

These terms and conditions apply to the purchase and provision of gift cards in digital or physical form, for use at participating Howard Smith Wharves venues being Felons Brewing Co., Felons Barrel Hall, Mr Percival's, Fellini's Trattoria, Stanley Restaurant and Ciao Papi (Gift Cards). Gift Cards are issued by **HSW Nominees Pty Ltd** ABN 19 166 209 874, of 5 Boundary Street, Brisbane, Queensland, 4000 (**HSW**) (referred to as "Howard Smith Wharves", "we", "us" or "our"). By placing an order for purchase of a Gift Card, you agree to be bound by these terms and conditions. If you do not accept these terms and conditions, you should not order a Gift Card.

We reserve the right to alter these terms and conditions from time to time. The amendments will take effect immediately upon publication on the pages of the international website of Howard Smith Wharves currently at [www.howardsmithwharves.com](http://www.howardsmithwharves.com) (Website) and it is your responsibility to check this page periodically for changes. If you place an order for purchase of a Gift Card after the publication of such amendments, this will constitute an agreement by you to be bound by the amended terms and conditions.

## 2. USE OF GIFT CARDS

The following conditions apply to all Gift Cards:

Gift Cards are not refundable or redeemable for cash and cannot be used to obtain a cash advance.

Gift Cards are valid for 36 months from the date of purchase (subject to clause 6 below). Once the Gift Card has expired it cannot be reactivated and any unspent money will be forfeited.

When a Gift Card is purchased, the purchaser is not required to use the entire available balance on the Gift Card in one transaction. However, if the available balance on the Gift Card is not entirely expended, we will not provide change or a refund. The remaining balance may be used in conjunction with future purchases until the Gift Card expires or the balance reaches nil.

Gift Cards may only be used to make purchases up to the remaining value contained on the Gift Card. If you wish to make a purchase for an amount that exceeds the remaining value, you must pay the excess using another payment method.

Gift Cards cannot be used to purchase additional Gift Cards. Gift Cards cannot be used for any unlawful purpose.

## 3. GIFT CARDS

Gift Cards can be purchased in digital or physical form by using the online store on the Website. The commencement date for a Gift Card will be the date on which we provide confirmation that the order has been submitted and payment has been accepted.

When a Gift Card is purchased, the minimum value permitted is \$50 and the maximum amount is \$9,999.99.

Digital Gift Cards will be delivered to the email address nominated at the time of purchase. We will endeavour to electronically deliver the digital Gift Card within twelve (12) hours from the time of purchase.

Physical Gift Cards will be delivered in Australia using Australia Post without Insurance or tracking. We will endeavour to dispatch physical Gift Cards within three (3) business days from the day of purchase. Delivery costs will be charged in addition to the value of the Gift Card and are currently \$5 for regular post and \$7.90 for express post.

While we will do everything that we reasonably can do to ensure physical Gift Cards are delivered in a timely manner, we will not be liable for any loss or damage incurred by any person as a result of delay caused by Australia Post or any other carrier that we have no control over or by any event which is out of our reasonable control or foresight including but not limited to any delay caused by an incorrect delivery address being provided to us.

Title in a Gift Card does not pass to you until payment has been received. Risk of loss or damage to a Gift

Card passes to you upon dispatch.

#### 4. CREDIT CARD PAYMENTS

Payment for Gift Cards (both physical and digital) may be made by cash, Visa, MasterCard, Diners Club or American Express.

For purchases made using the online gift card store on the Website, we will process your payment via a payment gateway, which will display the total amount paid for the Gift Card on a final screen prior to payment. By clicking 'Pay Now' you authorise us to debit the total amount from your nominated credit card.

We will not be required to fulfil any order where a nominated payment card is declined by a financial institution. If this occurs, you acknowledge that we may contact you (by using the contact details provided with your order) to make alternative payment and delivery arrangements.

#### 5. PROMOTIONS AND DISCOUNTS

Gift Cards may not be used in conjunction with any in-venue promotion, discount or offer made by us.

#### 6. CANCELLATION OF GIFT CARDS

Once you have placed an order for a Gift Card and your payment has been accepted, we will not be able to cancel the order if requested by you.

In addition, we reserve the right to cancel any order for a Gift Card at any time, without notice, for any reason. This may include where we decline to accept payment from you by credit card for any reason. If we decline to accept payment, we will not process your order and may not contact you to inform you that your order will not be processed.

In the event of suspected or proven fraud and / or improper use of the Gift Card, we reserve the right to suspend, pending investigation, or cancel any Gift Card without notice.

We reserve the right to cancel the Gift Card scheme for any reason at any time and without notice. In these circumstances, any cards issued prior to the cancellation or revocation will be valid until their expiry date has elapsed or may be refunded at our sole and absolute discretion.

#### 7. FAULTY GIFT CARDS

We will not re-issue a Gift Card that is claimed to be faulty or damaged unless the Gift Card is proven to be faulty or damaged as a result of the production process or otherwise due to the fault of Howard Smith Wharves its agents or contractors.

#### 8. DISCLAIMER

You are responsible for the use and safety of your Gift Card. You are liable for all transactions on your Gift Card, except to the extent to which there has been proven fraud or negligence by us or by any of our employees. We will not replace or refund lost or stolen Gift Cards.

We accept no responsibility for any loss or damage, whether direct or indirect and however caused (including through negligence) that you may suffer in connection with any Gift Cards that are on sold through any online auction sites. In addition, we are not liable for any losses suffered or incurred due to delay in delivery or for any lost or misdirected Gift Cards, including any Gift Cards lost or misdirected in the mail.

To the maximum extent permitted by law, we exclude any conditions or warranties that would otherwise be implied into these terms and conditions. Where a condition or warranty cannot by law be excluded, then that condition or warranty will be deemed included in these terms and conditions, but our liability in respect of any breach of that condition or warranty will be limited to the maximum extent permitted by law.

Our liability for a breach of a condition or warranty implied by chapter 3, part 3-2, division 1 of the *Australian Consumer Law* is limited to:

a) in the case of goods, any one or more of:

- i. the replacement of the goods or the supply of equivalent goods;
- ii. the repair of the goods;
- iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; and
- iv. the payment of the cost of having the goods repaired; or

b) in the case of services:

- i. the supplying of the services again; or
- ii. the payment of the cost of having the services supplied again.

## 9. QUERIES OR COMPLAINTS

If you wish to dispute an amount deducted from your Gift Card, you must contact our Head Office via email at [giftcards@hswco.com.au](mailto:giftcards@hswco.com.au). If an amount is not disputed within two (2) weeks after the transaction date, we may refuse to provide you with a refund in our sole discretion.

Any complaints about goods or services purchased with a Gift Card must be resolved directly with Howard Smith Wharves.

## 10. GOVERNING LAW

These Gift Card terms and conditions are governed by the laws of Queensland, Australia. In any action or other legal process with respect to any matter or thing in connection with these terms and conditions, you submit to the non-exclusive jurisdiction of the Courts of Queensland, Australia.