

DELICATO VINEYARDS – DFV WINES
PURCHASE ORDERS, CONTRACTS & WORK ORDERS
TERMS & CONDITIONS

The following terms and conditions apply to all Delicato Vineyards purchase orders, contracts, & work orders issued to suppliers of labor, workmanship, material, equipment, supplies, transportation and supervision for all Delicato entities in addition to any terms set forth on the face of an individual purchase order or in any plans, specifications or other documents incorporated by reference (each, collectively, an “Order”). Acceptance by Delicato of any offer from Seller is expressly limited to the terms and conditions of the Order, and Delicato hereby objects to and shall not be bound by any additional, different or conflicting terms, whether printed or otherwise, in any other communication between the parties (including on any of Seller’s forms, letter or papers), it being understood that the terms and conditions of the Order shall prevail notwithstanding any such additional, different or conflicting terms.

A. Acceptance

1. This order is Delicato’s offer to purchase the goods and/or services described herewith from Seller. Delicato’s placement of this order with Seller is expressly conditioned upon Seller’s acceptance of all of the terms and conditions of purchase contained on or attached to this order.
2. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by Delicato’s Purchasing Department, and no such additional or different terms or conditions in any printed form of Seller shall become part of this contract despite Delicato’s acceptance of materials or services, unless such acceptance specifically recognizes assents to their inclusions.
3. Any objection by Seller to the terms and conditions hereof shall be ineffective unless Delicato is advised in writing thereof within ten days of the date of this order.
4. The Order shall be deemed accepted by Seller on the earlier of (a) shipment of goods or rendering of services ordered, in total or in part, or (b) within 15 days of issuance by Delicato, absent written notification to Delicato of non-acceptance.

B. Identification: All invoices, packages, shipping notices, instruction manuals and other written documents affecting this order shall contain the applicable Purchase Order number. Packing lists shall be enclosed in each box or package shipped pursuant to this order, indicating the contents therein. Invoices will not be processed for payment until all item invoices are received.

C. Shipping Instructions: All goods are to be shipped freight prepaid, F.O.B. destination, unless otherwise stated. Where Delicato has so authorized in writing, goods may be shipped F.O.B. shipping point, but Seller shall prepay all shipping charges, route the goods by the least expensive common carrier, or the carrier specified, and list said charges as a separate item on Seller’s invoice. Each invoice for shipping

charges shall be accompanied by the original or copy of the bill indicating that such charges have been paid. Delicato reserves the right to reject C.O.D. shipments. Seller shall not insure the goods for Delicato's account during shipment except upon Delicato's written request, or where the shipping mode is parcel post.

- D. Special Charges: Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags, containers and related matters unless Delicato has assumed an express obligation therefore by notation on the reverse side hereof.
- E. Delivery: Time is of the essence, and this order may be terminated if delivery is not made or services are not performed by the date specified. No change in the scheduled delivery date or performance will be permitted without Delicato's prior written consent. No acceptance of goods or services after the scheduled delivery date will waive Delicato's rights with respect to such late delivery nor shall it be deemed a waiver of future compliance with the terms hereof.
- F. Invoices Payments: Unless otherwise specified in the purchase order, Payment terms will be Net 30. All quotes and amounts paid under the Order shall be in U.S. Dollars. Seller shall bear the risk of fluctuation in foreign exchange rate. Delicato shall have no obligation to pay any amount prior to Delicato's receipt of a correct and proper invoice for such amount prepared in accordance with the Order. Except as expressly provided in the Order, payment shall not be due until final acceptance by Delicato. Delicato shall have the right to reduce and set off against amounts payable under the Order any indebtedness or other claim which Delicato may have against Seller, however and whenever arising.
- G. Prices: If prices are not stated on this order, it is agreed that the goods or services shall be billed at the price last quoted, or paid by a customer of Seller, or the prevailing market price, whichever is lower.
- H. Discount Terms: If cash discounts are offered and identified, such discount periods will be computed from the date of delivery of the goods or services ordered; or the date of Delicato's receipt of a correct and proper invoice, whichever is later. Payment or other terms identified on the Seller's invoice which are contrary to those of the Order shall have no force and effect unless acted upon or approved in writing by Delicato. Delicato will make every effort to pay invoices within the terms prescribed in the Order, however, in no event will Delicato be obligated to pay late fees or penalties for invoices paid outside the Order terms.
- I. Tax: Seller shall pay all taxes that may arise out of its sale of goods and services. Delicato agrees to pay California State Sales or Use taxes or to provide Seller an exemption certificate.
- J. Assignments: Seller shall not assign this contract, or the right to payment due hereunder, without Delicato's written consent.
- K. Liens, Claims and Encumbrances: Seller warrants and represents that all goods will, when delivered hereunder, be free and clear of all liens, claims or encumbrances of any kind.

- L. Rejection: All goods purchased hereunder are subject to Delicato's inspection and approval. Goods rejected by Delicato for whatever reason shall be held, transported and/or stored at Seller's expense. Seller shall promptly reimburse Delicato for any such expense.
- M. Default: Delicato may, subject to the provisions of paragraph "N", by written notice of default to Seller, cancel the whole or any part of this order or exercise any other remedy provided Delicato of goods by law or in equity including any remedy under the Uniform Commercial Code (RCW Chapter 62A), in any of the following circumstances:
1. If Seller fails to make delivery of the goods or to perform the services within the time specified herein or any extension thereof;
 2. If, in Delicato's good faith judgment, Seller fails to perform any of the other provisions of this order or fails to make progress as to endanger performance of this order in accordance with its terms and does not cure each failure within a period of ten days, or such longer period as Delicato may authorize in writing, after receipt of notice from Delicato specifying such failure;
 3. Seller is in breach of any of the terms or conditions of this order; or
 4. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Seller any proceeding under any bankruptcy, reorganization, arrangement, readjustments of debt of insolvency law of any jurisdiction or for the appointment of receiver or trustee in respect to any of Seller's property and such proceeding is not dismissed or cured within 60 days.
- N. Remedies: Not by way of limitation, the remedies of the parties include:
1. If Delicato cancels this order in whole or part as provided in paragraph "N", Delicato may procure upon such terms and in similar to those cancelled and Seller shall be liable to Delicato for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of this order to the extent not cancelled under the provisions of this order.
 2. The rights and remedies of Delicatos provided in this clause shall not be exclusive provided by law or under this order.
 3. The failure of the Delicato buyer to insist upon strict performance of any of the terms of this order or to exercise any rights hereunder shall not be construed as a waiver of Delicato rights.
 4. Seller may be excused from performance under this order provided the Seller notifies the Delicato within ten days of discovery of any of the below-named events:
 - a. Such events are, but not limited to, Acts of God, or of public enemy, act of Delicato, acts of the government with lawful jurisdiction over Seller in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

- b. The Seller's failure to perform is caused by default of supplier or sub-contractor and if such default arises out of clauses beyond the control of both the Seller and the supplier or sub-contractor and without the fault or negligence of either of them.
 - c. The Seller agrees to make a concerted effort to obtain supplies or services from other sources in time to meet required delivery schedule(s), if such events or causes named above cause supplier default.
- O. Warranties: Seller warrants goods supplied and work or services performed under this order conform to specifications herein and are MERCHANTABILITY and fit for the particular purposes for which goods are ordinarily employed.
 - 1. Seller further warrants to the Delicato and to any third party ultimately using any item, whether such third party is a customer of Delicato or not, that all items delivered under this order will be free from defects in material and workmanship and will conform to applicable specifications, drawings, samples and descriptions. If Seller is responsible for design or items, Seller warrants that all items delivered under this order will be suitable for use by Delicato, including installation by Delicato in its ultimate products. Delicato's written approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty.
 - 2. Seller shall be liable for all damages both to Delicato and its customers incurred as a result of any defect or breach of warranty in any item covered by this order.
 - 3. The foregoing express warranties shall be in addition to any warranty customarily made by Seller of its products and implied warranties and shall be construed as conditions as well as warranties.
 - 4. SELLER'S WARRANTY SHALL EXTEND FOR A PERIOD OF 12 MONTHS AFTER THE ITEM IS DELIVERED AND ACCEPTED BY DELICATO AND APPLIED TO ITS INTENDED USE. Where Delicato incorporates that item into a product of Delicato to be delivered to its customer, Seller's obligation, under this clause shall be for the benefit of Delicato's customer.
- P. Quality Standards: If a special brand is listed in this order, the goods being purchased must meet the standard for quality, performance and use of such brand. If Seller is willing to supply a product equivalent to the designated special brand, it must first provide Delicato with descriptive literature identifying its brand, including the quality, performance, and specifications therefor. If Delicato elects to accept goods purported to be equal to the special brand, the goods may be rejected.
- Q. Inspection and Quality Control
 - 1. All terms furnished by Seller to Delicato shall be subject to inspection and tests by Delicato, or representatives of third party purchasing Delicato's product in which items will be used ("User's Representative"). To the extent practical, inspection may be made at all times and places, including the period of manufacture and prior to Acceptance.

2. If inspections or tests are made by Delicato if User's representative on the premises of Seller, supplier or sub-contractor, Seller will, without additional charge, provide all reasonable facilities and assistance for the safety and convenience of such inspectors in the performance of their duties. If inspection or test is made at a point other than the premises of Seller, supplier or sub-contractor, it shall be at the expense of Delicato except as otherwise provided in this order. In case of rejection, Delicato shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by Delicato shall be performed in such manner as to not unduly delay the work. Delicato reserves the right to charge Seller any additional cost to inspect and test when supplies are not ready at the time such inspection and test is requested by Seller or when re-inspection or re-test is necessitated by prior rejection. Inspection and acceptance or rejection of the supplies shall be made as promptly as practical after delivery as may be specified herein, regardless of prior payment. Failure to inspect, accept or reject goods shall neither relieve Seller from responsibility for such supplies as are not in accordance with the order requirements nor impose liability on Delicato.
 3. Seller shall provide and maintain inspection and quality control systems acceptable to Delicato covering the items furnished hereunder. Records of all inspection work by both Delicato and Seller shall be kept intact and made available upon request to the other party during the performance of this order.
 4. Seller shall provide Delicato appropriate material certifications as described on the herein, including but not limited to, American Bureau of Shipping Inspection Certificates, material, physical, and/or chemical analysis certifications, OSHA/WISHA Materials Safety Data Sheets.
- R. Infringements: Seller warrants that Delicato's purchase, installation and/or use of the goods covered hereby will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property right. Seller shall indemnify and hold Delicato harmless from and against all claims, losses, expenses, damages, causes of action and liabilities of every kind and nature, including without limitation reasonable attorney's fees (without waiver of Seller's obligation to indemnify Delicato hereunder), arising from or out of any breach of the foregoing warranty.
- S. Risk of Loss: Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury or destruction of goods and materials ordered herein which occur prior to acceptance by Delicato. No such loss, injury or destruction shall release Seller from any obligations hereunder.
- T. Indemnification: Hold Harmless: Seller shall indemnify and hold Delicato harmless from and against all claims, losses, expenses, damages of actions and liabilities of every kind and nature including without limitation reasonable attorney's fees, without waiver of Seller's obligation to indemnify Delicato hereunder, arising from or out of any alleged breach of any Seller's obligations or warranties hereunder or from other acts or omissions of Seller, its officers, agents, employees, sub-contractors and guests, however caused, instituted by persons who purchase from Delicato or use products purchased from Seller.
- U. Compliance with Laws: Seller represents and warrants that, in the production and sale of goods to be delivered pursuant hereto, and in the provision of services hereunder, Seller has complied with all applicable federal, state, and municipal laws and regulations, including, without limitation, (a) all such laws and regulations pertaining to health, safety and environmental standards, (b) all such laws and regulations

pertaining to design, manufacture, testing, labeling, and transportation of such goods, and (c) all such laws and regulations pertaining to affirmative action, nondiscrimination, and equal opportunity, including without limitation, the requirements of the Fair Labor Standards Act of 1938, as amended, and the rules and regulations of the Secretary of Labor issued pursuant to Executive Order Number 11246 of September 24, 1965.

- V. Service or Installation of Work: In the event this order requires the performance of work or installation of goods by Seller upon any property or project of Delicato, the following conditions shall also be applicable:
1. Seller shall take precautions to protect all property and persons from damage or injury arising out of its work and shall comply with all fire, safety and other applicable regulations prescribed by any governmental agency and by Delicato and/or owner of the project upon which work is being performed, and shall be responsible for the observance thereof by all sub-contractors, employees, agents and representatives of Seller and its sub-contractors. Seller shall also obtain at its own expense and provide Delicato with proof of insurance coverage satisfactory to Delicato for workmen's compensation and property damage, public liability, personal injury, employer's liability and other applicable insurance.
 2. Seller shall keep the owners premises and work area free and clear of all mechanics' and material liens or claims; Seller shall promptly pay for all labor and material and if Seller fails to do so, Delicato without waiving any rights or remedies against Seller for or by reason of failure may, but without any obligation to do so, pay the same and deduct the amount of such payments from sums due Seller hereunder; and Delicato may withhold any payment to Seller until receiving such affidavits, waivers, and releases with respect to claims for labor and materials as Delicato may require.
 3. The work shall remain a Seller's risk prior to written acceptance by Delicato buyer and/or the owner of the project and Seller shall replace at its own expense all work damaged or destroyed by any cause whatsoever.
 4. Seller shall observe and comply, to the extent required by Delicato buyer, the wages, hours and working conditions established by the Delicato buyer, the wages, hours and working conditions established by Delicato on the project or required of Delicato by an applicable labor agreement.
 5. Seller shall act as an independent contractor and not as the agent or representative of the Delicato.
 6. Seller shall perform its work in accordance with the schedules and work programs established by Delicato and shall fully cooperate with Delicato and others engaged in work on the project so that the work on the entire project may be performed with the utmost speed, consistent with good practices. In case of conflict, Delicato may direct the necessary coordination.
 7. Seller shall carry on its work so that the premises shall at all times be clean, orderly and free from debris and upon completion shall remove all equipment and unused materials from project, clean up all refuse and debris and leave the site of the work clean, orderly and in good condition.

8. Seller shall require Seller's employees, agents, contractors or sub-contractors to abide by Delicato's Work and Safety rules when work or services are performed at Delicato's premises. Delicato has the right to exclude personnel from Delicato's premises who do not abide by such rules, and at Delicato's election, to declare default under the order.
- W. Advertising: No advertising or publicity matter having or containing any reference to Delicato or any of its staff shall be made by Seller or anyone in Seller's behalf unless Seller has written consent of the company.
 - X. Disclosure of Information: All data and information not already in the public domain, developed or disclosed during the life of this order, will be property of the Delicato and will be classified in secrecy and confidence by the Seller. Seller will keep confidential all such data and information until it comes into the public domain or until the Delicato's Purchasing Manager consents in writing to disclosure.
 - Y. Attorneys' Fees: In any lawsuit or action brought to force any term, condition, or covenant herein, or to recover damages arising from any breach of this contract, the losing party shall pay to the prevailing party reasonable attorney's fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof appeals therefrom.
 - Z. Law: The laws of the State of California shall govern this order, and the venue of any action brought hereunder may be laid in or transferred to the County of San Joaquin, State of California.