

Haselgrove Vignerons Pty Ltd T/as Nick Haselgrove Wines ABN 99 059 751 923 – Terms & Conditions of Trade

1. Definitions	2.1	Delivery ("Delivery") of the Goods is taken to occur at the time that:	17.3	In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
(a) "Supplier" means Haselgrove Vignerons Pty Ltd (ABN: 99 059 751 973) T/A Nick Haselgrove Wines or James Haselgrove Wines, its successors and assigns or any person acting on behalf of and with the authority of Haselgrove Vignerons Pty Ltd T/A Nick Haselgrove Wines or James Haselgrove Wines.	2.2	(a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Supplier's address; or	17.4	Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.	2.3	(b) At the Supplier's sole discretion, the cost of delivery is either included in, or is in addition to the Price.		
(c) The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the terms of these terms and conditions.	2.4	The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the terms of these terms and conditions.		
(d) Any time specified by the Supplier for delivery of the Goods is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.	2.5	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.		
(e) If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.	2.6	Liquor Licensing Act 1997 (South Australia)		
(f) In accordance with the provisions of the Liquor Licensing Act 1997 and subsequent amendments and Regulations, it is an offence to sell or supply or to obtain liquor on behalf of a person under eighteen (18) years who are not permitted to place or receive orders for liquor.	2.7	The Supplier is entitled to place or receive orders for liquor for the purpose of placing and/or receiving orders for liquor may be required to provide a valid driver's licence.		
(g) The Supplier will refuse to deliver the Goods of the person receiving the Goods is unable to or unwilling to provide evidence of proof of age.	2.8	Out of Stock/Substitution		
(h) The Supplier will use reasonable endeavours to ensure that all Goods ordered by the Customer are supplied to the Customer. If the Goods ordered are not available in stock, the Supplier shall work with the Customer on a case by case basis where options may include back order of Goods or amendment to the order.	2.9	Title		
(i) The Supplier and the Customer agree that ownership of the Goods shall pass to the Customer:	2.10	(a) the Customer has paid the Supplier all amounts owing to the Supplier; and		
(j) the Customer has met all of their other obligations to the Supplier. Receipt by the Supplier 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.	2.11	(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;		
(k) 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 the Supplier and must pay or deliver the proceeds to the Supplier on demand.	2.12	(c) the Customer continues to own or possess 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.		
(l) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and to take possession of the Goods.	2.13	(d) the Supplier may commence proceedings to recover the Price of the Goods or to bring proceedings claiming that ownership of the Goods has not passed to the Customer.		
(m) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.	2.14	Personal Property Securities Act 2009 ("PPSA")		
(n) the Customer shall not charge or grant an encumbrance over the Goods nor grant or otherwise give away any interest in the Goods while they remain the property of the Supplier.	2.15	In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.		
(o) 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 the Supplier for Goods and/or Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.	2.16	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 the Supplier for Goods and/or Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.		
(p) the Customer must 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 the Supplier may reasonably require to:	2.17	(i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;		
(q) register any other document required to be registered by the PPSA; or	2.18	(ii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);		
(r) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;	2.19	(c) not register a financing charge statement in respect of a security interest without the prior written consent of the Supplier;		
(s) not register a financing charge statement in respect of a security interest without the prior written consent of the Supplier;	2.20	(d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier;		
(t) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.	2.21	(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.		
(u) The Supplier 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.	2.22	(f) The Supplier and the Customer agree that sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.		
(v) The Customer waives their rights to receive notices under sections 142 and 143 of the PPSA.	2.23	Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.		
(w) The Customer must unconditionally ratify any actions taken by the Supplier under clauses 12.3 to 12.5.	2.24	Subject to any express provisions to the contrary (including those contained in this clause 12) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.		
(x) Subject to any express provisions to the contrary (including those contained in this clause 12) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.	2.25	Security and Charge		
(y) In consideration of the Supplier agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or	2.26	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).		
(z) The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.	2.27	The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.		
(aa) Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)	2.28	The Customer must inspect the Goods on delivery and must within three (3) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect the Goods.		
(ab) Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied warranties and warranties (including, without limitation the statutory warranties under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).	2.29	The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.		
(ac) Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.	2.30	If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.		
(ad) If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.	2.31	If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:		
(ae) limited to the purchase price of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;	2.32	(a) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;		
(af) otherwise negated absolutely.	2.33	(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;		
(ag) Subject to this clause 14, returns will only be accepted provided that:	2.34	(c) the Customer has complied with the provisions of clause 14.1; and		
(ah) the Customer has complied with the provisions of clause 14.1; and	2.35	(d) the Supplier has agreed that the Goods are defective; and		
(ai) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and	2.36	(e) the Goods are returned in as close a condition to that in which they were delivered as is possible.		
(aj) Notwithstanding anything contained in this clause a subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:	2.37	(a) the Customer failing to properly maintain or store any Goods;		
(ak) the Customer using the Goods for any purpose other than that for which they were designed;	2.38	(b) the Customer continuing the use of any Goods after any defect becomes apparent or after the Customer has been advised by a reasonably prudent operator or user;		
(al) the Customer failing to follow any instructions or guidelines provided by the Supplier;	2.39	(c) fair wear and tear, any accident, or act of God.		
(am) The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.	2.40	Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.		
(an) Intellectual Property	2.41	If the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.		
(ao) The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design, or trademark, in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.	2.42	The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings of Goods which the Supplier has created for the Customer.		
(ap) Default and Consequences of Default	2.43	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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after the date when payment becomes due.		
(aq) If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).	2.44	Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:		
(ar) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;	2.45	(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;		
(as) the Customer has exceeded any applicable credit limit provided by the Supplier;	2.46	(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or		
(at) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or	2.47	(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.		
(au) Cancellation	2.48	Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.		
(av) The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.	2.49	In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).		
(aw) Privacy Act 1988	2.50	The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:		
(ax) The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.	2.51	(a) to assess an application by the Customer; and/or		
(ay) The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:	2.52	(b) to notify other credit providers of a default by the Customer; and/or		
(az) (a) to assess an application by the Customer; and/or	2.53	(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		
(ba) (b) to notify other credit providers of a default by the Customer; and/or	2.54	(d) to assess the creditworthiness of the Customer including the nature of the repayment history in the preceding two (2) years.		
(bb) (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	2.55	(e) The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.		
(bc) (d) to assess the creditworthiness of the Customer including the nature of the repayment history in the preceding two (2) years.	2.56	The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):		
(bd) (e) The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.	2.57	(a) the provision of Goods; and/or		
(be) The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):	2.58	(b) analysing, verifying or checking the Customer's credit payment and/or status in relation to the provision of Goods; and/or		
(bf) (a) the provision of Goods; and/or	2.59	(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or		
(bg) (b) analysing, verifying or checking the Customer's credit payment and/or status in relation to the provision of Goods; and/or	2.60	(d) enabling the collection of amounts outstanding in relation to the provision of Goods; and/or		
(bh) (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or	2.61	(e) The Supplier may give information about the Customer to a CRB for the following purposes:		
(bi) (d) enabling the collection of amounts outstanding in relation to the provision of Goods; and/or	2.62	(a) to obtain a consumer credit report;		
(bj) (e) The Supplier may give information about the Customer to a CRB for the following purposes:	2.63	(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.		
(bk) (a) to obtain a consumer credit report;	2.64	(c) The information given to the CRB may include:		
(bl) (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.	2.65	(a) personal information as outlined in 18.1 above;		
(bm) (c) The information given to the CRB may include:	2.66	(b) the name of the consumer credit provider that the Supplier is a current credit provider to the Customer;		
(bn) (a) personal information as outlined in 18.1 above;	2.67	(c) whether the credit provider is a licensee;		
(bo) (b) the name of the consumer credit provider that the Supplier is a current credit provider to the Customer;	2.68	(d) type of consumer credit;		
(bp) (c) whether the credit provider is a licensee;	2.69	(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);		
(bq) (d) type of consumer credit;	2.70	(f) the amount of the consumer credit, overdraft amounts, 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 the Supplier has been paid and/or otherwise discharged and all details surrounding that discharge (e.g. dates of discharge);		
(br) (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);	2.71	(g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;		
(bs) (f) the amount of the consumer credit, overdraft amounts, 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 the Supplier has been paid and/or otherwise discharged and all details surrounding that discharge (e.g. dates of discharge);	2.72	(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).		
(bt) (g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;	2.73	The Customer shall have the right to request (by e-mail) from the Supplier:		
(bu) (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).	2.74	(a) a copy of the information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect information; and		
(bv) The Customer shall have the right to request (by e-mail) from the Supplier:	2.75	(b) that the Supplier does not disclose any personal information about the Customer for the purpose of direct marketing.		
(bw) (a) a copy of the information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect information; and	2.76	(c) the Supplier 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 comply with the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.		
(bx) (b) that the Supplier does not disclose any personal information about the Customer for the purpose of direct marketing.	2.77	The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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 response of the Supplier, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au .		
(by) The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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 response of the Supplier, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au .	2.78	Service of Notices		
(bz) The Customer can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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 response of the Supplier, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au .	2.79	Any written notice given under this contract shall be deemed to have been given and received:		
	2.80	(a) by handing the notice to the other party, in person;		
	2.81	(b) by leaving it at the address of the other party as stated in this contract;		
	2.82	(c) by sending it by registered post to the address of the other party as stated in this contract;		
	2.83	(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;		
	2.84	(e) if sent by email to the other party's last known email address.		
	2.85	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.		
	2.86	General		
	2.87	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, legal effect and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Adelaide Courts in South Australia.		
	2.88	Subject to clause 14, the Supplier 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 the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).		
	2.89	The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.		
	2.90	The Customer cannot licence or assign without the written approval of the Supplier.		
	2.91	The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier. The Customer agrees that the Supplier may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Goods to the Customer.		
	2.92	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.		
	2.93	Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.		

Please note that a larger print version of these terms and conditions is available from the Supplier on request. Postal Address 5 Anglesea Lane Seaford Rise SA 5169