



Dusty Barrel Distillery Pty Ltd Founders Club Membership Form	
Member	Name: Address: Phone: Email:
Commencement Date	
Membership Period	Commencing on the Commencement Date and continuing indefinitely until terminated by either party
Membership Fee	A one-off payment of \$330 (inclusive of GST)

Member Acceptance of terms and conditions

I,, acknowledge that:

- I have read, reviewed and understood the attached terms and conditions;
- By signing this document I have agreed to become bound by the terms and conditions set out in this document.

Signed: _____

Name: _____

Date: _____



Terms and conditions

1 Membership and Term

1.1 Membership

The Member will have the benefit of the Membership Services.

1.2 Term

The Member's membership commences on the Commencement Date and will continue for the duration of the Membership Period, unless:

- (a) the membership is suspended or terminated prior to that date in accordance with these terms and conditions; or
- (b) the membership is extended or renewed by the Member.

1.3 Limits of membership

- (a) A membership grants only a permission by Dusty Barrel to a Member, individually, to use and enjoy the Membership Services, and a prospective Member should not view a membership as an investment or otherwise expect to derive some economic benefits from such membership.
- (b) Notwithstanding the Member's membership, the Member does not gain (by virtue of the membership) any rights to:
 - (i) access the Distillery Premises, other than with the consent of Dusty Barrel; or
 - (ii) any Products produced by Dusty Barrel.
- (c) Members shall not have rights beyond the period of their membership.

1.4 Classes of membership

Dusty Barrel may from time to time and at any time determine different classes of membership available to Members, and delineate:

- (a) which Member Services are available to each class of membership;
- (b) the Membership Fee payable for each class of membership; and
- (c) such other terms and conditions as Dusty Barrel deems appropriate for a particular membership class.

2 Services

2.1 Provision

Membership Services will be provided:

- (a) in a thorough and professional manner; and

- (b) to the standard and level of care required under any law.

2.2 Pricing

- (a) Certain Membership Services may require the Member to pay a fee or price (in addition to the Membership Fee) for certain Products or services, which may, in the absolute discretion of Dusty Barrel, be offered to the Member:
 - (i) at a discounted rate; or
 - (ii) prior to release to the general public.
- (b) Dusty Barrel will communicate its pricing for any Membership Services to the Member either in writing from time to time.
- (c) If the Member cancels the membership or any particular Membership Service which has been scheduled to be provided, Dusty Barrel may charge the member a cancellation fee.

2.3 Third party services

Dusty Barrel makes no warranty and accepts no responsibility or liability for:

- (a) any services provided by third party personnel (i.e. not employees, agents or contractors of Dusty Barrel); or
- (b) any Loss arising from the Member participating in any Membership Services, even if supervised by Dusty Barrel personnel.

2.4 Dusty Barrel personnel

- (a) The Member must not engage in, or allow, any conduct that would result in Dusty Barrel breaching a workplace law in respect of Dusty Barrel's personnel (e.g. harassment, or bullying of Dusty Barrel personnel).
- (b) The Member hereby indemnifies Dusty Barrel from and against any Claim or Loss arising out of or in connection with a breach of clause 2.4(a) of these terms and conditions.

3 Fees

3.1 Payment of Fees

The Member must pay:

- (a) the Membership Fee on or before the Commencement Date;
- (b) any fees payable for the provision of Membership Services;
- (c) the price payable for the purchase of any Products; and

- (d) any cancellation fees payable as a result of any breach of Dusty Barrel's cancellation policy.

3.2 Tax Invoice

- (a) Dusty Barrel will issue a tax invoice in respect of the fees incurred by the Member.
- (b) If a tax invoice is issued in respect of any particular service, it is payable immediately on the day that the service is provided and no credit terms will be extended to the Member.
- (c) The Member hereby indemnifies Dusty Barrel from and against all costs and expenses arising out of the Member's failure to pay any invoice as and when it falls due, including any interest and costs (including legal costs) associated with taking debt recovery action.

3.3 Suspension

Dusty Barrel may, at its absolute discretion:

- (a) suspend the Member's membership (which for the avoidance of doubt includes ceasing to provide the Membership Services); and/or
- (b) suspend the provision of any services in the event that the Member fails, refuses or neglects to pay its fees or disbursements as and when they fall due.

3.4 No refund

- (a) The Membership Fee is a non-refundable fee payable to Dusty Barrel in consideration for access to the Membership Services.
- (b) The Membership Fee is not refundable to the Member in the event that the membership is terminated for any reason prior to the end of the Membership Period.

4 Policies and procedures

4.1 Policies and procedures

- (a) Dusty Barrel may make such policies and procedures as it deems fit relating to the provision of the Membership Services.
- (b) Dusty Barrel may amend, update, revoke or replace any of its policies and procedures from time to time, and notify the Member of any changes.
- (c) The Member must at all times abide by all of Dusty Barrel's policies and procedures, including any changes thereto.
- (d) A Member's breach of any policy or procedure made by Dusty Barrel constitutes a material breach of these terms and conditions.

4.2 Dusty Barrel's policies

Without limiting the generality of clause 4.1, DUSTY BARREL's policies and procedures may cover:

- (a) rights of entry to the Distillery Premises;
- (b) use of social media, online message boards, and such other interactive methods of communication between Dusty Barrel and its Members (including communications and between Members);
- (c) offensive behaviour;
- (d) cancellation of prearranged services, cancellation fees payable and cancellation procedures; and/or
- (e) any other matter as Dusty Barrel deems appropriate.

5 Confidentiality & Privacy

5.1 Access

- (a) Dusty Barrel acknowledges that by reason or the membership, it will have access to the Member's confidential information, and the Member permits Dusty Barrel to use such information for all lawful purposes (including for the avoidance of doubt, for the purposes of direct marketing).
- (b) Dusty Barrel may grant the Member access to its Confidential Information to the extent necessary for Dusty Barrel to deliver the Membership Services.

5.2 Confidentiality obligations

The Member must:

- (a) keep any Confidential Information of Dusty Barrel in strict confidence, acknowledging it to be the valuable property of Dusty Barrel;
- (b) take all reasonable and necessary precautions to prevent the disclosure of any of Dusty Barrel's Confidential Information;
- (c) not copy, use or allow any person to copy or use, Dusty Barrel's Confidential Information;
- (d) not, except in the ordinary and proper performance of its obligations under these terms and conditions, disclose Dusty Barrel's Confidential Information to any third party;
- (e) not allow any unauthorised person to have access to places where Dusty Barrel's Confidential Information is displayed, reproduced or stored; and
- (f) not remove, delete, erase or destroy any of Dusty Barrel's Confidential Information

without the prior written consent from Dusty Barrel.

5.3 Permitted disclosure

- (a) A party may disclose the Confidential Information of another party if:
 - (i) it is permitted by law to do so;
 - (ii) the information is already in the public domain, other than by breach of these terms and conditions; or
 - (iii) the disclosure is to its personnel and/or professional advisors, who are themselves bound by duties of confidentiality.
- (b) Subject to clause **Error! Reference source not found.**, prior to disclosing any Confidential Information in accordance with these terms and conditions, the Member must notify Dusty Barrel of its intention to disclose the Confidential Information and afford Dusty Barrel a reasonable opportunity to take any lawful steps available to it to prevent the disclosure.

5.4 Privacy

- (a) The parties must deal with any personal information as follows in accordance with the Australian Privacy Principles and any other law which is applicable to the handling of personal information.
- (b) The Member acknowledges that the primary purpose for which Dusty Barrel is collecting their personal information is the promotion of products and services to the Member. The Member consents to the use of their personal information for the purposes of direct marketing conducted by Dusty Barrel and/or third parties.
- (c) The parties must:
 - (i) take reasonable steps to prevent the misuse, unauthorised access or wrongful disclosure of any personal information which comes into their possession; and
 - (ii) notify the other party immediately upon becoming aware of any breach of this clause 5.4.

6 Intellectual Property

All Intellectual Property created by Dusty Barrel and provided to the Member during the Membership Period vests in and remains the exclusive property of Dusty Barrel.

7 Termination

7.1 Termination rights

Dusty Barrel may immediately terminate the Member's membership prior to the expiry of the Membership Period if the Member:

- (a) breaches these terms and conditions and does not remedy that breach within a reasonable time after it is notified of the breach; or
- (b) repeatedly and persistently breaches these terms and conditions (including by failing to comply with Dusty Barrel's policies and procedures), even if each discrete breach is remedied.

7.2 Effect of Termination

Upon termination of the Member's membership:

- (a) the Member must pay all outstanding fees owed or accrued to Dusty Barrel up to the date of termination;
- (b) the Member's right to any Membership Services will cease;
- (c) each party must return, delete or destroy all Confidential Information or Intellectual Property it holds belonging to the other party.

8 Limitation of Liability

8.1 No warranty

- (a) Except as expressly set out in these terms and conditions (but subject to any non-excludable law or regulation), Dusty Barrel makes no warranty whatsoever in relation to the Products or Membership Services.
- (b) Dusty Barrel will not be liable for any Loss (including for the avoidance of doubt any loss, damage, liability, cost, expense, consequential loss, loss of profits, or any like claims whatsoever) arising out of or connection with:
 - (i) the provision of the Membership Services to the Member; or
 - (ii) the supply of any Products to the Member.

8.2 Release and Indemnity

- (a) The Member hereby indemnifies Dusty Barrel and will keep Dusty Barrel indemnified from and against any Loss or any Claims made against Dusty Barrel (whether by the Member or otherwise) in relation to the provision of the Membership Services and any Products.
- (b) The Member hereby releases Dusty Barrel from and against any Claims they have, or may in the future have, arising out of or in

connection with the provision of the Membership Services and any Products.

8.3 Limitation of Liability

- (a) If a non-excludable term, condition, guarantee, or warranty applies to the relationship between Dusty Barrel and the Member by operation of an applicable law (including the Australian Consumer Law), then to the maximum extent permitted by law the liability of Dusty Barrel for breach of such term, condition, guarantee or warranty will be limited to (at Dusty Barrel's election):
- (i) in the case of goods:
 - (A) replacement of the goods or the supply of equivalent goods;
 - (B) the cost of replacing the goods or acquiring equivalent goods;
 - (C) the repair of the goods; or
 - (D) the cost of having the goods repaired; and
 - (ii) in the case of services:
 - (A) supplying the service again; or
 - (B) paying the cost of having the Services supplied again.
- (b) Dusty Barrel's liability for any Claim or Loss arising out of or in connection with the membership will be limited to a refund of any amounts paid by the Member as a Membership Fee or for any Membership Services.

8.4 Warning – Victorian members

- (a) The rights of Members to make a claim against Dusty Barrel under the *Australian Consumer Law and Fair Trading Act 2012* (Vic) (**Act**) if the Member is killed or injured because the activities contemplated in these terms and conditions were not:
- (i) supplied with due care and skill;
 - (ii) reasonably fit for their purpose,
- are excluded, restricted or modified in the way set out in this clause 8.4.
- (b) Under the Act, several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that Dusty Barrel is required to ensure that the recreational services it supplies to the Member:
- (i) are rendered with due care and skill; and

- (ii) are reasonably fit for any purpose which the Member, either expressly or by implication, make known to Dusty Barrel; and
- (iii) might reasonably be expected to achieve any result the Member has made known to Dusty Barrel.

Under section 22 of the Act, Dusty Barrel is entitled to ask the Member to agree that these statutory guarantees do not apply to the Member.

- (c) If the Member signs the Membership Form, the Member will be agreeing that their rights to sue Dusty Barrel under the Act if the Member is killed or injured because the services provided were not in accordance with the above statutory guarantees, are excluded, restricted or modified in the way set out in these terms and conditions.
- (d) Note: the change to the Member's rights, as set out in these terms and conditions, do not apply if the Member's death or injury is due to gross negligence on Dusty Barrel's part. Gross negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission.

9 GST

Fees quoted on the Membership Form are exclusive of GST, unless expressly stated otherwise. In addition to the fee payable for the Services, the Member must pay to Dusty Barrel, on demand, the GST payable in respect of the supply of the Services. For the purposes of these terms and conditions, "GST" has the same meaning as that word is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

10 General

10.1 Survival

- (a) Any provision of these terms and conditions which is intended to operate after the end of the membership will survive termination or expiry of the membership.
- (b) Without limiting the generality of clause 10.1(a), any indemnity or release given by the Member in favour of Dusty Barrel is intended to survive the termination of the Member's membership.
- (c) If any clause (or subclause) in these terms and conditions is void or unenforceable,

then that clause or subclause (as the case may be) is severed or read down to the minimum extent possible and the rest of these terms and conditions remain in force.

10.2 Governing Law

These terms and conditions are governed by the laws of Victoria and the parties submit to the jurisdiction of Victoria.

11 Definitions and Interpretation

In this terms and conditions:

- (a) **Claim** means any claim, demand or cause of action whether arising in contract, tort, under statute or otherwise;
- (b) **Commencement Date** means the date that the Member's membership commences, as specified on the Membership Form;
- (c) **Confidential Information** means any information concerning the a party including, but not limited to, information concerning its health, personal details, training plans and routines, financial affairs, fee lists, policies, guidelines, and any other commercially valuable information of whatever description and any information exchanged, which is not in the public domain (other than as a result of a breach of any obligation under these terms and conditions), and which comes to the other party's attention;
- (d) **Distillery Premises** means 451 Tschampions Road, Macclesfield VIC 3782, or such other premises that may be occupied by Dusty Barrel from time to time;
- (e) **Dusty Barrel** means Dusty Barrel Distillery Pty Ltd (ACN 618 869 588) as trustee for the Spirit of Hope Discretionary Trust and, where applicable, includes any servant, agent, contractor or employee of that company;
- (f) **Intellectual Property** means all present and future rights to industrial and intellectual property including, without limitation, any inventions and improvements, trade marks (whether registered or common law trade marks), design, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data or formula, techniques and Confidential Information of a party;
- (g) **Loss** means any liability, cost or expense suffered or incurred by a party (whether actual or contingent);
- (h) **Member** means the party identified as the member on the Membership Form;
- (i) **Membership Fee** means the fee payable by the member, as may be specified on the Membership Form or communicated to the Member from time to time;
- (j) **Membership Form** means the form signed by the Member on the first page of these terms and conditions;
- (k) **Membership Period** means the terms of the Member's membership, as specified on the Membership Form;
- (l) **Membership Services** means the products and services that Dusty Barrel supplies to its "Founders Club" from time to time, as displayed on its website, social media page or communicated to the Member from time to time, and as at the Commencement Date includes:
 - (i) a regular newsletter (delivered electronically);
 - (ii) a welcome pack containing a selection of non-beverage related Products;
 - (iii) access to a private facebook group for all Members;
 - (iv) early notification of new releases of Products;
 - (v) subject to availability, a 500ml bottle "White New Make" whisky (anticipated to be delivered approximately 9 months after the Commencement Date); and
 - (vi) subject to availability, a 500ml bottle of either malt or wheat whisky (anticipated to be delivered approximately 6 years after the Commencement Date); and
- (m) **Products** means such products as may be supplied by Dusty Barrel to its members from time to time, including: and
 - (i) alcoholic and non alcoholic beverages;
 - (ii) Dusty Barrel branded promotional material;
 - (iii) key rings, glasses, Shirts and T-shirts; and
 - (iv) such other products as Dusty Barrel may supply in its sole and absolute discretion.