



TERMS AND CONDITIONS OF SUPPLY OF PRODUCTS

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions the following words and expressions shall have the following meanings (unless the context requires otherwise):

- “Agreement” means the agreement between Supplier and Customer for the supply of Products in accordance with these Terms and Conditions and the Delivery Schedule;
- “Confidential Information” means all confidential information (however recorded, preserved or disclosed) disclosed by a party or its representatives to the other party and that party’s representatives either before or after the date of this agreement including but not limited to information of proprietary nature or which would be regarded as confidential by a reasonable business person concerning the business affairs of the party to whom such information belongs or relates, product information, operations, or processes and excludes information which enters the public domain except as a breach of the Agreement or which the recipient is obliged by law to disclose;
- “Delivery” means delivery of the Products to you or collection of the Products by you from the location specified in the Delivery Schedule;
- “Delivery Location” means the location to which Products will be delivered to or collected from pursuant to the Delivery Schedule;
- “Delivery Schedule” means the invoice and packing list issued prior to or simultaneously with Delivery which includes inter alia details of the Products, the Lot number, WDE number, the Delivery Location and the Price;
- “Estimate” has the meaning set out in Clause 2.2;
- “Force Majeure” means any circumstances beyond our reasonable control including without limitation, an act of God, adverse weather conditions, fire, biological and meteorological factors, mechanical failures, terrorist attack, war, threat of or preparation for war, armed conflict, strike, lock-out or other form of industrial action, non-performance by suppliers or sub-contractors, disease or ailment in relation to the Products which affects (or could potentially affect) our ability to provide the Products in whole or in part under the Agreement;

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"Intellectual Property"	means any intellectual property rights of any nature in the Products or relating to us, or any ancillary documentation which for the avoidance of doubt shall include without being limited to, copyrights, patents, trade marks, know-how, design rights (registered or unregistered) and database rights whether recorded in any manner or otherwise and all rights pertaining thereto;
"Lot number"	means the harvest number detailed on the Delivery Schedule;
"Order"	means your request for the supply of Products made in writing or by telephone;
"Price"	means the Price as detailed in or to be calculated in accordance with the Delivery Schedule;
"Products"	means the products which we have agreed to provide to you as set out in the Delivery Schedule;
"Terms and Conditions"	means the terms and conditions herein;
"us"	means The Scottish Salmon Company Limited (SC107275), having its registered office at 8 Melville Crescent, Edinburgh EH3 7JA ("our" and "we" being construed accordingly);
"VAT"	means value added tax as defined in the Value Added Tax Act 1994; and
"WDE number"	means the WDE number detailed on the Delivery Schedule;
"you"	means the customer as detailed in the Delivery Schedule ("your" being construed accordingly).

1.2 In these Terms and Conditions:

- (a) the clause headings are included for convenience only and shall not affect the construction of the Agreement;
- (b) words denoting the singular shall include the plural and vice versa;
- (c) words denoting any gender shall include a reference to each other gender;
- (d) references to persons shall be deemed to include references to natural persons, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts (in each case whether or not having separate legal personality); and
- (e) words and expressions defined in the Companies Act 2006 shall, unless they are otherwise defined herein or unless the context otherwise requires, bear the same meanings in these Terms and Conditions.

1.3 References in these Terms and Conditions to statutory provisions shall (save where the context otherwise requires or unless otherwise expressly provided) be construed as references to those provisions as respectively amended, consolidated, extended or reenacted as at the date of these Terms and Conditions and to any orders, regulations, instruments or other subordinate legislation made under the relevant statutes.

1.4 References to Clauses are to clauses of these Terms and Conditions.



2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes a request by you to purchase Products from us in accordance with these Terms and Conditions.
- 2.2 Following our receipt of the Order we shall provide you with an estimate (by e-mail or telephone) of the Products we may reasonably be able to provide to you ("Estimate"). No Order or Estimate is binding and the Agreement is subject to the availability of stock and we shall not be obliged to fulfil the Order to the extent that we are unable to do so.
- 2.3 Prior to or simultaneously with Delivery we shall send to you the Delivery Schedule which constitutes our acceptance of your Order to the extent that it can be and is fulfilled or is to be fulfilled by us and specifies the Price to be paid by you to us in respect of the Products.
- 2.4 The Agreement shall constitute the entire agreement between you and us to the exclusion of all other terms and conditions which may have been submitted by you or subject to which the Offer has been made or which are implied by trade, custom, practice or course of dealing unless otherwise expressly agreed by us in writing or permitted in terms of these Terms and Conditions. These Terms and Conditions may not be modified or varied unless specifically agreed by both parties in writing.
- 2.5 Without prejudice to Clause 2.4 above, in the event of any conflict between these Terms and Conditions and the conditions in any communications from you whether upon initial acceptance of these Terms and Conditions or at any time thereafter (which are expressly agreed in writing by both parties as forming part of the Agreement), these Terms and Conditions shall prevail.

3. **PRICE AND PAYMENT**

- 3.1 Unless otherwise stated, the Price shall be exclusive of VAT and any other applicable taxes or charges (including but not limited to import duties or charges) which shall be payable by you at the applicable rate from time to time. The Price is fixed and may not be changed without our written agreement.
- 3.2 Our payment terms are stated on the invoice and all payments must be made on or before the due date. If you fail to pay on the due date any amount which is payable to us under the Agreement, then such amount shall bear interest from the due date until payment is made in full at the rate of 4% per cent per annum above the base rate from time to time of a clearing bank in Scotland nominated from time to time by us, such interest to accrue daily.

4. **SUPPLY AND DELIVERY OF THE PRODUCTS**

- 4.1 We will supply the Products to you in accordance with the Delivery Schedule.
- 4.2 We shall take reasonable care that the provisions of all relevant safety, environmental and other legislation as may from time to time be in force in respect of the maintenance of the Products, are complied with at all times until such time as risk in the Products passes to you.
- 4.3 While we will use reasonable endeavours to carry out Delivery on any stipulated delivery date, time is not of the essence and we shall not be in breach of the Agreement or have any liability whatsoever to you or any third party for failing to make the Products available on the agreed delivery or collection date.
- 4.4 In the event that you wish to vary any of the timescales, volumes of Product or details set out in the Delivery Schedule (or notified by us to you in writing) then you shall notify us of same in writing. We shall use reasonable endeavours to accommodate such variation but we shall not be obliged to do so. In the event that such variation is likely to increase the costs of the Products

or the delivery thereof then we shall notify you of such cost increase in writing and shall not implement any such variation until you have approved such cost in writing.

- 4.5 Products delivered by airfreight and/or road are DAT (Incoterms: Delivered at Terminal) and/or CPT (Incoterms: Carriage Paid to Terminal) to a named terminal, i.e. specified Delivery Location unless otherwise specified in the Delivery Schedule.

5. **INSPECTION AND ACCEPTANCE**

- 5.1 The Products shall be deemed accepted as conforming to the terms of the Agreement unless we are notified in writing of any material defect within 24 hours of Delivery. You will specify the nature of any defect, shall advise on the Lot number, order number and/or WDE number (as available) quantity delivered, quantity affected and shall provide details to us of:

- (a) damage which may reasonably be discovered on inspection;
- (b) damage arising in transit (where applicable);
- (c) any shortage or over delivery of the Products; and/or
- (d) loss of Products.

You agree to provide photographic evidence of any defect. You agree and acknowledge that the Products you claim as being defective may be required to be made available to us to investigate if requested and you agree to make such Products available as soon as reasonably possible.

- 5.2 For the avoidance of doubt, we shall have no liability in respect of Products which are considered by you to be defective other than where notification has been duly received in accordance with Clause 5.1

- 5.3 We shall not be responsible for any defect and/or fault in the Products arising due to or attributable to your fault and/or any negligence act or omission and/or your failure to treat, handle or store the Products in accordance with good practice and/or any instructions given by us.

- 5.4 We shall not be responsible for any defect and/or fault in the Products under your control and/or instruction and/or the control and/or instruction of any individual or company acting on your behalf arising due to or during transit and/or export of the Products.

6. **RISK AND TITLE**

- 6.1 Risk of loss of or damage to each ordered and delivered quantity of the Products shall immediately pass to you on Delivery and the parties shall be responsible for effecting insurance accordingly.

- 6.2 Notwithstanding Clause 6.1 hereof:

- (a) property and title in and to the Products shall remain with us until all monies due by you to us (including any interest and charges) for the relevant Products have been paid in full. Where you are in default in respect of any payment due under the Agreement (other than where a bona fide dispute has arisen), you shall be obliged to allow us full access to the Products in order to repossess them;
- (b) if you become apparently insolvent or compound with your creditors or have a liquidator, receiver or administrator appointed over all or any of its assets prior to property in any quantity of the Products passing as aforesaid, your right to resell or

otherwise deal in the Products shall automatically terminate and we shall be entitled to repossess any such Products;

- (c) for the purposes of Clauses 6.2 (a) and 6.2 (b) hereof, you will assist and allow us so to repossess the Products and admit or procure the admission of us or our employees or agents to the premises on which the Products are situated; and
- (d) until such time as the Products are repossessed in accordance with the above Clauses 6.2 (a) and 6.2 (b), you shall at all times hold the Products in accordance with our reasonable instructions and good industry practice.

6.3 From the time of collection until such time as property in the Products passes to you in terms of Clause 6.2 (a), you shall hold the Products on behalf of us, acting as our agent. During this period and until payment for the Products has been received in full, you shall:

- (a) keep the Products separate from any other products of yours or any third party;
- (b) protect, store appropriately in accordance with good industry practice, cultivate and insure the Products at your expense;
- (c) not be entitled to resell the Products unless our written consent has been obtained (in which case, until payment has been received in full, the proceeds from such a sale shall be deemed the property of the Supplier); and
- (d) endorse our interest on all insurance policies relating to the Products and provide to us proof of such endorsement within seven (7) business days of each delivery date.

7. **WARRANTY**

7.1 We warrant to you that the Products supplied shall substantially meet the description provided in the Delivery Schedule and to our reasonable knowledge are free of defects at the time of Delivery. If there is any difference of opinion between the parties as to whether any Products supplied are in accordance with the Agreement, the matter may be referred at the request of either party for determination by the Technical Expert (as defined in Clause 17).

7.2 You warrant to us that you have informed us of:

- (a) the country to which the Products are to be exported;
- (b) in the event that we are responsible for transit and/or export of the Products, all laws; regulations and other legislative provisions which apply to the export and import of the Products in the relevant country; and
- (c) all relevant administrative procedures relating to customs and exports and any other information that we require to be made aware of for the purpose of facilitating Delivery.

8. **LIABILITY**

8.1 Subject to Clause 8.4 below, we shall, under no circumstances, be liable to you, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, production or business revenue, goodwill, anticipated savings, time, delay or any indirect, incidental, special or consequential loss or damage arising under or in connection with the Agreement

8.2 Subject to Clause 8.4, we shall, under no circumstances be liable to you in respect of any liability to third parties suffered by any person arising out of the Agreement, the Products, or any use



of the Products except insofar as such liability arises solely from our action, omission or negligence.

8.3 Subject to Clause 8.2, 8.2 and 8.4, our aggregate liability under the Agreement for all loss or damage shall in no event exceed a sum equal to the Price paid by you as specified in the relevant Delivery Schedule.

8.4 Nothing in the Agreement shall limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful to exclude or restrict liability.

9. **CONFIDENTIAL INFORMATION**

9.1 Each party agrees and undertakes that during the Agreement and for a period of one year thereafter it shall keep secret and shall not without the prior written consent of the other party, disclose to any third party any Confidential Information of the other party which has been disclosed pursuant to the Agreement.

9.2 Any press release or other public information about or concerning the provisions of the Agreement or the supply of the Products under this Agreement will require to be agreed among the parties in advance.

9.3 The obligations of the parties pursuant to this Clause 9 shall survive expiry of this Agreement.

10. **INTELLECTUAL PROPERTY**

10.1 Nothing in this Agreement shall, or is intended to, grant you any Intellectual Property Rights or health certificates. You acknowledge that nothing in this Agreement is to be interpreted as granting a license of or effecting a transfer of any of the Intellectual Property to you.

10.2 For the avoidance of doubt nothing in this agreement permits or authorises you to use the name, logo or any other Intellectual Property Rights belonging to or associated with us without our express prior written permission or authorisation.

11. **FORCE MAJEURE**

11.1 If we are affected by an event of Force Majeure we shall forthwith notify you in writing of the nature and extent thereof.

11.2 Without prejudice to this Clause 11, we shall not be deemed to be in breach of the Agreement, or otherwise be liable to you, by reason of any delay in performance or non- performance of any of our obligations (in whole or in part) hereunder to the extent that such delay or non-performance is due to Force Majeure of which we have notified you [, and the time for performance of that obligation shall be extended accordingly as agreed between the parties, in writing.]



- 11.3 If an event of Force Majeure affects (in whatsoever way and/or for whatever other reason) our ability to supply Products to you at all i.e. we cannot supply any Products (at our sole discretion, acting reasonably), we shall be entitled to provide notice to you that the nature of the Force Majeure affecting us will have the effect of preventing any supply of the Products under the Agreement and to give notice of termination (with immediate effect) to you that the Agreement is terminated. In these circumstances and in accordance with clause 11.2 above, it is agreed that we shall not be liable to you, subject to clause 9.3 above for such termination.
- 11.4 If an event of Force Majeure prevents the supply of Products in part under the Agreement and if such an event of Force Majeure prevails for a continuous period in excess of 72 hours, both parties shall enter into bona fide discussions with a view to alleviating its effects, and/or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 11.5 If agreement cannot be reached between the parties in accordance with clause 11.4 above, both acting reasonably, we shall be entitled to reduce the volume of Products being supplied under the Agreement to such quantities that we consider (at our sole discretion) we are able to provide during the Force Majeure and to increase the Price of the Products, where reasonable, to take into account inter alia any increased costs incurred by us due to the event of Force Majeure.

12. **WAIVER**

Any failure by any party to exercise and any delay, forbearance or indulgence by any party in exercising, any right, power or remedy under the Agreement shall not operate as a waiver of that right, power or remedy or preclude its exercise at any subsequent time or on any subsequent occasion. The single or partial exercise of any right, power or remedy shall not preclude any other or further exercise of that right, power or remedy. The rights, powers and remedies provided in the Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

13. **ENTIRE AGREEMENT/VARIATION**

The Agreement constitutes the entire agreement between the parties with respect to all matters referred to herein. All separate agreements, undertakings and obligations between the parties in relation to matters dealt with in the Agreement are hereby superseded and terminated.

14. **SEVERABILITY**

If any one or more of the provisions of this Agreement is declared by a Court or other competent authority to be invalid, illegal, void or unenforceable, such provision(s) shall be deemed to be deleted from the Agreement and the remaining provisions of the Agreement shall continue in full force and effect. Notwithstanding the foregoing the parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

15. **NOTICES**

- 15.1 Any notice required to be given under the Agreement may be served personally or by pre-paid, registered or recorded delivery letter or by e-mail, addressed to the relevant party at its address stated on the Letter, marked for the attention of the Chief Executive or to such other address or e-mail address or addressed to such contact as that party may have notified to the other for this purpose.
- 15.2 Any notice so given by letter shall be deemed to have been served 48 hours after the same shall have been posted.
- 15.3 Any notice so given by e-mail shall be deemed to have been served when sent (which shall be deemed to be the time it is sent if sent during normal working hours in the recipient's local time

zone or 9am in the recipient's local time zone on the following working day in any other case).

- 15.4 In proving service of a notice it shall be sufficient to prove the letter or e-mail was properly addressed or numbered and, as the case may be, handed in at the post office as a pre-paid, registered or recorded delivery letter or dispatched or a confirmatory transmission report received.

16. NATURE OF AGREEMENT

Nothing in the Agreement shall constitute a partnership or joint venture between the parties hereto or the relationship of agency or employment.

17. TECHNICAL EXPERT

- 17.1 In the event of any dispute or disagreement of a technical nature between the parties which arises out of or in connection with the Agreement, the outcome of such dispute will be determined by independent third party investigation and recommendation. The parties shall select and agree the identity of the technical expert who is to carry out an investigation, in writing, in the event of any dispute or disagreement (both parties acting reasonably and in good faith).

- 17.2 The decision of the Technical Expert (which shall be given by the Technical Expert in writing stating their reasons for the decision made) shall be final and binding on the parties.

- 17.3 Each party shall provide the Technical Expert with such information as the Technical Expert may reasonably require for the purposes of the determination, if either party claims such information to be confidential to it then, provided that in the opinion of the Technical Expert that party has properly claimed the same as confidential, the Technical Expert shall not disclose the same to the other party or to any third party.

- 17.4 The cost of such Technical Expert shall be borne in such proportions as the Technical Expert may determine to be fair and reasonable in all the circumstances or, if no such determination is made by the Technical Expert, the cost shall be borne by the parties in equal proportions.

18. GOVERNING LAW AND JURISDICTION

- 18.1 The Agreement shall be governed by and construed in accordance with Scots law.

- 18.2 The parties hereby prorogate the exclusive jurisdiction of the Scottish Courts in relation to any claim, dispute or difference concerning the Agreement and any matter arising from the Agreement.

