Megalo Property Holdings Pty Ltd (In Partnership) T/A L'Atelier Fine Wines.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting L'Atelier Fine Wines to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns
- 1.4 "Goods" means all Goods or Services supplied by L'Atelier Fine Wines to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 "Price" means the Price payable for the Goods as agreed between L'Atelier Fine Wines and the Customer in accordance with clause 2 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or schedule that the parties have entered into, the terms of this Agreement shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Agreement may only be amended in writing by the consent of both parties.
- 2.4 Prices are subject to change without notice. All wholesale prices quoted are exclusive of taxes. The quoted LUC price by bottle includes WET but does not include GST.
- 2.5 Goods and Services will be subject to GST at the prevailing rate, and wine will be subject to the Wine Equalisation Tax (WET) at the rate of twenty-nine percent (29%) unless an exemption is applicable. To make a WET-exempt purchase, a valid tax exemption form must be provided to L'Atelier Fine Wines prior to despatch of Goods.

3. Price and Payment

- 3.1 The Price shall be as indicated on invoices provided by L'Atelier Fine Wines to the Customer in respect of the Goods supplied.
- 3.2 Payment terms are strictly prior to the despatch of Goods to the Customer unless an Application for Credit has been submitted and approved, whereupon payment will be made in line with the credit terms and conditions of L'Atelier Fine Wines.
- 3.3 Payment may be made by EFT, credit card or cheque. Payments by cheque or EFT will not be deemed made until cleared into the nominated account of L'Atelier Fine Wines.
- 3.4 A surcharge will apply to all credit card transactions as specified on invoice, and the customer will be responsible for all bank charges incurred by L'Atelier Fine Wines as a result of dishonoured cheques.
- 3.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by L'Atelier Fine Wines nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to L'Atelier Fine Wines an amount equal to any GST L'Atelier Fine Wines must pay for any supply by L'Atelier Fine Wines under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. Delivery

- 4.1 Minimum order is twelve (12) bottles with a minimum net value of one-hundred dollars (\$100) excluding taxes.
- 4.2 Orders received by twelve (12) noon will be delivered the next working day to Customers and nominated freight depots in metropolitan areas. Longer lead times may apply to regional deliveries.
- 4.3 Surcharges will apply to any deliveries with a delivery window of less than three (3) hours and to any urgent deliveries placed after the specified cut-off.
- 4.4 It is the responsibility of the Customer to inspect the Goods on or immediately after delivery. In the event of any damage or discrepancy the Customer must notify L'Atelier Fine Wines and make a claim against L'Atelier Fine Wines within twenty-four (24) hours of delivery. In the event the Customer does not make a claim in accordance with this clause, the Goods shall be deemed to

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have been received in good order and to have been accepted as such by the Customer. L'Atelier Fine Wines reserves the right to reject any claim.

- 4.5 Should L'Atelier Fine Wines agree to the return of stock, the Customer will be charged a fee per case to cover the cost of freight and handling. All returned stock must be unopened and in its original packaging.

5. Risk

- 5.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, L'Atelier Fine Wines is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by L'Atelier Fine Wines is sufficient evidence of L'Atelier Fine Wines' rights to receive the insurance proceeds without the need for any person dealing with L'Atelier Fine Wines to make further enquiries.

6. Title to Goods (including any incidental items supplied as part of any Services)

- 6.1 L'Atelier Fine Wines and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid L'Atelier Fine Wines all amounts owing to L'Atelier Fine Wines; and
 - (b) the Customer has met all of its other obligations to L'Atelier Fine Wines.
- 6.2 Receipt by L'Atelier Fine Wines of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 6.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 6.1 that the Customer is only a bailee of the Goods and must return the Goods to L'Atelier Fine Wines on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for L'Atelier Fine Wines and must pay to L'Atelier Fine Wines the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for L'Atelier Fine Wines and must pay or deliver the proceeds to L'Atelier Fine Wines on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of L'Atelier Fine Wines and must sell, dispose of or return the resulting product to L'Atelier Fine Wines as it so directs.
 - (e) the Customer irrevocably authorises L'Atelier Fine Wines to enter any premises where L'Atelier Fine Wines believes the Goods are kept and recover possession of the Goods.
 - (f) L'Atelier Fine Wines may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of L'Atelier Fine Wines.
 - (h) L'Atelier Fine Wines may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

7. Personal Property Securities Act 2009 ("PPSA")

- 7.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 7.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to L'Atelier Fine Wines for Services – that have previously been supplied and that will be supplied in the future by L'Atelier Fine Wines to the Customer.
- 7.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which L'Atelier Fine Wines may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 7.3(a)(i) or 7.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, L'Atelier Fine Wines for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of L'Atelier Fine Wines;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of L'Atelier Fine Wines;
 - (e) immediately advise L'Atelier Fine Wines of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 7.4 L'Atelier Fine Wines and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 7.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

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- 7.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 7.7 Unless otherwise agreed to in writing by L'Atelier Fine Wines, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 7.8 The Customer must unconditionally ratify any actions taken by L'Atelier Fine Wines under clauses 7.3 to 7.5.
- 7.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

8. Security and Charge

- 8.1 In consideration of L'Atelier Fine Wines agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 8.2 The Customer indemnifies L'Atelier Fine Wines from and against all L'Atelier Fine Wines' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising L'Atelier Fine Wines' rights under this clause.
- 8.3 The Customer irrevocably appoints L'Atelier Fine Wines and each director of L'Atelier Fine Wines as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Customer's behalf.

9. Default and Consequences of Default

- 9.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at L'Atelier Fine Wines' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 9.2 If the Customer owes L'Atelier Fine Wines any money the Customer shall indemnify L'Atelier Fine Wines from and against all costs and disbursements incurred by L'Atelier Fine Wines in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, L'Atelier Fine Wines' Contract default fee, and bank dishonour fees).
- 9.3 Further to any other rights or remedies L'Atelier Fine Wines may have under this Contract, if a Customer has made payment to L'Atelier Fine Wines by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by L'Atelier Fine Wines under this clause 9 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

10. Privacy Policy

- 10.1 All emails, documents, images or other recorded information held or used by L'Atelier Fine Wines is Personal Information, as defined and referred to in clause 10.3, and therefore considered Confidential Information. L'Atelier Fine Wines acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). L'Atelier Fine Wines acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by L'Atelier Fine Wines that may result in serious harm to the Customer, L'Atelier Fine Wines will notify the Customer in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 10.2 Notwithstanding clause 10.1, privacy limitations will extend to L'Atelier Fine Wines in respect of Cookies where transactions for purchases/orders transpire directly from L'Atelier Fine Wines' website. L'Atelier Fine Wines agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to L'Atelier Fine Wines when L'Atelier Fine Wines sends an email to the Customer, so L'Atelier Fine Wines may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via L'Atelier Fine Wines' website.
- 10.3 The Customer agrees for L'Atelier Fine Wines to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by L'Atelier Fine Wines.
- 10.4 The Customer agrees that L'Atelier Fine Wines may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 10.5 The Customer consents to L'Atelier Fine Wines being given a consumer credit report to collect overdue payment on commercial credit.

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- 10.6 The Customer agrees that personal credit information provided may be used and retained by L'Atelier Fine Wines for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 10.7 L'Atelier Fine Wines may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 10.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 10.3 above;
 - (b) name of the credit provider and that L'Atelier Fine Wines is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and L'Atelier Fine Wines has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of L'Atelier Fine Wines, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 10.9 The Customer shall have the right to request (by e-mail) from L'Atelier Fine Wines:
- (a) a copy of the information about the Customer retained by L'Atelier Fine Wines and the right to request that L'Atelier Fine Wines correct any incorrect information; and
 - (b) that L'Atelier Fine Wines does not disclose any personal information about the Customer for the purpose of direct marketing.
- 10.10 L'Atelier Fine Wines will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 10.11 The Customer can make a privacy complaint by contacting L'Atelier Fine Wines via e-mail. L'Atelier Fine Wines will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

11. Service of Notices

- 11.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 11.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

12. Trusts

- 12.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not L'Atelier Fine Wines may have notice of the Trust, the Customer covenants with L'Atelier Fine Wines as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of L'Atelier Fine Wines (L'Atelier Fine Wines will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

13. General

- 13.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of the state in which L'Atelier Fine Wines has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 13.3 Where applicable nothing in this agreement is intended to have the effect of contracting out of the Competition and Consumer Act 2010 (CCA). L'Atelier Fine Wines shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by L'Atelier Fine Wines of these terms and conditions (alternatively L'Atelier Fine Wines' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 13.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 13.5 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.