

Wharf Distillery – Terms and Conditions

These Terms and Conditions are the standard terms that apply to the purchase of all Product from Virtual Orchard Limited, a company registered in England and Wales under number 08170458, whose registered office is 156 Watling Street East, Towcester, England, NN12 6DB, trading as Wharf Distillery (hereinafter known as the "Manufacturer")

1. Definitions and Interpretation

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Company, you, your" means the sole trader, firm or corporate body ordering the Product. Where the person ordering the Product is an individual doing so on behalf of a business, that person confirms they have the authority to contractually bind and enter into the Contract on behalf of that business;

"Packaging Materials" means all bottles, closures, labels and stamps of all descriptions, attachments, cartons, cases, wire, divisions, address labels, pallets and other items appropriate to the manufacture, bottling and packaging of the Product;

"Product" means the beverages to be provided as agreed between the parties; and

"Specification" means your know-how, secret formulae, secret process and confidential information relating to the manufacture, bottling and packaging of the Product,

1.1 In this Agreement, where the context admits:

1.1.1 "writing" and "written" include emails;

1.1.2 references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions of which they are re-enactments (whether with or without modification);

1.1.3 references to "this Agreement" or to any other agreement or document referred to in this Agreement mean this agreement or such other agreement or document as amended, varied, supplemented, modified or novated from time to time, and include the schedules;

1.1.4 reference to clauses and schedules are references to clauses and schedules of and to this Agreement and references to paragraphs are, unless otherwise stated, references to paragraphs of the schedule in which the reference appears.

1.2 The headings and sub-headings are inserted for convenience only and shall not affect the construction of this Agreement.

2. The contract

2.1 A legally binding Contract between the parties will be created upon our acceptance of your order. The Contract will incorporate and be subject to these Terms and Conditions.

2.2 Any quotation we provide will be valid for a period of 30 days from the date of issue unless expressly stated otherwise. prices are liable to change based upon the volume of Product in your order. Should you increase or decrease your order size it may affect the price.

2.3 No order submitted shall be deemed to be accepted unless and until confirmed in writing by an authorised representative of ours or an invoice is sent.

2.4 Any sales literature, price lists and other documents issued by us in relation to the Product are subject to alteration without notice and do not constitute offers to sell the Product which are capable of acceptance. We reserve the right to correct any typographical, clerical or other accidental errors without liability.

3. Grant of Licence

3.1 You hereby grant to us a non-exclusive royalty-free licence to use the Specification to manufacture, distil and blend the Product for supply only to you.

3.2 We shall make no change in the Specification without your prior written consent. You shall be entitled to make reasonable changes to the Specification after taking into consideration the cost of implementing the same and the known capabilities of our plant, provided that reasonable prior notice is given to us of any such change.

3.3 If we develop or discover any improvement relating to the Product recipe, we shall promptly disclose full details to you, who shall then have a non-exclusive, royalty-free, worldwide licence to use such improvement (including the right to assign and sub-license the improvement).

4. Manufacture of Product

4.1 Where applicable, we shall procure all necessary ingredients and shall manufacture, distil and blend the Product for bottling and packaging in accordance with the Specification, and any other reasonable written instructions issued from time to time.

4.2 Where you are to provide the ingredients, you shall ensure that we receive such in good time and at suitable quality to produce the

Product. We shall not be liable for any failure or inconsistency due to ingredients supplied by you. We may require any packaging or waste containers to be collected and disposed of appropriately by you, where this is not collected promptly, we reserve the right to levy storage charges against you.

4.3 We shall provide all necessary facilities for manufacturing and bottling the Product in accordance with your instructions including, but not limited to:

4.3.1 the provision of proper and suitable storage facilities with precautions against fire; and

4.3.2 the maintenance (and replacement where necessary) in good working order and cleanliness of all vats, piping and other equipment necessary for the implementation of its obligations hereunder.

4.4 We shall promptly report to you any defect, breakdown or other matter materially likely to interfere with any performance of our obligations under this Agreement.

4.5 We shall use all reasonable care and skill in manufacturing and bottling the Product and shall ensure that all Product is of satisfactory quality, fit for its purpose and accords in all respects with the Specification. We shall be deemed not to be in breach of its obligations under this clause 4.5 if and to the extent that any liability arises by reason of a change in the Specification by you.

4.6 We shall keep full, true and accurate records of:

4.6.1 quantities of Product manufactured;

4.6.2 quantities of Product bottled and packaged;

4.6.3 quantities of Packaging Materials in storage; and

4.6.4 quantities of Packaging Materials used;

and shall permit you to inspect such records at all reasonable times. Further, we shall submit returns containing full information on all the above matters whenever required by giving 5 working days' notice.

4.7 We shall:

4.7.1 comply with all laws and regulations for the time being in force relating to the manufacture, bottling and storage of the Product and all regulations appertaining thereto;

4.7.2 conform to all safety standards;

4.7.3 not deliver or dispatch the Product except in accordance with your written instructions.

5. Liability and Indemnity

5.1 We shall promptly, fully and effectively indemnify and keep you indemnified against all losses, costs, damages, fees or charges incurred or suffered as a result of any claim for Product Liability.

5.2 For the purposes of this clause 5, "Product Liability" means a liability arising out of death, personal injury or loss of or damage to property caused by Product produced and supplied which is defective within the meaning of Part I of the Consumer Protection Act 1987, save to the extent that any defect arises by reason of an issue with the original Specification or a change to the Specification.

5.3 Subject to and in addition to clause 5.1, we shall be liable to replace any Defective Product at our own expense.

6. Quality Control

6.1 Where requested, we can supply samples of batches produced and shall not permit the batch represented by the sample or samples to be released for bottling or dispatch until you have approved the same. You agree to respond to requests for approval within two working days of receipt and in the absence of a response, we will be free to dispatch the batch. We shall only accept changes to the batch due to significant inconsistencies, faults or non-compliance with the Specification, no changes shall be entertained due to a matter of personal taste.

7. Packaging Materials

7.1 Where applicable, we agree to supply the Packaging Materials. We shall store such quantities of the Packaging Materials as may be necessary for us to perform our obligations under this Agreement punctually, where we hold Packaging Materials specific to you, we reserve the right to charge for storage of such.

7.2 Where we have agreed to provide the Packaging Materials, they shall be included in the price agreed between the parties.

7.3 You shall have the right to change the Packaging Materials and/or source the Packaging Materials from an alternative supplier and will give us a minimum of 60 days' prior notice of this in writing. Upon receipt of such notice we shall provide updated prices for agreement.

7.4 We shall:

7.4.1 label, capsule and seal the bottles filled, with the Packaging Materials and such description and labels as may be prescribed for the particular batch in question and shall ensure that each bottle is properly identified to denote the date of bottling by a method agreed in writing;

- 7.4.2 pack and case the bottles as reasonably prescribed and make ready the same for dispatch; and
- 7.4.3 store or deliver such Product as requested.
- 7.5 Where you are to provide the Packaging Materials:
- 7.5.1 you must include all such suitable closures and tamper evident seals as required by law;
- 7.5.2 it shall be your responsibility to comply with any regulatory requirements regarding labelling;
- 7.5.3 you must ensure all Packaging Materials are fully compliant and marked correctly as appropriate;
- we shall have no liability for where the provisions of this clause 7.5 is not complied with.

8. Title and Risk

- 8.1 Title in the Product shall pass to you upon completion of manufacture and bottling or, if later, upon payment for the Product or parts thereof.
- 8.2 We will provide an estimated collection date for the Product. Please note that such estimated dates may vary according to their availability and circumstances beyond our control.
- 8.3 Collection will be deemed to have taken place when you (or someone identified by you) have taken physical possession of the Product. The responsibility (or the "risk") for the Product remains with us until they have been collected, at which point it will pass to you.
- 8.4 We shall take all reasonable precautions against theft, fire, pilferage, contamination and other damage to the manufactured and bottled Product and Packaging Materials while in our possession or control.
- 8.5 We reserve the right to charge for storage if you fail to collect the Product or any part of them on the agreed date.

9. Price & Payment

- 9.1 We reserve the right to increase the price for orders accepted by us, if the cost of the Product to us increases due to any factor beyond our control including, but not limited to, material costs, labour costs, alteration of exchange rates or duties, or changes to delivery rates. We will contact you to advise of any increase in writing.
- 9.2 Any prices we provide are exclusive of VAT any other taxes or levies which are imposed or charged by any competent authority.
- 9.3 We will invoice you once your order has been confirmed.
- 9.4 All invoices are payable in full, without any deduction, retention or set off, upon receipt of invoice. The time for the payment shall be of the essence of the Contract.
- 9.5 If you do not make payment to us by the due date, we may cancel your order(s) and charge you interest on the overdue sum at the rate of 8% per annum above the Bank of England base lending rate from time to time. Interest will accrue on a daily basis from the due date for payment until the actual date of payment of the overdue sum, whether before or after judgment.

10. Intellectual Property

All trademarks, trade names, copyrights, and other intellectual property rights and designs in relation to the Product, the Specification (including, but not limited to, the recipe(s)) and Packaging Materials supplied by you or on your behalf shall be and remain your property and we will not at any time claim any right or property therein or register or cause to be registered in any part of the world any trademark, trade name, copyright or design similar to or a colourable imitation of any trademark, trade name, copyright or design which is your property.

11. Confidentiality

Each Party undertakes that throughout the duration of the Contract, the parties may disclose certain confidential information to each other. Both parties agree that they will not use the confidential information provided by the other, other than to perform their obligations under the Contract. Each party will maintain the confidential information's confidentiality and will not disseminate it to any third party, unless required by law or unless so authorised by the other party in writing.

12. Termination

- 12.1 No order which has been accepted by us may be cancelled except with our agreement in writing on the terms that you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, restocking, charges and expenses incurred by us as a result of such cancellation.
- 12.2 If, on collection, you are not satisfied with the Product due to significant inconsistencies, faults or it not complying with the Specification and you wish to return them, you may do so only provided:

- 12.2.1 you inspect the Product on collection. Where the Product cannot be examined the note shall be marked "not examined".
- 12.2.2 you inform us that you wish to return the Product within 72 hours of collection;
- 12.2.3 the Product remain in their original condition (as delivered);
- 12.2.4 the Product are returned at your risk and you agree to bear the cost of delivery to us; and
- 12.2.5 you indemnify us against any cost incurred by us in rectifying any deterioration of the Product caused by incorrect storage or use while in your possession.

- 12.3 All Product must be returned to us under this clause 12 in their original condition, in their original, un-opened packaging, accompanied by proof of purchase.
- 12.4 Replacement of the Product (or the defective part thereof), or any credit or refund offered at our discretion, shall be issued to you only upon the receipt of the Product in accordance with this clause 12.
- 12.5 If you require an advance replacement and we agree to this, you will be required to pay for the advance replacement up front and we will credit or refund this to you only once we receive the original Product, provided we have confirmed the Product were damaged or defective. The original Product must be returned to us within 30 days. In sending an advance replacement, we are not admitting any liability for any defect or otherwise.
- 12.6 Either party may terminate this Agreement forthwith by giving written notice to the other in any of the following events:
- 12.6.1 if the other party commits any breach of any of the terms and conditions of this Agreement and fails to remedy that breach (if capable of remedy) within one month after notice from the other party giving full particulars of the breach and requiring it to be remedied; or
- 12.6.2 if the other party enters into liquidation whether compulsory or voluntary (except for the purposes of bona fide reconstruction or amalgamation with the prior approval of the other party), or compounds with or makes any arrangement with its creditors or makes a general assignment for the benefit of its creditors, or if it has a receiver, manager, administrative receiver or administrator appointed over the whole or substantially the whole of its undertaking or assets, or if it ceases or threatens to cease to carry on its business, or makes any material change in its business, or if it suffers any analogous process under any foreign law.

13. Consequences of Termination

- 13.1 Upon termination of this Agreement for any reason whatever:
- 13.1.1 we shall complete the manufacture and bottling of any Product already in process at the date of termination and that Product together with all stocks of Product manufactured shall be delivered you or whomever you shall direct and the charges therefor shall be paid by you in accordance with this Agreement;
- 13.1.2 we shall deliver all Packaging Materials in our possession at the date of termination in accordance with your instructions and at your expense (save for any required for the completion of any manufacture as described in clause 13.1.1);
- 13.1.3 all the rights and obligations of the parties under this Agreement shall terminate, except for any rights or obligations to which any of the parties may be entitled or be subject before its termination (which shall remain in full force and effect) and except as otherwise provided in this clause 13;
- 13.1.4 termination shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 13.1.5 all clauses which either expressly or by their nature continue after termination of the Agreement shall remain in effect.

14. Force Majeure

- 14.1 If any, any circumstances beyond the reasonable control of that party occurs in relation to either party which affects or may affect the performance of any of its obligations under this Agreement, it shall forthwith notify the other party as to the nature and extent of the circumstances in question.
- 14.2 Neither party shall be deemed to be in breach of this Agreement, or shall otherwise be liable to other, by reason of any delay in performance, or the non-performance, of any of its obligations under, to the extent that the delay or non-performance is due to any Force Majeure event of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

15. Entire agreement

- 15.1 This Agreement, together with any documents referred to in it,

constitutes the whole agreement between the parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

15.2 No variation of this Agreement shall be effective unless made in writing.

16. Rights etc. cumulative and other matters

16.1 No failure to exercise nor any delay in exercising by any party to this Agreement of any right, power, privilege or remedy under this Agreement shall impair or operate as a waiver thereof.

16.2 No single or partial exercise of any right, power privilege or remedy under this Agreement shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

17. Invalidity

If any provision of this Agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Agreement shall not be affected in any other jurisdiction.

18. Notices

18.1 Any notice (which term shall in this clause 18 include any other communication) required to be given under this Agreement or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing.

18.2 Any such notice shall be addressed to the most recent address notified to the other party and may be:

18.2.1 personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address; or

18.2.2 if within the United Kingdom, sent by registered, signed for first class pre-paid post, in which case it shall be deemed to have been given two days after the date of posting; or

18.2.3 if from or to any place outside the United Kingdom, sent by registered, signed for pre-paid priority airmail, in which case it shall be deemed to have been given seven days after the date of posting.

18.3 Any party to this Agreement may notify the other parties of any change to the address or any other details, provided that such notification shall only be effective on the date specified in such notice of five days after the notice is given, whichever is later.

19. Relationship of the parties

19.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the parties nor, except as expressly provided, shall it constitute, or be deemed to constitute, any party the agent of any other party for any purpose. any other reason whatsoever.

20. Law and Jurisdiction

20.1 This Agreement shall be governed and construed in accordance with English Law.

20.2 In relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement ("proceedings") each of the parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.