

## BINNING WINE MART LTD T/A CELLARVINO TERMS AND CONDITIONS OF SALE

### 1. Definitions

“**Binning Wine Mart Ltd**” and/or “**BWM**” means **BINNING WINE MART LTD LIMITED T/A CELLARVINO**, a company registered in England and Wales, Number 03793613 of 25 Park Street West, Luton, Bedfordshire LU1 3BE England

“**Purchaser**” means the party named on the quotation or acceptance of order.

“**Goods**” means the products to be supplied to Purchaser by BWM.

### 2. General

All quotations given by BWM are subject to confirmation by BWM on receipt of the Purchaser's order which may be placed by phone, fax or e-mail. Acceptance and execution of orders is contingent upon availability of Goods and the absence of any circumstances beyond BWM's control which may hinder or prevent execution. All quotations, orders, sales and deliveries are subject to these Terms and Conditions. BWM does not recognise any terms and conditions of contract supplied by the Purchaser unless specifically acknowledged and agreed in writing by a Director of BWM.

### 3. Prices and Terms of Payment

All prices are exclusive of taxes which will be added at the rate prevailing at the time and date of invoice.

**Any query by the Purchaser of any prices on any invoice rendered by BWM must be made in writing and received by BWM within SEVEN DAYS of the date of that invoice otherwise the parties agree that such invoice shall be deemed accepted and any Purchaser's query waived**

In accordance with the Proceeds of Crime Act 2002 and the Money Laundering Act 2007, CellarVino does not accept payments in cash over £10,000 or 15,000€ in a single transaction or instalments.

Payment shall be made prior to delivery of Goods unless credit is expressly agreed by BWM in writing in advance. Where credit is granted by BWM in writing, Purchaser will be sent an invoice for the price of Goods Purchaser will pay the sum of any invoice within Seven (7) days of the date of the invoice or within such other period as confirmed in writing by BWM from time to time. Such period may be increased or decreased by BWM by notice in writing for all existing and future credit granted and sums owed. Payment is made when received in cleared funds by BWM.

**No debit claims may be made by Purchaser except as in Clause 6 below**

Credit will be granted to Purchaser at the sole discretion of BWM and shall be reviewed by BWM from time to time and may be increased, decreased or cancelled at any time without notice.

In the event of any payment not being received by the due date of any invoice, BWM may elect that all sums due or which may become due shall be accelerated and become immediately due. BWM may charge interest on all sums overdue at 2% per month and BWM may suspend deliveries or terminate the contract in respect of any undelivered Goods (ordered under the same and/or different orders).

**The following administrative charges will also be payable by the Purchaser:**

- (a) **Returned or dishonoured Cheque, Standing Order or Direct Debit. Charge £50 each return or dishonour; and**
- (b) **Late payment of any invoice (each item is cumulative):**
  - i. **- on the 21<sup>st</sup> day that an invoice is overdue an administrative charge of £50.00**
  - ii. **- on the 30<sup>th</sup> day that an invoice is overdue a further administrative charge of £50.**
  - iii. **- on the 45<sup>th</sup> day that an invoice is overdue a further administrative charge of £100.**
  - iv. **- all costs of recovery of sums overdue will be recoverable from Purchaser on an indemnity basis.**
- (c) **Refusal to accept Delivery – on each occasion delivery is refused, all carrier or carriage charges and costs for redelivery, return and/or storage plus any carrier administration charge and £100 BWM administration charge**

### 4. Title and Risk

4.1. Risk of loss or damage to the Goods shall pass to the Purchaser on delivery by BWM to Purchaser's premises on board truck (unloading at Purchaser's risk) except in the case where Purchaser or Purchaser's carrier collects from BWM whereupon risk passes on physical delivery to Purchaser or carrier and loading will be at the risk of Purchaser or its carrier.

4.2 Title to the Goods shall not pass to the Purchaser until BWM has received payment in full (in cash or cleared funds) for:

- (a) Such Goods; and
- (b) All other sums which are [or which become] due to BWM from the Purchaser for sales of Goods [or on any account].

4.3 Until title to the Goods has passed to the Purchaser, the Purchaser shall:

- (a) Hold such Goods on a fiduciary basis as BWM's bailee;
- (b) Store such Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as BWM's property;
- (c) Not remove, deface or obscure any identifying mark or packaging on or relating to such Goods; and
- (d) Maintain such Goods in satisfactory condition and keep them insured on BWM's behalf for their full price against all risks with an insurer that is reasonably acceptable to BWM. The Purchaser shall obtain an endorsement of BWM's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Purchaser shall allow BWM to inspect such Goods and the insurance policy.

4.4 The Purchaser may resell the Goods in the ordinary course of its business to unrelated third parties in arm's length transactions for value.

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4.5 Until BWM is paid in full the proceeds of any such sale shall be held by the Purchaser separate from all other money and in trust as a fiduciary for BWM and the Directors and Management of the Purchaser shall personally undertake by issuing or authorising issue of orders to BWM that they will personally stand with the Purchaser in this fiduciary relationship with BWM.

4.6 If before title to the Goods passes to the Purchaser the Purchaser:

(a) suspends or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(b) ceases, or threatens to cease, to carry on all or substantially the whole of its business; then, provided that such Goods have not been resold and without limiting any other right or remedy BWM may have, BWM may at any time require the Purchaser to deliver up such Goods and, if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the relevant Goods are stored in order to recover them.

4.7 The Purchaser shall examine all packaging on delivery and shall notify BWM AND CARRIER IN WRITING BY E-MAIL and/or FAX of any damage or shortage claims in writing to FAX: [01582 452002] or E-Mail: [sales@cellarvino.com] within 24 HOURS of physical delivery to Purchaser (or Purchaser's carrier) of the Goods including fullest particulars of advice note numbers and packing condition. The packaging and contents must be retained for examination.

It is agreed that the Purchaser WAIVES ANY CLAIMS for damages or shortages (of part of shipment) he/it may otherwise have had where no claims have been made in writing within 24 HOURS of delivery. The Purchaser must advise BWM in writing within SEVEN DAYS after the date of invoice of any non-delivery of entire batches of Goods.

No debit claims may be made by Purchaser except as in Clause 6 below.

### 5. Delivery and Delays

Unless otherwise agreed in writing between the parties, all deliveries will be to the Purchaser's UK premises specified by BWM. All deliveries must be signed, dated and checked in full by the Purchaser for any claim to be valid against the condition of Goods. BWM will not accept any liability for any loss or damages caused by delay in dispatch or delivery of Goods.

### 6. Returns and Debits

**No Goods may be returned to or debits claimed from BWM without prior written authorisation of BWM.**

If BWM consents to a debit claim and/or the return of any Goods it will provide in the former case a Credit Note or in the later case a RAN (return authorisation number) and the Purchaser must provide an advice note and debit note stating the reason for return and the date and number of BWM's invoice for the Goods and reference to BWM RAN or credit note number as applicable. **NO CREDIT WILL BE DUE WITHOUT SUCH INFORMATION.** All Goods so authorised for return must be securely packed and must be consigned carriage paid. Authorised returns are at the risk of Purchaser.

**Debit Notes not received by BWM within 7 days after issue of a credit note or RAN will be invalid and Purchaser will be deemed to waive any right to the debit.**

### 7. Representations

Descriptive matter published by BWM relevant to the Goods offered for sale shall not form part of any contract of sale and the Purchaser agrees that he will indemnify BWM, in relation to Goods supplied to the Purchaser, against any such claim or any claim that the descriptive matter amounts to a misrepresentation.

### 8. Warranty

**EXCEPT AS EXPRESSLY PROVIDED HEREIN, ANY CONDITION, WARRANTY, TERM, REPRESENTATION AND STATEMENT WHATSOEVER, WHETHER EXPRESS OR IMPLIED AND WHETHER STATUTORY OR OTHERWISE SHALL BE EXCLUDED, INCLUDING IN PARTICULAR, BUT WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, ANY CONDITION, WARRANTY, TERM, REPRESENTATION AND STATEMENT AS TO THE QUALITY OR FUNCTIONALITY OF THE GOODS OR THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR AS TO THE QUALITY OF THE SERVICE TO BE PROVIDED PURSUANT TO THIS AGREEMENT.**

This provision does not limit or restrict BWM's liability to consumers arising under the terms of the Consumer Protection Act 1987 nor for personal injury or death of individuals caused by the negligence of BWM or its employees.

### 9. Manufacturer Promotions

Manufacturers may from time to time operate marketing promotions. Such promotions are not a waiver or variation of the terms set out above and consist solely of the provision of the offers, goods or services set out in the terms of the promotion. Purchaser will comply with the requirements of any such promotion.

### 10. Exclusion of Liability

**IN NO EVENT WILL BWM BE LIABLE TO THE PURCHASER FOR LOSS OF REVENUE, PROFIT, INTEREST, OR LOSS OF GOODWILL, OR DAMAGES AWARDED TO THIRD PARTIES, NOR FOR COSTS OR EXPENSES OR ANY ECONOMIC, INDIRECT OR CONSEQUENTIAL LOSS ARISING OUT OF BREACH OF CONTRACT, NEGLIGENCE OTHER TORT OF ANY KIND OR OTHERWISE.**

### 11. Legality and Law

The Goods will comply with the Food and Drugs Act 1955 on delivery by BWM. When on-selling Goods, the Purchaser will comply at all times with all applicable Laws and Regulations. The Agreement between the parties will be governed and construed in all respects in accordance with the Laws of England.