

Haselgrove Vignerons Pty Ltd T/as Nick Haselgrove Wines – Terms & Conditions of Trade

1.	Definitions	7.1	Delivery of Goods	13.1	Security and Charge	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.	
1.1	"Supplier" means Haselgrove Vignerons Pty Ltd (ABN: 99 059 751 993) T/A Nick Haselgrove Wines or James Haselgrove Wines, its successors and assigns any person acting on behalf of and with the authority of Haselgrove Vignerons Pty Ltd T/A Nick Haselgrove Wines or James Haselgrove Wines.	7.2	Delivery ("Delivery") of the Goods is taken to occur at the time that:	13.1	In consideration of the Supplier 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).	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).
1.2	"Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:	7.2	(a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Supplier's address; or	13.2	The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on or in connection with this clause.	17.4	Cancellation of orders for Goods made to the Customer's specifications (e.g. non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
	(b) if there is more than one Customer, is a reference to each Customer jointly and severally; and	7.3	(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.	13.3	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.	18.1	Privacy Act 1988
	(c) if the Customer is a part of a trust, shall be bound in their capacity as a trustee; and	7.4	At the Supplier's sole discretion, the cost of delivery is either included in, or is in addition to the Price.	14.1	Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)	18.2	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.
	(d) includes the Customer's executors, administrators, successors and permitted assigns.	7.5	The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	14.2	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.	18.3	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:
1.3	"Goods" means all Goods or Services supplied by the Supplier 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).	7.6	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 the 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.	14.3	Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees). The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.	18.4	(a) to assess an application by the Customer; and/or
1.4	"Price" means the Price payable (plus any GST and WET where applicable) for the Goods as agreed between the Supplier and the Customer in accordance with clause 6 below.	7.7	Risk	14.4	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.	18.5	(b) to analyse, verify and/or check the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
1.5	"GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).	7.8	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.	14.5	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.	18.6	(c) to process any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
1.6	"WET" means Wine Equalisation Tax as defined within the "A New Tax System (Wine Equalisation Tax) Act 1999".	7.9	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 need for any person dealing with the Supplier to make further enquiries.	14.6	If the Customer is required to replace the Goods under this clause or the CCA, the Supplier will refund any money the Customer has paid for the Goods.	18.7	(d) enabling the collection of amounts outstanding in relation to the Goods.
2.	Acceptance	8.	Liquor Licensing Act 1997 (South Australia)	14.7	If the Customer is a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:	18.8	(e) the Supplier may give information about the Customer to a CRB for the following purposes:
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.	8.1	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. Persons placing and/or receiving orders for liquor may be required to provide evidence of proof of age.	14.8	(a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;	18.9	(a) to obtain a consumer credit report;
2.2	These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.	8.2	The Supplier will refuse to deliver the Goods to the person receiving the Goods is unable to or unwilling to provide evidence of proof of age.	14.9	(b) otherwise negated absolutely.	19.1	(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
2.3	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.	9.	Out of Stock/Substitution	14.10	Subject to this clause 14, returns will only be accepted provided that:	19.2	(c) the information given to the CRB may include:
2.4	These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.	9.1	The Supplier will use its 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.	14.11	(a) the Customer has complied with the provisions of clause 14.1; and	19.3	(d) name of the credit provider and that the Supplier is a current credit provider to the Customer;
3.	Errors and Omissions	9.2	Title	14.12	(b) the Supplier has agreed that the Goods are defective; and	19.4	(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);
3.1	The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):	9.3	The Supplier and the Customer agree that ownership of the Goods shall not pass until:	14.13	(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and	19.5	(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which have 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 or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
	(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this contract; and/or	9.4	(a) the Customer has paid the Supplier all amounts owing to the Supplier; and	14.14	(d) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;	19.6	(g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;
	(b) contained in any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.	9.5	(b) the Customer has met all of its 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 received or proceeds to the Supplier on demand.	14.15	(e) the Customer failing to follow any instructions or guidelines provided by the Supplier;	19.7	(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
	(c) in the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Supplier; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.	9.6	(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 the Supplier and must pay or deliver the proceeds to the Supplier on demand.	14.16	(f) fair wear and tear, any accident, or act of God.	19.8	(i) the Customer shall have the right to request (by e-mail) from the Supplier:
4.	Change in Control	9.7	(d) the Customer must 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.	14.17	(g) 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.	19.9	(a) a copy of the information about the Customer retained by the Supplier and the right to request that the Supplier correct any inaccuracies in that information;
4.1	The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, and change of trustees or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.	9.8	(e) the Customer irrevocably authorises the Supplier to enter any proceedings in respect of any insurance in the event of the Goods being lost, damaged or destroyed.	14.18	Notwithstanding anything contained in this clause if the Supplier is required to return a defective item to the Supplier, the Supplier will only accept a return on the conditions imposed by that law.	19.10	(b) the Supplier does not disclose any personal information about the Customer for the purpose of direct marketing.
5.	Online Ordering	9.9	(f) the Customer irrevocably authorises the Supplier to enter any proceedings in respect of any insurance in the event of the Goods being lost, damaged or destroyed.	14.19	Intellectual Property	19.11	(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 fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
5.1	The Customer acknowledges and agrees that:	9.10	(g) 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.	14.20	Where 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. No other circumstances may exist in which the designs and documents be used without the express written approval of the Supplier.	19.12	(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;
	(a) the Supplier does not guarantee the websites performance or availability of any of its Goods; and	9.11	(h) the Customer irrevocably authorises the Supplier to enter any proceedings in respect of any insurance in the event of the Goods being lost, damaged or destroyed.	14.21	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.	19.13	(e) if sent by email to the other party's last known email address.
	(b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and	9.12	(i) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.	14.22	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 or Goods which the Supplier has created for the Customer.	19.14	Any notice that is posted shall be deemed to have been served, unless it is shown at the time when the notice is posted by the ordinary course of post, the notice would have been delivered.
	(c) there are inherent hazards in electronic distribution and as such the Supplier cannot warrant against delays or errors in transmitting data between the Customer and the Supplier including orders, and you agree that to the maximum extent permitted by law, the Supplier will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.	9.13	(j) 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 the Supplier.	14.23	Default and Consequences of Default	20.1	General
	(d) the Supplier reserves the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Supplier's Services, or violated these terms and conditions.	9.14	(k) 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 the Supplier.	14.24	The Customer 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 as well as before any judgment.	20.2	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.
6.	Price and Payment	9.15	(l) 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 the Supplier.	14.25	Further to any other rights or remedies the Supplier may have under this contract, if a Customer has made payment to the Supplier, 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 the Supplier under this clause 16 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.	20.3	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.
6.1	At the Supplier's sole discretion, the Price shall be either:	9.16	(m) 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 the Supplier.	14.26	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:	20.4	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).
	(a) as indicated on any invoice provided by the Supplier to the Customer; or	9.17	(n) 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 the Supplier.	14.27	(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;	20.5	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.
	(b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; or	9.18	(o) 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 the Supplier.	14.28	(b) the Customer has exceeded any applicable credit limit provided by the Supplier;	20.6	The Customer cannot licence or assign without the written approval of the Supplier.
	(c) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days.	9.19	(p) 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 the Supplier.	14.29	(c) 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	20.7	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.
6.2	The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of changes to quantities/varieties to be supplied, or as a result of any increase to the Supplier in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.	9.20	(q) 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 the Supplier.	14.30	(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.	20.8	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.
6.3	At the Supplier's sole discretion, a non-refundable deposit may be required.	9.21	(r) 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 the Supplier.	14.31	Cancellation	20.9	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.
6.4	Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:	9.22	(s) 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 the Supplier.	14.32	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 suspended its rights under this clause.	20.9	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.
	(a) on delivery of the Goods;	9.23	(t) 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 the Supplier.	14.33	The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the		
	(b) before delivery of the Goods;	9.24	(u) 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 the Supplier.	14.34			
	(c) by way of instalments in accordance with the Supplier's payment schedule;	9.25	(v) 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 the Supplier.	14.35			
	(d) thirty (30) days following the end of the month in which a statement is delivered to the Customer's address or address for notices;	9.26	(w) 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 the Supplier.	14.36			
	(e) the date specified on any invoice or other form as being the date for payment; or	9.27	(x) 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 the Supplier.	14.37			
	(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.	9.28	(y) 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 the Supplier.	14.38			
6.5	Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction by any other method as agreed to between the Customer and the Supplier).	9.29	(z) 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 the Supplier.	14.39			
6.6	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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.	9.30	(aa) 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 the Supplier.	14.40			
6.7	Unless otherwise stated the Price does not include GST or WET. In addition to the Price, the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. Any WET applicable shall be duly calculated at the current legislated rate and added to the Price. The Customer must pay GST and WET, 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.	9.31	(ab) 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 the Supplier.	14.41			