

Harper's Club

FINE WINES & SPIRITS

TERMS AND CONDITIONS OF SALE

1. GENERAL These Terms and Conditions of Sale ("Terms") govern the sale of certain alcoholic beverages ("Products") by Harper's Club, LLC, ("HC") to the purchaser named on the Order Confirmation (defined below) for such Products (the "Customer" and with HC, the "Parties"). These Terms and each accompanying Order Confirmation (collectively, this "Agreement") represent the entire agreement between HC and Customer and supersede any and all previous agreements, understandings, negotiations, representations and warranties, and communications between the Parties, whether written or oral. HC may amend or modify the terms of this Agreement at any time in its sole discretion.

2. LEGAL AGE HC only sells Products to persons in the United States who are at least 21 years old ("Legal Age"). By placing an order for Products with HC, Customer represents and warrants that: (a) Customer is at least of Legal Age; (b) the person to whom any Products will be delivered is also of Legal Age; and (c) the Products are being purchased for personal consumption only and not for resale.

3. PRICE Customer will purchase the Products from HC at the prices (the "Prices") set forth in HC's published price list in force as of the date of the Order Confirmation. The Prices include the costs of standard packaging, and, except as expressly excluded herein, shipping costs to transport the Products to HC's California storage facility. The Prices exclude state and local sales tax, insurance costs, and any United States import duties, tariffs, taxes, or other fees (collectively, "Tariffs") that may be imposed at the time of sale and/or following the Order Confirmation at the time of importation into the United States, which are the sole responsibility of Customer.

4. TARIFFS Prior to authorizing the importation of any Products, HC will provide to Customer a pro-forma invoice detailing the amount of the estimated applicable Tariffs and Customer may elect, in its sole discretion, to approve such importation and delivery, or defer delivery to a later date. If Customer elects to defer delivery to a later date, HC will be responsible for any applicable fees to store the Products until the time of importation and delivery.

5. ORDER CONFIRMATION AND CANCELLATION No order for Products will be considered confirmed until Customer has fully paid the initially invoiced Prices for the Products and applicable sales taxes (the "Purchase Price") by credit card (or made other arrangements for payments acceptable to HC) and received an email or other written confirmation from HC confirming payment of the Purchase Price and acceptance of the order ("Order Confirmation"). All confirmed orders are final and cannot be cancelled.

6. TITLE AND RISK OF LOSS HC will notify Customer when Customer's order is ready to be fulfilled from HC's California storage facility and transported to Customer's designated delivery location (the "Fulfillment Confirmation"). All Products are sold in California, are subject to applicable California sales tax, and title to and risk of loss of the Products passes to Customer in California upon HC's issuance of the Fulfillment Confirmation. As of the date of the Fulfillment Confirmation, all Products are stored for Customer at HC's storage facility in Customer's name.

7. SHIPMENT AND DELIVERY HC makes no representations as to the legal rights of anyone to ship or import alcoholic beverages into any state outside of California. Customer is solely responsible for any shipment or other transportation of alcoholic beverages and for determining the legality and the tax/duty consequences of future transportation of the alcoholic beverages. Customer may authorize HC to act on Customer's behalf to engage a common carrier or other trusted shipping partner to facilitate the transportation of Customer's order at Customer's direction. Alternatively, Customer may choose to pick up the Products at HC's location, or make independent shipping arrangements. Any domestic U.S. shipment of alcoholic beverages requires the signature of a person of Legal Age and possessing identification proving they are of Legal Age. Delivery of Products to persons who are visibly intoxicated is prohibited.

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8. WEATHER HOLD NOTIFICATIONS HC may recommend a delay in the importation or transportation of Customer's order(s) due to weather or shipping conditions that may damage the Products in transit. HC will contact Customer if there is a hold on Customer's order due to weather or shipping conditions (a "Weather Hold Notification"). If, despite receiving a Weather Hold Notification, Customer requests that the order proceed in transit, HC will not be responsible for any claim of damages or loss of any or all of said order, Customer will be deemed to have waived its right to return or reject said order or any part thereof, and HC will not replace or refund said order or any part thereof for any reason.

9. DOMESTIC STORAGE COSTS If any Customer order is not retrieved or otherwise removed from HC's California warehouse by Customer within 30 days of issuance of the Fulfillment Confirmation for any reason, then Customer will be charged \$0.40 per bottle of Product per month or part thereof as a storage fee. No storage fee will be due for any time that storage is required due to a Weather Hold Notification. Customer must pay the storage fee before the order is released from the warehouse. HC will not be liable for any damage, loss or deterioration of Customer's order stored by HC, except to the extent arising from HC's gross negligence or willful misconduct. Customer will be solely responsible for obtaining any necessary or desirable insurance coverage for the Products while they are stored by HC in California.. Customer's Products stored by HC will be subject to a claim of lien and may be sold to satisfy the lien for fees and charges due remaining unpaid for 14 consecutive days, as authorized by the provisions of the California Commercial Code §§7209-10.

10. ACCEPTANCE OF ALCOHOLIC BEVERAGES; DAMAGED OR DEFICIENT ALCOHOLIC BEVERAGES Customer will inspect all Products upon delivery and immediately notify HC in writing of any damage or other deficiency of the Products. Absent delivery of such written notification to HC within 10 calendar days of receipt, Customer will be deemed to have accepted the Products as satisfying its order, and thereafter will not be entitled to reject or return the Products for any reason. HC may require Customer to return Products claimed to be damaged or deficient (including both opened and unopened ones) in order to determine if any refund or return is warranted. Returns and refunds are subject to HC's investigation, review and final evaluation of the relevant facts and circumstances regarding a particular request by Customer. Products transported by or at the direction of Customer by any transportation method or at any time without the consent of HC, or to locations outside of the 48-contiguous United States, any Products that are not current release, and any special-order Products are sold "as-is" and cannot be returned or refunded for any reason.

11. PRE-ARRIVAL ORDERS AND DELAYS. HC offers certain Products on a pre-arrivals or futures basis. HC may provide Customer with estimated times for the delivery of such pre-arrival or future alcoholic beverages from time-to-time, but such estimates are not guarantees. HC cannot guarantee the Ready-to-Ship date of any order, and delays in the delivery thereof may occur without notice. HC will not be liable for any costs, expenses, or damage to Customer caused by any delivery delay.

12. DISCLAIMER AND RELEASE HC takes commercially reasonable steps in sourcing, procuring, and inspecting the Products that it sells. However, it is impossible to know the complete provenance and condition of Products sold by HC. HC MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PRODUCTS SOLD, PURCHASED, SHIPPED, OR DELIVERED OR ANY SERVICES PROVIDED BY HC, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY WAIVED AND DISCLAIMED. CUSTOMER HEREBY RELEASES HC, ITS AGENTS, OFFICERS, OWNERS, AND EMPLOYEES, FROM ANY CLAIMS, DEMANDS, DAMAGES, LIABILITY OR CAUSES OF ACTION FOR ANY MONETARY RECOVERY EXCEPT AS EXPRESSLY SET FORTH AND LIMITED IN SECTION 13 BELOW. CUSTOMER HEREBY ASSUMES ALL RISKS CONCERNING AND RELATED TO THE QUALITY, DESCRIPTION, CONDITION, AUTHENTICITY, AND PROVENANCE OF ANY PRODUCTS PURCHASED FROM HC.

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13. LIMITATION OF LIABILITY HC's aggregate liability arising out of or related to this Agreement, Customer's purchase of products or services from HC, HC's sale of Products to Customer, HC's storage of Products, or any services provided by HC to Customer, whether arising out of or related to tort (including negligence), breach of contract, or upon any other basis in law or equity, will be limited to money damages in an amount which will not exceed under any circumstances the actual price paid by Customer to HC for the products or services in question. In no event will HC or any of its representatives be liable for any special, indirect, punitive, incidental, exemplary, consequential, or enhanced damages, lost profits or revenues or diminution in value, arising out of or relating to this Agreement, regardless of whether such damages were foreseeable, whether HC was advised of the possibility of such damages, and the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based.

14. FORCE MAJEURE Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the Party's control, including, but not limited to, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic, or explosion; (c) war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest; (d) order or action by any governmental authority or requirements of law; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; or (i) other events beyond the Party's control. Subject to the foregoing, nothing herein shall excuse Customer from the obligation to pay HC for Products actually received by Customer.

15. CHOICE OF LAW AND VENUE This Agreement and all matters and disputes arising out of or related to this Agreement are governed by and construed in accordance with the laws of the State of California, without giving effect to any choice or conflict of law provision or rule thereof. Any dispute arising from or related to this Agreement must be resolved by binding arbitration in accordance with Section 16 below, and any such arbitration will take place in San Francisco, California, the Parties hereby waiving any claim or defense that either forum is not convenient or proper. Each Party hereby agrees that any such arbitration will have in personam jurisdiction over it.

16. BINDING ARBITRATION Any dispute, claim or controversy arising out of this Agreement or the breach, termination, enforcement, interpretation or validity of any provision thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration pursuant to Judicial Arbitration Mediation Services Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. The arbitrator is hereby expressly granted the authority to decide his/her jurisdiction hereunder. The Parties shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with any court application for a provisional remedy or to enter judgment on the award, or unless otherwise required by law or judicial decision. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT, BY AGREEING TO BINDING ARBITRATION, THEY EACH WAIVE THE RIGHT TO SUBMIT THE DISPUTE FOR DETERMINATION BY A COURT AND THEREBY ALSO WAIVE THEIR RIGHT TO A JURY OR COURT TRIAL.