

1. INTERPRETATION

- 1.1 **Definitions:**
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.
Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer: the person or entity who purchases the Goods from the Supplier described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity
Equipment: shall mean display freezers and associated equipment.
Force Majeure Event: an event or circumstance beyond a party's reasonable control.
Goods: shall mean Goods supplied by the Supplier to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Supplier to the Customer.
Guarantor: means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
Price: shall mean the cost of the Goods as agreed between the Supplier and the Customer subject to clause 3 of this contract.
Sales Order: the Customer's order for the Goods, will be set out in the Sales Order which will follow any customer purchase request or enquiry.
Supplier: shall mean OZSU FISH UK LIMITED (registered in England and Wales with company number 10533465) its successors and assigns or any person acting on behalf of and with the authority of OZSU FISH UK LIMITED.

1.2 Interpretation:

- a. a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
b. any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
c. a reference to writing or written includes emails.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
2.3 The Order shall only be deemed to be accepted when the Supplier issues The Sales Order, at which point the Contract shall come into existence.
2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
2.5 Any samples, descriptions or advertising produced by the Supplier and any illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 7 Business Days from its date of issue.

3. GOODS

- 3.1 The Goods as described by the Supplier in the Sales Order.
3.2 The Supplier reserves the right to amend the specification of the Goods as required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 At the Supplier's sole discretion delivery of the Goods and shall take place when;
4.1.1 the Customer takes possession of the Goods at the Supplier's address, or
4.1.2 the Customer takes possession of the Goods at the Customer's address (in the event that the Goods are delivered by the Supplier or the Supplier's nominated carrier).
4.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
4.3 At the Supplier's sole discretion the costs of delivery may be included in the Price.
4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
4.5 The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated.
4.6 The Supplier shall not be liable for any loss or damage whatever due to failure by the Supplier to deliver the Goods (or any of them) promptly or at all.
4.7 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery.
4.8 If the Customer fails to accept delivery of the Goods within one Business Day of the Supplier notifying the Customer that the Goods are ready waiting to be accepted, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the first Business Day after the day on which the good are ready for acceptance; and
4.7.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
4.9 If the next Business Day after the day on which the Supplier notified the Customer that the Goods were ready for acceptance the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
4.10 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
4.11 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. ACCEPTANCE

- 5.1 Any instructions received by the Supplier from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Supplier shall constitute acceptance of the terms and conditions contained herein.
5.2 Where more than one Customer has entered into this agreement, the Customer shall be jointly and severally liable for all payments of the Price.
5.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and may be changed subject to the discretion of the Supplier.
5.4 The Customer undertakes to give the Supplier at least seven (7) days' notice of any change in the Customer's name, address and/or any other change in the Customer's details.

6. QUALITY

- 6.1 The Supplier warrants that upon delivery the Goods shall:
6.1.1 conform with their description; and
6.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
6.1.3 be fit for any purpose held out by the Supplier.
6.2 Subject to clause 6.3, if:
6.2.1 the Customer gives notice in writing to the Supplier within 12 hours of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
6.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
6.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
the Supplier shall, at its option, replace the Goods, or refund the price of the unsatisfactory Goods in full.
6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
6.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;
6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, handling, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
6.3.3 the defect arises as a result of negligence, or abnormal storage or working conditions;
6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
6.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.

- 7.1 If the Supplier retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
7.3 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
7.4 Until title to the Goods has passed to the Customer, the Customer shall:
7.4.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
7.4.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
7.4.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
7.4.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1; and
7.4.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
7.5 Subject to clause 7.6, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
7.5.1 it does so as principal and not as the Supplier's agent; and
7.5.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
7.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Supplier may have:
7.6.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
7.6.2 the Supplier may at any time:
7.6.2.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
7.6.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
7.7 the Customer shall not deal with the money of the Supplier in any way which may be adverse to the Supplier; and
7.8 the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Supplier; and
7.9 the Supplier can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
7.10 until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Supplier will be the owner of the end products.

8. CANCELLATION

- 8.1 The Supplier may cancel these terms and conditions or cancel delivery of Goods with at least 7 days before the Goods are delivered by giving written notice.
8.2 Upon giving a notice the Supplier shall repay to the Customer any sums paid in respect of the Price.
8.3 The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
8.4 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

9. PRICE AND PAYMENT

- 9.1 The price of the Goods shall be the Price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
9.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
9.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
9.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
9.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
9.3 At the Supplier's sole discretion;
9.3.1 payment shall be due on delivery of the Goods, or
9.3.2 payment shall be due before delivery of the Goods, or
9.3.3 payment for approved Customer shall be made by instalments in accordance with the Supplier's payment schedule.
9.4 The Customer shall pay the invoice in full and in cleared funds in accordance with the agreed terms of the Creditor Application Form. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
9.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
9.6 Payment will be made by bank transfer, or by cheque, or by bank cheque, or by any other method as agreed to between the Customer and the Supplier.
9.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. TERMINATION

- 10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
10.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
10.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
10.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
10.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
10.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1.1 to clause 9.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. SECURITY AND CHARGE

- 11.1 Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever:
11.2 where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
11.3 should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Supplier from and against all the suppliers costs and disbursements including legal costs on a solicitor and own client basis.
11.4 The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Supplier or the Supplier's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary

12 LIMITATION OF LIABILITY

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 12.1.2 fraud or fraudulent misrepresentation;
- 12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 12.1.4 defective products under the Consumer Protection Act 1987; or
- 12.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 12.2 Subject to clause 10.1:
- 12.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 12.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

13 FORCE MAJEURE

- 13.1 Force majeure. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate this Contract by giving 7 days' written notice to the affected party.

14 GENERAL

14.1 Assignment and other dealings

- 14.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

14.2 Confidentiality

- 14.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 12.2.2. For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- 14.2.2 Each party may disclose the other party's confidential information:
- 14.2.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
- 14.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.2.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

14.3 Entire agreement

- 14.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 14.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

- 14.4 **Variation** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 14.5 **Waiver** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- 14.5.1 waive that or any other right or remedy; nor

- 14.5.2 prevent or restrict the further exercise of that or any other right or remedy.

- 14.6 **Severance** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.7 Notices

- 14.7.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

- 14.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.7(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by [[fax or] email], one Business Day after transmission.

- 14.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 14.8 **Third party rights** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

- 14.9 **Governing law** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

- 14.10 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.