

TERMS AND CONDITIONS OF TRADE

Definitions and Interpretation

When the following words with capital letters are used in these Terms, this is what they mean:

- 1.1 VITICULT means VITICULT Limited company no: 08980281 where the context permits includes its agents, employees or contractors
- 1.2 "Market Appraisal" means review of all products including stages of delivery and storage from the time of purchase and where funds have cleared.
- 1.2 "Business Day" means any day other than a Saturday, Sunday or public holiday in the United Kingdom
- 1.3 "Claim" includes any loss, claim, demand, damages, expense or cost (including legal costs) incurred by the Customer or brought against the Customer by any other person whether in contract or tort, under statute or otherwise
- 1.4 "Customer" includes:
 - 1.4.1 a person with whom any contract for the provision of Products or Services is made by VITICULT; and
 - 1.4.2 a person to whom VITICULT Ltd provides Products or Services.
- 1.5 "The Management Fee" means a fee of:
 - 1.5.1 2% (two percent) per annum of the Value of the Order, payable in advance for a period of 5 years (total 10% (ten percent)) and
 - 1.5.2 1% (one percent) per annum of the Value of the Order, payable in advance for a period of 5 years (total 5% (five percent))
- 1.6 "Order" means the order for the Goods and/or Services placed with VITICULT by the Customer (as set out in the VITICULT'S invoice), by whatever means.
- 1.7 "Products" means any wine, whisky or other goods of any kind provided by VITICULT to a Customer
- 1.8 "Services" means any storage, delivery or other services provided or performed by VITICULT for a Customer as set out in the Order.
- 1.9 "Storage Facility" means a suitable facility for storage of the Products as determined from time to time by VITICULT in its discretion.
- 1.10 "Storage Charges" means the storage fees set by the storage facility, payable per case of either 12 X 37.5cl, 12 x 75 cl bottles or 6 x 150 cl bottles, or per 225 Litre cask per annum in advance where stated by the storage facility.
- 1.11 "Terms" means these terms and conditions as varied from time to time in accordance with clause 2.3
- 1.12 "Value of the Order" means the unit price, including the product and Storage Charges.
- 1.13 "VAT" means Value Added Tax.
- 1.14 "ABV" means Alcohol by volume
- 1.15 "RLA" means Re-gauge litre of alcohol
- 1.16 "OLA" means Original litre of alcohol

Application of Terms

- 2.1 The supply of Products and Services by VITICULT, and business undertaken by VITICULT is in all cases subject to these Terms. No person acting or purporting to act on behalf of VITICULT has any authority to waive, add or to vary these Terms, unless the waiver, addition or variation is reduced to writing and signed by a duly authorised representative on behalf of VITICULT.
- 2.2 The use of a Customer's own terms and conditions is no derogation from these Terms. In particular, VITICULT will not be bound by any terms attaching to or accompanying any Customer Order, and the Customer agrees that all such terms are excluded
- 2.3 VITICULT may add to or amend these Terms at any time by giving notice to the Customer by email or post. Such addition or amendment will take effect 30 days after notice is given, or later in accordance with its terms. Without limitation, continued placement of orders by the Customer with VITICULT after the notice has been given will be conclusive evidence that the Customer has accepted the terms as added to or amended

Customer Orders

- 3.1 The Order placed by the Customer may:
 - 3.1.1 not be cancelled except in accordance with clause 3.2 hereof; and
 - 3.1.2 be accepted or rejected by VITICULT in its absolute discretion. Acceptance of an order by VITICULT is not effective until it is confirmed in writing by VITICULT to the Customer. If we are unable to supply you with the goods and/or services, we will inform you of this as soon as possible and we will not process the Order.
- 3.2 Without limiting clause 2.1, VITICULT may reject any order placed by a Customer if there is not a sufficient quantity of Products available to VITICULT or if the terms upon which such Products are available are not acceptable to VITICULT in its sole discretion
- 3.3 The Customer has a right to cancel an order by sending a written notification of cancellation to VITICULT within 14 days of payment being received into VITICULT'S bank account. If the Customer cancels the order, then any money that has been paid to VITICULT will be refunded.

Management Fees

- 4.1 For Customers wishing to transfer products not purchased through VITICULT to VITICULT'S management, VITICULT shall charge a Management Fee of 2% (two percent) per annum, for the value of their stock.

Payment

- 5.1 The price payable by the Customer for any Products or Services ordered by a Customer and supplied by VITICULT will be:
 - 5.1.1 the price quoted by VITICULT at the time the Customer places the Order; or
 - 5.1.2 such other price as VITICULT may advise to the Customer at or before the time VITICULT accepts the Customer's Order
- 5.2 Payment in full for Products (and any associated Services) ordered by a Customer, together with any taxes or expenses payable by the Customer under clause 5, must accompany the Customer's Order.
- 5.3 VITICULT accepts payment in the form of cheques or bank transfers or in such other form as VITICULT agrees to accept from time to time. Any variation in the price notified by VITICULT pursuant to clause 5.1.2 will (if a reduction) be refunded by VITICULT to the Customer at the time the Products or Services are delivered by VITICULT.

Taxes and Expenses

- 6.1 Taxes, levies, duties and imposts, including VAT, which apply to the supply of any Product or the performance of any Service:
 - 6.1.1 will be borne by VITICULT, if the price at which VITICULT supplies such Product or Service is expressed to be inclusive of the particular taxes, levies, duties and imposts; and
 - 6.1.2 in every other case, must be borne by the Customer
- 6.2 The Customer must pay on demand, and must indemnify VITICULT in full against:
 - 6.2.1 any agent's fees, costs of handling and delivery or other expenses incurred as a result of delivery of any Product to an address other than the Storage Facility; and
 - 6.2.2 any taxes, levies, duties and imposts which are to be borne by the Customer under clause 5.
- 6.2.3 any fine, penalty or interest paid or payable by VITICULT because of a default by the Customer in paying such amounts.

Non-payment

- 7.1 If any amount, including any part of the Management Fee, is due and payable to VITICULT by a Customer but remains unpaid, VITICULT may (without the need for further notice or demand and without prejudice to any other rights or remedies which may be available to it) do any one or more of the following:
 - 7.1.1 charge and recover interest on the outstanding amount, calculated daily at the rate of 2% (percent) per annum; above the base lending rate of the Bank of England.
 - 7.1.2 cease managing the portfolio on behalf of the Customer immediately.
 - 7.1.3 close down the account of the Customer.
 - 7.1.4 take possession of any Products or any other goods held in the Storage Facility on the Customer's behalf and move it to VITICULT'S own private reserve account within the Storage Facility.
 - 7.1.5 sell any products held on behalf of the Customer to clear the outstanding balance owed and discharge themselves of all obligations under clause 6 by making the Product available to the Customer. VITICULT will remit the balance (if any) to the Customer.
 - 7.1.6 cancel any outstanding Order placed by the Customer and apply any amount paid in respect of such Order to the payment of amounts owing to VITICULT.

Delivery

- 8.1 All Products ordered by a Customer will be delivered into the Storage Facility unless at the time of accepting the order VITICULT has agreed in writing to make delivery to a different location, the cost of which will be borne by the Customer.
- 8.2 Although VITICULT will make every effort to deliver Products ordered by a Customer in accordance with the Customer's requested date for delivery, no warranty is given by VITICULT that the Products will be delivered on the nominated or any other date. VITICULT is not liable for any Claim arising from or relating to any delay or failure to deliver any Products
- 8.3 If, following acceptance of a Customer's Order, any Product specified therein becomes unavailable for any reason, VITICULT will use its best endeavours to offer an alternative Product to the Customer. VITICULT will refund to the Customer:
 - 8.3.1 the difference between the amount paid for the unavailable Product and any alternative Product which the Customer agrees to take; or
 - 8.3.2 the amount paid in respect of the unavailable Product, if the Customer does not choose to purchase the alternative Product. Any additional amount payable in respect of an alternative Product must be paid by the Customer at the time of agreeing to purchase the alternative Product
- 8.4 VITICULT is deemed to have delivered Products when, in the ordinary course of events, the Products would have arrived at the Storage Facility or at such other location as is agreed by VITICULT Pursuant to clause 8.1

Storage and Collection

- 9.1 For wine, products that are delivered into the Storage Facility will be stored until the Customer provides VITICULT with their private reserve account details. It is the responsibility of the customer to open a private reserve account at a reputable storage facility. Products are transferred into the customer's reserve account once an order has been paid in full. The Customer will pay Storage Charges and Insurance for storage of the Products within their own private reserve account. Storage Charges and Insurance are payable in accordance with the terms of the storage facility.
 - 9.1.1 For whisky, casks remain at the designated facilities; VITICULT will pay for the first 5 years of storage charges and insurance for the products. The storage is calculated per cask type (effectively a size of cask 250 Litre) 60 pounds approx. chargeable per year per cask inclusive of insurance.
 - 9.1.2 VITICULT reserves the right to withdraw its services, sell all of the Customer's Products and to deduct from the proceeds of sale, any or all outstanding Storage Charges and any costs incurred in connection with the sale. The Customer hereby authorises VITICULT to sell its Products as its agent and agree that ownership of the Products will upon sale transfer to the purchaser. Any remaining balance from the proceeds of the sale will be transferred to the Customer through Cheque payment terms.

9.2 At least 3 Business Days' notice of collection, specifying the particular Products to be collected, must be given by a Customer to ensure that those Products will be available for collection by or on behalf of the Customer. VITICULT is under no obligation to make Products available for collection from the Storage Facility until the Customer has paid to VITICULT (and/or the storage facility) all amounts owing to VITICULT in respect of purchase of the Products, their storage and any other amounts then owing to VITICULT by the Customer.

9.3 VITICULT may agree to dispatch the Products to the Customer or to an address nominated by the Customer, but the costs of so dispatching the Products, and any other expenses of collection will be the sole responsibility of the Customer, payment for which will be requested and collected by VITICULT in advance.

9.4 By making Products available to the Customer (or to a person whom VITICULT) in good faith believes to be authorised by the Customer to collect the Products for collection) or (if instructed by the Customer) dispatching the Products in accordance with clause 9.3, VITICULT discharges all of its obligations under this clause 9. VITICULT is not responsible for any Claim that arises after the Products are made available for collection or dispatched.

Insurance

- 10.1 VITICULT will ensure that a policy of insurance either taken out or advised to be obtained & maintained (where applicable), that which covers the Products for their declared replacement value against the risks of physical loss, destruction and damage, at all times from actual receipt of the Products into the Storage Facility until they are made available for collection or dispatched in accordance with clause 9. Such policy of insurance:
 - 10.1.1 will be subject to maximum limits in the aggregate and for each loss or series of losses; and
 - 10.1.2 will be subject to exclusions, limitations and other terms as set out in the policy terms and conditions
- 10.2 Upon request by the Customer, VITICULT will promptly provide to a Customer on whose behalf VITICULT holds or has at any time held Products in the Storage Facility a copy of the terms and conditions of the insurance policy taken out pursuant to this clause 10.1
- 10.3 The liability of VITICULT to the Customer in respect of any Products insured pursuant to clause 10.1 is limited to the proceeds actually recovered by VITICULT under such policies of insurance, less:
 - 10.3.1 any excess paid or payable by VITICULT in respect of the claim; and
 - 10.3.2 any other costs (including, but not limited to, legal and administrative costs) incurred by VITICULT in making or pursuing such claim, and, in the case of a claim also involving property of a customer or customers of VITICULT other than the Customer, will be the same proportion of the insurance proceeds recovered (net of the expenses referred to in clauses 10.3.1 and 10.3.2) as the value of the property of the Customer which has been lost, destroyed or damaged bears to the value of all of VITICULT'S customers' property which has been lost, destroyed or damaged.
- 10.3.2.1 For whisky, the casks are insured directly by the facility. VITICULT will pay the storage and insurance per year per cask for the first 5 years. Policies include cover against swelling staves that may lead to "exploding" casks, spillage, collapsing roof and fire. In the event of a claim, all casks are reimbursed on current market value. The insurance companies may, from time to time differ from distillery to distillery. Insurance does not cover against; tsunami, terrorist acts etc (force majeure).

Title & Documentation

- 11.1 Title of ownership to the Customer of the Product(s) is from date of purchase, subject to all amounts outstanding in respect of the Product(s), and otherwise owing by the Customer to VITICULT (whether on account of Products, Services or otherwise) having been paid in full to VITICULT and allowing for the cancellation period.
- 11.2 VITICULT will provide the Customer with a receipt of funds upon full payment in relation to the Product.
- 11.3 VITICULT will provide the customers of whisky casks with a Certificate of Ownership, the following information will be stated; client's name, client's address, cask number, distillery of origin, cask location, RLA or OLA, Alcohol by volume percentage either at filling or after re-gauging.

Sale

- 12.1 The Customer may ask VITICULT at any time after the request has been issued in writing to list the items for sale on behalf of the Customer.
- 12.2 VITICULT will assist in the referral to sell through their own trade affiliates, or will recommend other agents to sell. 12.3 VITICULT will have completed its obligations by listing the Customer's items in trade, or suggesting other agents to sell and will not be held accountable for the demand, price and period in which the Product(s) have been requested to sell. 12.4 Products sold through VITICULT and their affiliates are included within the brokerage fee. The client will incur a fee for the re-gauging of any cask/s, which requires the measurement of ABV and RLA in the cask to determine the exact quantity available before the sale. Non trading VITICULT clients will incur a fee of up to 15% (fifteen percent) commission on the total sale value of stock.
- 12.5 VITICULT will not be accountable for prices in trade which are dictated by the market.
- 12.6 No advice from VITICULT, should be relied upon by the Customer and the Customer is advise to take independent advice to its satisfaction. On the sale of the Customer nominated Goods; a 5% fee will be charged on the profit only, payable to VITICULT

Viticult Liability

- 13.1 The Customer acknowledges that the nature of the Products is such that VITICULT cannot and does not warrant:
 - 13.1.1 the quality, drink-ability, fitness for use or purpose or freedom from defect or deterioration of the Products, either at the time of delivery or deemed delivery under clause 8 or at the time of collection or dispatch under clause 9; or
 - 13.1.2 the market value or appreciation in value of the Products
- 13.2 Without limiting clause 13.1, and to the fullest extent permitted by law:
 - 13.2.1 VITICULT expressly excludes all warranties, conditions and representations, whether express or implied, and whether contained in statute or common law. To the extent to which such warranties, conditions and representations cannot be excluded or restricted, these Terms will be read subject to those warranties, conditions and representations; 13.2.2 subject to clause 10.3, VITICULT'S liability is limited, at its option:
 - 13.2.2.1 in the case of Products – to replacing the Products or re-supplying equivalent products, or paying to the Customer the cost of such replacement or re-supply; and
 - 13.2.2.2 in the case of Services – to supply the Services again or paying to the Customer the cost of having the Services supplied again.
 - 13.3 VITICULT shall not in any circumstances be liable for any indirect or consequential loss or damage arising from wastage, spoilage or the deterioration of any Products, the loss of market for any Products, decline in the value of any Products or for any other damages arising from or attributable to any cause, including the wilful or negligent act or omission of VITICULT.
 - 13.4 VITICULT will not be liable or responsible for any failure to perform or delay in performance of any of their obligations under these Terms or attributable or caused by acts, events, omissions or accidents that are caused or are beyond their control (Force Majeure Event).

Data Protection

- 14.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be passed to credit reference agencies and that they may keep a record of any search that they do.

Entire Agreement

- 15.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements.

General

- 16.1 Any part of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, invalid or unenforceable the remaining paragraphs will remain in full force and effect.
- 16.2 VITICULT may in its discretion sub-contract the performance of any part of its obligations under these Terms and VITICULT shall notify you in writing if this happens. This will not affect your rights or VITICULT'S obligations under these Terms. 16.3 The Customer may not assign the benefit of these Terms without VITICULT'S prior consent in writing
- 16.4 These Terms shall be governed by English Law and be subject to the exclusive jurisdiction of the English courts.
- 16.5 If VITICULT fail to insist that the Customer performs any of his/ her obligations under these Terms, or if VITICULT do not enforce their rights against the Customer, or delay in doing so, that will not mean that VITICULT have waived their rights against the Customer and will not mean that the Customer does not have to comply with those obligations.