



TERMS AND CONDITIONS OF  
SALE

Ellis Wharton Wines

Unit 9c, A30 Business Park, Lodge Way, Indian Queens, TR9 6FZ

Tel 01637 838998 Email: [info@ewwines.co.uk](mailto:info@ewwines.co.uk) Web: [www.ewwines.co.uk](http://www.ewwines.co.uk)

## INVOICE TERMS AND CONDITIONS

**All credit terms as agreed in writing at payment due 30 days after invoice date. Please see credit agreement for details.**

**Minimum delivery criteria – minimum delivery is £200.00 ex VAT. Failure to reach this minimum will result in a delivery charge being applied.**

### 1. Application

1.1 These Terms and Conditions shall apply to the purchase of the goods detailed overleaf ("Goods") by you ("Buyer") from Ellis Wharton Wines a company registered in England under number 05844920 whose registered office is at **Unit 9c A30 Business Park, Indian Queens, TR9 6FZ** ("Seller") and to the payment of this invoice. No other terms and conditions shall apply to the sale of the Goods or to this invoice unless agreed upon in writing between the Buyer and Seller.

1.2 The essence of these Terms and Conditions remains the same as those included with the Seller's quotation. The tense has been altered to reflect the inclusion of these Terms and Conditions in an invoice.

### 2. Interpretation

2.1 A "business day" means any day other than a Saturday, Sunday or bank holiday.

2.2 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2.3 Words imparting the singular number shall include the plural and vice-versa.

### 3. Goods

3.1 The description of the Goods are as set out in the Seller's price list and confirmed in the quotation and the invoice. In accepting this quotation the Buyer has acknowledged that it does not rely on any other representations regarding the Goods save for those made in writing by the Seller. No descriptions of the Goods set out in the Seller's quotation shall be binding on the Seller and are intended as a guide only.

3.2 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements.

### 4. Price

4.1 Subject to sub-Clause 4.2, the price ("Price") of the Goods shall be that detailed in the quotation, accepted by the Buyer and confirmed in this invoice.

4.2 Any increase in the cost of the Goods to the Seller due to any factor beyond the Seller's control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates, shall be reflected in this invoice in accordance with the Seller's right to increase the Price prior to delivery.

4.3 Any increase in the Price under sub-Clause 4.2 shall only take place upon the Seller informing the Buyer of the increase in writing.

4.4 The Price is exclusive of fees for packaging and transportation / delivery.

4.5 The Price is exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.

### 5. Basis of Sale

5.1 The quotation constitutes written acceptance and confirmation by the Seller of the Buyer's order for the Goods.

5.2 The quotation is a contractual offer to sell the Goods which the Buyer has accepted. The Seller and the Buyer have entered into a contract for the sale of the Goods.

### 6. Payment

6.1 The Buyer shall pay the Price stated in this invoice within 30 days of the date of this invoice or otherwise in accordance with any credit terms agreed between the Seller and the Buyer.

6.2 Payment must be made by the Buyer notwithstanding that delivery may not have taken place and / or that the property in the Goods has not passed to the Buyer.

6.3 If the Buyer fails to make payment within the period in sub-Clause 6.1, the Seller shall suspend any further deliveries to the Buyer and charge the Buyer interest at the rate of 2% per annum above the Bank of England base rate from time to time on the amount outstanding until payment is received in full.

6.4 Time for payment is of the essence of the Contract between the Seller and the Buyer.

6.5 All payments must be made in GDP unless otherwise agreed in writing between the Seller and the Buyer.

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### 7. Delivery

7.1 Unless otherwise agreed in writing delivery of the Goods shall be effected to the Buyer's place of business provided always that the Buyer meets the Minimum Delivery Criteria (as defined), in all other instances, the Buyer will take delivery of the Goods within 5 days of the Company giving it notice that the Goods are ready for collection.

7.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

7.3 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

7.4 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

7.4.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);

7.4.2 the Goods will be deemed to have been delivered; and

7.4.3 the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

7.5 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.

7.6 If the Company delivers to the Buyer a quantity of Goods of up to 75% more or less than the quantity accepted by the Company the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

### 8. Inspection of Goods

8.1 The Buyer is under a duty to inspect the Goods on delivery or collection.

8.2 If the Goods cannot be examined, the carriers note or such other note as appropriate must be marked "not examined".

8.3 If the Buyer identifies any damage or shortages it must inform the Seller in writing within 3 of delivery, providing details of the alleged damage or shortage. The Seller shall not be liable if the Buyer fails to provide such notice.

8.4 The Seller must be permitted to inspect the affected Goods before the Buyer uses, alters or modifies them in any way.

8.5 Subject to the Buyer's compliance with this Clause 8 and the Seller's agreement with any alleged damage or shortages, the Seller shall make good any and all damage and shortages within a reasonable time.

8.6 The Seller shall be under no liability for and shall not indemnify the Buyer against any matters arising from damage or shortages.

### 9. Returns

9.1 Goods may not be returned without the prior written agreement of the Seller.

9.2 Subject to sub-Clause 9.4, the Seller shall only accept returned Goods if it is satisfied that those Goods are defective and that such defects would not be apparent on inspection.

9.3 The Seller shall have the option of either replacing defective Goods within 3 days of receipt of them or shall refund to the Buyer the Price for those Goods which are defective.

9.4 The Buyer may return any Goods within six months of those Goods coming to market (that is, the launch of such goods) within 7 days of delivery provided that:

(a) the Buyer bears the risk and cost of returning the Goods;

(b) the Buyer indemnifies the Seller against any costs incurred in rectifying any deterioration of the Goods resulting from the Buyer's incorrect handling or storage of the Goods.

9.5 The Seller shall not be liable for defects arising out of normal wear and tear, the Buyer's failure to follow any instructions given by the Seller, misuse or alteration of the goods, negligence, wilful damage or any other act of the Buyer, its employees, agents or any other third party.

9.6 Any undamaged stock can only be returned at the seller's discretion and with prior written approval of the seller. Any returns over 7 days after delivery will incur a collection charge of £25 and an admin fee of 10% of the value of goods returned unless expressly agreed with the seller.

## 10. Risk and Title

10.1 Risk of damage to or loss of the Goods shall pass to the Buyer either when the Goods are delivered to the Buyer or when the Seller notifies the Buyer that the Goods are ready for collection.

10.2 If the Buyer wrongfully fails to take delivery of the Goods, risk shall pass to the Buyer at the time when the Seller has tendered delivery of the Goods.

10.3 Legal and beneficial title in the Goods shall not pass to the Buyer until the Seller has received, in cash or cleared funds, payment in full of the Price.

10.4 The Seller reserves the right to repossess any Goods in which the Seller retains legal and beneficial title if full payment is not received in accordance with Clause 6. In the event of such repossession the Buyer shall deliver the Goods in which legal and beneficial title has not passed to the Seller at its own cost.

10.5 The Buyer's right to possession of the Goods in which the Seller retains legal and beneficial title shall terminate if:

(a) the Buyer commits a material breach of its obligations under these Terms and Conditions;

(b) the Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;

(c) the Buyer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors; or

(d) the Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Buyer, notice of intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.

## 11. Rights, Warranties and Liability

11.1 Subject to these Terms and Conditions and except where the Buyer is purchasing the Goods as a consumer, all warranties, conditions or other terms implied by statute or common law (save for those implied by Section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.

11.2 The Seller shall not be liable for any loss or damages of any nature, direct or indirect, including any loss of profits or consequential damages suffered or incurred by the Buyer for whatever reason.

11.3 The exclusions of liability contained within this Clause 11 shall not exclude or limit the liability of the Seller:

(a) for death or personal injury caused by the Seller's negligence;

(b) for any matter for which it would be illegal for the Seller to exclude or limit its liability; and

(c) for fraud or fraudulent misrepresentation.

## 12. Data Protection

12.1 All personal information that the Seller has used or may use has been or will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and the Buyer's rights under the GDPR.

12.2 For complete details of the Seller's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Buyer's rights and how to exercise them, and personal data sharing (where applicable), please refer to the Seller's Privacy Notice available from EWWines

## 13. Communications

13.1 All notices under these Terms and Conditions shall be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).

13.2 Notices shall be deemed to have been duly given:

(a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;

(b) when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;

(c) on the fifth business day following mailing, if mailed by national ordinary mail; or

(d) on the tenth business day following mailing, if mailed by airmail.

13.3 All notices under these Terms and Conditions shall be addressed to the most recent address, email address or fax number notified to the other party.

## 14. Force Majeure

Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

## 15. No Waiver

No waiver by the Seller of any breach of these Terms and Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

## 16. Severance

In the event that one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which shall remain valid and enforceable).

## 17. Law and Jurisdiction

17.1 These Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

17.2 Any dispute, controversy, proceedings or claim between the Seller and the Buyer relating to these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

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