

Vê Để Di Distillery
COMPANY LIMITED

WHISKY CASK PURCHASE & FOUNDER'S CLUB LIFETIME MEMBERSHIP

From Vietnam's Oldest Independent Distillery.

These Terms and Conditions shall govern the sale by Ve De Di Distillery Company Limited (hereafter "the Distillery") of whisky filled from a single cask designated to the Customer by the Distillery and the provision if applicable of other services as specified herein.

1. DEFINITIONS

"Ageing Period" means the period commencing on the date a Cask is filled with spirit and ending on the date the Product from such Cask is bottled, which shall not be less than 2 years or more than 3 years from the date the Cask is filled, except if the Customer pays for an additional Aging Period.

"Agreement" means the Order Form, these Terms and Conditions (the "Terms") and all appendices, addendums and any ancillary or supplementary documents thereto, all as may be amended from time to time in accordance with the provisions hereof and thereof.

"By" means by or on behalf of.

"Cask(s)" means a cask or casks of the same type, which shall be first fill ex bourbon casks unless otherwise stated, used by the Distillery and selected in its sole discretion for the Customers to store and age its Product in the amount specified in the Customer in the Order Form. Where used in the plural "Casks" but the Customer has purchased one (01) cask only, the meaning shall be in the singular "Cask."

"Cask Purchase Price" means the price payable by Customer upon signature of an Order Form, in consideration for the purchase of the Product, and its aging up to the first 3 years of the Ageing Period, as specified in the Price List.

"Cask Strength" means that percentage of Alcohol by Volume ("ABV") of the Product aged in the cask at the time of bottling, estimated to be approximately 60%.

"Club Membership Benefits" means those Benefits of Founder's Club Lifetime Membership offered by TMS and available to the Customer.

"Customer" means the individual, group of individuals, company or other entity that is listed as the Customer on the Order Form.

“**Distillery**” means THE DISTILLERY and the premises of Product distillation and cask aging.

“**Price List**” means the document specifying the Cask Purchase Price and the Services Price, attached to these Terms as Annex A.

“**Primary Contact Person**” means the primary contact person on behalf of the Customer, identified on the Order Form. In the event a primary contact person is not so indicated by the Customer, the primary contact person shall be the Customer.

“**Product**” means new make single malt distilled at the Distillery, which shall age in the Casks during the Term.

“**Services Price**” means: (i) the price per each additional year (or part thereof) of ageing, exceeding the first 3 years of the Ageing Period, payable by the Customer in consideration of the Distillery’s costs in connection with the storage, maintenance, handling and insurance of the Casks; and (ii) the price per bottle filled with aged Product from the Customer’s Cask, payable by the Customer in consideration for bottling the aged Product, taxes and other Services, as specified in the Price List.

“**Term**” means the period commencing upon the signature of an Order Form and ending upon the delivery of the bottled aged Product to the Customer.

- 1.1. 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.
- 1.2. 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 Agreement and shall take precedence over any terms set out in any other document purported by Customer to apply.

2. TERMS OF SALE

- 2.1. The Distillery agrees to sell and provide (as applicable) to the Customer, and the Customer agrees to purchase directly and receive from the Distillery those whisky bottles filled from the new-make first filled in the cask designated for the Customer and subsequently aged until the time the whisky bottles are filled, under and in accordance with the terms of the Agreement.
- 2.2. The Customer acknowledges and declares that it is of legal age and/or of legal status (as applicable) permitting it to purchase and use the Product (whether personally or for commercial purposes) according to applicable laws and regulations at the relevant jurisdictions.

3. AGEING OF THE PRODUCT

- 3.1. Upon receipt by the Distillery of payment of the Cask Purchase Price, the Distillery will cause a Cask or Casks to be filled with spirit as specified by the Customer in the Order Form with the Product.

- 3.2. Casks will be filled with Product at Cask Strength estimated at 60% to 65% ABV and to the volume of estimated to be approximately 95% of the volume of a Cask.
- 3.3. The following shall apply during the Ageing Period:
 - 3.3.1. The Casks with Product will be stored and maintained by the Distillery at a location under its control and supervision, in conditions similar to those in which the Distillery stores and maintains its own casks and/or products.
 - 3.3.2. The Distillery may, in its sole discretion, monitor and/or adjust the Product and/ or the conditions of the storage of the Casks, in order to preserve or improve the quality of the Product.
 - 3.3.3. The Distillery shall procure that the Casks and Product be covered under the same insurance policies covering the Distillery's own casks and stock.
 - 3.3.4. The Customer may inspect the Casks at the Distillery's premises during normal business hours, subject to reasonable notice and prior coordination with the Distillery. The Customer may also receive a sample from the Casks every 6 months during the Term, subject to payment by Customer of the applicable shipment, postage, packaging and other administrative costs, as quoted by the Distillery, in advance.
- 3.4. At the expiry of the first two (02) years of the Ageing Period, or at any time thereafter up to the end of the three (03) years of the Ageing Period, the Customer may notify the Distillery it wishes to bottle the Product. At such time, the Customer shall also notify the Distillery regarding the desired rate of alcohol by volume of the bottled Product, from the resultant cask strength to 47% Alcohol by Volume ("ABV) subject to the condition of the aged Product in the Cask.
- 3.5. If, following the expiry of the Ageing Period (i.e., following the expiry of 3 years since the date the Cask was filled) the Customer fails to provide such notice, and the Distillery is unable to receive a response from the Customer and/or its Primary Contact Person for more than 90 days, then ownership over the Cask shall transfer to the Distillery and the Customer shall be entitled to receive a refund of 50% of the Cask Purchase Price paid by it and the Founders' Club Membership shall be cancelled.

4. BOTTLING AND PACKAGING (THE "SERVICES")

- 4.1. Upon receipt of notice from the Customer in accordance with Clause 3.4 above, according to which it wishes to purchase and bottle the aged Product, and subject to the payment in full of the Services Price, the Distillery shall bottle the aged Product contained in the Cask in bottles provided by the Distillery and with labels able to be individualized by the Customer within the specifications and as offered by the Distillery.
- 4.2. The Customer acknowledges and agrees that bottling of the Product shall take place only at the Distillery's premises and under its supervision.
- 4.3. The Customer acknowledges and agrees that during the ageing process, the Product will lose both volume and alcohol at a rate which cannot be accurately predicted and/or guaranteed, and that, therefore, the number of bottles which can be filled with Product from each Cask cannot be predicted and/or guaranteed as well. For the avoidance of doubt, the price per

bottle specified in the Price List, shall be payable by the Club Member only in respect of bottles actually filled and delivered to the Customer at the end of the bottling process.

- 4.4. The Customer acknowledges and agrees that the Distillery may, in its sole discretion, keep up to 3 bottles filled with Product from the Customer's Cask, for knowledge, expertise and record keeping purposes, and the Customer shall not be liable to pay the price per bottle specified in the Price List for such bottles.
- 4.5. The Distillery shall label the bottles. The Customer shall have the right to choose from five labeling options the Distillery shall provide to the Customer. The Customer may suggest other labeling options, subject to acceptance by the Distillery in its sole judgment, and the Customer acknowledges and agrees that such options shall incorporate the Distillery's trademarks, logo and name, as well as other details required by applicable laws and regulations, into any labels therein suggested. The price of such individualized labels shall be born by the customer, including the costs of design, registration, printing, delivery and other expenses.
- 4.6. Following the completion of the bottling of the aged Product, the Distillery shall prepare the bottles for shipment, and thereafter shall notify the Club Member accordingly. It is the Club Member's responsibility to provide and pay for transport, taxes, duties and handling charges applicable to shipping the bottles from the Distillery to its preferred address.
- 4.7. Below is an estimate of the number of 700ml bottles per year of ageing in a 200 Litre cask:

Barrel size 200 Litre		
Years of ageing	2	3
Estimated number of bottles	272 at 47% ABV to 205 at 60% ABV cask strength	239 at 47% ABV to 180 at 60% ABV cask strength

The estimate calculation is for 60% ABV Cask Strength and 47% ABV. We estimated a yearly 12% angel share.

5. TITLE

Subject to the fulfilment of all of its obligations in accordance with the Agreement, including, without limitation, the payment in full of all applicable prices, fees, costs, taxes and duties, the Club Member shall enjoy all Club benefits during the duration of Club Membership, including the right to purchase from the Distillery the bottles of whisky as described herein, and shall receive ownership and title of the bottles of aged Product upon receiving possession of them at the Distillery's premises prior to shipment. In no event, shall the Club Member hold title and ownership in the Casks themselves, which shall remain with the Distillery.

6. PRICE AND PAYMENT

- 6.1. The Customer shall pay the following prices, as follows:

- 6.1.1. The Cask Purchase Price shall be paid within 10 business days of the Customer signing the Order Form.
- 6.1.2. The Services Price shall be paid within 10 business days of the date the Customer provided notice to the Distillery to bottle the aged Product in accordance with Clause 3.4.
- 6.2. Payment to the Distillery shall be made via bank transfer to the following account, unless agreed to otherwise by the parties:
- Account Name: **Ve De Di Distillery Company Limited**
- Account Number: **57756688 (VND)** or **8687886666 (USD)**
- Bank Name: **ACB Bank Hanoi Branch**
- Swift Code: **ASCBVNVX**
- 6.3. Without derogating from the foregoing, the Distillery will provide the Customer with an invoice for each price the Customer is required to pay, including VAT (if applicable). For the avoidance of doubt, the prices listed in the Price List are exclusive of VAT, unless expressly specified to the contrary.
- 6.4. Without derogating from the foregoing, the Distillery will provide the Club Member with an invoice for each price the Club Member is required to pay, including VAT (if applicable). For the avoidance of doubt, the prices listed in the Price List are exclusive of VAT, unless expressly specified to the contrary.
- 6.4.1. The prices listed in the Price list are also exclusive of any costs related to, or in connection with, the shipment of the bottled aged Product to the Club Member by the Distillery, including, without limitation, any transport, import, export and/or insurance costs, and any taxes and/or duties in connection with the same, which shall remain the sole responsibility of the Club Member.

7. TAXES AND COMPLIANCE

- 7.1. The Distillery shall be responsible for the payment of any taxes, levies and/or duties imposed on it according to applicable laws and regulations in connection with the production, storage, maintenance and sale of the Product from the Distillery, including taxes on its income.
- 7.2. The Customer shall be responsible for the payment of any taxes, levies and/or duties imposed on it according to applicable laws and regulations in connection with the shipment of the bottled aged Product to the Customer from and on behalf of the Distillery, and the use and/or sale of such by the Customer, including, without limitation, any transport, import, export and/or insurance costs, and any taxes, levies and/or duties in connection with the same.
- 7.3. Without derogating from the foregoing in this Clause 7 herein, the Customer shall comply with all applicable laws and regulations with respect to the purchase, shipment and/or personal and/or commercial use by the Customer of the Product and/or Services.

8. MITATION OF LIABILITY

- 8.1. In the event the contents of a Cask are severely damaged or lost during the Ageing Period, excluding any such damage or loss caused by the Customer and/or anyone on its behalf, the Distillery shall make commercially reasonable efforts to replace such damaged or lost Cask with another cask with similar age and characteristics at no extra charge, or if such solution is not available, the Distillery shall refund the Club Member the amount paid by the Club Member until such time. the Distillery shall in such case extend all other Club Member benefits through and expiring on the fifth (5th) anniversary Cask Purchase. For the avoidance of doubt, the Customer acknowledges and agrees that the foregoing shall be the sole remedy to which it is entitled in the event the contents of a Cask are severely damaged or lost, and hereby irrevocably waives any right, contention, claim, remedy and/or cause of action with respect to the foregoing.
- 8.2. Nothing in the Agreement shall exclude the liability of any of the parties for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation, or any other liability which may not be excluded by applicable law.
- 8.3. Subject to Clause 8.2 and save as otherwise provided in these Terms, the Distillery shall not be liable for: (a) loss of profits; (b) loss of business; (c) damage to 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 of any kind.
- 8.4. Subject to Clauses 8.2 and 8.3, the Distillery's entire liability under or in connection the Agreement shall be limited to an amount equivalent to the price actually paid by the Customer.

9. INTELLECTUAL PROPERTY

- 9.1. The Customer acknowledges and agrees that all rights in any invention, design, trademark, logo, trade name, copyright, trade secret and any other intellectual property right of whatever kind or nature, whether registered or not, and whether registerable or not, related to the Casks and/or the Product, excluding such parts of the design of the labels and/or bottles which can be independently and separately attributed solely to the Customer, (hereafter "Distillery's IP") shall be and remain the exclusive property of the Distillery.
- 9.2. Nothing in the Agreement shall be construed or interpreted as giving title, license and/or permission to the Customer to use any of the Distillery's IP, without the prior written consent of the Distillery, other than the use and/or sale by Customer of the bottles purchased by it, if any, within the framework of the Agreement, and only to the extent that the Distillery's IP constitutes an inseparable part of the bottles and/or labels sold to the Customer as aforesaid.

10. MISCELLANEOUS

- 10.1. Any notice to be made under or in connection with the Agreement shall be made in writing to the following address:

If to THE DISTILLERY:

THE DISTILLERY's Office at:

email: _____

phone: +84 _____

If to the Customer:

to the Primary Contact Person, as specified in the Order Form.

The Customer is responsible to notify the Distillery in writing regarding any change in the contact details and/or identity if the Primary Contact Person.

- 10.2. The Distillery shall not be liable for any delay in performing its obligations under the Agreement where such delay is caused by circumstances beyond its reasonable control.
- 10.3. The Customer may assign its rights and obligations under the Agreement, provided that the assignee undertakes to comply with the provisions of the Agreement and sign an assignment agreement in a form acceptable by the Distillery.
- 10.4. The Agreement does not create a partnership or joint venture among or between the parties to it, nor authorizes either party to act as agent for the other.
- 10.5. No amendment of the Agreement will be effective unless it is in writing and signed by the parties.
- 10.6. If any provision (or part of a provision) of the Agreement 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 provisions which will remain in full force and effect.
- 10.7. The Distillery shall not be treated as having: (a) waived a right or remedy arising under the Agreement or otherwise in law; and/or (b) elected to abandon a right or remedy arising under the Agreement or otherwise in law; and/or (c) where applicable, thereby affirmed the Agreement; 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 the Customer.
- 10.8. The Agreement constitutes the entire agreement between THE DISTILLERY and the Customer in relation to its subject matter and supersedes any prior arrangement, understanding or agreement between them in relation thereto.
- 10.9. To the fullest extent permitted by applicable law, the Distillery hereby excludes 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 it except as specifically stated in these Terms and any condition, warranty or other term concerning the Casks and/or the Product which might otherwise be implied into or incorporated within the Agreement, whether by statute, common law or otherwise, is expressly excluded.
- 10.10. The Customer acknowledges that in entering into the Agreement, it had not relied on any statement, representation, warranty, undertaking or other assurance given or made by any

person (whether a party to the Agreement or not) other than as expressly set out or referred to in the Agreement. The Customer hereby waives 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.

10.11. This Agreement (and any non-contractual disputes or claims) shall be construed and interpreted in accordance with the laws of Vietnam. It is understood and agreed that any disagreement arising hereof shall be resolved by arbitration by the Vietnam International Arbitration Center (VIAC), at the Vietnam Chamber of Commerce and Industry, which head office is currently 6th Floor, VCCI Tower, No.9 Dao Duy Anh St., Dong Da Dist., Hanoi, Vietnam, and is pursuant to the Rules of VIAC. The seat of the arbitration shall be in Hanoi. The number of arbitrators shall be one (1), and the arbitration shall be conducted in English. The arbitrator shall have at least ten (10) years of experience in certified arbitration dispute resolution.

FOUNDER'S CLUB LIFETIME MEMBERSHIP BENEFITS:

- Private one time VIP Club Member tour for you and up to four special guests
- Annual VIP Club Member distillery banquet
- 10% forever discount on all standard distillery offerings
- Forever private advance notice of all new distillery offerings
- Priority attendance at special distillery events
- Personalized bottles from Distiller – Founders' Club Lifetime Member's private label on whisky bottles
- Sherry, Armagnac and rum cask finishings arranged for additional cost with Distiller, upon availability and mutual agreement

(on the behalf of the Customer)

Signature:

Date: / /

(on the behalf of the Distillery)

Signature:

Date: / /