

Moffat Distillery Cask Offer 2024

TERMS AND CONDITIONS OF SALE

Please ensure that you read these terms and conditions as they affect your rights and liabilities under the law and set out the terms under which Dark Sky Spirits Ltd (“we”) makes our products available to you. Dark Sky Spirits Ltd, owner of the Moffat Distillery is a business is registered under company law in Scotland, and is lodged with Companies House in Edinburgh under SC576266. Our registered office is Strathview, Well Road, Moffat DG10 9BH Scotland, United Kingdom.

1 BASIS OF CONTRACT

- 1.1 These terms and conditions as amended from time to time (“Conditions”) constitute a contract between “The Moffat Distillery”, a trading name of Dark Sky Spirits Ltd (“Supplier,” “us,” or “we”) and you, the buyer, person or syndicate who completes the order form (“you”) in connection with your cask purchase (“Contract”) to the exclusion of any other terms.
- 1.2 The processing of an application form (“Order”) online by you constitutes an offer by the buyer to become a Cask Owner in accordance with these Conditions. The buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 1.3 The Order shall only be deemed to be accepted when the Supplier receives full payment for the order, at which point the Contract shall come into existence.
- 1.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement made innocently or negligently, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 1.5 By placing an Order, you acknowledge and confirm that you are at least 18 years old. The Supplier will not accept orders from, nor arrange delivery of whisky to, any person under the age of 18 at the date of the Contract. If the Delivery Location (defined below) is specified to be outside of the United Kingdom, then by placing an Order you acknowledge and confirm that you are at least of the minimum legal age to purchase alcohol in accordance with the laws of that country.

2 TERMS OF SALE

- 2.1 We agree to sell and you agree to buy the cask for the price on the terms set out herein.
- 2.2 We do not enter into contract for the sale or supply of casks on terms other than these Terms.

3 THE AGREEMENT (OR CONTRACT OF SALE)

- 3.1 Casks and Contents. On receipt by us of (i) an Order Form completed by you and (ii) payment in full, we will fill a cask (of the Cask Type selected, but subject to availability) we will either provide you with a cask that has been filled or schedule a filling date based on our production schedule. Once confirmed, you will be invited to attend the cask filling if you wish or we will provide photos and / or video of the cask being filled.
- 3.2 Filling Strength. We will fill your Cask to capacity between 63% and 64% alcohol by volume.
- 3.3 Insurance. We shall insure your cask on the same terms and on the same basis as other like products and stock.
- 3.4 Rights and Damage. 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 you a replacement of the nearest available cask in terms of type, product and distillation date.

3.5 Storage. You acknowledge and agree that Your Cask must remain in our bonded warehouse, or our designated bonded warehouse for its entire maturation, and its contents must be bottled by us. Casks cannot be moved to third party warehousing. We will retain your Cask on our site or at such other place we deem appropriate for the in-cask maturation.

3.6 Bottling, Labelling and Copyright.

3.6.1 Bottling and Labelling. We will use the contents of your Cask to fill bottles and for this purposes we will, in the absence of any written agreement entered into with you to the contrary, use such Dark Sky Spirits dry goods and materials that are in use and available to us at the time of bottling. Bottling will take place at the Moffat Distillery, without chill filtration or the addition of any colour. You will have the choice of bottling your whisky at cask strength or any level as low as 46%ABV. 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.

3.6.2 Copyright and Trademarks. All rights to the expressions 'Moffat Whisky', 'Moffat Single Malt,' 'Dark Sky Spirits' along with all associated trademarks, copyrights and/or other intellectual property rights are the property of Dark Sky Spirits Ltd., also trading as the Moffat Distillery.

You may use the expression 'Distilled and bottled at the Moffat Distillery' on the label of the bottles that contain the product in your cask but only in a manner where the phrase is no more prominent than the principal or other brand featured said label. You may not use the expression "Distilled and bottled at the Moffat Distillery" in relation to any other whisky, or in relation to any other spirits, products, goods, or merchandise.

We are under no obligation to accommodate any customization that may adversely affect the Moffat Distillery brand. By designing and using a label, you accept that any such label complies with the relevant regulations and does not in any way infringe any existing trademarks, copyright or other intellectual property right and that you will indemnify Dark Sky Spirits Ltd against all claims, losses, damages and expenses which may be incurred by or leveled against us in connection with any actual or purported breach of regulations or infringement of any trademarks, copyright or other intellectual property rights resulting from the use of any such label.

3.7 Cask Buyback. Should you choose to sell the entire cask back to us, we will offer to purchase your cask at the prevailing market rate, i.e., the rate that we purchase whisky of a comparable age and value in the 3-month period preceding the cash buyback offer. If you choose to sell your cask back to us through our cash buyback offer, this transfer will take place underhand and there will be no duty or VAT to pay.

3.8 Partial Bottling. Should you choose to bottle part of the cask, you may be able to sell the remaining part of the cask under a partial Cask Buyback arrangement.

3.9 UK Duty & VAT. After bottling, you will be liable for UK 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 duty and VAT amounts, and in the case of bottling your entire cask, arrange for the shipping of your bottles within one month of bottling completion.

Should you choose to ship your bottles to a destination outside the UK, it shall be your sole responsibility to make all necessary importation arrangements for your whisky into the country in question, to make full payment of all applicable duties and levies and to ensure compliance with all labelling regulations.

3.10 Cask Visitation. Cask visits can be arranged during your annual tour. You are eligible to visit your cask annually by appointment only with no less than 10 working days' notice. We will try to accommodate

visitation requests but reserve the right to refuse or reschedule your visit due to the needs of the business. To arrange your visit, contact us directly.

3.11 Cask Samples. You can request a 100ml sample of your whisky annually up to five times over the 10 year maturation period. For more than five samples, you are subject to a filling charge. This option is subject to payment by you of all delivery, postage, packaging and administration charges. This payment will not exceed £50 per sample.

3.12 The Angels' Share. You acknowledge and agree that there will be a loss of both alcohol and volume while the whisky matures in your Cask. This loss occurs due to natural evaporation (Angels' Share) and the absorption of the spirit into the wood of the cask. The Angels' Share loss rate is dependent on the cask size, cask type, the cask's warehouse location, fill strength and length of maturation. These losses can be between 1-5% per year. Therefore, we give no guarantee of the amount of spirit remaining in your cask at the end of the maturation period.

It is estimated that after 5 years of maturation, a 200 bulk liter cask will yield approximately 250 x 70cl bottles at 60% ABV. By accepting this Contract of Sale, you acknowledge and agree that the approximate filling level of your cask is a guideline only and each cask will have a slightly different filling volume and we cannot guarantee any minimum filling amounts.

3.13 The Warehousekeepers & Owners Of Warehoused Goods Regulations 1999. 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: (a) you are a private customer who is purchasing the product for private, noncommercial use; or (b) you are a UK based Revenue Trader and are already registered as an Owner of Warehoused Goods in the UK (c) you are an overseas Revenue Trader and have appointed, or will appoint, a UK Duty Representative.

4 TITLE AND RISK

4.1 Risk in the Product shall pass to you at the point of collection by you or your nominee.

4.2 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.

5 PRICE AND PAYMENT

5.1 On receipt of your order and £100 deposit, we shall issue you with an invoice for the remaining price of the cask (an "Invoice").

5.2 You agree that you shall pay amounts owing under the Invoice within the period set out in the invoice and you acknowledge that full payment requires be made to us prior to filling the cask or transferring ownership of an existing filled cask. If the Invoice has not been paid within the period required we shall be entitled to treat your Order as rescinded and our confirmation of that Order as set out in any order acknowledgment that we have provided to you as cancelled and we shall have no further responsibility to you under the Contract. You may then decide whether you wish your name to go back into the ballot for the next drawing or withdraw altogether from the ballot.

5.3 The purchase price includes all insurance and storage charges for the first ten years of storage (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.

6 LIABILITY

6.1 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.

6.2 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.

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

7 MISCELLANEOUS

7.1 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 (i) in relation to us, in these Terms and Conditions and (ii) in relation to you as stated on the Order Form or the last known address which we have on record for you.

7.2 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.

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

7.4 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.

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

7.6 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.

7.7 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.

7.8 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 you and us in relation thereto and sets forth the full extent of our obligations and liabilities in respect of the Product.

7.9 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 Agreement, whether by statute, common law or otherwise, is expressly excluded.

7.10 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.

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

8 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).

Dark Sky Spirits Ltd.
The Moffat Distillery
Moffat
DG10 9FE

Company Registration No: SC576266
VAT Registration No: GB353009721