

Parties:

Wine Depot Holdings Pty Ltd ABN 61 627 925 400 trading as WINEDEPOT (“WINEDEPOT”) and You, the Customer who is signing up via winedepot.com for WINEDEPOT services.

“You”, “Customer” means the entity you represent in accepting this Agreement or, if that does not apply, you individually. If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree to this Agreement on behalf of the party that you represent. If you don’t have the legal authority to bind your employer or the applicable entity please do not click “I agree” (or similar button or checkbox) that is presented to you. PLEASE NOTE THAT IF YOU SIGN UP FOR WINEDEPOT ACCOUNT USING AN EMAIL ADDRESS FROM YOUR EMPLOYER OR ANOTHER ENTITY, THEN (A) YOU WILL BE DEEMED TO REPRESENT SUCH PARTY, (B) YOUR CLICK TO ACCEPT WILL BIND YOUR EMPLOYER OR THAT ENTITY TO THIS AGREEMENT, AND (C) THE WORD “YOU” IN THIS AGREEMENT WILL REFER TO YOUR EMPLOYER OR THAT ENTITY.

This Agreement is legally binding on and from the later of:

- the date You first click “I have read these terms and conditions and agree to be bound by them” (or similar button or checkbox); and
- the date that WINEDEPOT receives the first Goods from the Customer,

(the “Agreement Commencement Date”). Until the Agreement Commencement Date, Your entry or potential entry into this Agreement must be kept strictly confidential.

This Agreement does not have to be signed in order to be binding. You indicate your assent to this Agreement by clicking “I have read these terms and conditions and agree to be bound by them” (or similar button or checkbox) at the time you registered for a WINEDEPOT account, or when you make your first payment to WINEDEPOT.

BACKGROUND

- A. WINEDEPOT operates an online Platform designed to streamline wine and beverage distribution. From this Platform it offers customers a range of Services.
- B. WINEDEPOT has agreed to provide the Customer access to its Platform and the Services that it offers during the Term.
- C. The Customer has agreed to use the Platform and the Services it offers on the terms and conditions contained in this Agreement.
- D. WINEDEPOT and the Customer agree that WINEDEPOT is appointed as the Customer’s agent pursuant to this Agreement and that WINEDEPOT is not a distributor on the Customer’s behalf. Any “wine equalisation tax” liability will remain the responsibility of the Customer as the wholesaler.

IT IS AGREED

1. TERM

- 1.1 This Agreement commences on the Agreement Commencement Date and continues until terminated in accordance with clause 26 (titled “Termination”).

2. VARIATION

- 2.1 Unless otherwise contemplated in this Agreement, an amendment or variation to this Agreement is not effective

unless it is in writing and signed by an authorised representative of WINEDEPOT.

3. PRECEDENCE

- 3.1 If there is any inconsistency between any of the terms of the main body of this Agreement and a Schedule to this Agreement, the main body of the Agreement shall have precedence over the Schedule to the extent of the inconsistency.

4. ENGAGEMENT TO SUPPLY SERVICES

- 4.1 The Customer appoints WINEDEPOT during the Term, and WINEDEPOT accepts that appointment to provide the Services at the Services Location in accordance with this Agreement

5. WINEDEPOT’S OBLIGATIONS IN RESPECT OF SERVICES

- 5.1 WINEDEPOT agrees to:
 - a. commence the provision of the Services on Agreement Commencement Date;
 - b. use all reasonable efforts to meet the performance standards set out in the schedule titled “Services Specification” (Schedule 1);
 - c. store the Goods at the Services Location, unless otherwise instructed in writing by the Customer;
 - d. permit the Customer access to the Services Location to inspect its Goods, by arrangement and subject to such restrictions as any controller of the Services Location may impose; and
 - e. provide the Customer with a non-exclusive licence and training to use the “CONNECT” system implemented and maintained by WINEDEPOT to facilitate the online operation of the Services.

6. CUSTOMER’S OBLIGATIONS IN RESPECT OF GOODS

- 6.1 The Customer must present the Goods to WINEDEPOT in serviceable, clearly labelled packaging that is fit for the purposes of performing the Services, failing which WINEDEPOT may repackage the Goods at the Customer’s expense.
- 6.2 Where the Customer delivers Goods to WINEDEPOT on a pallet, the pallet and its contents must meet the requirements set out in Schedule 1.

7. SUBCONTRACTING

- 7.1 WINEDEPOT may subcontract any of its obligations under this Agreement at its absolute discretion.
- 7.2 If WINEDEPOT has subcontracted the performance of any part of its obligations under this Agreement, WINEDEPOT remains fully responsible for the performance of the Services in accordance with this Agreement and must continue to comply with all of its obligations under this Agreement.

8. RATE FOR SERVICES

- 8.1 Unless otherwise agreed in writing between WINEDEPOT and the Customer, the Rates for the Services are those outlined in the “Rate Card”, set out in Schedule 2 and varied from time to time.
- 8.2 A minimum of 1 months’ notice will be provided to the Customer before any new charges are added, or any increase or decreases is made to the Rates.

8.3 Subject to the clause titled "GST", the Rates are inclusive of any taxes, duties, fees or other government levies and charges which may be imposed on or in respect of the Services.

9. PAYMENT & LIEN RIGHTS

9.1 If WINEDEPOT is supplying Services to the Customer under this Agreement, the Customer must pay the Rate to WINEDEPOT in accordance with this Agreement.

9.2 WINEDEPOT will render the Customer invoices for the fees payable in respect of Services. If applicable, the invoice will include any supporting documentation in regards to the Services provided.

9.3 The Customer must pay the invoice within 14 days, calculated from the date of receipt of WINEDEPOT's properly rendered tax invoice.

9.4 The Customer acknowledges that WINEDEPOT has, in addition to any statutory lien, a general lien over the Goods with respect to all monies payable by the Customer to WINEDEPOT pursuant to this Agreement.

9.5 If any amounts owing by the Customer are not paid by the due date or Goods are not collected by the Customer prior to the termination or cessation of this Agreement, WINEDEPOT may, in addition to any other rights it may have under this Agreement, following provision of a 30-day notice to the Customer of its intention to do so:

- a. Remove the Goods and store them at another location at the risk and expense of the Customer; and/or
- b. Sell the Goods by any means determined in its discretion and apply the proceeds of sale in payment of any monies outstanding.

10. PAYMENT & LIEN RIGHTS

10.1 Unless the contrary intention appears, words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 have that same meaning. A reference to either party includes a reference to their representative member.

10.2 All amounts payable under this Agreement have been calculated without including an amount for GST (unless GST-inclusive amounts have been specified). In addition to any GST-exclusive amounts payable the recipient must pay an amount equivalent to the GST payable by WINEDEPOT in respect of the taxable supply (the "GST Amount"). The GST Amount is to be calculated by multiplying the GST-exclusive amount by the GST rate applicable to the supply at the time that supply is made. The GST Amount shall be paid to WINEDEPOT at the same time and in the same manner as the relevant consideration is otherwise required to be paid or provided.

11. CHANGE REQUESTS

11.1 If the Customer wishes to alter the provision of Services from that required under this Agreement, the Customer Representative may submit a Change Request.

11.2 WINEDEPOT will consider the Customer's Change Request and advise whether the requested change can be accommodated and, if so, advise the Customer of any increased costs or charges to affect the requested change(s). No customer Change Requests shall be unreasonably withheld.

12. MARKETPLACE SALES ON THE PLATFORM

12.1 The Customer may at its discretion elect for its Goods to be listed for sale via the Platform.

12.2 Once the Goods have been listed, the Customer agrees to sell and deliver the Goods to the buyer in accordance with

the following process:

- a. The Customer makes an offer to sell the Goods at an agreed price through the Platform (Your Offer);
- b. a buyer can either accept or reject Your Offer;
- c. where Your Offer is accepted, a contract is formed on the terms of the offer (Order) which WINEDEPOT then completes on your behalf; and
- d. WINEDEPOT reserves the right to accept or reject in its absolute discretion any Orders for any reason, including without limitation insufficient inventory, the rejection of an application for credit, a failure to pay for Goods, an error in the price or the description of Goods, any limits on availability of the Services or a user error in placing the Order.

12.3 Once a contract is formed, the Customer provides WINEDEPOT the exclusive authority to release and deliver the Goods, subject to the Order to the buyer in accordance with the terms of this Agreement.

12.4 WINEDEPOT acting as the agent of the Customer and is not a party to the transactions between the Customer and the buyer. As such it has no responsibility for the condition of or quality of the Goods other than expressly provided for in this Agreement. Should the buyer decide to reject or return the Goods for any reason, it is the Customer's responsibility to bear the costs of refunding the buyer. WINEDEPOT will manage this process on behalf of the buyer and Customer.

13. MARKETPLACE PRICING

13.1 Upon a contract being formed, the buyer will be liable for payment of the Goods the subject of the Order. WINEDEPOT will take payment for the Goods and remit the proceeds to the Customer less the respective fees outlined in the Rate Card, as per the agreed payment terms.

14. THIRD PARTY PLATFORMS & AGENCY APPOINTMENT

14.1 WINEDEPOT may from time to time be party to agreements with selected third party online retailers, online consumer marketplaces and other B2B platforms (each a Third Party).

14.2 The Customer has the option to use the Platform and appoint WINEDEPOT as an agent to syndicate listings of Goods for sale through a Third Party.

14.3 If You elect this option, You will be deemed to have appointed WINEDEPOT as exclusive agents of the Goods with that Third Party and WINEDEPOT accepts the exclusive right to market, promote and provide the necessary information of the Goods to the Third Party.

14.4 In consideration for appointing WINEDEPOT as Your agent to market the Goods on a Third Party platform, You agree to pay WINEDEPOT the fees as outlined in the Rate Card.

14.5 WINEDEPOT will remit the proceeds of all Third Party sales to the Customer less the respective fees as outlined in the Rate Card, as per the agreed payment terms.

15. WARRANTIES IN RESPECT OF SERVICES

15.1 In performing the Services, WINEDEPOT warrants that:

- a. the Services will comply with all relevant Australian Standards;
- b. it shall ensure that WINEDEPOT's Staff and contractors:
 - i. are suitably qualified to provide the Services in accordance with the terms of this Agreement;

- ii. comply with the provisions of all applicable statutes, rules and regulations;
 - iii. observe the reasonable directions of the Customer Representative in the performance of the Services; and
 - iv. perform their duties with due care, skill and diligence in accordance with applicable professional standards and principles.
- 16. GENERAL WARRANTIES AND ACKNOWLEDGEMENT**
- 16.1 The Customer warrants that:
- a. it does not rely upon any information provided in representations made by WINEDEPOT, its employees, agents, consultants or advisers other than as provided in this Agreement; and
 - b. the execution of and performance of its obligations under this Agreement comply with all applicable laws and regulations and its constituent documents (if any), including applicable statutes and regulations relating to the classification, description, labelling, transportation, packaging and storage of all Goods and do not result in any conflict with or breach or default under any agreement or instrument to which it is a party.
- 17. INTELLECTUAL PROPERTY RIGHTS**
- 17.1 The Customer acknowledges and agrees that WINEDEPOT Background IP shall remain the property of WINEDEPOT at all times. WINEDEPOT grants the Customer an exclusive, royalty free, non-perpetual licence during the Term and in Australia to use WINEDEPOT Background IP solely to allow the Customer to enjoy the full benefit and use of the Services.
- 17.2 WINEDEPOT acknowledges and agrees that the Customer Background IP shall remain the property of the Customer at all times. The Customer grants WINEDEPOT an exclusive, royalty free, non-perpetual licence during the Term to use the Customer Background IP solely for the purpose of the provision of Services to the Customer.
- 18. CONFIDENTIAL INFORMATION**
- 18.1 Each party acknowledges that the Confidential Information of the other party is valuable and undertakes to keep the Confidential Information secret and to protect and preserve the confidential nature and secrecy of the other party's Confidential Information.
- 18.2 Each party must not disclose the Confidential Information to any person except as permitted by this Agreement.
- 18.3 Subject to clause 18.4, each party may disclose the Confidential Information to:
- a. its employees, officers and representatives to the extent that they require the information for the purposes of performing the Services in this Agreement, so long as each has executed a confidentiality agreement if required by the Customer Representative; or
 - b. its legal advisers and auditors for the purpose of obtaining advice in relation to this Agreement.
- 18.4 Each party may disclose the Confidential Information:
- a. to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the recipient party or the rules of any applicable stock exchange on which the party or its parent company is admitted to quotation; and
 - b. if required in connection with legal proceedings relating to this Agreement,
- but, in each case, and to the extent reasonably practicable, subject to the recipient party giving the other, sufficient notice of any proposed disclosure to enable the disclosing party to seek a protective order or other remedy to prevent the disclosure.
- 18.5 At the expiry or earlier termination of this Agreement:
- a. each party must deliver up to the other party all materials comprising, embodying, including or otherwise relating to the Confidential Information; or
 - b. each party may request the other party to destroy, rather than return any material containing Confidential Information. It may do so on condition that its representative is present when the material is destroyed.
- 18.6 Each party acknowledges that:
- a. the Confidential Information is of such a special, confidential, unique and invaluable nature that an award of damages or an account of profits would not adequately compensate the disclosing party for a breach of this clause; and
 - b. the disclosing party has the right to seek and obtain an ex parte interlocutory or final injunction to prohibit and restrain the recipient from any breach or threatened breach of any provision of this clause.
 - c. The confidentiality obligations under this clause will survive the expiry or termination of this Agreement for a period of 2 years.
- 19. PRIVACY OF PERSONAL INFORMATION**
- 19.1 Each party acknowledges that they are bound by, or has agreed to comply with, Privacy Laws.
- 19.2 Each party agrees in respect of Personal Information held by it in connection with this Agreement:
- a. to use Personal Information only for the purpose of fulfilling its obligations under this Agreement;
 - b. unless required by law, not to disclose Personal Information without the prior written consent of the other party, except for the purpose of fulfilling its obligations under this Agreement;
 - c. to ensure that all employees, subcontractors or agents requiring access to Personal Information undertake in writing not to access, use, disclose or retain Personal Information except for the purposes of this Agreement and are informed that failure to comply with this undertaking may lead to disciplinary or other action against the relevant individual; and
 - d. to cooperate with all reasonable requests or directions of the other party arising directly from, or in connection with the exercise of the functions of:
 - i. the Privacy Commissioner under the Privacy Act; and
 - ii. any other governmental authority with functions in relation to privacy or data or information protection.

- 19.3 Each party must notify the other party immediately if:
- a. it becomes aware that a disclosure of Personal Information has been made in breach of this clause or any Privacy Law; or
 - b. it becomes aware that a disclosure of Personal Information may be required by law.
- 19.4 Each party must take all reasonable steps to ensure that the Personal Information is protected against misuse, loss, unauthorised access, modification or disclosure by itself or their respective Staff.
- 20. PUBLICITY AND ADVERTISING**
- 20.1 Neither party may seek or engage in publicity or advertising concerning this Agreement or the Services unless authorised by the other party in writing.
- 20.2 Neither party may itself or through any third party use any trademark, business name or logo of the other party in any form including without limitation print, multimedia, on a website, on goods or on products without the prior express written consent of the other party.
- 20.3 For the avoidance of doubt, the Supplier acknowledges and agrees that WINEDEPOT is a subsidiary of Digital Wine Ventures Limited, which is admitted to the official list of the Australian Securities Exchange and that clauses 20.1 and 20.2 shall not apply to restrict the ability of Digital Wine Ventures to comply with its continuous disclosure obligations under the ASX Listing Rules.
- 21. INSURANCE**
- 21.1 The Customer acknowledges that the Goods are stored with WINEDEPOT and, if the Services include delivery of Goods to a third party, the transport and delivery of the Goods, is entirely at the risk of the Customer and WINEDEPOT shall not be liable to the Customer or any other party, for any loss of the damage to the Goods stored, shipped or delivered.
- 21.2 The Customer agrees to insure and keep insured the Goods in the name of the Customer for the full insurable value of the Goods whilst they are in the possession of WINEDEPOT and whilst they are in transit to WINEDEPOT and/or during the course of transport or delivery of the Goods.
- 21.3 For the purpose of this clause and subject to the Lien referred to in clause 9, the Customer acknowledges that risk and title in the Goods shall never pass to WINEDEPOT and remains with the Customer.
- 22. LIMITATION OF LIABILITY & ULLAGE ALLOWANCE**
- 22.1 To the maximum extent permitted by law and subject to clause 22.2, WINEDEPOT's maximum liability (including under any indemnity) arising out of or in connection with the Services is limited to the lesser of:
- a. any limitation available under applicable law;
 - b. the following (as applicable):
 - i. with respect to the Services (excluding Transport Services), the amount of \$2,000; and
 - ii. with respect to the Transport Services, the amount of \$2,000.
- 22.2 To the maximum extent permitted by law:
- a. WINEDEPOT excludes all guarantees, conditions and warranties, express or implied by Law (Conditions), in respect of the Services; and
 - b. to the extent that Conditions apply to this Agreement pursuant to any law, WINEDEPOT limits its liability for breach of the Conditions to resupplying, or paying the cost of resupplying, the corresponding Service.
- 22.3 Neither party will be liable to the other party under or in respect of this Agreement (including under any indemnity) for any Consequential Loss.
- 22.4 The Customer shall provide WINEDEPOT with an annual Warehousing Ullage Allowance in respect of net (losses and gains) loss or damage to Goods. This allowance will be a percentage of the volume of the Customers Goods managed through WINEDEPOT Services Locations by per annum.
- 22.5 Where the Customer has used WINEDEPOT's services for a period shorter than 12 months, the annual Warehousing Ullage Allowance will be adjusted on a pro-rata basis.
- 22.6 WINEDEPOT will maintain a cyclic counting regime that ensures the inventory levels of all products are checked every 30 to 90 days. Any variances (+/-) found during cycle counts will be recorded in the Customers inventory records.
- 22.7 At the conclusion of each financial year, the Customer has 30 days to lodge a claim for any losses in excess of the Warehousing Ullage Allowance.
- 22.8 WINEDEPOT will reimburse the Customer at the standard wholesale price (exclusive of WET and GST) of any Goods lost or damaged over and above the Warehousing Ullage Allowance up to the maximum Warehousing Ullage Annual Claim Limit.
- 22.9 Any claims by the Customer arising from any liability pursuant to this clause shall be validated in consultation with WINEDEPOT, adjusted by the Warehousing Ullage Allowance, or prescribed annual Warehousing Ullage Annual Claim Limit (where applicable) and settled within 30 days from the date of receiving an invoice from the Customer for the approved claim amount.
- 22.10 Nothing in clause 22 limits a party's liability in respect of:
- a. death or personal injury caused by negligence of or breach of this Agreement;
 - b. breach of the clause titled "Privacy of Personal Information";
 - c. breach of the clause titled "Intellectual Property Rights"; or
 - d. breach of the clause titled "Confidential Information".
- 23. INDEMNITY**
- 23.1 Subject to the insurance obligations of the Customer in clause 21, each Party (Indemnifying Party) indemnifies the other party and its officers, employees and agents (Indemnified Parties) in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which any of the Indemnified Parties pays, suffers, incurs or is liable for in connection with:
- a. any unlawful act of the Indemnifying Party or the Indemnifying Party's Staff;
 - b. loss of or damage to any property (excluding loss or damage to Goods) resulting from a breach of this Agreement by the Indemnifying Party or the Indemnifying Party's Staff; and
 - c. any loss arising from and act or omission of the Indemnifying Party or the Indemnifying Party's Staff that results in a:

- i. death or personal injury caused by negligence of or breach of this Agreement;
- ii. breach of the clause titled "Privacy of Personal Information";
- iii. breach of the clause titled "Intellectual Property Rights"; or
- iv. breach of the clause titled "Confidential Information".

24. DISPUTE RESOLUTION

- 24.1 If any dispute arises, the parties must at first instance endeavour to resolve it by discussion and agreement between the Customer Representative and WINEDEPOT Representative.
- 24.2 The Customer Representative or WINEDEPOT Representative may at any time request by written notice to the other party that a dispute be referred to executive management of both parties. Within 5 Business Days of such request, each party must by written notice to the other party:
- a. nominate a member of its executive management with authority to settle the dispute to represent it in discussions;
 - b. ensure that its nominated executive manager is reasonably available to discuss the dispute and nominate a range of times and venues when discussions can take place; and
 - c. provide a written summary of what it sees as the issues in dispute and other relevant facts or information which will assist both executive managers in discussing the dispute.
- 24.3 A notice issued by the Customer under clause 24.2 must be signed by the Customer Representative.
- 24.4 Both nominated executive managers must make every effort to meet and otherwise progress discussions aimed at resolving the dispute.
- 24.5 If within 10 Business Days (or such other time as the parties agree) of a request to refer a dispute to executive management in accordance with clause 24.2, the nominated executive managers have not met or the dispute otherwise remains unresolved, then subject to this clause, either party may instigate mediation in accordance with clause 24.6. Neither party may commence litigation to resolve the dispute until mediation in accordance with sub-clause 24.6 has been completed.
- 24.6 At any time a dispute remains unresolved, both parties agree to participate in good faith in mediation of the dispute to be administered by a mediator selected by the parties. If after 2 Business Days of either party having sought to refer the dispute to mediation the parties have not selected a mediator, the mediator will on the application of either party be appointed by the President of the Law Society of NSW. Such mediation shall take place in Sydney (or at such other location as is mutually agreed).
- 24.7 The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.
- 24.8 Nothing in this Agreement prevents a party seeking an injunction or other interlocutory relief at any time.

25. NOTICES

- 25.1 A notice, consent or other communication under this Agreement is only effective if it is:

- a. in writing, signed by or on behalf of the person giving it;
- b. addressed to the person to whom it is to be given; and
- c. either:
 - i. hand delivered;
 - ii. delivered or sent by pre-paid mail to that person's address; or
 - iii. sent by email to a recipient's last notified email address.

- 25.2 A notice, consent or other communication that complies with this clause is regarded as given and received:

- a. if it is delivered:
 - i. by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - ii. after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- b. if it is hand delivered - on actual receipt;
- c. if it is sent by pre-paid mail - on the second Business Day after it was posted; and
- d. if it is sent by email, upon proof of completion of transmission.

26. TERMINATION

- 26.1 Either party may terminate this Agreement by written notice to the other if:
- i. the other party breaches or fails to carry out any of its material obligations or duties under this Agreement and the breach or failure is not capable of remedy;
 - ii. the other party breaches or fails to carry out any of its material obligations or duties under this Agreement which breach is capable of remedy, but fails to remedy that breach within 30 Business Days after receipt of written notice giving full particulars of the breach and requiring it to be remedied; or
 - iii. an Insolvency Event occurs in relation to the other party.
- 26.2 Notwithstanding any other provision of this Agreement, either party may terminate this Agreement by providing three months' notice to the other party.
- 26.3 If this Agreement terminates for any reason, each party:
- a. is released from its obligations to further perform this Agreement (as applicable);
 - b. retains its accrued rights and obligations; and
 - c. retains the rights it had against the other party in respect of any past breach, in addition to any other rights provided by law.

27. FORCE MAJEURE

- 27.1 A party ("Affected Party") is not liable for any delay or failure to perform an obligation (other than to pay money) under this Agreement caused by an act of God; strike, lock out or other industrial action other than those specifically

caused by or arising from the Affected Party's action or inaction; war, riot, insurrection, terrorism, vandalism, sabotage or epidemic; and law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application, (each an "Event").

27.2 The Affected Party must notify the other party as soon as practicable of any anticipated delay or failure caused by an Event.

27.3 The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event, provided however that the Affected Party must keep the other party fully informed of its plans to work around the issues caused by the Event and comply with all reasonable requests made by the other party to prevent, or minimise the impact of, the Event.

27.4 If a delay caused by an Event exceeds 2 months, either party may terminate this Agreement at the expiration of not less than 5 Business Days' notice to the other party.

28. MISCELLANEOUS

28.1 If anything in this Agreement is unenforceable, illegal or void, it is severed and the rest of this Agreement remains in force.

28.2 This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes all prior agreements, arrangements or representations regarding its subject matter.

28.3 WINEDEPOT may assign or otherwise deal with this Agreement without the prior written consent of the Customer.

28.4 A party's failure to exercise or delay in exercising a power or right does not operate as a waiver of that power or right.

28.5 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

28.6 A waiver is not effective unless it is in writing and signed:

- a. for the Customer by the Customer Representative; and
- b. for WINEDEPOT by an authorised representative of WINEDEPOT.

28.7 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

28.8 Each party must pay its own costs and disbursements connected with the negotiation, preparation and execution of this Agreement.

28.9 Each party must do all things and execute all further documents necessary to give full effect to this Agreement.

28.10 This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this Agreement by signing any counterpart.

28.11 This Agreement does not create (and is not intended to create) any partnership, agency or employment relationship between the parties which is, and shall at all times be, that of principal and independent contractor only.

29. GOVERNING LAW AND JURISDICTION

29.1 The laws of New South Wales, Australia govern this Agreement. The parties submit to the exclusive jurisdiction of the courts of New South Wales and the Federal Court of Australia.

30. DEFINITIONS AND INTERPRETATION

30.1 Definitions

In this Agreement:

Affected Party has the meaning specified in clause 27.1 titled "Force Majeure";

Agreement means this agreement, including all schedules, appendices and annexures;

Agreement Commencement Date means the date You first agree to these Terms;

Australian Standard means a standard published by Standards Australia International Limited;

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

Business Hours mean 8.30 am to 5.00 pm on a Business Day;

Confidential Information means all information relating to either party's business, computer systems or affairs and includes, without limitation, all:

- a. trade secrets, know-how, scientific and technical information;
- b. product, the Customer, marketing or pricing information; and
- c. information in relation to this Agreement (including, without limitation, the Customer's entry or potential entry into this Agreement before the Agreement Commencement Date)

that has already been disclosed (or will be disclosed) to the recipient party whether orally, electronically, in writing or otherwise, but excluding all such information that:

- a. was in the public domain before the disclosure of the information was made by disclosing party;
- b. is placed in the public domain other than by the recipient party acting without the prior written consent of the other party; or
- c. lawfully came into the recipient party's possession otherwise than as a result of a disclosure in breach of an obligation of confidence owed by someone (including the recipient party) to the disclosing party;

Consequential Loss means any economic loss, loss of revenue, loss of production, loss of profits, loss of income, loss of markets, loss of reputation, loss or impairment of goodwill, loss of business, loss of customers, loss of use, loss of an opportunity or chance, loss of value, loss of anticipated savings, increased costs of work or materials and any other indirect, incidental, special or consequential damages or loss;

Customer Background IP means IP owned or licensed by the Customer prior to the date of this Agreement and which IP is provided to WINEDEPOT for the sole purpose of the provision of the Services in accordance with the terms of this Agreement;

Customer Representative means the person who accepted these terms and conditions when creating a WINEDEPOT account, or such other person appointed from time to time as notified to WINEDEPOT;

Event has the meaning specified in clause 27.1 titled "Force Majeure";

Goods mean any product distributed by the Customer and warehoused by WINEDEPOT from time to time and includes any new, promotional, sample or replacement product and any advertising or promotional literature, item or materials that is the subject of the Service provided by WINEDEPOT;

GST Amount has the meaning specified in clause 10.1 titled "GST";

Indemnified Parties has the meaning specified in clause 23.1 titled "Indemnity";

Insolvency Event means any of the following events occurs in respect of a party:

- a. a receiver or receiver and manager or administrator, trustee or other controller is appointed to all or any part of the assets or undertakings of the party;
- b. the party enters into any scheme of arrangement with its creditors or any class of them or indicates its intention of endeavouring to do so;
- c. the party suspends payment of its debts or is unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the Corporations Act 2001;
- d. a provisional liquidator is appointed to the party;
- e. an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior written consent; or
- f. the party ceases, or threatens to cease, to carry on business;

Intellectual Property (or "IP") means any intellectual or industrial property rights including, without limitation, inventions, patents, copyright, trade marks, trade secrets, designs, circuit layout rights and Confidential Information;

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, whether directly from the information or opinion or from the information or opinion when read in combination with other information in a generally available publication;

Platform means the online platform operated by WINEDEPOT, where the Services are offered.

Privacy Act means the Privacy Act 1988 (Cth) of Australia;

Privacy Laws means all Commonwealth, State and Territory legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to the Personal Information including, but not limited to the Privacy Act (including the Australian Privacy Principles);

Privacy Obligations means the Privacy Laws binding on, or adopted by, the parties;

Rate means the total amount payable to WINEDEPOT under this Agreement for the provision of Services in accordance with the amounts specified in the Rate Card;

Rate Card means the list of rates specified in Schedule 2 titled "Rate Card" as varied from time to time in accordance with this Agreement;

Services means the services to be provided by WINEDEPOT under this Agreement as described in the Services Specification;

Services Location means the physical locations from which WINEDEPOT provides the Customer services, as published from time to time.

Services Specification means the specification for the Services to be provided by WINEDEPOT as described in Schedule 1 titled "Services Specification";

Term means the period commencing on the Agreement Commencement Date and continues until terminated in accordance with clause 26 (titled "Termination").

Third Party means the third party online retailers, online consumer marketplaces and other B2B platforms WINEDEPOT has an agreement and affiliation with from time to time.

Transport Services means the logistics and fulfilment services to be provided by WINEDEPOT under this Agreement as described in the Services Specification;

Warehousing Ullage Allowance means 0.75%

Warehousing Ullage Annual Claim Limit means \$25,000;

WINEDEPOT Background IP means intellectual property owned or licensed by WINEDEPOT which is in existence prior to the performance of this Agreement;

WINEDEPOT's Representative means the person appointed from time to time as notified to the Customer and

WINEDEPOT's Staff means the persons consulting to, contracting to or employed by WINEDEPOT in connection with the provision of the Services and their employees, agents and contractors.

30.2 Interpretation

In this Agreement, unless the contrary intention appears:

- a. headings are for ease of reference only and do not affect the meaning of this Agreement;
- b. the singular includes the plural and vice versa;
- c. other grammatical forms of defined words or expressions have corresponding meanings;
- d. if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;

SCHEDULE 1 - SERVICES SPECIFICATION

See <https://winedepot.com/servicespecification/>

SCHEDULE 2 - RATE CARD

See <https://winedepot.com/ratecard/>