

CELLARING AGREEMENT ("Agreement")



1. INTRODUCTION

The Liquor Holder is the owner of the Premises, which the Liquor Holder rents out for purposes of storing liquor. The Owner wishes to store his/her/its liquor at the Premises (collectively the "Billing Products"). Accordingly, the parties agree as set out herein.

2. DURATION

- 2.1. Subject to clause 9 below:
 - 2.1.1. this Agreement shall commence on the Commencement Date indicated in item 5 of the Schedule (being the date on which the Billing Products shall be delivered by the Owner to the Premises) and shall endure for an initial period of 6 months from the Commencement Date, provided that either party shall have the right to terminate this Agreement at any time after the Commencement Date, for any reason, on delivery of 30 calendar days' written notice to the other party to that effect; and
 - 2.1.2. thereafter, this Agreement will automatically renew for successive, 30 day intervals, unless either party gives the other party 30 days written notice of termination.
- 2.2. Should this Agreement be terminated or cancelled, as the case may be, prior to expiry of the then current term of the Agreement, the Owner shall collect its Billing Products within 30 days of such termination or cancellation, failing which the Owner shall forfeit all of its Billing Products to the Liquor Holder and the Owner waives all claims of any nature whatsoever he/she/it may have against the Liquor Holder in this regard.
- 2.3. Despite anything to the contrary contained in this Agreement, the Owner is liable for payment to the Liquor Holder of storage fees (as indicated on winecellar.co.za) for the 6 month minimum period referred to in clause 2.1.1, irrespective of whether the Billing Products are withdrawn, or this Agreement is terminated, prior to expiry of such 6 month period. By way of example, if the Owner withdraws all of his/her/its Billing Products from the Premises or terminates this Agreement on expiry of the second month following the Commencement Date, the Owner is still obliged to make payment to the Liquor Holder of an amount equal to four months of storage fees, calculated in accordance with the prices listed on winecellar.co.za, to be paid by the Owner to the Liquor Holder immediately upon such total withdrawal/termination of this Agreement, as the case may be.

3. SUITABILITY

The Liquor Holder makes no warranties or representations that the Premises is fit for the purpose of storing liquor. The Owner, by entering into this Agreement, confirms that he/she/it is satisfied with the condition of the Premises.

4. STORAGE AND WITHDRAWAL OF LIQUOR

- 4.1. **Storage**

The Billing Products shall be bar-coded for identification purposes, and shall be stored on such area of the Premises as the Liquor Holder may determine in its sole discretion. The Owner shall not be entitled to store liquor with an alcohol content in excess of 25% at the Premises. It is recommended that the Owner store sealed, full cases of the same type of liquor at the Premises. Should the Owner wish to store cases of mixed types of liquor, the Owner shall be liable for a once-off fee (as indicated on winecellar.co.za) per liquor type in each such case, payable by the Owner on demand by the Liquor Holder.
- 4.2. **Withdrawal**

Withdrawal by the Owner of any or all of its Billing Products stored at the Premises from time to time shall be regulated by way of the Liquor Holder's website, on terms communicated by the Liquor Holder to the Owner from time to time by way of such website. Collection of Billing Products by the Owner is only permitted between 08:30-16:30 on business days. The Owner shall be liable for additional withdrawal fees per Billing Product, in the circumstances and in the amounts set out on winecellar.co.za.

5. STORAGE FEES AND PAYMENT

- 5.1. As consideration for storage of the Billing Products, the Owner shall pay to the Liquor Holder the storage fee(s) indicated on winecellar.co.za hereto, payable per annum (or part thereof), calculated on the number of Billing Products at the Premises from time to time. The storage fees indicated on winecellar.co.za will be updated annually. The Liquor Holder shall submit invoices to the Owner for the total storage fee quarterly in arrears, on the last day of February, May, August and November of each year. The Owner shall make payment of each invoiced amount to the Liquor Holder forthwith against presentation of each invoice. The Liquor Holder shall not be under any obligation to release Billing Products to the Owner should any fees due and payable by the Owner be outstanding.
- 5.2. All payments to be made by the Owner under or arising from this Agreement shall be paid to the Liquor Holder free of any deductions or set-off whatsoever. Any amounts overdue by the Owner shall accrue interest at the prime rate charged by the Liquor Holder's bankers, from the due date for payment to date of actual payment, both dates inclusive.

6. FORFEITURE OF LIQUOR

Without derogating from the provisions of clause 2.2 above, in the event that (i) the Liquor Holder cannot make contact with the Owner or its appointed, secondary contact (specified in item 3 of the Schedule) in any given year, after reasonable attempts to make contact, and (ii) the storage fee(s) payable for such year have not been paid by the Liquor Holder, the Owner shall forfeit all Billing Products then at the Premises to the Liquor Holder and the Owner waives all claims of any nature whatsoever he/she/it may have against the Liquor Holder in this regard.

7. ELECTRONIC COMMUNICATIONS

By using the Liquor Holder's website, the Owner consents to receiving communications from the Liquor Holder electronically (including by way of e-mail, newsletter, notices, messages and/or pop-ups on such website). In this regard, where a communication given by one party to the other is required to be in writing, such electronic communication will satisfy this requirement. The Owner is able to view records of his/her/its liquor stored on the Premises from time to time on the website.

8. LIABILITY OF PARTIES AND INSURANCE

- 8.1. The Liquor Holder shall not be liable for any loss, damage or injury which the Owner may suffer by reason of (i) any breakage or theft of Billing Products on the Premises, (ii) the Premises or any part thereof being in a defective condition or state of disrepair, (iii) arising out of the functioning or malfunctioning of the air-conditioning (if any) on the Premises, (iv) failure in any way of the electricity supply to the Premises, (v) arising out of viz major or causa fortuitous or (vi) from any other cause whatsoever, whether within or beyond the Liquor Holder's control and whether from any act or omission by the Liquor Holder, its agents or employees, subject to any provision in this Agreement to the contrary. The Owner and any person(s) accompanying the Owner to the Premises enter the Premises solely at their own risk and the Liquor Holder shall not be liable for any injury or loss to any person or their property at the Premises. In addition, the Owner shall have no claim against the Liquor Holder should the building on the Premises be damaged or destroyed to such extent that prevents the continued storage of the Owner's liquor.
- 8.2. The Liquor Holder shall, on behalf of the Owner, insure the Billing Products up to a maximum value of R450.00 per 750ml bottle, adjusted pro rata for bottles of different sizes, the cost of which is for the Liquor Holder's account.

9. BREACH

Should either party ("**Defaulting Party**") commit a breach of any of the provisions of this Agreement, the other party ("**Aggrieved Party**") shall be entitled to give the Defaulting Party 5 days' written notice to remedy such breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled, without prejudice to its right to claim damages, to (i) claim immediate payment and/or specific performance by the Defaulting Party of all the Defaulting Party's obligations, or (ii) cancel this Agreement in its entirety, in which case written notice of the cancellation shall be given to the Defaulting Party and the cancellation shall take effect on the giving of the notice, provided that neither Party shall be entitled to cancel this Agreement unless the breach is a material breach. The

Owner shall pay on demand to the Liquor Holder all legal costs between attorney and client incurred by the Liquor Holder in respect of any legal steps taken in terms of this Agreement.

10. GENERAL

- 10.1. Each of the parties chooses the addresses indicated in items 1 and 2 of the Schedule for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, it being agreed upon and recorded that any notice given by either party to the other shall be in writing.
- 10.2. If any provision in this Agreement shall be or become invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.
- 10.3. The Schedule and annexure(s) to this Agreement and the terms contained therein are deemed to be incorporated into, and form an integral part of, this Agreement. If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the annexures, the provisions of the annexures will prevail to the extent of such conflict and/or inconsistency.
- 10.4. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in writing and signed by both parties.
- 10.5. The Liquor Holder may cede and/or delegate any or all of its rights and/or obligations under this Agreement to any person without requiring the consent of the Owner. The Owner shall not cede and/or delegate any or all of its rights and/or obligations under this Agreement without the prior written consent of the Liquor Holder.
- 10.6. The failure by a party to exercise any of its rights provided in this Agreement shall not be deemed to be a waiver of such rights.
- 10.7. This Agreement shall be governed in all respects by the laws of the Republic of South Africa. The parties consent to the jurisdiction of the Magistrate's Court for the purpose of any proceedings in terms of, or incidental to, this Agreement, notwithstanding that the amount claimed or the value of the matter in dispute may exceed such jurisdiction.

1. LIQUOR HOLDER

Name:	Wine Cellar Club Proprietary Limited
Registration Number:	2014/026268/07
Physical address:	Unit 4 Prices Park, Nelson Road, Observatory, South Africa, 7925
E-mail address:	info@winecellar.co.za
Contact number:	+27 21 448 4105

2. OWNER

Name:	
Registration/Identity/Passport No.:	
Physical address:	
E-mail address:	
Contact number:	

3. OWNER NEXT OF KIN/SECONDARY CONTACT

Name:	
Identity/Passport No.:	
Physical address:	
E-mail address:	
Contact number:	

4. PREMISES

Unit 4, Price's Park, Nelson Road, Observatory, Cape Town

5. COMMENCEMENT DATE