

User Pays Activity Registration Terms and 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 producers to elect to participate in the initiatives that best fit their brands, regions and market strategy.

2. AGREEMENT

By completing the online registration for a user-pays activity, a Participant agrees to be bound by these terms and conditions.

3. DEFINITIONS

‘**Activity**’ means the user-pays activity for which the Participant has registered online 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 total cost to Wine Australia in order to run the Activity.

‘**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 equals the Activity Running Fee.

‘**Market Program Guide**’ means the market program guide available on the Wine Australia website.

‘**Participating Wines**’ are the wines to be shown at an Activity.

‘**Participant**’ means any Winery, brand and/or wine, Regional Association, State Association, State Government Agency, importer, exporter, or distributor that has registered to participate in an Activity and in the case of a company includes the officers of that company and the representative(s) employed or engaged by that company.

‘**Payment Date**’ 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 of the Activity.

‘**Wine Australia**’ 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.

4. REGISTRATION PROCESS

- 4.1. Any Participant wishing to participate in an Activity must complete the online registration by the Registration Deadline and pay the Activity Fee by the Payment Date.
- 4.2. Wine Australia may refuse to accept the registration of an applicant at its sole and absolute discretion.

5. CANCELLATION OR VARIATION OF ACTIVITIES

- 5.1. If an Activity does not attract the minimum number of targeted Participants or, in the reasonable opinion of Wine Australia, it would be in the best interests of the Australian grape and wine community to do so, Wine Australia may, at its full 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.
- 5.2. 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.
- 5.3. If an Activity is cancelled or varied, Wine Australia will notify applicants and/or Participants as soon as practicably possible.

6. WINE AUSTRALIA CRITERIA

- 6.1. 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 all winemakers and exporters who fund our promotional activities through compulsory charges and levies.
- 6.2. Accordingly, Wine Australia shall have regard to the non-exclusive criteria below when determining (in its sole discretion) whether a candidate shall be deemed a suitable Participant for involvement in the Activity:
 - 6.2.1. whether the candidate contributes to Wine Australia’s marketing and promotional activities through payment of the Wine Grape Levy or the Wine Export Charge (however, while importers, retailers, exporter and distributors may support promotional

activities, it is not intended that they will be directly promoted);

6.2.2. whether Wine Australia is satisfied that the brand (including the label) to be promoted by the candidate has a well-established presence in Australia (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). ;

6.2.3. the quality and the reputation for quality of the wines to be displayed by the candidate including, for example whether they have received any 'high ratings' from reputable wine press (such as Wine Advocate, Decanter or James Halliday)

6.2.4. whether they have been the recipient of any wine press awards (such as a 'Decanter' award), and/or whether they have been the recipients of any silver or gold (or higher) medals at a wine show of an Australian state;

6.2.5. whether the candidate plans to actively promote 'buyers own brands', private labels, bulk wines and/or export-only 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 candidate, the candidate may not be eligible to participate in the Activity or may be required to promote all their wines (including nonbuyers own brand wines);

6.2.6. whether the candidate has engaged in any activity that might affect adversely the export trade in wine or Wine Australia's ability to successfully promote Australian wine overseas (for example, whether the candidate has engaged in (or is suspected of engaging in) 'copycat' activity.

6.3. The Participant acknowledges that any brand or wine not deemed eligible by Wine Australia for inclusion in its promotional activities may be removed from the Activity by Wine Australia at Wine Australia's sole discretion.

6.4. The Participant further acknowledges that it has express permission to exclusively represent a wine, winery or brand of wine at the Activity. The Participant agrees that should Wine Australia request written evidence confirming such

representation, the Participant will furnish Wine Australia with such evidence and Wine Australia may reject the Participant's right to participate in the Activity if the written confirmation is not provided and/or within the timeframe required by Wine Australia.

6.5. At least one label from each brand is to be showcased during the Activity.

6.6. The Participant must be able to supply the quantity of wine in which the Participant registered for.

6.7. Brands must ensure they have sufficient stock to participate in any proposed Activity.

6.8. Wine Australia shall have the right to deal with excess wine if more than the outlined quantity is received by the warehouses in Australia or in Activity market and Wine Australia has no obligation to return such bottles to the Participant. If any of the Participant's wines are requested for use in a seminar/masterclass, the Participant agrees to ship these wines at the Participant's expense as instructed by the deadline that is provided by Wine Australia

6.9. Exhibition Space Sizes

Exhibitor table sizes will be variable by market due to spatial limitations.

6.10. Product & Compliance

The channels through which product will be procured for the Activity must be compliant with local laws. Exhibitors must follow wine logistics protocols provided by Wine Australia. Wine Australia will not be responsible for any costs associated with product procurement.

6.11. Shipping

6.11.1. All shipments that are intended to ship product direct to host venues must follow the protocol which shall be provided by Wine Australia. Wine Australia will not be held liable for any missing inventory or costs incurred as a result of shipments sent that do not follow protocol.

6.11.2. The Participant acknowledges that all representatives of in-market wines will be responsible for the procurement of their own product and associated costs.

7. FEES AND PAYMENT

7.1. Fees

The Participant will pay to Wine Australia the Activity Fee and the Additional Fee in accordance with these terms and conditions. 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 8, after receipt of a valid tax invoice for the Activity Fee, the Participant will pay the Activity Fee on or before the Payment Date.
- 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.

8. WITHDRAWAL OR EXCLUSION

8.1. Withdrawal

Either the Participant or Wine Australia may, at any time, withdraw from a scheduled Activity by giving notice of their wish to withdraw to the other party.

8.2. Effect of withdrawal

- 8.2.1. If the Participant withdraws from an Activity after the date falling 14 days after the Registration Deadline, the Participant will 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 within four weeks of the scheduled date of the Activity—the full Activity Fee.
- 8.2.3. If withdrawal occurs between eight and four weeks of the scheduled date of the Activity—75% of the full Activity Fee.
- 8.2.4. If withdrawal occurs between twelve and eight weeks of the scheduled date of the Activity—50% of the full Activity Fee.
- 8.2.5. If withdrawal occurs twelve or more weeks of the scheduled date of the Activity—25% of the full Activity Fee.

- 8.2.6. Notwithstanding this 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 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 herein, Wine Australia may give notice to the Participant that they are to be excluded from the relevant Activity.
- 8.3.2. If a Participant does not remedy the breach within 3 days of receipt of notice under clause 8.3.1, the Participant may be excluded from the relevant Activity and may also be precluded from attending or participating in marketing initiatives developed by Wine Australia from there on in.
- 8.3.3. If a Participant is excluded under this clause 8.3, the Participant will pay to Wine Australia fees equal to the amount payable as if it had withdrawn pursuant to clause 8.2.
- 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. Additional compositional requirements may be required by Wine Australia in relation to a specific activity which must also be adhered to.

10. PUBLICITY AND PRIVACY

- 10.1. Any advertising, promotion or publicity relating or referring to participation in any Activity must not be false, misleading or deceptive.
- 10.2. Wine Australia may 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.

- 10.3. Wine Australia may obtain Participant personal information and/or data related to the Participant (Participant Information). Wine Australia will only share such Participant Information in accordance with its privacy policy which can be found at <https://www.wineaustralia.com/privacy>.
- 10.4. In relation to any Activity and in particular an online campaign, the Participant agrees to provide a non-exclusive, royalty free, perpetual, irrevocable, worldwide licence (including the right to sub-licence) and 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 these terms and conditions hence may lead to exclusion pursuant to clause 8.3.
- 11.5. Participants agree to comply with the obligations set out in the Diversity and Equality in Wine Charter (the Charter). Failure to comply with the Charter may mean participants are ineligible to attend Wine Australia events. A copy of the Charter can be found here: <https://www.wfa.org.au/assets/Diversity-and-Equality/AGW-Diversity-and-Equality-in-Wine-Charter-Supporting-Document-Action-Plan-2019.pdf>

12. GOVERNING LAW AND DISPUTE RESOLUTION

- 12.1. The application and interpretation of this Agreement shall be governed exclusively by the laws of South Australia, Australia.
- 12.2. 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.
- 12.3. 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.
- 12.4. 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.

13. WARRANTIES, INDEMNITIES AND LIABILITIES

13.1. Warranties

The Participant warrants that:

- 13.1.1. it will not claim or hold itself or any staff employed by them to be an employee of Wine Australia, or to represent Wine Australia in any way;
- 13.1.2. 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;
- 13.1.3. it will not pledge or attempt to pledge, the credit of Wine Australia, or expose it to any pecuniary liability;
- 13.1.4. It will comply with all statutory requirements and local laws and will ensure that it possesses all the relevant authorisations, permits and licences to comply with these terms and conditions (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);
- 13.1.5. it possesses insurance in respect of all claims and liabilities arising, whether at common law or statute, relating to any loss, damage or injury suffered by any agent, employee or

subcontractor of the Participant or to a third party (such as a guest being hosted by the Participant as part of a trade or media visit) in relation to the Activity including public liability insurance with a limit of liability of or exceeding \$10,000,000 AUD; and

13.1.6. if required by Wine Australia it can and will produce evidence of the insurance referred to in clause 13.1.5.

13.2. Indemnities

13.2.1. The Participant must indemnify, and keep indemnified, Wine Australia from and against any and all claims suffered or incurred by, or brought or made against Wine Australia to the extent caused or contributed to by:

- a) any personal injury suffered by an employee, agent or subcontractor of the Participant (or any other related third party);
- b) any loss or damage suffered by the Participant while participating in the Activity or meeting its obligations pursuant to these terms and conditions;
- 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 the warranties given in clause 13.1;
- h) cancellation or variation of an Activity pursuant to clause 5;
- i) any matter outside the control of Wine Australia;
- j) a breach of any other term of this Agreement; and
- k) a breach of any law.

13.2.2. Wine Australia shall indemnify and hold harmless the Participant (and its officers, employees and agents), against any Liability arising out of breach by Wine Australia of this Agreement or the Law.

13.3. Liabilities

13.3.1. The Participant will be liable to pay any expense incurred by Wine Australia as a result of breaching these terms and conditions. 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 by a Participant.

13.3.2. 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.

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 these terms and conditions.

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

This document contains the entire agreement between us and you in relation to its subject matter and supersedes all prior agreements, representations or understanding.