

PAMOJA® PRIVATE CASK OFFER

TERMS AND CONDITIONS OF SALE



1 Definitions and Interpretation

1.1 In this document, the following words and terms shall have the following meanings:

“Brand” means any and all intellectual property rights subsisting in or pertaining to Product and any name, logos, packaging, design and/or any aspect of the get-up, look and feel of the Product in whatever form we may apply from time to time;

“Cask” has the meaning set out in Clause 3.1;

“Contract” means the contract, comprising the Confirmation and these Terms, entered into between you and us for the supply of Product;

“Confirmation” means the confirmation to which these terms are appended that confirms our acceptance of your Order;

“Maturation Period” means the maturation period as stated in the Confirmation;

“Order” means the order for Product details of which are contained in the Confirmation;

“Price” means the price for the Product as set out in the Confirmation excluding any costs of delivery, insurance costs, overheads, packing, loading, carriage, customisation and all taxes and duties of any kind;

“Product” means the rum Products identified in the Confirmation which shall for the avoidance of doubt only include the actual liquid stocks and not any casks or containers in which we may store the Product from time to time;

“Terms” means these terms;

“us” or “we” means Matugga Distillers Limited, a company incorporated in Scotland with company number SC595608 and registered office at 1a Young Square, Brucefield Industrial Estate, EH54 9BX, United Kingdom, and “our” shall be interpreted accordingly.

“you” means the buyer or person to whom the Confirmation is addressed and “your” shall be interpreted accordingly.

1.2 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.

1.3 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 Contract and shall take precedence over any terms set out in any ordering of other document purported by you to apply.

1.4 Any references to any Scottish legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept or thing shall in respect of any jurisdiction other than Scotland be deemed to include what most nearly approximates in that jurisdiction to the Scottish legal term.

2 Terms of Sale

2.1 We agree to sell and you agree to buy the Product for the Price on the terms set out herein.

2.2 We do not enter into contracts for the sale or supply of Product on terms other than these Terms.

3 Our Responsibilities

3.1 On receipt by us of your payment in full, we will fill a cask (of the Cask Type and Cask Size as set out in the Confirmation, but subject to availability) with Product from the next available batch of Product, and a certificate of ownership will be produced in your name (your “Cask”).

3.2 We will fill your Cask to capacity at 63.0% alcohol by volume.

3.3 We will retain your Cask on our site or such other place we deem appropriate for the cask Maturation Period.

3.4 We shall insure the Products on the same terms and on the same basis as other like products and stock.

3.5 You acknowledge and agree that at no time will you obtain any rights in the cask itself and that all right, title and risk in the Cask itself shall remain ours. In the event of complete or substantial loss of or damage to your Cask, we shall endeavour to offer a replacement of the nearest available cask in terms of type, product and distillation date.

3.6 You acknowledge and agree that your Cask must remain in warehouses under our control for its entire Maturation Period. We reserve the right to relocate your cask to an alternative warehouse and in this instance you shall receive advance notice from us in writing.

3.7 The contents of the cask will be bottled by us or under our control and supervision and will be carried out without chill filtration or the addition of any additives. You will have the choice of bottling at any strength from 46% alcohol by volume (ABV) up to cask strength which after three years we would expect to be between 53% and 60% ABV. The water used to reduce your spirit down to bottling strength will be the same Scottish water used throughout our process. You may not ask for the cask contents to be bottled until it has matured for a minimum spirit maturation period of 3 years. If you wish to retain the spirit in our warehouse for longer than 3 years then the cost of warehouse insurance and rent, and UK HMRC compliance administration after the 3 year period will be chargeable and intimated to you at the time. Bottling and delivery will be charged at the then prevailing rate and the costs intimated to you in advance, at the end of the maturation period and prior to bottling. The cask owner can also arrange for collection of the bottles.

Following your request we will use the contents of your Cask to fill bottles and for this purpose we will, in the absence of any written agreement entered into with you to the contrary, use such Matugga Distillers' dry goods and materials that are in use and available to us at the time of bottling. We cannot guarantee the number of bottles during the bottling process as this will vary from cask to cask. Bottling by a third party will not be permitted without our prior consent in writing.

The cask will be bottled in a Matugga Distillers' bottle, with a personalised label based upon our own design. We reserve all rights in and to the Brand and nothing in the Contract shall be construed as granting or conferring on you any rights by any means (whether express, implied or otherwise) in connection with the Brand. We will endeavour to accommodate any reasonable and legally compliant requests which you may make in respect of customisation of the bottle, packaging and labelling, and, in the absence of any prior written agreement entered into with you which provides otherwise, we will (as between us) own any intellectual property rights in any such customisation and the production thereof. You acknowledge and agree that where we do so agree to accommodate requests for such customisation that we will be entitled to charge you for the same.

3.8 After bottling, you will be liable for UK excise duty and VAT at the prevailing rate unless you can arrange for shipping to a bonded warehouse either within or outside of the UK. You must settle all excise duty and VAT amounts, and, unless we have separately agreed to provide duty paid warehousing facilities for you, arrange for the shipping of your bottles within one month of bottling. The product will not be released from storage until all excise duty, VAT amounts and storage charges due and owing are paid in full.

4 Your rights and responsibilities

4.1 Once your cask has been paid for, and it has been filled, you will be entitled to visit your Cask by appointment, and with three weeks' notice, subject to the current terms and conditions. The cask price includes the cost of taking a 100ml sample of spirit from your cask on the second anniversary of the cask filling date for quality control purposes which will be sent to you for your own analysis and enjoyment.

Cask samples in addition to the single sample specified are permitted at our discretion subject to payment by you of delivery charges, postage, packing and a reasonable administrative charge to be advised by us.

4.2 You acknowledge and agree that there will be a loss of both alcohol and volume while the Product matures in your Cask and whilst this might fluctuate we anticipate that this may amount to up to 2% loss per annum.

4.3 You warrant and represent to us that you have complied, are complying and will comply with current HMRC regulations applicable to a contract of this nature, including that you are a private customer who is purchasing the product for private, non-commercial use.

4.4 You acknowledge and agree that it is your responsibility to familiarise yourself with and thereafter comply with the requirements of HMRC as regards the purchase of the Product from us. We will endeavour to include (and to the extent it is within our control, maintain) a link to the relevant section of the HMRC website on our website.

4.5 You acknowledge and agree that the 'Approximate Filling' levels contained in the Confirmation are a guideline only, that each cask will have a slightly different capacity and that we cannot guarantee any minimum amounts of fillings.

4.6 Nothing in the Contract will grant you any rights in or licence to the Brand or any of our intellectual property rights.

4.7 You must inform us of any change of name, address, and other contact details, and if you wish to transfer ownership of your Cask, you must seek our prior written agreement to the same and the new owner must agree to abide by these Terms.

5 Title and risk

5.1 Risk in the Product shall pass to you at the point of collection by you or your nominated representative or carrier from us.

5.2 Ownership in the Product shall not pass to you until all amounts owing to us in respect of the Product has been paid to us in full.

6 Price and payment

6.1 On receipt of your Order, we shall issue you with an invoice, and Confirmation, for the Price plus any VAT payable thereon (an "Invoice").

6.2 You agree that you shall pay amounts owing under the Invoice within the period set out in the Confirmation and you acknowledge that all payments should be received prior to filling the Cask. If you have not paid the balance due on the Invoice within the period required, we shall be entitled to treat your Order as rescinded and our confirmation of that Order as set out in the Confirmation as cancelled and we shall have no further responsibility to you under the Contract.

6.3 The Price includes all insurance and storage charges for the Maturation Period (which for the avoidance of doubt shall start on the filling date of the Cask), and you will be notified of the prevailing rates should you wish us to hold your Cask beyond this period. We may agree in writing with you to extend the Maturation Period and you will be liable for any additional insurance or storage charges in respect of this.

6.4 We retain the right to bottle the Product after the Maturation Period and you will be liable for all charges in respect of the bottling.

6.5 If, despite our reasonable efforts, we are unable to contact you after the Maturation Period, because you have not complied with clause 4.7, we shall be entitled to end the Contract with you. In this case title to the Product will revert to us and all payments will be offset against any additional insurance and storage charges.

6.6 The cost price includes the following:

- One (1) Bottle of Matugga Golden Rum.
- A VIP distillery tour for two people.
- Additional benefits as released by Matugga Distillers.

7 Liability

7.1 Nothing in the Contract shall exclude the liability of either party for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation, or any other liability which may not be excluded by applicable law.

7.2 Subject to Clause 7.1 and save as otherwise provided in these Terms, we shall not be liable for: (a) loss of profits; (b) loss of business; (c) depletion of 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 whatsoever or howsoever caused.

7.3 Subject to Clauses 7.1 and 7.2, our entire liability under or in connection with the Contract shall be limited to an amount equivalent to the Price.

8 Miscellaneous

8.1 Any notice to be made under or in connection with the Contract shall be made in English in writing and by letter to the address for the relevant party as set out in the Letter or in the case of letters to you to the last known address which we have on record for you.

8.2 We shall not be liable for any delay in performing our obligations under the Contract where such delay is caused by circumstances beyond our reasonable control.

8.3 You may not assign, sub-contract or otherwise transfer any rights or obligations under the Contract without our prior written consent.

8.4 The Contract does not create a partnership or joint venture between the parties to it, nor authorise either party to act as agent for the other.

8.5 No amendment of the Contract will be effective unless it is in writing signed by us.

8.6 If any provision (or part of a provision) of these Terms 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 Terms which will remain in full force and effect.

8.7 We will not be treated as having: (a) waived a right or remedy arising under the Contract or otherwise in law; and/or (b) elected to abandon a right or remedy arising under the Contract or otherwise in law; and/or (c) where applicable, thereby affirmed the Contract; 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 you.

8.8 The Contract constitutes the entire agreement between you and us in relation to its subject matter and supersedes any prior arrangement, understanding or agreement between them in relation thereto and sets forth the full extent of our obligations and liabilities in respect of the Product.

8.9 This Contract binds you and us, and is for your and our benefit and your and our respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

8.10 To the fullest extent permitted by applicable law, we hereby exclude 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 us except as specifically stated in these Terms and any condition, warranty or other term concerning the Product which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

8.11 You acknowledge that in entering into the Contract, you have not relied on any statement, representation, warranty, undertaking or other assurance given or made by any person (whether a party to the Contract or not) other than as expressly set out or referred to in the Contract. You hereby waive 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.

8.12 Nothing in these Terms is intended to or will be construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.

9 Governing law and Jurisdiction

The Contract (and any non-contractual disputes or claims) is governed by the laws of Scotland and the parties agree that the Scottish courts will have the exclusive authority to settle any dispute arising out of or in connection with the Contract (and any non-contractual disputes or claims).