

Terms and Conditions of Sale

Effective 9 November 2023
Australia



Pernod Ricard Australia

1. General

1.1. In these terms "Pernod Ricard Winemakers" means "Pernod Ricard Australia a division of Pernod Ricard Winemakers Pty Ltd" and "Customer" means the person, firm or corporation to whom Pernod Ricard Winemakers products are supplied.

1.2. The Customer must give Pernod Ricard Winemakers 30 days' notice of any change in the trading entity, the names of its principals, trading name and/or liquor licence.

1.3. These terms apply from the date specified above. These terms may be varied by Pernod Ricard Winemakers by providing at least 30 days' notice in writing to the Customer (following which the varied terms will form part of these terms) and cannot otherwise be varied unless in writing and signed by both parties. Any varied terms will not apply to orders placed prior to date that the variations become effective.

2. Prices

2.1. The prices charged by Pernod Ricard Winemakers, as set out in Pernod Ricard Winemakers' applicable price list, may be altered at any time. Pernod Ricard Winemakers will provide reasonable notice of other pricing changes. It is Pernod Ricard Winemakers' intention to vary prices in February and August of each year and the Customer accepts these terms as reasonable notice of the aforementioned regular pricing changes.

2.2. Prices quoted include excise duty (where applicable) except in the case of products sold underbond. If applicable, in addition to the prices quoted, the Customer must also pay Wine Equalisation Tax (WET) unless adequate quotation is provided and Goods and Services Tax in the amounts prescribed by relevant legislation.

2.3. Prices are subject to any change in the amount of excise duty, GST, WET, freight or insurance between the date of order and delivery and any such amount will be reflected in the purchase price.

3. Orders

3.1. All orders are subject to acceptance by Pernod Ricard Winemakers.

3.2. Supply of products is subject to availability and to any order limits imposed in respect of a product by Pernod Ricard Winemakers. Pernod Ricard Winemakers may, in its sole discretion, waive the application of an order limit in respect of an order.

3.3. Pernod Ricard Winemakers may reject an order by notice in writing to the Customer within 2 days of receiving the order.

3.4. The Customer cannot cancel an order nor delay delivery once an order has been accepted without Pernod Ricard Winemakers' written consent.

3.5. If the Customer wishes to claim a WET exemption (if applicable), The Customer must supply Pernod Ricard Winemakers with the documentation required by Pernod Ricard Winemakers. No claims for WET exemption will be accepted after the invoice has been processed.

4. Delivery

4.1. Products will be delivered free of charge to the following areas:

South Australia:

Products will be delivered free of charge to all metropolitan areas bounded by the Barossa Valley, Mt Barker and Noarlunga.

Western Australia:

Products will be delivered free of charge to all metropolitan areas bounded by Wanneroo, Mindarie, Midland, Roleystone, Armadale and Rockingham.

Queensland:

Products will be delivered free of charge to all metropolitan areas bounded by Caboolture, Bribie Island, Redcliffe, Redland Bay, Redbank Plains, Gold Coast and Tweed Heads, Banora Pt and Terranora.

Victoria:

Products will be delivered free of charge to all metropolitan areas bounded by Tullamarine, Geelong, Belgrave, Cranbourne, Diamond Creek.

New South Wales:

Products will be delivered free of charge to all metropolitan areas bounded by Newcastle (including Lake Macquarie), Richmond, Camden, Albion Park, including Central Coast, Wollongong, Morriset, Lower Hunter and Blue Mountains. In all other areas of NSW, for orders over 1 pallet contact your local Pernod Ricard Winemakers Regional Manager for details on freight costs, all other orders in NSW will be delivered FOB. In all other areas, orders for at least 900 cases will be delivered free of charge and all other orders will be delivered FOB.

4.2. Risk in the products passes to the Customer upon delivery to the Customer or the Customer's carrier.

4.3. Pernod Ricard Winemakers may consign or ship products to the Customer in instalments at varying times.

4.4. Pernod Ricard Winemakers is not responsible for and does not accept liability for delay or non-delivery of products. In the case of late delivery, the Customer must accept and pay for the goods delivered.

4.5. Each delivery will be regarded as a separate contract.

5. Payment

5.1. Payment terms will, at Pernod Ricard Winemakers' discretion, be payment on delivery or credit.

5.2. Credit accounts must be paid in accordance with the payment terms notified in writing to the Customer by Pernod Ricard Winemakers.

5.3. Credit accounts are subject to Pernod Ricard Winemakers' standard credit terms and conditions. Credit application forms can be obtained from your Pernod Ricard Winemakers representative or from the nearest Pernod Ricard Winemakers office.

5.4. If the Customer's account has not been paid by the due date, Pernod Ricard Winemakers may cease supplying products to the Customer, withdraw credit facilities and/or forfeit allowances. Pernod Ricard Winemakers may also charge interest at the rate of 2% per calendar month on all overdue amounts from the date of default until the date of payment (payable daily).

6. Retention of Title

Title and property in all products delivered to the Customer is retained by Pernod Ricard Winemakers and passes to the Customer only when the Customer has paid all amounts owing to Pernod Ricard Winemakers (whether under this agreement or any other agreement or arrangement) in full.

6.1. Until Pernod Ricard Winemakers have received full payment of all such amounts:

6.1.1. the Customer holds the products as bailee for Pernod Ricard Winemakers and the Customer must store or identify the Products in such a way that they are clearly recognisable as the property of Pernod Ricard Winemakers. If the Customer fails to store or identify the Products in accordance with this clause, the Customer irrevocably appoints Pernod Ricard Winemakers as its attorney to determine which products held by the Customer are owned by Pernod Ricard Winemakers.

6.1.2. notwithstanding that property in the products is retained by Pernod Ricard Winemakers, the Customer is authorised to sell the products in the ordinary course of its business but such authority may be revoked by Pernod Ricard Winemakers if Pernod Ricard Winemakers deems, acting reasonably, the credit of the Customer to be unsatisfactory or if the Customer breaches any agreement between the Customer and Pernod Ricard Winemakers. Such authority is automatically revoked if an Insolvency Event occurs in respect of the Customer.

6.1.3. Any book debt created upon the sale of such products to a third party, and the proceeds of the sale of such products (when received by the Customer) will be held by the Customer on trust for Pernod Ricard Winemakers. Any such book debt and proceeds must be held and accounted for separately to, and not mixed with, any other property of the Customer. Any such proceeds received by the Customer must be applied first towards the satisfaction of all indebtedness to Pernod Ricard Winemakers and thereafter shall be retained by the Customer.

6.1.4. The Customer irrevocably grants Pernod Ricard Winemakers and its agents and employees the right to enter any premises occupied by the Customer without notice to search for and remove products that are owned by Pernod Ricard Winemakers.

6.2. The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the products without Pernod Ricard Winemakers' prior written consent.

7. Personal Property Securities Act

7.1. Without limiting anything else in these terms and conditions, the Customer acknowledges that:

7.1.1. these terms and conditions are a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA") (as amended);

7.1.2. these terms and conditions create, in favour of Pernod Ricard Winemakers, a security interest, which the Customer consents to Pernod Ricard Winemakers registering a financing statement for, in all of the Customer's present and after-acquired property, except for any personal property which has not (or which is exclusively the proceeds of any personal property which has not) been supplied by Pernod Ricard Winemakers to (or for the account of) the Customer to secure the payment by the Customer to Pernod Ricard Winemakers of all amounts owing to Pernod Ricard Winemakers;

7.1.3. these terms and conditions will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and

7.1.4. the Security Interest shall continue until Pernod Ricard Winemakers gives the Customer a final release.

7.2. The Customer undertakes to:

7.2.1. promptly do all things, sign any further documents and/or provide any information which Pernod Ricard Winemakers may reasonably require to enable Pernod Ricard Winemakers to perfect and maintain the perfection of its security interest (including by registration of a financing statement or financing change statement);

7.2.2. give Pernod Ricard Winemakers not less than 30 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, email address, trading name or business practice);

7.2.3. indemnify (and upon demand reimburse) Pernod Ricard Winemakers for all expenses that Pernod Ricard Winemakers reasonably incurs in registering a financing statement (including any financing change statement) or releasing property charged by the statement. The costs of registering a financing statement or a financing change statement may, where applicable, be debited against the Customer's credit account with Pernod Ricard Winemakers; and

7.2.4. not register a financing change statement without the prior written consent of Pernod Ricard Winemakers.

7.3. The Customer irrevocably appoints Pernod Ricard

Winemakers and each director of Pernod Ricard Winemakers jointly and severally to be the Customer's attorney to give effect to this clause 7:

7.3.1. sign any instrument on the Customer's behalf; and

7.3.2. do any act in the Customer's name.

7.4. The Customer agrees that the security interest has the same priority in relation to all amounts forming part of the total amount owing to Pernod Ricard Winemakers, including future advances.

7.5. The Customer and Pernod Ricard Winemakers agree to contract-out of the PPSA in accordance with section 115 of the PPSA to the extent that the section applies for the benefit of, and does not impose a burden on, Pernod Ricard Winemakers. The Customer waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by Pernod Ricard Winemakers in respect of the security interest created by these terms and conditions.

7.6. The Customer shall not agree to allow any person or entity to register a financing statement over any of the products supplied by Pernod Ricard Winemakers and not paid for in full by the Customer without the prior written consent of Pernod Ricard Winemakers and will immediately notify Pernod Ricard Winemakers if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to such products.

7.7. The Customer shall not allow the products to become accessions or commingled with other like products unless Pernod Ricard Winemakers has first perfected any security interest that Pernod Ricard Winemakers has in relation to the products.

7.8. The Customer irrevocably grants to Pernod Ricard Winemakers the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Pernod Ricard Winemakers has cause to exercise any of Pernod Ricard Winemakers' rights under the PPSA, and the Customer shall indemnify Pernod Ricard Winemakers from any claims made by any third party as a direct result of such exercise, other than where such claims are the direct result of the gross negligence or wilful misconduct of Pernod Ricard Winemakers in exercising such right.

7.9. Where the Customer makes a payment to Pernod Ricard Winemakers in reduction of any amount owing whether in connection with the supply of products or otherwise, Pernod Ricard Winemakers may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.

7.10. Notices or documents required or permitted to be given for the purposes of the PPSA must be given in accordance with the PPSA.

7.11. In these terms and conditions the following words have the respective meanings given to them in the PPSA: account, personal property, proceeds, purchase money security interest, register, registration, security agreement, security interest and verification statement.

8. Ullages and Breakages

8.1. Pernod Ricard Winemakers will accept faulty and/or out of condition products returned by the Customer provided:

8.1.1. the products are not out of shelf life;

8.1.2. the products are returned in their original packaging and the original invoice number is quoted;

8.1.3. the products were not broken or damaged after delivery; and

8.1.4. the Customer notifies Pernod Ricard Winemakers of its claim within 7 days of delivery of the products.

8.2. Subject to applicable law (including the Australian Consumer Law), Pernod Ricard Winemakers' liability in respect of faulty and/or out of condition products is limited to the invoice value of those products, which will be credited to the Customer. If Pernod Ricard Winemakers decides to accept the claim, Pernod Ricard Winemakers reserves the right to apply the pricing applicable at the time of purchase when crediting the Customer for the products.

9. Pallets

9.1. Pallets delivered by Pernod Ricard Winemakers to the Customer do not become the property of the Customer.

9.2. The Customer must either replace the pallets delivered with pallets of a comparable quality or de-hire at the time of delivery. If the Customer fails to do this, Pernod Ricard Winemakers may charge the Customer a fee equivalent to the hiring charge until the pallets are exchanged and/or the pallet accounts are reconciled.

10. Liability

10.1. Subject to any relevant statutory provisions including, without limitation the Australian Consumer Law, these terms contain the entire agreement between Pernod Ricard Winemakers and the Customer and all representations, warranties and agreements (whether express or implied and whether statutory or otherwise) are expressly excluded and Pernod Ricard Winemakers' liability is limited to the lesser of:

10.1.1. the cost of replacing the products; or

10.1.2. the cost of obtaining equivalent products.

10.2. Neither party will be liable in any circumstances to the other for consequential damages, including without limitation, loss of profit, business opportunity, benefit and reputation..

11. On Supply of Products

11.1. The Customer must not sell, solicit sales of or promote Pernod Ricard Winemakers products outside of Australia or to any person whom the Customer knows, believes or ought to reasonably suspect will buy those products.

11.1.1. for resale outside Australia; or

11.1.2. for sale to a third party who will sell those products outside Australia.

11.2. The Customer must indemnify Pernod Ricard Winemakers against all claims, actions, liabilities, charges, expenses, losses damages and costs (whether incurred by or awarded against Pernod Ricard Winemakers) arising out of or in connection with a breach of clause 11.1 by the Customer, except to the extent such claims, actions, liabilities, charges, expenses, losses damages or costs arise as a direct result of any breach of these terms or any gross negligence or wilful misconduct by Pernod Ricard Winemakers.

11.3. Without limiting any other right of Pernod Ricard Winemakers, Pernod Ricard Winemakers may withhold payment of or recover from the Customer (as applicable) all rebates, allowances, discounts and other similar payments due to the Customer by Pernod Ricard Winemakers in respect of or calculated by reference to Pernod Ricard Winemakers products which:

11.3.1. the Customer sells, solicits sales of or promotes outside of Australia; or

11.3.2. which are sold by the Customer to any person whom the Customer knows, believes or ought reasonably to suspect will buy those products for resale outside Australia.

11.4. Pernod Ricard Winemakers may, in its discretion, make the supply of a particular Pernod Ricard Winemakers product to the Customer conditional upon the Customer imposing order restrictions in respect of that product for its customers. Such order restrictions will be notified in writing by Pernod Ricard Winemakers to the Customer from time to time and will apply to products ordered by the Customer after the date of such notification.

11.5. The Customer acknowledges that Pernod Ricard Winemakers may cease supplying products to the Customer if the Customer engages in "loss leader selling" as defined in the Competition and Consumer Act and equivalent State and Territory legislation.

12. Set-Off

Pernod Ricard Winemakers may set off any undisputed amount owed to it by the Customer (including, without limitation, any amount that Pernod Ricard Winemakers is entitled to recover under clause 11.3) against any amount owed by Pernod Ricard Winemakers to the Customer.

13. Bribery & Corruption

Each party:

13.1. must ensure that its obligations under this Agreement are performed in accordance with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption;

13.2. must not engage in any activity which may result in the other party committing an offence under any applicable anti-bribery or anti-corruption laws, statutes, regulations or codes;

13.3. must disclose to the other party any possible violation (and disclose any information reasonably requested by the other party in relation to the possible violation) of its obligations under this clause 13;

13.4. must notify the other party if any allegations of bribery or corruption relevant to the subject matter of this Agreement or to the parties' activities and operations in Australia and New Zealand are made against the first party; and

13.5. acknowledges that the other party may terminate any Agreement with the first party immediately on notice if the first party breaches any of its obligations under this clause 13.