



SYDNEY FISH MARKET PTY LIMITED
ACN 064 254 306

BUYER APPLICATION FORM
AUCTION, DIRECT SALE & REMOTE BIDDING

BUYER INFORMATION

APPLICANT'S NAME: _____
(First Name) (Surname)

COMPANY NAME: _____

ACN / ABN /
BIDDING NAME _____

BUSINESS ADDRESS: _____
(No.) (Street)

(Suburb/town) (Postcode) (State)

BUSINESS PHONE: _____ EMAIL: _____

HOME ADDRESS: _____
(No.) (Street)

(Suburb/town) (Postcode) (State)

HOME PHONE: _____ EMAIL: _____

MOBILE PHONE: _____ FAX (if any): _____

DRIVER'S LICENSE NO. _____ VEHICLE REGISTRATION: _____

ACCOUNT TYPE: CASH ACCOUNT 7-DAY CREDIT ACCOUNT

***APPROVED / NOT APPROVED**

Signature

Date

Position
(If the buyer is a company, the person making this
application must be a Director)

Credit Manager

The buyer acknowledges that they have read and agree to the terms and conditions attached to this application form.

***OFFICE USE ONLY**

ACCOUNT NO: _____ BUSINESS TYPE: _____

ACCOUNT TERMS: _____

STATEMENT FREQUENCY: _____

No. of SFM CARDS: _____ PIN: _____ YES NO
(auth. Agents nominated principals or employees)

Payment Terms Strictly Seven (7) Days from Week Ending Friday. Interest and Late Payment Fees will be charged on Overdue Accounts

GUARANTEE AND INDEMNITY DEED POLL

1. In consideration of Sydney Fish Market Pty Limited ACN 064 254 306 (**SFM**) selling goods and/or services to the buyer (**Buyer**) on these terms and conditions applicable to Buyer (**Terms and Conditions**). The Guarantor(s) identified below (**Guarantor**) jointly and severally guarantee to SFM the prompt payment of all moneys payable to SFM under the Terms and Conditions and performance of all Buyer obligations under the Terms and Conditions.
2. The Guarantor indemnifies SFM against any loss, liability or damage incurred by it as a result of any term of the Terms and Conditions or this guarantee being or becoming void, voidable or unenforceable for any reason, or arising in connection with a breach of the Terms and Conditions or the purchase of goods and/or services by, or on behalf of, the Buyer.
3. This guarantee and indemnity is a primary obligation and debt and constitutes separate obligation/s in respect of any moneys due and to become due to SFM under the Terms and Conditions. SFM is not obliged before enforcing this guarantee and indemnity to make any demand of the Buyer, enforce any other security it holds in respect of the Buyer's obligations under the Terms and Conditions or do any other thing.
4. This guarantee and indemnity will not be in any way discharged or impaired by any forbearance or any time or other indulgence given to the Buyer in relation to all or any of its obligations under the Terms and Conditions, any variation of this guarantee and indemnity or the Terms and Conditions or any act, thing, omission or means which, but for this provision, would or might constitute a legal or equitable discharge or defence of a guarantor.
5. This guarantee and indemnity is to be a continuing guarantee and indemnity and will remain in operation until all moneys owing under the Terms and Conditions have been paid in full and the obligations of the Buyer under the Terms and Conditions have been fully performed or satisfied.

SIGNED AS A DEED

Full Name of Guarantor

Full Name of Witness

Signature

Signature

Address

Full Name of Guarantor

Full Name of Witness

Signature

Signature

Address

STATEMENT OF UNDERSTANDING

**I have read, understood and agree to abide by the Policies and
Market Rules as set down by Sydney Fish Market Pty Ltd**

NAME:

.....

SIGNATURE:

.....

DATE:

.....

**I recognise that compliance with the Policies and Market Rules is a
condition of entry to the Sydney Fish Market**

**SYDNEY FISH MARKET PTY LTD
BUYERS TERMS AND CONDITIONS**

1. INTERPRETATION AND DEFINITIONS

1.1 Interpretation

In these Terms and Conditions unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a natural person and any body or entity whether incorporated or not;
- (c) a reference to any document includes the document as modified from time to time and any document replacing it;
- (d) money amounts are in Australian currency unless otherwise specified; and
- (e) a reference to a party includes that party's successors and permitted assigns.

1.2 Definitions

Application Form means the Buyer Application Form for Auction, Direct Sale and Remote Bidding, the Guarantee and Indemnity Deed Poll and the Statement of Understanding to which these Terms and Conditions are attached, as varied from time to time;

Auction means the Computerised Auction System or Voice Auction;

Auction Price means the final Bid accepted by an Auctioneer utilising the Reverse Auction System or the Price Up System, subject to any Reserve Price;

Auctioneer means SFM, its employees and agents conducting the Auction;

Automated Bidding Terminal means the electronic terminal devices used by Buyers at the Premises to place Bids at Auction;

Banning Notice means a notice in respect of any ban that SFM may impose upon any person entering the Fish Market in accordance with the Market Rules;

Bid or **Bidding** means a Buyer placing a bid for Seafood either in person or via its authorised agent at Auction or as Remote Bidder;

Buyer means any person purchasing via Direct Sale or participating in the Auction, including any Remote Bidder who has registered with SFM and been issued an SFM Card and includes any authorised agents of that Buyer;

Computerised Auction System means the Reverse Auction System and Price Up System in operation at the Premises;

Direct Sale means any non-auction sale of Seafood to a Buyer;

Direct Sale Price means the sale price of Seafood sold via Direct Sale by SFM to the Buyer;

Fee Schedule means the schedule of fees annexed to these Terms and Conditions;

Fish Market means the Sydney Fish Market located on the corner of Bank Street & Pyrmont Bridge Road, Pyrmont NSW 2009, or any adjoining site;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

Guarantee and Indemnity Deed Poll means the form which is annexed to these Terms and Conditions;

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law,

Logon means the logon identification number of the SFM Card granting access to Automated Bidding Terminal or any other selected electronic devices operated by SFM in accordance with clause 4.5;

Lot means a crate or group of crates of the same type (i.e. plastic or carton etc.) containing Seafood which is:

- (a) from the same Supplier or individual fisher (where applicable);
- (b) of the same species;
- (c) of substantially the same size and quality grading;
- (d) of substantially the same weight;
- (e) contains the same details of any processing (i.e. headed and gutted, gilled and gutted);
- (f) of substantially the same body count (i.e. the number of pieces),

delivered to SFM or collected by SFM from the Supplier with a view to its sale by Auction or Direct Sale.

Market Rules means the Sydney Fish Market, Market Rules & Policies dated 1 January 2017 as amended from time to time;

Notification Form means the form provided by SFM for the notification of lost SFM Cards;

PIN means the personal identification number of the Buyer and any authorised agent of the Buyer;

Point of Sale has the meaning given in clause 6.1'

Pre-Bid means any Bid placed prior to any Auction by a Buyer or any authorised agent of the Buyer or as Remote Bidder;

Premises means the Fish Market auction hall, loading docks and any other area at the Fish Market determined by SFM;

Price Up System means the method in which the Auction clock winds up the price for Seafood in incremental amounts when competing Buyers place Bids and concludes at the Point of Sale when no further Bids are received;

Remote Bidder means a Buyer Bidding online at the Auction via remote access;

Reserve Price means the amount (if any) as determined by the Supplier as the minimum price for which any Lot will be sold;

Reverse Auction System means the method in which the Auctioneer sets the price for Seafood and the Auction clock winds down the price at a rate of \$1 per revolution until a bidder stops the clock by Bidding at the desired Point of Sale via any Automated Bidding Terminal;

Seafood means all aquatic vertebrates and aquatic invertebrates intended for human consumption, but excludes amphibians, mammals and reptiles and aquatic plants;

Seafood Handling Guidelines means the Sydney Fish Market Quality Assurance HACCP Guidelines dated 2013, as amended from time to time;

SFM means Sydney Fish Market Pty Limited ACN 064 254 306 and its authorised officers and agents;

SFM Card means the card issued to the Buyer and any authorised agent of that Buyer by SFM;

Statement of Understanding means the form which is contained in the Market Rules and is annexed to these Terms and Conditions;

Supplier means fishers, cooperatives and other traders who have registered to become a supplier of Seafood with SFM;

Terms and Conditions means these terms and conditions of sale applicable to Buyers which came into effect on 1 August 2018 and replaces all earlier terms and conditions and agreements;

Voice Auction means a manual auction conducted by voice;

Warning means a discretionary warning that SFM may impose upon any person in accordance with the Market Rules.

2. GENERAL

2.1 By signing the Application Form the Buyer agrees to comply with these Terms and Conditions and the following policies and codes of conduct:

- (a) the Market Rules;
- (b) the Seafood Handling Guidelines;
- (c) any other terms and conditions, agreements or policies as determined and published by SFM from time to time,

(together, the **SFM Policies**).

2.2 Where there is any conflict between these Terms and Conditions and SFM Policies, these Terms and Conditions will prevail.

2.3 The Buyer:

- (a) represents and warrants to SFM that the information it provides to SFM from time to time (including in the Application Form) is true and correct and is not misleading;

- (b) represents and warrants to SFM that it has legal capacity to Bid and buy Seafood at the Fish Market; and
- (c) irrevocably authorises SFM to make any enquiries relating to the Application Form including obtaining any information in respect of the Buyer or the Guarantor held by the Credit Reference Association of Australia Ltd.

3. SYDNEY FISH MARKET

- 3.1 SFM receives Seafood on a consignment basis from the Supplier to be sold to a Buyer at Auction or Direct Sale.
- 3.2 The Premises are open for viewing and inspection of Seafood from 4.30 am Monday to Friday, or at any other time as determined by SFM.
- 3.3 SFM will conduct an Auction at the Premises from 5.30 am Monday to Friday. SFM has a sole discretion to conduct an Auction at any other time.
- 3.4 The Premises are closed on Saturday and Sunday and all public holidays held in NSW. SFM has a sole discretion to open the Premises at any other time.
- 3.5 Buyers may attend an Auction in person, via an authorised agent or may login remotely as a Remote Bidder.

4. OBLIGATIONS OF THE BUYER

- 4.1 In order to be eligible to Bid on Seafood at an Auction or purchase via Direct Sale an applicant must register to be a Buyer via the Application Form.
- 4.2 SFM may in its sole discretion accept or reject any Application Form. SFM may require further information from an applicant before determining whether to accept or reject an Application Form.
- 4.3 Applicants who successfully register as a Buyer are issued an SFM Card (and additional SFM Cards for each authorised agent of the Buyer) on the terms set out in these Terms and Conditions subject to approval of the Buyer's credit arrangements (approval determined at the absolute discretion of SFM) (**Credit Limit**).
- 4.4 SFM will only provide a Credit Limit to those Buyers who provide security to SFM in the form of a bank guarantee, personal guarantee, cash and / or security deposit for the purposes of securing moneys owed to SFM from time to time (**Guarantee**).
- 4.5 SFM will issue the Buyer with a logon identification number (**Logon**) for each SFM Card and a PIN. The Buyer is responsible for the use of the SFM Card Logon and PIN and any indebtedness incurred on any of the Buyer's accounts held with SFM.
- 4.6 The Buyer acknowledges that the Logon and PIN may be used to (1) purchase Seafood at Auction or via Direct Sale, and (2) to gain access to invoices and removal dockets issued by SFM.
- 4.7 The Buyer acknowledges that the SFM Card may be used to receive and remove products purchased from or through SFM.
- 4.8 If an SFM Card is lost or stolen, or there is any suspected unauthorised access of the login details the Buyer must notify SFM by completing a Notification Form. Lost or stolen SFM Cards or any suspected unauthorised access of the login details may be notified to SFM by telephone as soon as the Buyer becomes aware. The Notification Form must be received by SFM by personal delivery, post, email or fax within 24 hours of any notification by telephone.

- 4.9 SFM has a sole discretion to charge the Buyer a nominal fee for the cost of replacing an SFM Card which has been lost or stolen.
- 4.10 The Buyer will not be liable for amounts fraudulently debited to the Buyer's account by use of the SFM Card or login after the Buyer has notified SFM of the loss of the SFM Card or any unauthorised access of the login details in accordance with term 4.8 and received written confirmation from SFM that the Buyer's Notification Form has been received.
- 4.11 In the event the Buyer does not notify SFM in accordance with term 4.8, SFM will not be responsible for any loss suffered by the Buyer or its authorised agents.
- 4.12 If a transaction is recorded in error on the Buyer's account or statement with SFM, the Buyer must immediately contact SFM and provide full details of the error. The Buyer will not be responsible for proven errors or fraud by SFM employees.
- 4.13 SFM may vary the conditions of use of the SFM Card at any time provided that the Buyer is given prior written notice of any variation. Written notice may be provided by SFM to the Buyer's registered address or by email.
- 4.14 Alternatively, SFM may place a notice in a prominent position at the Fish Market. Any variation will take effect 48 hours after notice has been placed at the Fish Market. Use of the SFM Card by the Buyer after notification will constitute acceptance of the variation by the Buyer.
- 4.15 The SFM Card may be cancelled by SFM without notice at any time.

5. RULES OF THE AUCTION

- 5.1 For the Auction of certain types of Seafood, SFM is authorised to determine a minimum purchase quantity. Each Lot will specify the Supplier or individual fisher (where applicable), species, quality, size, grading, weight, processed manner of the Lot and body count.
- 5.2 Any Buyer attending an Auction in person or by authorised agent or as Remote Bidder may place a Pre-Bid for Seafood prior to the Auction. All Buyer's placing Pre-Bids will be bound by that Bid and if successful must pay the Auction Price.
- 5.3 A Buyer can Bid for all or part of a Lot up to a maximum crate number as determined by SFM. Any balance of a Lot will be re-offered and the auction process re-started.
- 5.4 The Auctioneer has an absolute discretion to refuse any Bid and to regulate the Bidding (including, but not limited to the ability to amend or cancel a Bid or sale).
- 5.5 The Auctioneer reserves the following rights which may be exercised by the Auctioneer in its absolute and sole discretion (1) not to offer for sale any Lot, (2) to offer for sale part only of any Lot, (3) to keep secret or disclose the existence and amount of the Reserve Price (if any) of any Lot, (4) to refuse any persons admission to, or to eject persons from the auction hall, or (5) to reject and / or seize and / or dispose of any Lot which is undersize, not fit for human consumption or otherwise fails to comply with the Seafood Handling Guidelines or any other Law.

6. POINT OF SALE AND DELIVERY

- 6.1 Bidding is concluded at the Auction the moment the auction clock is stopped by or on behalf of a Buyer:
 - (a) by Reverse Auction System by pressing a button on the Automated Bidding Terminal or by Remote Bidder at the preferred price, and concluded when the Buyer's Bid is received; or

- (b) on the Price Up System by pressing a button on the Automated Bidding Terminal or by Remote Bidder and concluded when competing Buyers place no further Bids,

(together, the **Point of Sale**).

- 6.2 The successful bidder may then select the required number of units or crates from the Lot.
- 6.3 Any error in Auction Price or any other dispute regarding the Computerised Auction System will be settled by the Auctioneer. The decision of the Auctioneer is final.
- 6.4 Title to the Seafood will pass from the Supplier to SFM, and then from SFM to the Buyer, at the Point of Sale.
- 6.5 Seafood which has been sold will be deemed to be delivered the moment the Seafood is removed from the auction hall (**Point of Delivery**).
- 6.6 It is the responsibility of the Buyer to take delivery of any Seafood purchased at Auction from the auction hall within 1 hour of the end of the Auction.
- 6.7 If the Buyer does not collect Seafood purchased within 1 hour of the end of the Auction, the Buyer will be in breach of these Terms and Conditions and SFM will have the right to provide cold storage on-site until the Buyer collects or arranges delivery of the Seafood. A cold storage fee and handling charge will be payable by the Buyer as set out in the Fee Schedule.
- 6.8 The Buyer will be in breach of these Terms and Conditions for any failure to take delivery of Seafood which may result in the cancellation of the sale at the absolute discretion of SFM. If a sale is cancelled SFM has the right to resell the Seafood. The Buyer will be responsible for the payment of cold storage fees and any shortfall in Auction Price incurred in the resale.
- 6.9 Buyers have the following options available for delivery of Seafood sold at Auction (1) Buyer may arrange delivery, (2) Supplier may deliver Seafood directly to the Buyer, (3) Supplier may organise a freight company to deliver Seafood to the Buyer, in which case the freight company may invoice the Supplier who will pay for the freight costs directly or recover the cost from the Buyer, or (4) where a Supplier has delivered Seafood to SFM directly, a freight company may be organised by SFM to deliver to the Buyer, in which case the freight company may invoice SFM who will pay for the freight costs directly or recover the cost from the Supplier and / or Buyer.

7. CLAIMS

- 7.1 In accordance with term 3.2, the Buyer may inspect Seafood to be sold prior to Auction. The Buyer is deemed to have inspected any purchased Seafood prior to sale and to be aware of the Supplier or individual fisher (where applicable) species, size, quality, weight, processed method and body count of Seafood purchased.
- 7.2 The Buyer accepts the Seafood purchased in the state in which it is at the Point of Sale, unless it can be demonstrated that there is a difference between the Point of Sale and the Point of Delivery. In the event the Buyer is of the opinion the Seafood purchased is not in compliance with the description on the label the Buyer must notify SFM immediately.
- 7.3 SFM will act as independent arbitrator, in respect of a dispute regarding Seafood purchased by the Buyer at Auction and will attempt to settle the dispute or negotiate an agreement between Buyer and Supplier. This may include an investigation into packing and transport methods and / or re-negotiation of price.

- 7.4 In the event the dispute cannot be resolved by the parties, SFM will appoint an independent inspector to inspect the Lot and provide a written report. The report will be binding upon both Buyer and Supplier.
- 7.5 Any costs involved in the inspection of Seafood will be charged to the Buyer if the Seafood is evaluated by the inspector as matching the description on the label. Any costs involved in the inspection of Seafood will be charged to the Supplier if the Seafood is evaluated by the inspector as not matching the description on the label.
- 7.6 Otherwise, the costs of the inspection will be charged to the Supplier and / or the Buyer as determined by the inspector.
- 7.7 SFM will maintain a record of all disputes.

8. RULE OF REMOTE BIDDING

- 8.1 Registered Buyers are eligible to Bid remotely at Auction via the remote bidding software provided by SFM. SFM will issue the Remote Bidder with a Logon and PIN. The Remote Bidder is responsible for the Logon and PIN and any indebtedness incurred on any of the Remote Bidders accounts held by SFM.
- 8.2 During the Auction, the Bidder may Bid for a Lot by clicking the Bid button. Each Bid is final and binding as soon as the Bidder clicks on the Bid button.
- 8.3 The Buyer acknowledges that Bidding is in a live Auction and the Buyer agrees that each Bid submitted is irrevocable and cannot be amended or corrected, even if submitted in error and notified to SFM. However, the Auctioneer has the sole discretion to cancel any Bid.
- 8.4 The Buyer accepts full liability for all Bids submitted via the remote bidding software (including the liability to pay in full and on time for any Lot that is the subject of a successful Bid submitted from the Buyers account).
- 8.5 SFM reserves the right to reject an application for the remote bidding software, withdraw its permission for a Buyer to use the remote bidding software, or terminate the use of the remote bidding software for any reason at any time prior to, during or after an Auction.
- 8.6 The Buyer agrees to pay for and collect any Lot that is the subject of a successful Bid submitted by the Buyer or the Buyer's authorised agent or from the Buyer's account.
- 8.7 Lots are available for inspection prior to any Auction, and it is the Buyer's obligation to view and inspect any Lot. SFM advises each Buyer to examine in person any Lot on which a Buyer may Bid or have it examined on the Buyer's behalf by any authorised agent before any Auction.
- 8.8 If a Buyer chooses to use the remote bidding software, the Buyer does so entirely at its own risk. Access to and use of the remote bidding software is dependent upon, among other things, the availability of the internet and the speed and quality of internet connections.
- 8.9 The content displayed in the remote bidding software may contain inaccuracies and typographical errors and SFM does not warrant the accuracy or completeness of the content or that any defects will be corrected. Any reliance on any content, advice, statement, or other information is at the Buyer's sole risk. SFM reserves the right, in its sole discretion, to correct any errors or omissions in the remote bidding software and to make any changes to the features, functionality or content of the remote bidding software at any time.
- 8.10 Access to the remote bidding software is made available as a convenience to Buyers, and SFM reserves the right to suspend or terminate any aspect or feature of the remote bidding software at any time, with or without notice. SFM may suspend access to the remote bidding

software to carry out scheduled or unscheduled maintenance or for any other reason at any time.

- 8.11 SFM accepts no liability for any failure or delay in executing Bids or any errors contained in Bids placed via the remote bidding software.
- 8.12 SFM provides the remote bidding software and the SFM web site "as is" and without any warranty or condition, express, implied or statutory. SFM accepts no liability for any failures, delays or errors caused by interruptions in the availability of the remote bidding software or the web site or any errors or defects in their content or functionality, any software and/or hardware defects (whether the Buyer's or SFM) and / or any internet connection problems (whether the Buyer's or SFM), and SFM does not represent or warrant that the remote bidding software or the web site will be error-free, free of viruses or other harmful components, or that any defects will be corrected.

9. FEES AND CHARGES

- 9.1 A Buyer's fee is charged to a Buyer on top of the Auction Price or Direct Sale Price for all Seafood purchased by a Buyer at Auction or Direct Sale as set out in the Fee Schedule.
- 9.2 SFM may charge the Buyer's account with any Government Agency rates, taxes or charges in respect of any transaction involving the use of the SFM Card (if applicable).
- 9.3 The Buyer must pay the balance of any account by cash, bank transfer, direct credit or cheque.
- 9.4 Accounts, other than extended terms accounts are payable within 7 days from the Friday of the week in which the transaction occurred (**Due Date**). If the Buyer fails to pay an account by the Due Date, SFM may suspend or terminate the Buyer's account and charge the Buyer a dishonour fee and / or a late payment fee as set out in the Fee Schedule.
- 9.5 The Buyer will pay interest at the overdraft rate charged by the banking institution used by SFM from time to time plus the percentage fee calculated on daily balances on any amounts outstanding and owed to SFM after the Due Date as set out in the Fee Schedule.
- 9.6 In the case of payments which are not made in accordance with term 9.4, the Buyer will be in default of these Terms and Conditions, and will be liable to pay default interest at a rate determined by SFM, from time to time on amounts owed to SFM from the Due Date. SFM may waive any interest if the amount owed is paid on or before the Due Date.
- 9.7 If the Buyer is in default, SFM may immediately call in the Guarantee.
- 9.8 If a Buyer exceeds its Credit Limit, SFM may block the Buyer from Bidding and block the Buyer's account from Auction or Direct Sale. If an account is blocked, SFM will not allow the Buyer to remove any Seafood from the Fish Market until the account is brought within terms.
- 9.9 Cash account Buyers are required to lodge a cash account deposit as set out in the Fee Schedule, which is refunded when the Buyer purchases Seafood at Auction at least once a week for a continuous period of 6 months. In the event a Buyer does not meet these requirements, SFM has the sole discretion to cancel the cash account and the SFM Card of the Buyer.
- 9.10 The Buyer will pay SFM all reasonable 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 Buyer to SFM.

10. FORCE MAJEURE

- 10.1 Neither SFM nor a Buyer is liable for any failure or delay in performing its obligations under these Terms and Conditions to the extent that such failure or delay is caused by Force Majeure Event.
- 10.2 A **Force Majeure Event** means any act, event or cause beyond a party's reasonable control, which by its nature could not have been foreseen, or if it could have been foreseen, was unavoidable by reasonable action by the affected party, including but not limited to:
- (a) availability of Seafood, acts of God, peril of the sea, accident of navigation, war, armed conflict, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, interference by civil or military authorities, national or international calamity, revolution, or malicious damage;
 - (b) breakdown of plant or machinery, failure of energy sources or transport network, faults in the computer system and/or the internet connection, faults in the Computerised Auction System, operational fire and/or operational failure, strike or other labour difficulty (whether or not involving employees of the party concerned),
 - (c) epidemic, quarantine, radiation or radioactive contamination, nuclear, chemical or biological contamination, sonic boom, collapse of building structures, or similar events, natural disasters or extreme adverse weather conditions, or default of SFM Supplier's and/or subcontractors;
 - (d) an action or inaction of a Government Agency or quasi-governmental agency, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; or
 - (e) the inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licenses, authorities or allocations.
- 10.3 In the case of a Force Majeure Event, SFM will have the right to suspend the fulfilment of its obligations for the duration of the Force Majeure Event.

11. EXCLUSION OF LIABILITY

- 11.1 SFM excludes liability for damages resulting from its deliveries and services insofar as these exceed the amount insured under any insurance policy which SFM may have taken out for this purpose.
- 11.2 All persons attending an Auction do so at their own risk and SFM is not liable for any damages, loss or injury to person or property suffered for any cause whatsoever except to the extent of any direct damage, loss or injury caused by the negligence of SFM. SFM will have no liability for indirect or consequential loss or injury whatsoever.
- 11.3 The Buyer agrees that any of its vehicles entering the Fish Market enter at the Buyer's sole risk and responsibility. SFM will not be responsible or liable in any way for any loss of or damage to the Buyer's vehicle or any of its contents as a result of or in connection with the presence on the Fish Market site however caused.

12. MAINTENANCE OF GOOD ORDER AND CONDUCT

- 12.1 SFM is charged with the maintenance of good order and conduct in and around the Fish Market. Anyone who is on the Premises or at the Fish Market is obliged to obey any rules, orders or instructions issued by or on behalf of SFM in the interests of public order and to

refrain from all acts which could cause damage to goods or personal property belonging to SFM and /or any third parties.

- 12.2 SFM has the right to issue a Buyer or Supplier and other persons a Warning or a Banning Notice or a claim for damages (if relevant) if those involved do not comply with these Terms and Conditions or SFM Policies or any other conditions or instructions determined by SFM from time to time.

13. BUYER PARKING VALIDATION

- 13.1 The Fish Market car park is open 24 hours.
- 13.2 Buyers who purchase Seafood at Auction or Direct Sale are provided with free parking at the Fish Market car park for two vehicles per day per Auction.
- 13.3 Upon entry to and exit from the Fish Market car park Buyers must scan their parking pass, be validated for licence plate recognition, or validate their car parking ticket at the credit manager's office.
- 13.4 Buyers who do not purchase Seafood at Auction or Direct Sale are not eligible for free parking at the Fish Market car park in accordance with term 13.2.

14. PERSONAL INFORMATION

- 14.1 Italicised terms used in this term bear the meanings they have in the Privacy Act 1988 (Cth) as amended from time to time.
- 14.2 The Buyer consents to SFM collecting *personal information* about the Buyer, the Buyer's Guarantors, employees and agents, whether from the Buyer or third parties (such as trade referees), for the purposes associated with providing the Buyer with services. SFM may use the *personal information* in accordance with SFM's privacy policy which is available on request.
- 14.3 SFM's privacy policy sets out the extent of people's right to access their *personal information* held by SFM and the applicable conditions.
- 14.4 SFM may disclose *personal information* to third parties retained to provide services to SFM in association with providing the services described in these Terms and Conditions.
- 14.5 If the Buyer does not provide certain *personal information*, SFM may be unable to provide the Buyer with goods or services. The Buyer warrants that any *personal information* the Buyer provides to 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 Buyer's breach of this term 14.

15. NOTICES AND COMMUNICATIONS

Unless otherwise provided, all notices and communications are to be sent by email with a copy by fax or mail to SFM.

16. GOVERNING LAW

These Terms and Conditions are governed by and construed in accordance with the law of the State of New South Wales and all parties concerned hereby submit to the non-exclusive jurisdiction of the courts of that State.