

## CUSTOM CRUSH SERVICE LEVEL AGREEMENT TERMS AND CONDITIONS

### PART 1 – INTRODUCTION

1. **About these terms and conditions:** These terms and conditions form part of any *Custom Crush Service Level Agreement* made between BRPL and a Customer and which refers to these terms and conditions. These terms and conditions may be modified only in writing signed by or for each of the parties.
2. **Glossary:** In these terms and conditions:
  - Agreement** means the applicable *Custom Crush Service Level Agreement* of which these terms and conditions form part.
  - BRPL** means Boar's Rock Pty Ltd ABN 55 076 553 118.
  - Grapes** mean wine grapes delivered by the Customer and accepted by BRPL for processing under the Agreement.
  - Customer** means the party to the Agreement other than BRPL, and if more than 1 person, means each of them jointly and severally.
  - Product** includes juice and / or wine processed from Grapes.
  - Product Specifications** mean specifications for processing Grapes into Product.
  - Schedule of Charges** mean the listing of standard and non-standard charges with the Schedule of Particulars.
  - Schedule of Particulars** means the schedule to the Agreement so named.
  - Service Charge** means the whole or any part of a fee, rental, price, cost or expense (including interest and GST) the Agreement requires the Customer to pay to BRPL. To avoid doubt, Service Charge includes:
    - (a) processing fees stated in the Schedule of Charges;
    - (b) costs of further additives to Product as stated in clause 12 as the Customer may require;
    - (c) any government or industry levy paid by BRPL on account of the Grapes / Product;
    - (d) any other service fee / barrel services, storage fee / casual tank rental fee as stated in the Schedule of Charges.
  - Winery** means the winery identified in the Schedule of Particulars.

### PART 2 – GRAPES

3. **Harvest estimates:** As soon as practicable and before the 31 January before harvest, the customer must give a non-binding written estimate to BRPL as to:
  - 3.1 total tonnes per variety of Grapes the customer expects to harvest and have processed under the Agreement; and
  - 3.2 the expected picking dates of those Grapes.If information so provided changes materially, within 14 days the Customer must give updated particulars to BRPL.
4. **Tonnage deficit:** If for reasons other than bushfire, drought, frost or other adverse seasonal conditions that could not have been overcome by local industry-standard prevention, total tonnes of a variety of Grapes delivered and accepted under the Agreement is 50% or less than that stated in the Schedule of Particulars, the Customer must pay to BRPL 50% of the standard processing fee that BRPL would have earned on the shortfall tonnes.

5. **Tonnage surplus:** If the Customer wishes BRPL to process more Grapes than those stated in the Schedule of Particulars, BRPL may (but is not obliged to) offer to process the surplus for such Service Charge as then agreed.
6. **Turn away rights:** Despite any other provision of the Agreement, without liability to the Customer, BRPL may decline to accept any Grapes due to either:
  - 6.1 the Winery being at full capacity due to accelerated harvesting by other customers due to unseasonal weather or threat of disease – in that case however, BRPL must make a fair allocation of Grapes it will accept from all customers;
  - 6.2 breakdown of essential machinery at the Winery not caused by BRPL's wilful act or negligence;
  - 6.3 breakdown or interruption of the electricity or water supply to the Winery not caused by BRPL's wilful act or negligence; or
  - 6.4 a lack of labour at the Winery due to pandemic or other public health issue.

If BRPL has reason to suspect this clause to be operative, it must give as much advance notice to the Customer as is practicable. Where Grapes are turned away under this clause, the Customer may deal with those Grapes as the Customer thinks fit.

7. **Delivery in:** A load of the Grapes the Customer in fact delivers to the Winery under the Agreement must:
  - 7.1 conform to the particulars set out in the Schedule of Particulars;
  - 7.2 at the Customer's cost, be delivered to the Winery only at times agreed with the Senior Winemaker / Wine Services Manager (or delegate) and in tipping trucks, tipping trailers or in suitable bins (as advised by the Winery) for tipping by rotating head forklift – a tipping truck, tipping trailer or bin so used must be clean to industry standards of hygiene and food safety;
  - 7.3 before placement in the Winery receivable bin, be visually inspected by the Senior Winemaker / Wine Services Manager (or delegate) and accepted by him / her as not contravening any of these following standards –

	<b>Rejection Standard</b>
Maturity upon harvest	As advised
Rogue varieties – Red in White	Maximum 2%
Rogue varieties – White in Red	Maximum 5%
Dry berry (Shrivel) / Sunburn	Maximum 8%
Dilution with water	None permitted
Powdery mildew	Maximum 8%
Downy mildew	Maximum 8%
Botrytis	Maximum 5%
Maceration - Damaged berries	Maximum 8%
Temperature of Grapes on delivery	Maximum 30°C
Mealy bug	Maximum 5%
Fermentation	None Permitted
Acetification or oxidation	None Permitted
Vinegar fly / Fruit fly	None Permitted
Salt contamination	Symptoms on foliage and/or maximum 400 mg/litre of juice of soluble chlorides expressed as NaCl
MOG (wood, leaves, stones, steel, insects, other creatures, etc).	Maximum MOG 3 (see MOG Rating Guidelines)

from the *Australian Winegrape Load Assessment – a Visual Guide* (Allan, 1998))

Hydraulic oil or chemicals not registered for viticultural use	None permitted
Chemicals applied within a withholding period or at rates in excess of manufacturer's specifications	None permitted
Smoke-affected or tainted	None permitted
Non-grape odour or residue not covered above	None permitted

The Customer or their delivery driver for the load is entitled to watch the inspection, but failure to do so does not invalidate the inspection.

7.4 if accepted by the Winery (as above) and before placement in the Winery receivable bin, be weighed on the registered, electronic weighbridge at the Winery – a duplicate copy of the weigh note should normally be sent to the Customer within 1 working day after the delivery – a weigh note is sufficient evidence of its subject matter unless proved incorrect.

8. **Rejection:** If in the Senior Winemaker / Wine Services Manager's (or delegate's) good faith and conclusive opinion a load of Grapes (or a fair sample of the load) fails to meet a standard listed in clause 7.3:

8.1 that load is rejected, will not be processed at the Winery, and the Customer at their cost must remove the load from the Winery on the same working day and within 6 hours on that day (failing which BRPL may do so and recover the costs from the Customer); and

8.2 the rejection and reasons must be advised to the delivery driver or (within 2 hours) advised to the Customer by telephone.

The Customer may deal with rejected Grapes as the Customer thinks fit.

9. **Late-discovered contamination:** If:

9.1 any Grapes as delivered would fail a standard listed in clause 7.3;

9.2 BRPL (upon customary visual inspection) is not aware of the fact and extent of the problem before those Grapes are placed in the Winery receival bin; and

9.3 those Grapes are accepted at the Winery;

then:

9.4 the Customer is liable for any loss or damage BRPL suffers as a result, including any reasonable costs or expenses incurred in testing for the extent of the contamination / salvaging or attempting to salvage the Grapes concerned and other juice / wine affected by those Grapes / cleaning equipment to remove residual contamination / making good any damage to equipment caused by the contamination, and / or disposing of those Grapes and any juice / wine affected by those Grapes;

9.5 as soon as practicable, BRPL must notify the Customer of the cause and extent of the loss or damage suffered.

10. **Label integrity program:** To comply with the Label Integrity Program (LIP) under the *Wine Australia Corporation Act 1980*, the Customer certifies that:

10.1 only chemicals registered for use under the Australian Food Standard have been used on the vineyards applicable to the Grapes;

10.2 specific chemicals and spray volumes for all chemicals have been recorded - this includes insecticides, fungicides, herbicides and foliar fertilisers applied during the current growing season;

- 10.3 adequate withholding periods have been observed in accordance with recommendations by the Australian Wine Research Institute, and
- 10.4 the source and variety of the Grapes advised to BRPL and entered on the weigh note provided under clause 7.4 is correct in every respect.

### PART 3 – PROCESSING

11. **Product Specifications:** After any Grapes are accepted at the Winery, BRPL promptly must inform the Customer (preferably in writing) if those Grapes cannot by usual processing be expected to achieve the proposed Product Specifications for the Product and, if not, what steps may be taken (and at what cost and with what potential outcomes). Taking into account information so provided, within 1 working day the Customer may in writing given to BRPL elect to either:

- 11.1 vary the Product Specifications to suit, or
- 11.2 not vary the Product Specifications but, to the extent of identified issues, irrevocably release BRPL from liability if the Product does not achieve the original Product Specifications.

In default of an election, clause 11.2 applies.

12. **Processing:** BRPL must crush and otherwise process each load of Grapes accepted at the Winery in accordance with (in descending priority):

- 12.1 applicable laws and mandatory codes of practice;
- 12.2 subject to clause 11, the Product Specifications;
- 12.3 BRPL's usual procedures; and
- 12.4 the exercise of reasonable care.

Processing includes appropriate use of those additives listed in the Product Specifications, and basic laboratory analysis of each ferment batch of Product as required. Any other additives required must be advised by the Customer in a timely fashion and would be supplied and administered by BRPL at additional expense to the Customer.

13. **Customer supplied additives:** If the Agreement provides for the Customer to supply any additives for use by BRPL in processing any Grapes:

- 13.1 the Customer must supply such additives in a timely manner and in the quantity required;
- 13.2 BRPL need not subject such additives to any testing or quality control before use; and
- 13.3 the Customer alone bears the risk of such additives resulting in an outcome for Product not intended by Customer.

14. **Marc:** Dry marc and grape stalks from Grapes accepted at the Winery become BRPL's property.

15. **Lees:** If a load of Grapes is less than 10 tonnes, lees from the juice become BRPL's property. Otherwise, juice lees remain the Customer's property. For lees from the wine produced, parcels of less than 1,000 litres will not be RDV-filtered and become BRPL's property.

16. **Product quality dispute:**

- 16.1 A claim that Product does not comply with the Agreement for reasons that are BRPL's responsibility is not valid unless:
  - 16.1.1 advised to BRPL in writing (with reasonable details) while the Product is in BRPL's possession or within 10 working days after the Product leaves the Winery and before the Product is blended or takes any other step to being in finished saleable condition; and

16.1.2 if the Product is then not at the Winery, the Customer takes reasonable steps to preserve the Product pending assessment of a sample by an expert under clause 17, if BRPL requires the claim be referred to an expert.

A claim (in common law, equity or under statute) by the Customer against BRPL is barred and irrevocably released insofar as one that could be made under the Agreement but for delay in making the claim.

16.2 If an expert appointed under clause 17 determines that a sample of the Product does not comply with the Agreement for reasons that are BRPL's responsibility or if BRPL admits the claim, the Customer may elect to either:

16.2.1 require the Product be promptly re-worked by BRPL at no additional cost to the Customer;

16.2.2 accept the Product as is, but at a reduced Service Charge to be agreed; or

16.2.3 reject the Product – in which case:

(a) the Customer need not pay any Service Charge for that Product unpaid, and is entitled to refund of any Service Charge for that Product already paid;

(b) BRPL's liability to the Customer for the non-compliance is limited to the lesser of:

(i) the wholesale cost to the Customer to purchase and bring to the Winery a wine product that is of substantially similar quality and characteristics as the Product rejected; and

(ii) an amount clause 40 allows;

(c) Product rejected becomes BRPL's property and, at BRPL's cost and election, the Customer must deal with any of that Product in the Customer's possession as BRPL directs.

In default of other election, clause 16.2.1 applies.

17. **About an expert:** Where an expert is to be appointed for the purposes of clause 16:

17.1 the expert must be an individual agreed by the parties or, if they cannot agree within 14 days, an individual nominated by the then managing director (or delegate) of The Australian Wine Research Institute ABN 83 007 558 296;

17.2 the terms of appointment of an expert must include:

17.2.1 each party may make submissions to the expert within the time set by the expert;

17.2.2 each party must give to the expert any records or information reasonably requested by the expert;

17.2.3 the expert may inform themselves as to the facts of the matter to be determined;

17.2.4 the expert may so far as is reasonable instruct laboratories, valuers, and other professionals to the extent the expert considers necessary to make his or her determination;

17.2.5 in making his or her determination, the expert must have regard to the express terms of the Agreement;

17.2.6 the expert must make his or her determination in writing (giving reasons) within 30 days after acceptance of the appointment; and

17.2.7 the expert's fees, costs and expenses are to be borne equally by the parties unless the expert decides otherwise;

- 17.3 an expert acts as an expert and not as an arbitrator;
- 17.4 an expert's determination is in the absence of bias or manifest error, final and binding on the parties.

#### PART 4 – STORAGE OF PRODUCT

18. **Storage obligation:** BRPL is not obliged to store Product for longer than the period stated in clause 26.
19. **Storage location:** BRPL must store the Product at the Winery or designated off-site locations, or as the parties may agree in writing.
20. **Storage:** BRPL must take reasonable care of Product in storage including:
- 20.1 a tank used to store Product at the Winery must be fit for the purpose; and
- 20.2 (subject to clause 21) store Product separate from other sources, varieties or other vintages.
21. **Ullage:** If Product when first transferred into a tank is insufficient to fill the tank (to its expansion chamber), then:
- 21.1 (unless the Customer is already aware of the problem), BRPL must promptly inform the Customer; and
- 21.2 within 72 hours of the Customer first being aware of the problem, the Customer must notify BRPL as to what action to take (at the Customer's risk and cost) to prevent or mitigate deterioration of the Product from exposure to air in the tank (such as to relocate the Product to smaller tank/s, or top up the existing tank with wine from other sources), failing which:
- 21.2.1 the Customer alone bears the risk of deterioration of the Product from exposure to air in the tank; and
- 21.2.2 at the Customer's risk and cost, BRPL may (but is not obliged to) take such steps in accordance with good practice as it considers desirable to mitigate further deterioration of the Product from exposure to air in the tank.
22. **Storage information:** If at any time the Customer requests, within 3 working days BRPL must notify the Customer as to the Product then stored (differentiating between each variety of Product and identifying a unique identifier of each tank in which Product is stored) and any other information the Customer reasonably requests.
23. **Access during storage:** At any time during working hours and upon reasonable notice, the Customer may inspect and take samples of Product stored at the Winery. At times of inspection, the Customer must be accompanied by a Winery employee, comply with usual occupational health and safety procedures and not disrupt Winery operations.

#### PART 5 – TAKING AWAY PRODUCT

24. **Product readiness:** Promptly (normally within 24 hours) after each ferment batch / wine Product is complete to the processing stage contracted by the Customer, BRPL must notify the Customer (preferably in writing) the ferment batch / wine is ready for the Customer to collect.
25. **Product containers:** Product leaves the Winery in bulk (in transport organised by the Customer), and not in bottles or bladders.
26. **Taking away the Product:** Unless the parties have agreed otherwise and in writing, the Customer at their cost must collect from the Winery each ferment batch of Product within normal working hours and no later than 7 days after notice of completion of contracted processing. In default, BRPL may:
- 26.1 for the applicable Service Charge, store the Product; and / or
- 26.2 at the Customer's cost and risk (including as to any loss or deterioration of the Product) load and arrange delivery of the Product to the Customer, and the Customer must then have suitable facilities to receive the Product; and / or

26.3 exercise any other remedy BRPL may have.

Upon demand, the Customer must reimburse BRPL for any costs to which this clause applies.

27. **Records:** Upon request, BRPL must give to the Customer such information or records about its provision of services as required to meet all legal requirements and any requirements of the Wine Australia Corporation in relation to the Product during its time at the Winery.

#### **PART 6 – OWNERSHIP & RISK**

28. **Ownership:** Subject to clauses 14 (marc) and 15 (lees), ownership of Grapes and of Product remains with the Customer.
29. **Risk:** Excepting that BRPL must take reasonable care of Grapes / Product while under BRPL's control, at all times the Customer alone bears the risk of loss or damage or deterioration in Grapes / Product. For these purposes, BRPL's control starts when Grapes are placed in the Winery grape receival bin and ends at the end of the Winery hose when Product enters the transport for leaving the Winery.
30. **Insurance:** BRPL recommends the Customer at all times insure against loss or damage or deterioration in Grapes / Product and any consequential loss.

#### **PART 7 – GOVERNMENT OR INDUSTRY LEVIES**

31. **Levies:** The Customer must pay when due the wine grape levy and grape research levy for the Grapes / Product as payable under *Primary Industries (Excise) Levies Act 1999* (Cwth), and any contribution required of the Customer under *Phylloxera and Grape Industry Act 1995* (SA) or other law. BRPL may in the first instance pay any government or industry levy legally payable by the Customer for the Grapes, then add those payments from amounts payable by the Customer to BRPL under this Agreement.

#### **PART 8 – PAYMENTS**

32. **Invoices:** BRPL may invoice the Customer:
- 32.1 for processing - after completion of each week's contracted processing;
  - 32.2 for storage - after the end of each month, or the cessation of storage, whichever is earlier;
  - 32.3 for any other amounts recoverable from the Customer under the Agreement – after BRPL incurs the cost, expense or damage to be recovered.
33. **Payment:** The Customer must pay an invoice to BRPL at the time agreed in writing, and, absent such agreement, within 30 days after the date of the invoice.
34. **Set off:** At any time, BRPL may set off any moneys payable or to become payable by BRPL to the Customer (alone or with others) on any account against any moneys payable or to become payable by the Customer to BRPL under the Agreement. The Customer may not set off against any invoice any present or future claim or defence that the Customer may have against BRPL for any reason.
35. **Default remedies:** If the Customer does not pay any invoice when due, BRPL may:
- 35.1 recover from the Customer as a debt interest thereon at 15% per annum from the due date to the date of payment;
  - 35.2 suspend processing of Grapes / Product without liability;
  - 35.3 retain possession of any Grapes / Product in BRPL's possession;
  - 35.4 cease storage of any Product for the Customer; and / or
  - 35.5 exercise any other remedy BRPL may have.

If any invoice remains unpaid for 60 days after due, subject to law and without limiting its other rights and remedies under the general law or statute, BRPL may sell any Product in its possession by public auction upon giving to the Customer at least 14 days before such sale a written notice by registered post stating the amount of the debt, a description of the Product to be sold, the time and place of sale, and the name of the proposed auctioneer. BRPL and its associates are free to bid at such auction. Upon such sale, the proceeds must be applied towards first to defray the costs of and incidental to such sale, next in payment of all money then due by the Customer to BRPL, and lastly any balance paid to or for the benefit of the Customer.

To avoid doubt, the above rights are in augmentation of, and not in derogation of, any common law possessory lien or rights or remedies of BRPL under the *Sale of Goods Act 1895*, *Unclaimed Goods Act 1987*, *Warehouse Liens and Storage Act 1990*, *Personal Property Securities Act 2009* or other legislation.

36. **PPS regime:** If and to the extent the above rights in clause 35 constitute a security interest under a security agreement as defined in the *Personal Property Securities Act 2009 (PPSA)*, then:
- 36.1 at any time, without prior notice to the Customer but at the Customer's cost, BRPL may register in relation to the above rights one or more financing statements / financing change statements on the register maintained under the PPSA;
- 36.2 to any extent BRPL at any time requests, within 7 days the Customer must do all things necessary to assist such registration(s) and / or ensure the above rights priority over any other security interest (present or future) over the same property; and
- 36.3 the Customer irrevocably contracts out of sections 95(1)(a), 130(1)(a), 132(4), 135(1)(a), 142, 143, 157 of the PPSA.
37. **GST:** If BRPL is liable to pay GST for a taxable supply it makes to the Customer under the Agreement, then (unless the consideration is expressed to include GST) the consideration payable by the Customer to BRPL for that taxable supply must be increased by an amount equal to the amount of that GST and be paid at the same time as when the consideration for the relevant taxable supply is required to be paid by the Customer, provided that BRPL must give to the Customer a tax invoice for the taxable supply within the time the GST Act requires.

In the Agreement, **GST**, **taxable supply** and **tax invoice** have their meaning in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*.

## PART 9 – LIABILITY

38. **Warranty by the Customer:** The Customer warrants that on delivery of Grapes to the Winery the Customer owns those Grapes, has bought or agreed to buy those Grapes (within the meaning of *Sale of Goods Act s. 25(2)*) or has the authority of the owner of those Grapes for work to be done to the Grapes and the Product under the Agreement.
39. **Warranties by BRPL:** So far as the Agreement does not expressly provide otherwise and so far as applicable laws permit, BRPL does not give any warranty, representation or other assurance in connection with its services or its possession of the Grapes / Product.
40. **Limitation of liability:**
- 40.1 Except to the extent loss or damage is caused by BRPL's wilful default, BRPL's liability in connection with the Agreement (in common law, equity or under statute) is limited to the amount (if any) that BRPL's insurer pays in response to a claim by the Customer.
- 40.2 To avoid doubt, in no case is BRPL in connection with the Agreement liable (in common law, equity or under statute) to the Customer for any indirect, special or consequential loss, such as any:
- 40.2.1 loss of income, profit or business;
- 40.2.2 loss of goodwill or damage to reputation;
- 40.2.3 loss of value of a capital asset;

40.2.4 reduction in share price; or

40.2.5 other types of indirect, special or consequential loss or damage whether or not foreseeable.

41. **Release:** Subject to clause 16.2 or to the extent caused by BRPL's wilful default, the Customer releases BRPL and / or a person for whom BRPL is responsible from a claim, liability, loss, cost or expense in connection with negotiations for or on the performance of this Agreement. BRPL holds the benefit of this clause on trust for itself and each person for whom BRPL is responsible.

42. **Indemnity:** As a continuing obligation, the Customer indemnifies BRPL and / or a person for whom BRPL is responsible from and against any claim, liability, loss, cost or expense to the extent released under clause 41.

43. **Force majeure:** A party is not liable for failure to perform the Agreement to the extent and for so long as its performance is prevented or delayed because of circumstances outside the party's direct control and without fault or negligence by that party, but only if that party:

43.1 immediately gives written notice to the other party; and

43.2 does everything reasonable to remedy the cause quickly.

44. **Dispute resolution:** Subject to this clause, any dispute in connection with the Agreement must not be the subject of litigation pending the party raising the dispute:

44.1 notifying the other party as to the nature of the dispute (with reasonable details), and what action the party giving notice thinks will resolve the dispute;

44.2 by the same or other notice, inviting the other party to a meeting of the parties' respective agents at some convenient location with a view to resolving the dispute.

This clause does not prejudice the right of a party: (i) to institute proceedings to enforce payment due under the Agreement or to seek injunctive relief to prevent immediate and irreparable harm; or (ii) to suspend services or terminate the Agreement where the basis for doing so is not in dispute.

45. **Termination:** A party may by written notice to the other party terminate the further performance of the Agreement (effective immediately or on such later date as stated in the notice) if:

45.1 the other party fails to pay any moneys payable under the Agreement within 7 days after the due date for payment;

45.2 the other party fails to remedy their material breach of the Agreement within 14 days (other than for payment of moneys) after written notice from the first party specifying the breach and requiring its remedy, what the first party requires to be done to remedy the breach and that the first party proposes to terminate the Agreement if the other party does not remedy;

45.3 any information provided by the other party to the first party in connection with the performance of the Agreement is misleading or deceptive in a material particular;

45.4 the other party is in the first party's reasonable opinion insolvent; or

45.5 for reasons to which clause 43 (*force majeure*) applies a party is prevented from substantially performing the Agreement for at least total 30 days and the notice is given while such *force majeure* exists.

Termination under this clause does not prejudice any accrued rights or obligations. If the Customer terminates the Agreement under this clause, the Customer and its contractors may enter the Winery during business hours to take possession of the Customer's Grapes / Product.

## PART 10 – OTHER MATTERS

46. **Additional services:** In addition to processing, BRPL may provide such other services to the Customer as the parties may agree in writing.

47. **Contact person:** A party's commercial contact person stated in the Schedule of Particulars (or as last notified) is taken to have authority to bind the party in relation to the Agreement generally.
48. **Customer's winemaking contact:** If the Customer is to nominate a person to oversee the processing for the Customer:
- 48.1 on a timely basis, the Customer must notify BRPL of the person's contact details, industry experience and any limitations on the person's authority to make choices for the Customer;
- 48.2 in the processing, the person may make choices for the Customer only to the extent the Product Specifications allow for such choices;
- 48.3 the Customer alone is liable for any adverse outcomes of choices made by the person in the processing; and
- 48.4 if, at any time, BRPL for good reason considers that such person is not one with whom BRPL can or should work, within 7 days of written request by BRPL, the Customer must replace that person, failing which BRPL may terminate the further performance of the Agreement by so notifying the Customer, without prejudice to accrued rights or obligations.
49. **Assignment by BRPL:** At any time, BRPL may by notice to but without need for the Customer's consent assign its rights and obligations under the Agreement so far as remain to be enjoyed or performed to a person then the owner or having right to possession of the Winery. Upon such assignment, BRPL is released from further performance of the Agreement, without prejudice to accrued rights and obligations.
50. **Assignment by the Customer:** Except with BRPL's prior written consent, the Customer may not assign their obligations under the Agreement. Consent may be conditional. If during the term of the Agreement the Customer conveys to a third party the ownership or right to possession of a vineyard block intended to be the source of any Grapes, the Customer must endeavour for the third party to accept an assignment of the Customer's rights and obligations under the Agreement so far as remain to be enjoyed or performed and concern that vineyard block. If such third party is at arm's length to the Customer and does not take an assignment as above, the total volume of Grapes to be processed under the Agreement reduces by the volume of Grapes now contemplated to be sourced from that vineyard block.
51. **Duty of confidence:** Subject to applicable laws or to any extent necessary to the performance of the Agreement or in seeking a remedy under the Agreement and excluding information then in the public domain (other than by breach of the Agreement), a party must keep confidential and not disclose information about the other party or its goods or services or business processes that becomes known as a result of negotiations for or in performance of the Agreement.
52. **Interpretation:** In the Agreement: singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward the Agreement or any portion of it.
53. **About the Agreement:** The Agreement governs a thing done by either party in relation to the Grapes before the date of the Agreement but in contemplation of the Agreement. The Agreement is the whole contract between the parties about the Grapes / Product and supersedes any prior contract or obligation between the parties about the Grapes / Product. The Agreement can be amended only by written agreement of the parties. A party waives a right under the Agreement only by written notice that it waives that right. Time is of the essence as regards any date or period under the Agreement. The laws in South Australia govern the Agreement.
54. **Notices:** To be effective, notice under the Agreement must be in writing and given to a party either:
- 54.1 by personal delivery - but only if the recipient is an individual;
- 54.2 by registered post to the recipient's address stated in the Schedule of Particulars or as last notified and is given at the time at which the letter would be delivered in the ordinary course of post;
- 54.3 by fax to the recipient's fax number stated in the Schedule of Particulars or as last notified and is given when the sending machine confirms notice has been sent;

- 54.4 by email to the recipient's electronic address stated in the Schedule of Particulars or as last notified and is given when the recipient issues a confirmation the notice has been read;
- 54.5 as *Electronic Transactions Act 2000 (SA)* may allow; or
- 54.6 as permitted by a statute applicable to that party.

A notice to BRPL must be marked to the attention of its commercial contact person at the time.