

MacPhee's Application Form

31-37 Buckhurst Street
 South Melbourne VIC
 3205
 Phone: 03 9696 5200
 Fax: 03 9686 5244
info@macphees.com
www.macphees.com

Personal details

Full Name:
 Email:
 Home number: Business number:
 Mobile number:

Home address:

Street:
 Suburb: State: Post code:
 Country:

Business details

Business Name:
 Street:
 Suburb: State: Post code:
 Country:

Postal address (please tick) Same as home Same as business Other

Street:
 Suburb: State: Post code:
 Country:

Security details

Date of birth:/...../..... Chosen password:
 Security question:
 Security answer:

Type of cellaring facility required

Managed Cellarage
 Private Cellar 27 case 36 case 54 case
 Private Vault 500 bottle 1000 bottle

How did you hear about MacPhee's?

.....

What are some reasons why you started and have a cellar collection?

.....

What would be the ideal size of your cellar?

.....

Are you interested in purchasing new wines or selling existing wines?

.....

What are your favourite grape varieties/wine styles?

.....

Insurance

I acknowledge that my wine is held at my risk and:

Yes, I require insurance for my wine Sum insured required \$.....

No, I do not require insurance for my wine

Payment details

I have seen MacPhee's fees and I give MacPhee's consent to debit my credit card accordingly.

Please charge payments to my:

Bank card MasterCard
 Visa Amex

Credit card number _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ Expiry ___ / ___

I agree to be bound by the attached terms and conditions of MacPhee's Pty Ltd

Applicant's signature:Date:/...../.....

MacPhee's only receives or accepts Goods on the following terms and conditions:

MacPhee's only receives or accepts Goods on these terms and conditions.

1.0 DEFINITIONS AND INTERPRETATION

1.1 In these conditions unless the context otherwise requires:

- a. "Cases" means storage containers, vaults, private cellars and general cellars, cartons or devices used from time to time for the storage of Goods at any of the Facilities;
- b. "Client" means the person who deposits Goods for storage at any of the Facilities;
- c. "Dangerous Goods" means Goods that are or will become illegal, dangerous, inflammable, explosive, volatile, offensive or aerosol items or substances;
- d. "Facilities" means any premises that MacPhee's has control of or access to and considers a suitable environment in which to store Goods;
- e. "Fees" means costs pursuant to this Agreement, including but not limited to costs of delivery, storage and pick-up as calculated by reference to the Rates and more particularly set out in the Application Form;
- f. "Goods" means property of the Client including wine, alcoholic beverages or other Goods deposited with or placed in the custody of MacPhee's, which are deemed acceptable for storage at the Facilities;
- g. "Deposit Documents" means MacPhee's 'wine receipt form' and 'delivery form';
- h. "MacPhee's" means MacPhee's Pty Ltd (ACN 097 964 399);
- i. reference to MacPhee's includes, where applicable, its officers, employees, representatives, agents and sub-contractors;
- j. "Rates" means MacPhee's published services rates as amended from time to time;
- k. "Term" is more particularly set out in the Application Form;
- l. words importing the singular number import the plural number and vice-versa;
- m. words importing a particular gender import the other genders; and
- n. headings and highlighting are for convenience only and do not affect the interpretation of these conditions.

2.0 CLIENT'S WARRANTIES

2.1 The Client warrants and agrees to and with MacPhee's that:

- a. the Client will promptly inform MacPhee's of any change to the Client's address, telephone number, fax number and email address;
- b. Goods will not be or include Dangerous Goods;
- c. the Client will properly and fully describe Goods on the Deposit Documents;
- d. the Client is the owner of the Goods free from all encumbrance; and
- e. all Taxes have and will be paid in full in relation to Goods before they are deposited with MacPhee's.

3.0 RISK

3.1 The Client's Goods are at all times at the Client's risk in all matters even when stored at the Facilities or in transit.

4.0 INSURANCE

4.1 MacPhee's may introduce an insurance broker to the Client but does so only on the condition that it shall be deemed not to be a party to or have notice of any of the terms of such insurance. MacPhee's may receive a commission for referring the Client to the insurance broker.

4.2 MacPhee's does not insure the Goods in its own right.

5.0 ACCESS TO THE FACILITIES AND GOODS

5.1 The Client shall have no right to enter the Facilities without MacPhee's consent and then only in accordance with the access procedures published by MacPhee's from time to time.

5.2 MacPhee's reserves the right to manufacture a master key for access to the Facilities for emergency purposes or to relocate the Goods.

5.3 MacPhee's only stores and does not monitor or inspect Cases. However, in its absolute discretion, MacPhee's may open any Case in which Goods are placed and inspect anything therein and exercise any rights pursuant to this Agreement.

5.4 MacPhee's may, in the exercise of its absolute discretion, repack Goods in new Cartons at the Client's expense where Cases are damaged or otherwise require replacement.

5.5 MacPhee's may in its sole discretion relocate Goods to alternate Facilities without notice.

6.0 DANGEROUS GOODS AND REPACKING OF GOODS

6.1 If in MacPhee's opinion Goods are or may be liable to become Dangerous Goods, then MacPhee's may take any action it sees fit to remove, destroy or render harmless such Goods at the Client's expense and the Client will have no compensation in any circumstances.

6.2 If Dangerous Goods destroy or damage the Goods of other Clients, the Client will be liable to MacPhee's for the cost of replacement of the Goods damaged or destroyed. If MacPhee's cannot obtain replacement Goods for those Goods damaged or destroyed by the Dangerous Goods, the Client will be liable for compensation to the value of the Goods damaged or destroyed.

6.3 Without limiting any other provision in this Agreement, MacPhee's will not be liable for damages to Goods caused by other Clients' Dangerous Goods except to the extent that it is able to recover from the owner of such Dangerous Goods provided always that nothing in this clause shall require MacPhee's to take any action or incur any costs in seeking to so recover any amount from the owner of such Dangerous Goods.

7.0 DELIVERY AND PICK UP OF GOODS

7.1 MacPhee's is not a common carrier.

7.2 In MacPhee's absolute discretion, it may:

- a. at any time refuse the carriage of any Goods for anyone; or
- b. carry Goods or have them carried by sub-contractors by any means, despite any specific instructions given by the Client as to the mode of carriage of Goods.

7.3 MacPhee's is authorised to deliver the Goods to the Client or its agent at the address specified by the Client in the delivery instructions and it is expressly agreed that MacPhee's will be deemed to have delivered the Goods in accordance with these Terms and Conditions if it obtains a receipt for the Goods from any person at that address.

7.4 If the nominated place of delivery is unattended or if delivery cannot be otherwise effected, MacPhee's in its absolute discretion may either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Client, both of which will be deemed to be delivery of the Goods under these Terms and Conditions. Fees for delivery are payable in full notwithstanding damage to the Goods or delay in delivery.

7.5 MacPhee's is authorised to pick up the Goods from the Client or their agent at the address nominated to MacPhee's on the delivery form, and MacPhee's will be deemed to have picked up the Goods from the Client if the Client or their agent signs the delivery acknowledgment form.

7.6 MacPhee's may accept delivery of the Goods to its premises from the Client and MacPhee's will be deemed to have accepted delivery of the Goods from the Client if the Client or their agent signs the delivery acknowledgment form.

7.7 The Client will give at least 24 hours notice of intention to pick up its Goods.

8.0 FEES

8.1 MacPhee's is entitled to increase the Fees by 4% annually without notice to the Client.

8.2 MacPhee's may give 30 days notice in writing of other variations to the Fees to the Client in which event the Client may give 7 days notice in writing terminating the Agreement if it does not agree to the variation in Fees. Failing such termination the Client will be deemed to have accepted the variation after the expiration of 7 days from the notice of variation.

9.0 PAYMENT OF ACCOUNTS

9.1 The Client shall pay the Fees and other charges in accordance with MacPhee's Schedule of Rates as published from time to time within 7 days of their due date.

9.2 If any amount payable to MacPhee's under this Agreement has not been paid by the Customer within 7 days of the due date for payment, MacPhee's may:

- a. charge interest on the amount outstanding (at the current rate of penalty interest prescribed by the Penalty Interest Rate Act 1983

(Vic) or if this is greater than permitted by law then the highest rate permitted by law) from the due date for payment until such time as full payment of the outstanding amount is made by the Customer; and/or

- b. suspend performance of, or terminate this Agreement until the amount outstanding is paid in full.

9.3 If the Client has given MacPhee's authority to charge payments to the Client's credit card or direct debit from the Client's bank account, this authority extends to MacPhee's charging its accounts to the Client's credit card or debiting the bank account as and when they fall due. MacPhee's will not be obliged to seek further authorisation if any credit card authorisation is declined. Interest will be payable at the rate set out in Condition 9.2 from the time the credit card authorisation was declined until the outstanding account has been paid in full.

10. LIMITATION OF LIABILITY

10.1 The liability of MacPhee's to the Client for a breach of this agreement, statutory causes of action, common law or tort (including negligence) in any way arising from this Agreement will be limited to the following extent:

- a. MacPhee's will not be liable for any direct or indirect lost profit or revenue, exemplary damages, or without limiting the foregoing, any indirect or consequential loss or damage howsoever described or claimed;
- b. MacPhee's will be liable for the amount of any loss or damage suffered by the Client relating to death or personal injury or damage caused by an act or omission of MacPhee's limited to \$1 million in an aggregate of all claims; and
- c. otherwise in respect to all other claims MacPhee's liability to the Client for all other proven loss and damage is limited to:
 - (i) in relation to any one claim, the lesser of:
 - a. \$1,000; or
 - b. the fees paid to MacPhee's in the preceding three (3) months prior to the claim; and
 - (ii) an aggregate of all claims to:
 - a. the amounts paid pursuant to this Agreement by the Client to MacPhee's in the preceding 3 months prior to the Client's notification to MacPhee's of the claim; or
 - b. \$100,000,whichever is the lesser.

10.2 Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy which is conferred on the Client by the Trade Practices Act 1974 and any other consumer protection legislation in force from time to time ("Acts"). Where MacPhee's breaches a condition or warranty which has been implied by the Acts, its liability for breach will be limited to (where permissible by the Acts):

- a. in the case of the supply of goods: the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; and
 - b. in the case of the provision of services: the supplying of the services again, or the payment of the cost of having the services supplied again,
- whichever MacPhee's sees fit to provide.

10.3 The rights and remedies which the Client has under this Agreement are in addition to all the rights and remedies which it has under the Acts.

11. TERMINATION OF THE AGREEMENT

11.1 MacPhee's shall be entitled to terminate this Agreement with the Client upon providing the Client 30 days written notice to that effect, otherwise the Agreement continues for the Term and is automatically extended for a further period equal to the Term unless the Client gives written notice to MacPhee's prior to the expiration of the Term.

11.2 Where this Agreement is terminated for any reason the Client will retrieve the goods within 5 days, failing which MacPhee's may deliver the Goods to the Client's address at the Client's cost. In the event that the Client fails or omits to pay all such costs (in advance), then without limiting any other provision of this Agreement or remedy at law MacPhee's may sell the Goods to meet its costs, such sale to be in accordance with Clause 13.

11.3 The Client may terminate at the end of the period for which they paid in advance.

12 GOODS AND SERVICES TAX

12.1 In this agreement "GST" means any goods and services tax or any tax or imposts of a like or analogous nature that is imposed, assessed

or levied in relation to any supply made of goods, services or of any other thing.

12.2 If GST is imposed, assessed or levied on any supply made under this Agreement ("Taxable Supply"), then the recipient of the Taxable Supply shall pay to the supplier in addition to any other payment required by this Agreement the GST imposed on the Taxable Supply calculated as such percentage of the GST exclusive value of the supply as is applicable, being the rate of GST imposed, assessed or levied on the Taxable Supply at the date the Taxable Supply is made.

13.0 LIEN

13.1 MacPhee's shall have a lien on all Goods and any documents relating to them for all sums payable by the Client to MacPhee's and for that purpose MacPhee's shall have the right to sell Goods by public auction or private treaty on the terms of the Warehouseman's Liens Act.

14.0 GENERAL

14.1 This Agreement may not be amended modified or supplemented except by a written instrument duly executed by or on behalf of each of the parties hereto.

14.2 This Agreement takes effect, is governed by and shall be construed in accordance with the laws of Victoria, Australia and each party hereby unconditionally submits to the jurisdiction of the Courts of Victoria, Australia, and of any court competent to hear appeals therefrom.

14.3 The Client must not nor purport to assign or sublicense or otherwise part with or dispose any of its rights under this Agreement without the prior written consent of MacPhee's. MacPhee's may, however, do so.

14.4 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and extinguishes all prior agreements and understandings between those parties with respect to the matters covered hereby and all representations or warranties previously given. This Agreement may be varied by notice in writing by MacPhee's to the Client in which event the Client may give 30 days notice in writing terminating the Agreement if it does not agree to the variation. Failing such termination the Client will be deemed to have accepted the variation after the expiration of 30 days from the notice of variation.

14.5 If this Agreement is executed by any party and transmitted by facsimile transmission to the other parties, execution is deemed effective on and from the execution by the other parties of counterparts. The party executing and transmitting this Agreement by facsimile shall promptly send to the other parties the original counterparts of this Agreement duly executed by that party.

14.6 Any notice given under this agreement:

- a. must be in writing addressed to the intended recipient at the address shown at page 1 of this agreement or the address last notified by the intended recipient to the sender;
- b. must be signed by a person duly authorised by the sender; and
- c. will be taken to have been given when delivered, received or left at the address.

14.7 If a provision of this Agreement is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down it shall be read down accordingly. If notwithstanding this clause a provision of this Agreement is still void or voidable or unenforceable or illegal:

- a. if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or those words (as the case may be) were omitted, that word or those words are hereby severed; and
- b. in any other case, the whole provision is hereby severed;

and the remainder of this Agreement has full force and effect.

14.8 Time is of the essence of this Agreement in relation to payment only.

14.9 No waiver by any part of any default in the strict and literal performance of or compliance with any provision, condition or requirement herein shall be deemed to be a waiver of strict and literal performance of or compliance with any other provision, condition or requirement herein nor be a waiver of or in any manner release any other party from such strict and literal performance nor shall any delay or omission or any party to exercise any right hereunder in any manner impair the exercise of any such right accruing thereafter.