



YALUMBA NURSERY

Samuel Smith & Son Pty Ltd

TERMS OF AGREEMENT

The Yalumba Nursery (a Wholly Owned subsidiary of Samuel Smith & Son Pty Ltd) hereafter referred to as Yalumba

1. The Purchaser agrees unconditionally to accept and pay for their order at the price specified at the time the order *was placed* and to pay a minimum deposit of 30% once the vine order has been placed and confirmed. The purchaser agrees to take delivery of all vines ordered, and to be responsible for the full cost of the vines ordered.
2. Vines are living growing plants. All care will be taken to fulfill your order. On occasion due to factors outside our control, your total order may not be able to be fulfilled. It is a term of this agreement that in such circumstances Yalumba shall not be held liable for any loss, economic or otherwise suffered by you as a result of non-supply of your order. The purchase price will however be adjusted pro-rata.
3. Terms of payment are COD unless the Purchaser has a trading account with Yalumba.
4. If the Purchaser has a Trading account with Yalumba we require payment, in full, by the last Friday of the month following purchase.
5. The Purchaser agrees to take delivery of the dormant rootlings within 4 weeks of notification that the order is complete.
6. It shall be the obligation of the Purchaser to inspect the goods upon delivery.
7. Delivery date estimate required to allow hot water treatment to be carried out prior to despatch. Delivery date to be confirmed prior to delivery.
8. Yalumba Nursery will not guarantee the performance of hot water treated vine material that is cool stored following supply to a customer.
9. Any claim in respect of unacceptable quality or short delivery must be notified in writing to the Yalumba Nursery within 5 days of delivery.
10. Risk in the goods shall pass when the goods are delivered to the Purchaser.
11. Yalumba will replace vines that are not true to name if advised within a twelve (12) month period of collection. It may be necessary to wait until the following planting season for replacement.
12. The Purchaser acknowledges that Yalumba can give no guarantee in respect of the following in vine propagation material; presence of viral/viroid infection, presence of phytoplasma infection, presence of bacterial infection, presence of fungal infection, presence of any other pest or disease.
13. Where the scion and/or rootstock material has been provided by the Purchaser, Yalumba accepts no responsibility in relation to the field performance, disease status, trueness to type of that rootstock or scion material.
14. The purchaser acknowledges that the seller is not responsible for and makes no warranty regarding the survival rate, fruitfulness or grape quality of or in relation to the vines or regarding any other matters relating to the performance of the vines and, without limiting the forgoing, the purchaser acknowledges that the seller is not responsible for any losses (including production losses) arising due to disease or pests in the vines (as outlined above) or otherwise in relation to the performance of the vines.

Retention of Title

15. The Purchaser acknowledges that all Vines and related products remain the property of Yalumba, and title does not pass until all debts owed to Yalumba including Interest, Bank Charges, Legal Fees and Collection expenses are paid in full. The Purchaser grants the right to Yalumba to enter the Purchaser's premises, or any other premises where goods are stored, to recover possession of the vines or related products.
16. For S. Smith & Son Pty Ltd growers the Purchaser grants the right to Yalumba to reclaim any outstanding debts from S. Smith and Son grape payments and/or to enter the Purchaser's premises, or any other premises where goods are stored, to recover possession of the vines or related products.

Guarantee

17. In consideration of the Purchaser's request to supply vines and related products, we the Purchaser/Director, agree to be responsible to Yalumba for all that Yalumba may now or hereafter supply to the Purchaser of whatsoever sum if the Purchaser fails to pay for vines or related products, that have been ordered, or received, on the clear understanding that the Purchaser's liability shall be unlimited and payable in respect of the whole debt. This Guarantee also extends to payment in full for all vines ordered even if delivery is subsequently refused. This Guarantee is a continuing Guarantee, and security and the Purchaser's liability under shall not be affected by Yalumba giving time or any indulgence of any subsequent decision to cease supply. This Guarantee may only be revoked as to future transactions. Notice of revocation must be made by registered Mail and will only become effective fourteen days after the date of posting.