

**ANNEXURE 1: BAM WINE LOGISTICS TERMS AND CONDITIONS  
(effective 1 July 2017)**

**1) Acceptance**

- a) Any instructions received by the Service Provider from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Service Provider shall constitute acceptance of the Terms and Conditions contained herein.
- b) Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Rates.
- c) Upon acceptance of these Terms and Conditions by the Client the Terms and Conditions are binding and can only be amended with the written consent of the Service Provider.
- d) The Client undertakes to give the Service Provider at least fourteen (14) day's notice of any change in the Client's name, address and/or any other change in the Client's details.

**2) Term**

The initial term of agreement will be as set out in a written Services Agreement Schedule or will be from the date the Services commence until 30 June or 31 December of the year following the year in which the Services commenced but no less than 12 months. For the avoidance of doubt if the Commencement Date was 1 March 2016 the initial term would be until 30 June 2017. The Agreement will be automatically renewed for successive terms of one (1) year each. Either Party may terminate this Agreement by giving to the other party not less than three (3) month's notice in writing effective at the end of the initial term or any further term. Notwithstanding the above, the parties may terminate this Agreement on such other terms as agreed in writing.

**3) Services**

The Services being provided to the Client are as per the Services set out in a written Services Agreement Schedule or in the Service Level Schedule (**Services**).

**4) Service Level Schedule**

The purpose of a Service Level Schedule is to set out the operational processes and procedures to ensure that the Service Provider meets the Services and service requirements of the Client. The Service Level Schedule will be as set out in an Annexure to the written Services Agreement Schedule or as published on [www.bamwine.com.au](http://www.bamwine.com.au).

**5) Service Provider's Obligations**

The Service Provider at its own cost shall engage and maintain workforce and material handling equipment (MHE) satisfactory in size and ability to effectively and efficiently carry out the Client's warehousing and distribution.

**6) Limit of Liability**

The Service Provider is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by the Service Provider subject only to these conditions and the Service Provider reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles which is not in accordance with these terms and conditions.

If the Client has a written Services Agreement Schedule with the Service Provider, and the written Services Agreement Schedule includes entitlement to Loss and Handling Damages, the terms for the Loss and Handling Damages will be as set out in the Rates. If the Client does not have a

written Services Agreement Schedule with the Service Provider, the Service Provider's liability is limited to the extent permitted by law, arising out of any one incident, for breach of warranty implied into these terms and conditions by the Australian Consumer Law or howsoever arising, to any of the following as determined by the Service Provider:

- i) The supplying of the Services again; or
- ii) The payment of the cost of having the Services supplied again.

**7) Insurance**

It is the responsibility of the Client to insure and keep insured the goods in the name of the Client for the full insurable value of the goods whilst they are in the warehouse and whilst they are in transit to the warehouse. The insurance must be against the risks of loss or damage by fire, explosion, burglary, theft and such other risks as are normally insured against by prudent persons carrying on businesses similar to those carried on by the Client and the Service Provider and the insurer must waive any rights of subrogation against the Service Provider.

**8) Statutory Requirement**

- a) The Service Provider shall at all times comply with and observe all laws regulations and directions of all statutory authorities governing the conduct and operation of the Service Provider's responsibilities undertaken pursuant to this Agreement.
- b) It is the responsibility of the Client to hold and provide a copy of a Liquor Licence as per any States' regulation for each location.

**9) Payment, Revision of Rates & Invoice Queries**

- a) The provision of credit to the Client by the Service Provider for the Services, is and at all times remains at the absolute discretion of the Service Provider. Any provision of credit is subject to acceptance by the Service Provider of a credit application by the Client including trade references.
- b) The Service Provider will raise invoices weekly for Services provided to the Client. These invoices are to be paid in accordance with the Payment Term set out in the written Services Agreement Schedule or will be due 14 days from the date of invoice.
- c) All Service Provider invoices are to be paid in full and no amount queried or claimed from the Service Provider will be set off against any invoice of the Service Provider to the Client.
- d) If the Client fails to make any payment by the due date, the Service Provider will serve the client a reminder notice that payment is due and clause 10(b) will apply.
- e) All invoice queries/claims should be addressed in writing to the Service Provider within 7 days from date of invoice or within 7 days from the date of the operational event leading to the claim. The Service Provider reserves the right to reject any claims over 14 days from date of invoice or 21 days from the date of the operational event leading to the claim. The Service Provider undertakes to investigate all claims from a Client within 7 days of receipt of said claim in writing. The outcome of the Service Provider's investigation will be notified to the Client in writing as soon as is practicable following the investigation.
- f) Where the Service Provider investigates and the claim is accepted by the Service Provider in whole or in part, payment of the claim amount (or that part of the claim amount that is accepted) will be made

within 14 days of notification of the outcome of investigation.

- g) Where the Service Provider investigates and the claim is not accepted by the Service Provider, steps three and four of the Dispute Resolution Process apply.

#### 10) Default

- a) Subject to clause 10(b), in the event that a party alleges that the other party is in breach of these terms and conditions the Dispute Resolution process in clause 11, applies. If the matter or matters cannot be resolved between the parties in accordance with the Dispute Resolution process, the party not in default shall serve a notice upon the defaulting party setting out the manner in which the defaulting party is not fulfilling its obligations. Such notice shall specify the details of the default and request that they be remedied within 7 days. If the default details are not resolved to the reasonable satisfaction of the party not in default, then a termination notice of 60 days may be served by that party.
- b) If the default is the failure by the Client to pay an invoice of the Service Provider, and the Client does not remedy the default within 7 days of receipt of the notice issued by the Service Provider in accordance with clause 9(d), then, the Service Provider may: (a) charge interest on all overdue payments at two per cent (2%) per month from the due date until the date of payment (or otherwise as allowed under the law), and either (b) suspend all Services provided and executed as defined in the services agreement or Service Level Schedule; or immediately terminate this agreement without further notice to the Client.

#### 11) Dispute Resolution

In the event of a dispute arising between the two parties the following dispute resolution process will be referred to:

- a) Step one: a solution to the dispute will be sought where it originated, at the local operational level between the Warehouse Supervisor and the Account Manager.
- b) Step two: should the dispute remain unresolved by the end of a further week, then it will be elevated to the attention of the Service Provider's National Operations Manager and the Account Manager.
- c) Step three: should the dispute remain unresolved by the end of a further week, then it will be elevated to the parties' General Managers.
- d) Step four: should the dispute remain unresolved by the end of a further week the parties will refer the matter to the mediation of a mediator to be agreed by the parties or, failing such agreement, but a mediator appointed by the Chairman of the Melbourne branch of LEADR ("the Mediator":
  - (i) The parties must jointly appoint the Mediator;
  - (ii) The parties must observe the instructions of the Mediator about the conduct of mediation;
  - (iii) If the dispute is not resolved in 21 days after Mediator is appointed or any other time that the parties agree to in writing, the mediation will cease;
  - (iv) The parties agree to share the cost equally of any mediation as described above.
  - (v) Both parties must continue to observe this Agreement during the currency of any dispute resolution procedure.

#### 12) Unpaid Service Provider's Rights

- a) Where the Client has left any goods with the Service Provider to perform any Service in relation to the goods and the Service Provider has not received or been tendered the whole of the price, or the payment has been dishonoured, the Service Provider shall have:
  - i) lien on the goods;
  - ii) the right to retain the goods for the price while the Service Provider is in possession of the goods;
  - iii) right to sell the goods,
- b) The lien of the Service Provider shall continue despite the commencement of proceedings, or judgement for the price having been obtained.

#### 13) Force Majeure

The parties shall not be liable for any failure to perform or observe any terms of this agreement if performance or observance has been delayed, hindered, restricted or prevented by any circumstance not within the direct control of the parties including without limiting the generality of the foregoing Acts of God, strikes, lock-outs or other industrial disturbances, war, hostilities or the threat or apprehension thereof, or any interruption to the supply of materials or information, or any accident or breakdown of machinery, or the making of emergency or essential repairs thereto, or compliance with any valid order of any governmental or public authority and the time or times for performances of the obligations on the respective parties parts too be performed herein shall be extended by a period equal to such period of delay provided that such party shall forthwith give notice to the other party in accordance with the provisions of this Agreement and shall endeavor to remove or remedy the cause thereof with all due diligence and expedition.

#### 14) Special Conditions

If any special conditions are set out in this agreement and are inconsistent with these standard terms and conditions, the standard terms and conditions will be read subject to the special conditions.

#### 15) Right of Entry

The Client's personnel and other authorized persons will be allowed entry to the Service Provider's operating area by the Service Provider, to deal with their goods, provided that prior approval has been given by the Service Provider and such entry does not interfere with normal operations and that such inspection is undertaken at the Client's own risk. The Client needs to comply with the Service Provider's OH&S policy as set out in the Service Level Schedule. Such entry will also be subject to the Service Provider's security measures in force at the time. Approval will not be unreasonably refused and the Service Provider will make every effort to allow entry at a convenient time in a safe environment.

#### 16) Security

The Service Provider will provide a security system sufficient to provide reasonable security for the warehouse. The monitoring of such security arrangements will be the responsibility of the Service Provider, and the Client acknowledges that such security exists.

#### 17) Good Housekeeping

The Service Provider will ensure that at all times the warehouse is operated and maintained to OH&S standards.

## 18) Rates

The commencing rates payable by the Client to the Service Provider will be as set out in a supply agreement or sent to the Client on commencement of Services. The rates will be varied at 12 month intervals with first adjustment on either 1st January if agreement commenced between the period 1st July and 31st December or 1st July if the agreement commenced between the period 1st January and 30th June unless agreed otherwise. The Rates will be increased on an annual basis by the greater of CPI or the annual increase in the underlying activity cost in providing the Service.

Fuel levies are separate and will be charged and varied monthly as per standard industry practice. The price of fuel varies considerably on a weekly and monthly basis. The levy is intended to reflect the volatility of fuel prices and protects both parties whether prices increase or decrease based on Australian Institute of Petroleum (AIP) Index Diesel Terminal Gate Price - Melbourne.

Changes in task or activities will result in a separate or different rate and will be negotiated between the two parties.

## 19) Confidentiality

The Parties agree to hold information regarding this Agreement, the parties trading relationship and any commercial terms and pricing (**Confidential Information**) as confidential and exercise all due care to ensure; (i) not to disclose or use the confidential information for any other purpose except as necessary for the purposes of and consistent with the terms of this Agreement such as without limitation if required to be disclosed under any law, governmental rule or regulation or court order (ii) to limit access to confidential information only to its employees on a need to know/use basis, and (iii) not to sell, transfer, publish, disclose or otherwise make available the whole or any part of the confidential information to any third party or persons not permitted by the terms of and pursuant to the terms contained in this Agreement without the disclosing Party's prior written consent.

The Client acknowledges that: (i) personal information (as defined in the Privacy Act 1988 (Cth)) including credit-related personal information may form part of the Confidential Information; and (ii) the Client is subject to, and must comply with, the Service Provider's privacy policy which is available at [www.bamwine.com.au](http://www.bamwine.com.au) or upon request from an authorised representative.

The Service Provider ensures all personal information held by it is accessed, used and handled strictly in accordance with the applicable requirements of the Australian Privacy Principles set out in the Privacy Act 1988 (Cth) and of any applicable State or Territory legislation concerning privacy and in accordance with the Service Provider's privacy policy.

## 20) Dangerous goods

Unless otherwise agreed in advance in writing with the Service Provider the Client shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous goods. The Client shall be liable for and hereby indemnifies the Service Provider for all loss or damage whatsoever caused by any Dangerous goods.

## 21) Client-Packed Containers

If a container has not been stowed by or on behalf of the Service Provider the Service Provider shall not be liable for loss of or damage to goods caused by:

- a) the manner in which the container has been stowed; or

- b) the unsuitability of the goods for carriage or storage in containers; or
- c) the unsuitability or defective condition of the container.

## 22) Nomination of Sub-Contractor

The Client hereby authorises the Service Provider (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any goods that are the subject of the agreement. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Service Provider. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Service Provider shall be deemed to enter into this agreement for its own benefit and also as agent for the Sub-Contractor.

## 23) General

- a) If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- b) These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- c) The Service Provider shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Service Provider of these terms and conditions.
- d) The Client shall not be entitled to set off against or deduct from any sums owed to the Service Provider, any sums owed or claimed to be owed to the Client by the Service Provider.
- e) The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the party's right to subsequently enforce that provision.

## 24) Bonded Stock

- 24.1 This clause 28 only applies to those clients that have deposited bonded stock with the Service Provider.
- 24.2 On the Commencement Date, the Client must provide the Service Provider with a security deposit, in a form of a bank guarantee, based on the duty applicable to the under bond stock holding of the Client, provided to the Service Provider at the Commencement Date unless agreed otherwise .
- 24.3 The security deposit can be reviewed by the Service Provider at any time to ensure that the security deposit equals the duty applicable to the under bond stock holding. The Client may be required to increase the security deposit on the request of the Service Provider, to ensure that the security deposit is equal to the duty applicable to the under bond stock holdings.
- 24.4 The security deposit (less any money owed by the Client to the Service Provider), will be refunded to the Client within 60 days of the expiry or termination of this agreement, or on release of all bonded stock of the Customer, from the warehouses of the Supplier.