



# OPERATING RULES

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## 1. Background

- 1.1 Sydney Fish Market Pty Limited ACN 064 254 306 (**SFM**) operates the internet trading system known as SFMLive. SFMLive operates independently from the seafood auction conducted by SFM at Sydney Fish Market, Pyrmont.

## 2. Acceptance of Operating Rules

- 2.1 In order to use SFMLive, you must register as a Registered User by completing the relevant Buyer or Supplier Application in accordance with clause 6.
- 2.2 All Users of SFMLive, by using or continuing to use SFMLive, accept and agree to be bound by these Operating Rules, as amended from time to time, notwithstanding any failure to complete a relevant Buyer or Supplier Application.

## 3. Facilities

SFMLive provides the facilities for online:

- (a) Bid and Offer Auction (Buyers bid for Items auctioned);
- (b) Fixed Price Sales;
- (c) Direct Sale entry including long term contracts; and
- (d) Reverse Auction (Buyers list an order for Items)

as described in clause 14.

## 4. Access

- 4.1 SFMLive normally operates 24 hours per day, 7 days a week or other times as determined by SFM at its absolute discretion. SFM does not warrant that SFMLive will be error free or that use of SFMLive will be error free or uninterrupted.

- 4.2 Users require, and must supply at their own cost, an internet connection and a personal computer (PC) with the following minimum system specifications:

- 4.3 The minimum system requirements for SFMLive software are as follows.

### 4.4 For Win 95/98/Me/NT/2000/Vista

- Pentium PC 150Mhz or higher
- 100 Mb Free Hard Drive space
- 32 Mb RAM or higher
- VGA video adaptor, recommended SVGA Video adaptor supporting more than 256 colours

For Win 2000 Professional

- Pentium 150Mhz or higher

- 100 Mb Free hard drive space
- 32 Mb RAM, recommended 64 Mb RAM or higher
- VGA video adaptor, recommended SVGA Video adaptor supporting more than 256 colours

4.5 The trading software is made available to Registered Users in accordance with these Operating Rules and the relevant Supplier and/or Buyer Application.

4.6 Alternatively, a User may have access to a number of Internet-stations located at Sydney Fish Market, Pyrmont. SFM does not warrant that the Internet-Stations will be error free or use uninterrupted.

## 5. User Support

The Internet Sales Coordinator is dedicated to providing assistance to Users in the management of their trading. Contact 1300 13 LIVE (1300 13 5483) or email [support@sfmlive.com](mailto:support@sfmlive.com).

## 6. Registration

6.1 Suppliers and Buyers must register to use SFMLive by completing the Supplier Application Form or the Buyer Application Form respectively.

6.2 SFM may accept or reject an Application as it sees fit. SFM may require further particulars before determining whether to accept or reject an Application.

6.3 Registered Users are allocated an Account Number and confidential Password for the User. The User may establish Sub-Users authorised by the User to operate the Account.

6.4 An up front annual registration fee is payable by Buyers and Suppliers as set out in Schedule 1.

## 7. Acknowledgments, Representations and Warranties

7.1 The User:

- (a) represents and warrants to SFM that:
  - (i) the information it provides to SFM from time to time (including its Application to become a Registered User) is true and correct and is not misleading; and
  - (ii) it has legal capacity to bid, buy and sell Items through SFMLive;
- (b) irrevocably authorises SFM to make any enquiries relating to the User's Application to become a Registered User including obtaining any information held by a credit reporting agency such as the Credit Reference Association of Australia Ltd.

7.2 The User:

- (a) agrees (and it is a condition of these Operating Rules) that it will use the SFMLive system (including the SFMLive web site) in accordance with these Operating Rules

and any directions, software or user manuals issued by SFM from time to time;  
and

- (b) acknowledges that SFM may give directions to all Users electronically, whether by email or by posting the direction on the SFMLive web site and the User must comply with any such directions.

7.3 The Users acknowledge that as a mere facilitator of the Auctions, SFM does not provide warranties for any Items. The Supplier is responsible for all warranties in relation to an Item. Each User warrants that all information provided in connection with an Auction, an Item or the use of SFMLive:

- (a) is accurate, up to date and comprehensive (and is not fraudulent or misleading or deceptive);
- (b) does not infringe any other person's intellectual property or other rights;
- (c) does not breach any relevant law;
- (d) is not defamatory, obscene, libellous, harassing or otherwise illegal; and
- (e) does not contain any virus, Trojan horse or other destructive agent which may interfere with or damage any system.

## **8. Account Code and Password**

8.1 SFM will issue the Registered User with an Account Code and Password for each SFMLive account.

8.2 The Registered User is responsible for the use and safekeeping of the Account Code and Password (including any Sub-User Account Code and Password) and in particular any charges incurred on any of the Registered User's accounts held with SFM.

8.3 Subject to clause 10, the User will be responsible for any loss suffered by the User, its representatives or SFM as a result of the theft, misuse or use of the Account Code and/or Password.

## **9. Use of the Account Code and Password**

9.1 SFM will issue the number of Account Codes and Passwords requested by the User in the Buyer Application Form on the terms and conditions set out in these Operating Rules subject to approval of the User's credit arrangements (which approval will be granted at the absolute discretion of SFM).

9.2 The User will be responsible for any liability to SFM incurred in connection with any SFM Account Code and Password and indemnifies SFM against any loss or cost arising from their use.

9.3 The Account Code and Password may be cancelled by SFM without notice or liability to the User at any time.

9.4 SFM is entitled to act on transactions effected by the User through SFMLive or any other electronic device of SFM.

- 9.5 The User acknowledges that the Account Code, Password, plus any Sub-User Account Code and Password, may be used:
- (a) to purchase Items on SFMLive;
  - (b) to gain access to invoices issued by SFM; and
  - (c) to receive products purchased from SFM.

## **10. Responsibility for Transactions**

- 10.1 If the User or any of the User's representatives loses its Account Code or Password or suspects any wrongful or unauthorised use of the Account Code or Password, the User must immediately notify SFM in writing. A request to block Account Codes or Passwords may be notified via telephone; however, the written request must be received by SFM by personal delivery, post or fax within 24 hours of any notification by telephone.
- 10.2 The User will not be liable for amounts fraudulently debited to the User's account by use of the Account Code or Password after the User has requested SFM to block the Account Code or Password in accordance with clause 10.1 and received written advice from SFM that notification has been received (except to the extent the User contributes to the loss or damage).
- 10.3 The User will not be responsible for proven errors or fraud by SFM employees.
- 10.4 SFM will not be responsible for the losses suffered by the User resulting from the failure of any electronic device owned or operated by SFM.

## **11. Improper Use**

Users must not do anything which is intended to interfere with the operation of SFMLive or which imposes a disproportionate or unnecessary load on SFMLive or associated infrastructure. Use of SFMLive or any data obtained from SFMLive for spamming purposes is prohibited.

## **12. Trading Safety**

SFMLive provides a facility and processes for Buyers and Suppliers to participate in Auctions. SFM exercises no control over transactions, over the nature, quality, safety or legality of the Items offered or the ability of Buyers and Suppliers to participate in or complete transactions. Therefore, SFM does not give any guarantees in relation to any of these aspects. Users accept sole responsibility for using SFMLive, and for determining the suitability of the Items offered and the good faith of the Buyers or Suppliers they deal with. Users also accept sole responsibility for any potential security and other risks involved in using the internet in the manner contemplated by SFMLive.

## **13. Transaction Errors**

- 13.1 If a transaction is recorded in error on the User's account or statement with SFM, the User must immediately contact SFM with full details of the error.

- 13.2 If the User fails to notify SFM of an error within 7 days of receipt of an account or statement, the User is deemed to accept the accuracy of the account or statement and may not object to payment of the account or statement in full.

## 14. Sales

- 14.1 Items are sold on a consignment basis from the Supplier to SFM. At the time of collection by the Buyer, title to the Items will pass from the Supplier to SFM, and then from SFM to the Buyer.

- 14.2 If for any reason whatsoever the Items are not collected by the Buyer, title in the Items will not pass from the Supplier to SFM.

- 14.3 Items may be sold through SFMIlive using either of the following systems:

(a) **Bid and Offer plus Fixed Price Sales**

Suppliers list a lot for sale by entering the required lot details onto SFMIlive such as species, grade, quantity, size, weights, process, delivery date, Collect Centres, closing date and time, reserve and asking price.

In the case of Bid and Offer, the Reserve and Asking Price are not displayed to Buyers or other Suppliers. However for Fixed Price Sales, the Asking Price is displayed to Buyers.

Buyers are able to bid for or order the product up to the closing time.

Suppliers and Buyers have the option to be notified of certain events via automated email, fax, or mobile phone message.

(b) **Direct Sales**

Direct sales can be entered directly by the Supplier nominating the Buyer, product details and price.

(c) **Reverse Auction**

Buyers may list species they wish to buy, setting out details such as the grade, quantity, price, Collect Centre plus the closing time for the auction.

Suppliers can then fill this order by undertaking to supply nominated quantities in accordance with the Buyer's requirements. There is no negotiation on price for Reverse Auctions.

- 14.4 A Supplier must, when listing a lot, nominate one of the methods of sale set out in clause 14.3. Only one method can be nominated.

- 14.5 A Supplier must not use SFMIlive to offer or sell:

- (a) any illegal, stolen or encumbered Item;
- (b) any Item which does not correspond with its description, the requirements of the law or which is otherwise unfit for purpose or unsuitable for consumption;

- (c) any Item comprising seafood that has not been handled, packed, stored or described in accordance with Sydney Fish Market's Seafood Handling Guidelines;
- (d) any Item which the Supplier does not have the legal right to sell or in respect of which a dispute or claim exists; or
- (e) any other Item which SFM notifies the Supplier is unsuitable.

Each Supplier warrants that all Items offered comply with this clause.

- 14.6 In using SFMIlive, Users must not engage in any unlawful practice including conduct that is misleading or deceptive or likely to mislead or deceive. Suppliers must not engage in any conduct which attempts to unfairly influence the price of their Item including by employing a third party to place 'dummy bids' or by bidding themselves. Other Suppliers must not email bidders in an Auction in progress to offer them similar or identical Items for sale.

## **15. Fees and Charges**

- 15.1 The Buyer and Supplier must pay to SFM such fees and charges as outlined in Schedule 1 and interest calculated at the rate notified by SFM from time to time.
- 15.2 SFM may charge the User for any Government rates, taxes or charges arising out of the issue or use of the Account Code / Password or in respect of any transaction under SFMIlive or these Operating Rules.
- 15.3 The User must pay interest at the overdraft rate charged by the banking institution used from time to time by SFM plus 2% pa calculated on daily balances on any amounts outstanding and owing to SFM after the due date for payment. If there is more than one such rate, SFM may nominate the applicable rate.
- 15.4 The Buyer must take delivery of products purchased at the nominated Collect Centre within 6 hours of delivery to the Collect Centre or any other time as SFM may agree in writing. Failure to take delivery may result in the cancellation of the transaction at the absolute discretion of SFM. If a transaction is cancelled, SFM is authorised to resell or dispose of the product on behalf of the Supplier and the Buyer will be responsible for the payment of any shortfall and administration costs incurred in the resale or disposal.
- 15.5 Title in the product purchased will not pass to the Buyer until the Buyer has taken delivery.
- 15.6 The User will pay SFM all costs and expenses incurred by SFM or on its behalf including solicitor's fees on a solicitor/client basis in recovering or attempting to recover any amount due by the User to SFM.

## **16. Payment**

- 16.1 At the time of collection by the Buyer, SFM will purchase the Items from the Supplier for the price determined on SFMIlive less the SFM margin set out in Schedule 1 (to be retained by SFM). SFM will then sell the Items to the Buyer at no more than the determined price plus any margin and/or charges set out in Schedule 1.
- 16.2 Users must pay the balance of any account with SFM in accordance with the payment terms set out in the Schedule 1 or such other terms and conditions applying to the account.

- 16.3 All bids made by Buyers and/or prices set by Suppliers are exclusive of any applicable Goods and Services Tax (GST). Any GST payable upon the supply of Items or any taxable supply to the Buyer will be payable by the Buyer.
- 16.4 Any GST payable upon the supply of Items by the Supplier to SFM will be payable by SFM (subject to the Supplier being a Registered Entity under the *A New Tax System (Goods and Services Tax) Act 1999* and either entering into an agreement authorising SFM to issue a Recipient Created Tax Invoice, or alternatively providing SFM with a Tax Invoice).
- 16.5 Any charges payable under these Operating Rules or for any use of SFMIlive or anything else SFM supplies to Users are exclusive of taxes (such as sales tax and GST), duties and charges imposed or levied in Australia or overseas, whether currently or in the future. To the extent permitted by law, SFM will invoice Users for and Users must pay all such taxes at or before the time SFM is required to remit such taxes to the taxing authority or as set out in SFM's invoice, whichever is earlier.
- 16.6 SFM may set off any amounts owed by a User to SFM under this or any other agreement or arrangement against any amounts owed by SFM to that User.
- 16.7 Subject to any bona fide dispute, SFM will use its best endeavours to make payment by electronic funds transfer into the Supplier's nominated bank account on the Friday following the week in which SFMIlive invoices the sale. For the purpose of this clause, the week concludes at 12.00 noon Friday (Sydney time) or other such time as determined by SFM.
- 16.8 Each bid may be checked against the Buyer's unused credit limit prior to acceptance and invoiced on delivery to the Buyer nominated Collect Centre. Purchases must be paid in full by electronic funds transfer within 7 days of invoice. If payment is received by SFM within 7 days of invoice, SFM will waive the interest payable in accordance with clause 15.1. Any amounts not paid when due may result in the User's right to use SFMIlive being suspended or terminated and a late payment fee as set out in Schedule 1 being imposed which the parties agree is a genuine pre-estimate of SFM's loss caused by such late payment.
- 16.9 SFM will take out credit insurance, the cost of which will be charged to Buyers in accordance with the Schedule 1.

## **17. Transport**

- 17.1 A list of approved Collect Centres is maintained on SFMIlive.
- 17.2 It is the responsibility of the Supplier to indicate, at the time of listing a Lot, the Collect Centres to which they will deliver.
- 17.3 Buyers may elect to take delivery from any Collect Centre nominated by the Supplier for that lot or, if agreed by the Supplier, from the Supplier's premises.
- 17.4 Suppliers must, within 24 hours of the available date specified on SFMIlive or the acceptance of the bid, whichever occurs last, arrange delivery to the Buyer nominated Collect Centre.
- 17.5 There are three options a Supplier can choose for transport on Bid and Offer:

(a) **Buyer pays (default)**

The bid price does not include transport. However the Buyer can obtain an estimate of transport costs when lodging a bid.

(b) **Supplier pays**

The transport costs are included in the bid price. Bids are assessed on a Net-Bid basis.

(c) **No transport**

The transport is not factored into the price, decision-making or invoicing process.

17.6 For Fixed Price Sales, the Supplier will only have options of “Buyer pays” and “No transport”.

17.7 For Reverse Auction sales, the only option available is “No transport”.

## 18. Insurance

18.1 The Supplier must take out and maintain valid and enforceable insurance policies relating to public liability in the sum of \$10 million.

18.2 The Supplier must on the date of Application and each year on the anniversary of that date until the expiry or termination of the User’s registration, provide SFM with certificates from the Supplier’s insurers certifying that the Supplier has insurance as required by this clause. The Supplier must also promptly produce a certificate of currency for inspection whenever requested by SFM.

18.3 If the Supplier fails to effect and/or keep in force any of the insurance policies specified in this clause, SFM may effect and keep in force any of those insurance policies and the cost of the insurance will be immediately due and payable by the Supplier to SFM. SFM may deduct the cost of the insurance from any amounts payable to the Supplier.

## 19. Crate Control System

19.1 The Supplier may use SFM Crates in accordance with the SFM Crate Control System.

19.2 When SFM Crates are selected by the Supplier, SFM Crate Charges will apply to all transactions for that Lot.

## 20. Order of Sale

20.1 Upon listing a Lot, Suppliers nominate a start and finish time for the bidding on a Lot.

20.2 At the close of listing for the Lot, there will be a 30-minute grace period when the Supplier can select bids for acceptance. At the close of the grace period, Bids above the Reserve Price are ranked automatically by SFMIlive and accepted until all the lot is sold, or all valid bids above the reserve are accepted. The Supplier acknowledges that should a part lot remain after allocation of Bids, ownership of that part remains with the Supplier.

## **21. Withdrawal of a Lot**

- 21.1 The Supplier may not withdraw a lot from sale once it is listed or during the auction period.
- 21.2 SFM may, in special circumstances, withdraw a Lot or cancel a sale.

## **22. Bidder as a Principal**

A bidder is deemed to be bidding as a principal and will be personally responsible for that bid unless the bidder is registered to bid as the nominated sub representative of a company who is a Registered Buyer on SFMLive.

## **23. Making a Bid**

- 23.1 A bid is made only when recorded on SFMLive. To the extent permitted by law, SFM accepts no liability for any bid failing to be recorded on SFMLive (whether due to SFM's negligence or otherwise).
- 23.2 The identity of the Buyer will be displayed only to the Supplier following acceptance of the bid.
- 23.3 The identity of the losing bidders will not be displayed.

## **24. Advance of Bidding**

A Buyer may nominate a start and finish date and time for a bid.

A Buyer may nominate a minimum and Maximum Bid Price in which case SFMLive will increase the Bid automatically to maintain that bid as the highest bid. The automatic bid facility will not increase the Bid Price above the maximum set by the Buyer.

A Buyer may advance a bid by the bidding increments fixed by SFMLive. A bid cannot be reduced once recorded on SFMLive.

## **25. Withdrawal of Bids**

A bid once recorded on SFMLive cannot be withdrawn. A bid may be invalidated automatically by SFMLive if:

- (a) the bid expiry time has lapsed;
- (b) the bid exceeds the credit limit; or
- (c) the bid is conditional (by use of the Shopping List facility of SFMLive) to another Bid that has been accepted.

## **26. Counter Offer**

The Supplier can at any time make a counter offer to the Buyer's bid. If the counter offer is accepted then the sale will be deemed to have been completed.

## **27. Bid Assessment**

- 27.1 During the course of the auction and within 30 minutes of the close of the auction, the Supplier may accept any bid.
- 27.2 SFMLive will automatically accept bids above the Asking Price.
- 27.3 If the Supplier elects to have bids with Positive Advice automatically accepted, SFMLive will automatically accept those bids.
- 27.4 If at 30 minutes after the close of the auction the entire lot is not sold, all valid bids will be ranked automatically by SFMLive and accepted until all valid bids above the Asking Price are accepted or all the lot is sold (with the highest bid being accepted first).

## **28. Variation of SFMLive**

- 28.1 SFM may vary any of the functions of the SFMLive or any hardware or software included in SFMLive, and will not be liable to any Registered User for any change in functionality, performance or specifications by reason of any such variation.
- 28.2 SFM may vary the conditions of use of the SFMLive account (including these Operating Rules) at any time provided that the User will be given 7 days prior notice of any variation imposing or increasing charges or increasing the User's liability for transactions.
- 28.3 Notice of any variation of the conditions of use may be given by written notice to the User forwarded by ordinary pre-paid post to the User's last known address, by sending written notice by email to the User's last known email address or by placing a notice on the SFMLive site. Unless otherwise specified in the variation notice, any variation will take effect 48 hours after notice has been given. Use of the Account Code and, or Password by the User after the notification period expires will constitute acceptance of the variation by the User.

## **29. Rights of Auctioneer**

SFM has the right and absolute discretion to refuse any Listing of a Lot or any bid, and to regulate the bidding (including, but not limited to, the ability to amend or cancel a bid, listing or sale).

## **30. Disputes about Bidding**

If there is any dispute about the bidding, SFM will be the sole arbitrator and the decision is final.

## **31. Dispute Resolution**

- 31.1 All attempts will be made to determine the cause of the dispute and negotiate an agreement between the Supplier and Buyer. This agreement may include renegotiation of price and evaluation of packing and transport methods. An independent inspector agreed by the parties, or failing agreement appointed by SFM, will be used to view the product when no agreement can be reached between the parties. The costs involved in the inspection will be charged to the Buyer if the product is evaluated as matching the description. If the product is found not to match the description the Supplier will pay the

inspection costs. Otherwise, the costs of the inspection will be charged to the Supplier and/or the Buyer as determined by the inspector.

- 31.2 SFM will maintain records of all disputes. Buyers or Suppliers may be barred or suspended by SFM from using SFMLive for any reason.
- 31.3 A dispute about any matter arising under the SFMLive system will be notified to SFM within 24 hours of delivery to the Collect Centre, after which time the User will be deemed to have foregone its rights to register its complaint.

## **32. Implied Terms**

- 32.1 The only terms implied into these Operating Rules are those that cannot be lawfully excluded. To the maximum extent permitted by law, where these Operating Rules involve the supply of goods or services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, SFM's liability for breach of those terms (other than section 69 of the Trade Practices Act) will be limited, at SFM's option as the case may be, to any one or more of:
- (a) the replacement, repair or payment of the cost of replacement or repair of the goods; and
  - (b) supplying the services again or payment of the cost of the services being supplied again.

## **33. Liability**

- 33.1 All persons using SFMLive do so at their own risk and, to the maximum extent permitted by law, SFM will not be liable for any direct, indirect or consequential damage, loss or injury (except death or personal injury) suffered or incurred by any person (including a User) arising from any cause whatsoever (including the negligence of SFM).
- 33.2 To the maximum extent permitted by law, SFM is not liable to any User for any malfunction of or break down in the SFMLive system (including its telecommunications provider and Internet service provider) or for any non-receipt, non-transmission or loss of data by the SFMLive system, whether caused or contributed to by any negligent or other act or omission of SFM or its employees, contractors or agents or of any Registered User.
- 33.3 Subject to clause 33.1 and 33.2, where SFM has any residual liability to any User for any claims, losses, damages or expenses arising directly or indirectly out of these Operating Rules, the use of SFMLive or otherwise, to the maximum extent permitted by law, that liability will be limited to \$50.

## **34. Release and Indemnities**

- 34.1 To the extent that a User does not comply with all applicable laws or these Operating Rules, each User releases and discharges SFM from all claims, actions, costs and damages which, but for this clause, the User or anyone else may have had against SFM.
- 34.2 Each User indemnifies SFM (and its officers, employees, affiliates and agents) and holds SFM (and its officers, employees, affiliates and agents) forever harmless from and against all direct or indirect actions, claims, demands, proceedings, costs, damages, expenses (including legal expenses on a solicitor and client basis), losses and liabilities brought or recovered against or incurred, suffered or sustained by SFM (or its officers, employees,

affiliates and agents) arising out of or in any way connected with any act, omission, breach, default, non-observance or non-performance of the User under or in connection with SFMLive or these Operating Rules or any claim made against SFM by an end consumer in relation to any Item which was sold through SFMLive.

### **35. Termination of Registration**

SFM may, at its absolute discretion, terminate immediately the registration of any Registered User.

### **36. Consequences of Termination**

Upon termination of the registration, all rights of the Registered User under these Operating Rules cease, but the User remains liable for any unpaid fees (whether or not invoiced), for any debt, liability or obligation incurred in relation to any sale, and for any claim arising from failure to comply with the Operating Rules.

### **37. Further Security**

- 37.1 If requested by SFM at any time the User must provide (at the User's cost) additional security satisfactory to SFM for the purposes of better securing moneys owed by the User to SFM from time to time under these Operating Rules.

### **38. Conditions of Parking**

- 38.1 The User agrees that any of its vehicles entering a Collect Centre or the Sydney Fish Market site enter at the User's sole risk and responsibility. SFM will not be responsible or liable in any way for any loss of or damage to the User's vehicle or any of its contents as a result of or in connection with its presence on the site however caused.

### **39. Additional terms for Market Pride Products**

The additional terms specified in Schedule 2 will only apply to the sale of Market Pride products

### **40. Personal Information**

- 40.1 Italicised terms used in this clause bear the meanings they have in the *Privacy Act 1988* (Cth) as amended from time to time.
- 40.2 The User consents to SFM collecting *personal information* about the User, the User's employees and agents, whether from the User or third parties (such as trade referees), for the purposes associated with providing the User with services. SFM may use the *personal information* in accordance with SFM's privacy policy which is available on request.
- 40.3 SFM's privacy policy sets out the extent of people's right to access their *personal information* held by SFM and the applicable conditions.
- 40.4 SFM may disclose *personal information* to third parties retained to provide services to SFM in association with providing the services described in these Operating Rules.
- 40.5 If the User does not provide certain *personal information*, SFM may be unable to provide the User with services. The User warrants that any *personal information* the User

provides SFM is accurate, complete and provided in compliance with the Privacy Act and indemnifies SFM against any loss or damage suffered as a result of the User's breach of this clause 40.5.

## 41. General

- 41.1 Nothing contained in these Operating Rules will create a partnership, agency or joint venture relationship between SFM and the User nor will the User hold SFM out as its partner, agent or joint venturer.
- 41.2 These terms and conditions will be governed by and construed in accordance with the laws in force in the State of New South Wales and all parties concerned hereby submit to the exclusive jurisdiction of courts of that State.
- 41.3 These Operating Rules and the User's Application set out the entire agreement between the parties. Subject to clause 32, all other terms are excluded.
- 41.4 If there is any conflict between the terms and conditions of any of the User's account and these Operating Rules then these Operating Rules will prevail.
- 41.5 If any part of these Operating Rules is held invalid, unenforceable or illegal, that part is treated as deleted and the remaining terms continue in full force.
- 41.6 The Users acknowledge that SFM is the absolute beneficial owner of SFMLive and of the copyright and all other rights in the nature of copyright and all other intellectual property rights, in SFMLive, the structure and layout of the site, the information it contains, its associated documentation and these Operating Rules.

## 42. Dictionary

- 42.1 In these Operating Rules the following words and expressions will have the following meanings:

<b>Account Code</b>	means the unique account number allocated to a User in relation to the SFMLive Internet trading system operated by SFM.
<b>Application</b>	means an application to become a Registered User in the form specified by SFM from time to time.
<b>Asking Price</b>	means the price nominated by the Supplier at which the Supplier will accept a bid.
<b>Auction</b>	means the computerised Dutch auction system and the voice auction system in operation at SFM's premises or through SFMLive.
<b>Auctioneer, SFM</b>	means Sydney Fish Market Pty Ltd, its employees and agents.
<b>Bid and Offer Auction</b>	means the bid and offer facility of the SFMLive system.

<b>Buyer</b>	means a User whose Application to become a buyer is accepted by SFM or who otherwise offers to acquire Items using SFMIlive.
<b>Buyer Service Charge</b>	has the meaning given to that term in Schedule 1.
<b>Collect Centre</b>	means a physical venue approved by SFM for the collection of Items sold on SFMIlive.
<b>Direct Sale</b>	means any sale of Items negotiated by a Supplier with a Buyer and transacted thorough the SFMIlive direct sale facility.
<b>Fixed Price Sales</b>	means the fixed price sales made using the SFMIlive system.
<b>Item</b>	means an item which is offered for sale on SFMIlive.
<b>Lot</b>	means any sale unit or group of sale units containing Items which are the same (eg the same species, process state, size and quality, etc).  A lot consists of a number of sale units and can be split and sold by sale unit.
<b>Market Pride Buyer</b>	means a Buyer who has been registered as a Buyer of Market Pride products.
<b>Market Pride Products</b>	means a range of processed seafood products sold by SFM through SFMIlive.
<b>Maximum Bid Quantity</b>	means the maximum quantity in sale units a Supplier is willing to sell per transaction.
<b>Minimum Bid Price</b>	means the minimum price for any lot as determined by SFM.
<b>Minimum Purchase quantity</b>	means the minimum quantity a Buyer would accept on a lot if the bid quantity cannot be filled.
<b>Net Bid Price</b>	Means the bid price, less the cost of transport to the Buyer nominated Collect Centre. If the Buyer opts to arrange transport himself, the net bid price equals the bid price.
<b>Operating Rules</b>	means these operating rules including the Background, any schedules and annexure.
<b>Password</b>	means the password of the User and of each authorised representative of the User.
<b>Positive Advice</b>	is given for a bid when that bid, if accepted, will, together with all other accepted bids for that Lot, result in an average price for the Lot above the Asking Price.

<b>Registered User</b>	means a Supplier or Buyer who has completed an Application that has been accepted by SFM.
<b>Reserve Price</b>	means the minimum price (nominated by the Supplier) at which the Supplier will sell (a complete or partial lot) at the conclusion of the auction if the Supplier does not receive a higher bid.
<b>Reverse Auction</b>	means the reverse auction facility of the SFMIlive system.
<b>SFM</b>	means Sydney Fish Market Pty Limited ACN 064 254 306.
<b>SFM Crate</b>	means a plastic fish crate approved and supplied by SFM.
<b>SFM Crate Charges</b>	means the crate charges set out in the terms and conditions of the SFM Crate Control System.
<b>SFM Crate Control System</b>	means the crate control system operated by SFM and subject to additional terms and conditions and available from SFM on request.
<b>SFMIlive</b>	means the internet trading system operated by Sydney Fish Market Pty Ltd.
<b>Shopping List</b>	means the facility on SFMIlive that enables a Buyer to submit multiple bids for an Item or number of Items, so that the bids are conditional on the total purchase not exceeding a nominated quantity of that Item or Items.
<b>Sub-User</b>	means a person authorised by a User to use SFMIlive on the User's behalf, using the User's account and at the User's risk.
<b>Supplier</b>	means a User whose Application to become a supplier is accepted by SFM or who otherwise offers to supply Items using SFMIlive.
<b>User</b>	means users of SFMIlive notwithstanding any failure to complete a relevant Buyer or Supplier Application.

#### 42.2 Interpretation

In these Operating Rules, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of these Operating Rules;

- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (g) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (h) the word "month" means calendar month and the word "year" means 12 months;
- (i) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (j) a reference to a thing includes a part of that thing;
- (k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (l) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (m) money amounts are stated in Australian currency unless otherwise specified; and
- (n) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body.

**Schedule 1: User Costs - Exclusive of GST where applicable**

	Item	Detail	Cost	When Payable
1	Registration fee	Paid by all Users	\$200	Paid on application and annually in advance thereafter
2	SFM margin – standard	Paid by Supplier	6.5% (to a maximum of \$16.50/kg)	Calculated on each sale as a discount on the Supplier's sale price to SFM
4	Buyer Service Charge	Paid by Buyer	1%	Calculated on each sale as a premium on the Buyer's purchase price from SFM
5	SFM's management of Supplier listings at the Supplier's request	Paid by Supplier	\$60/hour	Friday following the week of invoice
6	SFM's management of Buyer bidding at the Buyer's request	Paid by Buyer	\$60/hour	Friday following the week of invoice
7	Crate charges	In accordance with the SFM Crate Control System terms and conditions as per traditional auction system	As notified by SFM from time to time	Friday following the week of invoice
8	Messaging fees	e-mail Fax SMS	\$0.35 \$0.55 \$0.45	Friday following the week of invoice
9	Direct debit transaction fee	Paid by Buyer	\$0.30	Friday following the week of invoice
10	Direct debit dishonour fee	Paid by Buyer	\$40.00	Friday following the week of invoice
11	Late payment fee	Paid by Buyer	\$50.00	Friday following the week of invoice

## Schedule 2: Market Pride Terms and Conditions

### 1. Registration

- 1.1 Market Pride Buyers must register to purchase Market Pride products via SFMlive by completing the Market Pride Buyer Application Form.
- 1.2 SFM may, at its sole discretion approve (conditionally or unconditionally) or reject any application by a User to be registered as a Market Pride Buyer.

### 2. Condition Precedent to Registration as a Market Pride Buyer

It is a condition precedent to registration as a Market Pride Buyer that:

- (a) the User is a Registered User; and
- (b) the Registered User's registration for SFMlive has not been suspended or terminated.

### 3. Internet Trading System Operating Rules

To the extent that there is any inconsistency between Schedule 2 and the Operating Rules, the terms specified in this Schedule 2 will prevail with respect to all sales of Market Pride products.

### 4. Purchase of Market Pride products

Only registered Market Pride Buyers may purchase Market Pride products.

### 5. Sales

- (a) Market Pride products may only be sold to Market Pride Buyers by the Direct Sales System outlined in clause 14.3(b).
- (b) Market Pride Buyers may request to purchase Market Pride products by:
  - (i) calling SFMlive on 1300 13 5 483 or
  - (ii) placing an order through the Credit Office or Market Pride Office.

### 6. Fees and Charges

SFM waives the Buyer Service Charge on the sale of Market Pride products through SFMlive.

### 7. Temporarily Out of Stock Product

If a Buyer orders Market Pride products which are temporarily out of stock, SFM will advise the Buyer of the forecasted future availability of the relevant Market Pride products. The Buyer may:

- (a) confirm the order and wait for available stock; or
- (b) request that the order for those Market Pride products be cancelled and any payment made for that part of the order be promptly refunded.

### 8. Exchange of Market Pride products

- (a) The Buyer is responsible for checking that Market Pride products are delivered in accordance with orders placed by the Buyer.

- (b) SFM will exchange Market Pride products where:
  - (i) the Buyer notifies SFM that the item is faulty or incorrect within 24 hours of delivery and obtains a SFM returns authorisation code;
  - (ii) all original packaging has been maintained including outer packaging (in the case of incorrect delivery); and
  - (iii) the items have been maintained at the appropriate temperatures as specified.
- (c) The exchange of Market Pride products for any other reason is at SFM's sole discretion.
- (d) All notifications and requests for an exchange of Market Pride products should be directed to SFM on (Ph) 1300 13 5483.

## **9. Transport and Collection**

Unless otherwise agreed in writing, the Market Pride Buyer is responsible for collection of the Market Pride products which it has bought from SFM.

## **10. Merchandising Market Pride products**

The Market Pride Buyer agrees and acknowledges it will:

- (a) comply with all Laws;
- (b) comply with all training provided by SFM with respect to Market Pride products;
- (c) maintain the integrity of packaging for each item of seafood and comply with the shelf life of each Market Pride Product as specified;
- (d) not remove all or part of a Market Pride Product from its packaging for individual sale;
- (e) only present the product for retail sale to consumers at a retail location approved by SFM; and
- (f) install and maintain all point of sale and merchandising materials provided by SFM.

## **11. SFM liability for Market Pride products**

### **11.1 Limitations on liability**

Subject to this clause 11, SFM is not liable to any Market Pride Buyer or to any other person for:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of any Market Pride Buyer or any of its officers, employees, agents or contractors; or
- (b) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:
  - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or

- (ii) SFM, any Market Pride Buyer or any other person was previously notified of the possibility of the loss or damage.

#### 11.2 Exclusion of implied warranties

Any representation, warranty, condition or undertaking that would be implied into the sale of Market Pride products by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

#### 11.3 Non-excludable rights implied by statute

Nothing in this clause 11 excludes, restricts or modifies any condition, warranty, right or remedy conferred on any Market Pride Buyer by the *Trade Practices Act 1974 (Cth)* or any other applicable Law that cannot be excluded, restricted or modified by agreement.

#### 11.4 Liability for breach of non-excludable rights

To the fullest extent permitted by law, the liability of SFM for a breach of a non-excludable condition or warranty referred to in clause 11.3 is limited, at SFM's option, to:

- (a) in the case of Market Pride products, any one or more of the following:
  - (i) the replacement of the Market Pride products or the supply of equivalent goods;
  - (ii) the repair of the Market Pride products;
  - (iii) the payment of the cost of replacing the Market Pride products or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the Market Pride products repaired;

### 12. Suspension and Termination

SFM may, at its sole discretion immediately suspend (conditionally or unconditionally), or terminate a Market Pride Buyer's registration on written notice.

### 13. Consequences of Termination

- (a) If SFM terminates a Market Pride Buyer's registration, the Market Pride Buyer must, upon written request from SFM, return Market Pride products in the possession or under the Control of the Market Pride Buyer and any related documentation or materials, to SFM.
- (b) SFM will compensate the Market Pride Buyer for the price paid by the Market Pride Buyer for each item of Market Pride Product which, is returned to SFM under the appropriate temperature control specified and was not out of date as at the date of the written request given under clause 13(a).
- (c) The Market Pride Buyer must pay for all delivery costs associated with the return of Market Pride products and any related documentation and materials, to SFM.



## CONTACT INFORMATION

[www.sfmlive.com](http://www.sfmlive.com)

Email: [support@sfmlive.com](mailto:support@sfmlive.com)

Tel: 1300 13 LIVE (1300 13 5483)

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## DISCLAIMER

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