



# Whisky Sale Agreement

Tasmania Distillery Pty Limited (*Seller*)

*Insert name (Buyer)* \_\_\_\_\_

*Details* \_\_\_\_\_

*Date* \_\_\_\_\_

*Parties*

*Name* **Tasmania Distillery Pty Limited**

*ABN* **62 106 588 381**

*Short form name* **Seller**

*Notice Details* **Address: Suite 1/14 Lamb Place.  
Cambridge, Tasmania 7170, AUSTRALIA**

**Phone: +61 3 6248 5399**

**Facsimile: +61 3 6248 5741**

**Attention: Patrick Maguire**

*Name* \_\_\_\_\_

*ABN* \_\_\_\_\_

*Short form name* *Buyer* \_\_\_\_\_

*Notice Details* *Address:* \_\_\_\_\_

*Phone:* \_\_\_\_\_

*Facsimile:* \_\_\_\_\_

*Attention:* \_\_\_\_\_

## Schedule 1 - Reference Data

**Item 1**

Whisky \_\_\_\_\_ % of the contents of Barrel no. \_\_\_\_\_

The whole of the contents of Barrel no \_\_\_\_\_ (s).

**Item 2**

Price \$ \_\_\_\_\_

**Item 3**

Rental \$ \_\_\_\_\_ or \$ \_\_\_\_\_ per Barrel per annum

**Item 4**

Insurance Premium \$ \_\_\_\_\_ or \$ \_\_\_\_\_ per Barrel per annum

Item 5

Delivery Bottled Yes / No

Bulk Yes / No

To be advised Yes / No

METHOD OF PAYMENT

Cash

Cheque

Credit Card

Direct Deposit

TOTAL AMOUNT ENCLOSED/FORWARDED

\$

Name on Card

Card Number

Expiry Date



Other (please specify)

Signature

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Dated

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*EXECUTED* as an agreement.

*Executed by Tasmania Distillery Pty Limited* in accordance with its constitution and the relevant law (by its duly authorised agent)

\_\_\_\_\_  
*Signature of duly authorised agent*

\_\_\_\_\_  
*Signature of Witness*

\_\_\_\_\_  
*Name of duly authorised agent (print)*

\_\_\_\_\_  
*Name of Witness (print)*

*Executed by (the buyer) in the presence of:*

\_\_\_\_\_  
*Signature of Buyer*

\_\_\_\_\_  
*Signature of Witness*

\_\_\_\_\_  
*Name of Buyer (print)*

\_\_\_\_\_  
*Name of Witness (print)*

# Agreed terms incorporated in the Whisky Sale Agreement

1. Defined Terms
- 1.1 Definitions in this Agreement:

Barrel means a barrel the property of the Seller, in which the Seller matures Whisky produced by the Seller.

Default Rate means:

  - (a) 4% above the rate charged by the Seller's major bank for overdrafts exceeding \$100,000; or
  - (b) if that rate does not exist, another comparable rate that the Seller nominates.

Delivery means delivery of the Whisky to the port of embarkation specified in Clause 3.5.

FOB means free on board as identified by Incoterms (2000).

Insurance means insurance of the Whisky in accordance with Clause 4.1(e).

Insurance Premium means the amount specified in Item 4 of Schedule 1.

Price means the price that the Buyer must pay for the Whisky as specified in Item 2 of Schedule 1.

Rental means the amount specified in Item 3 of Schedule 1.

UNCITRAL means the United Nations Commission on International Trade Law.

Whisky means the Whisky specified in Item 1 of Schedule 1.

Year means each Financial Year, ending on 30 June in any year.
- 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

  - (a) the singular includes the plural and vice versa, and a gender includes other genders;
  - (b) another grammatical form of a defined word or expression has a corresponding meaning;
  - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to this Agreement, and a reference to this Agreement includes any schedule or annexure;
  - (d) a reference to a party is to a party to this Agreement, and a reference to a party includes the party's executors, administrators, successors and permitted assigns and substitutes;
  - (e) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
  - (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (g) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
  - (h) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.
- 1.3 Headings

Headings are for ease of reference only and do not affect interpretation.
- 1.4 United Nations Convention on the International Sale of Goods
  - (a) The United Nations Convention on the International Sale of Goods applies to this Agreement except to the extent that this Agreement is inconsistent with that convention.
  - (b) Clause 1.4 (a) does not apply if the Buyer is resident in Australia.
2. Agreement to Sell

The Seller agrees to sell the Whisky to the Buyer and the Buyer agrees to buy the Whisky from the Seller:

  - (a) for the Price; and
  - (b) on the terms of this Agreement.
3. Terms
- 3.1 Price

The Buyer must pay the Price for the Whisky to the Seller within five (5) days of the date of this Agreement.
- 3.2 Price Held on Trust if Part of Contents of Barrel Sold

If the Whisky represents less than the whole of the contents of a Barrel, the Seller will hold the Price on trust for the Buyer, until the Seller sells the whole of the contents of that Barrel. Upon the Seller selling the whole of the contents of the relevant Barrel, the Price will become the absolute property of the Seller.
- 3.3 Risk

Risk in the Whisky will pass to the Buyer on payment of the Price.
- 3.4 Title

Title to the Whisky will pass to the Buyer on Delivery.
- 3.5 FOB delivery

The Buyer will buy the Whisky and the Seller will sell the Whisky on the basis of FOB at Hobart, Tasmania, Australia.
- 3.6 Storage and Insurance

The Buyer must pay to the Seller:

  - (a) the storage charge for the Barrels in which the Whisky is stored; and
  - (b) the Insurance Premium for the Insurance (yearly in advance) within twenty-eight (28) days of the start of each year.
- 3.7 Default Interest

The Buyer must pay interest on all overdue amounts under this Agreement.

- Interest:
- (a) accrues on a daily basis from the date the amount became due up to the date of actual payment;
  - (b) compounds monthly; and
  - (c) is calculated at the Default Rate.
4. Seller's Obligations
  - 4.1 General

The Seller must:

    - (a) mature the Whisky for a minimum number of eight (8) years from the date on which the Whisky was placed in the Barrel;
    - (b) store the Whisky while the Whisky is maturing;
    - (c) exercise reasonable care and skill in:
      - (i) handling the Whisky; and
      - (ii) storing the Barrel or Barrels in which the Whisky is stored;
    - (d) take reasonable steps to ensure the Barrel or Barrels in which the Whisky is stored are safe;
    - (e) take out insurance for the Whisky and maintain that insurance until Delivery, insuring the Whisky for its full replacement value:
      - (i) against risks; and
      - (ii) on terms,that a reasonably prudent person in the Seller's position would insure.
  - 4.2 Charge
    - (a) The Seller will grant a fixed charge:
      - (i) on its standard terms over the Whisky to secure the Seller's obligations to the Buyer under this Agreement; and
      - (ii) within five (5) days of:
        - (A) the Buyer paying the Price to the Seller; or
        - (B) if the Buyer is buying less than whole contents of a Barrel, the Seller selling the whole of the Barrel.
    - (b) The Seller will register the charge with the Australian Securities and Investments Commission within forty-five (45) days of granting the charge.
  5. Delivery
  - 5.1 Notification of Anticipated Maturation Availability for Delivery

The Seller will give the Buyer approximately:

    - (a) Twelve (12) months notice of the date on which the Whisky will be mature; and
    - (b) One (1) month's notice of the date on which the Whisky will be ready for Delivery.
  - 5.2 Bottling and Labelling

If the Buyer requires the Whisky to be bottled before Delivery as specified in Item 5 of Schedule 1:

    - (a) The Seller will arrange for this to be done in a timely manner at the current commercial bottling rates and will arrange for labelling as requested by the Buyer and agreed to by the Seller;
    - (b) the Seller will notify the Buyer of the bottling and labelling charges before bottling the Whisky;
    - (c) the Buyer must pay the Seller all bottling and labelling charges within 14 days of the Seller giving the Buyer an invoice for those charges; and
    - (d) subject to Clause 5.4, the Seller will Deliver the Whisky to the Buyer promptly after the Seller has bottled the Whisky.
  - 5.3 Bulk

Subject to applicable laws-

If the Buyer requires the Whisky to be Delivered in bulk as specified in Item 5 of Schedule 1:

    - (a) The Seller will arrange for this to be done in a suitably acceptable container at the current commercial rates;
    - (b) the Seller will notify the Buyer of the charges for this delivery container before transferring the Whisky from the barrel;
    - (c) the Buyer must pay the Seller all delivery container charges within 14 days of the Seller giving the Buyer an invoice for those charges; and
    - (d) subject to Clause 5.4, the Seller will Deliver the Whisky to the Buyer promptly after the Whisky is mature and ready for Delivery.
  - 5.4 Non-Payment
    - (a) The Seller will not Deliver the Whisky to the Buyer until the Buyer has paid the Seller all amounts that the Buyer is required to pay the Seller under this Agreement (including any bottling and labelling costs).
    - (b) If the Buyer has not paid the Seller any amount that the Buyer is required to pay the Seller under this Agreement within thirty (30) days after the date on which the Seller has notified the Buyer that the Whisky is ready for Delivery, the Seller:
      - (i) may sell all or any of the Whisky to recover the amount owing to the Seller; and
      - (ii) will Deliver the balance of the Whisky to the Buyer.
    - (c) In exercising its rights under clause 5.4 (b), the Seller must exercise reasonable care and skill to obtain the market price for the Whisky.

## 6. Goods and Services Tax

### 6.1 Application

This Clause 6:

- (a) applies if the Buyer is resident in Australia; and
- (b) does not apply if:
  - (i) the Buyer is resident outside Australia; and
  - (ii) the Whisky is to be exported from Australia.

### 6.2 Interpretation

Words or expressions used in this Clause 6 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or, if not so defined, then which are defined in the Trade Practices Act 1974 (Cth), have the same meaning in this clause.

### 6.3 Consideration is GST exclusive

Any consideration to be paid or provided to the Seller for a supply made by the Seller under or in connection with this Agreement, unless specifically described in this Agreement as "GST inclusive", does not include an amount on account of GST.

### 6.4 Gross Up of Consideration

Despite any other provision in this Agreement, if the Seller makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as "GST inclusive"):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause ("GST exclusive consideration") is increased by, and the Buyer must also pay to the Seller, an amount equal to the GST payable by the Seller on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Seller by the Buyer without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 6.5 Tax Invoices

The Seller will provide a tax invoice for all payments that the Buyer is required to make under this Agreement.

## 7. Warranties

### 7.1 Joint Warranties

Each party represents and warrants to the other party that:

- (a) it has the power and has taken all corporate and other action required to enter into this agreement and to authorise the execution and delivery of this Agreement and the performance of its obligations;
- (b) this Agreement constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (c) the execution, delivery and performance of this Agreement does not violate any existing law or any document or agreement to which it is a party or which is binding on it or any of its assets.

### 7.2 Seller's Warranties

The Seller warrants to the Buyer that the Whisky will be:

- (a) aged at least eight (8) years; and
- (b) single malt Whisky.

### 7.3 Status of Warranties

All warranties in this Agreement:

- (a) survive the execution and delivery of this Agreement; and
- (b) remain in full force and effect for the term of this Agreement.

## 8. Limitation of Liability

### 8.1 Exclusion of Terms and Warranties

The parties exclude, to the maximum extent allowed by law, all terms and warranties expressed or implied by any legislation, the common law, equity, trade, custom or usage or otherwise in connection with the Seller's obligations under this Agreement.

### 8.2 Required Statutory Warranties

If any legislation implies in this Agreement any term or warranty and also prohibits provisions in a contract excluding or modifying the application of or liability under that term or warranty:

- (a) that term or warranty is included in this Agreement to the minimum extent required; and
- (b) to the maximum extent permitted by law, the liability of the Seller for a breach of that term or warranty is limited, at the option of the Seller, to any one or more of the following:
  - (i) the cost of replacing the goods or services (as applicable); or
  - (ii) the cost of repairing the goods or resupplying the services (as applicable).

## 9. Disputes

### 9.1 Arbitration

If there is any dispute arising out of this Agreement between the parties, that dispute will be resolved by arbitration in accordance with the UNCITRAL Arbitration Rules.

### 9.2 Related Issues

- (a) There will be one arbitrator.
- (b) The place of the arbitration will be Brisbane, Queensland, Australia.
- (c) The language to be used in the arbitration will be English.
- (d) The appointing authority will be the Institute of Arbitrators and Mediators in Australia.

## 10. Notices and Other Communications

### 10.1 Service of Notices

A notice, demand, consent, approval or communication under this Agreement (Notice) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Notice Details, as varied by any Notice given by the recipient to the sender.

### 10.2 Effective on Receipt

A Notice given in accordance with Clause 10.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second (2nd) Business Day after the date of posting or on the seventh (7th) Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight (8) Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice, but if the delivery, receipt or transmission is not on a Business Day or it is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## 11. Miscellaneous

### 11.1 Alterations

This Agreement may be altered only in writing signed by each party.

### 11.2 Invalid or Unenforceable Provisions

If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- (a) it is read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of:
  - (i) that provision in another jurisdiction; or
  - (ii) the remaining provisions.

### 11.3 Survival

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

### 11.4 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

### 11.5 No Merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### 11.6 Entire Agreement

This Agreement constitutes the entire Agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

### 11.7 Further Action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

### 11.8 Waiver

- (a) The failure of a party at any time to require performance of any obligation under this Agreement is not a waiver of that party's right:
  - (i) to claim damages for breach of that obligation; and
  - (ii) at any other time to require performance of that or any other obligation under this Agreement, unless written notice to that effect is given in accordance with Clause 10.
- (b) A waiver of any provision of or right under this Agreement:
  - (i) must be in writing signed by the party entitled to the benefit of that provision or right; and
  - (ii) is effective only to the extent set out in any written waiver.

## 12. Governing Law and Jurisdiction

### 12.1 Governing Law

Queensland law governs this Agreement.

### 12.2 Jurisdiction

The parties irrevocably and unconditionally:

- (a) submit to the exclusive jurisdiction of the Courts of Queensland, Australia; and
- (b) waive any claim or objection based on absence of jurisdiction or inconvenient forum.

### 12.3 Service of Process

A document required to be served in proceedings about this Agreement may be served:

- (a) by being delivered to or left at its address for service of notices under Clause 10.1; or
- (b) in any other way permitted by law.