

**TRI-MARINE INTERNATIONAL PTE LTD AND TRI MARINE INTERNATIONAL S. DE R.L.'S  
GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF TUNA (WHETHER IN  
PROCESSED OR UNPROCESSED FORM) OR OTHER FISH PRODUCTS**

**1. Scope of Application**

- 1.1 The General Terms and Conditions herein shall apply to all contracts in which Tri-Marine International Pte Ltd or Tri Marine International S. de R.L. (hereafter, TMI) agree to purchase tuna, whether in processed or unprocessed form and/or other fish products. The counter-party to such agreement shall be described herein as the Seller.

**2. Goods**

- 2.1 The description, specifications and quantity of the Goods to be purchased by TMI shall be set out in the Confirmation of Purchase, a specimen copy of which is reproduced in Schedule 1.

**3. The Confirmation of Purchase**

- 3.1 The General Terms and Conditions herein shall be deemed incorporated into every Confirmation of Purchase sent by TMI to the Seller and shall accordingly form part of the agreement to purchase contained in or evidenced by the Confirmation of Purchase. The terms and conditions set out in the Confirmation of Purchase shall to the extent of any inconsistency with the General Terms and Conditions herein prevail over the latter.
- 3.2 Nothing herein is to be construed as precluding the entering of an agreement by TMI other than by use of a Confirmation of Purchase. In the event that TMI enters into an agreement with the Seller without sending a Confirmation of Purchase to the latter, the General Terms and Conditions set out herein shall nevertheless apply to and be deemed as having been incorporated into such agreement. Any reference to a Confirmation of Purchase in the General Terms and Conditions set out herein shall be deemed in that event to refer to the document which contains or evidences the agreement.
- 3.3 The Confirmation of Purchase must be signed and stamped by the Seller for the same to be valid and binding on TMI.

**4. Quantity**

- 4.1 The quantity of Goods purchased should be that as stated in the Confirmation of Purchase unless the quantity stated therein is prefaced by 'about', in which case, the quantity is subject to a tolerance of plus or minus 5% at the seller's option. The computation of quantity for the purpose of determining the price payable shall be based on weight of the Goods ascertained at the place or port of shipment, port or place of discharge or at the destination of the Goods, as provided in the Confirmation of Purchase. The quantity shall be ascertained by use of a weigh bridge or other calibrated weighing device. Such quantity as ascertained shall be final in the absence of fraud or manifest error.

**5. Quality**

- 5.1 The Goods shall be of satisfactory quality and without prejudice to the foregoing, shall in all respects:-
- (a) be safe and fit for human consumption unless the Confirmation of Purchase indicates that the product is not intended for human consumption.
  - (b) in the case of unprocessed Goods be suitable for canning and be free from any defects or deficiencies such as to render the Goods unfit for canning purposes or to render the canning process more costly than would otherwise be; and
  - (c) the Goods must pass any inspection or test conducted by the health, food safety or customs authorities and comply with the relevant orders, rules and regulations of the

country or place of import, even if the agreement is on an FOB or delivery ex seller's warehouse basis.

- 5.2 Without prejudice to the foregoing and other provisions herein, the Goods shall conform to the specifications, description and any other terms as set out in the Confirmation of Purchase.
- 5.3 To the extent that TMI has informed, whether in the Confirmation of Purchase or otherwise, the Seller that the Goods must be fit for a particular purpose, the Seller shall be obliged to provide such Goods as are fit for that purpose.
- 5.4 TMI shall be entitled if it so desires to send representatives to the Seller's place of business or the place of processing, storage and/or delivery of the Goods to witness and supervise the processing, manufacture, storage, shipment and delivery of the Goods as well as to take samples of the same at any stage prior to discharge of the Goods. The Seller shall extend to such representatives all necessary assistance in the performance of the latter's task.
- 5.5 Quality of the Goods shall always be final at the destination of the Goods, unless otherwise stated in the Confirmation of Purchase.
- 5.6 Without prejudice to the foregoing, the Seller shall be liable to TMI for any losses, claims, costs, expenses, fees, penalties or other kinds of financial detriment arising out of or in connection with any recall, confiscation or destruction of the Goods or any punitive or administrative action taken by any governmental or public (including any health and foods safety) authorities in any port or place in which the Goods may be delivered, landed, processed, sold, re-sold or consumed. The Seller shall also be responsible or liable for any injury or death arising out of the consumption of the Goods.

## **6. Rejection of Goods**

- 6.1 Without prejudice to such other rights of rejection as TMI may have under the General Terms and Conditions herein or under general law, including the Sale of Goods Act of Singapore, TMI shall be entitled to reject the Goods or any part thereof in the event of that Goods do not conform with or meet the requirements in Clauses 5(1)(a) to (c), 5(2) and 5(3).
- 6.2 In the event of any rejection of the Goods or part thereof, TMI shall not be obliged to make any payment for such quantity of the Goods as is rejected. In the event of any payment made on Goods which may subsequently be rejected, the Seller shall reimburse TMI of such payment with interest at prevailing rate or TMI shall be entitled to set off such payment with interest at prevailing rate against other sums owing by TMI to the Seller irrespective of whether such sums owing relate to the same Confirmation of Purchase or not.
- 6.3 Without prejudice to such right or rejection as TMI may have herein or under the Sale of Goods Act of Singapore or its Panamanian equivalent, TMI shall always be entitled to reject the Goods:-
- (a) within 7 business days of receiving any adverse report from its representative on the quality or condition of the Goods and such a period shall be deemed a reasonable opportunity for examining the Goods under section 35(2) of the Singapore Sale of Goods Act or its Panamanian equivalent;
  - (b) if the Goods are rejected by TMI's buyers or receivers, whether such rejection be justified or otherwise even if such rejection shall be communicated to TMI after the Goods have been delivered to TMI's buyers, so long as TMI notifies the Seller of its rejection of the Goods within 3 business days upon being notified of the same by its buyers or receivers;
  - (c) In the event (occurring however long after the delivery of the Goods to TMI) of any recall, confiscation or destruction of the Goods or any punitive or administrative action taken by any governmental or public (including health and food safety) authorities in any port or place in which the Goods may be delivered, landed, processed, sold, re-sold or consumed in respect of the Goods.

- 6.4 For avoidance of doubt and without prejudice to the foregoing, TMI's right to reject the Goods shall be exercisable prior to, during or within a reasonable time after the processing of the Goods by TMI, even if the Goods are sold on a FOB basis or ex seller's warehouse basis.

## **7. Resale**

- 7.1 The Seller acknowledges that TMI is in the business of purchasing and re-selling the Goods to third parties. TMI shall accordingly be entitled to claim for any loss of re-sale or anticipated profit as well as other consequential losses and to be fully indemnified by the Seller in respect of any claim being brought by its buyers or receivers or in respect of any losses or damages otherwise suffered in respect of any breach in the quality, description or specifications of the Goods on the Seller's part or a breach of any of the General Terms and Conditions herein.

## **8. Payment**

- 8.1 The Confirmation of Purchase shall specify the percentage of the price which is payable as Advance Payment, the date of such Advance Payment as well as the documents to be presented by the Seller in respect of such Advance Payment.
- 8.2 The balance of the price ("Balance Payment") shall be settled within such number of business days after completion of processing of cargo as is specified in the Confirmation of Purchase.
- 8.3 The Advance and Balance Payments may be adjusted according to the quantity of the Goods as ascertained in accordance with Clause 4. Without prejudice to the foregoing, the Balance Payment may be set off against any amount due to TMI in respect of any deficiency in the specifications, quality, quantity or condition of the Goods or for rejection of the Goods as a result of such deficiency.
- 8.4 Payment by TMI shall be made by way of telegraphic transfer except otherwise agreed by the parties and stated in the Confirmation of Purchase.

## **9. Documents Required by TMI**

- 9.1 The documents to be provided by Seller to TMI in respect of any agreement by TMI to purchase Goods shall be specified in the Confirmation of Purchase. The provision to and receipt of all the documents so specified by TMI, in the requisite number of originals and/or copies shall be a condition precedent of TMI's liability to pay under Clause 8. All original documents required under a particular Confirmation of Purchase shall be sent by the Seller to TMI or such other party as designated by TMI in the Confirmation of Purchase within 7 days. TMI shall at its discretion pay against faxed copies of such documents if the Seller informs TMI in writing that originals are not yet available provided always that originals shall be sent to TMI once available.
- 9.2 Without prejudice to any other General Terms and Conditions herein, the Seller warrants to TMI the accuracy and truth of information and data contained in the documents issued by it provided as well as the authenticity of such documents.
- 9.3 Where the Goods are shipped on board a bulk carrier, the Seller shall be entitled to present a Mate's Receipt in lieu of the full set of Bills of Lading provided that if Bills of Lading are issued, the full set of the same shall be presented to TMI within 7 days from the date of such issuance.

## **10. Bills of Lading**

- 10.1 If Bills of Lading are issued, Seller shall procure that the full set of Bills of Lading are either endorsed in blank or endorsed specially in favour of TMI save where TMI is named as shipper in the Bills of Lading under which the Goods are shipped.

## **11. Shipment and Delivery Dates**

11.1 Any reference to "shipment date" in the Confirmation of Purchase shall be to the date of the Bill of Lading under which the Goods are shipped or to the date of the Mate's Receipt if Bills of Lading are not issued 3 business days after completion of loading.

11.2 Any reference to "delivery date" in the Confirmation of Purchase shall be to the date when the Goods are delivered to TMI, its nominees or receivers at the port or place of discharge as specified in the Confirmation of Purchase, except for any shipment on an FOB basis, where any reference to the delivery date shall be to the date shown on the Mate's Receipt or the Bill of Lading (if issued).

## **12. Disposal of Goods**

12.1 TMI does not warrant to the Seller that it would dispose, re-sell, process, or otherwise deal with the Goods at the place or port of discharge specified in the Confirmation of Purchase.

## **13. Delay in Loading or Discharge**

13.1 In FOB agreements, any delay in loading attributable directly or indirectly to the Seller, his servants, agents or suppliers shall be borne by the Seller based on the demurrage rate payable by TMI pursuant to the Contract of Affreightment. Laytime shall be that provided in the Contract of Affreightment.

13.2 In CIF or CNF contracts, TMI shall only be responsible for any delay in taking delivery of the Goods at the port of discharge if such delay is directly attributable to TMI, its servants or agents. The amount payable for such delay shall be based on the laytime and demurrage provisions in the Contract of Affreightment under which the Goods are shipped provided that the laytime and demurrage rate is informed to TMI in writing before shipment, in the absence of which information, TMI shall not be responsible for any such delay whatsoever. TMI shall not be responsible for any delay that is directly or indirectly attributable to any other party.

13.3 TMI should not be responsible or liable for any delay or failure in the loading or discharge of the Goods arising in connection with the Contract of Affreightment unless such delay or failure is directly attributable to its servants or agents.

13.4 Contract of Affreightment shall include any contract of carriage contained in or evidenced by a fixture note or a charterparty, whether demise, time, voyage or slot or a sub-charter thereof, or a bill of lading, booking note, sea waybill or delivery order.

## **14. Title and Risk**

14.1 Title to the Goods shall pass upon loading of the Goods onto the carrying vessel except where the purchase is on a seller's ex works basis, in which case, it shall pass once the Goods are taken out of the place or premise in which they are kept by the Seller prior to disposal to the Buyer.

14.2 Risk of loss, damage or deterioration of Goods shall pass to TMI at the completion of discharge of the Goods at the port or place of discharge or if specified in the Confirmation of Purchase, at the destination of the Goods.

## **15. Time Stipulations**

15.1 All time stipulations for the performance of the Seller's obligations herein and in the Confirmation of Purchase shall be of the essence.

## **16. Variation of Contract**

16.1 Any variation to the terms and conditions herein and to those set out in the Confirmation of Purchase shall not be valid unless effected in writing and signed by authorised signatories of

both parties. Persons holding the following designations shall be deemed Authorised Signatories of TMI for the purpose of these General Terms and Conditions:

- (a) Directors of TMI;
- (b) Director of Finance of TMI;
- (c) Director of Operations of TMI; and
- (d) Documentation Manager of TMI.

16.2 TMI shall be entitled to authorise persons holding other designations as signatories for the purpose of these General Terms and Conditions, from time to time. If persons holding other designations are so authorised, one of the Authorised Signatories listed in the sub-Clause 16.1 shall notify the Purchaser in writing of the same on TMI's behalf.

## **17. Compliance with National Regulations**

17.1 The Seller warrants that it has complied with and, where applicable, has procured its supplier(s) to comply with all applicable national legislation or regulations (including but not limited to any legislation or regulations in the European or United States pertaining to the place of origin or processing of the Goods). In the event that the Goods may not have complied with any applicable national legislation or regulations (including but not limited to any legislation or regulations in the European or United States pertaining to the place of origin or processing of the Goods) due to the act, omission, default or mis-conduct of the Seller, its suppliers or other parties in the supply chain, the Seller shall be responsible for and comes under a duty to reimburse TMI for all losses, claims, costs, expenses, fees, penalties and other kinds of financial detriment that may be imposed on or incurred by TMI.

17.2 The Seller acknowledges that even if the Goods sold by it are supplied by another party, it is responsible to pay for any taxes, customs, dues, fees or other charges that may be levied or imposed by the authorities in the exporting country unless the Confirmation of Purchase stipulates otherwise. Without prejudice to the foregoing, if the Goods attract preferential tax or import duty in the country of import subject to the fulfilment of conditions, the Seller warrants that such conditions have been complied with.

## **18. Force Majeure**

18.1 If any of the General Terms and Conditions herein or in a Confirmation of Purchase shall not be capable of performance or cease to be capable of performance or if performance thereof is in any way delayed due to war, insurrections, riots, fire, floods, act of God, tumultuous sea conditions, tsunami, adverse weather conditions, destruction or deterioration of fishing grounds, strikes, labour unrest, closure of processing centre or any other cause beyond the control of the party whose performance is so affected ("force majeure event") for a period expected to last not less than 30 days, such a party shall notify the other in writing, providing proof of the force majeure event by way of certification from the chamber of commerce in the territory where the affected party carries out his business or any other evidence to the reasonable satisfaction of the other party. Upon receiving such notification of the occurrence of a force majeure event, the party to whom such notification is sent shall be entitled to terminate the agreement contained in or evidenced by Confirmation of Purchase to the mutual discharge of both parties of all obligations performance of which is yet due, without prejudice to any rights and obligations that have accrued up to the date of termination. Any decision to terminate must be notified to the sender of the force majeure notification in writing within 7 days-after receiving the- latter's notification. If the force majeure event shall last a period of 120 days, the agreement shall automatically be discharged so far in relation to all obligations performance of which is not yet due.

## **19. Entire Agreement**

19.1 Save for the General Terms and Conditions herein and the terms and conditions appearing in a Confirmation of Purchase and save for any variation of terms and conditions as provided for in Clause 16 herein, no other terms and conditions wherever appearing and, whether oral or in writing, or partly oral and partly in writing, shall be binding on TMI. All previous

communications, representations and agreements between the parties, whether oral or in writing, shall have no contractual effect on the parties whatsoever.

- 19.2 TMI's servants and agents are not authorised to make or provide any representation, advice or recommendation as to the description, specifications, quality, processing, storage or transportation of the Goods, whether orally or in writing, unless such representations, advice or recommendation is confirmed in writing by an authorised signatory of TMI.

## **20. Survey**

- 20.1 Each party shall be entitled to call for a joint survey of the Goods at the Seller's place of processing, manufacture, storage or delivery or on board the vessel or other means of conveyance or at the port of discharge of the Goods. The surveyor shall be nominated by TMI; the Seller shall not unreasonably withhold their consent to the appointment of the surveyor so nominated. The costs of such survey and any investigation, analysis or test done in consequence or relation thereto shall be borne equally by both parties.

## **21. Incorporation of INCO Terms 2000**

- 21.1 Where the Confirmation of Purchase is on an Ex Works, CIF, CFR/CNF, FOB or DES basis, the relative INCO Terms 2000 shall apply insofar as they are not inconsistent with the General Terms and Conditions herein or any terms and conditions set out in the Confirmation of Purchase.

## **22. Legality of Fishing Method(s) Used**

- 22.1 The Seller warrants that the fishing method(s) used in respect of the Goods do not contravene the laws of any nations in whose fishing grounds the fishing is or has been carried out or such applicable international laws or conventions if the fishing is or has been carried out in international waters, irrespective of whether the fishing is or has been carried out by the Seller, its agents or servants, the Seller's supplier or any other party.

## **23. Packing / Loading / Shipment**

- 23.1 The Goods shall be packed, loaded and shipped strictly in accordance with the requirements of TMI as specified in the Confirmation of Purchase.
- 23.2 Partial shipment is only permitted if requested in writing by TMI or otherwise stated in the Confirmation of Purchase.

## **24. Insolvency or Liquidation of Seller**

- 24.1 TMI shall be entitled to terminate any agreement contained in or evidenced by the Confirmation of Purchase in the event that a liquidator, trustee in bankruptcy, receiver or judicial manager is appointed in respect of the Seller's assets or if the Seller enters into an arrangement or composition with its creditors.

## **25. Governing Law and Arbitration**

- 25.1 The Confirmation of Purchase as well as the General Terms and Conditions herein shall be governed by the laws of Singapore if Tri-Marine International Pte Ltd is the Purchaser, or governed by the laws of Panama if Tri Marine International S. de R.L. is the Purchaser save that:-

- (a) the Contracts (Rights of Third Parties) Act of Singapore and its Panamanian equivalent shall not apply to give any party other than the Seller and TMI any right to

enforce any General Terms and Conditions herein or any term in the Confirmation of Purchase.

(b) the UN Convention for International Sale of Goods shall not apply.

- 25.2 Any disputes arising out of or in connection with any agreement contained in or evidenced by a Confirmation of Purchase shall be referred to arbitration in Singapore in accordance with the prevailing rules of arbitration of the Singapore International Arbitration Centre. The arbitration shall be before a sole arbitrator either jointly appointed by parties or no joint appointment is made, appointed by the Chairman of the Singapore International Arbitration Centre. However, if Tri Marine International S. de R.L. is the Purchaser, then it alone may initiate arbitral and judicial proceedings in Panama instead.

**SCHEDULE 1****CONFIRMATION OF PURCHASE — Order No Pxxxx/xxx/10**

1, To:		3. Date:
2. Attn:		4. Ref:
5. cc:		
6. COP Ref:		
7. Merchandise:		
<b>8. Price</b>	<b>Item</b>	<b>Price</b>
9. Commission:		
10. Carrier:		11. Fishing Vessel:
12. Shipment:		
13. Shipment Terms:		
14. Destination:		
15. Payment Terms:		
16. Documents Provided		
<ul style="list-style-type: none"> <li>• Commercial Invoice</li> <li>■ Bills of Lading</li> <li>■ EUR1 Certificate</li> <li>■ Crew List</li> <li>■ Health Certificate</li> <li>■ Master's Declaration</li> <li>■ Form A</li> <li>■ NOAA Form 370</li> <li>■ Dolphin Safe Certificate</li> <li>■ Mates Receipt</li> <li>■ Certificate EU</li> <li>■ Sanitary Certificate Vessel</li> <li><input type="checkbox"/> Ownership Certificate</li> <li><input type="checkbox"/> Certificate of Origin</li> <li>■ Captain's Statement</li> <li>■ Packing List</li> <li><input type="checkbox"/> EU Catch</li> <li>• Certificate Others</li> </ul>		
17. Quality:	18. Quantity:	19. Sizing:
20. Unloading Rate:		
21. Demurrage:		
22. Other Terms:		
23. General Terms and Conditions		
<p>TMI General Terms and Conditions for Purchase of Tuna (whether in Processed or Unprocessed its Form) or other Fish Products, including are expressly of Purchase. These General Terms and Conditions incorporated into this Confirmation are available TMI's website at <a href="http://www.trimarinegroup.com">www.trimarinegroup.com</a>. A copy upon request and can be found in of the General Terms and Conditions has earlier been sent to and received by you.</p>		
<p>Please sign and affix your company stamp to confirm immediately. Any amendments or additions introduced by you to this Confirmation of Purchase which are not counter-signed by us are not binding on us.</p>		
Seller		Buyer