

# SMITH & TAYLOR

PRIVATE CELLARS

## ACCOUNT APPLICATION

*All clients are required to complete this form and return a copy to:*

Smith & Taylor Limited, Chelsea Bridge Cellars, 1c Broughton Street, London SW8 3QJ, England  
Telephone: +44 (0)20-7627 5070 • Fax: +44 (0)20-7622 8235 • E-mail: cellar@smithandtaylor.com

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Full title of Account Holder

*(please state whether 'Individual', 'Limited Company', 'Partnership' or 'Firm')*

Owner of cellar

Owner's address

Postcode

Mobile phone number

Telephone number (home)

Telephone number (office)

Fax number (home)

Fax number (office)

Email (home)

Email (office)

Name of person responsible for managing account *(if different from above)*

Manager's address

Postcode

Mobile phone number

Telephone number (home)

Telephone number (office)

Fax number (home)

Fax number (office)

Email (home)

Email (office)

Cellar requirements *(tick boxes as required)*:

Valuation/Appraisal Fine Wine Storage (with extended liability, subject to some exclusions)

Fine Wine Storage only (with limited liability)

Nursery (single case) Cellarage (with extended liability, subject to some exclusions)

**PLEASE OPEN AN ACCOUNT ON MY/OUR BEHALF SUBJECT TO SMITH & TAYLOR'S TERMS OF BUSINESS**

I have read Smith & Taylor's Terms and Conditions of Business shown with this document and I confirm that all transactions between Smith & Taylor and myself/ourselves will be governed by these terms and that any other/additional terms I/we may seek to apply will be ineffectual. (If completing this application on behalf of an incorporated body, I confirm that I am duly authorised to bind it to the enclosed contract terms).

Name *(block capitals)*

Signature

Capacity of person signing

Date

*(if signing on behalf of a company or firm)*

# SMITH & TAYLOR LIMITED TERMS AND CONDITIONS OF BUSINESS

1. **Preamble**

Smith & Taylor Limited ("the Company") undertakes all services subject solely to the following Conditions, which can be varied only in writing by a Director of the Company.  
The Customer's attention is drawn in particular to Condition 7 which limits the liability of the Company in relation to the goods the subject of the Contract ("the goods").

    - (i) The Company is not a common carrier; and the rights and liabilities of the parties hereunder shall be determined on the basis that the Company is not such a common carrier
    - (ii) These Conditions shall prevail over any terms or conditions contained in the Customer's order, acceptance or other communication and shall be deemed to have been accepted by the Customer in preference to such other terms or conditions by the Company's receipt of the goods, unless the customer has notified the Company specifically in writing of any proposed variation of these Conditions and such variation has been agreed specifically in writing by a Director or duly authorised servant of the Company.
    - (iii) The Company reserves the right to alter these Conditions (including the Schedule described in Condition 7) by giving the Customer not less than 28 days notice in writing. The Customer's continued storage of the goods constitutes acceptance of the altered Conditions.
  2. **Customer's warranties**

The Customer warrants:

    - (i) That it is either the Owner of the goods or it is authorised by such Owner to accept these Conditions on the Owner's behalf
    - (ii) That before presentation of the goods for warehousing the Customer will inform the Company in writing of any special precautions necessitated by the nature or condition of the goods, and of any statutory duties specific to the goods with which the Company may need to comply;
    - (iii) That when presented for warehousing, the goods shall where appropriate be securely and properly bottled and packed and in such condition as not to cause damage or injury or the likelihood of damage or injury to the property of the Company or to any other goods, whether by spreading of damp, infestation, leakage or the escape of fumes or substance or otherwise howsoever.
    - (iv) That the Customer has accurately and correctly described the goods presented to the Company for storage; packaging, transport or any other service.
  3. **Labelling Obligations of the Company**
    - (i) The Company will label the goods with the particulars of the Customer, or if different and notified prior to delivery to the Company, with the particulars of the Owner, such label to include a statement that the Company has no proprietary interest in the goods. The label will be applied within 40 working hours of delivery to the Company. The Customer shall notify promptly the Company in respect of any change of Owner.
    - (ii) The Customer shall be entitled at any time during normal working hours to visit the premises of the Company to ensure that the above has been complied with.
    - (iii) The Company will procure that any sub-contractor storing goods, labels the goods in similar fashion and within the 40 working hours of delivery stipulated above
    - (iv) Where the Company has bottled, sold or otherwise dealt with the goods (or part thereof) it reserves the right to label these goods to the effect that they have been bottled, sold or otherwise dealt with by the Company.
  4. **Preservation of Goods**

The Company shall be entitled, but shall not be bound, to carry out all such cooping, repairing, rebottling, reboxing, repacking and other acts as it may consider necessary for the preservation of the goods or for preventing or minimising any loss or damage thereto. Such work shall be carried out at the Customer's expense, save where the same is necessitated by the act, neglect or default of the Company, its servants or agents.
  5. **Sub-contracting**

(a) The Customer agrees that the Company may enter into any contract with another Contractor (removal, warehousing or otherwise) shipping line, railway, airline, dock, harbour or terminal company or authority to carry out the whole or any part of this contract and/or to cause all or any part of the property to be stored by or in the warehouse of another Contractor and all these Conditions shall apply; (b) Where (sub-) contractors are employed, the Company shall endeavour to advise the Customer in advance; (c) Where the Company enters into any such contract all these Conditions shall apply, save where it is proved by the Company that the loss, damage, or delay in transit occurred whilst the goods or the vehicle in which they were loaded were in the possession of such sub-contractor and that such loss, damage or delay was not caused by any act, error, omission or default or whatsoever nature of the Company. In such circumstances the Contractor's liability if any, shall be limited or excluded as set out in sub-clause (d) below: (d) Such loss, damage or delay shall be excluded or limited (but not extended by reference to) the terms, Conditions or statutes which define the extent of the liabilities of such (sub-)contractor; (e) Should the Company enter into any other contracts as herein provided for, then the liability of such (sub-)contractor or agent shall be defined as in Condition 7 and the customer agrees not to seek from such sub-contractor or agent any sum in excess of the amounts provided for under these Conditions.
  6. **Deviation and transfer**

When reasonably necessary, vehicles or other means of conveyance may be changed and may deviate from their intended route, and at the discretion of the Company the goods may be carried, stored or handled with other compatible goods or transferred between stores.
  7. **Liability and Limitations of Liability for Smith & Taylor clients with The Fine Wine Storage only service, with Limited Liability, subject to exclusions.**
    - (i) The Company shall only be liable for any loss of or damage to goods or for any other liability howsoever arising whether in contract, tort (including negligence), breach of statutory duty or otherwise howsoever (including but not limited to loss or damage to goods while in storage or transit or for any non-delivery, misdelivery or delay or for any non-compliance or mis-compliance with instructions or advice given by the Company or its Master of Wine) where the same arises due to the negligence, neglect or default of the Company, or its servants or agents;
    - (ii) The maximum liability of the Company to the Customer and the Owner howsoever arising (whether in contract, tort (including negligence) breach of statutory duty or otherwise howsoever) shall in no case exceed a total of £1.00 per bottle.
    - (iii) The Company shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise howsoever (and whether or not the Company has been advised of the possibility of such loss) for any indirect or consequential losses of any nature, including but not limited to loss of profits, goodwill, savings, business, revenue, or opportunity.
    - (iv) The Company shall not be liable for any loss or damage which arises by reason of the occurrence of any of the events described in the attached Schedule, which may be updated from time to time as provided in Condition 1(iii).
    - (v) The Company shall not be liable for any loss or damage as a result of any fraudulent or dishonest acts of the Customer or Owner or any other person acting on their behalf.
    - (vi) The Company's liability shall not be limited for any personal injury or death caused by the negligence of the Company, its servants or agents.
    - (vii) The Company shall be under no liability howsoever arising unless notice of loss or damage be received by the Contractor in writing within the time stipulated below (time being of the essence):- (a) Where goods are removed from the Contractor's warehouse by any persons other than the Contractors at the time of handing over. (b) In all other cases; within seven days after delivery of the goods alleged to be damaged or; in the case of goods alleged to be lost or which the Contractor fails to produce, within seven days after the time when the goods should in the ordinary course have been delivered alone or with other goods.
    - (viii) The Company shall not be liable hereunder for any loss or damage to the extent that the same is caused or contributed to by a breach of any of the Customer's warranties contained in Condition 2 above (or by any of the circumstances by virtue of which the Company is relieved of its contractual obligations in accordance with condition 8 below):
    - (ix) The benefit of these Conditions shall extend to all the employees from time to time of the Company, who shall each be entitled to every right; defence and exemption from or limitation from or limitation of liability to which the Company is entitled hereunder.
  - Liability and Limitations of Liability for Smith & Taylor clients with The Valuation/Appraisal Fine Wine Storage service with extended liability, subject to exclusions on the attached schedule.**
    - (i) The maximum liability of the Company to the Customer and the Owner for loss or damage howsoever arising whether in contract, tort (including negligence), breach of statutory duty or otherwise howsoever (including but not limited to loss or damage to goods while in storage or transit or for any non-delivery, misdelivery or delay or for any non-compliance or mis-compliance with instructions or advice given by the Company or its Master of Wine) shall be limited to the replacement value of the goods (which value shall be determined by the Company in its reasonable discretion). The Company may in its sole discretion replace goods which may be damaged instead of paying the replacement value of those goods.
  - (ii) The Company shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise howsoever (and whether or not the Company has been advised of the possibility of such loss) for any indirect or consequential losses of any nature, including but not limited to loss of profits, goodwill, savings, business, revenue, or opportunity.
  - (iii) The Company shall not be liable for any loss or damage which may arise by reason of the occurrence of any of the events described in the attached Schedule, which may be updated from time to time as provided in Condition 1(iii).
  - (iv) The Company shall not be liable for any loss or damage as a result of any fraudulent or dishonest acts of the Customer or Owner or any other person acting on their behalf.
  - (v) The Company's liability shall not be limited for any personal injury or death caused by the negligence of the Company, its servants or agents.
  - (vi) The Company shall be under no liability howsoever arising unless notice of loss or damage be received by the Contractor in writing within the time stipulated below (time being of the essence):- (a) Where goods are removed from the Contractor's warehouse by any persons other than the Contractors at the time of handing over. (b) In all other cases; within seven days after delivery of the goods alleged to be damaged or; in the case of goods alleged to be lost or which the Contractor fails to produce, within seven days after the time when the goods should in the ordinary course have been delivered alone or with other goods.
  - (vii) The Company shall not be liable hereunder for any loss or damage to the extent that the same is caused or contributed to by a breach of any of the Customer's warranties contained in Condition 2 above (or by any of the circumstances by virtue of which the Company is relieved of its contractual obligations in accordance with Condition 8 below).
  - (viii) The benefit of these conditions shall extend to all the employees from time to time of the Company, who shall each be entitled to every right; defence and exemption from or limitation from or limitation of liability to which the Company is entitled hereunder.
8. **Release from obligations and force majeure**

The Company shall be relieved of its contractual obligations to the extent that their performance is prevented by, or their non-performance is the direct or indirect consequence of the act, neglect or default of the Customer including any breach by the Customer of the warranties contained in Condition 2 above, or by storm, flood, fire, explosion, riot, industrial dispute, labour disturbance or other cause beyond the reasonable control of the Company.
9. **Indemnities**
  - (i) The Customer shall reimburse all duties and taxes that the Company may be required to pay in respect of the goods; except to the extent that the Company is required to accept responsibility therefore in accordance with Condition 7 above;
  - (ii) The Customer shall indemnify the Company against any loss or damage suffered by the Company including costs and expenses reasonably incurred by it to the extent that such loss or damage is caused or contributed to by a breach of any of the Customer's warranties contained in Condition 2 above;
  - (iii) The Customer shall save harmless and keep the Company indemnified against all claims or demands whatsoever by whomsoever made (and in particular, but without prejudice to the generality of the foregoing, all claims for Customs and Excise duty by the Commissioners of Customs and Excise) in excess of the liability of the Company under these Conditions.
10. **Transfer of goods to a different account**
  - (i) The Customer may give written authority for the goods or any part thereof to be transferred by the Company to the account of another party but subject to the Customer ensuring before the effective date of the transfer that such other party notifies the Company in writing that it is to become the Customer and is to be bound by these Conditions. In the event of non-payment of storage charges by the Transferee, the Company reserves the right to re-transfer the goods to the account of the Transferor and to claim from the Transferor any unpaid storage charges accruing since the date of the original transfer.
11. **Charges and payments**

The Company's charges which may be increased from time to time by at least 21 days prior notice to the Customer, shall be payable at such periodic intervals or on the expiry of such period of credit as may have been agreed between the parties or, in any event, before removal of the goods from the Company's custody or control. Interest on amounts due and unpaid shall be payable from the date when payment of such amounts fell due and shall be calculated on a daily basis at the rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (as amended) and the Company may in addition charge the additional fee in section 5A of such Act.
12. **Lien**

The Company shall have a general as well as a particular lien on the goods for payment of all amounts due from the Customer on any account and for all claims by the Company against the Customer whether or in respect of or in relation to such goods or any other goods received for on behalf of the Customer whether retained or delivered to or to the order of the Customer.
13. **Termination**
  - (i) Provided the Customer has paid all the Company's charges up to the agreed date of removal, the goods shall be removed by the Customer from the custody or control of the Company at such date as may have been agreed between the parties. In addition, the Company may at any time by notice in writing to the Customer require the removal of the goods within not less than 28 days from the date of such notice.
  - (ii) If the Customer fails to pay any amount due to the Company at any time or to remove any of the goods from the custody or control of the Company (notice in accordance with Condition 13 (i) having been given) at the due time, the Company may, without prejudice to its other rights and remedies against the Customer give notice in writing to the Customer of the Company's intention to sell or dispose of the goods at the Customer's entire risk and expense if such amount is not paid and/or such goods are not removed within 28 days. On the expiry of such period, if such payment has not been made and/or the goods have not been so removed the Company shall be entitled to sell or otherwise dispose of all or any part of the goods at the Customer's entire risk and expense by the best method reasonably available, and the proceeds of any sale or disposal shall be remitted to the Customer without interest after deduction there from of all expenses and all amounts due to the Company from the Customer on any account.
14. **Service of notices or statements of account**

Any notice or statement of account given by the Company to the Customer shall be duly given if left at or sent by registered or recorded delivery to the last known address of the Customer and such notice or account shall if posted be deemed to have been given 2 weekdays after posting.
15. **Agency**

The Customer hereby appoints the Company or any sub-contractors as agent for himself/herself/itself or where the Customer is not the Owner, as agent for the Owner to prepare and serve any declaration required by the Law of Distress Amendment Act 1908 to be served on any superior landlord, bailiff or other agent employed to levy distress and any other notice as may be required to safeguard the goods. Nothing in this Condition shall oblige the Company to serve any declaration as agent for the Customer or Owner (as appropriate) and the Company shall not be liable for any failure to serve any declaration or for the contents of such declaration.
16. **Whole agreement.**

These Conditions and any special Conditions agreed pursuant to Conditions 1(ii) comprise the whole agreement between the parties and supercede all prior representations understandings and agreements (whether written or oral) relating to the subject matter of these Conditions.
17. **Law and jurisdiction**

All contracts between the Company and the Customer shall be governed in all respects by the law of England and the Customer hereby submits to the exclusive jurisdiction of the English Courts.