

DIRECT WINES
PRODUCTION



Trade Account Application

Business Information		
Company Name:		
Registered Address:		
City:	Country:	Postcode
Date Business Commenced:		
Company Registration Number:		
Business Type:		
Sole Proprietorship	Partnership	PLC
LLC	Other:	LTD

Contact Information	
Finance Contact Name:	
Phone:	E-mail:

Operations Contact Name:	
Phone:	E-mail:

Credit Information	
Credit Limit Required:	Currency of Payment: GBP EUR AUD
Please note: From 1 April 2019, for orders fulfilled from the United Kingdom, all payments must be made in GBP unless otherwise agreed in writing with Direct Wines Production.	
Bank Name:	
Sort Code:	Account Number:
IBAN:	SWIFT Code / BIC:
Branch Address:	
Post Code:	

Invoice Address (If different from registered address)		
Contact:		
Address:		
City:	Country:	Postcode
Additional Requirements:		

Delivery Information (If different from registered address)		
Contact:		
Address:		
City:	Country:	Postcode
Additional Requirements:		

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Import Requirements
Movement Guarantee Number:
Specific Label / Case Requirements (e.g. Translated language / Imported By):
Specific Pallet Requirements (eg Fumigated Export):
Paperwork (eg Certificate of Origin):
Additional Requirements:

Trade References	
Reference 1	Reference 2
Company Name:	Company Name:
Contact:	Contact:
Address:	Address:
City:	City:
Country:	Country:
Postcode:	Postcode:
Phone:	Phone:
E-mail:	E-mail:

Agreement

- 1- By submitting this application the applicant authorises Direct Wines Production (Direct Wines Ltd) to make enquires into the banking, credit and trade references that have been supplied.
- 2- All invoices are to be paid 30 days from the date of invoice – Subject to credit approval.
- 3- We hereby confirm that we have read, understood and retained a copy of Direct Wines Production's (Direct Wines Ltd) Terms & Conditions and agree to trade in accordance with these for any goods supplied. We accept that title to all goods supplied to us will remain vested in Direct Wines Production (Direct Wines Ltd) until all outstanding amounts have been settled in full to Direct Wines Production (Direct Wines Ltd).

Authorisation

Signature:

Name:

Date:

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Terms & Conditions of Sale

1. Definitions

“**Contract**” means the contract for sale and purchase of Goods in accordance with these Terms.

“**Customer**” means the person firm or company who accepts the Seller’s quotation for the sale of Goods, orders the Goods and whose order for Goods is accepted by the Seller.

“**Goods**” means all those wines and other goods or services supplied by the Seller.

“**Group**” means in relation to a company, that company, any subsidiary or holding company for the time being of that company, and any subsidiary for the time being of a holding company of that company.

“**Holding Company**” and “**Subsidiary**” means a holding company and subsidiary as defined in s1159 of the Companies Act 2006.

“**Seller**” means Direct Wines Production (part of Direct Wines Ltd).

“**Terms**” means the standard terms and conditions of sale of the Seller as set out in this document to which all Contracts shall be subject. These Terms supersede any terms and conditions of the Customer.

“**Order**” means a request by the Customer for Goods subject to these Terms and submitted as a purchase order (which should include a reference number) signed by an authorised representative of the Customer.

The headings in these Terms are for convenience only and shall not affect their interpretation.

2. The Contract

- 2.1. Unless otherwise agreed in writing between the parties, all Orders are accepted by the Seller only under these Terms and these Terms shall be the sole terms and conditions of any sale by the Seller to any Customer. The Terms may not be altered except with the written agreement of a Company Director or authorised representative of the Seller. Any contrary or additional terms unless so agreed are excluded. The placing of an Order for or the acceptance of Goods by the Customer shall indicate unqualified acceptance of these Terms.
- 2.2. Orders are subject to acceptance by the Seller and availability of Goods at the time of delivery. Substitutions for out of stock items will only be made with the Customer’s Agreement.
- 2.3. These Terms supersede all previous oral or written representations, undertakings and agreements relating to the Goods.
- 2.4. The Seller reserves the right to revise or change the style of labels and packaging at any time to make any changes in the specification of the Goods which are required to conform with any applicable health, safety or other statutory and/or E.U. requirements or, where the Goods are to be supplied to the Seller’s specification, which do not materially affect their quality or performance. To the extent that the Seller makes any changes to its labels as a result of any applicable health and safety regulations or other statutory requirements in the Customer’s territory or otherwise at the request of the Customer, the Customer shall bear all of the Seller’s costs in relation to such changes (including but not limited to the costs of re-designing, printing and applying the labels).
- 2.5. The Seller shall not be liable in respect of any misrepresentation made by the Seller its employees or agents to the Customer as to the condition or quality of the Goods as far as English law allows or unless the representation is made or confirmed in writing by the Seller.
- 2.6. While the Seller takes every precaution in the preparation of its catalogues, price lists and other literature these documents are for the guidance of the Customer only and statements therein shall not constitute representations by the Seller and the Seller shall not be bound by them. Any typographical, clerical or other error or omission in any sales literature, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

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- 2.7. In order to protect the legitimate business interests of the Seller, the Customer covenants with the Seller for itself and as agent for each Group Company that it shall not, and shall procure that no member of its Group shall, except with the prior written consent of the Seller purchase any wine or related goods and services from any Restricted Supplier.
- 2.8. The Customer shall be bound by the covenant set out in clause 2.7:
- 2.8.1. for so long as it purchases Goods from the Seller on these Terms; and
- 2.8.2. for a period of 12 months from the date of its last purchase of Goods from the Seller on these Terms.
- 2.9. For the purposes of clauses 2.7 to 2.9, a Restricted Supplier shall mean any firm, company or person who is or has been at any time during the immediately preceding 12 months a supplier of goods to the Seller or any member of its Group.

3. Price Payment and Credit

- 3.1. The price payable for Goods shall be that stated in the Seller's price list current at the date of delivery unless otherwise agreed in writing by the Seller. Seller quotations and prices are based on costs and excise duty prevailing at the time when they are given or agreed. All prices quoted are exclusive of Value Added Tax which is payable at the rate ruling at the date of delivery unless zero rated or exempt from VAT.
- 3.2. The prices of Goods stated in either the Seller's general price list or any Customer specific price list including its website are subject to alteration without prior notice and will be reviewed at least once in a calendar year. Specifically (and without limiting the foregoing) prices are subject to alteration to reflect changes in duty or foreign exchange rates and variations in the prices charged to the Seller by their suppliers.
- 3.3. Any discounts, deductions, allowances, listing fees or rebates are specific to the Customer and must be agreed in advance and are only available if all sums due from the Customer to the Seller are paid by the due date. In the event of late payment the Seller shall be entitled to remove any discounts, deductions, allowances, listing fees or rebates (including on any other orders with the Customer) and re-invoice the Customer for the Goods at the full price stated in its then current price list.
- 3.4. The Seller shall be entitled to invoice the Customer for the price of Goods on or at any time after an Order has been placed. Payment details including the invoice due date shall be set out on each individual invoice.
- 3.5. The Seller may at its sole discretion set up a credit account for the Customer. The Seller shall be entitled, at its sole discretion, to refuse or at any time to withdraw a credit account without giving a reason. In accepting the offer of a credit account the Customer agrees that the Seller may make periodic searches with credit reference agencies and fraud prevention agencies to manage the Customer credit account. The Seller shall not disclose any information obtained carrying out such searches to any third party outside its holding company, subsidiaries or affiliates from time to time without the Customer's consent except as may be required by law.
- 3.6. If payment is not made by the invoice due date by the Customer then the Seller, may without prejudice to its other rights, charge interest at an annual rate of 4% above the current base rate of Barclays Bank plc to be calculated on a day to day basis on the balance outstanding until payment is made in full.
- 3.7. As the Seller hedges quarterly on currency other than pounds sterling, further charges may apply to late payments of non-sterling invoices. This clause is without prejudice to clause 3.6.

4. Orders and Delivery

- 4.1. The Customer may cancel an Order free of charge prior to acceptance of the Order by the Seller. The Seller will be entitled to refuse cancellation or apply a charge for orders cancelled after this point.
- 4.2. Delivery shall take place when the Seller or its carrier unloads the Goods at the Customer's premises (if the Seller arranges transport at the Customer's request) or when the Customer or its carrier or agent collects the Goods from the Seller's premises or, in the case of Free on Board orders, when the Seller or its carrier hands over to the Customer or its carrier at the port of departure. If the Customer fails to take or make arrangements to accept delivery or collect the Goods or if the Seller is unable to deliver because of inadequate access or

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instructions delivery shall be deemed to have occurred and the Seller may do any one or more of the following (without prejudice to any other right or remedy the Customer may have):-

1. Make additional charges for failed delivery;
2. Store the Goods at the Customer's risk and cost;
3. Terminate this Contract without liability on the Seller's part; and/or
4. Recover from the Customer all costs and losses incurred by the Seller.

- 4.3. Without prejudice to clause 4.2, in relation to any bespoke wines ordered by the Customer, If the Customer fails to take or make arrangements to accept delivery or collect the Goods or if the Seller is unable to deliver because of inadequate access or instructions delivery shall be deemed to have occurred and the Seller may store the bespoke wines at the Customer's risk and cost.
- 4.4. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence.
- 4.5. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control, or the Customer fault, and the Seller is accordingly liable to the Customer, the Seller's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods. The Customer will indemnify the Seller in respect of all losses damages costs and expenses incurred as a result of delivery in accordance with the Customer's instructions. This indemnity will be reduced in proportion to the extent that such losses damages costs or expenses are due to the Seller's negligence.
- 4.6. To the extent that Goods are delivered under any excise duty suspension system, the Customer shall comply with any reporting obligations relating to the receipt of the Goods in the time limits imposed by any such system. If the Customer fails to comply with its obligations under this clause 4.6: (i) it shall be liable for any costs, losses, fines or penalties that the Seller incurs as a result; and (ii) the Seller may, in its absolute discretion, elect to withhold any further Goods until such time as the Customer has fulfilled its obligations under this clause 4.6.

5. Inspection of Goods

- 5.1. The Customer shall inspect the Goods at the place and time of loading if the Goods are collected and unloading if the Goods are delivered.
- 5.2. Unless the Seller is notified forthwith and written notice is received by the Seller within 5 working days of loading or unloading as the case may be of any claim apparent on reasonable inspection for loss or damage in transit, short delivery or failure to conform to the Contract the Goods will be deemed to have been delivered in accordance with the delivery documents and accepted by the Customer and the Customer shall not be entitled to any right to reject the Goods.
- 5.3. The Seller's liability for loss or damage in transit, short delivery, failure to conform to the Contract or apparent on reasonable inspection is limited to supplying the Goods as ordered and the Seller shall not be liable for any damages whatsoever. The Customer remains liable to pay the full invoice price of other Goods delivered in accordance with the Contract.

6. Title Risk and Lien

- 6.1. Without prejudice to the retention of title set out in this clause 6, risk of loss or damage to the Goods shall pass to the Customer upon delivery or attempted delivery of the Goods in accordance with clause 4.2.
- 6.2. The Seller shall retain title to and ownership of all Goods until it has received payment in full of all sums due for all Goods supplied to the Customer
- 6.3. Until title in the Goods passes to the Customer it may use or resell the Goods in the ordinary course of its business as principal and not as the Seller's agent provided always that the Customer shall hold in trust and

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pay to the Seller on demand the proceeds of any such sale to the extent that any monies are owed by the Customer to the Seller on any account. Until title passes to the Customer or until the Customer resells the Goods the Customer shall hold the Goods as the Seller's fiduciary agent and bailee, shall keep the Goods stored separately from any other goods so that they remain readily identifiable as the Seller's property, protected and insured, and shall not interfere with any identification marks, labels, batch numbers or serial numbers on the Goods.

- 6.4. If a Customer fails to make any payment to the Seller when due, and/or compounds with its creditors, and/or executes an assignment for the benefit of its creditors, and/or has a bankruptcy order against it and/or, being a company, enters into a voluntary or compulsory liquidation or has an administrator or administrative receiver appointed over all and/or part of its assets or takes and/or suffers any similar action in consequence of debt and/or becomes insolvent or if the Seller has reasonable cause to believe that any of these events is likely to occur, the Seller shall have the right, without prejudice to any other remedies:
- 6.4.1. At any time to recover any or all of the Goods to which it has title and for that purpose the Seller its employees or agents may with such transport as is necessary enter upon any premises occupied by the Customer or to which the Customer has access and where the Goods may be or are believed to be situated; 6.4.2. to dispose of the repossessed Goods owned by it so as to discharge any sums owed to it by the Customer under this Contract or any other contract;
- 6.4.3. To require the Customer not to resell or part with possession of any Goods owned by the Seller until the Customer has paid in full all sums owed by it to the Seller under this Contract or any other contract.
- 6.5. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Seller, but if the Customer does so, all monies owing by the Customer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 6.6. Without prejudice to the foregoing none of the Goods are supplied on a "sale or return" basis.

7. **Warranty**

- 7.1. The Seller warrants that the Goods will correspond with any description given in its price list or specification and be of satisfactory quality and will comply with all applicable UK legislation governing the sale of the Goods and the Seller will at its option refund the purchase price of, or replace free of charge any Goods which its examination confirms are defective provided:
1. Customer makes a full inspection of the Goods immediately upon delivery;
 2. Customer notifies the Seller immediately of any defects which it discovers;
 3. Customer provides a proof of purchase;
 4. Customer provides the production LOT or BATCH number;
 5. Customer has stored the Goods in a suitable environment and at the appropriate temperature
 6. Goods are either made available to the Seller for inspection or returned to the Seller in their original condition and packaging, as the Seller may request.
- 7.2. For Fine Wine and wines sold "en primeur" section 7.1 only applies where the Seller has a returns agreement with the source supplier, chateau or property.
- 7.3. In all cases, claims must be made by the Customer only.
- 7.4. In no circumstances shall the Seller's liability to the Customer for any breach of warranty exceed the price paid for the Goods in respect of which the claim is made.
- 7.5. Except as provided for in these Terms there are no warranties, express or implied, of fitness for a particular purpose or of any other kind except as to title. In particular, all Terms and warranties which would otherwise

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be implied by statute or under common law are hereby excluded to the fullest extent permitted by law.

- 7.6. No refund, credit or replacement will be given for out of date Goods unless they are validly rejected for being out of date when delivered to the Customer.

8. Limitation of Liability

- 8.1. Nothing in these Terms shall exclude or restrict the Seller's liability for death or personal injury resulting from the Seller's negligence.
- 8.2. The Seller shall under no circumstances be liable to the Customer for any claim (whether arising in or for contract, tort (including negligence) breach of statutory duty, misrepresentation or otherwise) under or in connection with these Terms for any indirect, special or consequential loss or for any loss of anticipated profit or third party claims howsoever arising either from breach or non-performance of any of its obligations under the Contract or from the supply of or intended used of the Goods, even if the Seller has been advised of the possibility of such potential loss.
- 8.3. The Seller shall not be liable for any damage to Goods caused by storage of such Goods by or on behalf of the Customer in unsuitable conditions or in breach of any instructions provided by the Seller.
- 8.4. The total aggregate liability of the Seller in respect of any loss or damage suffered by the Customer and arising out of or in connection with this Agreement shall not exceed the price paid for the Goods in respect of which the claim is made.

9. Intellectual Property Rights

- 9.1. The Customer has no right to use any logo, any registered or unregistered trade mark, trading names or branding or any other intellectual property rights of the Seller or any of its trading names, holding company, or any of its subsidiaries or affiliates from time to time (including but not limited to Red Heads, Laithwaite's Wine, Le Chai au Quai, Handcrafted Wines).
- 9.2. The Customer acknowledges and agrees that all intellectual property rights in the Goods, including their packaging and branding and any accompanying information and merchandise are and shall remain at all times the property of the Seller or its licensors and, save for the honest use of any trade marks to identify the Goods (strictly in accordance with any guidelines or other directions notified to the Customer by the Seller) the Customer may not use any such rights without the Seller's express prior written consent and nothing in these Terms shall be deemed to convey any title, ownership, interest, licence or other right in such intellectual property rights to the Customer.

10. Data Protection

- 10.1. The Seller shall process any personal data (as such term is defined in the General Data Protection Regulation 2016/697 (the "GDPR")) provided by the Customer for the purposes of administering the Customer's account, processing any orders and for any other reason notified by the Seller from time to time.
- 10.2. The Seller shall, unless the Customer opts out of any such communications, use any such personal data for direct marketing purposes.
- 10.3. In processing personal data, the Seller shall comply with the GDPR, the Data Protection Act 2018 and any other applicable law.

11. Confidentiality

- 11.1. A party ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products, prices, customers, marketing activities and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under these Terms, and shall ensure that such

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employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to these Terms. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of these Terms.

12. Force Majeure

- 12.1. The Seller shall not be liable to the Customer for any loss or damage caused to or suffered by the Customer as a direct or indirect result of the supply of the Goods by the Seller being prevented, restricted, hindered or delayed by reason of any circumstances outside the control of the Seller including without limitation fire, war or civil unrest, Acts of God, revolution, acts of terrorism, floods or other adverse weather conditions, power failures, failure or non-availability of equipment, default of suppliers or sub-contractors, industrial action and disputes (a “**Force Majeure Event**”). For the avoidance of doubt, a Force Majeure Event shall not affect or suspend any payment obligations of the Customer.

13. General

- 13.1. In no event will any delay, failure or omission (in whole or in part) by either party in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under these Terms or by law, be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently. Any agreement on the part of any party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorised officer on behalf of such party.
- 13.2. All notices given under these Terms must be in writing and are to be deemed served if either delivered by hand or sent by pre-paid first-class or recorded post or by courier to the other party at their registered addresses (or such other address as notified to the other party from time to time).
- 13.3. A person who is not a party to these Terms or the relevant Order has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of these Terms.
- 13.4. The Customer may not at any time assign at law or in equity (including by way of a charge or declaration of trust), sub-license or deal in any other manner with these Terms, or any rights granted to it under a credit facility or an Order, or sub-contract any or all of its obligations under the same (or purport to do any of the foregoing) without the prior written consent of the Seller. Any such assignment without such prior written consent shall be null and void.
- 13.5. If any provision of these Terms shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of these Terms which shall remain in full force and effect.
- 13.6. These Terms (and any other agreements or instruments referred to in them) together with the Order and any applicable credit facility terms constitute the entire agreement and understanding between the Customer and the Seller, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between such parties with respect to the subject matter hereof and thereof.
- 13.7. Both parties acknowledge and agree that in entering into these Terms, they have not relied on any Statement, representation, warranty, understanding, undertaking, promise or assurance (whether negligently or innocently made) of any person (whether party to these Terms or not) other than as expressly set out in these Terms. Each party irrevocably and unconditionally waives all claims, rights and remedies which but for this clause it might otherwise have had in relation to any of the foregoing. Nothing in this clause 13.7 shall limit or exclude any liability for fraud.

14. Governing Law

- 14.1. The construction, validity and performance of the Contract shall be governed by English law and the parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising under or in connection with these Terms or their enforceability or the legal

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relationships established by them.