Australian Government

Wine Australia

Wine Australia

User-Pays Activity Terms & Conditions

1. OBJECTIVE

Wine Australia offers a range of marketing opportunities to the Australian grape and wine community in markets throughout the world on a user-pays basis allowing Participants to elect to participate in the initiatives that best fit their brands, regions and market strategy.

2. AGREEMENT

By completing the Wine Australia registration form for an Activity, an Applicant / Participant agrees to be bound by these terms and conditions which includes the information provided by Wine Australia on how to participate in the Activity (**Agreement**).

3. REGISTRATION PROCESS

3.1. The Applicant must complete the registration form by the Registration Deadline, pay the Activity Fee by the Payment Deadline and receive written communication from Wine Australia confirming approval of their application to be a Participant for the Activity.

3.2. Wine Australia may refuse to approve the registration of an Applicant at its sole and absolute discretion without providing any reason.

4. CANCELLATION OR VARIATION OF ACTIVITIES

4.1. If an Activity does not attract the Minimum Number of Targeted Participant or, if in the reasonable opinion of Wine Australia, it would be in the best interests of the Australian grape and wine community not to proceed with the Activity, Wine Australia may, at its sole discretion, cancel that Activity and, if so, will refund any portion of the Activity Fee already paid by a Participant in relation to that Activity.

4.2. If deemed necessary by Wine Australia, Wine Australia may alter the details of an Activity including, but not limited to, changing the date or venue of the Activity.

4.3. If an Activity is cancelled or varied, Wine Australia will notify the Participants as soon as practicably possible.

5. PARTICIPATION CRITERIA

5.1. Consistent with Wine Australia's strategic plan, the objective of the Activity is to increase the demand and the premium paid for all Australian wines. To further this objective, Wine Australia maintains a focus on increasing the appreciation of Australian wines for the benefit of our levy and charge payers who fund our international marketing activities.

5.2. Accordingly, Wine Australia may have regard to the non-exclusive criteria below when determining (in its sole discretion) whether an Applicant shall be deemed a suitable Participant:

5.2.1. whether the Applicant directly contributes to Wine Australia's international marketing activities through payment of legislated levies and charges;

5.2.2. whether Wine Australia is satisfied that the brand (including the label) to be promoted by the Applicant has a reputable well-established presence in Australia and/or in other overseas markets (for the avoidance of doubt Wine Australia, in its sole discretion, may request that the well-established presence in Australia be demonstrated through sales of the brand and/or label in the Australian domestic market);

5.2.3. the quality and the reputation for quality of the Participating Wines to be displayed by the Applicant including, for example whether they have received any 'high ratings' from Reputable Wine Press;

5.2.4. whether they have been the recipient of any Reputable Wine Press awards, and/or whether they have been the recipients of any silver or gold (or higher) medals at a wine show of an Australian state;

5.2.5. whether the Applicant plans to actively promote 'buyers own brands' products as part of the Activity (however, if 'buyers own brand', private labels, bulk wines and/or export only products are to be promoted by the Applicant, the Applicant may not be eligible to participate in the Activity (including future marketing initiatives developed by Wine Australia) and promote any or all of their wines (including nonbuyers own brand wines) at Wine Australia's Activities or other future marketing initiatives;

5.2.6. and whether the Applicant has engaged / alleged / associated in any act that might adversely affect Australian wine reputation, the export trade in wine or Wine Australia's ability to successfully promote Australian wine overseas for example the (alleged) engagement in 'copycat' or disreputable act.

6. ACTIVITY

6.1. The Participant is responsible for itself and its representatives and must arrange and meet all its costs associated with the Activity (including safety, travel, accommodation, insurances, visas, logistics, etc) unless otherwise advised and confirmed in writing by Wine Australia.

6.2. The Participant acknowledges that should, in Wine Australia's subjective view, any of the following occur, the Participant / brand / SKU(s) / product(s) may be removed, at any time, from the Activity at Wine Australia's sole discretion and Wine Australia will not refund the Activity Fee or Additional Fee to the Participant and the Participant may not be eligible to participate in the Activity and promote any or all of their wines at the Activity or any other Wine Australia events and / or other future marketing initiatives developed by Wine Australia:

6.2.1. the Participant/brand/SKU/product deemed unsuitable by Wine Australia;

6.2.2. should Wine Australia request written evidence confirming warranties outlined in clause 12.1, the Participant fails to provide such evidence within the stipulated timeframe and/or to Wine Australia's satisfaction;

6.2.3. brands and SKUs are not available in market, or not new-to-market and "export-ready" (in this respect, "export ready" means that the Participant, brand, SKUs and labels are fully compliant with the applicable laws/requirements of Australia and the destination market(s) (including but not limited to mandatory compositional, labelling, registration requirements e.g. GACC registration or its equivalent in other markets) so as to enable the lawful export/import/sale of the relevant product(s) in the relevant market), unless advised otherwise by Wine Australia;

6.2.4. the Participant is unable to:

a) showcase at least one label from each brand during the Activity;
b) showcase Participating Wines at the Activity;
c) supply the stipulated quantity of Participating Wines in which the Participant registered for;
d) provide sufficient quantity of Participating Wines to participate in all events as part of the Activity;

6.2.5. the Participant/brand brings disrepute to the Australian grape and wine community.

6.3. Wine Australia will endeavour to ensure an appropriate balance of regions, varietals, styles are exhibited, having regard to the strategic objectives of Wine Australia, the Activity and the markets concerned.

6.4. Wine Australia shall have the right to deal with excess wine if more than the outlined quantity is received by Wine Australia for the Activity and Wine Australia has no obligation to return such bottles to the Participant, except that:

6.4.1. should there be excess wines from the Activity, the Participant may request in writing before the deadline, as advised by Wine Australia, for its wines to be used in a different Activity/seminar/masterclass and the Participant agrees to meet all associated cost and the logistics to transport the wine(s) accordingly, subject to Wine Australia's absolute discretion.

6.5. Actual cost to the Participant is subject to change and we may require an Additional Fee from the Participant following finalisation of the Activity Running Fee.

6.6. The participation by the Participant is for the entire Activity. For the avoidance of doubt, the Participant must participate in all locations in relation to the Activity.

6.7. In the event the Activity is delivered by Wine Australia in collaboration with a Partner Organisation, the Participant agrees to:

6.7.1. advise the Partner Organisation with relevant requested information including sales generated as a result of its participation in the Activity;

6.7.2. provide consent for the information to be shared with the Partner Organisation and used for a non-commercial purpose including reporting requirements by Wine Australia and/or the Partner Organisation;

6.7.3. meet the Partner Organisation's requirements such as maintaining appropriate business ethics and demonstrating a commitment to legal obligations for example anti-modern-slavery and anti-bribery laws, both in Australia and overseas markets. For example, see information on Bribery of Foreign Public Officials on Austrade's website; and

6.7.4. its removal or rejection from participating in the Activity and / or including future

Activities and marketing initiatives developed by Wine Australia, at Wine Australia and/or Partner Organisation sole discretion if:

a) the criteria in clause 5.2 have not been satisfactorily met or any of the events listed in clause 6.2 occurs at any time prior to and during the Activity;
b) deemed ineligible for inclusion in the Activity and its marketing and promotional events;
c) unable to pay the full Activity Fee as they fall due and payable; and/or
d) unable to provide written evidence confirming they have express permission to exclusively represent a wine, winery or brand of wine at the Activity.

6.8. **Participant Exhibition Space Sizes:** Participant acknowledges that allocated space may vary due to spatial limitations.

6.9. **Product & Compliance:** The channels through which wine(s) will be procured for the Activity must be compliant with local laws. Participants must follow wine logistics protocols provided by Wine Australia. Wine Australia will not be liable for any costs associated with product procurement.

6.10. Shipping and Logistics

6.10.1. For the purposes of this clause 6.10, "**wine**" has the meaning assigned to that term in the *Wine Australia Act 2013*.

6.10.2. Participants who intend to transport wine(s) direct to in market venue must follow the wine logistics protocol provided by Wine Australia. Wine Australia will not be liable for any missing inventory, loss or costs incurred associated with the Participant's transportation.

6.10.3. The Participant acknowledges its representatives of in market wine(s) will be responsible for the procurement of its own product(s) and any associated costs.

6.10.4. The Activity Fee does not include any logistics costs. All logistics costs, including ground costs after customs clearance to delivery to all venue(s) of the Activity are to be covered by the Participant exclusively and invoiced by the logistics agent, appointed by Wine Australia for the Activity, directly post-Activity. It is the responsibility of the Participant to gain and approve a formal quote for wine logistics costs directly from the appointed logistics agent before wine(s) are shipped to one of the consolidation points, in Australia or in market, as nominated by Wine Australia.

6.10.5. The Participant warrants that it is an "approval holder" for all wine(s) submitted for the Activity in accordance with the *Wine Australia Regulations 2018* and the Participant authorises Wine Australia, as a licensee, and notifies Wine Australia as the regulatory authority, to export the wine(s) to the in market destination associated with the Activity. In practice, the Participant authorises Wine Australia as an "associated exporter" on WALAS for the wine(s) to allow Wine Australia to generate the shipping application and associated import certificates for the wine(s). This authorisation for wine(s), as described within this clause 6.10.5, is only provided by the Participant to Wine Australia upon the submission of the registration for the Activity through to the last day of the Activity. Should the Participant wish to retract their authorisation, please email exports@wineaustralia.com notifying of the retraction of the authorisation.

6.10.6. You understand that you will need to organise your own wine logistics to the in market destination, including the exporting of grape product(s) in accordance with the *Wine Australia Regulations 2018,* unless organised otherwise with Wine Australia in accordance with this clause 6.

7. FEES AND PAYMENT

7.1. Fees

7.1.1. The Participant will pay to Wine Australia the Activity Fee and the Additional Fee in accordance with this Agreement. Unless otherwise expressly stated, the Activity Fee does not include the value of any wines to be poured by each Participant, the provision of staff to work at exhibit stalls, compliance with licensing requirements, travel, transfers and accommodation, meals during the Activity.

7.2. Invoicing and payment

7.2.1. After the Registration Deadline, Wine Australia will issue to the Participant a valid tax invoice for the Activity Fee.

7.2.2. Subject to clause 7.1, after receipt of a valid tax invoice for the Activity Fee, the Participant must pay the Activity Fee on or before the Payment Deadline.

7.2.3. After the Activity has taken place, Wine Australia will issue to the Participant a valid tax invoice for the Additional Fee (if any).

7.2.4. Within 30 days of receipt of a valid tax invoice for the Additional Fee, the Participant will pay the Additional Fee to Wine Australia, or as otherwise specified on the invoice.

8. WITHDRAWAL OR EXCLUSION

8.1. Withdrawal

8.1.1. Either the Participant or Wine Australia may, at any time, with immediate effect withdraw from the Activity by giving written notice to the other party.

8.1.2. Wine Australia may terminate this Agreement with immediate effect for any reason. If so, you must cease performing the Agreement and minimise any arising loss.

8.2. Effect of withdrawal

8.2.1. If the Participant withdraws from the Activity after the date falling 14 days after the Registration Deadline, the Participant must pay to Wine Australia the following fees, less any fees already paid by the Participant for the Activity pursuant to clause 7.2.2:

8.2.2. If withdrawal occurs between 0 to 28 days prior the scheduled date of the Activity— 100% of the full Activity Fee.

8.2.3. If withdrawal occurs between 29 and 56 days prior to the scheduled date of the Activity— 75% of the full Activity Fee.

8.2.4. If withdrawal occurs between 57 and 84 days prior to the scheduled date of the Activity— 50% of the full Activity Fee.

8.2.5. If withdrawal occurs 85 days or more prior to the scheduled date of the Activity— 25% of the full Activity Fee.

8.2.6. Notwithstanding clause 8.1, if a Participant withdraws from an Activity prior to the Activity occurring, Wine Australia may in its sole discretion elect to waive any fees in part or in whole associated with the withdrawal from the Activity.

8.3. Breach and Exclusion

8.3.1. If the Participant is in breach of a term or condition contained in this Agreement and/or the information provided by Wine Australia on how to participate in the Activity, Wine Australia may give notice to the Participant that they are in breach and to be excluded from the Activity unless that breach is remedied to Wine Australia's satisfaction.

8.3.2. If a Participant does not satisfactorily remedy the breach within 3 calendar days of receipt of notice under clause 8.3.1, the Participant may be excluded from the Activity and may also be precluded from attending or participating in any marketing initiatives developed by Wine Australia from there on in.

8.3.3. If a Participant is excluded from the Activity under clause 8.3.2, the Participant must pay to Wine Australia fees equal to the amount payable as if it had withdrawn from the Activity pursuant to clause 8.2.1.

8.3.4. The date of exclusion is taken to be the date on which notice is given to the Participant pursuant to clause 8.3.1.

9. COMPOSITION OF PARTICIPATING WINES

9.1. Participating Wines must originate from Australia and comply with the Australia and New Zealand Food Standards Code and, if sold, must not invoke any offence under the *Wine Australia Act 2013*.

9.2. Any additional compositional requirements required by Wine Australia and/or in market requirements regarding the Activity must be adhered to.

10. PUBLICITY AND PRIVACY

10.1. Wine Australia may capture and use images from an Activity (whether still or motion pictures and with or without sound) for advertising, promotion or publication purposes, or for any other lawful purpose, without payment or any other consideration and the Participant consents to Wine Australia using such images. The Participant agrees to waive any and all intellectual property rights in the images.

10.2. Wine Australia may obtain Participant personal information and/or data related to the Participant (**Participant Information**) and share such Participant Information with third parties for the purposes of the Activity, including but not limited to organising wine logistics with logistics companies, or obtaining grants and/or subsidies from government, state or regional bodies. Wine Australia will only collect, use and share Participant Information in accordance with its privacy policy which can be found at https://www.wineaustralia.com/privacy. When providing personal information and/or data to Wine Australia, the Participant warrants it will have obtained the consent of or provided reasonable notification to the person in accordance with the *Privacy Act 1988*.

10.3. In relation to the Activity, including the online campaign, the Participant agrees to provide a non-exclusive, royalty free, perpetual, irrevocable, worldwide licence (including the right to sub-licence) to use or reproduce any trademark or logo supplied to Wine Australia for the purpose of the Activity.

11. RULES OF CONDUCT OF PARTICIPANTS

11.1. The primary role of a Participant at an Activity is to conduct business with trade, media and consumers who may be at such Activities, including the pouring and tasting of samples. While tasting or consuming wine is an integral part of such an Activity, consumption must at all times be moderate and responsible. Participants must ensure that any service of alcohol is undertaken responsibly and that they seek to prevent intoxication and refuse service to minors or those who appear to be intoxicated.

11.2. Participants must comply with the licensing arrangements at Activity venues.

11.3. Participants must comply with all directions and requests of Wine Australia.

11.4. Participants must not engage in actions that may bring the Australian wine sector into disrepute or compromise the integrity of Wine Australia's market development activities or objectives. For the avoidance of doubt, such actions will

constitute a breach of this Agreement and may lead to removal or exclusion pursuant to clauses 6.2 and 8.3.

11.5. Participants agree to comply with the obligations set out in the Australian Grape and Wine (AGW) – The Diversity Equality and Inclusion in Wine Charter (the Charter). Failure to comply with the Charter may result in Participants being ineligible to attend the Activity and / or any Wine Australia events including future Activities and marketing initiatives developed by Wine Australia. A copy of the Charter can be found on the AGW website: https://www.agw.org.au

12. WARRANTIES, INDEMNITIES AND LIABILITIES

12.1. Warranties

The Participant warrants that:

12.1.1. it has express permission to exclusively represent a wine, winery or brand of wine at the Activity;

12.1.2. all advertising, promotion and/or publicity relating or referring to its participation in the Activity is true and not misleading or deceptive;

12.1.3. it will not claim or hold itself or any staff employed by it to be an employee of Wine Australia, or to represent Wine Australia in any way;

12.1.4. it possesses the sufficient legal title in any materials provided to Wine Australia to be used in the course of the Activity and has the capacity to grant to Wine Australia a non-exclusive, perpetual and irrevocable licence to use the intellectual property rights contained in any materials developed in the process of delivering the Activity;

12.1.5. it will not pledge or attempt to pledge, the credit of Wine Australia, or expose it to any pecuniary liability;

12.1.6. it will comply with all statutory requirements and local laws and will ensure that it possesses all relevant authorisations, permits and licences to comply with this Agreement (including, but not limited to, ensuring that any employee, agent, sub-contractor or other associated third-party serving alcohol in relation to an Activity possesses the requisite qualifications, knowledge, permit or certificate);

12.1.7. in relation to the Activity, it has effected and will maintain insurance(s) (independently from Wine Australia) in respect of all claims and liabilities arising, whether at common law or statute, relating to any loss, damage or injury suffered by the Participant or a third party (such as, a guest being hosted by the Participant as part of a trade or media visit), including, but not limited to, public liability insurance with a limit of liability of or exceeding $10,000,000 AUD and such other insurance(s) a reasonably prudent and responsible person would take out that cover the Participant's performance associated with this Agreement; and

12.1.8. if required by Wine Australia, it can and will produce evidence of the insurance(s) referred to in clause 12.1.7.

12.2. Indemnities

12.2.1. The Participant must indemnify, and keep indemnified, Wine Australia from and against any claim, liability, loss and/or costs suffered or incurred by, or brought or made against Wine Australia arising or in connection with or to the extent caused or contributed to by:

a) any personal injury suffered by the Participant;
b) any loss or damage suffered by the Participant while participating in the Activity or meeting its obligations pursuant to this Agreement;
c) any breach by the Participant of this Agreement or any law;
d) the infringement of any intellectual property rights contemplated by this Agreement (including third party intellectual property rights);
e) any malicious, fraudulent, negligent, unlawful or willful act or omission by the Participant;
f) any damage to any property, or injury or death to any person;
g) a breach of any warranties given in clause 12.1;
h) cancellation or variation of the Activity pursuant to clause 4; and
i) any matter outside the control of Wine Australia.

12.2.2. Wine Australia will indemnify the Participant against any liability directly arising out of a breach by Wine Australia of this Agreement or any law.

12.3. Liabilities

12.3.1. Without limiting clause 12.2.1, the Participant will be liable to pay any expense incurred by Wine Australia as a result of breaching this Agreement. For the avoidance of doubt, this includes legal fees and expenses payable to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due to Wine Australia by a Participant.

12.3.2. The Participant is solely responsible for obtaining its own advice in respect of the insurance(s) required under clause 12.1.7 and acknowledges that Wine Australia will not provide any such advice.

12.3.3. Wine Australia may apply interest on any overdue amounts at a rate of 1.5% per calendar month or part thereof and the Participant shall be liable for, and expressly undertakes to pay, all such interest in addition to the overdue amount.

13. GOVERNING LAW AND DISPUTE RESOLUTION

13.1. The application and interpretation of this Agreement shall be governed exclusively by the laws of South Australia, Australia.

13.2. If any dispute arises out of this Agreement, both parties will endeavor to come to a mutually agreeable solution on the issue(s) in dispute.

13.3. If the parties are unable to resolve a dispute by means of good faith negotiations, the parties shall submit the dispute for mediation before a mutually acceptable mediator in South Australia, Australia.

13.4. If the parties are unable to resolve any dispute by mediation, any legal proceedings shall be subject to the exclusive jurisdiction of the courts of South Australia, Australia.

14. FORCE MAJEURE

A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to epidemic, pandemic, riots, fire, flood, hurricane, typhoon, earthquake, lightning, explosions, lock-outs, prolonged shortage of energy supplies, war, strikes or labor disputes, embargoes (such as those preventing the importation or exportation of wine), government orders or any act of a state or governmental action prohibiting or impeding either Wine Australia or the Participant from performing their obligations pursuant to this Agreement.

15. CONSEQUENTIAL LOSS

Notwithstanding any other provision of this Agreement, neither party shall be liable for any consequential or indirect loss or damage (including loss of profits, loss of goodwill or loss of data), arising from breach of this Agreement by that party.

16. ENTIRE AGREEMENT

These terms and conditions and the written information provided by Wine Australia on how to participate in the Activity contains the entire agreement between us and you in relation to its subject matter and supersedes all prior agreements, representations or understanding.

17. DEFINITIONS

'Activity' means the user-pays activity for which the Participant has registered online (or other means) and has elected to participate in.

'Activity Fee' means the fee for each Activity for each winery, brand and/or wine, regional association, state association or state government agency, importer or other relevant party.

'Activity Running Fee' means the cost incurred by Wine Australia in order to run the Activity as advised by Wine Australia.

'Additional Fee' means any additional fee payable in addition to the Activity Fee to ensure the monies collected from Participants for the Activity Fee and the Additional Fee collectively offset the Activity Running Fee.

'Applicant' means the entity who has completed the registration for the Activity but has not been approved by Wine Australia to be a Participant.

'Minimum Number of Targeted Participants' means the least number of Participant(s), as deemed by Wine Australia, in order to run the Activity at a cost-neutral impact on Wine Australia.

'Participating Wines' are the following to be shown at an Activity:

a) wine – as defined in the *Wine Australia Act 2013*;
b) wine product – as defined in the Australia New Zealand Food Standards Code;
c) wine based beverage – defined as an alcoholic beverage that has its alcohol contributed in whole or part by wine, sparkling, or fortified wine and the wine component contributes less than 70% to the product's overall composition,

but exclude vermouth, brandy, grape must, grape spirit, mistelle.

'Participant' ('you', 'your') means any winery, brand and/or wine, regional association, state association, state government agency, importer, exporter, or distributor that has successfully registered to participate in an Activity and the definition includes its employees, officers, agents, representatives, subcontractors and its related third parties.

'Partner Organisation' means other organisations, as advised in writing by Wine Australia, that Wine Australia is collaborating with for the Activity.

'Payment Deadline' means the date of payment for each Activity Fee or another date agreed between the Participant and Wine Australia.

'Registration Deadline' means the deadline for registration for the Activity.

'Reputable Wine Press' includes a publication such as Wine Advocate, Decanter, James Halliday Wine Companion.

'SKU' means stock keeping unit.

'WALAS' means the Wine Australia Licensing and Approval System.

'Wine Australia' ('us', 'our', 'we') means the statutory authority established under the *Wine Australia Act 2013* and any representative, successor or permanent assign of Wine Australia, including its representative organisations outside Australia.