

## CONTRACT FOR BOTTLING SERVICES

THIS CONTRACT FOR BOTTLING SERVICES (the “**Agreement**”) is entered into by and between **Casteel Custom Bottling, LLC**, an Oregon limited liability company (hereinafter “**CCB**”), and the undersigned (hereinafter “**Customer**”).

### RECITALS:

- A. CCB operates a wine bottling business, providing wine bottling services either at the locations of its customers or at CCB’s facility located in McMinnville, Oregon.
- B. Customer desires to retain the services of CCB in bottling its wine products from time to time on the terms and conditions set forth herein and in various Bottling Request Forms, as defined below.

### AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed by and between each of the parties hereto, as follows:

#### 1. Services

CCB agrees to perform bottling services for Customer in accordance with Customer’s instructions and specifications set forth on each Bottling Request Form that may be submitted to CCB by Customer from time to time and accepted by CCB. A Bottling Request Form shall be submitted to CCB no less than four (4) weeks prior to a requested bottling date. CCB may accept or reject a Bottling Request Form submitted by Customer in its sole discretion, but shall notify Customer of rejection or acceptance within 5 days of receipt of the complete Bottling Request Form. A sample form of a Bottling Request Form is attached hereto as **Exhibit A**. At such time as CCB notifies Customer in writing of its acceptance of a Bottling Request Form, the Bottling Request Form shall become part of this Agreement as if fully set forth herein. CCB may modify or amend the form of Bottling Request Form at any time by notice to Customer.

#### 2. Contract Price and Payment

CCB’s current prices are listed on **Exhibit B**, attached hereto and by this reference made a part hereof. In the event Customer cancels a Bottling Request Form accepted by CCB, Customer shall pay CCB a cancellation fee as set forth on **Exhibit B**. The prices are subject to change at CCB’s sole discretion and effective upon written notice by CCB to Customer. Customer shall pay the charges incurred for services provided by CCB under each Bottling Request Form in full within thirty (30) days of bottling. Any amount outstanding after thirty (30) days shall be charged a late fee of one and two percent (2%) per month.

### **3. Customer Obligations**

#### **3.1. *Supplies and Specifications***

Customer shall supply all materials required for bottling, including but not limited to wine, corks, labels and bottles. Supplies necessary for completion of bottling must be available at the bottling location on the date specified by CCB on the Bottling Request Form. CCB may terminate this agreement if Customer fails to deliver supplies and materials by the date specified in the Bottling Request Form. CCB shall not be responsible for delay or damage caused by Customer's failure to have sufficient supplies for bottling or for the condition and quality of supplies. Customer shall meet the specifications and provide all supplies in accordance with CCB's specifications set forth in *Exhibit C*, attached hereto and by this reference made a part hereof.

#### **3.2. *Quality Control***

CCB shall have no responsibility for the quality or appearance of the bottled product, other than those obligations set forth in Section 5, below. CCB shall take one (1) bottle sample from the bottling line each hour during bottling to allow Customer to inspect the wine packaging. If at any time Customer objects to the quality or appearance of the bottling, including but not limited to the cork, foil and/or labels, Customer shall immediately notify CCB of such concern(s) and shall request CCB to temporarily cease bottling. Customer's failure to object to the quality or appearance of the bottling at the time of production shall be deemed acceptance by Customer of the bottling services and waiver of any claim against CCB concerning the quality or appearance of the bottling services.

#### **3.3. *Responsible Person***

Customer shall identify to CCB an employee or agent with authority to on behalf of Customer and who shall be responsible for all bottling decisions. This responsible person shall be present at all times during the bottling process to observe the bottling but shall not perform any bottling services. Such responsible person shall have full authority to bind Customer and to act on behalf of Customer.

#### **3.4. *Insurance***

Customer shall insure all of Customer's property in CCB's possession from loss or damage, including without limitation, general liability, breakage, theft, and casualty.

#### **3.5. *Mobile Bottling***

If bottling is occurring at Customer's location, Customer shall provide the following, at Customers' expense, in addition to the obligations listed above:

##### **3.5.1. Labor**

Eight (8) individuals capable of performing all bottling activities during the bottling process, unless otherwise specified by CCB. Such individuals must be available for the entire bottling process. Customer shall provide general liability insurance, workers compensation insurance and all other coverages required by law for such individuals. If bottling includes tapered bottles, two (2) additional individuals will be required.

### 3.5.2. Equipment Maintenance and Damage

Customer shall assume all responsibility for the sanitation, care and maintenance of its equipment, hoses, storage containers and wine. Customer is additionally responsible for the cost to repair or replace all damage to CCB's equipment caused by Customer's employees, volunteers, supplies, product, forklift or other cause under Customer's control.

### 3.5.3. Utilities and Services

Electrical service, water and any other utilities or services required for bottling in accordance with CCB specifications set forth on **Exhibit C**.

## 4. CCB Disclaimers and Customer Waivers

### 4.1. *Packaging Materials and Supplies*

CCB is not responsible for damage to Customer's wine due to the condition of, or defects in, any supplies provided by Customer including, but not limited to, cork moisture content, cork taint, cork depth variation, cork bacterial migration, wine spillage from faulty closure due to cork defects, bottles of irregular shape, vacuum loss from deformed bottle tops, lack of sterility of bottles, bottle breakage due to bottle defects, poor label application due to bottle irregularities, oxygen levels, water quality, nitrogen sterilization, water sterilization, fill level fluctuation due to poor storage, re-fermentation of wine, wine sediments, filter clogging, biological stability of the wine, or the oxidation, discoloration, smell and/or odor of wine, loss of product, or any other condition outside of the direct control of CCB. CCB is not responsible for defects in the quality of any packaging material, including, but not limited to, corks, labels, foil and the related effects of such packaging material. Customer hereby waives any and all claims against CCB for the damage referred to in this Section, or for any other loss, liability or damage not directly resulting from CCB's gross negligence or willful misconduct. Customer shall have no right to incidental or consequential damages.

### 4.2. *Biological Stability*

The biological stability of the wine is the sole responsibility of Customer and CCB expressly disclaims any liability for the condition of the wine both before and after bottling.

### 4.3. *Reservation of Rights*

CCB reserves the right to stop production at any time in its sole and absolute discretion. In the event production is stopped, the parties shall mutually agree on a future date for bottling to occur.

## 5. CCB Obligations

### 5.1. *Licensing*

CCB shall comply with all laws and regulations required to perform the bottling services described in this Agreement.

**5.2. Equipment Sterilization**

CCB shall maintain its equipment, including the bottling line and internal components, in a clean and sanitary manner. Sterilization is attained by two hundred degree (200°) Fahrenheit water for ninety (90) minutes on all contact surfaces. A detailed description of full sterilization procedures is available upon request to CCB.

**5.3. Equipment Malfunction**

CCB will arrive at Customer’s designated location with equipment in good operating condition, clean and ready to bottle. In the event of an equipment malfunction, CCB will make every reasonable effort to repair such equipment on-site and resume bottling. If on-site repair of the equipment is not reasonably possible, CCB will deduct such down time from the contract price and reschedule bottling for a date agreeable to both parties.

**6. Miscellaneous**

**6.1. Binding Effect**

The provisions of this Agreement shall be binding and inure to the benefit of the heirs, personal representatives, successors and, to the extent permitted by this Agreement, assigns of the parties.

**6.2. Notices**

All notices and other communications under this Agreement must be in writing and shall be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties to the following addresses or facsimile numbers (or at such other address or facsimile number as a party may designate by like notice to the other parties):

**CCB:** Casteel Custom Bottling, LLC  
Attn: Jon Casteel  
3138 Rivergate Street, Suite 301A  
McMinnville, Oregon 97128

**CUSTOMER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax No. \_\_\_\_\_

Any notice or other communication shall be deemed to be given (a) on the date of personal delivery, (b) at the expiration of the second (2<sup>nd</sup>) day after the date of deposit in the United States mail, or (c) on the date of confirmed delivery by facsimile or overnight delivery service.

### **6.3. *Attorney Fees and Costs***

In the event of a default under this Agreement, the defaulting party shall reimburse the non defaulting party for all costs and expenses reasonably incurred by the non defaulting party in connection with the default, including without limitation attorney fees, and whether or not a suit or other form of dispute resolution is filed.

If any arbitration, suit or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue shall be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in preparation or in prosecution or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

### **6.4. *Entire Agreement***

This Agreement (including the documents, exhibits and instruments referred to in this Agreement), constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

### **6.5. *Amendments***

No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties, which writing must refer to this Agreement.

### **6.6. *Counterparts and Facsimile Signature***

This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm facsimile transmitted signatures by signing an original document.

### **6.7. *Severability***

If any provision of this Agreement is determined to be illegal or unenforceable, the validity of the remaining provisions hereof shall not be affected hereby; and such illegal or unenforceable provision shall be deemed modified to the minimum extent necessary to make it consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

### **6.8. *Waiver***

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

### **6.9. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict-of-law principles.

### **6.10. Exclusive Jurisdiction and Venue**

In any action or proceeding, including any arbitration (if arbitration is mutually agreed to by the parties), seeking to enforce any provision(s) of, or based on any right(s) arising out of, or related to or concerning this Agreement, the parties hereto consent to the exclusive jurisdiction of the courts of the State of Oregon and of any duly appointed arbitrator. In any such action or proceeding, venue shall lie exclusively in Marion County, Oregon, and in no other location. The parties further agree that in any such action or proceeding the parties shall appear for deposition at their own expense in Marion County, Oregon at such time as is either mutually agreed upon by the parties or ordered by the court.

### **6.11. Arbitration**

Each party, at such party's option, shall have the right to require that any claim, controversy, or dispute between the parties, including but not limited to those arising out of or relating to the Agreement, and including those based on or arising from any statute, constitution, regulation, ordinance, rule or any alleged tort, be determined by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc., and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. If litigation has been commenced in court by either party with respect to a dispute (in hope that a default judgment could be obtained):

- 6.11.1. The party who is the defendant or respondent in such litigation shall be deemed to have waived its option to arbitrate said dispute if such party files a general appearance in the litigation prior to filing a claim in arbitration in the manner specified above, and
- 6.11.2. The plaintiff or petitioner in such litigation will be deemed to have waived its right to arbitrate said dispute if such party fails to file a claim for arbitration in the manner specified above within sixty days after a general appearance in the litigation has been filed by the party who is the defendant or respondent in the litigation. This provision is intended to allow either party to commence litigation and seek an order of default without waiving their right to arbitrate in the event the default is not attainable.

If either party properly exercises its option to arbitrate, arbitration of such dispute shall be mandatory and any pending litigation shall be stayed.

### **6.12. Exhibits**

The exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year set forth below.

**CASTEEL CUSTOM BOTTLING, LLC:**

**CUSTOMER:**

NAME: \_\_\_\_\_

By: \_\_\_\_\_  
Jon Casteel, Member/Manager

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_