

TERMS AND CONDITIONS OF BUSINESS

DUNCAN MURRAY WINES

The Buyer's attention is in particular drawn to the provisions of condition 10.4.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods from DMW.

Consumer: an individual who is not acting for the purposes of his or her business or profession.

Contract: any contract between DMW and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

DMW: Duncan Murray Wines, whose trading address is at 10 Adam & Eve Street, Market Harborough, Leicestershire LE16 7LT.

Goods: any goods agreed in the Contract to be supplied to the Buyer by DMW (including any part or parts of them).

Writing: includes facsimile transmission and comparable means of communication including e-mail.

A reference to a particular law is a reference to it as amended, re-enacted or extended at the relevant time.

1.2 Words in the singular include the plural and in the plural include the singular.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.2 the Contract shall be on these conditions to the exclusion of all other terms and conditions. No terms and/or conditions which the Buyer may seek to impose shall apply or have effect.

2.2 These conditions apply to and form part of every Contract between DMW and the Buyer and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of DMW. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of DMW which is not set out in the Contract. Nothing in this condition shall exclude or limit DMW's liability for fraudulent misrepresentation.

2.3 Each order or acceptance of a quotation for Goods by the Buyer from DMW shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted by DMW until a written acknowledgement of order is issued by DMW or (if earlier) DMW delivers the Goods to the Buyer. The Contract relates only to those Goods specified in the order acknowledgement. DMW will not be obliged to supply any other Goods which may have been part of the Buyer's order until such order has been confirmed in a separate order acknowledgement.

2.5 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.6 Any quotation is given on the basis that no Contract shall come into existence until DMW despatches an acknowledgement of order to the Buyer. Any quotation is valid for period of 30 days only from its date, provided that DMW has not previously withdrawn it.

2.7 Where Goods are supplied on a 'Sale or Return' basis, the following conditions apply:

2.7.1 the order must be for the minimum prevailing amount;

2.7.2 a maximum of 20% of the original order quantity may be returned;

2.7.3 all returned Goods must be in a re-saleable condition; and

2.7.4 DMW is entitled to charge the prevailing charge for collection of Goods returned in respect of each sale or return order.

3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in DMW's quotation or acknowledgement of order.

3.2 All samples, descriptive matter and advertising issued by DMW and any descriptions or illustrations contained in DMW's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3.3 If any Goods ordered are out of stock or where a particular vintage becomes exhausted, DMW is entitled to offer to the buyer substitute goods of at least equal value.

4. PRICE

4.1 Unless otherwise agreed by DMW in writing, the price for the Goods shall be DMW's quoted price, or, in the absence of a quoted price, the price set out in the order acknowledgment. All prices are quoted in pounds sterling.

4.2 Subject to Condition 4.1, the price for the Goods shall be inclusive of any value added tax and duty but exclusive of delivery charges, which the Buyer shall pay in addition when it is due to pay for the Goods. Delivery within 15 miles of Market Harborough is free of charge for orders in excess of the prevailing minimum amount.

4.3 DMW reserves the right to adjust the price of the Goods at its discretion at any time before (but not after) DMW accepts the Buyer's order.

5. DELIVERY

5.1 Unless otherwise agreed in writing by DMW, delivery of the Goods shall take place at DMW's premises. Where delivery of the Goods is to take place at DMW's premises, the Buyer shall take delivery of the Goods within 30 days of DMW giving it notice that the Goods are ready for delivery. Where it is agreed as above that delivery of the Goods shall not take place at DMW's premises, any such delivery shall be made only within the UK.

5.2 Delivery will be made by the date set out in the order acknowledgement form or, if no date is specified, within 30 days of the order acknowledgement unless there are exceptional circumstances. Any dates specified by DMW for delivery of the Goods are intended to be an estimate and are not intended to be binding.

5.3 Subject to the other provisions of these conditions DMW shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 30 days.

5.4 If the Buyer fails to take delivery of the Goods or fails to give DMW adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of DMW's fault) then, without prejudice to any other right or remedy available to DMW, DMW may store the Goods until actual delivery and charge

the Buyer for the reasonable costs (including insurance) of storage. Where a carrier is unable to deliver the Goods to the Buyer, the Goods will be returned to DMW and redespached at the Buyer's expense.

5.5 DMW may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

5.6 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5.7 The Buyer undertakes to inspect the Goods immediately on delivery or when collecting Goods and to notify DMW or the carrier of any shortage or damage or other deficiency. The Buyer will be deemed to have accepted the Goods as satisfying its order 2 days after delivery/collection.

6. NON-DELIVERY

6.1 The quantity of any consignment of Goods as recorded by DMW upon despatch from DMW's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

6.2 DMW shall not be liable for any non-delivery of Goods unless the Buyer gives written notice to DMW of the non-delivery within 2 days of the date when the Goods would in the ordinary course of events have been received.

6.3 Any liability of DMW for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. RISK/TITLE

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-

7.1.1 in the case of the Goods to be delivered otherwise than at DMW's premises, at the time of delivery, or, if the Buyer wrongfully fails to take delivery of the goods, the time when DMW has tendered delivery of the Goods; or

7.1.2 in the case of the Goods to be collected by the Buyer from DMW's premises, at the time when DMW notifies the Buyer that the Goods are available for collection.

7.2 Ownership of the Goods shall not pass to the Buyer until DMW has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 the Goods; and

7.2.2 all other sums which are or which become due to DMW from the Buyer on any account.

7.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

7.3.1 hold the Goods on a fiduciary basis as DMW's bailee;

7.3.2 store the Goods (at no cost to DMW) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as DMW's property;

7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

7.3.4 maintain the Goods in satisfactory condition and keep them insured on DMW's behalf for their full price against all risks to the reasonable satisfaction of DMW. On request the Buyer shall produce the policy of insurance to DMW; and

7.3.5 ensure that the Goods shall be kept free from any charge or encumbrance.

7.4 DMW shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from DMW.

7.5 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

7.5.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

7.5.2 any such sale shall be a sale of DMW's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and

7.5.3 the full proceeds of sale (or such monies as the Buyer receives) are the property of and held on trust for DMW and if required by DMW in writing, shall be kept separate from the Buyer's own monies and from all other accounts. At such time as DMW may require, the Buyer shall account to DMW for the full proceeds of sale (or such monies as the Buyer shall have received) as DMW's bailee and shall keep a separate account of all such proceeds or monies for such purposes.

7.6 The Buyer's right to possession of the Goods shall terminate immediately if:

7.6.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the grant-ing of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

7.6.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between DMW and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

7.6.3 the Buyer encumbers or in any way charges any of the Goods.

7.7 Where DMW is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by DMW to the Buyer in the order in which they were invoiced to the Buyer.

7.8 On termination of the Contract, howsoever caused, DMW's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.

8 PAYMENT

8.1 Subject to condition 8.5, payment of the price for the Goods is due in pounds sterling at the time of order or (except for internet orders) in cash at the time of delivery of the Goods unless otherwise agreed in writing by DMW. DMW shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods.

8.2 The Buyer shall pay the price of the Goods within 14 days of the date of DMW's relevant invoice. Where the Buyer is not a Consumer, time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until DMW has received cleared funds.

8.4 Payment can be made by major credit or debit card, cheque, direct debit or by direct electronic means. DMW may refuse to accept cash settlement of amounts due and will always refuse cash sums in excess of £1,000.

8.5 All payments payable to DMW under the Contract shall become due immediately on its termination despite any other provision.

8.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by DMW to the Buyer.

8.7 If the Buyer fails to pay DMW any sum due pursuant to the Contract or DMW has reasonable grounds for believing that the Buyer may default in making any payment pursuant to the Contract then, without prejudice to any other right or remedy available to DMW, DMW will be entitled to:

8.7.1 cancel or terminate the Contract or suspend any further deliveries to the Buyer; and

8.7.2 charge the Buyer interest (both before and after any such judgment) on the amount unpaid, at the annual rate of 2% above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis until payment is made, and withdraw all credit facilities given to the Buyer. DMW reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9 QUALITY

9.1 DMW warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.2 DMW shall not be liable for a breach of the warranty unless:

9.2.1 the Buyer gives written notice of the defect to DMW within 2 days of the time when the Buyer discovers or ought to have discovered the defect (or, if the Buyer is a Consumer, the Buyer should notify any defect within a reasonable period, i.e. 28 days, of becoming aware of such defect); and

9.2.2 DMW is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by DMW) returns such Goods to DMW's place of business at DMW's expense for the examination to take place there.

9.3 DMW shall not be liable for a breach of the warranty in condition 9.1 if:

9.3.1 the Buyer makes any further use of such Goods after giving such notice; or

9.3.2 the defect arises because the Buyer failed to follow DMW's oral or written instructions as to the storage or use of the Goods.

9.4 Subject to conditions 9.2 and 9.3, if any of the Goods do not conform with the warranty in condition 9.1 DMW shall, at its option:

9.4.1 in the event of Goods damaged in transit, replace such Goods, issue a credit note to the value of the Goods or refund the price of such Goods at the pro rata Contract rate;

9.4.2 in the event of Goods that are faulty, replace such Goods or issue a credit note to the value of the Goods, provided that, if DMW so requests, the Buyer shall, at DMW's expense, return the Goods or the part of such Goods which is defective to DMW.

9.5 If DMW complies with condition 9.4 it shall have no further liability for a breach of the warranty in condition 9.1 in respect of such Goods.

9.6 A Buyer contracting as a Consumer where the Buyer is not physically present with DMW at the time the Contract is made may cancel a Contract within seven working days, beginning on the day after the Buyer receives the Goods. If the Buyer exercises such right of cancellation, the Buyer will be entitled to a refund of the price paid for the Goods at the pro rata Contract rate. The Buyer must inform DMW in writing of the cancellation and return the Goods to DMW in the condition in which they were received and at the Buyer's cost and risk.

10 LIMITATION OF LIABILITY

10.1 Subject to conditions 5, 6 and 9, the following provisions set out the entire financial liability of DMW (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

10.1.1 any breach of these conditions;

10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 Where the Buyer is a firm or company, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract. No provisions of these terms and conditions will adversely affect the rights of any Consumers

10.3 Nothing in these conditions excludes or limits the liability of DMW:

10.3.1 for death or personal injury caused by DMW's negligence; or

10.3.2 under section 2(3) of the Consumer Protection Act 1987; or

10.3.3 for any matter which it would be illegal for DMW to exclude or attempt to exclude its liability; or

10.3.4 for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

10.4.1 DMW's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £1,000,000; and

10.4.2 DMW shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11 INSOLVENCY

11.1 This Condition applies if:-

11.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to any administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction); or

11.1.2 an encumbrancer takes possession or a receiver, administrative receiver or administrator is appointed of any of the property or assets of the Buyer; or

11.1.3 the Buyer ceases or threatens to cease to carry on business; or

11.1.4 DMW reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 If this Clause applies then, without prejudice to any other right or remedy available to DMW, DMW shall be entitled to cancel or terminate the Contract without any liability to the Buyer immediately on giving notice to the Buyer, and the Buyer shall immediately pay to DMW all of DMW's outstanding unpaid invoices and interest; in respect of Goods that have been delivered but not paid for the price shall become immediately due and payable, notwithstanding any previous agreements or arrangement to the contrary.

12 ASSIGNMENT

12.1 DMW may assign the Contract or any part of it to any person, firm or company.

12.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of DMW.

13. FORCE MAJEURE

13.1 DMW shall not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under a Contract that is caused by events outside its reasonable control ('Force Majeure Event').

13.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

13.2.1 Strikes, lock-outs or other industrial action.

13.2.2 Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.

13.2.3 Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster.

13.2.4 Impossibility of the use of railways, shipping, aircraft, motor transport, or other means of public or private transport.

13.2.5 Impossibility of the use of public or private telecommunications networks.

13.2.6 The acts, decrees, legislation, regulations or restrictions of any government.

13.3 DMW's performance under any Contract is deemed to be suspended for the period that the Force Majeure Event continues, and DMW will have an extension of time for performance for the duration of that period. DMW will use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under the Contract may be performed despite the Force Majeure Event, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to DMW to terminate the Contract.

14 GENERAL

14.1 By placing an order with DMW, the Buyer confirms that he is at least 18 years old and is legally capable of entering into binding contracts. At the time of delivery of the Buyer's order, DMW may request proof of age from the person accepting the delivery. If appropriate proof cannot be produced, DMW may refuse to deliver the order.

14.2 Each right or remedy of DMW under the Contract is without prejudice to any other right or remedy of DMW whether under the Contract or not.

14.3 If any part of these terms and conditions for any reason should be held to be invalid, such invalidity shall not affect the remaining clauses of these terms and conditions.

14.4 Failure or delay by DMW in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.5 Any waiver by DMW of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.7 The Contract shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

15 COMMUNICATIONS

15.1 All communications from the Buyer to DMW about the Contract must be given in writing to DMW at its registered office or to its e-mail address or such changed address or e-mail address as shall be notified to the Buyer by DMW.

15.2 All communications from DMW to the Buyer about the Contract must be given in writing to the Buyer at any postal or e-mail address of the Buyer given to DMW at the time of order or set out in any document which forms part of the Contract or such other address as shall be notified to DMW by the Buyer.

15.3 Notice will be deemed received and properly served immediately when posted on DMW's website, 24 hours after an e-mail is sent, or 3 working days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.