

Twaites & Jones Ltd
Orchard House
Victoria Square
Droitwich Spa
Worcestershire
WR9 8DS

Tel: 01905 772 561
Fax: 01905 772 562
Web: www.twaitesandjones.com
Web: www.finewineinvestments.co.uk



TWAITES & JONES
FINE WINE TRADERS

CONDITIONS OF SALE – TRADE CUSTOMERS

1. Application of these terms and conditions

These Conditions of Sale (**Conditions**) shall apply to the contract between Twaites & Jones Limited (**Supplier**) and the Buyer for the sale and purchase of the wines therein detailed, to the exclusion of any other terms that the Buyer may seek to impose or incorporate, or argue should be implied by trade, custom, practice or course of dealing.

2. Definitions

2.1 In these Conditions:

Buyer – means the buyer(s) of the Goods as identified in the relevant Order Confirmation;

Contract – means the relevant contract for the sale of goods by the Supplier to the Buyer;

En Primeur (EP) – means [wine] in an unfinished state, before it is bottled and/or shipped by the producer.

EP Wine – means wine sold En Primeur.

Goods – means the goods sold under the Contract;

Order Confirmation – means the Supplier's written confirmation of the Buyer's order;

writing or **written** – means by post, fax or email.

2.2 Headings do not affect the interpretation of these Conditions.

3. Formation and basis of Contract

3.1 No individual Contract will be formed until the Supplier has sent its Order Confirmation to the Buyer.

3.2 The Contract will then constitute the entire agreement between the parties in relation the Goods. The Buyer acknowledges that it has not relied upon any promise, representation, assurance or warranty made or given by or on behalf of the Supplier which has not been confirmed in writing by the Supplier.

4. Identification and description of the Goods

The Goods shall be those described in the Order Confirmation, in the quantities therein detailed, and shall, unless otherwise stated therein, include their original packaging.

5. Warranty

5.1 Subject to clause 5.3, and except in the case of any EP Wine included in the Contract (as to which see clause 6.2 below), the Supplier warrants that unless otherwise stated in its offer and repeated in the Order Confirmation, the Goods will, on delivery to the Buyer, conform in all material respects with their description, be in good condition (see clause 5.2), and be reasonably fit for all the purposes for which products of that kind are commonly supplied.

5.2 “**Good condition**” means that the wine level in each bottle is at the base of the neck or better, the wine colour is acceptable, there are no signs of leakage or pushed out corks, the labels are clean, undamaged and properly attached to each bottle, the capsules are not ripped or wrinkled and have not been damaged or tampered with, and the packaging is undamaged and in good condition.

5.3 The Supplier’s liabilities to the Buyer under the above warranty shall be subject to the limitations set out in clause 15 below.

6. **EP Wine**

6.1 The Supplier will make every effort to meet any EP Wine order it has confirmed, but if any such EP Wine proves unobtainable for any reason, it shall be entitled to cancel the relevant Order in whole or in part without any liability to the Buyer other than to either refund or issue a credit note for any amount paid by the Buyer.

6.2 The Supplier warrants that unless otherwise stated in its offer and repeated in the Order Confirmation, any EP Wine included in the Contract will, on delivery to the Buyer (a) conform in all material respects with its description, and (b) be original stock, in its original packaging and as delivered directly from its producer to the Supplier or its order. The Supplier’s liabilities to the Buyer under this warranty shall be subject to the limitations set out in clause 15 below.

7. **The price and payment**

7.1 The price and currency of payment shall be as stated in the Order Confirmation, as shall any additional amounts payable in respect of delivery or otherwise.

7.2 The price shall be exclusive of any duty or VAT that may be payable. The Order Confirmation shall expressly state any amounts of duty or VAT that are payable in addition to the price.

7.3 The price shall be payable by the Buyer, by bank transfer or cheque (subject to clearance), immediately on receipt of the Supplier’s invoice unless otherwise agreed in writing by the Supplier.

8. **Delivery**

8.1 The Supplier’s obligation to deliver the Goods to the Buyer will be as stated in the Order Confirmation, and will not arise until the Buyer has paid for the Goods, unless otherwise agreed in writing by the Supplier.

8.2 The Supplier’s estimated delivery date is only an estimate, and the time of delivery is not of the essence of the Contract.

8.3 If the Supplier is unable to deliver all the Goods at one time due to operational reasons or shortage of stock, it may elect to deliver them in instalments. There will be no additional delivery charges for this, but if the Buyer requests delivery in instalments, the Supplier may make additional delivery charges. Each instalment shall be subject to these Conditions. If the Supplier is late in delivering an instalment or one instalment is faulty, that will not entitle the Buyer to cancel any other instalment.

8.4 The Supplier shall not be liable for any delay in delivery of the Goods caused by any Force Majeure Event (see below) or by the Buyer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. A **Force Majeure Event** means an event preventing or hindering the Supplier from complying with its delivery obligations which was beyond its reasonable control and which it could not reasonably have foreseen or been expected to anticipate or plan for.

9. **Claims relating to delivery**

Any claims that the Goods were not delivered in accordance with the Contract, and/or in respect of any breakages and/or shortages at the time of delivery, must be recorded in writing on the carrier's copy of the delivery note or handheld device at the time of delivery and notified to the Supplier within 3 working days thereafter. Failure to comply with these requirements will entitle the Supplier to reject the relevant claim and the Buyer will be liable to pay all amounts remaining due under the Contract.

10. **Claims to rejection of the Goods**

If the Buyer claims to be entitled to reject the Goods for any reason, written notice of such claim must be received by the Supplier within 5 working days after the day of delivery of the Goods. The Buyer will not be entitled to reject any Goods which have, or the Supplier reasonably believes to have, been damaged, used, tampered with, modified or altered in any way since their delivery to the Buyer.

11. **Passing of risk**

The risk in the Goods shall pass to the Buyer on completion of delivery.

12. **Payment**

12.1 The Buyer shall pay for the Goods in accordance with the payment terms agreed for the Contract, in full and by bank transfer or cheque (subject to clearance), without any deduction, withholding or set-off by the Buyer for any reason whatever.

12.2 Time of payment is of the essence of the contract and the Buyer's failure to pay any amount due to the Supplier by the due date shall be both a repudiatory breach of the contract and an event of default with the consequences detailed in clauses 13.3, 14.1 and 14.2 below.

13. **Retention of title to Goods**

13.1 Subject to clause 13.2, legal title to the Goods shall not pass to the Buyer until the Supplier has received payment in full in respect of:

13.1.1 the Goods; and

13.1.2 any other goods that the Supplier has supplied to the Buyer for which payment has become due.

13.2 Subject to clause 13.3, the Buyer may use or resell the Goods as principal in the ordinary course of its business, but may not transfer or resell any of them to a company which is a member of its corporate group, or to any other person to or with whom it is connected or associated, without the prior written consent of the Supplier. Title to any of the Goods lawfully resold by the Buyer shall pass to the Buyer immediately before their resale occurs.

13.3 If before title to the Goods passes to the Buyer any of the events mentioned in clause 14.3 occurs, or the Supplier reasonably believes that such an event has occurred or will shortly occur, the Buyer's right to possession of the Goods, and its right to use or resell them, shall immediately and automatically come to an end, and the Buyer shall, if and when so required by the Supplier, immediately and at its expense deliver up the Goods to the Supplier or as it may direct, free from any lien or other encumbrance.

13.4 Until title to the Goods passes, the Buyer shall:

13.4.1 hold them on a fiduciary basis as bailee for the Supplier;

13.4.2 insure them against all risks for at least their full price;

13.4.3 keep them intact and in good condition, separately stored and readily identifiable as the Supplier's property; and

- 13.4.4 promptly give the Supplier all such information and/or documents relating to them as it may require from time to time.
- 13.5 The Buyer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises of the Buyer, or to which the Buyer has a right of access, at which any Goods owned by the Supplier are or may be stored, in order to inspect such Goods and, if the Buyer's right to possession has come to an end, to take possession of them.
- 13.6 Where it is not possible to determine whether the Buyer has paid for particular Goods, all relevant Goods shall be deemed to have been sold by the Supplier to the Buyer in the order in which they were invoiced to the Buyer.
- 13.7 If the Buyer fails to pay the full price of the Goods on or by the due date, the Supplier may bring an action for the unpaid price notwithstanding that title to the Goods has not passed to the Buyer.

14. **Further consequences of events of default**

- 14.1 If any of the events mentioned in clause 14.3 occurs, the Supplier may without liability to the Buyer terminate the Contract and any other contract(s) with the Buyer, and all sums owed by the Buyer to the Supplier shall immediately become due and payable notwithstanding that any period(s) of credit allowed to the Buyer may not have expired.
- 14.2 If the Supplier reasonably believes that any of the events mentioned in clause 14.3 has occurred or will shortly occur, the Supplier may without liability to the Buyer suspend performance of any uncompleted contract with the Buyer, and/or decline any further order(s) from the Buyer.
- 14.3 Events of default are – the Buyer failing to pay any amount due to the Supplier by the due date; the Buyer ceasing to trade or becoming insolvent, any execution being levied on its property, or the commencement of any proceeding or court application which relates or could lead to the insolvency of the Buyer; any breach by the Buyer of any of its obligations under this or any other contract; the commission of other unlawful act by the Buyer against the Supplier.

15. **Limitation of Supplier's liability**

- 15.1 Subject to clauses 15.2 and 15.4:
 - 15.1.1 the Supplier shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any Contract; and
 - 15.1.2 the Supplier's total liability to the Buyer in respect of all other losses arising under or in connection with any Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 150% of the net invoiced price of the Goods to which the relevant claims(s) relate(s).
- 15.2 Subject to clause 15.4, the Supplier shall not be liable to the Buyer in respect of any claim relating to any Goods unless written particulars of such claim are notified by the Buyer to the Supplier within 3 months of delivery of those Goods.
- 15.3 Except as otherwise stated in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 15.4 Nothing in this clause 15 excludes or limits any liability the Supplier may have for or under any of the following – death or personal injury caused by negligence; fraud or fraudulent misrepresentation; section 12 of the Sale of Goods Act 1979; the Consumer Protection Act

1987; any other matter for which it would be illegal for the Supplier to seek to exclude or limit its liability.

16. **Third party rights**

Except as expressly provided, a person who is not a party to the Contract shall not have any right to enforce its terms.

17. **Indemnity**

The Buyer will on demand indemnify the Supplier and keep it indemnified against any and all claims, liabilities, costs, losses or expenses it may suffer or incur (whether directly, or as a result of the action, claim or demand of any third party) resulting from the Buyer's breach of any provision of the Contract or any obligation implied by or arising under any applicable law, statute or regulation.

18. **Assignment**

The Buyer may not assign any right under the Contract without the Supplier's prior consent in writing.

19. **Variation**

No waiver or variation of any term of the Contract shall be effective unless it is in writing and signed by the Supplier.

20. **Governing law and jurisdiction**

20.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales. Subject to clause 20.2 the parties irrevocably submit all such disputes and claims to the exclusive jurisdiction of the courts of England and Wales.

20.2 The Supplier may require any dispute as to the description, authenticity, provenance, condition or quality of any of the Goods to be determined by an independent expert:

20.2.1 who shall be agreed between the parties or, failing that, nominated by the Academy of Experts, of 3 Gray's Inn Square, London; and

20.2.2 in accordance with the procedure agreed between the parties and the expert or, failing that, with the Rules for Expert Determination published by the Academy of Experts on the date we require such determination.