

## **“Mount View” Certification Trade Mark – Rules of Use**

These rules of use govern the use of the certification trade mark “Mount View”, which is the subject of Australian trade mark 1312893 (“**the Mark**”).

### **Objectives of the Mark**

1. To provide information to members on their rights and obligations to ensure correct use of the Mark as intended.
2. To build confidence amongst the wine-buying trade and consumers that winegrapes and wine bearing the Mark originate in the Mount View region, and have the particular quality or characteristic that is attributable to wine grapes and wine which originate in the Mount View region.
3. To raise the profile of winegrapes and wines which originate in the Mount View region.

### **Ownership of the Mark**

The mark is owned by Hunter Valley Wine Industry Association (“**the Association**”), a not-for-profit association whose membership comprises producers of winegrapes and wines. The Mark has been devised with the intention of it being available for use by any qualifying applicant for the promotion of quality winegrapes and wine originating in the Mount View region.

### **Boundaries of the Mount View region**

The boundaries of the Mount View region, for the purposes of licensing the Mark, have been determined by the Association following an extensive consultation with all stakeholders in and around the region, and are as set out in Annexure B.

### **Administration of the Mark**

The Association is responsible for administration of the Mark.

The contact officer is:  
President  
Hunter Valley Wine Industry Association  
PO Box 352  
CESSNOCK NSW 2325

The “Mount View Certification Mark Approval Sub-Committee” is an elected group of 3 persons as a sub-committee of the Association, with representation of: 2 wine producers and 1 grapegrower. The chairperson of the subcommittee is elected by the sub-committee members, and has a casting vote if necessary.

The sub-committee members hold office for a maximum of three years, with one member (the member longest in office) required to stand for re-election each year following the election of office bearers of the Association.

The inaugural committee members must have at least 5 years’ relevant experience in the industry.

The sub-committee will receive administrative support from the Executive Officer of the Association.

Certified copy  
pursuant to section 175(2)(b)  
of the *Trade Marks Act 1995*

  
..... 8/7/11  
Commissioner Date

### **Compliance Test for use of the Mark**

An applicant for a licence to use the Mark must satisfy the following criteria:

1. Winegrapes must “originate in” the Mount View region, and wines must comply with the minimum blending requirements for use of a single geographical indication, as required by the *Australian Wine & Brandy Corporation Act, 1980* and/or the *Australian Wine & Brandy Corporation Regulations, 1981* (or any legislation or regulations which supercede these items, to the extent that it deals with the use of geographical indications in the description and presentation of wine) (“**the Legislation**”);
2. Winegrapes and wines must be of a minimum standard, being produced in accordance with the reasonably acceptable viticultural and oenological standards adopted in the Mount View region, and otherwise complying with all relevant regulatory requirements including, as applicable, the Label Integrity Program and the Food Standards Code.

Winegrapes and wines which comply with these criteria are referred to as “Complying Product”.

If there is a dispute as to whether winegrapes or a wine satisfies the second of these criteria (i.e. of the required minimum standard), the Mt View Certification Mark Approval Sub-Committee shall appoint a panel to assess the winegrapes or wine in question, which panel shall comprise three persons with at least five years’ experience each in growing grapes or making wine (as the case may be) in or from the Mt View region.

### **Obligations on Licensees of the Mark**

To be entitled to hold a licence to use the Mark, the licensee must be either a Member or Associate Member of the Association.

The term of a licence to use the Mark is for the current calendar year (or remaining part) for which it is granted. The licence fee includes the cost of supplying the Mark once only in digital form. The Association reserves the right to charge an administrative fee for providing further copies.

Any use of the Mark must be in accordance with the “style guide” requirements determined from time to time for affixing or displaying the Mark, for example in relation to its colour, size, positioning, etc.

Each licensee must also, if required, include a notice to the following effect:

*The Mount View Certification Trade Mark is used under licence from the Hunter Valley Wine Industry Association.*

The licence agreement will also include a term that the licensee agrees to abide by any future determinations of the Mount View Certification Mark Approval Sub-Committee in relation to any variations to the use of the Mark or elements of the style guide.

The licence agreement will also contain provisions that:

- the licensee acknowledges that all intellectual property rights in relation to the Mark remains at all times the property of the Association.
- if the licensee becomes aware of any infringement or potential infringement, or dispute as to ownership, of the Mark, the licensee must promptly inform the Association and the Association will take whatever action it deems reasonable to protect its rights.

- the licensee agrees, both during and after the term of any licence, not to dispute the Association's ownership of the Mark, nor to make application for, or otherwise use, any business name, company name, domain name licence of trade mark registration which comprises or includes the Mark.
- The licensee must provide the Association with a declaration by 28 February each year that the winegrapes and wine in relation to which the licensee has used the Mark during the previous year complied with the two compliance criteria set out above.

### **Obligations in relation to usage of the Mark**

The Mark may only be used on description and presentation material which directly supports Complying Product.

The description and presentation of Complying Product can display the words "Product of the Mount View region", if it meets the criteria specified in the Legislation which it would have to comply with if the Mount View region were registered as a geographical indication under the Legislation.

Each licensee must submit examples of its proposed use of the Mark for approval of the Mount View Certification Mark Approval Sub-Committee. Provided such examples are submitted not less than two weeks before the next meeting of the Mount View Certification Mark Approval Sub-Committee, if the Mount View Certification Mark Approval Sub-Committee fails to provide its approval within two weeks after such meeting, it is deemed to have approved the proposed use.

### **Breach of Obligations**

If a licensee breaches any of its obligations in relation to use of the Mark, and fails to remedy such breach within 30 days of notice of the breach from the Association, the Association may terminate its licence to use the Mark by giving three (3) months' written notice.

If a licensee breaches any of its obligations in relation to use of the Mark, which breach cannot be remedied, the Association may terminate its licence to use the Mark by giving one (1) months' written notice.

### **Complaints and Dispute Resolution**

#### **Step 1 – Direct negotiation**

- Any person making a complaint regarding use of the Mark, or a refusal to be allowed to use the Mark or whether winegrapes or a wine satisfies the "minimum standard" criteria, must put all details of its complaint in writing, including details of any acceptable resolution, and provide it to the Executive Officer of the Association, for the attention of the Mount View Certification Mark Approval Sub-Committee.
- The Executive Officer must provide a copy of the complaint to all relevant parties within 14 days of receipt.
- Any party which wishes to respond to the complaint must provide the Executive Officer with a written response, including details of any acceptable resolution, within 30 days of receipt of the complaint from the Executive Officer.
- The Executive Officer must provide a copy of all written responses to all relevant parties within 14 days of their receipt.
- If the dispute is between two parties (i.e. not involving the Mount View Certification Mark Approval Sub-Committee), the Executive Officer must convene a meeting of the parties in dispute within 45 days of receipt of the last date for responses to be provided to the original complaint, and all parties involved in the complaint must attend that meeting to

attempt to resolve the dispute, failing which their position in relation to the dispute will be disregarded.

- If the dispute involves the Mount View Certification Mark Approval Sub-Committee, a meeting of the Mount View Certification Mark Approval Sub-Committee must be convened within 45 days of receipt of the last date for responses to be provided to the original complaint, and all parties involved in the complaint must attend that meeting to attempt to resolve the dispute. If a party fails to attend the meeting, their position in relation to the dispute will be disregarded.

#### Step 2 – Determination by Association

- If, at the end of Step 1, the complaint has not been resolved to the satisfaction of a party, that party must give written notice ("**Step 2 notice**") to the Executive Officer within 14 days of the Step 1 meeting, setting out the grounds on which it is aggrieved, including details of any acceptable resolution.
- The Executive Officer must provide a copy of the Step 2 notice to all relevant parties within 14 days of receipt.
- Any person who wishes to make a response to the Step 2 notice must do so within 30 days of receipt of the Step 2 notice.
- The Executive Officer must provide a copy of any responses to the Step 2 notice to all relevant parties within 14 days of receipt.
- The Mount View Certification Mark Approval Sub-Committee may, following receipt of all Step 2 materials, provide a written recommendation (which may include dissenting opinions) for consideration by the governing committee of the Association.
- A special meeting of the governing committee of the Association must be convened within 90 days of the date of the Step 2 notice. The Executive Officer must provide all members of the Association with all written materials provided to it during the Step 2 process, together with any written recommendation from the Mount View Certification Mark Approval Sub-Committee. The governing committee of the Association must make a decision on the dispute at the end of that meeting.

#### Step 3 – Determination by Independent Expert

- If, at the end of Step 2, the complaint has not been resolved to the satisfaction of a party, that party must give written notice ("**Step 3 notice**") to the Executive Officer within 14 days of the Step 2 meeting of the governing committee of the Association, setting out the grounds on which it is aggrieved, including details of any acceptable resolution.
- The Executive Officer must provide a copy of the Step 3 notice to all relevant parties within 14 days of receipt.
- Any person who wishes to make a response to the Step 3 notice must do so within 30 days of receipt of the Step 3 notice.
- The Executive Officer must provide a copy of any responses to the Step 3 notice to all relevant parties within 14 days of receipt.
- The governing committee of the Association must, within 60 days of the date of the Step 3 notice, appoint an independent expert with at least five years' experience in the relevant field to determine the dispute. The Executive Officer must provide the independent expert with all written materials provided to it during the Step 3 process, together with any written recommendation from the Mount View Certification Mark Approval Sub-Committee from Step 2, and a copy of the written decisions and reasons (if any) given by the governing committee of the Association in Step 2.
- The independent expert must make his or her decision based on the materials provided to him or her, and must provide a written decision within 90 days of receipt of such materials.
- The decision of the independent expert will be conclusive and binding on all parties.

A party is not entitled to legal representation at any meeting under Step 1 or Step 2, except with the consent of the Mount View Certification Mark Approval Sub-Committee and all other parties involved in the meeting.

The Association may determine, from time to time, the different levels of fees (if any) payable by a party which:

- files a complaint;
- files a response to a complaint;
- gives a Step 2 notice;
- files a response to a Step 2 notice;
- gives a Step 3 notice;
- files a response to a Step 3 notice.
- files a response to a Step 3 notice.

Each party is responsible for its own legal and other costs of participating in the dispute resolution procedure set out above.

### **Rules and Conditions**

1. The Association is the owner of the certification trade mark "Mount View".
2. The Association exists to assist its members in their participation in the Hunter Valley wine industry in all its facets from viticulture through winemaking, sales and wine tourism. Membership is open to individuals or companies who are involved in the commercial growing of grapes and or the production of wine. Associate membership is open to persons who do not own or operate a vineyard or winery in the Hunter Valley area
3. Approval of an application for membership of the Association will be approved when an applicant: completes the membership form, and pays the relevant fee.
4. A licence will be granted to any member of the Association who produces Complying Product, subject to their agreement to the terms of the licence from time to time, and payment of any relevant fees.
5. Each licensee must ensure that all persons involved in their business comply with the rules and conditions for use of the Mark.
6. Liability in relation to use of the Mark rests solely with the licensee, which indemnifies the Association and its members against any losses, costs, expenses, charges, suits or other liabilities whatsoever in relation to or in connection with such use.
7. Upon termination of the licensee's membership of the Association, its right to use the Mark terminates immediately, and the licensee must cease all use of the Mark.
8. The Mark may only be used on or in connection with Complying Products.
9. Members may only use the Mark in accordance with the requirements of the style guide from time to time.
10. Members must keep appropriate records to demonstrate their claim to compliance with the requirements of the Mark, and may be required to substantiate such claims from time to time.
11. The Association may, but is not obliged to, undertake or sponsor activities from time to time to promote the Mark and increase its recognition in the marketplace.
12. Sanctions against non-compliant licensees can include: publication of details of the licensee and its breach, suspension or revocation of its licence and / or membership of the Association.
13. A licensee is not entitled to any partial refund of licence or membership fees upon early termination, howsoever arising.
14. These rules and conditions are lodged with IP Australia, which is responsible for registration of the Mark.

15. These rules and conditions are approved by the Australian Competition and Consumer Commission (ACCC), as required under the Trade Mark Act 1995.
16. These rules and conditions may only be amended with the written approval of IP Australia and the ACCC.
17. All licensees will be advised of any changes to these rules and conditions as soon as practical.

# ANNEXURE A

## TRADE MARK LICENCE AGREEMENT

### Mount View Certification Trade Mark

This Agreement is entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 2010

**Between:**

Hunter Valley Wine Industry Association  
of PO Box 352, CESSNOCK NSW 2325 (“the Association”)

and

[Insert Name]  
ABN \_\_\_\_\_  
of [insert address] (“Licensee”)

### Background

- A. The Association is the registered proprietor of the certification trade mark “Mount View”, registration no. 1312893 in classes 33,35 (“the Trade Mark”).
- B. Licensee is a member of the Association, and grows grapes or produces wine which originate in the Mount View region.
- C. Licensee wishes to obtain a licence to use the Trade Mark throughout the world (“the Territory”) on or in connection with winegrapes and/or wines which originate in the Mount View region.
- D. This Agreement sets out the terms and conditions on which the Association authorises Licensee to use the Trade Mark.

The parties agree as follows.

### 1. Definitions and Interpretation

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- 1.1 In this agreement unless the contrary intention appears:
  - (a) the singular includes the plural and vice versa; and
  - (b) the word person includes a firm, a body corporate, an unincorporated association or an authority.
- 1.2 Headings are inserted for convenience and do not affect the interpretation of this agreement.

## 2. Grant of Licence

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- 2.1 Subject to clause 2.2, the Association hereby grants Licensee a non-exclusive licence to use the Trade Mark in the Territory for the Term (“Licence”).
- 2.2 The Term of the Licence is for one calendar year (or the remainder of the current calendar year, as the case may be), subject to renewal in accordance with clause 2.3.
- 2.3 Subject to:
- (a) renewal by Licensee of its annual membership of the Association,
  - (b) Licensee’s continued compliance with the terms of this Licence, and
  - (c) Payment by Licensee of any annual fee for use of the Trade Mark,
- the term of the Licence automatically renews for a further 12 month period.

## 3. Use of the Mark

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- 3.1 Licensee agrees that all use of the Trade Mark in accordance with the Licence will include such words as the Association may reasonably consider appropriate and accordingly direct Licensee to use, which wording is currently:

The Mount View Certification Trade Mark is used under licence from the Hunter Valley Wine Industry Association

- 3.2 Licensee agrees that it will protect and promote the goodwill attached to the Trade Mark and that it will not use the Trade Mark in a manner likely to prejudice the distinctiveness of the Trade Mark or the validity of the registrations. In particular, but without limitation:
- (a) Winegrapes must “originate in” the Mount View region, and wines must comply with the minimum blending requirements for use of a single geographical indication, as required by the *Australian Wine & Brandy Corporation Act, 1980* and/or the *Australian Wine & Brandy Corporation Regulations, 1981* (or any legislation or regulations which supercede these items, to the extent that it deals with the use of geographical indications in the description and presentation of wine) (“**the Legislation**”);
  - (b) Winegrapes and wines must be of a minimum standard, being produced in accordance with the reasonably acceptable viticultural and oenological standards adopted in the Mount View region, and otherwise complying with all relevant regulatory requirements including, as applicable, the Label Integrity Program and the Food Standards Code; and
  - (c) Licensee agrees that the Trade Mark will be used solely as authorised in writing by the Association.

- 3.3 Licensee agrees that it provide the Association with a declaration by 28 February each year that the winegrapes and wine in relation to which the licensee has used the Trade Mark during the previous year:

- (a) complied with the minimum blending requirements for use of a single geographical indication, as required by the Australian Wine & Brandy Corporation Act, 1980 and/or the Australian Wine & Brandy Corporation Regulations, 1981 (or any legislation or regulations which supercede these items, to the extent that it deals with the use of geographical indications in the description and presentation of wine);
- (b) were of a minimum standard, being produced in accordance with the reasonably acceptable viticultural and oenological standards adopted in the Belford region, and



otherwise complied with all relevant regulatory requirements including, as applicable, the Label Integrity Program and the Food Standards Code.

#### **4. Ownership of the Trade Mark**

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- 4.1 Licensee acknowledges the Association's absolute right and title to the Trade Mark and to the goodwill attaching to it and disclaims any right or interest in the Trade Mark other than as a licensee.
- 4.2 Licensee acknowledges the validity of the registration of the Trade Mark and undertakes not to dispute, directly or indirectly, the validity of its registration nor to assist directly or indirectly any other person to do so.

#### **5. Use of the Trade Mark**

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- 5.1 Licensee acknowledges and agrees that the Rules of Use of the Trade Mark registered with IP Australia in connection with the registration of the Trade Mark are incorporated into and form part of this Agreement as if they were set out in full in this Agreement, and are binding on the Licensee.
- 5.2 Without limiting the generality of clause 5.1, Licensee acknowledges and agrees that it must observe the Complaint and Dispute Resolution procedure set out in the Rules of Use.

#### **6. Infringement of the Trade Mark**

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- 6.1 If Licensee becomes aware of any infringement or threatened infringement of the Trade Mark, Licensee must immediately notify the Association.
- 6.2 Licensee is not entitled to call upon the Association to take proceedings for infringement of the Trade Mark or to institute proceedings in Licensee's name. The rights and obligations of the parties with respect to the institution and prosecution of proceedings will be as determined by the Association in its sole and unfettered discretion.

#### **7. Termination**

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- 7.1 If Licensee breaches any of its obligations in relation to use of the Trade Mark (whether set out in this Agreement or incorporated through the Rules of Use), and fails to remedy such breach within 30 days of notice of the breach from the Association, the Association may terminate the Licence by giving to Licensee three (3) months' written notice.
- 7.2 If Licensee breaches any of its obligations in relation to use of the Trade Mark (whether set out in this Agreement or incorporated through the Rules of Use), which breach cannot be remedied, the Association may terminate the Licence by giving to Licensee one (1) months' written notice.
- 7.3 If Licensee ceases to be a financial member of the Association, the Licence terminates immediately.
- 7.4 Upon termination of the Licence, Licensee must discontinue all use of the Trade Mark.
- 7.5 If Licensee fails to comply with clause 7.4 by the tenth day following termination of the Licence, the Association may enter the premises of Licensee to cause such discontinuance to be effected at the expense of Licensee, including taking possession of all goods and other materials bearing the Trade Mark.

7.6 Licensee hereby irrevocably appoints the Association to be lawful attorney of Licensee to do all acts, matters and things which are necessary to remove the registration of Licensee as a registered user of the Trade Mark under clause 7.4.

## **8. Governing Law**

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8.1 This Agreement is governed by and construed in accordance with the laws of the State of New South Wales, Australia and the parties expressly submit to the non-exclusive jurisdiction of the courts of that State and of the Federal Courts of Australia.

## **9. Notices**

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9.1 Any notice, demand, request, consent, approval, designation, specification or other communication given or made or required to be given or made under this Agreement must be in writing and must be delivered by hand, by pre-paid post or by facsimile, addressed to the parties using the contact details set out at the beginning of this Agreement, unless either party notifies the other in writing of a change of address.

9.2 A notice which complies with this clause 9 is deemed to have been given three (3) business days following the date of mailing if given by mail, when delivered to the other party if delivered by hand and signed for, and on the next business day upon receipt of acknowledgement of receipt in full of a facsimile transmission.

**Executed on behalf of Hunter Valley Wine Industry Association**

\_\_\_\_\_

in the presence of:

\_\_\_\_\_

Witness

Executed on behalf of *[insert name of Licensee]*

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in the presence of:

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Witness

## **ANNEXURE B**

### **Boundaries of the Mount View Region**

The Eastern boundary starts on Mount View Rd at the northern boundary of lot 570592, proceeding south down Christy Road to the Pokolbin parish boundary, South on that parish boundary to meet Wollombi Road.

The Southern boundary is Wollombi road west to its intersection with Congewai Creek (also known as Wollombi Brook).

The Western boundary is the northern side of Congewai Creek from its intersection with Wollombi Road to the eastern boundary of lot 961, then along the northern boundary of lot 961, then along the of the north eastern boundary of lot 1 DP 174902, then along the western boundary of lot 1 DP 747966, then North East to be eastern boundary of lot 1203, north along the western boundaries of lots 112 and 102, then along the western boundaries of lot 1 DP 873124, then along the eastern boundaries of lot 183 and the western boundary of lot 172.

The Northern boundary commences from the northern boundary of lot 172, along the northern boundary of lot 172, the western boundary of lot 46 and lot 297, the eastern boundary of lot 65 as extended to its intersection with the extension of Mount Bright Road, then southeast along Mount Bright Road until its intersection with the northern boundary of lot 2 DP 77235, then along the eastern boundary of lot 209 as extended to its intersection with of the southern boundary of lot 2 DP 845455, the southern and eastern boundaries of lot 87, the western and northern boundaries of lot 38, the northern boundaries of lots 39, 122 and 570592, joining the original start point on Mount View Rd.