

Terms and Conditions for purchase of Old Kempton Distillery Private Barrel

**These terms and conditions form a sales
agreement**

(the "Agreement")

Between:

Old Kempton Distillery of 26 Main Street, Kempton, 7030,
Tasmania

(ABN 62156575549)

(the 'Seller')

Of the first part

- and –

Private Barrel Owner

(the 'Buyer')

Of the second part

IN CONSIDERATION OF THE COVENANTS and agreements contained in this Sales Agreement the parties to this Agreement agree as follows:

1) Sale of Goods

- a) Old Kempton Distillery will distil new make spirit producing Tasmanian single malt whisky in a 20 litre or 100 litre cask.
- b) The size and type of cask will be nominated by the Buyer, depending on availability, and some of the options may include the options below
 - 20 litre
 - Ex-American Bourbon
 - Ex-Australian Port/Tawny
 - Ex-Australian Sherry/Apera & Muscat
 - Ex-Australian Wine Pinot etc
 - 100 litre
 - Ex-American Bourbon
 - Ex-Australian Port/Tawny
 - Ex-Australian Sherry/Apera & Muscat
 - Ex-Australian /New Zeland Wine Pinot etc
 - Ex-Australian Rum
 - French Oak
- c) Barrels are not be offered for sale as an investment opportunity.

2) Purchase Price – barrel and maturing spirit

- a) The Buyer will pay for the Goods with the sum of
 - \$2600 for a 20 litre barrel (the "Purchase Price"),
 - \$8500 for a 100 litre barrel (the "Purchase Price"),
- b) The Purchase Price includes the following
 - Your own barrel in the size and type nominated
 - New make whisky spirit
 - Storage of barrel during maturation
 - Insurance of barrel
 - Auditing costs
 - Barrel management fee
 - Preparation of ownership documents
 - Ongoing monitoring of quality
- c) The Seller and the Buyer both acknowledge the sufficiency of this consideration.
- d) The Purchase Price is inclusive of Goods and Services tax.

- e) The Purchase Price is exclusive of excise tax. In addition to the Purchase Price specified in this Agreement, the amount of any present or future use, excise or similar tax applicable to the sale of the Goods will be paid by the Buyer.
- f) The Seller will issue a 'Certificate of Ownership' for each barrel filled upon receipt of payment of the invoice.

3) Purchase Price – bottling

- b) The Buyer will pay for the bottling of the mature whisky. This include the bottle, cork, closure, label & OKD private cask tin.
- c) The cost of the bottling is to \$18 including GST per bottle.

4) Government Excise Tax

- b) As whisky is an excisable good the applicable excise tax must be paid in accordance with the requirements of the Australian Tax Office.
- c) The excise tax rate is reviewed every six months by the Australian Tax Office.
- d) For the purposes of an estimation the excise on a typical
 - i) 20 litre barrel providing approximately 39 bottles @46% is \$1015.00
 - ii) 20 litre barrel providing approximately 30 bottles @60% is \$1015.00
- e) This estimate is based on excise rate as of March 2024.

4) Payment

- a) The Purchase Price for the barrel and maturing spirit will be paid upon placement or order by the Buyer.
- b) The Purchase Price for the bottling, after maturation is complete, must be paid within 14 days of being invoiced.
- c) The payment for the excise tax must be made by the Buyer before the bottles are removed from the Seller's bonded facility and within 14 days of bottling.

5) Filling of barrel

- a) The Seller will order the nominated barrel within five business days of receipt of payment from the Buyer.
- b) Delivery of the nominated barrel, from the cooperage, can take up to eight weeks from the time the Seller places the order.

- c) The nominated barrel is expected to be filled with new make spirit within 5 business days of the barrel being received by the Seller.
- d) The Buyer is permitted to witness the filling of the nominated barrel if permitted by the Seller.
- e) If the Buyer is not able to visit the distillery in person the filling can be lived streamed or recorded and the vision sent to the Buyer.
- f) The Seller reserves the right to alter the distilling and filling schedule due to operational requirements. The Buyer will be advised accordingly.

6) **Late Payment**

Should the Buyer fail to make a payment, the barrel will not be ordered nor filled.

7) **Maturation of whisky**

- a) The Seller will determine at which time the whisky has matured and ready for decanting and bottling.
- b) This time frame will vary depending on the size of the barrel.
- c) Indicatively the maturation period is as follows
 - i) for 20 litre barrels is approximately 2 years and 3 months
 - ii) for 50 litre barrels is approximately 3-4 years
 - iii) for 100 litre barrels is approximately 3-5 years.
- d) Naturally occurring evaporation known as 'Angels Share' results in losses during the maturation period.
- e) Additional losses occur during the flocking period.
- f) For a 20 litre barrel these natural losses could result in approximately 15 litres of cask strength whisky at time of maturation.
 - i) When the whisky strength is broken down or reduced by adding water, some of the losses could be recovered. e.g. 15lt @67% when broken down provides approximately 23lt @46%.
- g) For a 50 litre barrel these natural losses could result in approximately 40 litres of cask strength whisky at time of maturation.
 - i) When the whisky strength is broken down or reduced by adding water, some of the losses could be recovered. e.g. 40lt @67% when broken down provides approximately 58lt @46%.

- h) For a 100 litre barrel these natural losses could result in approximately 70 litres of cask strength whisky at time of maturation.
- i) When the whisky strength is broken down or reduced by adding water, some of the losses could be recovered. e.g. 70lt @67% when broken down provides approximately 110lt @46%.

8) Storage

- a) The Purchase Price covers the cost for the storage of all barrels under bond at the distillery for the full maturation period as determined by Old Kempton Distillery.
- b) For ease of understanding the storage period will include the “flock” period referred to later in clause 9 (a).
- c) The Seller will manage the storage until the whisky is deemed to have matured including the “flock” period.
- d) The Seller will keep a separate register of the Buyer’s purchases and provide the Buyer with a copy if requested.
- e) The Buyer is welcome to visit the bond store and sample the maturing whisky every six months or upon request.

9) Insurance

- a) The Seller will maintain an insurance policy for storage all maturing and bottled stock purchased or ordered by the Buyer.
- b) The product is covered by the Seller’s insurance from time of distillation until product is dispatched from 26 Main Street Kempton.
- c) If the Buyers barrel is damaged in any way to cause loss of maturing whisky or the barrel is stolen the Seller reserves the right to not make an insurance claim and substitute the loss with an OKD barrel of equivalent size and similar age or refill new barrel with new make spirit. The Buyer can choose which option.

10) Bottling and labelling

- a) When the whisky is matured it will be decanted. If it is to be broken down to 46% it is set aside to 'flock' in preparation for bottling. At least 8 weeks up to 12 weeks will need to be allowed for this to occur.
- b) The whisky will be bottled using the Seller's standard square 'qbic' 500ml bottles.
- c) The bottle is labelled with a special OKD label noting it as 'Private Collection' and that it was distilled at Old Kempton Distillery.

11) Delivery of Goods

- a) The Goods are offered to the Buyer ex-distillery, 26 Main Street Kempton, Tasmania.
- b) The method of shipment from works will be to the discretion of the Buyer.
- c) The Seller normally uses the courier Aramax.
- d) The cost per carton is estimated to be \$21 including GST.
- e) A carton can take up to six x 500ml bottles.

12) Risk of Loss during transit

- a) Risk of loss will be on the Buyer from the time of dispatch from 26 Main Street Kempton, Tasmania.
- b) If using our preferred sender, claims can be made for lost or destroyed product up to their current insurance limit. (Currently wholesale price of 6 bottles per carton – March 22)

13) Warranties

- a) The Seller warrants that the Goods will be fit for the purpose for which such goods are ordinarily intended.
- b) The Seller makes no warranty, and no warranty will be deemed to exist, that the Buyer holds the Goods free of the claim of any third person that may arise from patent or trademark infringement.
- c) Except for the above warranties, no other warranty (whether expressed, implied or statutory) is made by the seller regarding the goods.

14) Title

- a) Title to the Goods will remain with the Seller until dispatch.

- b) The barrel and contents are for private use.
- c) The Seller will not enter a guaranteed buy back option.
- d) If the Seller requires stock upon maturation and the Buyer can sell, then individual cases could be negotiated, but no guarantees will be offered.

15) Security Interest

- a) The Seller retains a security interest in the Goods until paid in full.
- b) Once paid in full all goods become the property of the Buyer and are only kept (and insured) in storage on behalf of the Buyer by the Seller.
- c) The Buyer will have the right to remove any goods at a mutually agreed time for which full payment, including excise tax if applicable, has been made.
- d) Any movement of bottled whisky must be done in accordance with the requirements of the Australian Tax Office.
- e) In the event of the Sellers insolvency or bankruptcy the Buyer will, with permission of the Seller, enter the premises of the Seller in exercising this right to remove goods, maturing in barrel or bottled, in accordance with the requirements of the Australian Tax Office.
- f) The Seller will not be held responsible for quality of any goods removed by the Buyer before full maturation as agreed on by The Seller.

16) Inspection

- a) Inspection can be made by the Buyer at the time and place of dispatch.

17) Claims

The Buyer's failure to give notice of any claim within 5 days from the date of delivery will constitute an unqualified acceptance of the Goods and a waiver by the Buyer of all claims with respect to the Goods.

18) Excuse for Delay or Failure to Perform

- a) The Seller will not be liable in any way for any delay, non-delivery or default in shipment due to labour disputes, transportation shortage, delays in receipt of material, priorities, fires, accidents, pandemics and other causes beyond the control of the Seller or its suppliers.

- b) If the Seller, in its sole judgment, will be prevented directly or indirectly, on account of any cause beyond its control, from delivering the Goods at the time specified or within five years after the date of this Agreement, then the Seller will have the right to terminate this Agreement by notice in writing to the Buyer, which notice will be accompanied by full refund of all sums paid by the Buyer pursuant to this Agreement.

19) Remedies

The Buyer's exclusive remedy and the Seller's limit of liability for any and all losses or damages resulting from defective goods or from any other cause will be for the Purchase Price of the particular delivery with respect to which losses or damages are claimed, plus any transportation charges actually paid by the Buyer.

20) Cancellation

The Seller reserves the right to cancel this Agreement:

- a) if the Buyer fails to pay for the purchase price of the barrel(s) or bottles.
- b) in the event of the Buyer's insolvency or bankruptcy; or
- c) if the Seller deems that its prospect of payment is impaired.

The Buyer reserves the right to cancel this agreement :-

- d) if the seller fails to abide by the terms and conditions of this contract,
- e) in the event of the Sellers insolvency or bankruptcy.

21) Notices

- a) Any notice to be given or document to be delivered to either the Seller or Buyer pursuant to this Agreement will be sufficient if delivered personally or sent by prepaid registered post to the address specified below or delivered by confirmed email.
- b) Any written notice or delivery of documents will have been given, made and received on the day of delivery if delivered personally, or on the third (3rd) consecutive business day next following the date of posting if sent by prepaid registered post:

SELLER: Old Kempton Distillery of 26 Main Street, Kempton, 7030, Tasmania

BUYER: nominated mailing address

22) Mediation and Arbitration

- a) If any dispute relating to this Agreement between the Seller and the Buyer is not resolved through informal discussion within 14 days from the date a dispute arises, the parties agree to submit the issue first before a non-binding mediator and to an arbitrator in the event that mediation fails.
- b) The decision of the arbitrator will be binding on the parties. Any mediator or arbitrator must be a neutral party acceptable to both the Seller and the Buyer. The cost of any mediations or arbitrations will be shared equally by the parties.

25) General Provisions

- a) Headings are inserted for the convenience only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
- b) All representations and warranties of the Seller contained in this Agreement will survive the closing of this Agreement.
- c) The Buyer may not assign its right or delegate its performance under this Agreement without the prior written consent of the Seller, and any attempted assignment or delegation without such consent will be void. An assignment would change the duty imposed by this Agreement, would increase the burden or risk involved and would impair the chance of obtaining performance or payment.
- d) This Agreement cannot be modified in any way except in writing signed by all the parties to this Agreement.
- e) This Agreement will be governed by and construed in accordance with the laws of the State of Tasmania and the Seller and the Buyer hereby attorn to the jurisdiction of the Courts of the State of Tasmania.
- f) If any clause of this Agreement is held unconscionable by any court of competent jurisdiction, arbitration panel or other official finder of fact, the clause will be deleted from this Agreement and the balance of this Agreement will remain in full force and effect.
- g) This Agreement will inure to the benefit of and be binding upon the Seller and the Buyer and their respective successors and assigns.

- h) This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
- i) Time is of the essence in this Agreement.
- j) This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise. The Buyer acknowledges that it has not relied upon any representations of the Seller as to prospective performance of the Goods but has relied upon its own inspection and investigation of the subject matter.

Signed on behalf of Old Kempton Distillery (the seller)

Name: Martin Turmine

Signature

Date: 10/2/2022

Signed on behalf of Barrel Owner (buyer)

Name:Signature

Date: