

## **PURCHASE AGREEMENT**

### **Terms and Conditions of Purchase**

#### **1.0 INTERPRETATIONS**

##### **Definitions**

In this Agreement the following expressions shall have the following meaning unless the context or otherwise requires: "Agreement" means this written document and shall be deemed to include any deed, agreement or instrument amending, novating or supplementing this written document;

"The Nursery" means YANNAKOUDIS PTY LTD;

A.B.N. 85 087 914 761, a company incorporated in the State of South Australia and having its registered office at 61 Henley Beach Road, MILE END and includes the successors and permitted assigns of Yannakoudis Pty Ltd.

"The Grower" means the grower named in the invoice.

"The Vines" means the grafted vines and Vinifera set out in the order.

#### **2.0 AGREEMENT**

The Nursery agrees to sell to the Grower, who agrees to purchase from The Nursery, the vines.

#### **3.0 PRICE**

The price to be paid by the Grower shall be the sum stated on the GST inclusive Tax Invoice, together with the cost of any freight and reasonable packaging costs.

#### **4.0 TERMS OF PAYMENT**

The terms of payment shall be:-

4.1 A deposit of \$1.00 plus GST shall be payable by the Grower within fourteen (14) days of this Agreement.

4.2 The balance of payment shall be payable prior to the vines leaving The Nursery.

#### **5.0 COLLECTION**

5.1 All times quoted for collection are estimates only and The Nursery shall not be liable for any failure to supply arising from any cause whatsoever.

5.2 The Nursery is entitled to cancel or vary the delivery date, either in all or in part, if the vines are not available for collection as a result of seasonal conditions.

5.3 The Grower shall be responsible for collection of the vines within two (2) days of advice from The Nursery that the vines are available for collection.

5.4 In the event of the Grower failing to collect or arrange cartage the vines, The Nursery at its option, shall be entitled to do all or any of the following:

5.4.1 Retain any monies paid by the Grower;

5.4.2 Charge the Grower reasonable storage costs;

5.4.3 Upon expiration of fourteen days after giving notice to the Grower that the vines are available for collection and the vines remaining uncollected, The Nursery shall be entitled to sell the vines and recover from the Grower any losses sustained as a result of the default of the Grower;

5.4.4 Claim from the Grower the full amount of the purchase price remaining outstanding.

#### **6.0 FREIGHT / CARTAGE**

In the event that the Grower does not collect the vines in person but wishes to make arrangements for freight, either with The Nursery or a carrier direct:-

6.1 The cost of such freight shall be at the Grower's expense.

6.2 Any carrier engaged shall be deemed to be the agent of the Grower;

6.3 The Grower shall be still liable pursuant to paragraph 5.0 herein;

6.4 The Nursery shall not be liable for any failure, neglect or act of the carrier engaged;

6.5 The Nursery does not undertake the obligations or liability of a common carrier with respect to freight arrangements.

6.6 All freight shall be at the risk of the Grower and the Grower is advised to appropriately insure against such risks.

#### **7.0 RISK**

The vines shall be at the risk of the Grower upon the vines leaving The Nursery.

#### **8.0**

#### **OWNERSHIP**

The Grower acknowledges the title to the vines will be transferred to the Grower only upon payment in full of all moneys owing by the Grower to The Nursery for the vines. The Grower further acknowledges and confirms that in the event of default in the payment required hereunder, The Nursery shall be entitled to remove the vines from the property of the Grower without notice to the Grower.

#### **9.0**

#### **CONDITIONS OF SUPPLY**

The vines are supplied to the Grower by The Nursery on the condition that:-

9.1 Any claim for compensation by the Grower shall be limited to the invoice price of the vines, and no claim can be made by the Grower against The Nursery in respect of freight arrangements.

9.2 Any claim must be made in writing by the Grower within six (6) months of collection of the vines by the Grower.

9.3 The Grower acknowledges that The Nursery, as a precondition of obtaining source vine propagation materials required for the vines, has entered into terms of trading whereby no guarantee is given to The Nursery that the vines are free from infection, phytoplasma, Australian Grapevine Yellows, pest or disease or true to description and without guarantee of performance of the vines and, accordingly, the Grower purchases the vines from The Nursery on the same terms.

9.4 The Grower has requested that The Nursery hot water treat the vines. The Grower has not relied upon any representation by The Nursery as to the success or otherwise of hot water treatment and has made his own judgement of the risks and dangers associated with such treatment. Accordingly, the grower agrees to hold harmless The Nursery from all claims, suits or demands arising from any loss or damage sustained by or arising out of hot water treatment of the vines.

9.5 The Grower acknowledges and accepts that The Nursery does not provide any technical advice or assistance and that the Grower is responsible for obtaining independent expert horticultural and viticultural advice regarding the purchase and planting of the vines.

#### **10.0**

#### **FORCE MAJEURE**

Neither party shall be responsible for any failure to fulfil their respective obligations under this Agreement if fulfilment has been delayed, hindered, interfered with, curtailed or prevented:

10.1 by any circumstances whatsoever which is not within control of The Nursery, or

10.2 by any compliance with any law, regulation or ordinance, or with any other demand or request by any local authority or agency or of anybody or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them.

#### **11.0**

#### **TERMINATION**

The Nursery shall have the right to terminate this Agreement at any time upon written notice to the Grower where:-

11.1 The Grower commits a breach of any of the terms or conditions of this Agreement and fails to rectify the breach to the reasonable satisfaction of the other party within fourteen (14) days of receiving written notice of the breach from the Nursery.

11.2 Becomes bankrupt or make any arrangement of composition of his creditors.

#### **12.0**

#### **SEVERANCE**

If any provision of this Agreement or part thereof is held illegal, unenforceable or otherwise invalid, that provision or part thereof shall be deemed to be severed from this Agreement and the remainder of this Agreement shall continue in effect.

#### **13.0**

#### **NOTICES**

Any notice hereunder shall be in writing and served upon the other party either personally, by post or by facsimile.