

CUSTOMER DETAILS AND CREDIT APPLICATION

Customer (or "you"):	Full Legal Name:		ABN:	
	Trading name (if different from the above):			
	Business Address:		Shipping Address:	
	Telephone: ()		Fax: ()	
	Email:		Website:	
	Years current owner has carried on the business:		☐ Company ☐ Trustee ☐ Sole Proprietor ☐ Government/Statutory Authority ☐ Partnership ☐ Other	
	Accounts payable contact:		Telephone: ()	
	Buyer contact:		Email:	
	Requested credit limit or special credit terms: \$ (Note that this is subject to acceptance by us. See in particular clause 3.7 of the Terms)			
	If the Customer's business premises are leased, name and address of landlord and agent:			
Has the Customer or any of its directors or officers ever been insolvent or involved in any way with an insolvency? ☐ Yes ☐ No If yes, please provide details (including who, when and the circumstances):				
Bank Details:	Bank Name:		Branch:	
Trade References:	Name:		Telephone: ()	
	Email:		Fax: ()	
	Name:		Telephone: ()	
	Email:		Fax: ()	
Customer Execution:	By signing below, by placing orders with or by accepting supplies from Angel Oysters Australia Pty Ltd the Customer hereby agrees to the Terms and Conditions set out below. The person(s) signing represent and warrant that they have the proper authority to bind the Customer. For a company Customer, two directors or a director and secretary must sign (or the sole director/secretary in the case of a sole director/secretary company).			
	Signature: _____		Signature: _____	
	Name (print): _____		Name (print): _____	
	Position: _____		Position: _____	
	Date: _____		Date: _____	
Personal Guarantee:	Warning: Each person who signs below (jointly and severally a Guarantor) becomes personally liable to us for amounts which the Customer now or later owes on the terms set out in clause 13. Guarantors should seek independent legal and financial advice before signing this document, and make continuing enquiries about the creditworthiness, financial position and honesty of the Customer.			
	Signed and sealed as a deed poll:		Signed and sealed as a deed poll:	
	Guarantor Signature: _____		Guarantor Signature: _____	
	Guarantor Name (print): _____		Guarantor Name (print): _____	
	Guarantor Address (print): _____		Guarantor Address (print): _____	
	_____		_____	
	Witness Signature: _____		Witness Signature (print): _____	
	Witness Name (print): _____		Witness Name (print): _____	
	Date: _____		Date: _____	

TERMS AND CONDITIONS OF SUPPLY

1 Application

- 1.1 These Terms and Conditions of Supply (**Terms**) apply to all transactions involving the supply of seafood or other products (**Goods**) by Angel Oysters Australia Pty Ltd (**we, us, our**) to you, and prevail over any other terms, unless otherwise expressly stated or agreed in writing by Angel.
- 1.2 By signing where indicated overleaf, placing an order with us, or accepting any Goods from us, you agree to be bound by these Terms.
- 1.3 A contract will be formed between us and you for the supply of the Goods (**Contract**) constituting solely of (in descending order of priority unless otherwise expressly stated or agreed in writing by us):
 - (a) these Terms;
 - (b) the contract details attached to or issued with these Terms by us;
 - (c) any written quotation or other terms and conditions issued by us and accepted by you; and/or
 - (d) any order issued by you and accepted by us.
- 1.4 No terms or conditions sought to be imposed by you (including any that are incorporated into a tender, offer, counteroffer or proposal made by you) will apply, unless expressly accepted in writing by us.
- 1.5 We may in our absolute discretion require as a condition of supplying any Products, that you provide to us and we accept an application for credit.
- 1.6 You may not cancel or vary an order we have accepted without our prior written consent.

2 Delivery

- 2.1 We will use reasonable endeavours to supply the Goods to you on or before any delivery date specified in the Contract.
- 2.2 We will endeavour to despatch Goods ordered promptly and notify you of any delays in delivery, however all consignment and delivery dates are estimates only and we will not be liable for any delays caused by any reason whatsoever.
- 2.3 You acknowledge and agree that you are solely responsible for ensuring that the Goods are transported and stored in the manner necessary to comply with applicable regulations and to ensure that the Goods remain safe for consumption. Any information or guidance provided by us regarding such matters may not be exhaustive, and we will bear no liability for reliance on any such information or guidance.

3 Price

- 3.1 The amounts payable for the Goods are as specified in the Contract or invoice (as may be varied by the written agreement of the parties if applicable) (**Price**).
- 3.2 Payment is due 7 days from date of invoice, unless otherwise agreed in writing.
- 3.3 We may invoice you for the Price at any time prior to supply of the Goods, and you must pay the invoice in accordance with the payment terms specified in the Contract or our invoice.
- 3.4 Payment of all amounts due to us must be in the manner specified in the Contract (or if not specified, as specified on our invoice or as otherwise directed by us) in Australian Dollars (unless otherwise stated) and free of any deduction, withholding, counterclaim or set off on any account whatsoever.
- 3.5 We may deduct and set off from any amounts payable by us to you any amounts which are payable by you to us.
- 3.6 We reserve the right to increase the Price to reflect any increase in costs due to any factors beyond our reasonable control by providing reasonable advance written notice to you (where any such change will not be retrospective for any Goods already supplied).
- 3.7 We may grant, refuse, withdraw or vary (including to impose or vary a credit limit) a credit facility in our absolute discretion at any time,

and if we withdraw or vary your credit facility, any credit advanced to you that is beyond the continuing credit terms will become immediately due and payable.

- 3.8 You authorise us to retain by way of lien any materials, funds, documents or other property that is from time to time in our possession or control until all amounts, interest and other amounts due from you on any account whatsoever have been paid to us.
- 3.9 You must pay us on demand interest on any overdue amounts you owe us at the rate that is 5% above the cash rate prescribed by the Reserve Bank of Australia per annum accruing daily from the due date for payment.
- 3.10 We may suspend, cease or refuse supply of any Goods if payments are overdue, you exceed your credit limit, or other circumstances arise that in our opinion give rise to an unacceptable risk to us.
- 3.11 You must pay us and indemnify us in respect of all costs and expenses we incur (including debt collection costs and our internal, administrative and legal costs on a solicitor and own client basis) associated with any breach by you of your obligations under the Contract.

4 Taxes

- 4.1 Unless otherwise stated, the amounts payable by you to us for, or in connection with, any supply under the Contract do not include any GST, and if specified on an invoice then you must pay us (at the same time and in the same manner as the Price) an additional amount on account of GST equal to the Price multiplied by the prevailing GST rate.
- 4.2 You must pay all other taxes, duties and government charges payable or assessed in connection with the Contract (excluding taxes assessed solely on our income).

5 Risk and title

- 5.1 Risk in the Goods will pass to you upon delivery to you.
- 5.2 Title to the Goods will not pass to you until we receive payment in full for those Goods and all other Goods supplied to you, and if you sell or otherwise deal with the Goods before title has passed to you, you hold the proceeds on trust for us.

6 Defective Goods

- 6.1 You must inspect all Goods promptly on delivery and notify us within 48 hours of delivery if you consider that the Goods may be Defective Goods or of insufficient quantities, and if you do not so notify us within that period then the Goods will be deemed to comply with the Contract unless they contain latent defects.
- 6.2 Goods may be rejected by you only on the basis that they did not materially comply with the Contract, or we agree that they were in unsatisfactory condition or otherwise defective, at the time immediately before risk passes to you under the Contract (**Defective Goods**). Supporting documents and images must be provided to Angel before claims can be processed.
- 6.3 You may not return any goods other than Defective Goods without our prior written consent.
- 6.4 You acknowledge and agree that, as the Goods are perishable goods, they will be fit for consumption for a limited time only due to their inherent nature.
- 6.5 Subject to clause 7.1, we will not be liable for and you irrevocably release us from any liability (whether in contract, tort, negligence, statute or from any other source) in connection with any Goods (including Defective Goods) that arises on or from 14 days after their delivery to you (irrespective of how the Goods have been stored in that time, even if that has occurred following regulatory or other guidance or good practice).
- 6.6 For the avoidance of doubt, the liability excluded under clause 6.5 includes any cost or other liability you may incur in relation to any inability to use or re-supply the Goods after the period described in clause 6.5.

7 Liability

- 7.1 We do not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010*) where to do so would contravene that statute or cause any part of this clause to be void.
- 7.2 We exclude:
- all conditions, warranties, guarantees and terms implied or imposed by statute, general law, international convention or custom, except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of these Terms to be void;
 - all liability to you in contract for consequential or indirect damages arising out of or in connection with the Contract, even if we knew they were possible or they were otherwise foreseeable, including without limitation lost profits and damage suffered as a result of claims by any third person, such as any customer of yours; and
 - all liability to you in negligence for our acts or omissions, and those of our personnel, arising out of or in connection with the Contract.
- 7.3 Our liability to you for breach of any express or implied provision (that is not otherwise excluded), including in respect of any Defective Goods, is limited to any one of (at our option) replacing or repairing the goods, supplying similar goods, supplying again the services, or refunding any amount paid by you for goods or services in respect of which the breach occurred or liability arose.
- 7.4 Our total liability in connection with any Goods, including for any negligent act or omission, will not exceed the total Price paid by you to us for the Goods to which the breach relates.
- 7.5 Without limiting the foregoing we will have no liability as a result of any act or omission of yours, ours or any other party on any account whatsoever with respect to any matter, circumstance or thing beyond our reasonable control.

8 Warranties

- 8.1 Each party warrants and represents that it has full power and authority to execute, perform and observe the Contract and that the Contract is binding on it and enforceable in accordance with its terms.
- 8.2 You warrant and represent that you are acquiring the Goods for the purposes of re-supply.

9 Product recall

- 9.1 You must promptly communicate to us any information that comes to your attention relating to any:
- failure of any Goods to conform to the requirements of the Contract or any applicable regulatory requirement;
 - investigation by any Government or regulatory authority that is or may be relevant to the Goods or us, including in relation to food safety;
 - adverse event, claim or anomaly relating to, or unexpected behaviour of, any Goods; or
 - other quality, labelling or other regulatory issue relating to the Goods.
- 9.2 If we determine that it is necessary to recall any Goods for safety or other reasons, you must provide any assistance reasonably required by us in order to give effect to such recall.
- 9.3 You must notify us as soon as practicable after becoming aware of a product recall that is required by a regulatory agency in relation to any Goods, and provide all information available to you in relation to that matter.
- 9.4 Unless required by law, you must not make any public announcement or comment in relation to a recall of any Goods without our prior written consent.
- 9.5 Except to the extent otherwise stated in the Contract, each party will bear its own costs and risk in relation to a product recall.

10 Dispute resolution

The parties will endeavour to resolve any dispute by negotiation, and must not commence legal proceedings unless the dispute is not resolved within 30 days of being first notified by one party to the other.

11 Termination

- 11.1 At any time prior to the Goods being delivered, either party may terminate the Contract by written notice to the other party if the other party is in material breach of the Contract and fails to remedy the breach within 14 days of receiving a written notice requiring it to do so.
- 11.2 You may terminate the Contract and cancel any order by giving written notice that is received by us prior to the Goods being harvested (which you acknowledge and agree may occur the same day as we receive your order).
- 11.3 We may, at any time prior to all of the Goods being delivered, terminate the Contract by written notice to you.
- 11.4 If the Contract is terminated under this clause:
- we will be under no obligation to supply any Goods that have not yet been delivered to you;
 - all money owed to us under or in connection with the Contract for any Goods delivered prior to termination will be immediately due and payable by you; and
 - if you have made any payments for Goods not delivered at the time of termination, we will refund such payments within 30 days of the date of termination.

12 General

- 12.1 A notice to be given by a party to another party under the Contract must be in writing and addressed to the recipient as specified in the Contract (or as previously amended by notice in writing given by the recipient to the sender).
- 12.2 Any variation or modification by you of the Contract must be in writing and signed by us and you but we have the right by reasonable notice to you to amend, modify or change these Terms or the Contract where considered by us to be necessary to accommodate circumstances beyond our reasonable control which might affect our operations or the Contract.
- 12.3 You may only assign or otherwise deal with your rights under the Contract with our prior written consent (where a change in control, as defined in the Corporations Act 2001, in relation to you is deemed to be an assignment requiring such consent).
- 12.4 We may assign any rights under the Contract to any legal entity that assumes all of our obligations under the Contract by giving 14 days' notice to you (in which case you must promptly execute any documentation we reasonably require to give effect to that transfer, including a novation if we require).
- 12.5 We may subcontract or otherwise arrange for another person to supply any part of any Goods or to discharge any of our obligations under the Contract, and every right, exemption from liability and defence to which we are entitled under the Contract shall also extend to all subcontractors.
- 12.6 We will not be liable to you or in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to any Goods, if the delay or failure was due to anything outside our reasonable control including, without limitation, fire, storm, flood, earthquake, explosion, accident, enemy acts, war, rebellion, insurrection, sabotage, epidemic or pandemic, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation.
- 12.7 Part or all of any clause of the Contract that is unenforceable or illegal will be severed from the Contract and will not affect the enforceability of the remaining provisions of the Contract.
- 12.8 A party's failure to insist another party perform any obligation under the Contract is not a waiver of that party's right to insist the other party perform, or to claim damages for breach of, that obligation, nor to insist the other party perform any other obligation, unless the waiving party acknowledges the waiver in writing.
- 12.9 The Contract constitutes the entire agreement between the parties about its subject matter and supersedes all previous representations, understandings and agreements in connection with that subject matter.
- 12.10 The Contract is governed by and construed in accordance with the laws of South Australia and the parties submit to the exclusive jurisdiction of the courts of South Australia.

13 Personal Guarantee

Each Guarantor hereby acknowledges and agrees:

13.1 that we have entered into the Contract with the Customer at the Guarantor's request and that the Guarantor has received valuable consideration for the personal obligations assumed under this agreement;

13.2 to unconditionally and irrevocably:

- (a) guarantee to us prompt payment of all moneys that are or become due and payable to us under the Contract and prompt compliance and performance of all Customer obligations under the Contract; and
- (b) indemnify us against all losses, damages, costs and expenses that we may now or in the future suffer directly or indirectly because of any failure by Customer to make any payment or perform any obligations under the Contract, or any payment to us subsequently being avoided, set aside or the subject of orders under any law;

13.3 each obligation of the Guarantor under the Contract is a principal obligation and must not be treated as ancillary or collateral to any other right or obligation and will be a continuing obligation until all of the obligations (including payment of all moneys) under the Contract have been satisfied;

13.4 the Guarantor's obligations under the Contract are not affected by:

- (a) any person executing or not executing the Contract;
 - (b) any part payment of money or part performance of obligations by anyone;
 - (c) any variation, grant of time, credit, compromise, release, discharge, waiver, indulgence or the like in respect of any Customer or Guarantor;
 - (d) an insolvency event occurring in relation to any person;
 - (e) any variation or change to the Contract or assignment under the Contract;
 - (f) any agreement, concession, settlement, transaction or arrangement whatsoever between us and any other person;
 - (g) the failure or omission by you or us to give notice to any Guarantor of any default by you or any other person under the Contract;
 - (h) the absence of or defect in any demand; or
 - (i) any other act, event or omission which but for this clause 13.4 would operate to discharge the Guarantor's liability under the Contract; and
- 13.5 we may obtain credit reporting information about the Guarantor from credit reporting bodies for the purposes of us assessing whether to accept the Guarantor as a guarantor