

**THE TUNA STORE'S  
GENERAL TERMS AND CONDITIONS OF PURCHASE**

These General Terms and Conditions ("Terms") are applicable to all sales made by you ("Supplier") to The Tuna Store ("Buyer").

**1. Purchaser's Acceptance of Terms:** If Buyer submits a purchase order ("PO") to Supplier, the parties have formed a binding agreement if Supplier does not object to such PO within 2 business days of Supplier's receipt of such PO, and the parties shall perform according to the terms and conditions of any applicable PO and these Terms (collectively, the "Contract"). The PO will be in a form mutually agreed to between the parties.

**2. Products; Inspections:** Supplier shall sell to Buyer the seafood (the "Products") set forth in Exhibit A, which is incorporated by this reference, and as more particularly described in a the PO. Buyer shall carefully inspect all Products in accordance with the procedures set forth in Exhibit A.

**3. Price and Payment Terms:** The price will be determined as set forth in Exhibit A, and, unless otherwise indicated in any PO or on Exhibit A, all prices quoted are F.O.B. Buyer. All sales are made subject to all applicable local, State, Federal, use, sales and excise taxes, the amount of which Buyer agrees to pay. Supplier's payment terms are net 30 days. Products shall be considered delivered, and risk of loss, title, and damage shall pass, to Buyer at the F.O.B. point upon pickup.

**4. Late Delivery:** Time is of the essence in the delivery of the Products, and Supplier shall immediately notify Buyer of any possible delays. If the delivery date is expected to be delayed more than 2 days for fresh Products, or more than 10 days for frozen or finished Products, Buyer may, in its sole discretion, cancel the PO without penalty and purchase substitute Products from a third-party, in which event Supplier will be liable for any difference in the price paid to the third-party supplier and the price of the delayed Products, in addition to any other remedies available to Buyer at law or in equity. If Buyer elects not to purchase, or is unable to purchase, Products from a third-party, Supplier will pay to Buyer 3% of the purchase price of frozen or finished Products, and 7% of the purchase price of fresh Products (as set forth in the applicable PO), for every two-day delay, in addition to all other remedies available to Buyer at law or in equity.

**5. Warranties:** The parties agree to the representations and warranties contained in Exhibit A.

**6. Breach:** In the event Supplier breaches the Contract, Supplier shall pay Buyer all damages, including incidental and consequential damages and attorneys' fees, including on appeal. Supplier acknowledges that Buyer is in the business of re-selling the Products to third parties and that Buyer is relying on Supplier to provide the Products to Buyer in accordance with the Contract.

**BUYER'S TOTAL LIABILITY TO SUPPLIER FOR DAMAGE OR LOSS ARISING OUT OF, OR IN ANY WAY RELATED TO, THE PURCHASE OF PRODUCTS HEREUNDER, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR ANY OTHER CAUSE (A "CLAIM") SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR PRODUCTS WITH RESPECT TO WHICH SUCH CLAIM RELATES.**

**7. Recall.** Buyer and Supplier will immediately notify the other in writing should it become aware of any condition that could justify any recall of Products. Buyer and Supplier shall promptly consult with one another to determine whether a recall of Products is warranted and, if so, to develop a joint plan reasonably acceptable to each party for the manner of promptly implementing the recall. Buyer and Supplier will carry out the recall in accordance with the joint plan, in compliance with applicable laws and regulations, in as expeditious a manner as feasible, and in such a way as to protect customers and preserve the reputation of the Products, Buyer, and Supplier. To the extent that the recall results from a breach of this Contract by Supplier, Supplier will reimburse Buyer for all reasonable, direct costs of the recall. To the extent that the recall results from a verifiable breach of this Contract by

Buyer, Buyer will reimburse Supplier for all reasonable, direct costs of the recall or replacement. In all other circumstances, Buyer and Supplier will each bear its own costs of the recall. In the event of a recall, Buyer may request from Supplier a refund of the purchase price or replacement of the recalled Products, at Buyer's sole discretion.

**8. Indemnification.** Supplier agrees to defend, indemnify, and hold harmless Buyer and its affiliates, or their respective officers, directors, employees, shareholders, members, agents, successors, or assigns from all liabilities, claims, demands, and expenses, including attorneys' fees, that arise from (a) Supplier's breach of the Contract, including claims brought by third-party purchasers of the Products from Buyer; (b) Supplier's breach of any representation or warranty given by Supplier; and (c) the use of the Products, regardless of whether such claim arises as a result of a recall or withdrawal of the Products, including, but is not limited to, claims for wrongful death, personal injury, property damage and/or economic loss brought by consumers of the Products who allege that such Products were contaminated, adulterated, unfit for human consumption or in any way defective. Buyer reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Supplier, in which event Supplier will cooperate with Buyer in asserting any available defenses. Supplier agrees to maintain commercial/comprehensive general liability insurance, including product liability, and blanket contracts insurance, in a minimum amount of \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, in support of this indemnity with insurance companies reasonably acceptable to Buyer, which insurance will name Buyer and its affiliates as additionally insured.

**9. Force Majeure.** Neither party will be liable for performance delays or non-performance due to causes beyond its reasonable control.

**10. Choice of Law; Venue.** This Contract is governed by and construed in accordance with the law of the State of Washington, and the United Nations Convention on the International Sale of Goods shall not be considered a part of the law of the State of Washington and shall not be applicable to this Agreement. The parties consent to the jurisdiction and venue of the state and federal courts sitting in Seattle, Washington. In any legal action or other proceeding brought to enforce or interpret the terms of the Contract, the prevailing party or parties shall be entitled to reasonable attorneys' fees and other costs and expenses incurred in that proceeding and in any subsequent appeals, in addition to any other relief to which it is entitled.

**11. Waiver of Jury Trial. EACH OF SUPPLIER AND BUYER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT. EACH OF SUPPLIER AND BUYER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH TO ENTER INTO THE CONTRACT.**

**12. Severability; Waiver; Entire Agreement.** If any provision of the Contract shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, this provision shall not affect any other provision contained in the Contract. If there is any inconsistency between these Terms and any PO, the PO will control. These Terms and any applicable PO constitute the entire agreement between the parties as to any particular transaction. None of the provisions of the Contract shall be (a) deemed to have been waived unless such waiver is in writing signed by both parties, or (b) subject to modification or waiver by course of performance, course of dealing, legal requirement or usage of trade.

## **EXHIBIT A**

### **Fresh and Chilled Seafood Purchase Supplemental Terms**

#### **1. Products; Price:**

Supplier agrees to sell to Buyer the fresh and chilled seafood products described in the PO (the "Products"). Buyer shall pay Supplier based on the quantity and grade of Products indicated in the FSR (defined below), and all prices will be in accordance with any price list agreed to between the parties.

#### **2. Inspection; Rejection:**

a. Buyer shall carefully inspect the Products promptly upon receipt of the Products (the "Inspection"). Upon completion of the Inspection, Buyer shall complete a Final Settlement Report ("FSR"), indicating the quantity and grade of Products received by Buyer. Buyer shall complete the FSR with the utmost good faith and in accordance with the highest industry standards.

b. Buyer may reject Products if Buyer gives Supplier written notice within a commercially reasonable time of delivery specifying in detail the reason for the rejection, and (a) the Products varies materially from the quantity and grade of Products listed in the applicable PO; (b) the Products has, or will soon have, a grade greater than #3; or (c) Supplier has violated any representation or warranty related to the Products or other material term of the Contract.

#### **3. Warranties:**

c. Supplier represents and warrants that Supplier: (a) shall use its best efforts to supply Buyer with the quantity and grade of Products set forth in the applicable PO, and will not deliver any Products with a grade greater than #3; (b) strictly operates under all applicable procedures for the safe and sanitary importation, processing and distribution of Products as outlined by the U.S. Food and Drug Administration mandating the application of Hazard Analysis Critical Control Points ("HACCP") principles and, upon request by Buyer, will provide Buyer with a Certification of HACCP Compliance; (c) shall not deliver any species of seafood that is restricted or prohibited by the regulations or laws of the U.S. Government or Washington State; and (d) shall maintain and document that all Products requiring refrigeration or freezing at the proper temperatures at all times, in accordance with highest industry standards.

d. Supplier further represents and warrants that the Products: (a) will clearly and convincingly pass without objection in the trade, is of good and uniform quality and free from material defects, and is merchantable and fit for human consumption and their intended use; (b) shall be properly packed, clearly and accurately labeled in accordance with applicable laws and the PO, adequately protected against damage and deterioration in transit and, if appropriate, delivered in temperature controlled vehicles; (c) was processed, stored, and is in strict compliance with the U.S. Federal Food, Drug and Cosmetic Act, and applicable regulations thereunder, and other applicable laws, rules, and regulations, and in accordance with the highest industry standards; (d) was caught using fishing methods in strict compliance with the laws of any nation or other international law or convention applicable in the fishing grounds in which the Products was caught; (e) will not be adulterated or misbranded within the meaning of the U.S. Federal Food, Drug and Cosmetic Act; and (f) will be delivered to Buyer free and clear of any liens or encumbrances.

## **EXHIBIT A**

### **Frozen Seafood or Finished Seafood Purchase Supplemental Terms**

#### **1. Products; Price:**

Supplier agrees to sell to Buyer the frozen seafood products or finished seafood products described in the applicable PO (the "Products"). The price for the Products will be as set forth in the PO and will be in accordance with any price list agreed to between the parties.

#### **2. Inspection; Rejection:**

a. Buyer shall carefully inspect the Products promptly upon receipt of the Products.

b. If the Products is not delivered in accordance with the specifications or as warranted, Buyer may in its sole discretion reject the Products or negotiate a reduction in the price of such Products. Buyer will give Supplier written notice within a reasonable time of delivery specifying in detail the reason(s) for the rejection, reduction or refund.

#### **3. Warranties:**

c. Supplier represents and warrants that Supplier: (a) strictly operates under all applicable procedures for the safe and sanitary importation, processing and distribution of Products as outlined by the U.S. Food and Drug Administration mandating the application of Hazard Analysis Critical Control Points ("HACCP") principles and, upon request by Buyer, will provide Buyer with a Certification of HACCP Compliance; (b) shall not deliver any species of seafood that is restricted or prohibited by the regulations or laws of the U.S. Government or Washington State; (c) shall maintain all Products requiring refrigeration or freezing at the proper temperatures at all times, in accordance with highest industry standards; and (d) shall compute the Products' quantity based upon the Products' weight, exclusive of glaze and packaging (including vacuum packaging).

d. Supplier further represents and warrants that the Products: (a) is of the precise quality described in the PO; (b) will clearly and convincingly pass without objection in the trade, is of good and uniform quality and free from material defects, and is merchantable and fit for human consumption and their intended use; (c) shall be properly packed, clearly and accurately labeled in accordance with applicable laws and the PO, adequately protected against damage and deterioration in transit and, if appropriate, delivered in temperature controlled vehicles; (d) was processed, stored, and is in strict compliance with the U.S. Federal Food, Drug and Cosmetic Act, and applicable regulations thereunder, and other applicable laws, rules, and regulations, and in accordance with the highest industry standards; (e) was caught using fishing methods in strict compliance with the laws of any nation or other international law or convention applicable in the fishing grounds in which the Products was caught; (e) will not be adulterated or misbranded within the meaning of the U.S. Federal Food, Drug and Cosmetic Act; and (f) will be delivered to Buyer free and clear of any liens or encumbrances.