

## Cask Fractional Ownership Fungible Token Programme - Terms and conditions

These terms and conditions (the “**Conditions**”) apply to the Token purchase and fractional cask ownership programme offered by **Speyside Capital Limited**, a company incorporated in Scotland with company number SC758269 and having its registered office address at The Whisky Bond, 2 Dawson Road, Glasgow, United Kingdom, G4 9SS (the “**Issuer**”). By purchasing or being transferred a Token (as defined below) through the Trading Platform (as defined below), whether from the Issuer or from an existing Token Holder (as defined below), you as the Token Holder acknowledge you have read and agree to be bound by these Conditions.

### 1 Definitions and interpretation

1.1 In these Conditions, the following words and expressions have the following meanings:

“**Additional Charges**” has the meaning given in clause 5.4;

“**Actual Bottling Date**” means the date on which the spirit in the Cask is first bottled as Scotch whisky;

“**Bottle**” means one 500 or 700 millilitre (as specified in the Prospectus) bottle of Scotch whisky with a minimum alcohol-by-volume of 40% ABV produced from spirit matured in the relevant Cask;

“**Business Day**” means between the hours of 9.00am and 5.00pm on Monday to Friday in Scotland, excluding bank, public and national holidays;

“**Cask**” means the relevant cask of Scotch whisky spirit to which the Token relates, as specified in the Prospectus;

“**Chintai**” means Chintai Utility Services Ltd., a BVI Business Company with Company Number 2086857 with registered office at Commerce House, Wickhams Cay 1, Road Town Tortola, British Virgin Islands VG1110, BVI;

“**Further Storage Period**” means, if applicable, the period from the end of the Initial Storage Period until the earlier of:

- (a) the date upon which the relevant Bottle is delivered to or made available for collection by, the Token Holder or its representative; and
- (b) the period of time after the end of the Initial Storage Period as specified in the Prospectus or such longer period as the Issuer may agree in writing;

“**Initial Storage Period**” means the period until the number of months or years after the Actual Bottling Date of the relevant Cask, as specified in the Prospectus or otherwise notified by the Issuer to the Token Holder at the time of, or prior to, first issue of the Token;

“**Net Sale Price**” has the meaning given in clause 6.2;

“**Projected Bottle Yield**” means the estimated total number of Bottles to be produced from the relevant Cask at the Target Bottling Date taking into account average estimates of 2% total Cask volume loss per year by evaporation;

“**Prospectus**” means the prospectus for the relevant Cask attached at the start of these Conditions;

“**Register**” has the meaning given in clause 3.7;

“**Target Bottling Date**” means the target date on which the Issuer intends to first bottle the spirit in the relevant Cask as Scotch whisky, as specified in the Prospectus;

“**Tax**” means includes any present and future tax, levy, impost, deduction, withholding, duty or other charge of a similar nature, and all related penalties, fines, charges and interest;

“**Token**” means a fungible cryptographic token implemented on the blockchain representing an option on the Token Holder to redeem the Token for one Bottle as the Token’s Holder share of the whisky bottled from the relevant Cask;

“**Token Holder**” means a person who:

- (a) has purchased a Token for a share in the relevant Cask; or
- (b) to whom a Token has been validly transferred for a share in the relevant Cask

and has been entered as the Token Holder in the Register;

“**Trading Platform**” means the online tokenised securities trading platform operated by Chintai or such other Trading Platform as appointed by the Issuer from time to time;

1.2 Unless otherwise specified:

- 1.2.1 a reference to each gender includes all other genders;
- 1.2.2 a reference to the singular includes the plural and vice versa;
- 1.2.3 references to clauses, sub-clauses, Schedules and/or Appendices (if any) are to clauses and/or sub-clauses of and Schedules and/or Appendices (if any) to these Conditions and references in a Schedule or part of a Schedule are to a paragraph of that Schedule or that part of that Schedule;
- 1.2.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
- 1.2.5 the words ‘include’, ‘includes’ and ‘including’ are deemed to be followed by the words ‘without limitation’;
- 1.2.6 the words and phrases ‘other’, ‘including’ and ‘in particular’ or similar words shall not restrict the generality of any preceding words or be construed as being limited to the same class, acts, things or matters as the preceding words where a wider construction is possible;
- 1.2.7 an obligation not to do something includes an obligation not to cause or allow that thing to be done; and
- 1.2.8 clauses headings in these Conditions are inserted for convenience only, have no legal effect and shall be ignored in the interpretation of these Conditions.

## **2 Application of these Conditions**

- 2.1 These Conditions apply to and form a binding contract between the Token Holder (from time to time) and the Issuer.
- 2.2 By obtaining a Token on the Trading Platform, whether by purchasing the Token from the Issuer or being transferred the Token from an existing Token Holder through the Trading Platform, the relevant Token Holder acknowledges that they have read and agree to be bound by these Conditions.
- 2.3 Each Token represents an option to be redeemed for a single Bottle of whisky (minimum 40% ABV) bottled from the Cask to which the Token relates, subject to these Conditions.

### 3 Transfer of Tokens and purchase of additional Tokens

- 3.1 If the Token Holder is purchasing the Token directly from the Issuer on the Trading Platform, the purchase price for the Token shall be the price stated on the Trading Platform for the Token at the time of purchase.
- 3.2 Additional Tokens may be purchased from the Issuer on the Trading Platform, subject to the maximum number of Tokens available for purchase. If the Issuer does not have any more Tokens available to sell, additional Tokens may be obtained from other token holders on the Trading Platform.
- 3.3 Additional Tokens may be purchased from other token holders on the Trading Platform. If a Token is purchased from another Token Holder, the purchase price shall be the purchase price offered by the Token Holder for the Token.
- 3.4 The Token Holder acknowledges and agrees that the value of the whisky represented by the Tokens is assumed to appreciate in value as the Cask matures and the price payable on the Trading Platform to purchase additional Tokens may fluctuate as a result.
- 3.5 These Conditions shall be binding on the new Token Holder in respect of any transfer of a Token by an existing Token Holder.
- 3.6 Where a Token is purchased from the Issuer, the purchase price includes the Issuer's estimated storage costs for the Cask and Bottles from the date of purchase to the end of the Initial Storage Period. Notwithstanding the foregoing, the Issuer reserves the right to make additional charges to the Token Holder where the Issuer incurs increases in any additional storage costs incurred in respect of the Cask and/or Bottles whilst under the Issuer's control both during the Initial Storage Period and Further Storage Period (if applicable). Such charges will require to be settled in accordance with Clause 5.5 and will be regarded as Additional Charges for such purpose.
- 3.7 A ledger of the ownership of the Tokens will be maintained through the blockchain and changes in ownership of Tokens monitored through the Trading Platform ("**Register**") which will verify the following information in relation to the Tokens:
  - 3.7.1 the names, contact details and address of the Token Holders for the time being;
  - 3.7.2 the number of Tokens held by each Token Holder;
  - 3.7.3 the date at which the name of the Token Holder is entered in respect of the Tokens registered in its name;
  - 3.7.4 the unique blockchain identifier of each Token;
  - 3.7.5 the transfers and changes in ownership of the Tokens.
- 3.8 The Issuer shall be entitled to rely on the Register as definitive as regards ownership and other rights in connection with any Token.
- 3.9 If:
  - 3.9.1 an entry is omitted from the Register;
  - 3.9.2 an entry is made in the Register otherwise than in accordance with these Conditions;
  - 3.9.3 an entry wrongly exists in the Register;
  - 3.9.4 there is an error or defect in any entry in the Register; or

3.9.5 default is made or unnecessary delay takes place in entering in the Register that any person has ceased to be the holder of a Token,

the Issuer will rectify the same promptly upon becoming aware of its existence.

3.10 Any reference to a Token Holder shall be deemed to be a reference to the person recorded as the holder of the relevant Token in the blockchain Register. No person claiming to be the Token Holder shall be acknowledged as the same unless they are identified as the relevant owner under the Register.

3.11 The Tokens when issued shall rank equally in all respects with each other.

#### **4 Cask maturation and monitoring**

4.1 The Issuer shall periodically:

4.1.1 re-gauge the spirit in the Cask to test the alcohol-by-volume (“**ABV**”) content of the spirit; and

4.1.2 establish the quantity of spirit remaining in the Cask.

4.2 Subject to clause 4.3, the Issuer shall endeavour not to commence bottling of the whisky in the Cask until the Target Bottling Date.

4.3 If the Issuer, acting reasonably, considers that:

4.3.1 the spirit in the Cask has or is likely to have an insufficient ABV content to fulfil the Projected Bottle Yield at the Target Bottling Date; or

4.3.2 there is or is likely to be an insufficient volume of spirit in the Cask to fulfil the Projected Bottle Yield at the Target Bottling Date,

the Issuer may at their discretion choose to bottle the spirit in the Cask prior to the Target Bottling Date where required in order to fulfil the Projected Bottle Yield on the Actual Bottling Date. This is to ensure that there are sufficient Bottles produced to satisfy the Projected Bottle Yield. Bottling of spirit prior to the Target Bottling Date shall not constitute a default by the Issuer of any of its obligations under these Conditions.

#### **5 Redemption of Tokens**

5.1 Tokens may only be redeemed in the circumstances specified in and in accordance with this clause 5, subject to clause 6.

5.2 Once the whisky has been bottled, the Issuer will arrange for storage of the Bottles on the Token Holder’s behalf at a HMRC bonded storage warehouse of the Issuer’s choice.

5.3 Following bottling of the whisky, the Issuer will itself or through Chintai give notice to all Token Holders through the Trading Platform that the Tokens are able to be redeemed for the Bottles. The Token Holder will be required to transfer a Token to the Issuer to exercise its option to redeem the Token for a Bottle.

5.4 At least three months prior to expiry of the Initial Storage Period of the relevant Cask the Issuer will itself or through Chintai give notice to all Token Holders through the Trading Platform of:

5.4.1 whether the Issuer at its entire discretion will offer a Further Storage Period for the Bottle;

- 5.4.2 anticipated storage and other costs which will be incurred during the Further Storage Period, where applicable (the “**Additional Charges**”). Such notice and the Additional Charges payable will be updated at regular intervals and at least every three months on the Trading Platform.
- 5.5 The Token Holder must exercise the option to redeem the Token prior to the expiry of the Initial Storage Period or, if applicable, the Further Storage Period. If it fails to do so, the redemption option shall lapse and the Issuer shall be free to dispose of the Bottle with full title in accordance with clause 6.2 with no refund payable to the Token Holder of the price paid for the Token. If the Token Holder exercises the option to redeem the Token prior to the expiry of the Initial Storage Period or Further Storage Period (as applicable) it acknowledges that the relevant Bottle will not be made available for delivery or collection unless or until all Additional Charges have been paid. The Issuer shall have absolute discretion to invoice the Additional Charges to the Token Holder directly or instruct Chintai to charge the Additional Charges to the Token Holder’s account on the Trading Platform and the Token Holder irrevocably authorises Chintai to charge the Additional Charges to its account with the Trading Platform and remit such charged amount to the Issuer. If Additional Charges are accrued for 3 months in aggregate and remain outstanding at the end of the last day of such period, if not paid in full within 7 days following such date the Token Holder acknowledges the Token Holder’s interest in the Bottle shall lapse on the expiry of such 7 day period and the Issuer shall be free to dispose of the Bottle with full title in accordance with clause 6.2 with no refund payable to the Token Holder of the price paid for the Token.
- 5.6 The Token Holder must contact the Issuer to arrange for delivery of the Bottle(s) by its nominated carrier. The Issuer may, on request, arrange for delivery of the Bottle(s) to the Token Holder, on the Token Holder’s behalf. The Token Holder shall be required to pay all packaging charges, shipping charges, delivery charges and Tax (including for the avoidance of doubt all duty payable on the removal of the Bottle from bond) and the Issuer’s associated administration costs associated with the delivery of the Bottle to the Token Holder’s chosen delivery address prior to dispatch of the Bottle. All such amounts must be paid to the Issuer prior to shipment of the Bottle and if not done within 14 days of the Token Holder’s exercise of the option to redeem the Token shall be deemed to have lapsed and the Issuer shall be free to dispose of the Bottle with full title in accordance with clause 6.2 with no refund payable to the Token Holder of the price paid for the Token. The Issuer holds absolute discretion on the permitted geographical territory (country) for shipping the bottle. For example, there may be countries that ban or restrict import of alcohol due to onerous or restrictive import policies or due to sanctions. In this scenario the Issuer can arrange for the bottle to be directly collected from the United Kingdom.
- 5.7 Risk in the Bottle shall pass to the Token Holder at the time the Token Holder’s nominated carrier takes possession of the Bottle. Title in a Bottle shall pass to the Token Holder on the Token Holder transferring the corresponding Token to the Issuer and full payment of all shipping costs, Tax, delivery charges and any storage charges incurred by the Issuer (including Additional Charges where applicable).
- 5.8 Once the Token has been transferred to the Issuer and the Bottle has been dispatched for delivery, or the Token being redeemed or lapsing, the Issuer shall “burn” the Token, removing the Token from circulation and rendering it no longer tradeable, transferable for monetary value or redeemable for any further Bottles.

## **6 Token Holder default**

- 6.1 If the Token Holder:
- 6.1.1 fails to pay any Tax required for the delivery of the Bottle; or
  - 6.1.2 does not pay any excess storage costs for the Bottle to the Issuer; or
  - 6.1.3 fails to redeem the Token before the expiry of the Initial Storage Period or, if applicable, the expiry of the Further Storage Period,

the Issuer may at its discretion invalidate the Token for further trading or redemption for the Bottle and dispose of the Bottle in accordance with clause 6.2 with full title with no refund payable to the Token Holder of the price paid for the Token.

6.2 The Issuer shall be free to dispose of a Bottle over which the Issuer has the right of disposal under clauses 5.5, 5.6 or 6.1 by selling the Bottle either directly at market price or via auction (such method to be determined by the Issuer at its discretion). Following the sale of the Bottle, the Issuer shall remit to the Token Holder's account on the Platform an amount equal to the net price received from the relevant buyer for the Bottle, less:

6.2.1 any unpaid Additional Charges;

6.2.2 any Tax, administration fees, additional storage costs, insurance costs, shipping and delivery fees incurred by the Issuer in connection with the sale;

6.2.3 any costs incurred by the Issuer in connection with the sale (including auction fees);

6.2.4 an amount equal to 10% of the total purchase price paid (less VAT or sales tax if applicable) by the buyer for such Bottle (prior to deduction of the aforementioned costs) which the Token Holder authorises the Issuer to retain as its fee for facilitating the sale of the Bottle,

such amount being the "**Net Sale Proceeds**".

6.3 The Issuer's remittance of the Net Sale Proceeds to the Token Holder shall be in full and final discharge of any obligation it has to the Token Holder in respect of the Token and/or Bottle.

## **7 Circumstances in which redemption cannot occur**

7.1 The Token Holder may not exercise the option to redeem the Token in any of the following circumstances:

7.1.1 the Initial Storage Period or, if applicable, the Further Storage Period has expired;

7.1.2 the Token Holder has its access to the Trading Platform suspended or revoked and such access is not reinstated to enable the Token Holder to redeem the Token prior to the expiry of the Initial Storage Period or, if applicable, the Further Storage Period; or

7.1.3 loss of the relevant Cask and/or Bottle occurs for any reason including without limitation fire, flood, contamination, earthquake or deterioration of the spirit within;

7.1.4 the Bottle has been made available for sale to a third party in accordance with clause 6.2;

7.1.5 the Token Holder has failed to pay any outstanding Tax or charges payable by it in accordance with these Conditions.

## **8 Limitation of liability**

8.1 Nothing in these Conditions shall limit or exclude the Issuer's liability in any way for:

8.1.1 death or personal injury caused by negligence;

8.1.2 fraud or fraudulent misrepresentation; or

8.1.3 any other losses which cannot be excluded by applicable laws in Scotland.

- 8.2 The Issuer shall not be liable to a Token Holder for any losses, claims or expenses arising out of or in connection with:
- 8.2.1 any inability of the Token Holder to access any Token;
  - 8.2.2 any inability of the Token Holder to access the Trading Platform;
  - 8.2.3 any failure of the Token Holder to exercise its option to redeem a Token in accordance with these Conditions.
- 8.3 Without limitation to clause 8.1, the Issuer excludes all liability to the Token Holder whether under contract, delict (including negligence) or otherwise for any special, indirect or consequential losses.
- 8.4 If the relevant Cask is destroyed prior to the Actual Bottling Date, subject to the Token Holder transferring the Token to the Issuer and in lieu of redemption of the Token for the Bottle, and subject to the Issuer being paid under the relevant policy under the Issuer's insurance policy for the same, the Issuer shall pay to the Token Holder an amount of the insurance proceeds received in such proportion as follows:

$$\frac{\text{Total paid out under policy}}{\text{Total NFTs issued}} \times \text{Number of NFTs held by Token Holder.}$$

The Token Holder acknowledges and agrees that any sums paid to it by the Issuer pursuant to this clause 8.2 shall be in full settlement of any and all past, present and future obligations and liabilities owed to the Token Holder by the Issuer pursuant to these Conditions and the Token Holder acknowledges and agrees that it shall be excluded from any further rights and remedies in respect of the same whether in contract, delict, statute, at common law or otherwise.

- 8.5 Without limitation to clause 8.1, the Issuer's maximum liability to the Token Holder, whether in contract, delict or otherwise, will in no circumstances exceed the least of: (a) the price for which the Token was purchased from the Issuer; or (b) the price for which the Token Holder purchased the Token from the previous Token Holder through the Trading Platform; or (c) the insured price of the liquid correlated to the Token.

## 9 Notices

- 9.1 Notices and other communications shall be sent to:
- 9.1.1 The Issuer at:
    - Address: The Whisky Bond, 2 Dawson Rd, Glasgow, United Kingdom, G4 9SS
    - Email: info@whiskybloc.com
  - 9.1.2 The Token Holder using the contact details associated with the Token Holder's account on the Trading Platform.
- 9.2 Notices may be given, and are deemed received:
- 9.2.1 by hand: on receipt of a signature at the time of delivery;
  - 9.2.2 by first class Royal Mail Signed For post: at 9.00am on the second Business Day after posting;
  - 9.2.3 when sent internationally, by international tracked and signed post: at 9.00am on the fourth Business Day after posting.
  - 9.2.4 by email: at 9.00am on the next Business Day after sending.

9.3 All notices must be in English.

9.4 This clause does not apply to notice given in legal proceedings, arbitration or other dispute resolution proceedings.

## **10 Disclaimer**

The Token Holder acknowledges and agrees that the appreciation of the whisky as an asset is not guaranteed and that all investments are subject to risk.

## **11 Assignment**

The Issuer may transfer any of its rights or obligations under these Conditions to any third party by giving notice of the same to the Token Holder. The Token Holder may not, other than by transferring a Token to a third party through the Trading Platform, assign or otherwise deal with in any way with any right or obligation it has under these Conditions.

## **12 Third party Rights**

No person other than the Issuer or the current Token Holder shall have any right to enforce any provision of these Conditions pursuant to the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.

## **13 Waiver**

No failure, delay or omission by the Issuer in exercising any right, power or remedy provided by law or under these Conditions shall operate as a waiver of the same nor preclude or restrict any future exercise of that or any other such power, right or remedy. No single or partial exercise of any right, remedy or waiver shall prevent any future exercise of it or of any other right, power or remedy.

## **14 Governing law and jurisdiction**

These Conditions are governed by and shall be construed in accordance with the laws of Scotland. Any action, dispute, claim or proceeding arising out of in connection with these Conditions shall be subject to the exclusive jurisdiction of the courts of Scotland.