

# C R A G G Y R A N G E

VINEYARDS LTD

## EXPORT ACCOUNT

**Application for Credit to:** \_\_\_\_\_

Trading Name: \_\_\_\_\_

Legal Name: \_\_\_\_\_ ("The Purchaser")

Postal Address: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Mobile Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

**BUSINESS ENTITY - Tick Box**

Company:

Partnership:

Sole Trader:

Company No. \_\_\_\_\_ GST no. \_\_\_\_\_

Company Registered Office Address: \_\_\_\_\_

Banker: \_\_\_\_\_

Business Activity: \_\_\_\_\_ Years in Business: \_\_\_\_\_

**NAME OF DIRECTORS, PROPRIETORS, PARTNERS:**

Full Name: \_\_\_\_\_ Residential Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**TRADE REFERENCES - Two Current References:**

Name: \_\_\_\_\_ Phone no.: \_\_\_\_\_ Email Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ACCOUNT ADMINISTRATION:**

Name of Contact Person: \_\_\_\_\_

Orders: \_\_\_\_\_ Phone no. \_\_\_\_\_ Email Address: \_\_\_\_\_

Accounts: \_\_\_\_\_

I/We have read the Company's Export Terms of Trade detailed below which will apply in respect of all contracts for the supply of goods and services.

**PURCHASER NAME:** \_\_\_\_\_

**SIGNED BY:** \_\_\_\_\_ **POSITION:** \_\_\_\_\_

**As an authorised person on behalf of the Purchaser** **DATE:** \_\_\_\_\_

## TERMS AND CONDITIONS OF SALE

### Interpretation

1. In these terms and conditions:
  - (a) The "Company" means Craggy Range Vineyards Limited (and its subsidiaries) that supplies goods or services to the Purchaser;
  - (b) "Contract" means the contract between the Company and the Purchaser for the purchase of the Goods;
  - (c) The "Purchaser" means the person, company or other entity to whom such goods or service are sold by the Company pursuant to these terms and conditions;
  - (d) "Goods" means the wine and other products supplied by the Company to the Purchaser and, in respect of each order of goods from the Purchaser accepted by the Company, means the goods described in the invoice issued by the Company to the Purchaser in respect of the relevant order, and any services related thereto;
  - (e) The Company supplies all goods and services to every Purchaser, notwithstanding anything that may be stated to the contrary in the Purchaser's enquires or on the Purchaser's orders or otherwise by the Purchaser, upon the terms and conditions set out below and are deemed to include the invoice issued by the Company in respect of the relevant order;
  - (f) Without limiting the generality of the foregoing, the ordering of goods or services by the Purchaser will be deemed to be acceptance by the Purchaser of these terms and conditions;
  - (g) All prices and all payments for Goods are in New Zealand dollars unless expressly stated otherwise.

### Price

2. The Purchaser shall pay the price indicated on the invoice, order form or other similar document issued by the Company.
3. In addition to the price payable under Clause 2 the Purchaser shall pay any Goods and Service Tax and any other taxes, duties and levies payable in respect of the supply of goods or services as at the date of the invoice.
4. The Company may alter prices without notice and the purchase price of goods or service may be different from the price quoted or the price current when the goods or services are ordered.
5. The Purchaser shall make all payment due to the Company in full without any deductions, whether by way of set off, counter-claim, or any other equitable or legal claim.

### Payment

6. Payment for domestic sales shall be made on monthly or weekly terms as specified by the Company. Where the Purchaser is paying on monthly terms, payment is due by the 20<sup>th</sup> day of the month following the date of delivery. Where the Purchaser is paying on weekly terms, payment is due within 7 days following the date of statement.

Payment for export sales shall be made on a specified number of calendar days from the date of shipment (as evidenced by the Bill of Laden) as specified by the Company.
7. If the Purchaser does not pay the amount due by the due date, the Company may charge a default penalty at a rate per annum equal to 5% above the retail lending base rate charged by their bankers on the date the amount fell due and calculated on a daily basis on the unpaid amount from the due date until payment in full.
8. Alterations to any price list shall be effective from the date specified by the Company at the time of giving notice to the Purchaser.
9. The Company reserve the right to impose a credit limit at any time, which may be altered at the Company's discretion with effect from the date the Company notifies the Purchaser of the change.
10. If the Company at any time considers the credit of the Purchaser to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under the Contract until it is provided. All costs and expenses of or incurred by the Company as a result of such suspension and any recommencement shall be payable by the Purchaser upon demand.
11. If required by the Company, prior to shipment of any Goods the Purchaser shall arrange a letter of credit ("LOC") drawn in favour of the Company and issued by a bank that is approved by the Company and for the amount of the invoice that is payable by the Purchaser, all at the cost of the Purchaser. The Company shall not be under any obligation to ship any Goods until the LOC is issued to the Company upon the specified terms.

### Purchase Order and Delivery

12. The Purchaser shall complete a purchase order for any order of Goods as required by the Company and which shall include all information required by the Company including (but not limited to):
  - (a) Shipping terms (FOB Incoterms, unless otherwise agreed with the Company).
  - (b) Target delivery date, subject to shipping schedules.
  - (c) Shipping method (LCL (less than full container load, or FCL (full container load))). N.B. LCL shipments shall be palletised, and for FCL shipments the Purchaser shall confirm if cases are to be palletised or loose stacked. FCL containers shall be 20ft standard containers, non-refrigerated.
  - (d) Any specific packaging requests, subject to agreement by the Company.
  - (e) Purchaser's shipping agent name, contact details and shipment delivery address.
13. Any time stated for delivery is an estimate only and shall not be of the essence of the Contract.
14. The Company shall obtain, at its own cost, any necessary permits, certifications, or other authorisations, statutory or regulatory, to enable shipment of the Goods.
15. For the purposes of this Contract, delivery shall be complete when:
  - (a) The relevant Goods are uplifted from the Company's premises (if the Goods are uplifted by the Purchaser, or the Purchasers agent); or

- (b) The Goods are delivered to the Purchaser's nominated address or premises (if the Goods are delivered to the Purchaser by the Company pursuant to clause 16).
16. The standard sea freight shipping terms of the Company are FOB Incoterms 2000 (Free on Board). Unless expressly agreed to the contrary between the Company and the Purchaser upon confirmation of any purchase order the Company will arrange for the delivery of the Goods upon those specified shipping terms to the Purchaser, or to a place specified by the Purchaser. The Purchaser will reimburse the Company the full amount of delivery costs if demanded by the Company. Should the Company fail to deliver any instalment within the time specified or a reasonable time thereafter, this shall not give the Purchaser any right of repudiation or rejection in respect of that or any other instalments.

#### **Risk and Insurance**

17. Risk of any loss, damage or deterioration of or to the Goods passes to the Purchaser on delivery (as defined in clause 15).
18. Notwithstanding clause 17, if the Goods are delivered by the Company pursuant to clause 16, the Purchaser agrees that the Goods shall be at the sole risk of the Purchaser from the time the Goods are loaded for despatch to the Purchaser from the Company's premises. The Purchaser agrees (at the Purchaser's expense) to ensure the Goods are under an enforceable comprehensive policy or policies of insurance in both the Company's and the Purchaser's name for an amount equal to the full insurable value of the Goods, against fire, accident, malicious damage, theft and such other risks as the Company may from time to time require. The Purchaser shall pay all premiums payable in respect of such policy or policies on the due date and produce proof of payment to the Company within 7 days of any request from the Company. Notwithstanding the above, such insurance may be arranged by the Company at a price to be agreed between the Company and the Purchaser.

#### **Ownership**

19. Ownership of the Goods remains with the Company and shall only pass to the Purchaser when the Contract Price and all moneys payable to the Company by the Purchaser when the Contract Price and all moneys payable to the Company by the Purchaser (whether under the Contract or otherwise) have been paid in full or the Goods are resold pursuant to the authority granted by clause 20(c).
20. While ownership of the Goods remains with the Company:
- (a) The Purchaser must store them separately or clearly identify them as belonging to the Company.
  - (b) the Company authorises the Purchaser in the ordinary course of the Purchaser's business to use the Goods or sell them for full consideration. This authority is revoked from the earlier of:
    - (i) the Company notifying the Purchaser in writing that this authority is revoked because of the Purchaser's failure to comply with its obligations under the Contract or any other contract between the Company and the Purchaser, or because the Company deems the credit of the Purchaser to be unsatisfactory; or
    - (ii) The Purchaser committing an act of bankruptcy, entering into any composition or arrangement with its creditors, or (in the case of a company), the Purchaser doing any act which would render it liable to be liquidated or a resolution being passed or an application being made for liquidation, or a receiver or statutory manager being appointed over any of its assets; or
  - (c) The Purchaser authorises the Company to enter the premises where the Goods are stored and remove them. the Company may resell any of the Goods and apply the proceeds of sale in reduction of the Purchaser's indebtedness.
21. Where Goods in respect of which ownership has not passed to the Purchaser are sold by the Purchaser pursuant to the authority granted by clause 20(c), any book debt created upon the sale of such Goods and the proceeds of sale of such Goods, when received by the Purchaser, shall be held upon trust by the Purchaser for the Company and any proceeds of sale received by the Purchaser shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Purchaser to the Company and thereafter shall be retained by the Purchaser. However, the Company authorises the Purchaser to deal with any such proceeds of sale received by the Purchaser as if such proceeds of sale were the absolute property of the Purchaser. This authorisation is revoked on the happening of the same events outlined in clause 20 (b) (i) and (ii) above.

#### **Right of Set Off**

22. The Company may apply (without prior notice) all or part of any credit balance with the Company towards satisfaction of any amount owing (whether or not due to payment) by the Purchaser to the Company.
23. If at any time any amount is contingently due or is not quantified, the Company may retain and withhold repayment of any credit balance the Purchaser may have with the Company pending such amount becoming due or being quantified.
24. The Company shall not be obliged to exercise any of its rights conferred by this clause. The exercise or non-exercise of those rights shall not affect, impair or otherwise, detract from:
- (i) Any securities or other documents held now or in the future by the Company, to secure any indebtedness which may be the subject of a set of hereunder, or
  - (ii) Any rights, privileges, or directions available to the Company, or any of its subsidiaries under general law, under any security or other documents or otherwise howsoever, and shall be without prejudice and in addition to such rights, privileges, and directions.
25. The Purchaser may not assign any credit balance, which it may have with the Company and undertakes not to attempt any such assignment.

#### **Personal Property Securities Act**

26. The Purchaser grants to the Company a security interest in all Goods as security for all amounts owing by the Purchaser to the Company and performance of the Purchaser's obligations under these conditions of sale. If any of these conditions of sale are not complied with then the Company reserves the right to demand immediate and full payment of accounts and the Company may exercise any and all remedies afforded to a secured party by Part 9 of the Personal Property Securities Act 1999 and enter any building or premises owned occupied or used by the Purchaser to locate and re-take possession of any Goods supplied by the Company.
27. The Purchaser acknowledges receipt of a copy of these conditions of sale and waives any right it may have to receive from the Company a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to these conditions of sale.

#### **Change in Ownership**

28. The Purchaser must immediately advise the Company if there is any change in the ownership or effective control of the Purchaser. the Company may terminate any trading account the Purchaser has if there is a change in ownership or effective control of the Purchaser and may stop supplying any Goods to the Purchaser.

**Short Delivery**

29. Any delivery, which is less than the quantity ordered, must be reported to the Company within 48 hours of the receipt of the Goods.

**Return of Goods**

30. The Purchaser shall not be entitled to return to the Company any Goods for credits unless:

- (a) The Goods are defective; and
- (b) The defect is reported by the Purchaser to the Company within 7 days following delivery; and
- (c) the Company agrees the Goods are defective; and
- (d) The Purchaser provides evidence of the particular invoice under which the Goods were supplied together with the date on which the Goods were delivered to the Purchaser.

31. The Purchaser agrees that any costs incurred in returning any defective Goods to the Company shall be paid by the Purchaser.

**Claims**

32. The Company accepts no liability for any claim by the Purchaser or any other person, including without limitation, any claim relating to or arising from:

- (a) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
- (b) Any representations, warranties, conditions or agreements made by any agent or representative, which are not expressly confirmed by the Company in writing, and the Purchaser agrees to indemnify the Company against any such claim. In any event, the liability of the Company under any such claim shall not exceed the price of the Goods.

33. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Purchaser acquires Goods from the Company for the purposes of business in terms of sections 2 and 43 of that Act.

34. These conditions of sale are intended to have the effect of contracting out of the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 to the fullest extent permitted by those Acts, and these conditions of sale are to be varied to the extent necessary to give effect to that intention.

**Use of Information**

35. The Purchaser agrees that the Company may obtain information about the Purchaser from the Purchaser or any other person (including any credit or debt collection agencies) in the course of its business, and the Purchaser consents to any person providing The Company with such information.

36. The Purchaser agrees that the Company may give any information it has about the Purchaser relating to the Purchaser's credit worthiness to any other person, including any credit or debt collection agency, for credit assessment and debt collection purposes.

**Assignment**

37. The Company shall be entitled to assign to any other person or company all or any part of the Purchaser's indebtedness to the Company and the assignee shall be entitled to claim all or part of the indebtedness and shall have the same rights of recovery as the Company.

**Non-Waiver**

38. If at any time the Company does not enforce any of these terms or grants the Purchaser time or other indulgence, the Company shall not be construed as having waived that term or condition or its right to later enforce that or any other term or condition.

**Circumstances Beyond the Company's Control**

39. The Company shall not be liable for any failure to supply goods or services or meet any other obligation owed to the Purchaser where such failure results from fire, flood, industrial dispute, act of government (such as a change in legislation, regulation, or order made under legislative authority), or other circumstances beyond the Company's control.

**Severability**

40. Where any provision or part of a provision of the Contract is rendered void, unenforceable or otherwise ineffective by operation of law, that provision or part of a provision shall be severed from this Contract and the Contract shall be construed and continue to be enforceable but with such provision or part of a provision removed.

41. These terms of sale are entered into on behalf of and are intended to bind and endure to the benefit of the Company and the Company and the Company's successors and assigns.

**Costs**

42. The Purchaser shall upon demand pay all of the expenses and legal costs, including actual fees and disbursements, incurred by the Company in connection with the registration of a financing statement or financing change statement relating to the security interest created by this agreement or obtaining an order under section 167 of the Personal Property Securities Act 1999 or the collection of over due monies or the exercise, enforcement or preservation of any right or interest under this agreement or any other contract with the Purchaser.

**Governing Law**

43. The laws of New Zealand govern these conditions of sale and their application and enforcement.