

## AGREED TERMS

These are the terms and conditions on which we supply the private casks to you. Please read these terms carefully before you submit your order to us.

## INFORMATION ABOUT US AND HOW TO CONTACT US

We are Yarm Distillery Ltd, a company registered in England and Wales. Our company registration number is 11588936 and our registered address is 8A Wass Way, Durham Lane Ind Park, Eaglescliffe, TS16 0RB, UK

1.1 You can contact us by email at [info@yarmdistillery.co.uk](mailto:info@yarmdistillery.co.uk) or the company registered address.

## 2. DEFINITIONS AND INTERPRETATION

2.1 In these terms and conditions the following terms shall have the following meanings:

### Price Contract Duty

### VAT WOWGR

means the price of the contents of the cask as purchased by you and as set out in the Details of Contract.

means the contract for the sale and purchase of the contents of the Private Cask as described in clause 3.

means the charge made by Her Majesty's Revenue and Customs based on the percentage level of alcohol in the spirit. The rate of Duty at the date of this agreement is £28.74 per litre of pure alcohol but is subject to change.

value added tax chargeable under the Value Added Tax Act 1994.

Warehousekeepers and Owners of Warehoused Goods Regulations UK 1999.

2. 2.2 When we use the terms "writing" or "written" in these terms, this include emails.
3. 2.3 When we use the terms "we/us/our" in this document, we mean Yarm Distillery Ltd as identified above.
4. 2.4 When we use the terms "you/your" we mean, you, the person or entity who has purchased the spirit.

## 3. AVAILABILITY AND OWNERSHIP

1. 3.1 From time to time, we produce a limited number of casks filled with new make spirit (**Private Reserve**).
2. 3.2 We make the contents of these casks in the Private Reserve available for sale on a first come

first filled basis to individuals, group of individuals or businesses.

3. 3.3 A maximum of 2 casks may be purchased per person or group per year.

#### **4. THE CONTRACT**

4.1 These terms and conditions, together with the Details of Contract and your certificate of cask ownership comprise the Contract between us and you for the sale and purchase of the

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contents of a cask in the Private Reserve. By submitting your order to us and paying the Price you agree to be bound by all terms of the Contract.

#### **5. THE PRIVATE RESERVE**

1. 5.1 The new make spirit will be distilled at our distillery and filled into an ex-bourbon cask at our filling strength of 63.5 % ABV, subject to change.
2. 5.2 The nominal capacity of the ex-bourbon cask is 200 litres.
3. 5.3 Whilst we endeavour to ensure that each cask is filled to its capacity with the new make spirit, due to their nature, each cask has a slightly different capacity and consequently we cannot guarantee the exact amount of spirit filled into each cask.
4. 5.4 Subject to payment of the Price, the cask containing your spirit will be marked with the year of distillation, cask number and your name to mark the contents as your property. Your purchase agreement with us is for the contents of the cask, and the cask remain the property of Yarm Distillery Ltd. Upon bottling, we shall retain the cask unless otherwise agreed in writing with you.
5. 5.5 Whilst the Price includes storage of the spirit for 10 years, subject to clause 10.3 it is possible to remove the cask from the bonded warehouse sooner if you would like us to do so. If you wish to remove the cask from storage, and bottle the contents, before the expiry of the 10 year maturation period, we require a minimum of 6 months' written notice.
6. 5.6 In the event that you wish to move the spirit to a different facility for maturation this must be agreed with us in writing and will be subject to the purchase of the cask.

#### **6. PAYMENT AND PRICE**

1. 6.1 The Price is set out in the Details of Contract and includes:
  1. 6.1.1 the cost of the spirit;
  2. 6.1.2 warehousing of the spirit under bond and insurance while under bond for a period of 10 years from the date when the spirit is laid down;
  3. 6.1.3 the cost of bottling where this is agreed in advance;
  4. 6.1.4 regular inspection of the cask for signs
  5. 6.1.5 of leakage during that time, repair of any cask found to be leaking and the replacement of any spirit subject to clause 10;
2. 6.2 Payment of the Price must be made within 30 days of placing the order. Your cask will not be secured until payment is received. Once payment is received, we will issue a reservation confirmation email and your cask is reserved but will not be filled until the expiry of the cancellation period described in clause 6.

3. 6.3 The Price does not include Duty and VAT, both of which become payable by you at the prevailing rates for the cask and its contents to be dispatched from the bonded warehouse in order for the spirit to be bottled.

## **7. CANCELLATION**

7.1 You may cancel your order, within 14 days from the day on which we issue the reservation confirmation email;

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1. 7.1.1 you must notify us in writing of your intention to cancel within the 14 day term set out in clause 7.1. We will confirm your cancellation in writing; and
2. 7.1.2 if you cancel an order in accordance with clause 6.1, we will refund the Price to you.

7.2 Due to the nature of the goods supplied, orders may only be cancelled within the 14 day period set out in clause 6.1. We regret that orders cannot be cancelled after this time.

## **8. TRANSFER OF TITLE**

1. 8.1 The cask will not be filled until we have received payment of the Price in full and the 14 day cancellation period described in clause 6 has expired. Upon filling the cask, title in the spirit will pass to you.
2. 8.2 For deliveries of bottled spirits to destinations outside of the UK, it is possible to export under bond without paying UK Duty or VAT, and instead pay local duties and VAT in the country of destination. It is your responsibility to make any necessary arrangements for export and payment of relevant duties and taxes in the country of import.

## **9. STORAGE**

1. 9.1 The cask will be stored under bond from the date of filling until it is removed for bottling. We are an authorised warehousekeeper for the purposes of WOWGR.
2. 9.2 Individuals and groups purchasing the casks for private, non-commercial use will qualify for the exemption from the requirement to obtain registered approval to own goods in an excise warehouse in the UK. When placing your order, you should confirm whether the purchase is made for private or commercial purposes. If you are a 'revenue trader' as defined by WOWGR, and are purchasing the cask for commercial purposes you must ensure that you have the appropriate approval and registration to own goods in an excise warehouse. You will be required to confirm your WOWGR registration when placing the order for the cask.
3. 9.3 In the event that you want us to store your spirit for a period greater than 10 years, this will be charged at a rate of £50.00 per cask per annum, (subject to increase in line with the UK Retail Prices Index). We will arrange storage for your spirit for a maximum of 50 years.

## **10. THE MATURATION PROCESS**

1. 10.1 During the maturation process, there is a natural evaporation of the whisky from the cask. This is at an average annual rate of 2% to 3%, although the rate of loss can depend on a variety of factors and you acknowledge that this percentage loss may vary from year to year.

2. 10.2 We will not be responsible for the value or replacement of any contents of the cask lost due to the natural evaporation process and we cannot guarantee the amount of spirit remaining in your cask at the end of the maturation period.
3. 10.3 The minimum maturation period is 3 years. It is not possible to bottle your spirit within 3 years of it being laid down.

## **11. BOTTLING YOUR SPIRIT**

1. 11.1 Bottling of your spirit must be carried out by us. The bottling will be carried out without chill-filtration or the addition of any colour.
2. 11.2 The contents of each cask must be bottled in its entirety and bottled separately to preserve the unique flavour infused by each cask.
3. 11.3 We require a minimum of 6 months' notice of your intention to bottle the contents of your cask in order to schedule a date and time for bottling.
4. 11.4 Where the cost of bottling is included in the Price, this will be at a fixed rate of £1000.00 for the 200 litre cask. Where the cost of bottling is not included in the Price, the cost will be charged at our rate at the time of bottling.
5. 11.5 Where the cost of bottling has not been included in the Price, payment for bottling must be made as soon as possible upon giving us notice of your intention to bottle. In any event, the cost of bottling must be paid to us before the cask is removed from bond. The cask will not be removed from bond until the cost of bottling has been paid.
6. 11.6 The cost of bottling includes bottles, corks, closures, outer cases and labels.
7. 11.7 Labelling and packaging must comply with all relevant UK legislation. Labels, bespoke to the Private Casks, will be applied to bottles upon bottling.

## **12. DELIVERY**

1. 12.1 On completion of bottling, we can arrange delivery of the bottles, the cost of which shall be paid by you in advance of dispatch. Alternatively, you can make arrangements to collect the bottles from our premises during our working hours of 9am to 5pm Monday to Friday.
2. 12.2 Risk shall pass to you at the point of collection by the carrier and it is your responsibility to arrange and pay for appropriate insurance for the transportation of the bottles whether this has been arranged by you or by us. We can arrange such insurance upon request.

## **13. NON-PAYMENT OR LOSS OF CONTACT**

1. 13.1 It is very important that you inform us of any changes in your contact details from the date of purchase of the spirit until the date it is delivered to you in accordance with your instructions. You can do this by contacting us at the address, email.
2. 13.2 If you fail to make payment of the Duty, VAT and/or bottling costs required to remove the spirit from bond, and/or we have not heard from you regarding your instructions for your spirit within 12 months of the expiry of the initial 10 year storage period included in the Price, and we are unable to contact you or you fail to make the necessary payments, we shall be entitled to dispose of the spirit as we see fit. We will hold any sale proceeds on your behalf after the deduction of Duty and VAT payable on release from bond as well as bottling costs, sale costs and storage costs which may have been incurred as a result of the disposal.

3. 13.3 In the event that you die whilst your spirit is being matured at our facility, the ownership of the spirit will pass to your personal representatives who will transfer it to the beneficiaries of your estate. We will note the change of ownership on the cask containing your spirit. If you die during the term of storage and we are not notified of your death the provisions of clause 12.2 will apply.

#### **14. OUR RIGHTS TO MAKE CHANGES**

14.1 We may change the product to reflect changes in relevant laws and regulatory requirements such as laws relating to the production of alcohol or weights and measures legislation.

#### **15. DAMAGED OR FAULTY GOODS**

15.1 Provided they have been stored correctly the goods will maintain their quality. For this reason, it is only in very unusual circumstances that we would expect to discover any defects with the spirit after delivery. If such circumstances arise and following our own inspection we are satisfied that the goods are indeed defective through no fault or action of yourself, we will seek to remedy this with you. We will not provide any remedy on the subjective grounds of personal taste or in any circumstances when we are not at fault.

#### **16. RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU IF YOU ARE A CONSUMER**

1. 16.1 If we fail to comply with these terms and conditions, we will be responsible for loss or damage suffered by you that is a foreseeable result of our breach of the terms and conditions or our failure to use reasonable care and skill. But, subject to clause 16.4, we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by both you and us at the time of entry into this Contract.
2. 16.2 We supply the goods under this contract for domestic and private use. You agree not to use the goods for any commercial, business or re-sale purposes.
3. 16.3 Subject to clause 16.4, we have no liability to you for any consequential loss, any indirect loss or for loss of profit, loss of business, business interruption, or loss of business opportunity.
4. 16.4 We do not exclude or limit in any way our liability for:
  1. 16.4.1 death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors;
  2. 16.4.2 fraud or fraudulent misrepresentation;
  3. 16.4.3 anything which cannot be excluded or limited by applicable law.

#### **17. RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU IF YOU ARE A BUSINESS**

1. 17.1 If you are purchasing as a business, this clause 17 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and subcontractors) for:
  1. 17.1.1 any breach of this agreement however arising;
  2. 17.1.2 any use made or resale of the product by you, or of any product incorporating any of the product; and
  3. 17.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
2. 17.2 Nothing in this agreement shall limit or exclude the liability for:

1. 17.2.1 death or personal injury resulting from negligence; or
  2. 17.2.2 fraud or fraudulent misrepresentation; or
  3. 17.2.3 anything which cannot be excluded or limited by applicable law.
3. 17.3 Without prejudice to clause 17.2, we shall not under any circumstances whatever be liable to you, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
  1. 17.3.1 loss of profit;
  2. 17.3.2 loss of goodwill;
  3. 17.3.3 loss of business;
  4. 17.3.4 loss of business opportunity;
  5. 17.3.5 loss of anticipated saving;
  6. 17.3.6 loss or corruption of data or information; or
  7. 17.3.7 special, indirect or consequential damage, suffered by you that arises under or in connection with the Contract.

17.4 Without prejudice to clause 17.2 our total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the Price paid by you.

## **18. HOW WE MAY USE YOUR PERSONAL INFORMATION**

1. 18.1 We will use the personal information you provide:
  1. 18.1.1 to provide the goods and services to you and perform our obligations under the Contract; and
  2. 18.1.2 to process the payment of the Price.
2. 18.2 We also wish to use your contact details to invite you to exclusive events that we host for those who purchase casks from our Private Reserve. At the time of purchase of the spirit, we will ask you to confirm that you are happy for us to use your information for these purposes. You can elect to stop receiving these invitations at any time by following the instructions to unsubscribe on each such communication or by contacting us by email at [info@yarmdistillery.co.uk](mailto:info@yarmdistillery.co.uk).
3. 18.3 In addition, from time to time we would like to inform you via email about products or services that we provide which are similar to the products and services you have purchased from us. Again, at the time of purchase we will ask you if you are happy to receive these emails and ask for your affirmative consent to their receipt. You may choose to stop receiving the emails at any time by using the unsubscribe link on each communication or by contacting us by email at [info@yarmdistillery.co.uk](mailto:info@yarmdistillery.co.uk).
4. 18.4 We will not share your personal information with any other third party for marketing purposes without your prior written consent.

## **19. ASSIGNMENT AND TRANSFER OF OWNERSHIP**

1. 19.1 We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the Contract.
2. 19.2 You may not assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract without our prior written consent. Ownership of the spirit may not be transferred to a third party without our prior written consent.

## 20. OTHER IMPORTANT TERMS

1. 20.1 **Notices.** If you have any questions or complaints, you should contact us by email at [info@yarmdistillery.co.uk](mailto:info@yarmdistillery.co.uk)
2. 20.2 If you wish to contact us in writing, or if any clause in these terms and conditions requires you to give us notice in writing, this should be sent to us by e-mail, by hand, or by pre-paid post using the our contact details above. We will confirm receipt of this by contacting you in writing. If we have to contact you or give you notice in writing, we will do so by e-mail, by hand, or by pre-paid post to the address provided to us in the order.

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3. 20.3 **Severance.** Each of the clauses of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect. If any invalid, unenforceable or illegal clause of the Contract would be valid, enforceable and legal if some part of it were deleted, the clause shall apply with the minimum modification necessary to make it legal, valid and enforceable.
4. 20.4 **Waiver.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this Contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
5. 20.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
6. 20.6 **Variation.** Except as set out in these terms and conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by us.
7. 20.7 **Governing law and jurisdiction.** These terms are governed by English law and you can bring legal proceedings in respect of the products in the English courts. You and we both agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these terms and conditions.

**Yarm Distillery Ltd**