



# SALE & PURCHASE AGREEMENT [Bulk Wine]

## Terms & Conditions

### PARTIES

- (1) The company, person or firm whose name and address appears at part 1 of the Schedule (the "**Seller**"); and
- (2) The company, person or firm whose name and address appears at part 2 of the Schedule (the "**Buyer**").

### BACKGROUND

- (A) The Seller and the Buyer have been introduced to each other via VINEX.
- (B) The Seller has agreed to sell and the Buyer has agreed to purchase the Product in accordance with the terms of VINEX and the conditions set out in this agreement.
- (C) VINEX is not a party to this agreement.

### IT IS HEREBY AGREED

#### 1. Interpretation

##### 1.1 Definitions:

"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
"Agreement"	the contract between the Buyer and the Seller for the sale and purchase of the Product in accordance with this agreement.
"Encumbrance"	any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement
"Exchange"	The web-based bulk wine trading exchange and business to business marketplace platform operated by VINEX at <a href="http://www.vinex.market">http://www.vinex.market</a> .
"Final Sample"	a final sample of the Product provided by the Seller via VINEX for the Buyer's unconditional acceptance.
"Product"	the wine or wine-grape derived product in a bulk form as more particularly described at part 3 of the Schedule.
"Schedule"	the schedule to this agreement.
"Specification"	the supporting technical specification for the Product provided by the Seller via VINEX for the Buyer's unconditional acceptance.
"VINEX"	Vin-Exchange Ltd, incorporated and registered in England and Wales with company number 9908869 whose registered office is at Level 1, 1 Mayfair Place, London W1J 8AJ

##### 1.2 Interpretation:

- 1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.2 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.3 a reference to **writing** or **written** includes emails.

#### 2. Condition Precedent

- 2.1 This Agreement is conditional upon the Buyer providing, in writing to the Seller (via VINEX) its approval and unconditional acceptance of:

- 2.1.1 the Final Sample; and
- 2.1.2 Technical Specification.

- 2.2 The Buyer must provide the Seller with a style description or benchmark sample, and a technical specification with tolerances before the Seller is obligated to supply a sample for acceptance.
- 2.3 The Seller retains the right to provide up to 3 Final Samples delivered on the same or separate occasions to the Buyer for unconditional acceptance, and the Buyer retains the right to request up to 3 Final Samples delivered on the same or separate occasions for unconditional acceptance.

### **3. Sale and Purchase**

The Seller sells and the Buyer buys the Products free from all Encumbrances.

### **4. The Product**

- 4.1 The Seller undertakes to the Buyer that the Product shall:

- 4.1.1 correspond with the Final Sample and Technical Specification;
- 4.1.2 comply with all applicable statutory and regulatory requirements relating to the manufacture, packaging, storage, handling and delivery of the Product.

- 4.2 The Seller has the right to:

- 4.2.1 over-blend a wine stored on behalf of the Buyer for greater than 6 months, to maintain its condition within the agreed technical specification during the full term of its draw-down. Before an over-blend is undertaken, the Seller must advise the Buyer and provide indicative samples for the Buyer's approval. The Seller must endeavour to closely match the original wine technical specification, and
- 4.2.2 reject the container(s) if provided by the Buyer on receipt, and must within 2 Business Days notify the Buyer of a valid reason for such a rejection.

- 4.3 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement.

- 4.4 The Seller must provide pre-despatch Product samples (min. 2 bottles) to the Buyer on request within 4 weeks of the Despatch Date, and subsequent Despatches if a minimum of 2 months has elapsed since the previous despatch. The samples are to be provided by the Seller at the Seller's cost including freight, and duty (if applicable).

### **5. Price and payment**

- 5.1 The Buyer shall pay the Price on the Payment Terms set out in the Schedule. Payment shall be made in cleared funds to the bank account nominated in writing by the Seller

- 5.2 The Price of the Product:

- 5.2.1 excludes amounts in respect of value added tax or any equivalent duty which may be payable, for which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid tax invoice; and
- 5.2.2 includes the costs of liable by the Seller under the incoterms agreed.

- 5.3 No charges in excess of the Price shall be payable unless agreed in writing between the Buyer and the Seller.

- 5.4 If either party fails to make any payment due to the other under the Agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 5% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.

## 6. Delivery

- 6.1 The Seller shall deliver the Product to the Buyer at the Delivery Incoterm Location on the Delivery Date during the Buyer's usual business hours or as instructed by the Buyer.
- 6.2 The Seller shall ensure that:
- 6.2.1 the Product is properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 6.2.2 delivery of the Product is accompanied by a delivery note which shows the details and date of the order, the type and quantity of the Product, special storage instructions (if any) and, if the Product is being delivered by instalments, the outstanding balance of Product remaining to be delivered; and
  - 6.2.3 if the Seller requires the Buyer to return any packaging material to the Seller, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Seller at the cost of the Seller.
- 6.3 Delivery of the Product shall be completed on the completion of unloading the Product at the Delivery Location.
- 6.4 The Buyer shall have 5 days following delivery to inspect and test the Product.
- 6.5 If following such inspection or testing the Buyer considers that the Product does not conform or is unlikely to comply with the Seller's undertakings at clause 4.1, the Buyer shall inform the Seller within 7 Business Days of the date of Delivery and the Seller shall immediately take such remedial action as is necessary to ensure compliance.
- 6.6 The Buyer may conduct further inspections and tests after the Seller has carried out its remedial actions.
- 6.7 The Seller shall not deliver the Product in instalments without the Buyer's prior written consent. Where it is agreed that the Product is to be delivered by instalments, it may be invoiced and paid for separately. However, failure by the Seller to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in clause 8.

## 7. Title and risk

- 7.1 Risk of damage to or loss of the Product shall pass to the Buyer on completion of delivery
- 7.2 Title in the Product shall pass to the Buyer only on payment in full (in cleared funds) of the Price.
- 7.3 Until title to the Product has passed to the Buyer, the Buyer shall:
- 7.3.1 store the Product separately from all other Products held by the Buyer so that they remain readily identifiable;
  - 7.3.2 maintain the Product in satisfactory condition and keep the Product insured against all risks for the full Price from the date of delivery; and
  - 7.3.3 notify the Seller immediately if it becomes subject to any of the events listed in clause 10.1.2 or 10.1.3.
- 7.4 The Seller may recover Product in which title has not passed to the Buyer. The Buyer irrevocably licenses the Seller, its officers, employees and agents, to enter any premises of the Buyer (including with vehicles), in order to satisfy itself that the Buyer is complying with the obligations in clause 7.3 and to recover any Product in which property has not passed to the Buyer.

## 8. Remedies

- 8.1 If the Product does not comply with the undertakings set out in clause 4.1, and following any remedial action taken in clause 6.5 then, without limiting any of its other rights or remedies, and whether or not it has accepted the Product, the Buyer may exercise any one or more of the following remedies:
- 8.1.1 to reject the Product (in whole or in part) and return them to the Seller at the Seller's own risk and expense;
  - 8.1.2 to require the Seller to replace the rejected Product, or to provide a full refund of the price of the rejected Product (if paid);
  - 8.1.3 to refuse to accept any subsequent delivery of the Product which the Seller attempts to make;
  - 8.1.4 to recover from the Seller any costs incurred by the Buyer in obtaining substitute Product from a third party; and
  - 8.1.5 to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the Agreement.

## 9. Confidentiality

- 9.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 9.2. For the purposes of this clause, **group** means, in relation to a party, that party,

any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

9.2 Each party may disclose the other party's confidential information:

9.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9.2.1; and

9.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

9.4 Each party must not disclose the other's name or brand logo imagery to promote or use in any commercial application, either internally or externally without first obtaining the other party's agreement in writing.

## 10. Termination

10.1 Without limiting its other rights or remedies, the either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

10.1.1 the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 7 Business Days of that party being notified in writing to do so;

10.1.2 the other party, being a company or organisation, takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

10.1.3 the other party, being an individual or sole trader, is the subject of a bankruptcy petition or order; or

10.1.4 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

10.2 Termination of the agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.

10.3 Clauses that expressly or by implication survive termination of the Agreement shall continue in full force and effect.

## 11. Limitation of Liability

11.1 Nothing in this Agreement shall limit or exclude the Seller's liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

11.1.2 fraud or fraudulent misrepresentation;

11.1.3 breach of the terms implied by section 12 of the UK Sale of Goods Act 1979; or

11.1.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

11.2 Subject to clause 11.1:

11.2.1 the Seller shall under no circumstances be liable to the Buyer, whether in agreement, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Agreement, and

11.2.2 the Seller's total liability to the Buyer for all other losses, including shortage or damage arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the Price.

**12. Force majeure**

Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Agreement by giving 7 Business Days' written notice to the affected party.

**13. Language**

13.1 This Agreement is legally binding in the English language, even when drafted in another language.

13.2 Any notice given under or in connection with this Agreement must also be in English. All other documents provided under or in connection with this Agreement must also be in English, or accompanied by a certified English translation.

**14. Counterparts**

14.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

14.2 Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. Without prejudice to the validity of the agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.

14.3 No counterpart shall be effective until each party has executed at least one counterpart.

**15. Mediation and Dispute Resolution**

15.1 If any dispute arises in connection with this Agreement, the parties agree to enter into mediation to settle such a dispute and will do so in accordance with the VINEX Mediation Procedure (as set out in VINEX Terms and Conditions).

15.2 To initiate the mediation, process a party must give notice in writing to the other party to the dispute referring the dispute to mediation and at the same time a copy of such notice should be sent to VINEX.

15.3 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

**16. No partnership or agency**

16.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

16.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**17. Entire agreement**

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**18. Variation**

No variation of the Agreement shall be effective unless it is agreed in writing and signed by the parties.

**19. Waiver**

19.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

19.1.1 waive that or any other right or remedy; or

19.1.2 prevent or restrict the further exercise of that or any other right or remedy.

**20. Severance**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

**21. Further assurance**

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

**22. Notices**

22.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party for the attention of the contact and at the address or email address listed in the Schedule.

22.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 22.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

22.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**23. Third party rights.**

No one other than the two parties to this Agreement shall have any right to enforce any of its terms.

**24. Governing law and Jurisdiction**

24.1 The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of Buyer's jurisdiction.

24.2 Each party irrevocably agrees that the courts of the Buyer's jurisdiction shall have the exclusive right to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**THIS AGREEMENT HAS BEEN ENTERED INTO ON THE DATE  
STATED AT THE BEGINNING OF IT.**