

## STANDARD TERMS OF TRADE

Please note that these standard terms and conditions are deemed to be accepted by the Buyer, (and therefore binding between Mischa and the Buyer), by either (i) placing an Order for Products (as defined below), or (ii) by effecting payment for the purchase of any Products or (iii) generally by the Buyer's conduct.

### 1. Interpretation

- 1.1. For purposes of these Standard Terms, the following terms shall have the following meanings, unless the context otherwise indicates:
  - 1.1.1. "**Business Day**" means any day other than a Saturday, Sunday or public holiday officially recognised as such in the Republic of South Africa and "**Business Days**" shall be construed accordingly;
  - 1.1.2. "**Buyer**" means the person/customer more fully described in a Quote, whether a natural person or a juristic person, or otherwise;
  - 1.1.3. "**CPA**" means the Consumer Protection Act, 2008 (Act No. 68 of 2008, as amended);
  - 1.1.4. "**Mischa**" means Mischa Premier Vines CC, registration no. 1987/002460/23), a close corporation with limited liability duly registered as such in the Republic of South Africa, or its successor-in-title;
  - 1.1.5. "**Order**" means an order for the supply of Products as set out in either a (i) Quote, or (ii) an Order Form, in either event which document has been accepted by Mischa and which is regulated by these Standard Terms;
  - 1.1.6. "**Order Form**" means a document evidencing and/or reflecting an Order contained in either a Quote, or an order document to which these Standard Terms are referred to or are attached, and all other attachments thereto, if any, which may include, without limitation, any invitation to tender or other documents issued by the Buyer to Mischa in respect of the Products, as the case may be;
  - 1.1.7. "**Parties**" means Mischa and the Buyer, and "**Party**" shall mean either one of them, as the context may indicate;
  - 1.1.8. "**Prime Rate**" means the rate of interest per annum which is equal to Mischa's bank's publicly quoted basic rate per annum ruling from time to time, calculated daily and compounded monthly in arrears on the basis of a 365 (three hundred

and sixty five) day year, irrespective of whether it is a leap year or not, charged by the said bank on the unsecured overdrawn current account of its most favoured corporate clients in the private sector from time to time (and in the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, acting as an expert and not as an arbitrator, whose appointment need not be proved, and whose decision shall, save in the event of manifest error, be final and binding upon the Parties);

1.1.9. **"Products"** means vine scions and/or rootstock products reflected in a Quote ordered by the Buyer from Mischa in terms of an Order and/or more fully described in an Order Form and/or such additional Products as may be requested by the Buyer from Mischa in writing from time to time;

1.1.10. **"Quote"** means the written document and/or verbal quotation from Mischa to the Customer in respect of the supply of Products; and

1.1.11. **"Standard Terms"** means these standard terms and conditions, together with any appendices, schedules and/or annexures attached hereto.

1.2. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate.

1.3. When any number of days is prescribed in these Standard Terms, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Business Day, in which case the last day shall be the next Business Day.

1.4. The headnotes to paragraphs hereof are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

1.5. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

1.6. Any reference in these Standard Terms to a Party shall include a reference to that Party's assigns expressly permitted under these Standard Terms and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.

## 2. **Quotation**

2.1. Any Quote given is not an offer by Mischa to sell the Products but is merely an invitation by Mischa to the Buyer to do business with Mischa.

- 2.2. A Quote may be revoked at any time by Mischa.
- 2.3. The Buyer must within three (3) business days of receipt of a Quote from Mischa communicate the Buyer's acceptance of that Quote by either (i) signing the duly completed Quote and returning the same to Mischa (which document will then constitute an Order Form) or (ii) effecting payment of a deposit as detailed below, in which event that Quote will become an Order Form, failing which that Quote shall cease to be of any force and effect.
- 2.4. Mischa may accept or reject in whole or in part any Order placed upon it by the Buyer pursuant to an Order Form. Accordingly, a binding contract shall only come into force between Mischa and the Buyer in relation to the supply of Products if after receipt by Mischa of an Order Form, Mischa either confirms to the Buyer that such a contract has been concluded, or accepts a payment (or part payment) for the Products so ordered and tenders delivery in accordance with an Order Form.
- 2.5. Each and every Quote by Mischa will describe the Products the Buyer wishes to purchase, along with the purchase price, intended date and place of delivery, or intended date and place of collection of the Products by the Buyer, and any other information Mischa wishes to include in the Quote.

### 3. **Terms Regulating an Order of Products**

- 3.1. A contract for the purchase of Products by the Buyer from Mischa will only come into existence on the earlier of (i) written acceptance of a Quote by the Buyer (thereby becoming an Order Form) or (ii) delivery of the Products specified in a Quote to the Buyer or (iii) payment of the purchase price (in part or in full) as specified in a Quote (thereby becoming an Order Form). Each contract for the purchase of Products as described herein shall constitute a separate and indivisible purchase contract for Products ("**Purchase Contract**") subject to the Standard Terms.
- 3.2. The purchase and sale of the Products shall be regulated in accordance with this document, a Quote to which this document may be attached, and any specifications, drawings or documents attached to and forming part of that Quote or Order Form. It is hereby agreed that the aforesaid documents constitute the Purchase Contract and shall constitute the entire agreement between the Parties regarding the sale of the Products. Neither the Buyer nor Mischa shall be entitled to rely upon any other agreements, proposals, negotiations, Quotes, guarantees or representations (whether oral or in writing), in regard thereto, unless reduced to writing, it is expressly stated in such document to form part of the Purchase Contract and is signed by Mischa.

- 3.3. It is specifically recorded and agreed that the terms and conditions of any Quote, delivery note and/or other documentation delivered by Mischa to the Buyer prior to the placing of, or pursuant to any Order shall be of no force and effect to the extent that such terms and conditions conflict with clauses 3.1 and 3.2 above and Mischa shall not be bound by any such terms and conditions.
- 3.4. In the event of a conflict between the provisions of a Purchase Contract and/or the provisions of any of the Buyer's documentation, or any annexure or schedule attached thereto, if any, the provisions of these Standard Terms (and the remainder of the Purchase Contract) shall take precedence, unless otherwise agreed by Mischa in writing.

#### **4. Acceptance Of The Order**

- 4.1. Every Order for Products that the Buyer places with Mischa, whether orally or in writing shall be subject to the terms and conditions of these Standard Terms. In the event that an Order has been placed verbally with Mischa, such Order shall be reduced to writing in the form of an Order Form within 72 (seventy two) hours after the verbal communication and signed by or on behalf of Mischa.
- 4.2. The Order Form constitutes an offer to Mischa by the Buyer to purchase the Products set out therein, which offer shall be accepted by Mischa on written notice to such effect to the Buyer within 48 (forty eight hours) of receipt of the Order Form. Should the offer not be so accepted, it shall be deemed not to have been accepted and no Purchase Contract shall come into being.
- 4.3. Acceptance of the Buyer's Order Form as set out in clause 4.2 above will bring into force a valid and binding Purchase Contract as of the date of such acceptance for the sale of the Products by Mischa to the Buyer, subject to the provisions of these Standard Terms.

#### **5. Deposit, Pricing And Payment**

- 5.1. The Buyer hereby acknowledges and agrees that the purchase price as specified in a Quote, Order or an Order Form is not fixed and remains subject to any changes in the current value of the Products on or before the delivery of the Products to the Buyer, and will exclude VAT. Subject to these Standard Terms, the definitive purchase price payable pursuant to a Purchase Contract shall be the amount reflected as owing on a valid tax invoice issued by Mischa to the Buyer.

- 5.2. The Buyer shall, simultaneously with acceptance of a Quote, furnishing of an Order or Order Form pay to Mischa a non-refundable deposit in an amount equal to 40% (forty percent) of the purchase price specified in such Quote, Order or an Order Form, or such other amount as may be reflected therein (the "**Deposit**"). Mischa shall have the right to apply the whole or a portion of the Deposit as part payment of the purchase price due in terms of a Purchase Contract.
- 5.3. In addition to clause 5.1, Mischa hereby reserves the right to amend and increase any costs contained in the Quote, Order or an Order Form, even after acceptance thereof. The purchase price for Products as reflected in a Purchase Contract will thus vary in the event of any adverse currency fluctuations, increases in government or statutory levies, increases in labour costs, and/or increases levied by third party service providers and/or suppliers.
- 5.4. Any revision in any of the Quote, Order, Order Form or Purchase Contract, as the case may be, will be communicated by Mischa to the Buyer and will be commensurate with the change in the currency exchange rates or the increase in the amounts payable (as contemplated in clause 5.3), as the case may be. In the event of the Buyer disputing the quantum of such increase, such dispute shall be referred by either party forthwith to the accounting officer or auditor of Mischa for determination, who, in such determination, shall act as expert and not as arbitrator, and whose decision shall be final and binding on the Parties, and accordingly not subject to appeal.
- 5.5. The Buyer shall not be entitled to any right of set off in respect of the purchase price contained in an invoice in any nature and shall not withhold or defer payment of the purchase price for any reason whatsoever.
- 5.6. Mischa may cancel Purchase Contract at any time for any reason. In such circumstances Mischa will reimburse the reasonable and necessary costs actually incurred by the Buyer in relation to such cancellation, less the Deposit; provided that Mischa's liability in law to the Buyer shall not in any circumstance whatsoever exceed the amount of a Deposit, or the full purchase price payable under Purchase Contract, as the case may be, whichever is the lesser.
- 5.7. Unless otherwise agreed in writing by the Parties, all amounts due by the Buyer to Mischa shall be paid by the Buyer in South African currency within 30 (thirty) days of the date of an invoice without deduction or set-off, by way of an electronic transfer of funds into Mischa's bank account as set out in the Order Form, or such other bank account nominated by Mischa in writing for such purpose.

5.8. **Without prejudice to the remedies of Mischa, if any amount owed by the Buyer is not paid on the due date thereof, such amount shall bear interest at a rate of 2% (two percent) above the Prime Rate calculated on a daily basis reckoned from the due date to the actual date of payment.**

6. **Delivery/Collection Of Products**

6.1. The intended date of delivery or collection of the Products as specified in a Purchase Contract is subject to applicable weather conditions. **The Buyer specifically acknowledges and agrees that Mischa will not be liable to the Buyer for any damage (or losses) of any nature whatsoever that the Buyer suffers, sustains or may incur as a result of Mischa's failure to provide the Products at all, or on such intended date of delivery/collection as a result of adverse weather conditions.**

6.2. Where Mischa agrees in writing to deliver the Products to the Buyer, such delivery shall be at the risk of the Buyer and the carrier or transporter shall be deemed to be the agent of the Buyer.

6.3. Unless Mischa agrees in writing that the costs of delivery are included in the price specified in the Order Form, Mischa shall be entitled to recover from the Buyer, in addition to the price specified, on demand all reasonable costs incurred in the delivery of the Products to the Buyer.

6.4. The Buyer shall furthermore be liable to Mischa for any additional costs incurred by Mischa including, but not limited to, storage costs, if any, if the Buyer delays in accepting delivery of the Products tendered by Mischa.

6.5. Time shall not be of the essence in respect of the delivery of the Products by Mischa to the Buyer. The date of delivery by Mischa is given in good faith and all reasonable efforts will be made to comply therewith. **Mischa will not be liable to the Buyer for any delay in delivery of the Products in any circumstances whatsoever.**

6.6. Mischa may deliver the Products in instalments and no failure of, or delay in delivery of any instalment, or any defect in the contents thereof, shall entitle the Buyer to treat the Purchase Contract and/or these Standard Terms as repudiated with regard to any remaining delivery instalments. If the Products are delivered in more than one batch, then the Purchase Contract (and these Standard Terms) will be divisible and each batch will be subject to a separate contract subject to the terms hereof.

7. **Risk and Ownership**

- 7.1. Ownership of the Products shall not pass to the Buyer until the full purchase price has been paid by the Buyer to Mischa.
- 7.2. The risk in and to the Products shall pass from Mischa to the Buyer on the date of delivery or collection thereof, as the case may be, notwithstanding the reservation of ownership therein.

8. **Limitation Of Liability**

- 8.1. **Subject to the CPA, the Buyer hereby waives any claim (of any nature whatever) it may have in law against Mischa arising from the Purchase Contract (and/or these Standard Terms) and/or the Products and/or Mischa's failure to comply with a Purchase Contract. In this regard, the Buyer hereby indemnifies and holds Mischa harmless against any and all claims of whatsoever nature and howsoever arising which may be made against Mischa by any third person arising from the re-sale or use by the Buyer of all Products, items, equipment, goods and/or apparatus sold by Mischa to the Buyer, including, without limitation, the infringement of any patent, registered design, registered trade mark or copyright, or the Products being defective or infected in any way.**
- 8.2. **The Buyer further indemnifies and holds Mischa harmless against any and all claims of whatsoever nature and howsoever arising which may be made against Mischa by the Buyer of all Products, items, equipment, goods and/or apparatus sold by Mischa to the Buyer, including, without limitation, the infringement of any patent, registered design, breeder's right, registered trade mark or copyright, or the Products being defective or infected in any way.**
- 8.3. **Mischa gives no warranty and makes no representation in respect of the Products save for the warranties and representations which Mischa is expressly obliged to give in respect of the Products under the CPA.**
- 8.4. **Save as expressly provided in these Standard Terms, all conditions, warranties or representations (express or implied) as to the quality, fitness, performance or otherwise in relation to the Products are expressly excluded.**
- 8.5. **Mischa shall not be liable for any defect in the Products by reason of faulty production, quality of raw materials or otherwise or for any shortfall in the delivery of the Products, unless:**
- 8.5.1. the Buyer notifies Mischa in writing in respect of any shortfall of Products within 20 (twenty) Business Days from the date of delivery thereof; or

- 8.5.2. the Buyer notifies Mischa in writing of any defect within 20 (twenty) Business Days from the date of delivery thereof; and
- 8.5.3. the Buyer establishes, to the reasonable satisfaction of Mischa, that such defect in the Products or shortfall in the delivery thereof does not arise out of any breach by the Buyer of the provisions of these Standard Terms or any other act or omission on the part of the Buyer or its employees, agents and representatives.
- 8.6. **Mischa shall not be liable to the Buyer for any indirect or consequential loss of whatsoever nature and whatsoever cause suffered or incurred by the Buyer**, including but not limited to any loss incurred due to any negligence on the part of Mischa, its members, employers, agents and/or representatives.
- 8.7. **If Mischa is liable in law for any defect or shortfall in the Products, Mischa's liability shall be limited at Mischa's discretion to:**
- 8.7.1. supplying the Buyer with similar replacement Products (as determined in the reasonable discretion of Mischa); or
- 8.7.2. refunding (whether in part or in full) the Buyer the price paid by the Buyer for the Products in question.
- 8.8. **Without limiting the provisions of clause 8.5 above, it is expressly recorded and agreed that the liability of Mischa arising out of any defect in the Products shall not, under any circumstances whatsoever, exceed the purchase price paid by the Buyer for the Products in terms of these Standard Terms.**
- 8.9. In addition to any other remedies of Mischa, Mischa shall be entitled to suspend the fulfilment of any Purchase Contract at any time if any event, occurrence, or happening of any nature whatever, beyond Mischa's control arises, such as non or reduced availability of raw materials, strikes, lock-outs, fire or any other act or event beyond Mischa's reasonable control which interferes with or prevents the manufacture, production or delivery of the Products. Mischa shall furthermore be entitled to cancel the relevant Purchase Contract if any of these events or happenings extend beyond a period of 60 (sixty) days, on written notice to the Buyer to such effect.

8.10. **The Buyer hereby indemnifies and holds Mischa, its directors, shareholders, employees and consultants harmless against any claims, losses, costs and expenses incurred or suffered by any of Mischa, its directors, members, employees and/or consultants arising from any claim/s (of whatever nature) instituted by any third party in relation to or in connection with the Products, including but not limited any claims arising in respect of the on-sale of the Products by the Buyer to its clients.**

9. **Breach And Cancellation**

9.1. Should:

9.1.1. the Buyer commit any act of insolvency (as contemplated in the Insolvency Act, 1936), be wound up (whether provisionally or finally), undergo business rescue proceedings, enter into any arrangement or compromise with the general body of its creditors, be the subject of any resolution passed for its winding up or dissolution, or have a judgement given against it in any court of law which remains unsatisfied for a period of 10 (ten) days; or

9.1.2. any amount owing by the Buyer to Mischa be overdue for a period exceeding 14 (fourteen) days whether under these Standard Terms or any other contract or for any other reason whatsoever; or

9.1.3. the Buyer otherwise be in breach of these Standard Terms or any other contract entered into with Mischa and fail to remedy such breach within 14 (fourteen) days after receipt of written notice from Mischa requiring it to do so,

then, without prejudice to its other remedies, Mischa shall have the right by notice in writing to the Buyer to:

9.1.4. cancel the Purchase Contract in question and any other contract between Mischa and the Buyer;

9.1.5. suspend performance of all or any of its obligations under Purchase Contract or any other contract between Mischa and the Buyer; or

9.1.6. demand payment of all amounts owing by the Buyer to Mischa whether under these Standard Terms or any other contract between Mischa and the Buyer, whether or not then due and payable and which will immediately become due and payable on such demand.

10. **Dispute Resolution, Negotiation, Mediation Then Arbitration**

- 10.1. Should any dispute, disagreement or claim arise between the Parties (“**the dispute**”) in connection with a Purchase Contract, these Standard Terms, or otherwise the Parties shall endeavour to resolve the dispute by negotiation. This entails one of the Parties inviting the other in writing to meet and to attempt in good faith to resolve the dispute within 7 (seven) days from date of written invitation to do so.
- 10.2. If the dispute has not been resolved by such negotiation within 7 (seven) days of the date of the delivery of the written invitation referred to in clause 10.1 above, then the Parties shall submit the dispute to arbitration in accordance with the commercial rules of the Arbitration Foundation of Southern Africa NPC (“**AFSA**”).
- 10.3. An arbitrator/s shall be appointed by AFSA. The decision of the arbitrator/s shall, in the absence of a manifest error or fraud, be final and binding on the Parties and will be given effect to and may be made an order of court.
- 10.4. Unless otherwise agreed in writing by both Parties, any such negotiation or arbitration shall be held in Cape Town.
- 10.5. Nothing in this clause 10 shall preclude either Party from seeking an interim or urgent relief from a court of competent jurisdiction.

11. **Governing Law**

These Standard Terms shall be governed by and interpreted under the laws of the Republic of South Africa.

12. **Proceedings**

- 12.1. Subject to the provisions of the CPA, Mischa shall be entitled to institute any proceedings against the Buyer in any Magistrate’s Court having jurisdiction over it, even though the cause of action or the amount claimed is beyond the jurisdiction of that Court.
- 12.2. In the event of Mischa instructing its attorneys to recover monies from the Buyer, the Buyer shall be liable for and shall pay all legal costs incurred by Mischa on an attorney/client scale inclusive of collection commission.

13. **Cession And Assignment**

- 13.1. The Buyer shall not be entitled to cede, assign or delegate any of its rights or obligations under these Standard Terms without the prior written consent of Mischa.

13.2. Mischa shall be entitled to cede, assign or delegate any of its rights or obligations under these Standard Terms to any other party (ies) on written notice to the Buyer to such effect.

14. **Notices And Domicilium**

14.1. Each of the Parties choose as their *domicilium citandi et executandi* ("**domicilium**") for the purposes of the giving of any notice, the serving of any legal process and for any other purposes arising from these Standard Terms at their respective addresses as set out in the Order Form.

14.2. Each of the Parties shall be entitled from time to time, by written notice to the other to vary its domicilium to any other address which is not a post office box or *poste restante*.

14.3. Any notice given and any payment made by a Party to the other ("**the addressee**") which:

14.3.1. is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

14.3.2. is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the fourteenth day after the date of posting.

14.4. Where, in terms of these Terms and Conditions any communication is required to be in writing, the term "**writing**" shall include communications by telefax and/or e-mail correspondence shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee one hour after the time of transmission.

14.5. Notwithstanding anything to the contrary contained herein, a written notice actually received by a Party shall be an adequate written notice or communication to such Party notwithstanding that it was not sent or delivered at its chosen domicilium.

15. **General**

15.1. **No alteration, cancellation, variation of, or addition hereto (of any nature) shall be of any force or effect unless reduced to writing and signed by both Parties.**

- 15.2. Notwithstanding any express or implied provisions of these terms and conditions to the contrary, or any latitude or extension of time which may be allowed by Mischa in respect of any matter or thing that the Buyer is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver by Mischa of its rights. Mischa is entitled at any time, and without notice, notwithstanding the said indulgence to require strict and punctual compliance with each and every provision or term hereof.
- 15.3. If any provision of these Standard Terms is held by any competent authority to be invalid or unenforceable in whole or in part, then, to the extent of the invalidity or unenforceability, such provision shall be severable from the remaining provisions and the remaining provisions shall continue to be of full effect.
- 15.4. Each provision contained herein is severable, the one from the other, and, if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.

**NOTICE: CONSUMER PROTECTION ACT**

16. If these Standard Terms, the Purchase Contract and/or any Products provided hereunder are regulated by the CPA, it is not intended that any provision of this document contravenes any provision of the CPA and therefore all provisions of this document must be treated as being qualified to the extent necessary, to ensure that the provisions of the CPA are complied with.
17. No provision of these Standard Terms does or purports to limit or exempt Mischa from any liability for any loss directly or indirectly attributable to its gross negligence or wilful default or that of any employee, agent, or any other person acting for or controlled by it to the extent that the law does not allow this, and no provision of this document requires the Buyer to assume risk or liability for this kind of loss to the extent that the law does not allow this.
18. **Please note that:**
- 18.1. Paragraphs 6, 7 and 8 limits and exclude obligations, liabilities and legal responsibilities which Mischa may have towards the Buyer and also limit and exclude the Buyer's rights and remedies and place various risks, liabilities, obligations and legal responsibilities on it;
- 18.2. paragraphs 3, 4 and 6 contains an assumption of risk by the Buyer and may limit the Buyer's rights and remedies to claim against Mischa;

- 18.3. various provisions of these Standard Terms contain acknowledgements of fact by the Buyer. The Buyer must read each paragraph carefully and ensure that the acknowledgement is true and correct. If it is not true and correct, that acknowledgement may limit the Buyer's rights to later claim that it was not aware of those facts or that the acknowledgement is not true and correct; and
- 18.4. paragraphs 6 and 8 require the Buyer to indemnify Mischa against claims that may be made against Mischa in certain circumstances. This may place various risks, liabilities, obligations and legal responsibilities on the Buyer and may entitle Mischa to payment from the Buyer of the amount of such claims.
- 18.5. in complying with the CPA, certain portions of the Standard Terms have been printed in **bold** above. Kindly ensure that you as the Buyer have had adequate opportunity to understand these terms. If the Buyer does not understand these terms or if the Buyer does not appreciate their effect, please ask for an explanation and do not accept these Standard Terms until they have been explained to the Buyer to its satisfaction.