

1 Definitions and Interpretation

1.1 In this document, the following words and terms shall have the following meanings:

“Brand” means any and all intellectual property rights subsisting in or pertaining to Product and any name, logos, packaging, design and/or any aspect of the get-up, look and feel of the Product in whatever form we may apply from time to time and/or any rights in or to the *“Adelphi Dancey Man Club”*;

“Cask” has the meaning set out in Clause 3.1;

“Cask Type” means the cask type set out in the Letter;

“Contract” means the contract, comprising the Letter and these Terms, entered into between you and us for the supply of Product;

“Letter” means the letter to which these terms are appended, or in which these terms are referred to, that confirms our acceptance of your Order;

“Order” means the order for Product details of which are contained in the Letter;

“Price” means the price for the Product as set out in the Letter excluding any costs of delivery, insurance costs, overheads, packing, loading, carriage and all taxes and duties of any kind;

“Product” means the whisky Products identified in the Letter which shall for the avoidance of doubt only include the actual liquid stocks and not any casks or containers in which we may store the Product from time to time;

“Terms” means these terms;

“us” or **“we”** means Adelphi Distillery Limited, a company incorporated in Scotland with company number SC141800 and registered office at Adelphi Distillery Limited, The Ardnamurchan Distillery, Glenbeg, Argyll, PH36 4JG and **“our”** shall be interpreted accordingly.

“you” means the buyer or person to whom the Letter is addressed and **“your”** shall be interpreted accordingly.

1.2 Unless the context requires a different interpretation, the following rules shall be used to interpret these Terms: (a) the word "including" means "including but not only"; (b) a reference to a "Clause" is to the relevant Clause of these Terms, unless otherwise stated; (c) the headings in these Terms do not affect the meaning of the Clauses.

1.3 In the event of any conflict or inconsistency between them, the terms of these Terms will take precedence over any other terms purported to apply to the Contract and shall take precedence over any terms set out in any ordering of other document purported by you to apply.

1.4 Any references to any Scottish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept or thing shall in respect of any jurisdiction other than Scotland be deemed to include what most nearly approximates in that jurisdiction to the Scottish legal term.

2 Terms of Sale

2.1 We agree to sell and you agree to buy the Product for the Price on the terms set out herein.

2.2 We do not enter into contracts for the sale or supply of Product on terms other than these Terms.

3 Our Responsibilities

3.1 On receipt by us of your payment in full, we will fill a cask (of the Cask Type selected, but subject to availability) with Product from the next available batch of Product, and a certificate of ownership will be produced in your name (your “Cask”). Where the selected Cask Type is unavailable, we will contact you to confirm other available Cask Types and agree with you the type to be used. If we are unable to contact you, despite using reasonable endeavours to do so, we will select a suitable alternative and advise you of the same.

3.2 We will fill your Cask to capacity at 63.5% alcohol by volume.

3.3 We will retain your Cask on our site or such other place we deem appropriate for the in-cask maturation of the Product.

3.4 We shall insure the Products on the same terms and on the same basis as other like products and stock.

3.5 You acknowledge and agree that at no time will you obtain any rights in the cask itself and that all right, title and risk in the cask itself shall remain ours. In the event of complete or substantial loss of or damage to your cask, we shall endeavour to offer you a replacement of the nearest available cask in terms of type, product and distillation date..

3.6 You acknowledge and agree that Your Cask must remain in our warehouse for its entire maturation, and its contents must be bottled by us. You may not ask for it to be bottled until after our own first release of “Ardnamurchan Single Malt Scotch Whisky”.

3.7 Following your request and subject to Scotch whisky regulations and clause 3.6, we will use the contents of your Cask to fill bottles and for this purposes we will, in the absence of any written agreement entered into with you to the contrary, use such Ardnamurchan Distillery dry goods and materials that are in use and available to us at the time of bottling. We will endeavour to accommodate any reasonable and legally compliant requests which you may make in respect of customisation of the bottle, packaging and labelling, and, in the absence of any prior written agreement entered into with you which provides otherwise, we will (as between us) own any intellectual property rights in any such customisation and the production thereof. You acknowledge and agree that where we do so agree to accommodate requests for such customisation that we will be entitled to charge you for the same.

3.8 After bottling, you will be liable for UK duty and VAT at the prevailing rate unless you can arrange for shipping to a bonded warehouse either within or outside of the UK. You must settle all duty and VAT amounts, and arrange for the shipping of your bottles within one month of bottling completion.

4 Your rights and responsibilities

4.1 Once your cask has been paid for, and it has been filled, you will be entitled to visit your Cask by appointment subject to the current terms and conditions as displayed on our website.

4.2 In the event that you wish to obtain a sample of your Cask, we may at our discretion, following a request from you permit this and will do so subject to payment by you of delivery charges, postage, packing and a reasonable administrative charge to be advised by us.

4.3 You acknowledge and agree that there will be a loss of both alcohol and volume while the Product matures in your Cask and whilst this might fluctuate we anticipate that this may amount to up to 2% loss per annum.

4.4 You warrant and represent to us that you have complied, are complying and will comply with current HMRC regulations applicable to a contract of this nature, including that:

(a) you are a private customer who is purchasing the product for private, noncommercial use; or

(b) you are a UK based Revenue Trader and are already registered as an Owner of Warehoused Goods in the UK

(c) you are an overseas Revenue Trader and have appointed, or will appoint, a UK Duty Representative.

4.5 You acknowledge and agree that it is your responsibility to familiarise yourself with and thereafter comply with the requirements of HMRC as regards the purchase of the Product from us. We will endeavour to include (and to the extent it is within our control, maintain) a link to the relevant section of the HMRC website on our website.

4.6 You acknowledge and agree that the 'Approximate Filling' levels contained in the Letter are a guideline only, that each cask will have a slightly different capacity and that we cannot guarantee any minimum amounts of fillings.

4.7 Nothing in the Contract will grant you any rights in or licence to the Brand or any of our intellectual property rights.

You must inform us of any change of name or address, and if you wish to transfer ownership of you Cask, you must seek our prior written agreement to the same and the new owner must agree to abide by these Terms.

5 Title and risk

5.1 Risk in the Product shall pass to you at the point of collection by you or your nominated representative or carrier from us.

5.2 Ownership in the Product shall not pass to you until all amounts owing to us in respect of the Product has been paid to us in full.

6 Price and payment

6.1 On receipt of your order, we shall issue you with an invoice, and covering letter, for the Price plus any VAT payable thereon (an "**Invoice**").

6.2 You agree that you shall pay amounts owing under the Invoice within the period set out in the Letter and you acknowledge that all payments should be received prior to filling the cask. If you have not paid the Invoice within the period required we shall be entitled to treat your Order as rescinded and our confirmation of that Order as set out in the Letter as cancelled and we shall have no further responsibility to you under the Contract.

6.3 The purchase price includes all insurance and storage charges for the first ten years of storage (which for the avoidance of doubt shall start on the filling date of the Cask), and you will be notified of the prevailing rates should you wish us to hold your cask beyond this period.

7 Liability

7.1 Nothing in the Contract shall exclude the liability of either party for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation, or any other liability which may not be excluded by applicable law.

7.2 Subject to Clause 7.1 and save as otherwise provided in these Terms, we shall not be liable for: (a) loss of profits; (b) loss of business; (c) depletion of goodwill or similar losses; (d) loss of anticipated savings; (e) loss of use; (f) loss or corruption of data or information; or (g) any form of indirect, special or consequential loss whatsoever or howsoever caused.

7.3 Subject to Clauses 7.1 and 7.2, our entire liability under or in connection the Contract shall be limited to an amount equivalent to the Price.

8 Miscellaneous

8.1 Any notice to be made under or in connection with the Contract shall be made in English in writing and by letter to the address for the relevant party as set out in the Letter or in the case of letters to you to the last known address which we have on record for you.

8.2 We shall not be liable for any delay in performing our obligations under the Contract where such delay is caused by circumstances beyond our reasonable control.

8.3 You may not assign, sub-contract or otherwise transfer any rights or obligations under the Contract without our prior written consent

8.4 The Contract does not create a partnership or joint venture between the parties to it, nor authorise either party to act as agent for the other.

8.5 No amendment of the Contract will be effective unless it is in writing signed by us.

8.6 If any provision (or part of a provision) of these Terms should be found to be invalid, unlawful or unenforceable by a court having proper authority, or if the law changes so that it becomes invalid, unlawful or not enforceable to any extent, then this Clause will apply and the provision (or part affected) will be treated as having been deleted from the remaining Terms which will remain in full force and effect.

8.7 We will not be treated as having: (a) waived a right or remedy arising under the Contract or otherwise in law; and/or (b) elected to abandon a right or remedy arising under the Contract or otherwise in law; and/or (c) where applicable, thereby affirmed the Contract; except if and to the extent that it has expressly documented such waiver or election (and any resultant affirmation) in writing signed and delivered to you.

8.8 The Contract constitutes the entire agreement between you and us in relation to its subject matter and supersedes any prior arrangement, understanding or agreement between them in relation thereto and sets forth the full extent of our obligations and liabilities in respect of the Product.

8.9 To the fullest extent permitted by applicable law, we hereby exclude any conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose

or any other kind whatsoever, as being binding on us except as specifically stated in these Terms and any condition, warranty or other term concerning the Product which might otherwise be implied into or incorporated within the Agreement, whether by statute, common law or otherwise, is expressly excluded.

8.10 You acknowledge that in entering into the Contract, you have not relied on any statement, representation, warranty, undertaking or other assurance given or made by any person (whether a party to the Contract or not) other than as expressly set out or referred to in the Contract. You hereby waive all rights and remedies howsoever arising which, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, undertaking or other assurance.

8.11 Nothing in these Terms is intended to or will be construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.

9 Governing law and Jurisdiction

The Contract (and any non-contractual disputes or claims) is governed by the laws of Scotland and the parties agree that the Scottish courts will have the exclusive authority to settle any dispute arising out of or in connection with the Contract (and any non-contractual disputes or claims).