

## PRODUCER TERMS AND CONDITIONS

These Producer Terms and Conditions (**Producer Terms**) are issued jointly by NZ Wine Collective Limited, trading as Wine Collective Direct (**WCD**) and Wine Export Marketers Int. Limited, trading as NZ Wine Home (**WEM**), and apply to each Producer that agrees to become part of WCD's international e-commerce and marketplace website at [www.winecollective.direct](http://www.winecollective.direct) and any apps WCD may publish (**Platform**). These Terms apply also to WEM's associated export and fulfilment services (**Services**).

Before creating a Producer Account and using WCD's Platform and WEM's Services, any producer of New Zealand wine (the **Producer**) must agree to and accept these Terms which form a binding contract between WCD, WEM and the Producer. WCD has sole discretion to determine who qualifies as a producer of New Zealand wine and any other relevant criteria for classification as a **Producer**.

WCD and WEM may change these Terms from time to time using the process set out in clause 9.1.

### 1. Establishing a Producer Account

- 1.1 To access the Platform and Services, an authorised representative of a proposed Producer must apply for an account with WCD (**Producer Account**). WCD will determine the method by which applications may be submitted, processed and accepted and may accept or decline any application at its discretion.
- 1.2 Any person submitting an application for a Producer Account (in their personal capacity and as agent for the proposed Producer) warrants and represents that:
  - (a) the Producer is licensed to lawfully sell and supply alcohol by the means offered on the Platform under the Sale and Supply of Alcohol Act 2012 and is in compliance with any conditions of such licenses held; and
  - (b) all information provided with any account application is true and correct and not misleading (including by omission).
- 1.3 On acceptance, WCD will issue credentials to access the Platform as a Producer, including a Producer ID and Producer password. It is the Producer's responsibility to:
  - (a) keep its Producer ID and Producer password secure and confidential; and
  - (b) notify WCD immediately if the Producer believes that its access credentials are no longer secure and confidential or that there has been any unauthorised access or activity in relation to a Producer Account.
- 1.4 Producers are responsible and liable for all activities that occur under or through Producer Accounts. WCD is not responsible for:
  - (a) verifying the accuracy or completeness of information input into a Producer Account or posted to the Platform; or
  - (b) any unauthorised access to, or interference with, a Producer Account.

### 2. The Platform and Services

- 2.1 WCD has developed a proprietary e-commerce marketplace intended to enable Producers to market and sell their products to consumers in certain overseas jurisdictions.
- 2.2 WCD will notify Producers of the eligible jurisdictions for sales through the Platform from time to time.
- 2.3 WCD will:
  - (a) operate the Platform by using its proprietary software to enable Producers to create an 'e-cellar door' portal within the Platform and complete e-commerce sales to consumers who access the Platform; and
  - (b) provide access to WCD's exclusive export services provider, WEM.
- 2.4 WCD is not a wine retailer or merchant. WCD is not in any way responsible for the sale of goods by Producers on the Platform. Producers acknowledge and agree that WCD does not warrant or represent that the Platform will:
  - (a) be available on an uninterrupted, timely, secure or error free basis;
  - (b) meet the Producer's requirements or expectations;
  - (c) be accurate, reliable or free of viruses or other harmful code (provided that WCD will use all reasonable endeavours to comply with good security practices to screen for and prevent the introduction of any virus or harmful code to the Platform); or
  - (d) result in any revenue or profits for the Producer.
- 2.5 WEM is appointed exclusively by WCD as the sole provider of direct to consumer export services in relation to sales made through the Platform. When sales are made through the Platform, WEM is the legal entity purchasing from Producers (as agent for the consumer) and is responsible for receiving goods sold from the Producer and exporting and procuring final delivery of those goods to the consumer.
- 2.6 The Platform and Services are provided to Producers on a non-exclusive basis. What this means is that nothing in these Terms prevents WCD or WEM from providing access to the Platform and Services to any other person.

### 3. Posting Content and Sales

#### Posting content

- 3.1 The Platform allows Producers to publish advertisements for goods.
- 3.2 When creating an advertisement or posting any content to the Platform, Producers must:
  - (a) provide complete and accurate information that is not misleading;
  - (b) disclose any restrictions and requirements that may apply to the making of any sale or to any promotion;
  - (c) comply with all applicable laws (including laws regulating the sales and marketing of alcohol and the Sale and Supply of Alcohol Act 1992); and
  - (d) comply with any policies, guidelines or directives WCD may issue in relation to Producer advertisements from time to time.
- 3.3 Producers are responsible for keeping any advertisements or other content published to the Platform up to date.
- 3.4 Producers must ensure they publish information to the Platform relating to availability, vintages, bottle sizes and any quantity or volume related differential pricing.

- 3.5 Advertisements and other content published by Producers must not contain terms which conflict with these Terms. WCD reserves the right to refuse to publish any Producer content (or remove without notice any previously published Producer content) if it does not adhere to the requirements of these Terms or is otherwise considered to be detrimental to the operation or reputation of the Platform. WCD is not liable to Producers for any loss or damages whatsoever arising from a decision to refuse to publish (or to remove previously published) Producer content.

#### Prices

- 3.6 Pricing for goods offered for sale by Producers through the Platform is the sole responsibility of the Producer.
- 3.7 Producers must provide prices for goods to be sold through the Platform on a 'net of GST' basis and inclusive of applicable excise duties or ALAC levies.
- 3.8 The Platform will use the prices submitted by Producers and delivery costs (inclusive of taxes, duties and insurance) to enable the Platform to display prices for consumers on an 'all inclusive basis'. The Platform will present pricing in the currency of the consumer's choice based on relevant exchange rates prevailing, but all sales will be made and processed in New Zealand dollars.

#### Sales

- 3.9 The Platform provides a 'direct to consumer' service for Producers. Where consumers elect to purchase goods from a Producer using the Platform, they appoint WEM to complete the purchase on their behalf as agent and concurrently the Producer appoints WEM to sell the goods to consumers on the Producer's behalf as agent. For the avoidance of doubt, the Producer is the legal entity responsible for making the sale.
- 3.10 All purchases made through the Platform will be completed by WEM on behalf of, and as agent for, the consumer. For the purposes of the Goods and Services Tax Act 1985, the Producer acknowledges that WEM and the consumer elect that section 60(2B) of that Act will apply and that, for GST purposes, the supply of Goods through the Platform is to be treated as two separate supplies (first, from the Producer to WEM and then, second, from WEM to the consumer).
- 3.11 The Producer acknowledges that WEM is engaged by the consumer to provide, its export services in order to make delivery of goods to the relevant consumer.
- 3.12 The Producer warrants they will remit excise duties and ALAC levies to the New Zealand Customs Service on every sale made through the Platform. WEM's BCTI's will be issued and calculated on the basis of Producer pricing being inclusive of excise duty and ALAC levies.

#### Payments

- 3.13 Consumers who purchase goods from Producers using the Platform will complete payment using any one or more payment options that may be enabled on the Platform. Producers must not:
- (a) in content posted to the Platform, direct consumers to order and complete sales other than through the Platform; or
  - (b) embed redirects to any alternative e-commerce website in any content posted to the Platform,
- provided that:
- (c) the Producer may encourage consumers to become part of the Producer's wine club (or similar offering) where the Producer has agreed to exclusively use WEM to complete export fulfilment for orders made through the Producer's wine club; and
  - (d) nothing in these Terms prevents or restricts a Producer from independently operating its own e-commerce website or using any other third party e-commerce solution.
- 3.14 All payments made through the Platform will be receipted into WEM's designated funds account (being a designated bank account through which only payments made by Consumers are receipted, held and then distributed in accordance with these Terms and no other transactions conducted) which will be held by WEM in its capacity as agent for the consumer.
- 3.15 WEM will generate IRD approved buyer created tax invoices (**BCTIs**) on a twice monthly basis setting out the relevant sales price for goods sold through the Platform less deductions for shipping costs, tax, duties, levies, other export charges or any other withholdings or deductions required by applicable law (whether in New Zealand or overseas) and Service Fees. Producers agree not to separately invoice WEM in relation to any sales.
- 3.16 WEM will remit net sales proceeds to Producers on the 1<sup>st</sup> or 16<sup>th</sup> of each calendar month (or the next working day where the 1<sup>st</sup> or 16<sup>th</sup> is not a working day), whichever is the earlier date, following confirmation of products being exported from New Zealand.
- 3.17 WCD and WEM may from time to time issue policies, guidelines, or directives in relation to the processing of payments and fees in relation to the Platform and Services which must be read in conjunction with these Terms.

#### Export and fulfilment

- 3.18 Title in goods sold to consumers through the Platform passes directly between Producer and consumer at the point of export.
- 3.19 Export and fulfilment for goods sold by Producers through the Platform will be completed by WEM.
- 3.20 Pricing for the Services will be determined by WEM from time to time, but for the avoidance of doubt will be added to the price nominated by the Producer.
- 3.21 Producers must use all reasonable endeavours to ensure orders are dispatched within one working day of being placed. WEM will provide Producers with purchase/product fulfilment summaries on a daily basis (provided sales are made on that day). Producers must despatch goods in full to WEM's nominated delivery point, in saleable condition and appropriately packed.
- 3.22 Notwithstanding any other provision in these Terms or WEM's terms and conditions, WEM is not liable to a Producer for any loss resulting from an event or occurrence beyond the reasonable control of WCD (including a failure of any information and communications technology infrastructure or networks, an act of God, flood, earthquake, storm, cyclone, fire, explosion, epidemic, war, riot or civil disturbance).

#### 4. Fees

- 4.1 Producers will pay fees and charges to WCD, as Platform operator and provider and WEM as export fulfilment service provider.
- 4.2 WCD will charge Producers fees for the use of the Platform (**Platform Fees**).
- 4.3 WEM will charge Producers a fee, being a percentage of the Producer's nominated price for goods sold on the Platform (**Credit Card & Agent Fee**).
- 4.4 By utilising the Platform and agreeing to these Terms, Producers agree to:
- (a) pay the Platform Fees to WCD; and
  - (b) Service Fees being deducted by WEM at source from WEM's designated account.
- 4.5 WCD and WEM each reserve the right at any time to vary the quantum or basis for calculation of Platform Fees or Service Fees. Continued use of the Platform following such variation is deemed acceptance of those varied Platform Fees and/or Service Fees.

## 5. Privacy, Data Ownership and Use

- 5.1 Personal Information WCD and WEM collect from Producers will be held in accordance with applicable legal requirements (including the Privacy Act 2020).
- 5.2 Producers must comply at all times with their obligations under any applicable data or privacy laws (including the Privacy Act 2020).
- 5.3 Producers own all data submitted by them to a Producer Account and any intellectual property rights that subsist in works published by the Producer to the Platform.
- 5.4 WCD owns all data submitted by, or collected from, consumers or visitors to the Platform.
- 5.5 WCD may use and disclose to any third party any information provided to it by the Producer or any information or statistics generated by the Platform, in each case to assist it in improving the Platform, for data analytics, or other lawful purposes provided that where information is personal information, such information has been fully anonymised and/or aggregated prior to such use or disclosure.
- 5.6 The Producer authorises WCD to identify it as a customer or user of the Platform and to reproduce the Producer's name and logo in any marketing or promotional materials. If the Producer provides WCD with any feedback, suggestions, or other information or ideas regarding the Platform (**feedback**), the Producer hereby assigns to WCD all rights in the feedback and agrees that WCD has the right to use the feedback and related information in any manner it deems appropriate.
- 5.7 WCD may provide consumers and other visitors to the Platform the option to consent to WCD sharing their data or personal information with Producers to enable the Producers to contact consumers directly for marketing purposes. Any such data or personal information provided may only be used by Producers in accordance with all applicable data or privacy laws and a Producer's licence to use such data or personal information may be revoked by WCD at any time without cause and with immediate effect.
- 5.8 The Producer acknowledges and agrees that any intellectual property rights in the Platform (including any software, web client development or interface or API, documentation, branding, domain names, logos, layout, look and feel and any trade marks associated with it) are the sole and exclusive property of WCD (or the relevant licensor of the intellectual property rights as the case may be). The Producer agrees that it will not claim ownership of, or infringe, any intellectual property rights in the Platform.
- 5.9 Nothing in these Terms confers on the Producer any right, title or interest in, or licence to use, or permit or cause to be used, any of WCD's intellectual property rights, except that WCD grants the Producer a non-exclusive limited licence to use the Platform in accordance with these Terms.

## 6. Liability

### Producer's liability

- 6.1 The Producer acknowledges and agrees that:
- (a) it has responsibility and liability for the sale of any of its goods through the Platform; and
  - (b) it is solely responsible for any and all liability and loss which results or is alleged as a result of the goods that the Producer markets and sells through the Platform or any of the Producer's acts or omissions in using the Platform, including any:
    - (i) mispricing of goods, failure to accurately report stock levels, or errors in packing or fulfilment;
    - (ii) personal injury, including sickness or death;
    - (iii) liability relating to damage, loss, delay, destruction of goods or other property; and
    - (iv) liability related to any applicable consumer laws or other laws relating to the sale of goods in any jurisdiction.
- 6.2 The Producer irrevocably indemnifies and holds WCD and WEM (and each of their directors, officers, employees and agents) harmless against any liability, loss, cost or expense (including legal costs on a solicitor-client basis) suffered by WCD, WEM or any of them arising as a direct or indirect result of:
- (a) a claim against WCD or WEM by any user of the Platform relating to any act or omission of the Producer or goods sold through the Platform (including any claim relating to personal injury, including sickness or death);
  - (b) the use of or reliance on any information, data, or other content that the Producer has provided to WCD or WEM;
  - (c) a breach of any statute or applicable law by the Producer,
- provided that the Producer does not indemnify WCD or WEM to the extent that:
- (d) the relevant loss was caused or contributed to by any negligent or wrongful act or omission of WCD or WEM (as the case may be); or
  - (e) the relevant loss is consequential loss or loss of profits (other than a loss of profits that is a reasonably foreseeable consequence of the relevant breach, event, claim or information).

### Exclusion and limitation of Liability

- 6.3 Except where WCD or WEM is in breach of an express provision of these Terms (in which case the Producer may bring a claim for breach of contract), and to the maximum extent permitted by law, under no circumstances will WCD, WEM, or any employees or agents of WCD or WEM be liable to the Producer in contract, tort, equity, statute, regulation or otherwise for any loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Producer or by any other third party, whether direct or consequential (including, but without limitation, any economic loss or other loss of turnover, profits, business or goodwill) arising out of any dispute or contractual, tortious or other claims or proceedings made by or brought against the Producer which relate in any way to use of the Platform or a Producer Account.
- 6.4 If WCD or WEM is in breach of an express provision of these Terms or otherwise becomes liable to a Producer, then each of WCD and WEM's maximum aggregate liability to the Producer will be limited to 20% of the aggregate amount of Platform Fees received by WCD from the Producer in the year preceding the date of the claim. Neither WCD or WEM will be liable to a Producer for any:
- (a) consequential loss or loss of profits; or
  - (b) loss resulting from an event or occurrence beyond the reasonable control of WCD (including a failure of any information and communications technology infrastructure or networks, an act of God, flood, earthquake, storm, cyclone, fire, explosion, epidemic, war, riot or civil disturbance).

## 7. Termination

- 7.1 Either WCD, WEM or the Producer may terminate the legal relationship created by these Terms at any time without cause on one month's notice.
- 7.2 If WCD has reasonable grounds to believe that:
- (a) the Producer is in breach of these Terms or any of WCD's policies in relation to the Platform;
  - (b) the Producer is insolvent or is otherwise not a fit and proper person to use the Platform; or
  - (c) the Producer's use of the Platform is or may cause reputational damage to the Platform or other Producers using the Platform,

then WCD may:

- (d) suspend the Producer's use of the Platform until such time as WCD is satisfied the grounds above no longer apply; or
- (e) immediately terminate these Terms and exclude a Producer from using the Platform by notice in writing.

7.3 Termination or cancellation of a Producer's use of the Platform and the Services will not affect the rights, powers, remedies, obligations, duties or liabilities of any party which have accrued prior to termination.

7.4 If a Producer exercises its right to terminate these Terms, it acknowledges and agrees that WCD may immediately remove the Producer and any content published or submitted by the Producer from the Platform without liability.

## 8. Disputes

### Consumer disputes

8.1 Producers must endeavour in good faith to resolve any disputes with consumers directly with them in a manner intended to promote the reputation of the Platform and the Producer.

### Disputes between the parties

8.2 The parties will use all reasonable endeavours in good faith to amicably resolve any dispute between them arising under or in connection with the Producer's use of the Platform or the Services.

8.3 If the dispute cannot be resolved within 20 working days of being notified, then either party may exercise all rights and remedies available to it at law in relation to that dispute (including by commencing proceedings).

8.4 No party may issue any legal proceedings (other than for urgent injunctive, interlocutory or declaratory relief) in respect of such dispute, unless that party has taken all reasonable steps to comply with this clause 8.

## 9. General

### Amendments to these Terms

9.1 WCD and WEM reserve the right to amend or replace these Terms from time to time. Amendments will be effective immediately upon being notified to the Producers.

Not a consumer

9.2 The Producer acknowledges and agrees, for the purposes of the Consumer Guarantees Act 1993 (**CGA**) and Fair Trading Act 1986 (**FTA**), that the use of the Platform and the Services are not ordinarily acquired for personal, domestic or household use. Accordingly, without limiting this clause 9.2, the provisions of the CGA and FTA which apply to "consumer" services do not apply.

### Fair Trading Act 1986

9.3 To the extent permitted by law, the Producer and WCD and WEM, all being in trade, acknowledge and agree that they are contracting out of sections 9, 12A and 13 of the FTA in respect of all matters covered by these Terms.

Further assurances

9.4 The Producer must, at its own expense, do all things and execute all documents as reasonably necessary to give full effect to the provisions and intentions of these Terms.

### Discretion of exercise of rights

9.5 A party may exercise a right or remedy or give or refuse its consent, approval or agreement in the discretion of that party (including by imposing conditions), unless these Terms expressly state otherwise.

### Waiver

9.6 A waiver of any breach of these Terms or any right, power or remedy under, or in connection with, these Terms (including a right of termination) is not effective unless that waiver is in writing and is signed by the party granting the waiver. A failure to exercise, a delay in exercising, or a partial exercise of, any right, power or remedy under, or in connection with, these Terms does not operate as a waiver of such right, power or remedy. A waiver of any breach is not, or is not deemed to be, a waiver of any other or subsequent breach.

### Entire agreement

9.7 These Terms constitute the entire agreement of the parties concerning the subject matter of these Terms, and supersede and cancel any previous representations, agreements, understandings or arrangements (whether written or oral) between the parties.

### Relationships

9.8 The relationship of WCD and WEM to the Producer is that of an independent supplier to its customer. Nothing in these Terms is intended to constitute a relationship of employment, trust, agency, joint venture, partnership or any other fiduciary relationship between the parties. No party has authority to bind or incur debts on behalf of the other party.

Severability

9.9 If any provision of these Terms is illegal, invalid or unenforceable then:

- (a) where that provision can be modified to give it a valid and enforceable operation of a partial nature, it must be modified to the minimum extent necessary to achieve that result; and
- (b) in any other case the provision must be severed from these Terms, in which event the remaining provisions of these Terms operate as if the severed provision had not been included.

### Governing law and jurisdiction

9.10 These Terms are governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining all disputes under, or in connection with, these Terms.