

Terms and Conditions of Sale

Effective June 2022
New Zealand



Pernod Ricard New Zealand

1. General

- 1.1. In these terms "PRWNZ" means "Pernod Ricard Winemakers New Zealand Ltd" and "Customer" means the person, firm, company or other entity to whom PRWNZ products are supplied.
- 1.2. The Customer must give PRWNZ 14 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 PRWNZ by notice in writing to the Customer (following which the varied terms will form part of these terms) and cannot otherwise be varied without PRWNZ's written consent.
- 1.4. Ordering of Products by the Customer will be deemed acceptance of these terms. Notwithstanding anything that may be stated to the contrary in the Customer's orders or other communications, these terms apply to all orders placed by the Customer for PRWNZ products supplied directly by PRWNZ.

2. Prices

- 2.1. The prices charged by PRWNZ are as set out in PRWNZ's applicable price list, as provided by PRWNZ from time to time. Prices are subject to change without notice.
- 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 Goods and Services Tax in the amounts prescribed by relevant legislation, and any other tax, duty or levy applicable.
- 2.3. Prices are subject to any change in the amount of excise duty, GST, 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 PRWNZ.
- 3.2. Supply of products is subject to availability and to any order limits imposed in respect of a product by PRWNZ. PRWNZ may, in its sole discretion, waive the application of an order limit in respect of an order.
- 3.3. PRWNZ 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 PRWNZ's written consent.

4. Delivery

- 4.1. Each Customer shall be entitled to the free delivery of one order of Product per week. Any orders over and above one order per week (Mon – Sun) may incur a delivery charge.
- 4.2. Where PRWNZ has placed a Product on allocation, the allocation per Customer will be cumulative and apply across all orders placed by a Customer in a week (Mon-Sun). Any orders placed by a Customer that exceed the specified allocation in any one week may not be accepted or fulfilled by PRWNZ.
- 4.3. Risk in the products passes to the Customer upon the products leaving PRWNZ's nominated warehouse.
- 4.4. PRWNZ may consign or ship products to the Customer in instalments at varying times.
- 4.5. PRWNZ 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.
- 4.6. Each delivery will be regarded as a separate contract.

5. Payment

- 5.1. Payment terms will, at PRWNZ's 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 PRWNZ. Credit accounts are subject to PRWNZ's standard credit terms and conditions. Credit application forms can be obtained from your PRWNZ representative or from the nearest PRWNZ office.
- 5.3. If the Customer's account has not been paid by the due date, PRWNZ may cease supplying products to the Customer, withdraw credit facilities and/or forfeit allowances. PRWNZ 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).

- 5.4. The Customer must not deduct from the price any set-off, counterclaim or other sum without PRWNZ'S written consent.

6. Retention of Title

- 6.1. Title and property in all products delivered to the Customer is retained by PRWNZ and passes to the Customer only when the Customer has paid all amounts owing to PRWNZ (whether under this agreement or any other agreement or arrangement) in full.
- 6.2. Until PRWNZ have received full payment of all such amounts:
 - (a) the Customer holds the products as bailee for PRWNZ and the Customer must store or identify the Products in such a way that they are clearly recognisable as the property of PRWNZ. If the Customer fails to store or identify the Products in accordance with this clause, the Customer irrevocably appoints PRWNZ as its attorney to determine which products held by the Customer are owned by PRWNZ;
 - (b) notwithstanding that property in the products is retained by PRWNZ, the Customer is authorised to sell the products in the ordinary course of its business but such authority may be revoked by PRWNZ if PRWNZ deems the credit of the Customer to be unsatisfactory or if the Customer breaches any agreement between the Customer and PRWNZ. Such authority is automatically revoked the Customer becomes insolvent;
 - (c) 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 PRWNZ. 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 PRWNZ and thereafter shall be retained by the Customer; and
 - (d) the Customer irrevocably grants PRWNZ 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 PRWNZ.
- 6.3. The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the products without PRWNZ's prior written consent.

7. Personal Property Securities Act

- 7.1. Without limiting anything else in these terms and conditions, the Customer acknowledges that:
 - (a) these terms and conditions are a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999 ("PPSA") (as amended);
 - (b) these terms and conditions create, in favour of PRWNZ, a first ranking security interest, which the Customer consents to PRWNZ 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 PRWNZ to (or for the account of) the Customer to secure the payment by the Customer to PRWNZ of all amounts owing to PRWNZ;
 - (c) 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
 - (d) the Security Interest shall continue until PRWNZ gives the Customer a final release;
 - (e) Nothing in sections 114(1) (a), 133 and 134 of the PPSA will apply to these Terms and Conditions of Sale, or the security under these terms and conditions, and Customer also waives any rights the Customer may have under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 148 of the PPSA.
- 7.2. The Customer undertakes to:

- (a) promptly do all things, sign any further documents and/or provide any information which PRWNZ may reasonably require to enable PRWNZ to perfect and maintain the perfection of its security interest (including by registration of a financing statement or financing change statement);
- (b) give PRWNZ not less than 14 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, facsimile number, trading name or business practice);
- (c) Indemnify (and upon demand reimburse) PRWNZ for all expenses that PRWNZ 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 PRWNZ; and
- (d) not register a financing change statement without the prior written consent of PRWNZ.
- 7.3. The Customer irrevocably appoints PRWNZ and each director of PRWNZ jointly and severally to be the Customer's attorney to give effect to this clause 7:
- (a) sign any instrument on the Customer's behalf; and
- (b) 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 PRWNZ, including future advances.
- 7.5. The Customer shall not agree to allow any person or entity to register a financing statement over any of the products supplied by PRWNZ without the prior written consent of PRWNZ and will immediately notify PRWNZ if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to such products.
- 7.6. The Customer shall not allow the products to become accessions or commingled with other like products unless PRWNZ has first perfected any security interest that PRWNZ has in relation to the products.
- 7.7. The Customer irrevocably grants to PRWNZ 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 PRWNZ has cause to exercise any of PRWNZ's rights under the PPSA, and the Customer shall indemnify PRWNZ from any claims made by any third party as a result of such exercise.
- 7.8. Where the Customer makes a payment to PRWNZ in reduction of any amount owing whether in connection with the supply of products or otherwise, PRWNZ 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.
- 7.9. Notices or documents required or permitted to be given for the purposes of the PPSA must be given in accordance with the PPSA.
- 7.10. Terms defined in the PPSA have the same meaning herein.
- 8. Ullages and Breakages**
- 8.1. PRWNZ will accept faulty and/or out of condition products returned by the Customer provided:
- (a) the products are not out of shelf life;
- (b) the products are returned in their original packaging and the original invoice number is quoted;
- (c) the products were not broken or damaged after delivery; and
- (d) the Customer notifies PRWNZ of its claim within 7 days of delivery of the products.
- 8.2. PRWNZ's 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 the Customer does not quote the original invoice number, PRWNZ may, in its sole discretion, refuse the claim. If PRWNZ decides to accept the claim, PRWNZ reserves the right to apply earlier pricing when crediting the Customer for the products.
- 9. Pallets**
- 9.1. Pallets delivered by PRWNZ 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, PRWNZ 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 provision, these terms contain the entire agreement between PRWNZ and the Customer and all representations, warranties and agreements (whether express or implied and whether statutory or otherwise) are expressly excluded and PRWNZ's liability is limited to the lesser of:
- (a) the cost of replacing the products; or
- (b) the cost of obtaining equivalent products.
- 10.2. PRWNZ will not be liable in any circumstances to the Customer for consequential loss or damages.
- 11. On Supply of Products**
- 11.1. The Customer must not sell, solicit sales of or promote PRWNZ products outside of New Zealand or to any person whom the Customer knows, believes or ought to reasonably suspect will buy those products:
- (a) for resale outside New Zealand
- (b) for sale to a third party who will sell those products outside New Zealand
- 11.2. The Customer must indemnify PRWNZ against all claims, actions, liabilities, charges, expenses, losses damages and costs (whether incurred by or awarded against PRWNZ) arising out of or in connection with a breach of clause 11.1 by the Customer.
- 11.3. Without limiting any other right of PRWNZ, PRWNZ may withhold payment of or recover from the Customer (as applicable) all rebates, allowances, discounts and other payments due to the Customer by PRWNZ in respect of or calculated by reference to PRWNZ products which:
- (a) the Customer sells, solicits sales of or promotes outside of New Zealand; or
- (b) 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 New Zealand.
- 11.4. PRWNZ may, in its discretion, make the supply of a particular PRWNZ 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 PRWNZ to the Customer from time to time.
- 12. Set-Off**
- PRWNZ may set off any amount owed to it by the Customer including, without limitation, any amount that PRWNZ is entitled to recover under clause 11.3) against any amount owed by PRWNZ to the Customer.
- 13. Bribery & Corruption**
- 13.1. The Customer:
- (a) 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;
- (b) must not engage in any activity which may result in PRWNZ committing an offence under any anti-bribery or anti-corruption laws, statutes, regulations or codes;
- (c) must disclose to PRWNZ any possible violation (and disclose any information reasonably requested by PRWNZ in relation to the possible violation) of its obligations under this clause 13;
- (d) must notify PRWNZ if any allegations of bribery or corruption are made against the Customer; and
- (e) acknowledges that PRWNZ may terminate any Agreement with the Customer immediately on notice if the Customer breaches any of its obligations under this clause 13.
- 14. Consumer Guarantees Act**
- The Customer acknowledges that they are not a "Consumer" for the purposes of the Consumer Guarantees Act 1993 and the provisions of that act do not apply.