
GENERAL TERMS AND CONDITIONS

concerning the purchase and sale of whisky via



Sassenheim

May 2022 Version

Article 1 Definitions

Account: A personal account to be created by the Client on THE SWEX that is exclusively accessible with the Access Details, with which the Client can gain access to THE SWEX and by doing so can purchase and sell Bottles pursuant to a Purchase Agreement and can conclude a Custodianship Agreement.

Calling off/Call-off: The issuing of a written notification by the Client to SWI whereby the Client unambiguously communicates that s/he wishes to take control and custody of (a) Physical Bottle(s) held in custody by SWI, which notification is deemed to be a cancellation of the Custodianship Agreement concerning this/these Physical Bottle(s).

General Terms and Conditions: the present general terms and conditions in the version applicable at any particular time.

Custody Fee: The regular fee payable by the Client to SWI on account of the Custodianship Agreement for the custody of Physical Bottle(s), which fee is calculated on the grounds of the Scale.

Bottling Costs: The costs associated with the bottling of whisky in bottles at the end of the SOMP, which costs are borne by SWI.

Bottle(s): (A) bottle(s) of whisky which is/are offered for sale via THE SWEX, also including Virtual Bottles and Vaulted Bottles.

Fraction: The portion of the whisky in a Cask that remains after bottling, in other words a portion that is insufficient to fill a bottle completely in the measure of capacity applicable to the bottling process in question (0.7 litres or otherwise).

Physical Bottle(s): (A) bottle(s) of whisky, including Vaulted Bottles, which are offered for sale via THE SWEX, not being Virtual Bottles.

Vaulted Bottle(s): Bottles designated as such by SWI on THE SWEX and Bottles offered there by a Vendor which have to stay in the custody of SWI during the Mandatory Retention Period pursuant to a Custodianship Agreement and which can only be traded via THE SWEX during the Mandatory Retention Period.

Client: A (potential) client of SWI, being a Purchaser, a Vendor, a visitor and/or user of THE SWEX, or the party which is deemed to be a customer or depositor on account of a Deposit Agreement.

Purchase Agreement: The agreement concluded via THE SWEX between a Purchaser and a Vendor relating to the purchase and sale of (a) Bottle(s), which agreement is deemed to have been formed by the Purchaser entering into this agreement with the Vendor via his/her Account and thereby (digitally) accepting these General Terms and Conditions. SWI is explicitly not a party to the Purchase Agreement.

Purchaser: Any natural person and/or legal entity that enters into a Purchase Agreement via THE SWEX.

Agreement: A Purchase Agreement and/or Custodianship Agreement.

Custodianship Agreement: An agreement for custody within the meaning of Article 7:600 (et seq) of the Dutch Civil Code between SWI and a Client on the grounds of which SWI undertakes to take custody of (a) Bottle(s) on behalf of the Client, which agreement is deemed to have been formed by the Purchaser entering into this agreement with SWI via his/her Account and thereby (digitally) accepting these General Terms and Conditions. The Custodianship Agreement relating to a Bottle ends by operation of law as of the sale of said Bottle. The Custodianship Agreement relating to Virtual Bottles is also deemed to contain an instruction to SWI to bottle the whisky concerned as of the end of the SOMP.

SWI: The private company with limited liability Scotch Whisky International B.V. – as well as its affiliated companies – also acting under the name of Scotch Whisky Investments, established in (2172 HV) Sassenheim at Industriekade 18 A, listed in the Commercial Register of the Chamber of Commerce under number: 51096072, user of these General Terms and Conditions, and holder of an AFM licence with registration number: 12042065;

THE SWEX: An online platform offered by SWI for the purchase and sale of Bottles, exclusively available on the website: my.theswex.com, and exclusively to be used by the Client by logging on to his/her Account.

Access Details: The username, password and/or registration number, with which the Client can gain access to, and use, THE SWEX by means of the Account.

Cask(s): (A) cask(s) of whisky (or parts thereof) which is held in custody by/on behalf of SWI and which is/are traded on THE SWEX in the form of Virtual Bottles.

Vendor: Any natural person and/or legal entity that offers (a) Bottle(s) for sale and/or sells (a) Bottle(s) on THE SWEX. SWI does not offer or sell any Bottles on THE SWEX in its own name and for its own account.

Mandatory Retention Period: i) The retention period applicable to Vaulted Bottles as displayed on THE SWEX and ii) the retention period applicable to Virtual Bottles, which period equal is to the SOMP of the Cask(s) containing the whisky which belong to this/these Virtual Bottle(s). During this period the Client is obliged to give the Vaulted Bottles and Virtual Bottles in custody to SWI pursuant to a Custodianship Agreement.

Shipment Fee: The regular fee as published on THE SWEX which SWI charges for the dispatch of the Bottle(s) to the Client which fee will, in any event, include the following costs: packaging costs, transport costs, transport insurance and postage.

Virtual Bottle(s): (A) Bottle(s) of whisky which, at the time of the formation of the Purchase Agreement, does/do not yet physically exist because the whisky concerned is still in (a) Cask(s). The Purchaser of a Virtual Bottle purchases, both actually and legally and subject to the conditions laid down in Article 10, a quantity of whisky in a Cask which, at the time of the purchase, is equal to the Virtual Measure of Capacity, which whisky will be bottled after expiry of the applicable SOMP, thereby converting the Virtual Bottle into a Physical Bottle.

Virtual Measure of Capacity: The measure of capacity of a Virtual Bottle as determined upon purchase.

SOMP: The Suggested Optimal Maturation Period for a Cask, as determined in years by SWI, which period SWI can unilaterally extend or shorten. The period as from the end date of the SOMP and the date of bottling is deemed to be part of the SOMP within the meaning of these General Terms and Conditions.

Article 2 Applicability

- 2.1 These General Terms and Conditions have not only been agreed for SWI, but explicitly also for the Vendor, as well as for third parties engaged by SWI in the execution of a Custodianship Agreement, as if the Vendor or these third parties had agreed these General Terms and Conditions themselves.
- 2.2 Unless expressly agreed otherwise in writing these Terms and Conditions are applicable to:
 - i) any Purchase Agreement;
 - ii) any Custodianship Agreement and all offers, bids, quotations and confirmations made by SWI concerning a Custodianship Agreement;
 - iv) all visits to, and use of, THE SWEX by a Client.
- 2.3 The applicability of any special and/or general terms and conditions used by the Client is explicitly rejected and the Client's special and/or general terms and conditions are explicitly not part of any Agreement.
- 2.4 Any deviations from these General Terms and Conditions must be agreed explicitly in writing and are only valid insofar as SWI has accepted and confirmed them in writing.
- 2.5 If one or more provisions of these General Terms and Conditions are in conflict with the provisions of any Agreement, the provisions of the Agreement will always prevail.
- 2.6 If any provision of these General Terms and Conditions or any Agreement is invalid or null and void, the other provisions of these General Terms and Conditions or Agreement will continue to apply in full. In that case the parties will start

negotiations in order to reach agreement about (an) alternative provision(s) which approximate(s) the original provision as much as possible.

- 2.7 If SWI does not consistently demand strict compliance with these General Terms and Conditions, this will not mean that the provisions are not applicable, or that SWI in any way loses the right to demand, in all instances, timely compliance with the provisions of these General Terms and Conditions.
- 2.8 The General Terms and Conditions will entirely replace earlier version(s) of SWI's General Terms and Conditions, as made available to the Client on (an) earlier date(s) and/or published by SWI on THE SWEX or otherwise and/or as have been accepted by the Client on THE SWEX.
- 2.9 SWI explicitly reserves the right to amend and/or supplement the General Terms and Conditions unilaterally from time to time. Amendments which are of secondary importance can always be implemented and are only announced by publication on THE SWEX. The Client will be informed in advance about material changes.
- 2.10 In these General Terms and Conditions references to the singular will also include the plural and vice versa, unless the content and purport of these General Terms and Conditions unambiguously provide otherwise.
- 2.11 In these General Terms and Conditions the term 'in writing' also means by e-mail.

Article 3 THE SWEX/Account/Access Details

- 3.1 THE SWEX is exclusively available on the website: my.theswex.com.
- 3.2 On THE SWEX the Client can exclusively purchase and sell Bottles.
- 3.3 The Client can exclusively use THE SWEX by means of his/her Account.
- 3.4 The Account is exclusively accessible with the Access Details.
- 3.5 The Client is obliged not to disclose the Access Details to third parties. The Client is bound by and liable for the (legal) actions performed using their Access Details via THE SWEX.
- 3.6 The Client ensures that all details, including but not exclusively contact and personal details, which SWI indicates are necessary or desirable, or with regard to which the Client should reasonably understand could be necessary for the provision of services (on behalf) of SWI, are issued to SWI on time, clearly and in full.
- 3.7 The Client is not permitted to use THE SWEX for unlawful or criminal conduct. As necessary and if, in its opinion, reasonable grounds exist, SWI is entitled to suspend or terminate Agreements, or access to or the use of THE SWEX, the Account or the Access Details.
- 3.8 The Client indemnifies SWI against third-party claims relating to any violation of this Article 3.

Article 4 Conditions of purchase and sale of Bottles on THE SWEX

- 4.1 A Client can exclusively offer and sell Bottles via THE SWEX which have been given in custody to SWI by means of a Custodianship Agreement.
- 4.2 The Client can exclusively purchase Bottles by logging in to his/her account and by entering into a Purchase Agreement there with a Vendor, which Purchase Agreement is deemed to have been formed by the Purchaser (digitally) accepting these General Terms and Conditions.

- 4.3 The Client can exclusively sell Bottles by logging on to his/her account and by entering into a Purchase Agreement there with a Purchaser, which Purchase Agreement is deemed to have been formed by the Purchaser (digitally) accepting these General Terms and Conditions.
- 4.4 The purchase/sale of Bottles via THE SWEX can exclusively take place by means of a Purchase Agreement. Neither the Vendor nor the Purchaser is permitted to apply different and/or additional special and/or general terms and conditions to a purchase/sale of Bottles via THE SWEX.
- 4.5 A Client that purchases (a) Virtual Bottle(s) or Vaulted Bottle(s) agrees that s/he can only offer and sell this/these Virtual Bottle(s) or this/these Vaulted Bottle(s) during the Mandatory Retention Period via THE SWEX.
- 4.6 A Client that purchases (a) Virtual Bottle(s) or (a) Vaulted Bottle(s) is always bound, at the time of the purchase, to the Mandatory Retention Period applicable to that/those Virtual Bottle(s) or Vaulted Bottle(s) and can therefore not Call Off this/these Virtual Bottle(s) or Vaulted Bottle(s) during the Mandatory Retention Period.
- 4.7 Only adults who are legally competent to enter into binding agreements can enter into an agreement via THE SWEX.

Article 5 Transaction costs/Custody Fee/Shipment Fee

- 5.1 An Account can be created and used free of charge.
- 5.2 If the Purchaser chooses not to give the purchased Physical Bottle(s) to SWI in custody, or to Call Off the Physical Bottle(s) at any point in time, SWI will send the Physical Bottle(s), in return for payment of the Shipment Fee, to the delivery address indicated by the Purchaser in his/her Account.
- 5.3 SWI is entitled to change the Shipment Fee unilaterally from time to time. A change to the Shipment Fee is to be exclusively announced via publication on THE SWEX.
- 5.4 The bottling of a Cask transforms Virtual Bottles both legally and actually into Physical Bottles. The Client that consequently becomes the owner of these Physical Bottles can – unless the Mandatory Retention Period is applicable to the Physical Bottles thus created – opt for: i) custody of these Physical Bottles by SWI pursuant to a Custodianship Agreement to which the Custody Fee is applicable or ii) a Call-off of these Physical Bottles, after which SWI will send the Called-Off Bottles to the delivery address indicated in the Client's Account, to which the Shipment Fee is applicable.

Article 6 Portrayal of and communication about the Bottles on THE SWEX/authenticity guarantee

- 6.1 SWI aims to ensure that THE SWEX always portrays a complete, accurate and faithful specification, description and (photographic) illustration of the offered Bottles in order to enable an adequate assessment of the offered Bottles by the Client. However, SWI emphasises that it is possible that a portrayed illustration, specification or description differs from a Bottle purchased by the Client via THE SWEX because not all offered Bottles can be individually depicted, but only at product level, in other words that for some (less unique) Bottles the illustration displayed only serves as an illustration and may deviate from the Bottles purchased by the Client via THE SWEX. All specifications, (photographic) illustrations, descriptions and other communication on THE SWEX concerning the Bottles is posted with care. However, SWI cannot guarantee that there will be no discrepancies in this regard. Therefore, the Client cannot derive any rights from the displayed specifications, (photographic) illustrations and descriptions on THE SWEX. SWI therefore accepts no liability in this regard.
- 6.2 In the case of Virtual Bottles the Client cannot derive any rights from other qualitative characteristics or properties displayed, including but not exclusively the alcohol strength, taste and colour composition at the time of bottling.

Communication relating to qualitative characteristics or properties of Virtual Bottles merely indicate expectations and are only indicative. The Client cannot derive any rights from such communication.

6.3 SWI guarantees the authenticity of the Bottles.

Article 7 Maturation/evaporation/shelf life

- 7.1 Whisky matures exclusively in casks. There are certain risks associated with the ageing process, such as evaporation (both in volume and in alcohol strength) and the development of quality and/or taste. During the period that the whisky is stored in a cask a portion of the whisky (i.e. the so-called *Angels' Share*) evaporates. In general this is equal to a one-off amount of approximately 4% and after that an average of approximately 2% of the remaining volume per year, partly depending on the casks used.
- 7.2 In principle whisky cannot spoil on the condition that a bottle of whisky remains closed and that no oxygen can get to it. SWI any Client that takes custody of Physical Bottles itself to store the Physical Bottles in an upright position.
- 7.3 SWI does all it can, to the best of its knowledge and ability, to minimise the evaporation of whisky in Bottles and Casks which it has in its custody. Except in the case of attributable failure on the part of SWI in the fulfilment of its obligations on the grounds of the Custodianship Agreement SWI does not accept any liability for loss or damage as a consequence of the evaporation of whisky in Bottles and Casks.

Article 8 Guarantees relating to quantity and quality

- 8.1 Notwithstanding the provisions of Article 7.1 and Article 9.7, it is deemed to be the case that if SWI (whether via THE SWEX or otherwise) has issued the Purchaser with a written, explicit and unconditional notification that a certain number of bottles of whisky can be bottled from a certain Cask as of the end of the SOMP in a bottle size indicated by SWI (i.e. 0.7 litres of otherwise), this notified number will be deemed to be a guarantee. If and insofar as any obligation to compensate loss or damage might arise for SWI on account of the aforementioned guarantee, SWI will be entitled to provide non-monetary compensation for this loss or damage by providing alternative whisky products which are comparable in terms of market value.
- 8.2 During the SOMP SWI monitors the (annual) (development in) quality of the Casks. If SWI (whether via THE SWEX or otherwise) has issued the Purchaser with a written, explicit and unconditional notification that the whisky in a certain Cask will have a certain (measurable) quality after expiry of the (possibly extended or shortened) SOMP, this quality will be deemed to be a guarantee. If and insofar as any obligation to compensate loss or damage might arise for SWI on account of the aforementioned guarantee, SWI will be entitled to provide non-monetary compensation for this loss or damage by providing alternative whisky products which are comparable in terms of market value.

Article 9 SOMP/Mandatory Retention Period/power of disposal/bottling/dilution/Bottling Costs

- 9.1 Each Cask is subject to the SOMP determined by SWI as indicated on THE SWEX. SWI is entitled to extend or shorten the SOMP unilaterally in order to achieve the highest possible return on investment for the Client. During the SOMP SWI has the exclusive actual power of disposal over the Casks. SWI will always inform the Client properly, on time, in advance and in writing about a change to the SOMP, which notification will be accompanied by a proper explanation of the reason for the change.
- 9.2 If a Purchaser purchases a Virtual Bottle, the Purchaser undertakes to enter into a Custodianship Agreement with SWI as of the date of the purchase for the term of the Mandatory Retention Period, which will be equal to the remaining

SOMP of the Cask concerned to which the Virtual Bottle belongs. Call-off is impossible during the Mandatory Retention Period.

- 9.3 If a Purchaser purchases (a) Vaulted Bottle(s), the Purchaser undertakes to enter into a Custodianship Agreement with SWI as of the date of the purchase for the term of the Mandatory Retention Period, as indicated on THE SWEX. Call-off is impossible during the Mandatory Retention Period.
- 9.4 During the term of the Custodianship Agreement the Client cannot actually have disposal of the Bottle(s) (including but not exclusively: moving, treating, processing, taking custody or control, or giving custody or control to a third party, opening, etc.). During the term of the Custodianship Agreement the Client transfers the entire actual power of disposal in relation to the Bottle(s) to SWI, unless the parties explicitly agree otherwise in writing.
- 9.5 During the term of the Custodianship Agreement, the Client can always offer and sell the Bottle(s), also including Virtual Bottles and Vaulted Bottle(s), on the condition that the sale takes place via THE SWEX on the grounds of a Purchase Agreement. Other legal acts of disposal relating to the Bottle(s) are only permitted during the term of the Custodianship Agreement based on the prior written consent of SWI.
- 9.6 In the event that the SOMP is extended, the term of the Custodianship Agreement will be extended accordingly, on the grounds of which SWI will also retain the actual power of disposal over the Cask concerned for the term of the extension of the SOMP, which means (among other things) that the Client cannot determine the moment at which the whisky in the Casks is bottled.
- 9.7 As a consequence of an extension to the SOMP it may be that fewer Bottles are bottled from a Cask. However, in such instances the future value per Bottle is expected to increase more than proportionally. In the event of an extension to the SOMP the Client cannot derive any rights from the guarantee as referred to in Article 8.1. The aforementioned guarantee then lapses and is replaced by a guarantee relating to a number of bottles of whisky yet to be determined by SWI that can be bottled as of the end of the extended SOMP in a bottle size indicated by SWI (i.e. 0.7 litres or otherwise), which replacement guarantee is also subject to the final sentence of Article 8.1. If necessary SWI can also shorten the SOMP. The specific developments concerning the number of bottles of whisky to be bottled and the expected change in value is different for each Cask.
- 9.8 SWI's aim is (in principle) for the whisky in a Cask to have a minimum alcohol percentage of 46% after expiry of the (possibly extended or shortened) SOMP. If SWI establishes that the whisky in a Cask has a higher alcohol percentage than 46% after expiry of the (possibly extended or shortened) SOMP, SWI reserves the right to dilute the whisky in question in such a way that an alcohol percentage of 46% is achieved.
- 9.9 Whisky in a Cask that has an alcohol percentage of between 46% and 40% after expiry of the (possibly extended or shortened) SOMP is (in principle) bottled at cask strength.
- 9.10 The Purchaser of (a) Virtual Bottle(s) does not have to pay any Bottling Costs. The Bottling Costs are payable by SWI.

Article 10 Virtual Bottles and Fractions

- 10.1 Subject to the conditions of this Article 10 the Purchaser of a Virtual Bottle purchases, both actually and legally, a quantity of whisky in a Cask which, at the time of the purchase, is equal to the Virtual Measure of Capacity, which whisky will be bottled after expiry of the applicable SOMP, thereby converting the Virtual Bottle into a Physical Bottle.
- 10.2 Notwithstanding the provisions of Article 10.1 SWI always reserves the right to determine the measure of capacity of the whisky bottles unilaterally when bottling the whisky from a Virtual Bottle, which measure of capacity can deviate from the Virtual Measure of Capacity, as a result of which Fractions may arise.

- 10.3 With reference to the provisions of Article 7.1, an extension to the SOMP can lead to more evaporation, as a result of which fewer Physical Bottles may be bottled from a Cask. As a result the quantity of whisky as referred to in Article 10.1 can also be worse, meaning that not every Virtual Bottle may transform into a (completely full) Physical Bottle, thereby creating Fractions.
- 10.4 If a Fraction arises, the Client will have the option i) of selling this Fraction to SWI for a reference price yet to be determined which will be based on the market price of recent comparable bottlings of the same age (as specified on THE SWEX) or ii) of purchasing other Fractions, if available, for a reference price yet to be determined which will be based on the market price of recent comparable bottlings of the same age (as specified on THE SWEX), in order to achieve a completely full bottle in the measure of capacity applied when bottling.

Article 11 Custody and insurance

- 11.1 Except in the event that the Mandatory Retention Period is applicable, the Purchaser has the option, when purchasing (a) Physical Bottle(s), of giving this/these Physical Bottle(s) to SWI in custody. SWI has at its disposal storage spaces which are specifically designed for the custody of these Physical Bottles. Within this framework SWI will take all reasonably required security measures. The Physical Bottles given in custody to SWI are insured at replacement value. A copy of the insurance policy will be made available on request.
- 11.2 The whisky belonging with Virtual Bottles will still be in (a) Cask(s) at the time of the purchase. Casks are to be held in custody in the United Kingdom by/on behalf of SWI. Casks cannot leave the United Kingdom before having been bottled. Casks are stored in the United Kingdom in so-called 'bonded warehouses' and therefore continue to be free of duty and VAT under the applicable legislation and regulations of the United Kingdom. SWI requires the distillery and/or manager of the *bonded warehouse* in question to take all reasonably required security measures. Casks are to be insured by/on behalf of SWI at replacement value plus 30%. SWI reserves the right to change the aforementioned cover within reason. A copy of the insurance policy will be made available on request.
- 11.3 If a Bottle becomes damaged or lost due to (among other things but not limited to) burglary, theft, fire or flooding, SWI will not be liable for more than the amount that is paid out accordingly by the insurer of the Bottle in question or the insurer of the distillery in question or (the manager of the) *bonded warehouse* as referred to in Article 11.2. If the insurer pays out a total amount relating to the loss of several Bottles, the total amount paid out will be divided proportionally, without SWI being obliged to compensate more.
- 11.4 The Dutch Tax and Customs Administration can seize goods from third parties in certain (exceptional) circumstances in connection with a number of taxes referred to in Article 22 of the Collection of State Taxes Act 1990 [Invorderingswet 1990]. This is the so-called Tax and Customs Administration's right of seizure. Third parties that believe they have a whole or partial right to movable property which has been seized can lodge an appeal with the director for the sale of the Bottles and by no later than within seven days after the day of the seizure. The Tax and Customs Administration will then respect the real ownership of the movable property. In view of the short period available for appeals, and given that SWI wants, on behalf of the Client, to avoid this period passing by unnoticed, the Client hereby authorises SWI to lodge such an appeal in the event of a situation as described in this Article 10.4 on behalf of the Client and to object to the seizure by indicating that the Bottles are owned by the Client. In no event can SWI be held liable or responsible for making an objection and the outcome of this objection. For the record SWI wishes to point out that if the aforementioned appeal does not lead to the desired result, the Client will be able to submit the matter to the competent civil court in order to assert his/her rights.

Article 12 Communication

- 12.1 The Client is obliged to check the confirmations, copies, invoices or other specifications sent to him/her by, or on behalf of, SWI immediately after receipt and to inform SWI immediately if any inaccuracy or incompleteness is observed. If the Client has not disputed the content of aforementioned notifications from SWI within 7 days after they can reasonably be deemed to have reached the Client, their content will be deemed as having been accepted by the Client.
- 12.2 The Client bears the own risk of malfunctions or any other defect in terms of the functioning of the e-mail address designated by the Client to SWI for communication and undertakes to maintain this address for the term of the Custodianship Agreement, or to inform SWI on time and in advance in writing about any change to the e-mail address. The Client ensures that all details which SWI indicates are necessary or desirable, or with regard to which the Client can reasonably understand ought to be necessary for the provision of services (on behalf) of SWI, are issued to SWI on time, clearly and in full. If the Client fails to issue these details, SWI cannot be held liable in any way for possible loss or damage which consequently results for the Client.
- 12.3 Notwithstanding the provisions of Article 11.2 above SWI reserves the right to communicate with the Client exclusively via the Account. During the Custodianship Agreement the Client undertakes to maintain his/her Account and to ensure that s/he always has access to his/her Account using the Access Details.

Article 13 No right of withdrawal

The Bottles qualify as goods, whereby the price 'links to fluctuations on the financial markets on which the trader has no influence' and also as alcoholic drinks 'of which the actual value depends on market fluctuations on which the trader has no influence', within the meaning of Article 6:230p under a. and f. of the Dutch Civil Code. Consequently the Purchaser cannot invoke the statutory right of withdrawal in relation to consumer purchases and/or remote purchases with regard to the purchase of (a) Bottle(s).

Article 14 Execution and end of the Custodianship Agreement

- 14.1 SWI will execute the Custodianship Agreement to the best of its insight and capacity and in accordance with the requirements of good workmanship.
- 14.2 SWI is entitled to have certain work on account of the Custodianship Agreement performed by third parties. The applicability of Articles 7:404, 7:407 paragraph 2 and 7:409 of the Dutch Civil Code is explicitly excluded.
- 14.3 The Client that concludes a Custodianship Agreement with SWI for Bottles which are not subject to a Mandatory Retention Period is always entitled to Call-off one or more Bottles, as a result of which the Custodianship Agreement will end immediately but (only) in relation to these Bottles. Consequently, the Call-off of (a) Bottle(s) is deemed to be a cancellation of the Custodianship Agreement in relation to these Bottles. After the Call-off SWI will send the Called-Off Bottles to the delivery address indicated in the Client's Account, with the Shipment Fee for this shipment being payable by the Client.
- 14.4 Notwithstanding the provisions of Article 14.5 below a Custodianship Agreement concerning Bottles which are subject to the Mandatory Retention Period can never be cancelled in between times. The term of the Custodianship Agreement is then equal to the Mandatory Retention Period, unless the term after expiry of the Mandatory Retention Period is extended.
- 14.5 In the event that the Client sells (a) Bottle(s) via THE SWEX, the Custodianship Agreement in relation to these Bottle(s) will immediately end by operation of law.

as that SWI demonstrates that it has incurred higher costs for extrajudicial and/or judicial fulfilment, which costs were reasonably necessary, these will all qualify for reimbursement.

- 16.5 SWI is always authorised to set off any payable or conditional claim vis-à-vis the Client, whether on behalf of itself or its contract party/parties or otherwise, against any counterclaim, whether payable or conditional or otherwise, of the Client vis-à-vis itself or its contracts party/parties. Claims in foreign currency will be set off at the exchange rate on the day of set-off.
- 16.6 Payments made by the Client always serve for successive settlement of:
- a. all payable interest and costs;
 - b. the longest outstanding invoices.

Article 17 Force majeure

- 17.1 If proper fulfilment by SWI is wholly or partially impossible as a consequence of one or more circumstances which cannot be attributed to SWI because they are not due to its fault, nor are for its account pursuant to the law, a (legal) act or generally accepted views (i.e. force majeure), SWI will be entitled to suspend execution of its obligations under the Custodianship Agreement, or to dissolve the Custodianship Agreement if fulfilment is permanently impossible. SWI will then not owe the Client any compensation.
- 17.2 Supplementary to the legal provisions the term force majeure means in these General Terms and Conditions all externally originating causes, whether foreseen or unforeseen, on which SWI cannot exert any influence and as a result of which SWI is unable to fulfil its obligations.
- 17.3 Force majeure includes, in any event (but not exclusively) epidemics and pandemics (including but not exclusively COVID-19), war, the threat of war, mobilisation, riot, sabotage, extreme weather conditions, fire, strikes, business and transport disruptions, a lack of raw materials or energy, delays in deliveries by suppliers and/or government measures which make fulfilment of the Custodianship Agreement impossible, the unavailability of THE SWEX or the unauthorised use of the Account or the Access Details by third parties, the non-functioning or faulty functioning of (Internet or communication) services of third parties or of SWI equipment or software.

Article 18 Liability restriction

- 18.1 Except in the event of gross negligence or intent, SWI is never liable for indirect loss or damage, including consequential loss or damage, such as loss of profit, immaterial loss or damage, trading loss, injury, losses and/or environmental loss or damage caused to (property of) the Client or third parties due to non-execution, incomplete execution or improper execution of a Custodianship Agreement.
- 18.2 Insofar as SWI is liable for any (legal) liability, the loss or damage to be compensated by SWI will always be limited to the amount paid out in the incident in question on account of (any) (liability) insurance (policies) taken out by SWI, or the amount to be received by SWI pursuant to (any) (liability) insurance (policies), and will, in any event, be maximised at the amount paid by the Client to SWI on account of the Custodianship Agreement related to SWI's liability.
- 18.3 The Client indemnifies SWI against all third-party claims resulting from and/or connected to the Custodianship Agreement.

18.4 Any liability claim vis-à-vis SWI lapses, in any event, at the end of one month after the Client has become, or should have become, aware of any loss or damage. The Client must inform SWI properly and with reasons about the loss or damage within the aforementioned period of one month, under pain of the lapsing of any (compensation) claim vis-à-vis SWI.

18.5 Contrary to the statutory periods of limitation all claims vis-à-vis SWI and/or (any) third parties engaged by SWI are subject to a period of limitation of 1 (one) year as from the date on which the loss or damage arose.

18.6 SWI can only be held liable for any loss or damage connected to the shipping of (a) Bottle(s) if and insofar as its insurance provides cover and for no more than the amount paid out by the insurer.

18.7 SWI accepts no liability for loss or damage to Bottles which the Client sends to SWI or to a third party designated by SWI – by whatever means – and which turn out to be damaged or diminished in value after shipping or after having been received, including in those instances in which any shipping instructions or recommendations of, or on behalf of, SWI or a third-party (shipper) indicated by SWI were fully complied with by the Client.

18.8 SWI is responsible for ensuring the management and accessibility of THE SWEX. SWI is not liable for loss or damage as a consequence of a power cut, connection outage, or another defect or malfunction affecting THE SWEX. SWI will rectify a malfunction, or arrange for it to be rectified, as soon as possible.

Article 19 Confidentiality

19.1 The Client is obliged to observe confidentiality with regard to any information with regard to which he or she knows, or reasonably should suspect, is confidential.

19.2 The Client will not disclose to third parties the content of Agreements, confirmations, bids, reports, recommendations and/or other written or otherwise communications by SWI.

Article 20 Privacy

20.1 SWI will keep or process the details and information which the Client issues to SWI and which SWI collects carefully and confidentially in accordance with the relevant applicable legislation, including but not exclusively the General Data Protection Regulation (GDPR).

20.2 The Client hereby gives SWI explicit permission to register and use his/her personal details, within the meaning of the law, exclusively for personal use of SWI (and to its affiliated companies). The Client gives SWI permission to inform him/her about (new) products and/or services and to be approached by SWI employees in order to provide information about (new) products and/or services. If the Client does not wish to receive any such information (any longer), the Client can contact SWI by e-mail, after which SWI will process the e-mail as soon as possible.

Article 21 Other stipulations

21.1 The Agreements make up the entire agreements between the parties and, insofar as not explicitly agreed otherwise, replace all previous verbal or written agreements between the parties on the matter.

21.2 The General Terms and Conditions can be consulted on and downloaded from THE SWEX. SWI explicitly reserves the right to amend the General Terms and Conditions unilaterally from time to time. Any change to the General Terms and Conditions will be communicated through publication on THE SWEX. A copy of these General Terms and Conditions can be obtained on request free of charge.

21.3 In the event of a discrepancy between the Dutch text of the General Terms and Conditions and the translation thereof in any other language, the original Dutch text will always take precedence.

Article 22 Applicable law and competent court

22.1 Dutch law applies exclusively to any Agreement, offer, bid, quotation and/or confirmation. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.

22.2 Any disputes on account of, or resulting from, an Agreement (or the formation thereof) must be exclusively submitted to the competent court in the district of Noord-Holland, located in Haarlem.

Article 23 Contact

Complaints, as well as questions and/or comments should be addressed to:

THE SWEX

Industriekade 18 A

2172 HV Sassenheim

Telephone number: +31 (0)252 222011

E-mail address: info@theswex.com