



MACLEAN
& BRUCE

MACLEAN & BRUCE LIMITED

CASK WHISKY SUPPLY TERMS AND CONDITIONS

1.1 These are the terms and conditions of sale (“Conditions”) for MacLean & Bruce Limited, a company incorporated in Scotland (registered number SC450922) with registered office at Waggon House, Mid Waggon Road, Crossford, Dunfermline, Fife, KY11 3HF (“Supplier”).

1.2 These conditions together with all Order Confirmations form the Agreement between the Supplier and the Customer.

2. INTERPRETATION

2.1 The following definitions apply in these Conditions:

- **ABV:** means Alcohol by Volume. This is the standard measure of strength of alcohol.
- **Additional Terms:** means the conditions imposed by the producer of the Products or by any third party which the Supplier engages in relation to any Cask Services, which require to be incorporated into the Agreement, as may be set out in the Order Confirmation, Sales Invoice or otherwise notified to the Customer in writing.
- **Agreement:** has the meaning given in the first Order Confirmation.
- **Angels’ Share:** the volume of spirit within a Product which is unavoidably lost to evaporation during the ageing process.
- **Approved Bottle:** means the bottling materials, including label, as agreed between the parties, to be used if bottling of the Product is to be provided as part of Cask Services.
- **AYS:** means Age of Youngest Spirit. This is the completion date of the distillation process and the date a cask is filled.
- **Bottling Date:** where bottling is to be arranged by the Supplier as part of the Cask Services, the date agreed for bottling of a Product.
- **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in Edinburgh are open for business.
- **Cask Services:** means the transport, storage and /or bottling services which the Supplier may provide and/or arrange, as specified in the applicable Order Confirmation.
- **Customer:** means the customer identified in the Sales Confirmation.

- Data Protection Legislation: any data protection legislation from time to time in force in the UK, including the Data Protection Act 2018, and any other
- directly applicable regulation relating to privacy.
- Delivery: completion of delivery of Products specified in an Order in accordance with Condition 8.3.
- Delivery Location: the address of a bonded warehouse facility, as set out in each Order.
- Effective Date: means the last date of signature of the Agreement.
- Force Majeure Event: an event or circumstance beyond a party's reasonable control.
- OLA: means Original Litres of Alcohol. This is the original amount of pure alcohol contained in a cask when first filled.
- Order: an order for Products submitted by the Customer in accordance with Condition 4.
- Order Confirmation: the document confirming acceptance and details of an Order, the first of which is set out on the signature page of the Agreement.
- Products: the cask whisky products set out in each Order Confirmation or Sales Invoice.
- Price: the price of the Products and if applicable the Cask Services.
- RLA: means Re-Gauged Litres of Alcohol. This is the amount of pure alcohol in the cask at the points of measurement during the lifetime of the cask.
- Specification: the specification of the Products as set out in each Order Confirmation or otherwise communicated to the Customer in writing, which may include, but is not limited to, the OLA and AYS of the Products and the RLA and ABV(%) as at the last date of re-gauging of the Products.
- Spirit: the Scotch whisky spirit held within a Product.
- Supplier Warehouse: means the bonded warehouse where the Supplier is authorised to hold Products under its WOWGR registration.
- WOWGR: means the Warehousekeepers and Owners of Warehoused Goods Regulations 1999

3. COMMENCEMENT AND DURATION

3.1 The Agreement shall begin on the Effective Date and shall continue, unless terminated earlier in accordance with Condition 14, until either party gives written notice of termination to the other.

3.2 If there are no uncompleted Orders as at the date notice to terminate is service under Condition 3.1 above, such notice shall terminate the Agreement with immediate effect. If there are any unfulfilled Orders at the time of such notice, termination will occur on fulfilment of such Orders.

4. ORDERS

4.1 Each Order shall be deemed to be a separate offer by the Customer to purchase Products on the terms of these Conditions, which the Supplier shall be free to accept or decline at its absolute discretion.

4.2 An Order shall only be deemed accepted when an Order Confirmation or a Sales Invoice is issued by the Supplier.

4.3 The Customer will provide such documentary evidence as the Supplier may reasonably request in order to comply with applicable UK AML and KYC legislation. The Supplier shall be entitled to terminate an accepted Order for a Product where the

Customer fails to provide such evidence. Where, prior to such termination, the Supplier had to pay a deposit to the original seller of that Product in order to ensure its availability for the Customer, the Supplier does not warrant that any such deposit will be refundable in the event of such termination.

5. QUALITY

5.1 The Supplier warrants that all Products sold by the Supplier to the Customer under the Agreement will on Delivery:

5.1.1 conform in all material respects to the product description;

5.1.2 be free from material defects; and

5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to Condition 5.3, if:

5.2.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining such Products; and

5.2.3 the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

5.3 The Supplier shall not be liable for the Products' failure to comply with the warranty set out in clause 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Products after giving notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;

5.3.3 the Customer fails to periodically re-gauge the Products (according to normal industry averages);

5.3.4 the Customer alters or repairs such Products without the written consent of the Supplier;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.3.6 the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 The Customer acknowledges that the RLA and ABV(%) provided in the Specification may change over time and the Supplier accepts no liability for any change in the RLA and/or ABV(%) discovered following subsequent re-gauging of the Products carried out by the Customer.

5.5 Where the Supplier procures the purchase of a Product on behalf of the Customer, the Supplier will pass on any product warranty obtained from the original seller, to the extent it is able to do so.

5.6 The Supplier will provide the Customer with such evidence of the provenance and authenticity of the Products as it may reasonably obtain. Where requested by the Customer, and at the Customer's cost, the Supplier will arrange for an independent expert to provide an opinion on the authenticity of the applicable Products.

5.7 Except as provided in this Condition 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 5.1.

5.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. REQUIREMENTS

6.1 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products and Cask Services as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to the relevant shipment.

6.2 The Products are held initially in the Supplier Warehouse. The Customer is required to have their own WOWGR registration, a duty representative or a private account, and the Products will be transferred into the Customer's name on Delivery.

6.3 Any Customer who is a revenue trader must possess a valid WOWGR certificate, with evidence of such certificate to be provided to the Supplier promptly upon request.

6.4 Failure by a Customer who is a revenue trader to produce a valid WOWGR certificate when requested will be treated as a material breach under Condition 14.1.1.

6.5 The Supplier shall ensure that the Products are properly packed and secured in a manner to enable them to reach their destination in good condition.

6.6 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to supply the Products and, if applicable, provide the Cask Services, in accordance with the terms of these Conditions.

6.7 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling, and delivery of the Products.

6.8 The Supplier shall comply with Data Protection Legislation in relation to any personal data of the Customer which is use in relation to the Agreement.

7. CASK SERVICES

7.1 Cask Services are not included as standard in the purchase of the Products. The Supplier will only provide Cask Services where those services have been expressly agreed in writing, whether in the applicable Order Confirmation, Sales Invoice, quote, email correspondence or other written agreement between the parties.

7.2 Where the Cask Services include transport services (whether relating to delivery of a cask or delivery of bottles following bottling of the cask) the method of transport and applicable costs will be set out in the applicable Order Confirmation, Sales Invoice, quote, email correspondence or otherwise agreed in writing between the parties.

7.3 Unless expressly stated as being included in the purchase price, the Customer will be responsible for all transport, delivery, warehouse, storage, insurance, regauge, sampling, reracking, bottling, duty, tax and other third-party costs or charges properly incurred in connection with the Products or the Cask Services. Where reasonably practicable, the Supplier will provide advance notice of any such costs or charges before they are incurred or passed on to the Customer. Where this is not reasonably practicable, including where costs are imposed or updated by a warehouse, haulier, bottler or other third party after the relevant services have been arranged, the Supplier may recharge those costs to the Customer once known.

7.4 Where the Cask Services include cask storage, the following conditions shall apply:

7.4.1 the Products will be stored at a warehouse or bonded storage facility operated by a third party, as selected or approved by the Supplier;

7.4.2 storage of the Products will be subject to the terms, conditions, rules and procedures of the relevant warehouse or storage provider;

7.4.3 unless otherwise agreed in writing, any warehouse, storage, insurance, regauge, sampling, reracking, movement or other related charges will be payable by the Customer in accordance with clause 7.3;

7.4.4 the Products will be insured by the Supplier against theft and destruction; and

7.4.5 the Supplier will not be required to physically inspect the Products. The Supplier may, where reasonably practicable, request stock confirmations, delivery orders, regauge reports, warehouse records or other relevant information from the warehouse or storage provider.

7.5 Where the Cask Services include bottling, the following conditions shall apply:

7.5.1 the parties will agree the applicable Bottling Date for the Product;

7.5.2 the design of the Approved Bottle must be agreed at least 60 days prior to the Bottling Date;

7.5.3 the Customer shall pay for the quantities of Approved Bottles required at least 30 days prior to the Bottling Date;

7.5.4 the Customer must notify the Supplier at least 30 days before the Bottling Date if the Spirit is to be at bottle strength, in which case the Supplier will arrange to convert the Spirit by dilution from its natural cask strength to an appropriate bottling strength of ABV;

7.5.5 the entire volume of Spirit from a Product that has not been lost to Angels' Share must be bottled on the Bottling Date, and any Spirit which the Customer directs the Supplier not to bottle shall automatically pass back to the Supplier.

8. DELIVERY

8.1 The Supplier shall ensure that:

8.1.1 each delivery of Products is accompanied by a delivery order that shows the type and quantity of Products and the Specification, including any restrictions;

8.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery order. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Customer's expense.

8.2 The Supplier shall endeavour to keep the customer informed of an estimated delivery date but such date shall be an estimate only and time shall not be of the essence for delivery of the Products

8.3. Delivery is completed when the Supplier places the Order at the Customer's disposal at the Delivery Location.

8.4 The Supplier may deliver Orders by instalments, which may be invoiced and paid for separately. References in these Conditions to Orders shall, where applicable, be read as references to instalments.

8.5 Delays in the delivery of an Order shall not entitle the Customer to:

8.5.1 refuse to take delivery of the Order;

8.5.2 claim damages; or

8.5.3 terminate the Agreement, subject always to Condition 13.1.1 and Condition 15.2. The Supplier shall have no liability for any failure or delay in delivering an Order to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations under these Conditions.

8.6 The Customer shall require to provide appropriate evidence of insurance to the Supplier, together with such documentation as required under Condition 6, before delivery of the Products can take place.

9. TITLE AND RISK

9.1 Risk in Products shall pass to the Customer on Delivery of the Products at the Delivery Location.

9.2 Title to Products shall pass to the Customer once the Supplier receives payment in full for them.

9.3 Subject to Clause 8.5, the Customer may resell or use Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time:

9.3.1 it does so as principal and not as the Supplier's agent; and

9.3.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

10. PRICE AND PAYMENT

10.1 The Price for the Product(s) shall be specified in each Order Confirmation or Sales Invoice. Prices for Cask Services shall be stated in the applicable Order Confirmation or Sales Invoice, or subsequently agreed in writing between the parties.

10.2 The Prices exclude amounts in respect of VAT, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice:

10.3. The Supplier may invoice the Customer for the price of the Products plus VAT at the prevailing rate (if applicable) at any time after the Supplier has informed the Customer it is ready and willing to deliver the Products. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Customer's order number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require.

10.4 The Customer shall pay invoices in full in cleared funds upon receiving the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. The following payment terms apply:

10.4.1 A non-refundable deposit may be required to secure the Products. In this instance, the Products will not be reserved until the deposit is received;

10.4.2 The remaining balance of the total invoice will be due on the date specified on the Order Confirmation or Sales Invoice; and

10.4.4 Subject to clause 14, the deposit is non-refundable under any circumstances.

10.5 If the Customer fails to make any payment due to the Supplier under the Agreement by the due date for payment, then, without limiting the Supplier's remedies under Clause 14:

10.5.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause will accrue each day at 4% a year above the Bank of Scotland's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10.5.2 the Supplier may suspend all further deliveries of the Products until payment has been made in full.

10.6 All amounts due under the Agreement from the Customer to the Supplier shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

11. COMPLIANCE WITH LAWS AND POLICIES

11.1 In performing its obligations under the Agreement, the Customer shall comply with all applicable laws, statutes, regulations from time to time in force.

11.2 The Supplier may terminate the agreement with immediate effect by giving written notice to the Customer if the Customer commits a breach of Condition 11.1.

12. LIMITATION OF LIABILITY

12.1 Nothing in these Conditions shall limit or exclude either party's liability for:

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

12.1.2 fraud or fraudulent misrepresentation;

12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

12.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

12.2 Subject to Condition 12.1:

12.2.1 the Supplier shall not be liable to the Customer for any loss of profit, or any indirect or consequential loss arising under or in connection with the Agreement; and

12.2.2 the Supplier's total liability to the Customer for all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed 100% of the total sums paid and/or payable by the Customer for Goods under the Agreement.

13. CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time during the Agreement, and for a period of five years after termination or expiry of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Condition 15.2.

13.2 Each party may disclose the other party's confidential information:

13.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Condition 15; and

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.

14. TERMINATION

14.1 Without limiting its other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

14.1.1 the other party commits a material breach of any term of the Agreement or

14.1.2 the other party becomes insolvent.

14.2 Termination of the Agreement shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

14.3 Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

15. DISPUTE RESOLUTION

15.1 If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it ("Dispute") then the parties shall follow the procedure set out in this Condition:

15.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the project managers of the parties shall attempt in good faith to resolve the Dispute;

15.1.2 if the project managers of the parties are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the CEO (or equivalent) of the parties (or their respective nominees) who shall attempt in good faith to resolve it; and

15.1.3 if the parties CEOs (or equivalents or nominees) are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice.

15.2 No party may commence any court proceedings in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

16. GENERAL

16.1 Entire Agreement: The Agreement shall be governed in all respects by these Conditions. The Supplier shall not be bound by any terms or conditions set out in any other order form, documents or correspondence of the Client. These Conditions shall supersede and prevail over any other terms and conditions stipulated or referred to by the Client, and no addition, alteration or substitution of these Conditions will bind the Supplier or form part of any Agreement, unless expressly accepted in writing by an authorised officer of the Supplier.

16.2 Force Majeure: The Supplier shall not be responsible or liable for any loss or damage whether direct, indirect or consequential, arising from any delay or default in the performance of any of the Supplier's obligations in terms of these Conditions where such delay or default arises as a result of any circumstances or conditions beyond the reasonable control of the Supplier. The Supplier shall be entitled to terminate the Agreement without liability to the Client in the event that the ability of the Supplier to deliver the Services is delayed, hindered or prevented by circumstances beyond its reasonable control.

16.3 Waiver of Rights: No failure or delay by the Supplier to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, and the single or partial exercise of such right or remedy shall not prevent or restrict the further exercise of that or any other right or remedy.

16.4 Variation: No variation of the Agreement shall be effective unless it is in writing and signed by the parties.

16.5 Invalidation: The invalidity of any of these Conditions shall not affect the validity of any other provision.

16.6 Severability: Each of these Conditions shall be separate and severable and shall be enforceable accordingly.



16.7 Relationship of Parties: Nothing in these Conditions shall constitute or be deemed to constitute a partnership or joint venture between the parties, or shall constitute either party as the agent, employee or representative of the other party. The parties to the Agreement are independent parties.

16.8 Third Party Rights: No rights are given under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Agreement.

16.9 Assignment: Neither party shall, without the prior written consent of the other party, assign, transfer or sub-contract all or any of its rights or obligations under the Agreement except for the Supplier's right, at its discretion to appoint suitably qualified consultants to assist with the Services, whose performance the Supplier remains liable for.

16.10 Notices: Any notice required to be given, shall be deemed to have been served (i) six (6) Business Days after time of posting if sent by airmail (ii) forty eight (48) hours after time of posting if sent by first class or prepaid UK post or (iii) at the time of delivery, if delivered personally, by commercial courier or sent by e-mail.

17. GOVERNING LAW AND JURISDICTION

17.1 These Conditions and any other provisions which constitute an Agreement between the parties in relation to the supply of the Services shall be governed by and construed in all respects in accordance with the Law of Scotland. The parties submit to the non-exclusive jurisdiction of the Scottish Courts for the determination of any question or dispute between them.

18. COMPANY INFORMATION:

MacLean & Bruce Limited

Company Number: SC450922

Registered Address: Waggon House, Waggon Road, Dunfermline, Fife, KY11 3HF

Contact: Vikki Bruce, Managing Director, E: whisky@macleanandbruce.com

VAT Number: 322 788 781

Excise ID (WOWGR): GBOG322788700

AWRS URN: XAAW00000117162

Departmental Trader Registration Number: 322 7887 81 0001