



## THE SCOTTISH SALMON COMPANY TERMS AND CONDITIONS OF PURCHASE

- We, the Company, only purchase goods, rights and services ("Deliverables") on these terms and conditions ("the Terms"). If you accept our order it will be on these Terms and no other standard terms. If you act in a manner calculated to appear as an acceptance of our order, *this will act as an acceptance* and you will be bound by our Terms, regardless of any inconsistency in your own small print. If you wish to reject our order and make a counter-offer you MUST therefore reply to our order in words explicitly and clearly indicating *rejection*. Equally, if you make a counter-offer which is not clearly labelled as such (or as a rejection of our order) no subsequent behaviour of ours, in accepting Performance, can be taken to imply any acceptance by us of that counter-offer. These Terms can only be changed, or other terms agreed, in written correspondence signed by a director or other senior officer of the Company. These Terms are important and should be studied carefully.
- These Terms are available from us in 12 point type on request.
- 1. DEFINITIONS**
- 1.1 The "Company" shall mean The Scottish Salmon Company.
- 1.2 The "Supplier" shall mean the person, firm, company or other organisation to whom the Company's order is issued.
- 1.3 The "Deliverables" shall mean all goods, rights and services (including any instalment of the goods or any part of them, and services) specified by the Company's order.
- 1.4 The "Contract" shall mean the agreement between the Company and the Supplier consisting of the order on the reverse side hereof, these Terms and Conditions of Purchase and any other documents or conditions specified or referred to in the order.
- 2. THE CONTRACT**
- 2.1 Our contract with you, our Supplier, will comprise our express written order, these Terms, anything else we expressly agree under section 2.2, any content imposed by law, but nothing else.
- 2.2 If you want us to accept a term of yours, or accept a particular responsibility, or if you wish to rely on a representation we have made, you must therefore obtain our express agreement to that. *That means express written agreement, signed by a director or other senior officer of the Company and referring expressly to these Terms.* We will deal with you in reliance on these Terms, so be aware that our acceptance of contractual performance by you does not imply acceptance of any terms that are different to our Terms. You must indemnify us against any consequence of your seeking to rely on any contractual terms, or any statement, understanding or representation which is not contractually agreed as set out in this section 2. For purposes of this section, written agreement can be communicated by pre-paid post, fax or e-mail, save that we never accept small print terms communicated by fax, on grounds of uncertain legibility.
- 2.3 If any of the terms of the contract conflict with or contradict each other those terms will over-ride each other in the following order of priority: (1) any express written agreement from us; (2) our order; (3) these Terms.
- 2.4 We are not contractually bound until we place a formal order and then only to the extent of the issues specifically covered by that order or in writing signed by a director. We will only be contractually bound to you when you accept our offer with a formal order acknowledgement in writing or (if later) when we accept Performance by you (see below).
- 3. PRICE**
- 3.1 The price of the Deliverables will be as stated in our order and, unless otherwise stated, will be:
- exclusive of any applicable VAT (which will be payable by us subject to receipt of a valid VAT invoice);
  - inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery, commissioning or performance of Deliverables to or at the delivery address, and of any duties or levies other than VAT;
  - payable in pounds sterling; and
  - fixed for the duration of the contract.
- 3.2 We will be entitled to any discount for prompt payment, bulk purchase or the like normally granted by you in comparable circumstances
- 3.3 If we will be reliant on you for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the Deliverables ("Follow-on Deliverables") then you will provide those Follow-on Deliverables or procure them to be provided, for at least 36 months following full Performance, at fair and reasonable prices which take no advantage of our dependence on you for their supply.
- 4. PAYMENT**
- 4.1 Invoices for the Deliverables may be sent to us on, or after, completion of Performance (as defined in section 5.1). Each invoice must quote the number of our order. No sum may be invoiced more than six months late.
- 4.2 Unless otherwise stated in the order, we will pay the contract price within 45 days of the end of month in which we receive the invoice.
- 4.3 We will be entitled to set off against the price any money owed to us by you.
- 5. SPECIFICATIONS**
- 5.1 If we order goods, then unless otherwise stated the order is deemed to include the supply of all relevant documentation and certification, and of any commissioning of those goods, necessary to enable the Company to use them for their intended purposes. If we order services then, unless otherwise stated, our order includes the complete performance of those services including any employee instruction, manuals, explanations or certifications necessary to enable the Company to benefit from them for their intended purposes. If we order goods or services then, unless otherwise stated, our order includes any *legal rights* necessary to use those goods or services for their intended purposes. As for those intended purposes, see section 7.3. References in these Terms to "Performance" are to complete performance of all your contractual obligations as described in these Terms.
- 5.2 The quantity, quality and description of Deliverables will be as specified in our order and these Terms or as agreed by us in writing, subject to which then in full accordance with your representations (see section 7.1)
- 5.3 You have sole responsibility for complying with all applicable regulations and other legal and regulatory requirements concerning performance of the contract, and for ensuring that we can, in compliance likewise, fully utilise the Deliverables for their intended purposes.
- 5.4 We will be allowed to inspect any contract goods during (and your premises for) manufacture and storage, so long as we request an inspection by reasonable notice. If, as a result of the inspection, we are not satisfied that the quality of the goods or the standards of their manufacture, storage or handling conforms with the contract, you will take such steps as are necessary to ensure compliance. If, after that, we are still not satisfied we can cancel the contract without penalty.
- 5.5 If, before Performance has occurred in the relevant aspect, we notify you in writing of any change in desired specification (including as to quality and time frame) you will respond as follows. We appreciate that a change may affect the contract price, or may even be unachievable. If the change would *reduce your costs*, the contract price will reduce to fairly reflect that saving. If the change would *increase your costs* you may notify us promptly, in writing, of a proposed revision of the contract price fairly and proportionately reflecting any unavoidable such increased cost: you and we will then use our reasonable efforts to agree the revised terms in full, including as to price, pending which the contract variation will not take effect. If the change would for any reason be *unachievable* you may notify us promptly and in writing: again, both parties will then use reasonable efforts to reach a mutually acceptable contract variation. Failing notice under one of the two preceding sentences our proposed change will be deemed to have been accepted, and the contract will be deemed to have been varied with immediate effect to reflect the requested specification change with no price increase. What amounts to "prompt" notice for this purpose will depend on feasibility for you and urgency for us, but not in any case later than 48 hours (excluding Saturdays, Sundays and recognised bank holidays) from our notice of proposed change. In no event, agreed or not, will we be liable to you in respect of any contract variation for more than a reasonable and proportionate reflection of such increased costs as you could not reasonably have been expected to avoid. The contract price will not in any circumstance increase except with our express written agreement under, or referring explicitly to, this sub-section.
- 5.7 To protect our business we may need, sometimes urgently, information as to precisely how Deliverables were performed, and as to all relevant activities of any suppliers or sub-contractors of yours. You will meet any such reasonable request as soon as reasonably possible and will keep records adequate for that purpose for at least two years after completion of Performance. Without limitation, these records must provide full traceability for all goods comprised in, or used in making, any contract goods which are in any respect safety-critical. They must also demonstrate compliance of the contract work with all legal or regulatory requirements and with all contractually binding quality and Performance standards.
- 5.8 You will comply with all reasonable requirements we may have as regards the packaging and packing of any contract goods, and as to information to be displayed on packaging or included on dispatch documentation and bills of lading. Subject to that, you will ensure that all packaging, packing, labelling and documentation is such as to ensure full compliance with legal requirements throughout the selected delivery process.
- 5.9 In the case of plant and machinery the onus shall be on the Supplier to ensure that the Goods comply with the Health and Safety at Work Act 1974 or any statutory modification or re-enactment thereof or any regulation made thereunder.
- 6. DELIVERY, RISK AND TITLE**
- 6.1 Any goods will be delivered to, and any services performed at, the address and on the date stated in the order, or else under section 6.2, during usual business hours. If no address is specified, then delivery will be at our usual or main UK premises.
- 6.2 If we specify the date or delivery address after ordering, we will give you reasonable notice of the details. Failing a date, supply will be as soon as reasonably possible.
- 6.3 The date of delivery of any goods or rights, and the performance of any services, will be of the essence of this contract.
- 6.4 A packing note quoting the number of the order must accompany each delivery or consignment of goods and must be displayed prominently.
- 6.5 Where Deliverables are to be supplied in instalments, the contract is still to be treated as a single contract. If you fail to deliver or perform any instalment we may treat the whole contract as repudiated.
- 6.6 We may reject any Deliverables which are not fully in accordance with the contract. Acceptance does not occur until we have had a reasonable time to inspect or consider the relevant Deliverables following supply and, in the case of latent defect, a reasonable time after the defect becomes apparent.
- 6.7 We will not be bound to return to you any packaging or packing material, but if any relevant requirement for packaging recycling applies, you will take materials back free of charge on request.
- 6.8 If any Deliverables are not supplied to us on or by the agreed date then, in addition to any other remedies available to us, we will be entitled to deduct 1% of the overall contract price for those Deliverables, for every week's delay.
- 6.9 Risk of damage to or loss of any goods passes to us on delivery.
- 6.10 Property and ownership of any goods will pass to us on delivery unless we have paid in whole or in part for the goods in advance. In that case it will pass to us as soon as the goods have (or, if goods are being assembled for us, each successive component of the goods has) been appropriated to the contract.
- 6.11 If we supply any articles to you, e.g. for modification or copying, they stay our property at all times. Those articles must be kept confidential and secure and we can enter your premises at any time on reasonable notice to ensure that this is so. While those articles are in your custody you must not use them, copy them or disseminate them, electronically or otherwise, except in the performance of our contract. We retain copyright and any other available intellectual property rights in any plans, design drawings, computer programs, compilations of data, specifications or the like which we supply to you. You must indemnify us against any loss caused to us, and account to us for any profit which you make, through breach of this provision.
- 6.12 If any Performance occurs on our premises this sub-section will apply. You will ensure that best industry standards are adopted for the health and safety both of your personnel and of any other individuals affected by your actions. We may refuse or terminate access to any individual whom we reasonably consider undesirable to have on our premises. Your personnel must, while on our premises, comply with our reasonable requirements as to security, health and safety routines, times and areas of access, and otherwise. You will be responsible to us on a full indemnity basis for all damage and injury caused by your staff.
- 6.13 If the contract terms refer to terms such as F.O.B and C.&F. which bear defined meanings in the current edition of Incoterms, those defined meanings will apply unless expressly stated otherwise.



6.14 Any goods provided by us to you on a free issue basis will remain our absolute property throughout and will be at your risk while the goods are, or are supposed to be, in your possession. You are not to part with possession (save to us) unless with our express prior consent.

## 7. WARRANTIES AND LIABILITY

7.1 You promise that:

- The quantity, quality, description and specification for the Deliverables will be those set out in the order, apart from which then of the best standards reasonably to be expected in the market for that kind of Deliverable; and
- Any goods will be free from defects in materials and workmanship and fit for any purpose made known to you, the Supplier, by us the Company; and
- Any Deliverables will comply with all statutory requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply; and
- All claims made by you about any Deliverables, and all apparently serious claims in your advertising and promotional material, are correct and can be relied upon; and
- Any services will be performed by appropriately qualified, trained personnel with reasonable care and skill; and
- Neither the sale and supply of any Deliverable, nor its proper use by us for an intended purpose, will breach any property rights in or about that Deliverable, including intellectual property rights, of any other person.

7.2 All warranties, conditions and other terms implied by statute or common law in our favour will apply to any Deliverables bought from you.

7.3 It is your responsibility to find out from us the purposes that we intend the Deliverables to be put to (including any applicable deadline affecting us). You promise that they will be suitable for those intended purposes, save only for any unsuitability which you have, as soon as might reasonably have been expected of you (and in any case before starting Performance) expressly notified to us.

7.4 You will indemnify us and keep us indemnified immediately upon our written demand against any cost, claim, expense or liability arising from any risk for which you are responsible under this contract.

7.5 If you fail to comply with any obligation under the contract we will be entitled, at our discretion, to reject and Deliverable and you will not be entitled to receive payment for that Deliverable.

7.6 If any contract goods do not comply with all contractual requirements we can demand that you repair them or supply replacement goods within seven days or, at our sole discretion, we can reject the goods and demand the repayment of any sum already paid for them.

7.7 We will not be liable to you for any delay or failure to perform any of our obligations under this contract if the delay or failure was due to a cause beyond our reasonable control.

7.8 If any contract goods or rights were bought or obtained by you from a third party then any benefits or indemnities that you hold from that other party, in respect of those items, will be held on trust for us.

7.9 You will insure yourselves, and keep insured until Performance is complete, against all normal insurance risks relevant to your work for or with us, on terms and for amounts consistent with normal business prudence. You will demonstrate to us the terms and currency of any such insurance on request.

## 8. RIGHTS

8.1 Any rights which you are contracted to supply must be provided to us in accordance with sections 8.2 or 8.3 as applicable.

8.2 This sub-section will apply to the following types of contract right: where the contract expressly identifies particular rights as covered by it; where the rights in question are evidently not unique to our Deliverable; or if those rights evidently derive from a third party of whom the same would be true. In those cases we are not to expect full ownership of those rights. You will however validly licence those rights to us, or procure them to be validly licenced to us, on the following terms: assignable; royalty-free; covering usage for any likely intended purpose; and free of any obligation on us save such as we expressly agree in the contract or as are the minimum reasonably necessary for the maintenance of the right in question.

8.3 This sub-section will apply to all contract rights to which section 8.2 does not. In that case you will transfer to us, or procure to be transferred to us, with full title guarantee the ownership of those rights to the full extended (including as to territory) that we reasonably need them for our intended purposes, and to the full extent of any wider rights available to you. You will execute any documents and make any declarations reasonably required by us, now or in future, to transfer those rights, you will not exploit those rights save for us or with our written consent, and you will (to the extent not yet legally transferred) hold all such rights on trust for us absolutely for the maximum permitted period of eighty years. We have your irrevocable power of attorney to execute any such documents and make any such declarations on your behalf if you fail to do so promptly on request.

8.4 If you carry out any development work at our request and wholly or primarily at our expense we will own all intellectual property rights generated by that work, and section 8.3 will not apply to those rights.

8.5 You will do anything reasonably required by us, during or after Performance, to perfect any transfer or licence of rights to us under this section or to assist us in registering or authenticating (but not at your cost enforcing or defending) those rights.

## 9. TERMINATION

9.1 If goods have been offered by you as, or if they are, standard or stock items we can, by notice to you, at any time up to delivery cancel our commitment to buy them. Any other commitment of ours to receive and pay for Deliverables may be cancelled by us as follows. We will be bound to reimburse you for all irrecoverable costs incurred, or unavoidable committed, by you up to the point of cancellation. By "costs" is meant for this purpose the direct costs to you of Performance, to an aggregate amount not exceeding 80% of the purchase price for the cancelled commitment. We will be entitled, if we wish it, to the benefit of the part-finished Deliverables in question.

9.2 We may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the contract without liability to you if you breach its terms, or if your business fails.

9.3 Your business will be treated for this purpose of having failed if:

- You make any voluntary arrangement with your creditors;
- (being an individual or firm) you become bankrupt;
- (being a company) you become subject to an administration order or go into liquidation;

- Any third party takes possession of, or enforces rights over, any of your property or assets under any form of security;
- You stop or threaten to stop carrying on business;
- You suffer any process equivalent to any of these, in any jurisdiction; or
- We reasonably believe that any of the events mentioned above is about to occur and we notify you accordingly.

9.4 Any right of cancellation or suspension under this section is additional to any rights available to us under the law of any relevant jurisdiction.

## 10. CORRUPT GIFTS

The Supplier shall not offer or give or agree to give to any person in the service of the Company any gift or consideration of any kind as an inducement or regard for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract with the Company or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Contract with the Company.

## 11. FORCE MAJEURE

Neither party shall be liable for any failure to fulfil any term or condition of the Contract, nor shall it be deemed to be in breach thereof, if fulfillment has been delayed, hindered or prevented by circumstances beyond its reasonable control.

11.2 For the purposes of the Contract the term force majeure shall mean:

- War and other hostilities (whether war be declared or not) invasion, terrorist activity, act of foreign enemies, mobilisation, requisition or embargo
- Rebellion, revolution, insurrection, military or usurped power or civil war
- Riot, commotion or disorder except where solely restricted to employees of the Supplier or or its sub-contractors or its sub suppliers
- Earthquake, flood, fire, pandemic or other natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming force majeure
- A general industrial dispute not limited to the employees of the Supplier or the employees of its sub-contractors or sub suppliers.

11.3 If either party is affected by force majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

11.4 During any period of force majeure, the party affected shall at all times use its reasonable endeavours to minimise the adverse effects on the other party.

11.5 If an event of force majeure exceeds a period of 30 days then either party shall have the right to terminate the Contract upon fourteen (14) days written notice to the other.

## 12. USE OF DOCUMENTS, INFORMATION ETC

All specifications, plans, samples, drawings, designs and other information issued or communicated by the Company to the Supplier in connection with the Contract are confidential and shall not be used by the Supplier except for the purposes of the Contract, or copied, reproduced, published or disclosed to any third party without the consent in writing of the Company. Title to all items referred to in this Section 14 shall remain with the Company at all times and all such items shall be returned to the Company on fulfilment of the Contract. In the event of cancellation or repudiation of the Contract for any reason the Company shall be entitled to the immediate return, free from any charge or deduction howsoever arising, of any of its property held by or in the custody of the Contractor.

## 13. LAW

The Contract shall be governed and construed as a Contract made in Scotland and subject to Scots Law.

## 14. WAIVER

The failure of the Company to enforce its rights under the Contract at any time shall not be construed as a waiver of any such right.

## 15. ASSIGNMENT AND SUB-CONTRACTING

15.1 The Contract shall not be assigned by the Supplier nor sub-contracted either in whole or in part except with the Company's written consent. This shall not be necessary in the case of sub-contractors for materials, or for minor items or for any part of the work so specified in the Contract.

15.2 The Supplier shall be responsible for all work done or Deliverables supplied by any sub-contractors but shall ensure that the Company has the right to approach the sub-contractor direct and to inspect the Deliverables at the sub-contractor's premises at all reasonable times.

## 16. NOTICE

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing and may be given by hand or sent (by first class pre-paid post, telex, cable, facsimile transmission or comparable means of communication) to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

## 17. SEVERANCE

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.