



**THE SCOTCH MALT
WHISKY SOCIETY**



**C A S K S A L E
T E R M S O F S A L E**

THE SCOTCH MALT WHISKY SOCIETY LIMITED

1. This Agreement

- 1.1 This agreement sets out the terms on which the Scotch Malt Whisky Society Limited ("SMWS"), shall sell to you the entire contents of Single Malt Scotch Whisky from one of our handpicked casks, as further detailed in paragraph 2 below (the "Agreement").
- 1.2 The Order Form (defined below) forms part of this Agreement and is incorporated by reference with the same force and effect. To the extent that any term of the Order Form is inconsistent with any other term of this Agreement, the Order Form shall take precedence.
- 1.3 Any reference to "we", "us" or "our" means SMWS. Any reference to "you" or "your" means the person entering into this Agreement with us. If you are purchasing multiple casks, "Cask" will refer to all those casks that you are purchasing from us.

2. Your Order

- 2.1 Under the terms of this Agreement and subject to paragraph 2.2 below, you agree to purchase, and SMWS agrees to sell to you, the entire contents of the cask of Single Malt Scotch Whisky (the "Cask") as selected on our website or shown in the order form in Appendix 2 (the website selection and / or the form in Appendix 2 being together the "Order Form") at the Total Price detailed in that Order Form ("Your Order"). Where not otherwise defined in this Agreement or in paragraph 2.2 below, defined terms have the meaning given to them in the Order Form.
- 2.2 The estimates in Your Order are based on our very best calculations as on the date of latest sampling prior to Your Order. However, maturing whisky in casks for this length of time is a natural process, and the ultimate output may differ to these estimates. Therefore, you acknowledge and agree the following in relation to Your Order:
 - a) The Estimated Strength of the whisky is estimated on the date of latest sampling prior to Your Order, and may prove to be higher or lower once bottled.
 - b) Similarly, the actual number of bottles produced from the Cask is estimated as on the date of latest sampling and may prove to be less or more than the Estimated Quantity stated in Your Order ("Bottled Whisky").
 - c) Please note that approximately 2% of the contents of each Cask (and more in the first few years of being in cask) will evaporate through the wooden cask each year of the maturation period, which is an entirely natural process known as the "Angel's Share", and which will further reduce the Estimated Quantity.
 - d) You accept the risk that the total number of bottles that you receive for the Total Price stated in Your Order may be less or more than the Estimated Quantity stated in Your Order, and will depend on a number of factors including the degree of Angel's Share.
 - e) The Total Price will not be affected by a higher or lower number of bottles than the Estimated Quantity in Your Order, and the Total Price will be payable in full despite a lower output than the Estimated Quantity. Equally, if the ultimate number of bottles you receive turns out to be more than the Estimated Quantity, they are yours to keep (subject to paragraph 3.5, the entire content of the Cask belongs to you).
 - f) The total number of Bottled Whisky to be delivered and the exact Cask strength shall be confirmed to you on bottling.

3. Payment

- 3.1 We may ask you to provide us with certain information relating to you and/or your business for the purpose of our anti-money laundering and anti-corruption checks. The sale of the Cask to you is conditional on you complying with any such requests and passing these checks to our satisfaction. We will not use this information for any other purpose.
- 3.2 By placing Your Order, you warrant that you are capable of entering into legally binding contract and are the legal age to purchase alcohol in your country of residence and in the United Kingdom.

- 3.3 The Order is an offer by you to enter into a binding contract, which we are free to accept or decline at our absolute discretion. The contract between us shall become binding on you when we receive and accept Your Order, at which time we will allocate the contents of the Cask to you and risk will pass to you.
- 3.4 If we receive Your Order via a completed form, we will issue you with an invoice for the agreed Total Price, payable only to the bank account and on the payment terms stated in the invoice.
- 3.5 Legal and beneficial title to the contents of the Cask will be transferred to you on our acceptance of Your Order. For the avoidance of doubt, only title to the contents of the Cask will transfer to you, and not the wooden cask itself (and which will not be available for separate purchase).
- 3.6 We will maintain an insurance policy on your behalf that covers the contents of the Cask at the level of the Total Price up until the point of delivery of the Bottled Whisky, and at no additional cost to you. This will be under our group insurance policy.
- 3.7 Once we receive and accept Your Order, you have 14 calendar days in which to notify us if you change your mind and wish to cancel Your Order. We will issue you with a confirmation of cancellation and process your full refund. Beyond this period, cancellation and/or refunds will not be permitted and you will be obliged to pay the Total Price for your Cask.

4. Storage & bottling

- 4.1 As part of the Total Price, we will store your Cask at a bonded warehouse in Scotland for the 10 year maturation period ("Storage"). At the end of this period, during the Society's 50th anniversary, we will bottle the entire contents of the Cask. Partial or early bottling of a Cask is not permitted. With our express permission, we may negotiate additional maturation and storage at the end of the 10 year maturation period with you, if you wish.
- 4.2 Over the life of your cask's maturation, from time to time we will send out samples to allow you to see how your spirit is developing. We will issue the 1st sample after your cask has matured enough to be officially called whisky, after three years and a day, and at a couple of more points before final bottling. We'll be in touch over the period to let you know when to expect your samples. I am afraid that it will not be possible to visit your cask during its maturation journey. Measuring the contents of a cask that has been maturing whisky for long periods of time presents unique difficulties including the need to move the cask from its location in our warehouse to an area where measurement can take place safely. Moving the cask opens up the possibility of damage to the structure of the cask causing leakage. Therefore, you accept that some liquid from your Cask may be lost as a result of this process when samples are taken.
- 4.3 Prior to bottling, we will contact you to discuss options for bottle label customisation. Please note that these are indicative only and subject to change. We will do our best to meet your requirements, but a particular requested bottle label customisation is not guaranteed. Prior to bottling we will contact you to ask if you would like to personalise your bottle label with your name, signature and/or a short message (together, the "Label Content"). Any messages must be appropriate and consistent with our brand image and the nature of the product you are purchasing, and not obscene, vulgar, offensive, malicious, discriminatory, defamatory, or otherwise unlawful. You warrant that your Label Content does not mention any person who is under the legal drinking age in your or their country of residence, is original to you, does not infringe on another party's intellectual property rights and that any other person mentioned in your Label Content has given their permission. We reserve the right to reject any Label Content that we consider is in breach of this paragraph at our absolute discretion. We are not responsible for maintaining your Label Content and we may delete or destroy it at any time. The labels, which we have designed exclusively for this cask sale programme, will otherwise include serial numbers, maturation details and the date of bottling and any legally required content, warnings or notices.

5. Delivery

- 5.1 The contents of your Cask must be bottled by us before it can be delivered to you.
- 5.2 All applicable duties, tariffs, taxes (including VAT) and bottling and labelling fees must be paid by you before we will deliver the Bottled Whisky to you.
- 5.3 Once bottling is complete, an estimated delivery date will be confirmed to you. Subject to paragraph 6 (Taxes & Duties) below, your Bottled Whisky will be delivered to you as stated below.
 - a) If you are located within the United Kingdom, we will deliver within the United Kingdom and you will be responsible for paying the delivery costs at the prevailing market rate at the time of delivery.
 - b) If you are located outside of the United Kingdom you will be responsible for any delivery costs associated with international delivery.
- 5.4 We reserve the right to charge additional delivery costs in the event of a non-delivery caused by your failure to provide adequate delivery instructions, adequate personnel/equipment to take receipt and/or your non-availability to receive the delivery.
- 5.5 The person receiving the Bottled Whisky (whether this is you or your agent) must tell us immediately if the delivery does not arrive, and on arrival inspect the Bottled Whisky and inform us immediately in any event within 2 weeks if any products are damaged.
- 5.6 If any of the Bottled Whisky is damaged during storage or delivery, defective in manufacture or contained in defective containers, our liability (howsoever arising) in respect of any such defects shall be limited, at our absolute discretion, to refunding you the Total Price paid for the affected bottles or replacing the defective containers. You acknowledge that the contents of the Cask itself is a unique product that cannot be replaced. The Products are otherwise sold without any guarantees or representations and all warranties, conditions or terms (whether statutory or otherwise and whether express or implied) to the contrary are, to the fullest extent permitted by law, expressly excluded. For the avoidance of doubt, this shall not exclude the implied undertakings under the Consumer Rights Act 2015.

6. Taxes & Duties

- 6.1 The Total Price of Your Order excludes all taxes and duties due in the United Kingdom or in the destination country, including any excise and customs duties, import or export taxes, value added tax (VAT) or any goods and services taxes ("Taxes & Duties") that may be payable by you before delivery of the Bottled Whisky.

Please note that on purchase, the Casks will be stored in Scotland "under bond", which means that United Kingdom excise duty will not yet have been paid. You hereby warrant that you are not a revenue trader (as defined under Excise Notice 196 and any other applicable UK legislation) and are therefore exempt from the need to register as an owner of goods in duty suspension (WOWGR) with HMRC or to appoint a duty representative if you are not based in the United Kingdom.
- 6.2 All Taxes & Duties and other charges including delivery fees must be paid prior to the delivery of the Bottled Whisky. As at the time of writing, it is expected that the stated Taxes & Duties and other charges shown in the Price Calculation Estimate may be payable. The rates stated are correct as at the time of writing, but are for illustrative purposes only. The actual rates and sums which will be payable by you will be calculated after bottling has been completed and we will inform you of the amount which needs to be paid.
- 6.3 You agree to fully reimburse and indemnify SMWS, and the SMWS group of companies, in the event that we become liable for the payment of any taxes, duties, penalties or charges incurred as a result of your: (i) non-payment of any Taxes & Duties; or (ii) failure to properly declare and discharge the Bottled Whisky in accordance with any applicable laws and regulations.

6.4 In the event that you are unable to pay any Taxes & Duties or any other applicable charges payable once the Bottled Whisky has been bottled, you will forfeit your right to receive the Bottled Whisky, which will be retained by us. We will refund you the Total Price.

7. Assignment

You may not assign or sub-contract any of your rights or obligations under this Agreement without our prior written consent. We can transfer all or any of our rights or obligations under this Agreement to another organisation at our sole discretion.

8. Intellectual property rights

8.1 All intellectual property rights in the Cask, the contents of the Cask and the bottles sold to you under the terms of this Agreement shall remain the property of SMWS.

8.2 You shall:

- a) undertake not to do anything calculated or likely to harm the reputation of SMWS or its affiliates;
- b) ensure that any reference to or use of our trade marks is in a manner and form approved by us and accompanied by an acknowledgement that the trade mark belongs to us;
- c) not use any other trade marks in relation to the Bottled Whisky without first obtaining our express written consent; and
- d) immediately on becoming aware of the same, notify us of any infringement or wrongful use of our intellectual property rights which comes to your attention, and shall co-operate at all times with us in the prevention of any such infringement or wrongful use.

8.3 In relation to any labels you choose to personalise, you grant us a royalty-free, worldwide, perpetual, irrevocable, non-exclusive, transferable and sub-licensable license to use, copy, reproduce, modify, adapt, publish, create derivative works from, distribute and display your Label Content (in whole or part). You further warrant that no other party has any rights to the Label Content and that any "moral rights" belonging to third parties have been waived. You agree to indemnify us in full in respect of any third party claims that your Label Content infringes their intellectual property rights.

9. Confidentiality

In this clause "Confidential Information" means the existence and provisions of the Agreement and any other information and materials relating to us or our affiliates disclosed to you by or on behalf of us (or otherwise obtained by you) at any time. You shall keep the Confidential Information strictly confidential and shall not use it or disclose it to any third party (except solely, if bound by equivalent obligations of confidentiality, any of your personnel that reasonably require access to Confidential Information for the purpose of fulfilling your obligations under the Agreement). You shall, at our request or in any event upon termination of the Agreement for any reason:

- a) return any or all Confidential Information to us;
- b) ensure that all Confidential Information stored electronically, digitally or magnetically by you and/or any such personnel is erased; and
- c) cease all further use of Confidential Information. Your obligations under this clause do not apply to the extent otherwise required by law or by a court, regulatory authority or other competent authority.

10. Data Protection

- 10.1 In order to fulfil Your Order, we will ask you to provide us with certain personal information including name, email address, postal address, telephone number and bank details, and such other information as may be necessary in order to fulfil our obligations under paragraph 3.1 above (“Personal Information”). In processing this information, we will comply with all applicable data privacy laws, and only use your Personal Information for the purposes of the performance of this Agreement and in order to comply with relevant laws.
- 10.2 This may include sharing your Personal Information with associated companies and other third parties who provide services to SMWS in connection with Your Order (“Third Parties”), but only where they offer adequate protection for your information and, in certain cases, only where you have provided your consent. This processing activity by us or our Third Parties may involve transferring your Personal Information to other countries. By providing your Personal Information to us, you acknowledge and agree to such use and transfers.
- 10.3 We shall at all times ensure that appropriate technical and organisational measures are in place to protect your Personal Information against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, and that anyone with access to this information has a binding obligation to protect the confidentiality of such information. We will delete all Personal Information on termination of the Agreement, or once no longer of use for the purposes of this Agreement.
- 10.4 In the course of creating any personalised labels, you may provide us with personally identifiable information about yourself (e.g. names and signatures, and any identifying language in your message). You agree that you are solely responsible for the accuracy of this information, and agree to us storing and processing this information for the purposes of creating your label only. In circumstances where you provide us with personally identifiable or other information relating to any third parties, you warrant that you have received that third party’s consent for such disclosure. We will dispose of this information once it is no longer needed for the purposes of creating your label.

11. Applicable laws

You must comply with all applicable laws and regulations of the United Kingdom and the country where delivery of the Bottled Whisky is being received. We will not be liable for any breach by you of any such laws.

12. Termination

We may immediately terminate this Agreement (i) upon giving notice to you that you are in breach of any of your obligations under this Agreement and fail to remedy such breach within 15 days of receiving a written notice requiring you to do so, (ii) if you engage in or are charged with smuggling, terrorism or money laundering or are convicted of any illegal or criminal offences or practices, or (iii) if we are unable to fulfil Your Order by reason of an event provided for in paragraph 14 below. Termination of the Agreement for any reason shall not affect: (a) either party’s rights, obligations or remedies that have accrued before the date of termination; or (b) the coming into force or continuance in force of any provision of the Agreement that is expressly or by implication intended to come into or continue in force by or after such termination.

13. Notices

Any notices you send to us should be for the attention of the 50th Anniversary Bottling Programme Office, Scotch Malt Whisky Society Limited, The Vaults, 87 Giles Street, Edinburgh, Scotland, EH6 6BX and copied to your allocated contact at SMWS. We may give notice to you at either email or postal addresses that you provide to us.

14. Liability

Our total liability to you whether in contract, tort (including negligence) or otherwise in connection with this Agreement is limited to the Total Price paid by you. We accept no liability for any loss or income or revenue, loss of business, loss of profits or contracts, loss of anticipated saving, loss of data or for any indirect or consequential loss suffered by you. Nothing shall, however, exclude or restrict our liability for fraud, for death or personal injury resulting from our negligence or for any matter for which we cannot lawfully exclude (or attempt to exclude) our liability.

15. Events Outside Our Control

We shall not be liable for any failure to perform, or delay in performance of, any of our obligations under this Agreement that is caused by events outside our reasonable control ("Force Majeure Event"), nor any loss and/or damage arising from any such Force Majeure Event save to the extent that such loss and/or damage is recoverable under our insurance. A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), explosion, storm, earthquake, subsidence, epidemic or other natural disaster, act of war, impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport and impossibility of the use Of public or private telecommunications networks.

16. Severance

If at any time any provision of this Agreement becomes or is found to be illegal, invalid or unenforceable (in whole or in part), the legality, validity and enforceability of the remainder of the Agreement shall not be affected.

17. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to its subject matter, and may only be modified by a written document signed by both parties.

18. Governing Law

This Agreement and any related dispute or claim shall be governed by, and construed in accordance with, Scots Law.