



Superior Oysters
Superior Farming Solutions

SEAPA PTY LTD - TERMS & CONDITIONS

This is an agreement between Seapa Pty Ltd and the customer

1. Meanings

In these terms the following words shall have the following meanings:

- 1.1 **“confidential information”** means information that is by its nature confidential but does not include:-
 - 1.1.1 information already known to the receiving party at the time of disclosure by the other party; or
 - 1.1.2 information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this agreement;
- 1.2 **“collateral”** means all PPSA Personal Property and all Other Property;
- 1.3 **“contract”** means any contract for a supply from us to you;
- 1.4 **“goods”** means any goods supplied by us;
- 1.5 **“month”** means (a) a calendar month, or (b) if calculating a month from a certain date, includes the period from such date to the same date in the next month but if the next month does not contain the same date then the last day of the next month;
- 1.6 **“notice”** means written notice by post, facsimile or email;
- 1.7 **“order”** means an order for a supply from us;
- 1.8 **“premises”** means 26-28 Erudina Ave, Edwardstown, South Australia, 5039;
- 1.9 **“quote”** means any written quote or written offer from us to you;
- 1.10 **“supply”** means our supply of manufactured aquaculture goods and related services (if any) to you;
- 1.11 **“we”, “our”, “us” or “Seapa”** means SEAPA Pty Ltd (ACN 084 720 730);
- 1.12 **“Customer”** means the business or individual named on the sales invoice.

2. Application

- 2.1 These terms:
 - 2.1.1 apply to each contract and;
 - 2.1.1.1 together with our quote (if any) are the sole terms of each contract; and
 - 2.1.1.2 prevail over any terms put out by or to you including in any order or quote, unless we expressly agree in writing.
- 2.2 This agreement may only be varied by the written consent of both parties except where otherwise indicated.
- 2.3 Except as required by the mandatory operation of law all implied terms and conditions are excluded.

2.4 If you enter into a contract as a trustee you agree that you enter into the contract in both your own capacity and as trustee of the trust.

3. Goods

3.1 We may alter the range of supply we offer without notice to you. If we agree to supply goods which subsequently are not readily available, we may use substitute goods of comparable functionality and quality.

4. Quotes and Orders

4.1 Any order for a supply that you place with us is subject to our acceptance and we may decline to accept an order either in whole or in part. You may not cancel an order, or delay delivery of such order, once we accept your order unless we agree in writing.

4.2 Quotes are valid for thirty (30) days from their date unless withdrawn or varied by us by notice prior to our receipt of your notice of acceptance. In any event we may decline to accept an order as specified in 4.1.

5. Prices

5.1 Total prices quoted are exclusive of GST unless otherwise stated. If we have provided a quote our invoices will be calculated in accordance with the quote. For supplies provided without a quote, or outside the scope of a quote, invoices will be calculated in accordance with our published price schedule for our goods ("**price schedule**") as current at the time we make any supply. We may alter our price schedule without notice to you.

5.2 If the supply is subject to GST the price payable by you will be adjusted upwards by the amount of such gst.

6 Invoicing and Payments

6.1 Unless a quote provided by us otherwise provides you must:

6.1.1 pay the invoiced amount plus any applicable GST in full within 30 days of delivery of the goods;
and

6.1.2 we will invoice you upon despatch of the goods.

6.2 At our discretion, an order may require payment in full or payment of a non-refundable deposit before we manufacture the goods. We may require you to provide satisfactory evidence of your financial position, you authorise us to make credit inquiries as to your ability to make payments to us at your cost and in the event that we are not satisfied with any such credit report or you fail to cooperate with any request from us then we reserve the right to terminate any contract for any supply in whole or in part or impose credit terms more satisfactory to us including payment in part or in full at or prior to delivery.

6.3 All payments by you will be made in full and you may not deduct from the price any set off, counterclaim or other sum unless we agree in writing.

6.4 If you pay an invoice by credit card you must also pay any credit card surcharge. The credit card surcharge will be an amount equal to the total costs we incur from third parties because you pay us by credit card.

6.5 If payment is overdue, we may charge you interest at the rate of the Commonwealth Bank ordinary commercial overdraft rate indicator rate plus two percent (2%) (on a per annum basis) from the date of the default until we receive payment in full. We may apportion any part payments you make against any outstanding principal or interest as we may decide. We may also apportion any payments you make under one contract to amounts due under another contract.

6.6 If payment is overdue under any contract or prior supply we may in respect of any contract cancel or suspend the delivery or performance of any supply. You must still pay us for any supply (or part thereof) delivered or performed under any such contracts.

7 Agreement to Create the Personal Properties Securities Register Interest

- 7.1 Seapa claims a purchase money security interest, as defined in the *Personal Property Securities Act 2009* (Commonwealth) (“the *PPS Act*”) in the goods so as to secure payment of the full purchase price of such items as are delivered from time to time.
- 7.2 The Customer grants to Seapa a Personal Money Security Interest (“PMSI”) in the goods and any proceeds of their sale to secure payment of the purchase price of the goods delivered from time to time.
- 7.3 The Customer agrees not to do or permit anything to be done that may result in the PMSI granted to Seapa to rank or to be subjected to priority to any other Personal Property Security Interest in favour of any other party.
- 7.4 The Customer agrees to take such further steps which may be required by Seapa to take additional or better security under the *PPS Act* over the goods and the proceeds of their sale, or to maintain the ability to claim and realise the security interest, including its priority, pursuant to the *PPS Act* or by reason of the financing statement (in order to avoid any doubt, this obligation on the part of the Customer includes obtaining written consents, supplying information, signing forms, executing documents, whether on the part of the customer, any financier to the Customer, a lessor or landlord of the Customer or any third party having a claim or interest over land or a building in respect of which the Personal Goods are located at present or at any time in the future).
- 7.5 The Customer agrees to provide to Seapa when requested all details of the location of the goods.
- 7.6 In consideration of the agreement on the part of Seapa to supply and to continue to supply goods to the Customer in accordance with these terms of trade the Customer agrees and acknowledges the consignment goods delivered into its possession and the proceeds of the sale constitute collateral in respect of which Seapa is entitled to a Personal Property Security Interest until such time as Seapa receives payment in full on account of each such supply of goods (collateral) or the proceeds of its sale.

8. Performance

- 8.1 We will make every effort to fulfil orders and to comply with any delivery or completion date provided in the quote, but if our ability to do so is affected by circumstances or events beyond our control then we may:
- 8.1.1 elect to extend the time for fulfilment of the supply or compliance with any such delivery or completion date;
 - 8.1.2 alter the specifications for the supply so as to allow the substitution of equivalent goods and/or services; or
 - 8.1.3 terminate the contract without liability for breach of the contract or for any antecedent breach.
- 8.2 In any event we will be entitled to full payment for all goods which have been delivered. We will not be liable for any loss, including consequential or indirect loss and loss of profits, arising from any delay in making the supply or the early termination of any contract.

9. Delivery

- 9.1 Unless a quote otherwise specifies, we will make goods available to you from our premises, or, at your request and expense, we will deliver or engage carriers to deliver the goods to your premises. If you do not specify a method of delivery then we may decide the method but all carriers will be your agents only and we except no liability whatsoever for any damage incurred as a result of the acts or omissions of you or your agents.
- 9.2 Where goods are:
- 9.2.1 collected by you or consigned by us to you, the goods are deemed to be delivered to you when collected by you or by your agent at our premises; or

9.2.2 transported by us to your premises or nominated destination, the goods are deemed to be delivered to you when they are unloaded from our vehicle.

10. Acceptance and Returns

10.1 If the goods are defective, you may return them to us. If we are satisfied that the goods are defective we may either fix the goods at our cost, refund you the purchase costs or provide you with compensation subject always to any applicable Consumer Laws and rights that may apply as described in clause 13.

11. Title and Risk

11.1 The legal and equitable title to the goods will only be transferred to you when we have received full payment for the goods provided under the contract.

11.2 Until you make full payment you are to keep the goods in their original condition for us in your capacity as our trustee. If required you must store the goods in such a way that they can be identified as our goods.

11.3 We may enter your premises to take possession of goods where payment to us is overdue.

11.4 If we lawfully take possession of the goods and re-sell the goods we must pay you such amount (if any) received by us exceeding the amount owed by you under the contract plus our costs in relation to the sale.

11.5 Risk in the goods passes from us to you on delivery. Goods are not insured by us unless you give us notice to do so and you pay us the cost of the same. Any claims for shortages in delivery must be in writing and received by us within fourteen (14) days of delivery.

12. Intellectual Property and Confidentiality

12.1 We have designs and patents (registered or pending) over some of our goods. You agree that you will not yourself or via a third party copy or reverse engineer our goods or have manufactured goods that infringe our intellectual property rights.

12.2 A party may use or disclose confidential information about the other party only:

12.2.1 to perform its obligations and provide the goods and services described under this agreement;

12.2.2 as required by the mandatory operation of law;

12.2.3 to its professional advisors (bankers, accountants, lawyers) for a proper purpose; or

12.2.4 with the other party's prior written consent.

12.3 You agree that we own all confidential information that we provide to you (including in respect of a tender or our pricing). You agree to return all of our confidential information to us upon demand.

12.4 The obligations imposed under this clause survives the termination of a contract.

13. Liability

13.1 Except as provided in elsewhere in these terms and conditions:

13.1.1 we disclaim and exclude all conditions and warranties, expressed or implied (including any rights and remedies) imposed or conferred by statute, common law, equity, trade custom or usage; and

13.1.2 we are under no liability to you or any other party for any loss (including consequential loss and loss of profits), injury or damage suffered or caused as a result of or arising from any negligence or defect in or failure of or unsuitability for any purpose of any supply, howsoever the same may arise. To the maximum extent possible at law our liability for any claim is limited to the refund of the purchase price of the goods.

13.2 This clause is subject to any contrary provisions of any applicable statute, the operation of which cannot be excluded.

14. Consumer Legislation and Guarantees

14.1 If goods or services we supply are of a kind ordinarily acquired for personal, domestic or household use or consumption, then our liability (including a condition or warranty implied by the *Competition and Consumer Act 2010*) is limited to (as we may decide at our option):

14.1.1 in the case of goods where any fault or defect is minor:

14.1.1.1 the replacement of the goods or the supply of equivalent goods or the repair of the goods, or a refund of the purchase price of the goods; or

14.1.1.2 in the case of goods where any fault or defect is major then at your choice;

14.1.1.3 the payment of the cost of replacing the goods, or providing a full refund, or you retaining the goods and us providing compensation for the reduction in value of the goods as a result of the major defect;

14.1.2 in the case of services then at our option we may supply the services again, or the payment of the cost of having the services supplied again, refund your cost or provide compensation for losses reasonably arising from the services..

14.2 You agree and acknowledge that you are purchasing products from us that: _

14.2.1 the goods are purchased for a business purpose;

14.2.2 The goods purchased are not of a kind ordinarily acquired for domestic, household or personal use or consumption.

Representations

14.3 We may have provided you with marketing materials for our goods. Such marketing materials may have included information as to the potential lifespan of particular goods supplied by us. Such information is made in good faith based upon:

14.3.1 industry experience for our long- established goods lines; and

14.3.2 on estimates for our newer goods lines based upon experience with our similar established goods lines.

14.4 Such information is provided for information purposes only and whilst our estimates are made in good faith they are estimates only and we do not warrant or represent that any specific goods supplied to you will operate as required by you or have a lifespan as suggested in any marketing materials or other representations. The life expectancy of any goods supplied is dependent upon various factors including:

14.4.1 the dynamic environment the goods are subject to, including, but not limited to the particular local conditions, installation methods, specific site wind and wave exposure and other environmental variations; and

14.4.2 the specific nuances of the particular goods purchased (including any change to our standard specifications (including colour)).

14.5 We in no way be liable for any damage to goods or failure to operate properly or at all due to weather conditions or other forces or events beyond our control or any unauthorised repairs or alterations or incorrect assembly or installation of the goods after supply to you.

14.6 We strongly recommend that you:-

14.6.1 conduct your own site assessment and assessment as to the suitability of our products for your own location, environmental factors and applicable usage;

14.6.2 familiarise yourself with proper assembly and installation techniques as provided by Seapa.

14.7 Where applicable, goods manufactured by a third party carry the warranty provided by that manufacturer which may operate concurrently with any other applicable legislation.

15. Indemnity and Costs

15.1 You indemnify us against any claim, action, damage, loss, liability or cost (including reasonable legal fees on a solicitor/client basis) which we may incur arising out of any breach by you of the contract or any negligence or wrongful act or omission by you. You must pay us all our costs (on a solicitor/client basis) incurred in the recovery of monies owing by you or in otherwise enforcing our rights against you under a contract.

16. Termination

16.1 We may terminate all or any contracts by notice to you if:

16.1.1 you fail to pay any amount in full within 7 days of the due date under a contract.

16.1.2 you breach any term or condition in a contract and fail to remedy that breach within 7 days of notice from us or the breach cannot be remedied.

16.1.3 you are a natural person and you commit an act of bankruptcy under the *Bankruptcy Act 1966* or become an *insolvent under administration* within the meaning of section 9 of the *Corporations Act 2001*.

16.1.4 you become an *externally-administered body corporate* or a party appoints a *controller* over your property (both within the meaning of section 9 the *Corporations Act 2001*).

16.1.5 a party seeks to enforce a security against the whole or substantial part of your assets; and/or

16.1.6 there is, in our opinion, a material adverse change in your financial position that gives us reasonable grounds for believing that you may be unable to fully and promptly perform your obligations under a contract.

16.2 Termination does not affect any of our rights or remedies existing before termination or arising from termination.

17. Disputes

17.1 If the parties are in dispute about a contract or these terms and the same is not resolved within thirty (30) days either party may refer the dispute to arbitration. There must be only one arbitrator agreed by the parties or, if they cannot agree within fourteen (14) days, an arbitrator nominated by the President of the Institute of Arbitrators of Australia (or his or her appointee). The arbitration must take place under *The Institute of Arbitrators and Mediators of Australia's Rules for the Conduct of Commercial Arbitrations* (dated 13 August 1999).

17.2 Nothing in this clause prevents a party from instituting proceedings to enforce payment due under a contract, to seek injunctive relief to prevent immediate and irreparable harm, or to terminate the contract where the basis for doing so is not in dispute.

18. Force Majeure

18.1 We will not be liable for delay or failure to perform any of our obligations under a contract to the extent that such delay or failure is caused by a *force majeure* event.

18.2 A *force majeure* event means any circumstance not within our direct or reasonable control including labour disputes, obtaining labour, materials or goods, destruction or damage to our premises or a relevant

work site, malfunction, breakdown or damage to our plant or equipment, breach of contract, default or insolvency of any third party, an act of government or governmental authority, terrorism, disruption to the supply of power, gas, water, electronic or telecommunication services, civil disorder, the weather or other natural events.

18.3 We may terminate a contract thirty (30) days after the occurrence of a force majeure event if in our opinion we are unable to perform the contract or can only perform the contract at a loss due to the effects of the force majeure event.

19. Acknowledgement by Customer

19.1 The Customer acknowledges that it has conducted its own due diligence and selected the products based upon its own skill and judgement (or that of its agents) and it has satisfied itself as to the suitability of the products based upon amongst other things, local conditions, your specific circumstances, and objectives, environmental factors and intended usage. Our representations are indicative only based upon past experience and no warranty as to fitness for any particular purpose is offered by us.

19.2 To the fullest extent allowed at law any representations made or alleged to have been made by us as to suitability for any specific purpose are denied and any representations made or alleged to have been made in and about the negotiations of this agreement or in relation to the products generally are expressly overridden by this agreement.

20. Assignments and Amendments

20.1 You may not assign your rights under a contract with us without our prior written consent. A contract can only be amended by agreement in writing. We can only waive any of our rights under a contract by notice to you.

21. Law and Jurisdiction

21.1 These terms and each contract are governed by South Australian law and any dispute arising in connection with a contract or these terms is subject to the non-exclusive jurisdiction of the courts of South Australia (and the Federal Court of Australia (Adelaide Registry)).