

# TERMS AND CONDITIONS OF TRADE

The Customers attention is in particular drawn to the provisions of clause 14.

## 1. Definitions and Interpretation

- 1.1 In these Terms the following definitions apply:
- 1.1.1 "PFW" means Provenance Fine Wines Ltd company no: 02567909 and where the context permits includes its agents, employees or contractors
- 1.1.2 "Business Day" means any day other than a Saturday, Sunday or public holiday in the United Kingdom
- 1.1.3 "Claim" includes any loss, claim, demand, damages, expense or cost (including legal costs) incurred by the Customer or brought against the Customer by any other person whether in contract or tort, under statute or otherwise
- 1.1.4 "Contract" means any contract between the Company and the Customer for the sale and purchase of the Products, incorporating these Conditions;
- 1.1.5 "Customer" includes a person with whom any contract for the provision of Products or Services is made by PFW; and a person to whom PFW provides Products or Services
- 1.1.6 "VAT" Value Added Tax
- 1.1.7 "Products" means any wine or other goods of any kind provided by PFW to a Customer
- 1.1.8 "Services" means any storage, delivery or other services provided or performed by PFW for a Customer
- 1.1.9 "Storage Facility" means a suitable facility for storage of the Products as determined from time to time by PFW in its discretion
- 1.1.10 "Terms" means these terms and conditions as varied from time to time in accordance with clause 2.5.

## 2. Application of Terms

- 2.1 Words and phrases that are defined in clause 1 have the same meaning when used elsewhere in these Terms. Defined terms are generally indicated by the use of a capital letter
- 2.2 Any Contract for the supply of Products and Services by PFW, and business undertaken by PFW, will in all cases be subject to these Terms. No person acting or purporting to act on behalf of PFW has any authority to waive, add to or vary these Terms, unless the waiver, addition or variation is reduced to writing and signed by a duly authorised representative on behalf of PFW
- 2.3 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of PFW which is not set out in the Contract. Nothing in this clause shall exclude or limit PFW's liability for fraudulent misrepresentation
- 2.4 The use of a Customer's own terms and conditions is no derogation from these Terms. In particular, PFW will not be bound by any terms attaching to or accompanying any Customer order, and the Customer agrees that all such terms are excluded
- 2.5 PFW may add to or amend these Terms at any time by giving notice to the Customer by e-mail or post. Such addition or amendment will take effect 30 days after notice is given, or later in accordance with its terms. Without limitation, continued placement of orders by the Customer with PFW after the notice has been given will be conclusive evidence that the Customer has accepted the terms as added to or amended
- 2.6 Each order for Products by the Customer from PFW shall be deemed to be an offer by the Customer to purchase Products subject to these Terms.

## 3. Customer Orders

- 3.1 No order placed by the Customer shall be deemed to be accepted by PFW until a written acknowledgement of order is issued by PFW or (if earlier) PFW delivers the Products to the Customer.
- 3.2 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 3.3 Any quotation is given on the basis that no contract will come into existence until PFW despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that PFW has not previously withdrawn it.
- 3.4 Without limiting clause 3.1, PFW may reject any order placed by a Customer if there is not a sufficient quantity of Products available to PFW or if the terms upon which such Products are available are not acceptable to PFW in its sole discretion
- 3.5 The Customer has a right to cancel an order. The Customer can do this by sending to PFW a written notice of cancellation within 7 days from issue of invoice. If the Customer cancels the order, then any money that has been paid to PFW will be returned by PFW

## 4. Right to cancellation/Cooling-Off Period

- 4.1 The Customer (if contracting as a consumer) may cancel a Contract at any time within seven working days, beginning on the day after written acknowledgement of order is issued by PFW. In this case, Customer will receive a full refund of the price paid for the Products in accordance with PFW's refunds policy set out herein.
- 4.2 To cancel a Contract, the Customer must inform PFW in writing.
- 4.3 PFW will usually refund any money received from Customer using the same method originally used by Customer to pay for the Products.

## 5. Management Charge

- 5.1 PFW levies a charge of 5% (five per cent), which covers all client services provided, to include administration, shipping, bond transfers of the product. Customers will also receive regular market/pricing reports, newsletters and updates both in writing and via telephone from their portfolio manager.

## 6. Payment

- 6.1 The price payable by the Customer for any Products or Services ordered by a Customer and supplied by PFW will be:
- 6.1.1 the price quoted by PFW at the time the Customer places the order; or
- 6.1.2 such other price as PFW may advise to the Customer at or before the time PFW accepts the Customer's order.
- 6.2 Payment in full for Products (and any associated Services) ordered by a Customer, together with any taxes or expenses payable by the Customer under clause 7, must accompany the Customer's order and must be made in cash or in such other form as PFW agrees to accept. Any variation in the price notified by PFW pursuant to clause 6.1.2 will (if a reduction) be refunded by PFW to the Customer at the time the Products or Services are delivered by PFW.

## 7. Taxes and Expenses

- 7.1 Taxes, levies, duties and imposts, including VAT, which apply to the supply of any Product or the performance of any Service:
- 7.1.1 will be borne by PFW, if the price at which PFW supplies such Product or Service is expressed to be inclusive of the particular taxes, levies, duties and imposts; and
- 7.1.2 in every other case, must be borne by the Customer
- 7.2 The Customer must pay on demand, and must indemnify PFW in full against:
- 7.2.1 any agent's fees, costs of handling and delivery or other expenses incurred as a result of delivery of any Product to an address other than the Storage Facility; and
- 7.2.2 any taxes, levies, duties and imposts which are to be borne by the Customer under clause 7.1, together with any fine, penalty or interest paid or payable by PFW because of a default by the Customer in paying such amounts

## 8. Non-payment

- 8.1 If any amount is due and payable to PFW by a Customer but remains unpaid, PFW may (without the need for further notice or demand and without prejudice to any other rights or remedies which may be available to it) do any one or more of the following:
- 8.1.1 charge and recover interest on the outstanding amount, calculated daily at the rate 12% (twelve per cent) per annum;
- 8.1.2 take possession of any Products or any other goods held in the Storage Facility on the Customer's behalf, sell the same and, after deducting the costs of such sale and the amount owing to PFW, remit the balance (if any) to the Customer;
- 8.1.3 cancel any outstanding order placed by the Customer and apply any amount paid in respect of such order to the payment of amounts owing to PFW.

## 9. Delivery

- 9.1 All Products ordered by a Customer will be delivered into the Storage Facility unless at the time of accepting the order PFW has agreed in writing to make delivery to a different location.
- 9.2 Although PFW will make every effort to deliver Products ordered by a Customer within 60 days of receipt of cleared funds, no warranty is given by PFW that the Products will be delivered on the nominated date.
- 9.3 Wines purchased en primeur (whilst the wine is still maturing and are not yet bottled by the Chateau) are generally due for bottling and delivery up to 2 years from the purchase date, at which point correspondence detailing their arrival at the Storage Facility will occur in the normal manner.
- 9.4 Subject to the other provisions of these Terms PFW 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 Products (even if caused by PFW's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.
- 9.5 If, following acceptance of a Customer's order, any Product specified therein becomes unavailable for any reason, PFW will use its best endeavours to offer an alternative Product to the Customer. PFW will refund to the Customer:
- 9.5.1 the difference between the amount paid for the unavailable Product and any alternative Product which the Customer agrees to take; or
- 9.5.2 the amount paid in respect of the unavailable Product, if the Customer does not choose to purchase the alternative Product
- 9.6 Any additional amount payable in respect of an alternative Product must be paid by the Customer at the time of agreeing to purchase the alternative Product
- 9.7 PFW is deemed to have delivered Products when, in the ordinary course of events, the Products would have arrived at the Storage Facility or at such other location as is agreed by PFW pursuant to clause 9.1

## 10. Storage and Collection

- 10.1 Products delivered into the Storage Facility will be stored until the Customer arranges to collect them. The Customer will pay for storage of the Products on the following basis:
- 10.1.1 during the first 5 year period following delivery of the Products into the Storage Facility – nil, this cost is already included in the parcel price of the Product;
- 10.1.2 during any subsequent period of storage – at the storage charge applicable from time to time, at the Storage Facility and payable by a customer direct to the Storage Facility.
- 10.2 At least 3 Business Days notice of collection, specifying the particular Products to be collected, must be given by a Customer to ensure that those Products will be available for collection by or on behalf of the Customer. PFW is under no obligation to make Products available for collection from the Storage Facility until the Customer has paid to PFW (and/or the storage facility) all amounts owing to PFW in respect of purchase of the Products, their storage and any other amounts then owing to PFW by the Customer
- 10.3 PFW may agree to dispatch the Products to the Customer or to an address nominated by the Customer, but the costs of so dispatching the Products, and any other expenses of collection will be the sole responsibility of the Customer
- 10.4 By making Products available to the Customer (or to a person who PFW in good faith believes to be authorised by the Customer to collect the Products for collection) or (if instructed by the Customer) dispatching the Products in accordance with clause 10.3, PFW discharges all of its obligations under this clause 10. PFW is not responsible for any Claim that arises after the Products are made available for collection or dispatched from the Storage Facility.

## 11. Insurance

- 11.1 Once the Products have been delivered to the Storage Facility, the Products are covered by insurance provided directly from the Storage Facility which covers the Products for their declared replacement value against the risks of physical loss, destruction and damage, at all times from actual receipt of the Products into the Storage Facility until they are made available for collection or dispatched in accordance with clause 9. Such policy of insurance:
- 11.1.1 will be subject to maximum limits in the aggregate and for each loss or series of losses; and
- 11.1.2 will be subject to exclusions, limitations and other terms as set out in the policy terms and conditions
- 11.2 Upon request by the Customer, PFW will promptly provide a copy of the terms and conditions of the insurance policy taken out pursuant to this clause 11.1.

## 12. Risk/Ownership

- 12.1 The Products are at the risk of the Customer from the time of delivery to the Storage Facility.
- 12.2 Ownership of the Products shall not pass to the Customer until PFW has received in full (in cash or cleared funds) all sums due to it in respect of:
- 12.2.1 the Products; and
- 12.2.2 all other sums which are or which become due to PFW from the Customer on any account.

## 13. Sale

- 13.1 The Customer may ask PFW at any time after their delivery into the Storage Facility to value the Product and to arrange for the sale of the Product on the Customer's behalf. Upon completion of documentation authorising release of wines for the purpose of sale the Customer appoints PFW as their agent and authorises PFW to do and undertake any acts it may consider necessary or desirable in order to facilitate such a sale, whether by auction, private sale or otherwise.
- 13.2 PFW will try to sell the Product at the best price reasonably obtainable within a reasonable time of receiving instructions from the Customer to sell. Prior to any sale PFW will agree with the Customer a minimum or reserve price Customer will accept.
- 13.3 PFW will charge a maximum of 10% (ten per cent) commission on the sale price of the Product, dependent on the method of sale chosen and volume & timescale desired for settlement by the Customer. If the Product is sold at auction no commission will be levied by PFW.

## 14. PFW Liability

- 14.1 The Customer acknowledges that the nature of the Products is such that PFW cannot and does not warrant the market value or appreciation in value of the Products.
- 14.2 PFW warrants that any Product purchased is of satisfactory quality and reasonably fit for all the purposes for which products of the kind are commonly supplied.
- 14.3 PFW's liability for losses Customer suffers as a result of PFW breaching these terms is strictly limited to the purchase price of the Product Customer purchased (or in the case of Services, to supplying the Services again or paying to the Customer the cost of having the Services supplied again) and any losses which are a foreseeable consequence of PFW breaching these terms. Losses are foreseeable where they could be contemplated by Customer and PFW at the time Customer's order is accepted by PFW.
- 14.4 This does not include or limit in any way PFW's liability:
- 14.4.1 For death or personal injury caused by our negligence;
- 14.4.2 Under section 2(3) of the Consumer Protection Act 1987;
- 14.4.3 For fraud or fraudulent misrepresentation; or
- 14.4.4 For any matter for which it would be illegal for PFW to exclude, or attempt to exclude, our liability.
- 14.5 PFW is not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by Customer and PFW, including but not limited to:
- 14.5.1 loss of income or revenue
- 14.5.2 loss of business
- 14.5.3 loss of profits or contracts
- 14.5.4 loss of anticipated savings
- 14.5.5 loss of data
- 14.5.6 loss of data, or
- 14.5.7 waste of management or office time however arising and whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable;
- provided that this clause 12.5 shall not prevent claims for loss of or damage to Customer's tangible property that fall within the terms of clause 12.2 or clause 12.3 or any other claims for direct financial loss that are not excluded by any of categories 12.5.1-12.5.7 inclusive of this clause 12.5.

## 15. Events outside our control

- 15.1 PFW will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by events outside PFW's reasonable control (Force Majeure Event).
- 15.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond PFW's reasonable control and includes in particular (without limitation) the following:
- 15.2.1 Strikes, lock-outs or other industrial action.
- 15.2.2 Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.
- 15.2.3 Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster.
- 15.2.4 Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
- 15.2.5 Impossibility of the use of public or private telecommunications networks and power cuts.
- 15.2.6 The acts, decrees, legislation, regulations or restrictions of any government.
- 15.3 PFW's performance under any Contract is deemed to be suspended for the period that the Force Majeure Event continues, and PFW will have an extension of time for performance for the duration of that period. PFW will use its reasonable endeavours to find a solution by which its obligations under the Contract may be performed despite the Force Majeure Event.

## 16. General

- 16.1 These Terms constitute the entire agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 16.2 The Customer acknowledges that, in entering into a Contract which is subject to these Terms, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these Terms.
- 16.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 16.4 Any part of these Terms which is invalid or unenforceable will be read down or severed to the extent of such invalidity or unenforceability, without affecting the remaining provisions
- 16.5 PFW may in its discretion sub-contract the performance of any part of its obligations under these Terms.
- 16.6 The Customer may not assign the benefit of these Terms without PFW's prior consent in writing.
- 16.7 These Terms shall be governed by English Law and be subject to the exclusive jurisdiction of the English courts.