

# Terms & Conditions

The Buyer's attention is in particular drawn to the provisions of condition 10.4.

## 1 INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Buyer:** the person, firm or company who purchases the Goods from the Company.

**Company:** HONEI FISHERIES GROUP, 224 N SUNKIST AVE, WEST COVINA, CA 91790 USA

**Contract:** any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4.

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and, in the plural, include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

**IncoTerms:** international trade terms developed by the International Chamber of Commerce and which regulate the responsibilities and liabilities of a buyer and a seller of goods.

## 2 APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4, the Contract between the Buyer and the Company shall be subject to these terms and conditions and the terms of any relevant Incoterm that applies to the Contract (and interpreted in accordance with the International Chamber of Commerce official rules for the interpretation of trade terms from time to time in force).

2.2 Any other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) are expressly excluded from any Contract between the Buyer and the Company.

2.3 For the avoidance of doubt, no terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.4 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the President of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.5 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.6 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.7 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.8 Any quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgement of order to the Buyer. If no special terms of valid for a period specified by company, any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

## 3 DESCRIPTION

The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

## 4 DELIVERY

4.1 The Company shall deliver the Goods to the Buyer in accordance with any applicable Incoterm agreed between the Buyer and the Seller.

4.2 Where the parties agree any particular Incoterm for delivery (by way of example only CIF Foreign Port or DDP named place of destination), delivery shall be deemed to have taken place in accordance with the International Chamber of Commerce official rules for the interpretation of trade terms.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be estimates only and time for delivery of the Goods shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar losses), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licenses or authorizations:

4.5.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

4.5.2 the Goods shall be deemed to have been delivered; and

4.5.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 Where the specific Incoterm relating to any Contract does not include the loading and/or unloading of the Goods, the Buyer shall provide at the Delivery Point and at its own expense adequate and appropriate equipment and manual labor for loading and/or unloading the Goods.

4.7 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.8 The Company may deliver the Goods by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.9 Each installment shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Buyer to repudiate or cancel any other Contract or installment.

## 5 NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company on any bill of lading supplied to the Company by any carrier shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been delivered.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6 RISK/TITLE

6.1 Risk in the Goods shall pass in accordance with the specific Incoterm applying to any Contract. As such the International Chamber of Commerce official rules for the interpretation of trade terms from time to time in force shall stipulate when risk passes in the Contract.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and 6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions: 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and 6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

6.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts or the Buyer ceases to trade; or

6.5.3 the Buyer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 It shall be at the sole discretion of the Company whether it shall seek to exercise its right to recover the Goods from the Buyer if any of the sub clauses of condition 6.5 are satisfied or seek to enforce the Buyer's obligation to make payment of the Goods.

6.10 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7.1 PRICES

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in any quotation supplied to the Buyer in force on the date of delivery.

7.2 Any quotation supplied to the Buyer will be based on the applicable Incoterm that shall apply to the Contract and the Company's responsibility for any particular costs pursuant to such an Incoterm shall be as set out in the International

Chamber of Commerce official rules for the interpretation of trade terms.

7.3 Any price given to the Buyer to deliver the Goods will be exclusive of US Sales Tax which shall also be payable in addition to the price of the Goods where applicable.

## 8 PAYMENT

8.1 Subject to condition 8.5, payment of the price for the Goods is due in US dollars and time for payment shall be of the essence.

8.2 Where the Buyer arranges collection of the Goods Ex Works from the Company's premises, unless agreed otherwise in writing by the Company, payment is due on collection of the Goods.

8.3 Where the Company arranges the shipment of the Goods to the Buyer, unless agreed otherwise, the payment terms are cash against documents. The shipping documents (including the bill of lading) shall not be released to the Buyer until the Buyer's bank has received payment in full for the Goods.

8.4 Notwithstanding the provisions of condition 8.2 and condition 8.3, the Buyer must make payment for the Goods within 7 days of the date that the Company notifies the Buyer that the Goods are available for collection or where the Goods have been arranged shipment of the Goods, when the Buyer's bank notifies the Buyer that the shipping documents are available for collection or within 7 days of the Company confirming to the Buyer that the documents are available for collection whichever is sooner. 8.5 The Company may agree with the Buyer different payment terms in writing and any alternative payment terms shall be set out in the acknowledgement of order and commercial invoice.

8.6 No payment shall be deemed to have been received until the Company has received cleared funds. 8.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.8 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of setoff, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.9 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of the Bank of America, accruing on a daily basis until payment is made, whether before or after any judgment.

## 9 QUALITY

9.1 The Company warrants to the Buyer that any Goods supplied by the Company shall comply with all relevant US food safety standards, hygiene, labeling and storage requirements pursuant to any applicable US legislation from time to time in force. Where the Goods are delivered to a member state within the European Community, the Goods will comply with any equivalent European legislation.

9.2 The Company further warrants that (subject to the other provisions of these conditions) on delivery the Goods shall be of satisfactory quality and fit for human consumption.

9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.1 and 9.2 unless: 9.3.1 the Buyer gives written notice of the defect in the Goods to the Company within 7 days of the time when the Buyer discovers or ought to have discovered the defect in the Goods; and

9.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns a sample of the Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of the warranties in condition 9.1 and condition 9.2 if the defect in the Goods arises because the Buyer has failed to follow the Company's oral or written instructions as to the storage, packaging and good trade practices or the Goods have been damaged in transit when at the risk of the Buyer.

9.5 Subject to condition 9.3 and condition 9.4, where the Company is satisfied that the Goods do not conform with the warranties in condition 9.1 and condition 9.2 the Company shall at its option replace such Goods or refund the price of such Goods at the pro rata Contract rate.

9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of the warranties in condition 9.1 and condition 9.2 in respect of such Goods.

## 10 LIMITATION OF LIABILITY

10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

10.1.1 any breach of these conditions;

10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by US law or the law of the State of California are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Company:

10.3.1 for death or personal injury caused by the Company's negligence; or

10.3.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

10.3.3 for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

10.4.1 the Company's total liability in contract, tort, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

10.4.2 the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 11 ASSIGNMENT

11.1 The Company may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## 12 FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 13 GENERALS

13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.

13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of the State of Maine and the parties submit to the non-exclusive jurisdiction of the courts of the State of Maine in any actions that may arise under this Contract.

## 14 COMMUNICATIONS

14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first-class post or sent by fax:

14.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

14.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

14.2 Communications shall be deemed to have been received:

14.2.1 if sent by pre-paid first-class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

14.2.2 if delivered by hand, on the day of delivery; or

14.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

14.3 Communications addressed to the Company shall be marked for the attention of the President of the Company.

**We, as the buyer or a representative of the buyer, agreed and accepted all the terms & conditions.**

**X** BUYER'S AUTHORIZED SIGNATURE DATE OF SIGNED