



## USER PAYS VIRTUAL 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

- 2.1. These terms and conditions govern your participation in any Wine Australia owned and operated platform, virtual event, meeting, show, seminar or conference (“Activity”).
- 2.2. By completing the online registration, a Participant agrees to be bound by these terms and conditions. Your registration entitles you to access the Activity for which you have registered. Any and all other costs associated with your attendance shall be borne solely by you, and Wine Australia shall have no liability for such costs.

### 3. DEFINITIONS

‘Activity’ means the user-pays virtual activity for which the Participant has registered online and has elected to participate in including accessing the Platform.

‘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.

‘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.

‘Platform’ means the platform Australian Wine Connect that Participants shall register to have a Profile.

‘Profile’ means the Participant’s individual virtual expo space.

‘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. Each winery shall be considered a separate Participant.
- 4.2. If a Participant wishes to sign up after the Registration Deadline, the Participant shall pay the full Activity Fee to be paid by a prescribed Payment Date.
- 4.3. Wine Australia may refuse to accept the registration of an applicant at its sole and absolute discretion.
- 4.4. Once you have completed your registration, you will receive your registration confirmation by email. Please ensure that your valid email is entered correctly on the registration form. Be sure to check your junk email box too in case any of your Activity related email(s) are caught by spam filters.
- 4.5. You will receive essential information for registered attendees electronically at the email address and mailing address that are provided on your registration form.
- 4.6. In addition, you will also be added to the Participant list for notifications of future activities such as other associated virtual events.

### 5. CANCELLATION OR VARIATION OF ACTIVITIES

- 5.1. If an Activity does not attract the minimum number of targeted Participants or, if 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. You acknowledge and agree that Wine Australia in its sole discretion, reserves the right to change any and all aspects of an Activity, including but not limited to, the Activity name, format of a platform including the Platform, themes, content, program, speakers, performers, hosts, moderators, and time.
- 5.3. If an Activity is cancelled or varied, Wine Australia will notify applicants and/or Participants as soon as practicably possible.

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### 6. LIKENESS

- 6.1. By participating in an Activity you acknowledge and agree to grant Wine Australia the right to record, film, live stream, photograph, or capture your likeness in any media now available or hereafter developed and to distribute, broadcast, use, or otherwise globally to disseminate, in perpetuity, such media without any further approval from you or any payment to you.
- 6.2. This grant to Wine Australia includes, but is not limited to, the right to edit such media, the right to use the media alone or together with other information, and the right to allow others to use or disseminate the media.
- 6.3. The Participant agrees to waive any and all intellectual property rights in the media.

### 7. WINE AUSTRALIA CRITERIA

- 7.1. 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.
- 7.2. 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:
  - 7.2.1. 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);
  - 7.2.2. 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).
- 7.3. 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.
- 7.4. 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.

### 8. FEES AND REGISTRATION

#### 8.1. Fees

The Participant will pay to Wine Australia the Activity Fee in accordance with these terms and conditions.

#### 8.2. Invoicing and payment

- 8.2.1. After the Registration Deadline Wine Australia will issue to the Participant a valid tax invoice for the Activity Fee.
- 8.2.2. After receipt of a valid tax invoice for the Activity Fee, the Participant will pay the Activity Fee on or before the Payment Date.

#### 8.3. Platform and 'Go Live' Dates of a Profile

- 8.3.1. The Platform associated with the Activity will 'go live' for a 12-month period from 31 March 2021 – 31 March 2022. For registrations received after 31 March 2021, Platform Profiles will 'go live' and be visible for the remainder of the 12 months from the date of registration.
- 8.3.2. For registrations received after 31 March 2021, there will be no refund after a Profile 'goes live' on the Platform.
- 8.3.3. Wine Australia shall have full and absolute discretion to edit a Profile before it 'goes live' on the Platform.

### 9. PROHIBITED CONDUCT

By registering for an Activity, you agree not to share, sell or trade your access. If Wine Australia determines that you have violated this policy, Wine Australia may cancel your access and retain any payments made by you.

### 10. WITHDRAWAL OR EXCLUSION

#### 10.1. 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.

#### 10.2. Effect of withdrawal

- 10.2.1. 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 10.2.2:
- 10.2.2. If withdrawal occurs within four weeks of the scheduled date of the Activity—the full Activity Fee. If withdrawal occurs between eight and four weeks of the scheduled date of the Activity—75% of the full Activity Fee.
- 10.2.3. The Participant acknowledges that after the Activity has commenced there shall be no refunds for any reason.

#### 10.3. Breach and Exclusion

- 10.3.1. 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.
- 10.3.2. If a Participant does not remedy the breach within 3 days of receipt of notice under clause 10.3.1, 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.
- 10.3.3. If a Participant is excluded under this clause 10.3, the Participant will pay to Wine Australia fees equal to the amount payable as if it had withdrawn pursuant to clause 10.2.
- 10.3.4. The date of exclusion is taken to be the date on which notice is given to the Participant pursuant to clause 10.3.1.

### 11. COMPOSITION OF PARTICIPATING WINES

- 11.1. 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.
- 11.2. Additional compositional requirements may be required by Wine Australia in relation to a specific activity which must also be adhered to.

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### 12. PUBLICITY AND PRIVACY

- 12.1. Any advertising, promotion or publicity relating or referring to participation in any Activity must not be false, misleading or deceptive.

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>. The Participant acknowledges that the data provided as part of a Profile on the Platform may be stored with a third party.

- 12.2. 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.

### 13. RULES OF CONDUCT OF PARTICIPANTS

- 13.1. You acknowledge and agree that Wine Australia reserves the right to remove you from an Activity if Wine Australia, in its sole discretion, determines that your participation or behaviour creates a disruption or hinders the Activity or the enjoyment of the Activity content by other participants.
- 13.2. Participants may not record or broadcast audio or video of sessions at an Activity.
- 13.3. Wine Australia reserves the right to deny participation to anyone who engages in or is reputed to engage in unethical or non-compliant business practices.
- 13.4. Participants must comply with all directions and requests of Wine Australia.
- 13.5. 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 10.3.

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>

### 14. BUSINESS MATCHING

- 14.1. Wine Australia will partner with Food Innovation Australia to run a number of business matching events for wineries on the Platform during the 12-month 'go live' period.
- 14.2. As part of the Activity Fee, participation in three Food Innovation Australia business matching events will be included.
- 14.3. Participation in additional events will be at an additional cost to the Participant.
- 14.4. Participation in these events (which shall be voluntary) will require Wine Australia to share your information with both Food and Innovation Australia and Austrade. By agreeing to these Terms and Conditions, you consent to Wine Australia providing your information to these organisations for the purpose of the business matching events.
- 14.5. Translation requirements associated with these events will be at an additional cost to the Participant.
- 14.6. Wine Australia reserves the right to cancel these events at any time if there is insufficient demand for such events.

### 15. GOVERNING LAW AND DISPUTE RESOLUTION

- 15.1. The application and interpretation of this Agreement shall be governed exclusively by the laws of South Australia, Australia.
- 15.2. 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. 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.
- 15.3. 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.

### 16. WARRANTIES, DISCLAIMER, INDEMNITIES AND LIABILITIES

#### 16.1. Warranties

The Participant warrants that:

- 16.1.1. 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;
- 16.1.2. it possesses the sufficient legal title in any materials provided to Wine Australia including data provided as part of a Profile to be hosted on the Platform or to be used in the course of the Activity and will grant to Wine Australia a non-exclusive, perpetual and irrevocable licence to use the intellectual property rights in the data to be hosted on the Platform and contained in any materials developed in the process of delivering the Activity;
- 16.1.3. it will not pledge or attempt to pledge, the credit of Wine Australia, or expose it to any pecuniary liability;
- 16.1.4. 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; and
- 16.1.5. 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.

#### 16.2. Disclaimer

- 16.2.1. You acknowledge that by participating in an Activity that you are responsible for the outcomes of participation. Wine Australia makes no guarantee or warranty that participation in an Activity will meet your requirements or achieve a particular result.
- 16.2.2. All communications that takes place by way of the platform are the responsibility of the Participant and Wine Australia shall have no responsibility or liability for the nature of those discussions or any transactions that occur as a result.

#### 16.3. Indemnities

- 16.3.1. 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 loss or damage suffered by the Participant while participating in the Activity or meeting its obligations pursuant to these terms and conditions;

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- b) the infringement of any intellectual property rights contemplated by this Agreement (including third party intellectual property rights);
- c) any malicious, fraudulent, negligent, unlawful or willful act or omission by the Participant;
- d) a breach of the warranties given in clause 16.1;
- e) cancellation or variation of an Activity pursuant to clause 5;
- f) any matter outside the control of Wine Australia; and
- g) a breach of any other term of this Agreement and/or a breach of any law.

16.3.2. 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.

### 16.4. Liabilities

16.4.1. 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.

16.4.2. 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.

## 17. 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 a software or issue with the hosting platform due to acts of God, 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.

## 18. 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.

## 19. 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.