

Sotheby's Wine Storage Terms of Use

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT APPLY TO YOU. PLEASE READ IT CAREFULLY.

BY CLICKING "ACCEPT" OR TAKING ANY OTHER ACTION THAT INDICATES YOUR AGREEMENT TO THESE TERMS OF USE ("TERMS OF USE"), YOU ACCEPT AND AGREE TO BE BOUND BY THESE TERMS OF USE (INCLUDING THE ARBITRATION AGREEMENT AND CLASS ACTION WAIVER SET FORTH HEREIN, PURSUANT TO WHICH YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION (EXCEPT AS OTHERWISE PROVIDED HEREIN) AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION), AND YOU REPRESENT THAT (A) YOUR USE OF THE SERVICES WILL BE IN ACCORDANCE WITH THESE TERMS OF USE AND ALL APPLICABLE LAWS, RULES AND REGULATIONS AND (B) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING CONTRACT.

The following Terms of Use are entered into by and between you and Sotheby's Inc. or its affiliates ("Sotheby's" or "we" or "us" or "our" or other similar pronouns) and, together with any documents incorporated herein by reference, govern our provision of and your use of the Sotheby's wine and spirits storage services, as described in these Terms of Use ("Services"). We offer the Services in connection with our Sotheby's Wine Virtual Cellar platform ("Platform"). Your access to and use of the Platform, and our provision of the Platform, is governed by Sotheby's Wine Virtual Cellar Terms of Use.

We may change these Terms of Use from time to time, at any time without notice to you, by posting such changes on the Sotheby's website for the Services ("Sotheby's Website"). It is your responsibility to periodically check the Terms of Use. You will know if these Terms of Use have been revised since your last visit to the Sotheby's Website by referring to the "Last Modified" date at the bottom of this page. IF YOU DO NOT AGREE TO THE CURRENT VERSION OF THE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THESE TERMS OF USE AND RECEIVE A RETURN OF YOUR WINE IN ACCORDANCE WITH SECTION 4 (RETURNING YOUR WINE).

1. Electronic Communication. In connection with the Services, you may provide your e-mail address to a Sotheby's representative or send us e-mails, and you will be communicating with us electronically. In so doing, you consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on the Sotheby's Website. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communication be in writing.

2. Ownership of Your Wine. As part of the Services, we may store wine and/or spirits (a) that you purchase from us, that you have purchased from a third party, or that is otherwise legally in your possession, and (b) for which you engage us to provide the Services (collectively, "Wine"). By accepting these Terms of Use, you represent and warrant that (x) you are over the legal purchase age of 21 in the U.S., the legal purchase age of 18 in Hong Kong or the legal purchase age of 18 in the United Kingdom, (y) you hold title to the Wine or legal authorization to arrange for storage of the Wine on behalf of another party, and (z) all national, federal, special administrative region, state, and local taxes and duties applicable to the Wine are paid in full, unless the Wine is shipped to the United Kingdom in bond, if available.

3. Shipping Your Wine. All shipments of Wine that are not purchased from us must be delivered to us in compliance with applicable law from your location of residence to us. If you are shipping Wine between countries, the shipment must be made by you in compliance with applicable law. You are responsible for payment of all applicable federal, state and local taxes and duties as well as any fees for services of licensed Customs brokers.

4. Receiving Your Wine. We will enter information related to your Wine into our Platform within a reasonable time, depending on the quantity and condition of the Wine. We will affix a unique identifier to every container of your Wine that we receive and do not reject under Section 5 (Rejecting Your Wine). If you believe there is any discrepancy between your Wine and the corresponding information on our Platform, you will notify us in writing within 30 days after the date the information becomes available on the Platform. We will use commercially reasonable efforts to notify you once the information becomes available on the Platform. If you do not notify us within the 30-day period, we will have no obligation to correct any corresponding information on the Platform, and the information on the Platform will be deemed correct and accurate for purposes of the Services. We may revise the information on the Platform if we determine that the information does not accurately reflect your Wine. We will use commercially reasonable efforts to accurately reflect information about your Wine received in the Platform, but we do not warrant or guarantee that any information in the Platform will be timely, accurate, reliable, precise, thorough, correct or complete. We may repackage your Wine if we determine that the casing or other container containing the Wine is not suitable for storage. While we have no obligation to do so, we may open your Wine shipping containers to inspect and photograph the Wine and include the photographs on the Platform. However, we have no obligation to open or take photographs of Wine contained in a banded or originally sealed original wooden case or an original carton. All Wine will be stored in space we have reserved in a facility that we utilize to protect and preserve fine wines. If you request an appointment to examine your Wine with a minimum of five business days' advance written notice, we will work in good faith to schedule a reasonable opportunity for you to inspect your Wine during normal business hours. Such inspection will be subject to additional fees, as set forth in the Fee Terms (as defined below).

5. Rejecting Your Wine. We may refuse to store Wine that, in our sole discretion, is unsuitable for storage or the Services, including, without limitation, because of (a) our standards for minimum quality of Wine based on authenticity, condition, and appearance; (b) storage requirements for the Wine; or (c) value of the Wine, as determined by us, which must be at least 50 USD / 40 GBP / 400 HKD per bottle. If we reject any Wine, we will send it back to you in accordance with Section 6 (Returning Your Wine). If at any time during our performance of the Services we determine that any of your Wine is no longer suitable for storage, we will notify you that the Wine should be removed. If you do not respond with instructions for return of your Wine that comply with Section 6 (Returning Your Wine) within 90 days after the date of our notification, we may remove the Wine from storage and dispose of or sell the Wine, the proceeds of which we may keep to recover any unpaid fees.

6. Returning Your Wine. Within five business days of our receipt of your request to return Wine to you, we will prepare Wine for collection or schedule delivery of your Wine to you in the areas in which we are legally permitted to do so. The person who receives the Wine must be 21 years of age or older in the U.S. or 18 years of age or older in Hong Kong or the United Kingdom.

7. Title and Risk of Loss. You retain ownership and all right, title, and interest in your Wine and authorize us to perform the Services. Before shipping any Wine in your possession to us, you will inspect the Wine, its packaging, and shipping containers to ensure that the Wine and any other materials provided to us are in good and safe condition, suitable for shipping to and from Sotheby's and storage by Sotheby's. You will bear the risk of loss during shipment of Wine (a) until received by Sotheby's at our premises from the carrier, and (b) after we have provided the Wine to the carrier for shipment back to you. We are not responsible for any loss or damage to any Wine due to any causes outside of our control, including Wine that we receive in damaged condition and Wine that is seized, damaged, or destroyed as a result of government inspections and/or violations of applicable law.

8. Fees. In consideration for the Services, you shall pay the fees found at and in accordance with www.sothebyswine.com/ny/storage-fees (collectively, the "Fee Terms"). These fees shall be due and charged in accordance with the Fee Terms. The Fee Terms are hereby incorporated by reference into these Terms of Use. Subject to the Fee Terms, we generally charge property management fees to

cover liability against loss and damage on an annual basis; inventory management and access for accessing inventory information online, handling and administration of the Wine on an annual basis; and fees related to discrete Services – such as Services related to receipt of Wine, return of Wine, and repacking Wine – when we provide the Services for you. Property management fees and inventory management and access fees are charged on October 1 of each year as long as you have Wine stored with us. You may also opt out of the property management fee by providing to us in writing a proof of appropriate insurance coverage of your own. You are responsible for all shipping costs for your Wine and all related taxes, including any applicable tariffs and duties. You may pay these fees, costs and taxes by credit, debit, or check card. You agree to allow Sotheby's, or our payment affiliates or service providers, to process and store your payment card information as described herein and in the Fee Terms. You also agree to pay all related taxes, and to reimburse Sotheby's, or our payment affiliates or service providers, as applicable, for all collection costs and interest for any overdue amounts. Please note that fees for the Services and the Fee Terms are subject to change without notice. We may suspend or deny Services for any failure to process your payment card. Suspension or denial of Services may include return of your Wine to you at your expense. We may also require that you pay all outstanding fees prior to returning any of your Wine to you. We have no obligation to refund any fees paid by you, including for early withdrawal of Wine from the Services. Failure to pay fees due after one hundred twenty (120) days shall entitle us to (a) place a warehouse lien on the Wine and to sell the Wine in satisfaction of the amounts due, and (b) impose a late charge of eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. All such sales shall be subject to a service charge equal to the lesser of (x) twenty (20) percent of the sale price or (y) the balance remaining after all fees are paid. Any balance remaining from the proceeds of a sale after deducting all fees due and the service charge will be refunded to you.

9. Wine Valuation. Certain fees, such as the property management fees, may be based on the Value (as defined below) of the Wine. We will value the Wine at the time of annual billing and every anniversary thereof. The "Value" of the Wine will be: (a) determined based on the market price available on the Platform, or (b) if the Platform does not have a market price for the Wine, based on (i) if the Wine was purchased from us, the purchase price, or (ii) if the Wine was purchased from a third party or is otherwise in your possession, the purchase price of the Wine as evidenced in written documentation. If you cannot or do not provide sufficient documentation for the purchase price of your Wine, we will determine the Value of the Wine in our discretion. We may adjust the Value of any Wine at any time at our discretion.

10. Indemnification. You agree to defend, indemnify on demand and keep Sotheby's and our affiliates, parents, subsidiaries and each of our and their respective officers, employees, agents, partners, content providers, service providers, suppliers and licensors (collectively, the "Released Parties") indemnified, and hold the Released Parties harmless from any and all claims, liabilities, costs, losses (including without limitation consequential and indirect losses) and expenses, including reasonable attorneys' fees, arising in any way from (a) your use of or reliance on the Services, (b) your Wine, or (c) your fraudulent or deceptive acts or omissions including but not limited to your representations concerning ownership of the Wine or any other material disclosure you make to us, or breach or violation of the law including infringement of any intellectual property or other right of any person or entity, violations of alcohol beverage laws of any jurisdiction with authority over the Wine, or of these Terms of Use. We will provide notice to you promptly of any such claim, suit, or proceeding. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to assist and cooperate with our defense of such claim. In any event, you shall not settle any such claim without our prior written approval.

11. DISCLAIMER OF WARRANTIES.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK, AND THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS

WITHOUT WARRANTY OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INTEGRATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

WITHOUT LIMITING THE FOREGOING, THE RELEASED PARTIES (A) MAKE NO WARRANTIES OR REPRESENTATIONS REGARDING THE SERVICES, AND (B) HEREBY DISCLAIM, AND YOU HEREBY WAIVE, ANY AND ALL WARRANTIES AND REPRESENTATIONS WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES AND REPRESENTATIONS MADE IN LITERATURE, FREQUENTLY ASKED QUESTIONS DOCUMENTS OR OTHERWISE ON THE SOTHEY'S WEBSITE OR IN CORRESPONDENCE WITH SOTHEY'S OR ITS AGENTS. THE RELEASED PARTIES FURTHER DO NOT WARRANT OR GUARANTEE THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT THE QUALITY OF THE SERVICES WILL MEET YOUR EXPECTATIONS.

12. LIMITATION OF LIABILITY.

The maximum amount of Sotheby's or its affiliates' liability to you resulting from loss or damage to the Wine shall not exceed the Value of the Wine for such Wine. Neither Sotheby's nor any of its affiliates will be responsible for Wine that is not within their or their agents' custody and control or liable for damage occurring in the course of any process undertaken by independent contractors employed with your consent, or for damage caused by inherent conditions or defects, normal wear and tear, war, acts of terrorism, nuclear fission or radioactive contamination, or chemical, bio-chemical or electromagnetic weapons, or for damage occurring in the course of altering or removing entirely the capsule(s) of any Wine to inspect cork condition and any markings. Sotheby's maintains insurance for loss or damage to all property that is under its custody and control. In the event of any loss of or damage to the Wine as described in this Section 12, you agree that your sole remedy against Sotheby's or any of its affiliates will be payment pursuant to this Section 12 (the "Payment"), and upon receipt of the Payment by you, you shall irrevocably release and discharge Sotheby's and its affiliates, on your own behalf and on behalf of any insurer you may have, from all liability for loss or damage to the Wine resulting from any cause whatsoever, including but not limited to the negligence of Sotheby's, its affiliates and their respective agents and independent contractors.

EXCEPT FOR PAYMENTS (AS DEFINED ABOVE) THAT MAY BE DUE TO YOU UNDER THE PRECEDING PARAGRAPH, IN NO EVENT SHALL ANY RELEASED PARTY BE LIABLE, WHETHER IN AN ACTION BASED ON CONTRACT INDEMNIFICATION, OBLIGATION, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), COLLATERALLY OR ARISING FROM ANY STATUTORY DUTY, PRE-CONTRACT OR OTHER REPRESENTATIONS, OR OTHERWISE, HOWEVER ARISING, FOR ANY ECONOMIC LOSSES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUES, PROFITS, CONTRACTS, BUSINESS, GOODWILL OR ANTICIPATED SAVINGS) OR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM, OR DIRECTLY OR INDIRECTLY RELATED TO THESE TERMS OF USE, INCLUDING, WITHOUT LIMITATION, (A) ANY BREACH OF THESE TERMS OF USE, (B) THE USE OF, OR THE INABILITY TO USE, THE SERVICES, (C) THE CONDITION OR QUALITY OF YOUR WINE, OR (D) LOST BUSINESS OR LOST SALES, EVEN IF SUCH RELEASED PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CERTAIN USERS.

13. Dispute Resolution.

YOU UNDERSTAND AND AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION

OR AS A NAMED OR UNNAMED MEMBER IN A CLASS, CONSOLIDATED, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION, UNLESS BOTH YOU AND SOTHEBY'S SPECIFICALLY AGREE TO DO SO IN WRITING. THIS PROVISION DOES NOT PRECLUDE YOUR PARTICIPATION AS A MEMBER IN A CLASS ACTION FILED ON OR BEFORE AUGUST 20, 2011. THIS PROVISION IS NOT APPLICABLE TO THE EXTENT SUCH WAIVER IS PROHIBITED BY LAW.

YOU UNDERSTAND THAT YOU AND SOTHEBY'S ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS BEFORE A JURY.

14. Prohibited Use. As a condition of your use of and our provision of the Services, you agree that you will not use the Services for any purpose that is unlawful, commercial in nature (such as, for example, acting as a retailer, distributor, broker, or other entity for the commercial sale or resale of wine, reselling the Services or otherwise using the Services to store Wine for a third party, raising money for anyone, advertising or promoting any product, service, pyramid scheme or other venture) or otherwise prohibited by these Terms of Use, or any other purpose not permitted under these Terms of Use. You agree to abide by all applicable local, state, national and international laws, regulations and rules.

15. Termination. Notwithstanding anything to the contrary set forth in these Terms of Use, we may terminate these Terms of Use or the Services at any time, with or without cause (including because of your failure to provide valid payment card information), with or without notice and without attendant liability, effective immediately. You may terminate these Terms of Use or the Services at any time, with or without cause, upon written notice to us. Upon any termination, we will return all of your Wine to you at your expense in accordance with Section 4 (Returning Your Wine), and all rights and obligations of the parties hereunder shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) and all remedies for breach of these Terms of Use shall survive and (b) the provisions of these Terms of Use that by their nature are intended to survive termination shall so survive.

16. Miscellaneous. The Terms of Use incorporate the applicable Privacy Policy and any other terms applying to your use of the Sotheby's Website by reference. These Terms of Use and the relationship between you and us shall be governed by the laws of the State of New York, without regard to its conflict of law provisions. Subject to the terms of Section 11 above (Dispute Resolution), you agree to submit to the personal and exclusive jurisdiction of the courts located within New York County in the State of New York. Our failure to exercise or enforce any right or provision of the Terms of Use shall not constitute a waiver of such right or provision. Except as otherwise set forth herein, these Terms of Use may only be amended by a written agreement executed by you and an authorized representative of Sotheby's specifically referencing these Terms of Use. Any waiver of any provision of these Terms of Use by Sotheby's must be made in writing and signed by an authorized representative of Sotheby's and the provision to be waived. Headings used in these Terms of Use are for convenience only and are not to be relied upon. If any provision of the Terms of Use is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms of Use remain in full force and effect. These Terms of Use will inure to the benefit of, and are intended to be enforceable by, Sotheby's successors, assigns and licensees. You will not assign these Terms of Use or otherwise transfer your rights or obligations under these Terms of Use without our written consent. Any assignment in contravention of this Section 14 is void. There are no third party beneficiaries to this Agreement. We will not be liable for, and our performance under these Terms of Use will be excused due to, any causes outside of our reasonable control.

17. Further Inquiries. You may direct questions about these Terms of Use, or other issues, to:

Sotheby's Inc.
1334 York Avenue

New York, New York 10021
Attn: Wine Department

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