

## TERMS AND CONDITIONS OF TRADE

1. **Defined Terms:**
  - (i) **ACCC** means the Australian Competition and Consumer Commission.
  - (ii) **ASI** means Australian Seafood Industries Pty Ltd.
  - (iii) **Authorisation** means the interim authorisation granted by the ACCC in favour of ASI in connection with the imposition and collection of the Levy to fund research into breeding Pacific oyster spat with resistance to Pacific Oyster Mortality Syndrome.
  - (iv) **Conditions** means these Terms and Conditions of Trade between the Purchaser and SCL as set out in this document.
  - (v) **Contract** means these Conditions, the conditions contained in any credit application made by the Purchaser to SCL, and any conditions imposed by SCL as conditions on which credit is granted.
  - (vi) **Data Collector** means Wise, Lord & Ferguson of 160 Collins Street, Hobart or such other accounting firm appointed from time to time to perform a data collection role in respect of the Levy.
  - (vii) **Goods** means the oyster spat and other goods ordered by the Purchaser and supplied by SCL to the Purchaser from time to time.
  - (viii) **Levy** means \$2.80 per 1000 Pacific oyster spat or such other amount imposed by ASI in accordance with the Authorisation or any replacement, varied, final or subsequent authorisation.
  - (ix) **Purchaser** means the person, entity or organisation that purchase Goods from SCL.
  - (x) **SCL** means Shellfish Culture Limited (ACN 009 519 171).
2. **Acceptance of Conditions:** The Purchaser agrees that in placing any order with SCL and or by accepting delivery in whole or part of any Goods after being provided with a copy of these Conditions, the Purchaser has agreed to these Conditions whether or not the Purchaser has signed a copy of these Conditions.
3. **Price:** the price of Goods will be as advised by SCL to the Purchaser from time to time.
4. **Deposit:** The Purchaser shall pay the deposit (if any) specified by SCL in respect of any order placed by the Purchaser, but the acceptance of any order or the payment of any deposit shall not impose on SCL any liability whatsoever to deliver the number, type or size of Goods ordered at any particular time or at all, it being acknowledged that SCL, due to circumstances outside its control, or for any other reason, may not be able to supply the number, type or size of Goods ordered.
5. **Payment:** The Purchaser agrees to pay SCL for all Goods and services provided by SCL to the Purchaser, as well as any applicable GST or other charges, duties and taxes set out in the Contract or otherwise invoiced by SCL. All amounts are due and payable within thirty (30) days of date of statement (unless otherwise specified).
6. **Failure to pay:** In the event that payment is not received according to the Contract this will constitute a default under the Contract and:
  - (i) all money owed by the Purchaser to SCL will become immediately due and payable from the Purchaser to SCL; and
  - (ii) Interest on daily balances of overdue accounts will be charged at the rate of interest determined by SCL from time to time and such interest shall be payable immediately upon being charged.
7. **Costs:** In the event of a default by the Purchaser under the Contract, the Purchaser agrees to indemnify SCL for all costs that SCL may incur in connection with the default, including:
  - (i) any reasonable legal costs (on a solicitor/client basis) that SCL may become liable for;
  - (ii) the reasonable costs, including their commission; of any mercantile agent or collection agency that SCL may choose to engage; and
  - (iii) any other disbursements that SCL may reasonably become liable for.
8. **Risk in Goods:** The risk in any Goods supplied by SCL to a Purchaser passes when they are delivered to a Purchaser or into custody on the Purchaser's behalf (whether or not payment is made at that time). SCL will not be liable for any claim in respect of damaged or faulty Goods or Goods which are not in accordance with the Purchaser's order unless SCL receives notice of such claim within 24 hours of their delivery to the Purchaser or into custody on the Purchaser's behalf, subject to the further terms below which may add to or vary this part in some circumstances there described.
9. **Ownership and treatment of Goods:** Ownership in Goods supplied by SCL remains with SCL until payment in full of the price for the Goods and all other sums whatsoever due to SCL. Pending such payment the following conditions apply to the Goods:
  - (i) the Purchaser must designate and keep the Goods in such a way as to indicate the Goods are the property of SCL and upon request must advise SCL of the location of the Goods and the means by which the Goods have been kept separately identifiable;
  - (ii) the Purchaser shall be bailee of the Goods and shall hold them and any proceeds, rights and claims in a fiduciary capacity for SCL;
  - (iii) SCL shall be entitled at any time by its servants or agents to enter upon any land or property owned or occupied by the Purchaser and recover and dispose of the Goods and shall be entitled to use such force as may be necessary to make such entry and seizure without any liability to the Purchaser. SCL shall be at liberty to resell the Goods at such price and upon such terms as it sees fit and the proceeds of such sale, after deduction of all expenses, shall be deducted from the amount due;
  - (iv) the Purchaser must not in the ordinary course of business mix the Goods with other objects where such mixing renders the Goods unidentifiable;
  - (v) the Purchaser must not dispose of the Goods to a third party. In the event of any sale the Purchaser shall hold the proceeds of sale or disposal and any rights or claims against third parties arising out of such sale or disposal in a fiduciary capacity for and to the account of SCL until the Purchaser has paid all sums whatsoever due to SCL and the Purchaser shall take all steps necessary to keep such proceeds separate from any other monies, to pay over such proceeds to SCL and to transfer to SCL any such rights or claims to the extent necessary to discharge in full the Purchaser's indebtedness to SCL; and
  - (vi) the Purchaser has no authority to enter into any contract or condition or give any warranty or representation in relation to the Goods which may render SCL liable to any third party for breach of such contract or condition or for inaccuracy of such warranty or representation or which may render SCL chargeable to any tax or duty.
10. **Set off:** SCL may at any time and without prior notice to the Purchaser deduct from or set off against any amounts which are due to or which are held for or on behalf of a Purchaser the amount of any indebtedness or liability in respect of Goods supplied by SCL.
11. **Application of payments:**
  - (i) The Purchaser agrees that any time that it makes a payment to SCL, irrespective of whether the payment is made under or in connection with the Contract, that SCL may apply that payment in any manner that SCL sees fit.
  - (ii) If SCL for whatever reason ceases to grant credit to the Purchaser in relation to the supply of Goods but continues to supply Goods on the basis that cash equal to or greater than their sale price is paid at the time of delivery of the Goods, SCL may at its option (and without notice to the Purchaser) apply all or any part of the cash so paid in or towards payment of any amount outstanding for Goods previously supplied to the Purchaser. In that event, the payment by the Purchaser shall be deemed to be in respect of such Goods

previously supplied and the provisions of clause 9 (Ownership and treatment of Goods) shall apply in all respects to the Goods delivered at the time such cash payment is made on the basis that such Goods are being supplied on credit.

12. **PPSA:**

- (i) **Definitions:** unless the context requires otherwise, the terms used in this clause 12 have the meanings given to them in, or by virtue of, the Personal Property Securities Act 2009 (Cth) (**PPSA**).
- (ii) **Consideration:** in consideration of SCL agreeing to supply Goods to the Purchaser, the Purchaser:
  - a. grants to SCL, at SCL's discretion, a security interest or purchase money security interest (**PMSI**) in the Goods;
  - b. agrees that any Goods supplied after the date of the Contract and any proceeds of sale of such Goods will be subject to:
    - i. the security interest or PMSI granted in the Contract; and
    - ii. the terms of the Contract;
  - c. agrees that the security interest or PMSI has attached or will attach to all Goods supplied now or in the future to the Purchaser when the Purchaser takes possession of the Goods and that the attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of the Contract; and
  - d. agrees to treat SCL's security interest or PMSI in the Goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.
- (iii) **Purchaser must take all steps:** SCL may, by notice to the Purchaser at any time, require the Purchaser to take all steps that SCL consider necessary or desirable to:
  - a. ensure that the Contract or any security interest or PMSI arising under it, is enforceable against the Purchaser or any third party; and
  - b. protect, perfect, record, or better secure SCL's position under the Contract as a first ranking security.
- (iv) **Registration:** the Purchaser acknowledges that SCL reserves the right to register a financing statement in respect of any Goods supplied by SCL to the Purchaser under the Contract and that SCL can require the Purchaser to pay the cost and expense of registering a financing statement or a financing change statement.
- (v) **Notices:** the Purchaser waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the security interest or PMSI under the Contract, unless the notice or statement is required by law and cannot be excluded.
- (vi) **Protection of Goods:** the Purchaser agrees:
  - a. not to allow any person to register a financing statement over any of the Goods supplied by SCL without SCL's prior written consent;
  - b. that the Purchaser must immediately notify SCL if the Purchaser becomes aware of any person taking steps to register a financing statement in relation to the Goods; and
  - c. to perfect and maintain any security interest or PMSI that the Purchaser may have in the Goods under the PPSA.
- (vii) **Contracting out of enforcement provisions:** if Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of the Contract, SCL and the Purchaser agree that to the extent permitted by law, each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other than sections 117, 118, 123(1), 134(1) and 135, do not apply to the enforcement of that security interest.
- (viii) **Confidentiality:** SCL and the Purchaser may not disclose any information of a kind referred to in section 275(1) of the PPSA that is not in the public domain. The Purchaser agrees that the Purchaser will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d), if SCL approves.
- (ix) **Insolvency:** if the Purchaser becomes insolvent, without prejudice to any of SCL's other rights:
  - a. the Purchaser's right to dispose of the Goods in the ordinary course of business in accordance with the PPSA and any of the Purchaser's other rights in respect of the Goods immediately cease; and
  - b. the Purchaser must immediately return the Goods to SCL in which title has not passed as provided for under clause 9 (Ownership and treatment of Goods).

13. **Exclusion of warranties:** All warranties, conditions, liabilities or representations in relation to the quality or fitness of Goods or services (other than any being or giving rise to non-excludable rights under any laws of Australia or its State or Territories) which might otherwise be implied herein by law or otherwise are expressly negated and excluded.

14. **Warranty limitations:** Any warranty expressly or impliedly contained in the Conditions or imputed by statute is subject to the Purchaser having fully complied with its obligations under these Conditions. Any such warranty shall not apply to any loss or damage caused by neglect misuse or mismanagement of Goods by the Purchaser or its servants or agents.

15. **No consequential loss:** SCL shall not in any event be liable to the Purchaser or any of its officers, employees, contractors, agents or other users of the Goods for any special, incidental, indirect or consequential damage or loss or loss of profits arising out of or in connection with the Contract and the supply of Goods.

16. **Limitation of liability:**

- (i) Where legislation implies in these Conditions any condition or warranty, and that legislation voids or prohibits provisions in a contract excluding or modifying liability under such condition or warranty, the condition or warranty will be deemed to be included in this Agreement. However, in those circumstances SCL's liability for any breach of such condition or warranty will be limited at its option to one or more of the following:
  - a. the replacement of the product or the supply of equivalent product; or
  - b. payment of the cost of replacing the product or acquiring equivalent Goods.
- (ii) SCL's overall liability to the Purchaser or any of its officers, employees, contractors, agents or other users of the Goods arising out of or in connection with the Contract and the supply of Goods is limited to the value of the Goods supplied.

17. **Severance:** If and to the extent that any clause or part of a clause in these Conditions renders the Contract unenforceable or void for any reason that clause or part of a clause shall be deemed to be no part and never to have been any part of these conditions and shall be struck from them.

18. **Notices:** Any statement, invoice notice or other document including any court process may be given or delivered to or served upon the Purchaser by SCL by despatch by prepaid post addressed to the Purchaser at the last address of the Purchaser known to SCL and in the event that it is so despatched by prepaid post it shall be conclusively deemed to have been received by the Purchaser when it would have reached the address to which it was despatched in due course of the post.

19. **Variation:** SCL may vary any provisions of the Contract, and any fees and charges, at any time by giving the Purchaser notice in writing of the variation.

20. **Termination:** SCL may terminate the Contract and any supply of Goods immediately and without any liability to the Purchaser if the Purchaser is in breach of any provision of the Contract or becomes insolvent, goes into liquidation, enters into a scheme of arrangement or appoints an administrator. SCL may terminate the Contract and any supply of Goods at any time at its discretion by giving notice in writing to the Purchaser. Termination or expiry does not affect the accrued rights and obligations of the parties under the Contract, including with respect to any payments due to SCL or any indemnities given by the Purchaser under the Contract.

21. **Governing law and jurisdiction:** the laws of Tasmania govern these Conditions and the parties submit to the non-exclusive jurisdiction of the courts of Tasmania.
22. **Entire agreement:** the Contract is the entire agreement in relation to the supply of Goods to the Purchaser and will have precedence over all other documents, correspondence or other writing at any time passing between SCL and the Purchaser, including over any purported terms of the Purchaser.
23. **Additional conditions in relation to purchases:** The following conditions are additional to the terms and conditions preceding this part and shall be applied in respect of shellfish seed as appropriate to the purchase made:
- (i) **Conditions relating to Pacific oyster and Flat oyster seed**  
The oyster seed SCL supplies is supported by a quality assessment report which describes the quantity and size delivered, percentage mortality, doubles and curl back and, for triploid product, the percentage triploidy. Up to five sub-samples are assessed per quality assessment report.  
The total number of seed invoiced to the Purchaser is calculated on live and good quality spat as determined by SCL. The counting method used is by weight using trade certified scales. Dead and substandard spat are not included in sample counts.
  - (ii) **Purchaser's obligations on receipt of shellfish seed**  
Upon receipt of shellfish seed the Purchaser must inspect it and any complaint with respect to size, quality or quantity must be received by SCL within 24 hours of delivery. The nature of the product supplied prevents SCL from entertaining any claim after that time: NO CLAIMS WITH RESPECT TO SIZE, QUALITY OR QUANTITY OF SHELLFISH SEED WILL BE CONSIDERED MORE THAN 24 HOURS AFTER DELIVERY TO THE PURCHASER.
  - (iii) **Complaints relating to shape or growth characteristics of seed**  
Complaints relating to shape or growth characteristics of a particular batch of shellfish seed will be entertained by SCL in its absolute discretion. No warranty is made or given with respect to the shape or growth characteristics of the shellfish seed supplied. In any event complaints with respect to growth and quality will not be accepted unless the problem is applicable to the total supply and batch.
  - (iv) **Triploid Shellfish**  
SCL will provide a triploid assessment report which shows the percentage triploidy at time of sale. The triploid percentage shown on the triploid assessment for this product is an indication only and is provided from results obtained by flow cytometry testing. Limitations inherent in the testing regime permit SCL to give an indication of triploidy only and non-triploids (including diploid, aneuploid and mosaic) may be present in this supply.  
Please note that SCL neither warrants nor guarantees that the triploid percentage disclosed is actually at or will remain at this level within this supply or that any mature stock will produce acceptable meat condition. The total number of seed invoiced shall be at a triploid price whether or not the triploid rate is below 100%.  
SCL does not accept liability for damages or any claim arising out of or in connection with this supply. The Purchaser acknowledges and accepts this condition upon receipt of the Goods and accepts the triploid percentage supplied.
  - (v) **Environmental and other conditions**  
SCL will not be responsible for any loss caused or substantially contributed to by farm conditions, the Purchaser's management practices, site specific problems, or other environmental problems associated with the poor performance of seed.
24. **Levy:** The Purchaser:
- (i) acknowledges and agrees to the imposition and collection of the Levy;
  - (ii) undertakes that it will, upon receipt of an invoice from ASI, accept and pay the Levy on its purchases of Pacific oyster spat from SCL; and
  - (iii) consents to and authorises SCL to provide monthly Pacific oyster commercial purchase data to the Data Collector so that the Data Collector can provide to ASI the Purchaser's name and address, the volume of Pacific oyster spat purchased by the Purchaser and subject to SCL's consent, SCL's name.