

# THE VINO SHOP

## TERMS & CONDITIONS

Welcome to The Vino Shop website. If you continue to browse and use this website, you are agreeing to comply with and be bound by the following terms and conditions of use, which together with our privacy policy govern The Vino Shop's relationship with you in relation to this website. If you disagree with any part of these terms and conditions, please do not use our website.

The term 'The Vino Shop or 'us' or 'we' refers to the owner of the website whose registered office is via Tricolore Imports Pty Ltd. The ABN for Tricolore Imports Pty Ltd is 29 162 732 578. The term 'you' refers to the user or viewer of our website.

## USE OF OUR WEBSITE

The use of this website is subject to the following terms of use, outlined in :

1. By accessing and/or using the Site you:
  - a. agree that you have reviewed these Terms and Conditions (TERMS) and our Privacy Policy (available on the Site);
  - b. confirm to us that you are over 18 years of age and you have the legal capacity to enter into a legally binding agreement with us; and
  - c. agree to use the Site in accordance with the Terms.
  - d. understand that this website is operated by Tricolore Imports Pty Ltd (ACN 162 732 578) trading as The Vino Shop (WE, OUR or US). It is available at: [www.thevinoshop.com.au](http://www.thevinoshop.com.au) and may be available through other addresses or channels including our mobile application (collectively the SITE).
2. The content of the pages of this website is for your general information and use only. It is subject to change without notice.
3. Neither we nor any third parties provide any warranty or guarantee as to the accuracy, timeliness, performance, completeness or suitability of the information and materials found or offered on this website for any particular purpose. You acknowledge that such information and materials may contain inaccuracies or errors and we expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law.
4. Your use of any information or materials on this website is entirely at your own risk, for which we shall not be liable. It shall be your own responsibility to ensure that any products, services or information available through this website meet your specific requirements.
5. This website contains material which is owned by or licensed to us. This material includes, but is not limited to, the design, layout, look, appearance and graphics. Reproduction is prohibited other than in accordance with the copyright notice, which forms part of these terms and conditions.
6. All trademarks reproduced in this website, which are not the property of, or licensed to the operator, are acknowledged on the website.
7. Unauthorised use of this website may give rise to a claim for damages and/or be a criminal offence.

8. From time to time, this website may also include links to other websites. These links are provided for your convenience to provide further information. They do not signify that we endorse the website(s). We have no responsibility for the content of the linked website(s).

9. Your use of this website and any dispute arising out of such use of the website is subject to the laws of Australia.

## **ORDERS**

1. You may order products from us as set out on the Site. Any order placed through the Site is an offer by you to purchase a particular product or products for the price notified (including the delivery and other charges and taxes) at the time you place your order.
2. You may make an order for a one-off purchase, as the Vino Shop offers no subscription method.
3. We may, at our absolute discretion, accept or reject an order. We will endeavour to notify you of a rejection at the time of the order or within a reasonable time thereafter.
4. Each One-Off Purchase order that we accept results in a separate binding agreement between you and us for the supply of products in accordance with the Terms.
5. It is your responsibility to check the order details, including selected products and pricing, before you submit your order through the Site.
6. When you order and pay on the Site and your payment has been validated, we will provide you with order details, which may include an order number, an order ID, the delivery and billing addresses and a description of what was ordered.
7. Under Australian laws, alcohol can only be sold or supplied to persons aged 18 years or older. By placing an order with us, you confirm that you are at least 18 years old. You agree that it is your responsibility to consume alcohol in accordance with the law and responsibly, including a responsibility to not supply or sell alcohol to person/s under the age of 18 years old.

## **RETURNS POLICY**

Whilst we strive at The Vino Shop to provide reliably high quality products to every client in every instance, we do understand that from time to time, products can be faulty, or we could accidentally deliver a wine that did not match the order you placed. For these scenarios, we have prepared a process whereby you (the customer) can understand our Returns Policy and be guided to a resolution.

1. If the wrong wine is delivered, please notify us immediately in writing with photographic evidence, and we will contact you using the details provided on your order to rectify the solution (either via pick up of incorrect wine by our own The Vino Shop staff, or via a Third Party courier, delivery service or Australia Post).
2. Due to the fact that we ship wines as is, if the wine liquid is faulty (e.g. corked) we strongly urge customers to contact the manufacturer directly for replacement or feedback. However, we can offer this service on customers' behalf: Simply ship the wine back to us and we will arrange for a credit from our suppliers. When this is complete, we will balance your account with the credit.
3. The Vino Shop shall not provide a refund or replacement if you simply change your mind, unless The Vino Shop chooses to do so at its absolute discretion.

## **PRICE AND PAYMENTS**

1. You must pay us the purchase price of each product you order plus any applicable delivery costs based on the delivery options selected by you as set out on the Site (the PRICE) in accordance with this clause.

2. In the event of a One-Off Purchase, you must pay the Price via credit card or any other payment methods set out on the Site such as Stripe.
3. All amounts are stated in Australian dollars and are inclusive of GST (where applicable).
4. We display delivery costs separately from the purchase price.
5. You must not pay, or attempt to pay, the Price by fraudulent or unlawful means.
6. To the extent permitted by law, the Prices are non-refundable and non-cancellable once paid.
7. We reserve the right to change all or some product prices at any point in time without prior notice, including both increase and decrease to pricing.
8. We reserve the right to advertise any products with 'special' or 'sale' pricing for a limited amount of time. This does not indicate a permanent change of pricing relative to such products, and it remains your duty to check all product and/or order details, including selected products and pricing in every instance, before you submit your order through the Site.

## PROMOTIONAL DISCOUNT CODES

1. We may from time to time issue promotional discount codes for certain products, and/or for certain time periods on the Site. To claim the discount, you must enter the promotional discount code at the time of submitting your order through the Site. The conditions of use relating to promotional discount codes will be specified on the Site or social media platforms at the time they are issued.
2. Any additional terms and conditions published that relate to the use of specific promotional codes on the website or social media platforms are deemed to be **in addition to** the terms and conditions set out here in the website ("The Vino Shop"). This is because Terms & Conditions related to an explicit offer or promotional code may offer further specific details to be taken into account relative to the offer such as validity periods (dates and time of when the offer or promotional code is deemed valid), discount amounts or pricing, or to which products or services the promotional code applies to. This means that all Terms and Conditions laid out here remain valid in addition to those advertised.
3.
  - a. Where you have been issued any other personalised or 'group' discount code (intended for a certain group of people relative to The Vino Shop business), it is intended purely for your personal use when ordering and for this reason, you must not share, publicise or sell this code; verbally, in text, email or electronic message or on any online platform. Should The Vino Shop suspect that your personal discount code has been shared with, sold to or stolen by parties that were not intended to obtain such promotional code by The Vino Shop, we reserve the right to cancel this code or any related discount code immediately and at our absolute discretion, without prior forewarning or communication after the event.
  - b. Should The Vino Shop suspect that your personal discount code has been shared with, sold to or stolen by parties that were not intended to obtain such promotional code by The Vino Shop, we reserve the right to cancel, at any time before delivery and for whatever reason, any order that has utilised such discount code; including when we have previously accepted such order. This also applies if there has been a considerable delay in dispatching your order. We will contact the customer who placed the order to notify them, using the details provided when such order was placed to notify them of the cancelled order.
2. Where promotional codes are issued with specific validity periods of time (i.e. may be used within only specific time frames or calendar dates); at the termination of such stated time period, we reserve the right to cancel this code or any related discount code immediately and at our absolute discretion, without prior forewarning.
3. Where promotional codes are issued that are disclosed as valid for only limited periods of time, (i.e. within specific time frames or calendar dates): **no rain checks will apply to such offer/s**. This means that any discount, saving or benefit available to our customers

through the utilisation of such code will not be available for future use or benefit once the specific period publicised has terminated.

4. For all promotional codes, The Vino Shop reserves the right to cancel any offer, code or any related discount code immediately and at our absolute discretion, without prior forewarning. We reserve the right to change the amount, quantity, percentage or type of saving attached/linked to any promotional code at our absolute discretion, without prior forewarning.
5. The below 'No Rainchecks Policy' applies also to the use of Promotional codes.

## **'NO RAINCHECKS' POLICY**

1. The Vino Shop have a strictly 'No Rain Checks' policy, meaning that:
  - a. No Rainchecks are available at any time
  - b. If The Vino Shop has sold out of, or is temporarily out of stock, of any item of Offer Goods during the 'Offer Period' (a period of time within which certain items are discounted or promotional codes or other promotions are deemed as applicable), then The Vino Shop are not obligated to and **will not** offer any person/s who requests supply of that item during the Offer Period, a raincheck.
  - c. In the instance that The Vino Shop updates or increases any product prices AND that/those same item/s or product/s became sold out or is/are temporarily out of stock ; The Vino Shop are not obligated to and **will not** offer any raincheck on previous pricing. You will pay the attributed product or item cost as it published on the website at the time when the product or item returns to 'in stock'.
  - d. Where promotional codes are issued that are disclosed as valid for only limited periods of time, (i.e. within specific time frames or calendar dates): **no rain checks will apply to such offer/s**. This means that any discount, saving or benefit available to our customers through the utilisation of such code will not be available for future use or benefit once the specific period publicised has terminated.

## **AVAILABILITY**

1. All purchases made through the Site are subject to availability. We cannot guarantee the availability or stock of all products at all times.
2. We do our best to keep products in stock and to keep the Site up to date with the availability of products, however there may be times where stock is showing as available, when in reality our stock system has not been updated and the product is indeed out of stock. In this scenario, we will contact you using the details you provided when you placed your order to suggest an alternative product (in stock) for the same or lesser value, or else take instruction from you to remove this product from your overall order.
3. We reserve the right to cancel, at any time before delivery and for whatever reason, an order that we have previously accepted, including where there is a considerable delay in dispatching your order, if for any reason we cannot supply the products you order (for example for an event beyond our reasonable control) or if products ordered were subject to an error on our Site (for example in relation to a description, price or image). We will contact you using the details you provided when you placed your order.
4. If you observe that an item or product on our website is stated as sold out or temporarily out of stock, and then after such time that the item becomes available again you observe that the price has changed, we are not obligated to offer or provide this item or product to you at any price formerly advertised. The price applicable for every product will always remain as that which is exhibited at the time of a successful transaction (sale) taking place as long as our product or item availability allows us to fulfill such order.

## **DELIVERY, TITLE AND RISK**

1. We will deliver the products to the delivery address you provide when making your order. We deliver Australia wide. If for whatever reason we cannot deliver to you, we will notify you as soon as practicable. We do not currently ship internationally.
2. Where your delivery is handled directly by our 'The Vino Shop' staff (for some but not all deliveries within Metro or Greater Melbourne), we will endeavour to ensure that the receipt of your goods is sighted (we can see that you have physically received the goods).
3. We reserve the right to request to see a copy of identification to prove you are the intended recipient of an order, where we suspect you are not the intended recipient.
4. Where you have instructed and agreed our team or an outsourced delivery partner (delivery service/courier or Australia Post) to deliver a parcel or product to a certain address that is unattended (i.e. not able to be received by yourself at the time of delivery), we accept no responsibility for the loss, theft, damage or misplacement of the order or products, once the item is delivered.
5. Delivery costs are set out on the Site and will vary depending on your delivery address.
6. We normally dispatch products within 48 hours of receiving an order, unless otherwise noted on the Site.
7. Any delivery periods disclosed here, on the website or on social media are subject to change without prior forewarning or notice. We will endeavour to notify you in any instance that your delivery significantly delayed, however this is not always possible.
8. Any delivery periods displayed on the Site are estimates only, based on the information provided by the delivery company.
9. If you need to change the delivery date or delivery address, please notify us immediately in writing, and we will endeavour to accommodate these changes; though depending on if delivery is already in progress or outsourced to a third party delivery partner, this may not be possible and beyond our control. Should you change in delivery address result in increased delivery costs, we or our delivery partners retain the right to charge you for such increased delivery costs.
10. We may deliver the products using a range of delivery methods.
11. We may deliver the products using our own 'The Vino Shop' delivery staff **OR** outsourced delivery service/courier partners or Australia Post. We are not formally associated with such parties.
12. When you place an order with us and it is stated we will use a Third Party delivery or courier service or Australia Post, you accept this as a separate binding agreement between you and this third party for the delivery of products in accordance with their own specified Service Standard, Terms, Conditions & Policies.
13. Where an order or product is delivered to you using a Third Party delivery service, courier or Australia Post; The Vino Shop accepts no responsibility or liability for the service, terms or conditions applied to such delivery by these Third Parties. It remains the responsibility of the customer ('you') to review the Service Standards, Terms, Conditions & Policies set out by such Third Parties relative to your order, before you place the order with The Vino Shop.
14. Third party delivery or courier service partners, or Australia Post, may change their Service Standards, Terms, Conditions & Policies at any point in time, The Vino Shop is not liable for the consequences of such changes, nor are we responsible for notifying you of when these Third Party Service Standards, Terms, Conditions & Policies may change.
15. Title to the products will remain with us until you have paid us the Price in full in accordance with the Terms.
16. Our The Vino Shop delivery staff are trained to check that no broken goods (i.e. smashed bottles of beverages that render the product unconsumable) are delivered to you, and that your ordered goods are delivered in the condition intended by The Vino Shop at the time of selling such goods to you.
17. Risk in the products will pass to you as soon as they are delivered to the delivery address you provided in your order. Once the order is deemed delivered, you accept all risk including any liability to breakage of products due to your handling or movement of products.

18. When you place an order with us, and detail your delivery instructions (whether you accept delivery in person or instruct to leave the delivery unattended at your desired address), you do so accepting that once we have deemed the order delivered, The Vino Shop holds no responsibility for theft, use, or consumption of delivered goods by parties known or unknown to you, that you may or may not reside with.

## **INTELLECTUAL PROPERTY**

1. All intellectual property (including copyright) developed, adapted, modified or created by us or our personnel (including in connection with the Terms and the Site) will at all times vest, or remain vested, in us.
2. You must not, without our prior written consent:
  - a. copy or use, in whole or in part, any of our intellectual property;
  - b. reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our intellectual property to any third party;
  - c. breach any intellectual property rights connected with the Site or the products, including (without limitation) altering or modifying any of our intellectual property; causing any of any of our intellectual property to be framed or embedded in another website; or creating derivative works from any of our intellectual property.

## **USER CONTENT**

1. You may be permitted to post, create, upload, publicise or otherwise submit content (SUBMIT), such as reviews, comments, pictures and videos on our web social media platforms or independent review websites.
2. We ask you to limit your discussions to topics which are relevant to the Site and the products.
3. We reserve the right to remove any reviews or comments from any of our social media platforms or our website which we, in our sole discretion, deem to be in breach of these terms including the 'Exclusions' clause and deem to be inappropriate including posts that:
  - a. defame, harass, threaten, stalk, menace, track, monitor, hurt, mistreat, offend or otherwise hurt any person;
  - b. use obscene or foul language;
  - c. include link(s) to inappropriate, offensive or illegal material on the forum;
  - d. could be considered intolerant of a person's race, culture, appearance, gender, sexual preference, religion or age; and
  - e. interfere with another user.
4. We are not responsible for the conduct of any user of our Site or social media platforms.
5. You agree and acknowledge that you participate on the Site including by Submitting User Content at your own risk.
6. By making available any User Content on or through our Site or social media platforms, you grant to us a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free licence to use the User Content, with the right to use, view, copy, adapt, modify, distribute, license, transfer, communicate, publicly display, publicly perform, transmit, stream, broadcast, access, or otherwise exploit such User Content on, through or by means of our Site.
7. You agree that you are solely responsible for all User Content that you make available on or through our Site. You represent and warrant that:
8. you are either the sole and exclusive owner of all User Content or you have all rights, licences, consents and releases that are necessary to grant to us the rights in such User Content (as contemplated by these Terms);
9. neither the User Content nor the posting, uploading, publication, submission or transmission of the User Content or our use of the User Content on, through or by means of our Site will infringe, misappropriate or violate a third party's intellectual property rights,

or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

## EXCLUSIONS

You must not access or use the Site except as permitted by these Terms and you must not do, omit to do, or authorise any act that would or might invalidate or be inconsistent with our intellectual property rights on the Site. Without limiting the foregoing provisions, you must not and must not permit any other person to:

- a. resell, assign, transfer, distribute or provide others with access to the Site;
- b. use the Site to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
- c. use the Site in any way that damages, interferes with or interrupts the supply of the Site;
- d. introduce malicious programs into our hardware and software or our hardware, software and services which are integrated and operate together, including our networks (SYSTEMS), including viruses, worms, trojan horses and e-mail bombs;
- e. reveal your account password to others or allow others to use your account;
- f. use the Site to carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- g. use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the Site or any training resources from the Site;
- h. send any unsolicited messages through or to users of the Site in breach of the Spam Act 2003 (Cth) or to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the Site in breach of any person's privacy (such as by way of identity theft or "phishing");
- i. use the Site to circumvent user authentication or security of any of your networks, accounts or hosts or those of your customers or suppliers.

## LIMITATIONS

1. Despite anything to the contrary, to the maximum extent permitted by law:

- a. our maximum aggregate liability arising from or in connection with the Terms (including the products and/or the subject matter of the Terms) will be limited to, and must not exceed us resupplying the products to you;
- b. we will not be liable to you for any loss of profit (including anticipated profit), loss of benefit (including anticipated benefit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise

2. Despite anything to the contrary, to the maximum extent permitted by law, we will have no liability, and you release and discharge us from all liability, arising from or in connection with any:

- a. loss of, or damage to, the products, or any injury or loss to any person;
- b. failure or delay in providing the products;

c. breach of the Terms or any law, where caused or contributed to by any:

- event or circumstance beyond our reasonable control;
- act or omission of you or your related parties, and, in any event, any defect, error, omission or lack of functionality or suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the products.

3. Nothing in the Terms attempts to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian Consumer Law.

In Australia, our goods come with guarantees which cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Any and all other warranties or conditions which are not guaranteed by the Australian Consumer Law are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in these Terms.

## COLLECTION NOTICE

1. We collect personal information about you in order to enable you to access and use the Site, to customise your Subscription based on your preferences, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our Privacy Policy.
2. We may disclose that information to third party service providers who help us deliver our services (including information technology service providers, data storage, web-hosting and server providers, professional advisors, payment systems operators and our business partners) or as required by law. If you do not provide this information, we may not be able to provide our products to you. In certain circumstances, we may disclose your personal information to third parties located, or who store data, outside Australia.
3. Our Privacy Policy contains further information about how we store and use your personal information and how you can access and seek correction of your personal information.
4. By providing personal information to us, you consent to us collecting, holding, using and disclosing your personal information in accordance with our Privacy Policy.

## GENERAL

**DISPUTES:** Neither party may commence court proceedings relating to any dispute arising from, or in connection with, these Terms without first meeting with a senior representative of the other party to seek (in good faith) to resolve that dispute (unless that party is seeking urgent interlocutory relief or the dispute relates to compliance with this clause).

**NOTICES:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided when placing an order. Any notice may be sent by standard post or email and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

**WAIVER:** Any failure or delay by a party in exercising a power or right (either wholly or partly) in relation to these Terms does not operate as a waiver or prevent a party from exercising that power or right or any other power or right. A waiver must be in writing.

**RELATIONSHIP OF PARTIES:** These Terms are not intended to create a partnership, joint venture or agency relationship between the parties.



**PHOTOGRAPHS:** If you provide us with photographs of the products via email, on your account page or by tagging us on social media networks, you consent to us publishing such photographs, associated text and details (including but not limited to your name, location and date) for our marketing purposes including on the Site and social media.

**SEVERANCE:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions.

**ASSIGNMENT:** You must not assign any rights or obligations under these Terms, whether in whole or in part, without our prior written consent.

**AMENDMENT:** We may, at any time and at our discretion, vary these Terms by providing you with 30 days' written notice. For One-Off Purchases, prior to placing an order, we recommend you carefully read the terms that are in effect at that time to ensure you understand and agree to them. For any One-Off Purchase order that has been accepted by us, the terms and conditions that apply will be the ones that were in effect (and which you agreed to) when you placed your order.

**GOVERNING LAW:** These Terms are governed by the laws of Victoria, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts. The Site may be accessed in Australia and overseas. We make no representation that the Site complies with the laws (including intellectual property laws) of any country outside of Australia. If you access the Site from outside Australia, you do so at your own risk and are responsible for complying with these laws in the place you access the Site

#### **PRIVACY POLICY**

Our Privacy Policy is outlined in the section of the website titled 'Privacy Policy'. The Above outlined Terms, Conditions and policies, together with our privacy policy govern The Vino Shop's relationship with you in relation to this website. If you disagree with any part of these terms and conditions, please do not use our website.

#### **FOR ANY QUESTIONS AND NOTICES, PLEASE CONTACT US AT:**

Tricolore Imports Pty Ltd (ACN 162 732 578) trading as The Vino Shop.  
Email: [info@thevinoshop.com.au](mailto:info@thevinoshop.com.au)

**LAST UPDATE:** August 9th, 2020