

**PLEASE READ ALL TERMS AND CONDITIONS CAREFULLY**

THESE TERMS AND CONDITIONS ("TERMS") APPLY TO ALL SALES (EACH A "SALE") OF GOODS PROCESSED AND/OR DISTRIBUTED (COLLECTIVELY, "PRODUCTS") THROUGH OR BY ANY DIVISION, SUBSIDIARY, OR AFFILIATE (EACH AN "AFFILIATE") OF DULCICH, INC. DBA PACIFIC SEAFOOD GROUP ("PACIFIC") TO ANY PURCHASER OF THE PRODUCTS (EACH A "CUSTOMER"). THE TERM "SELLER" REFERS TO THE SPECIFIC PACIFIC AFFILIATE THROUGH OR FROM WHICH CUSTOMER PURCHASES THE PRODUCTS AS NAMED IN THE INVOICE OR OTHER SIMILAR DOCUMENT ISSUED BY THE PACIFIC AFFILIATE IN CONNECTION WITH THE SALE (AN "INVOICE").

SALE OF ANY PRODUCTS BY SELLER TO CUSTOMER IS EXPRESSLY CONDITIONED ON CUSTOMER'S ASSENT TO THESE TERMS. BY ACCEPTING DELIVERY OF, RETAINING, OR USING ALL OR ANY PORTION OF THE PRODUCTS, CUSTOMER AGREES TO BE BOUND BY AND ACCEPT ALL TERMS UNLESS EXPRESSLY MODIFIED BY SEPARATE AGREEMENT SIGNED BY BOTH CUSTOMER AND SELLER.

PACIFIC MAY, FROM TIME TO TIME, AND IN ITS SOLE DISCRETION, REVISE THESE TERMS WITHOUT NOTICE BY POSTING THE REVISED TERMS ON ITS WEBSITE ([HTTP://WWW.PACSEAFOOD.COM](http://www.pacseafood.com)) (THE "WEBSITE"). THE TERMS POSTED ON PACIFIC'S WEBSITE AT THE TIME SELLER ACCEPTS ANY ORDER GOVERN THAT ORDER.

1. **Product Orders.** Customer shall order all Products in accordance with Seller's then current ordering procedures. If not otherwise specified, Customer may submit orders (each an "Order") to Seller either orally or in writing (including e-mail and all forms of electronic communication (e.g. fax, instant message, SMS text, etc.)).

2. **Offer and Acceptance.** Each Order constitutes a separate offer to purchase Products. No Order shall be binding upon Seller until accepted. Seller's written confirmation (including e-mail and all forms of electronic communication (e.g. fax, instant message, SMS text, etc.)), receipt of payment, commencement of work, or shipment of all or any portion of Products in connection with an Order, whichever occurs first, shall constitute acceptance of Customer's Order. All Orders incorporate these Terms whether or not they are separately referenced in the Order or Invoice. Accepting delivery of, retaining, or using all or any portion of Products sold by Seller shall constitute acceptance of these Terms. In the event of a conflict between any term or condition of an Order and these Terms, these Terms shall control unless expressly modified by separate agreement signed by both Customer and Seller. Any terms included in Customer's purchase order, bid, proposal, statement, or other memoranda or attachment of any nature whatsoever, whether written or oral, shall not govern the transaction between Customer and Seller unless signed by both Customer and Seller. Additional or different terms proposed by Customer, or any other attempt by Customer to vary these Terms, shall constitute a counteroffer by Customer, which counteroffer is rejected by Seller.

3. **Delivery.** Customer shall communicate any required delivery dates for each Order to Seller in writing. Seller will notify Customer as soon as practicable after receipt of any Order as to whether Customer's Order is accepted and, if accepted, of the date or dates on which delivery of the Products will be made. Seller will use its best efforts to fill accepted Orders on or before requested delivery dates. Seller, however, shall not be liable for damages, losses, expenses, or other liabilities of any kind if Seller fails to meet a requested delivery date.

4. **Inspection and Testing.** Customer, at Customer's expense, may inspect and/or conduct reasonable, non-destructive testing at the Delivery Point (as defined below) to confirm that Products meet or exceed the Pacific Guarantee (as defined below). Any such inspections and/or testing must take place within TWENTY FOUR (24) hours after delivery of fresh Products or within SEVENTY TWO (72) hours after delivery of frozen Products (the "Inspection Period"). Failure to notify Seller of any non-conformities or other problems within the Inspection Period shall: (a) constitute acceptance of the Products; (b) waive Customer's rights and remedies in connection with the Products; and (c) relieve Seller of any further obligations in connection with the Products.

5. **Rejection.** Customer may, within the Inspection Period, reject and either return to Seller or hold at Seller's risk and expense any Products that: (a) do not conform to the Pacific Guarantee (as defined below); (b) do not conform to industry standards and practices for similar Products; (c) do not conform to any Customer specifications submitted to Seller in writing prior to the Order; or (d) violate applicable law. Customer's failure to reject Products within the Inspection Period shall constitute acceptance of those Products. Customer shall bear all expenses and risks of unpacking, examining, repacking, storing, holding and/or reshipping, and returning any rejected Products.

6. **Payment.** Customer shall pay for all accepted Products as invoiced by Seller. All Invoices shall be due and payable within the time period specified on the Invoice, measured from the date of the Invoice. Seller will assume that Customer has reviewed each Invoice and found it in order unless Seller receives questions within FIVE (5) days from the date of the Invoice. Time is of the essence with respect to all payment deadlines.

7. **Delinquent Payment.** Should Customer fail to make any payment within FIVE (5) days of when due, then Customer shall pay a delinquency charge to Seller in the amount of 5 PERCENT (5%) of the delinquent payment as liquidated damages for administrative expenses associated with such delinquent payment, and not as a penalty (the "Delinquency Charge"). Customer agrees that the



Delinquency Charge is a reasonable estimate and fair compensation of the administrative costs, expenses, and other losses, which are incapable of exact determination, incurred by Seller as a result of Customer's delinquent payment. The Delinquency Charge shall not prejudice Seller's right to recover any and all other and/or additional damages that may be available in connection with default by Customer, all of which are expressly reserved.

**8. Failure to Pay.** Seller reserves the right to suspend, reduce, or cancel any Order if Customer fails to make any payment when due. Customer shall pay interest on any and all past-due amounts at the rate of ONE AND ONE-HALF PERCENT (1.5%) per month or, if less, the maximum rate permitted by law from the date the amount became past due until the date of payment in full.

**9. Collection Agent.** Seller may appoint an agent to collect any past-due amount owed by Customer and may pass on Customer information for that purpose. Customer shall compensate Seller for all reasonable costs and expenses of any kind, including, without limitation, attorney, paralegal, and other professional fees, actually incurred and reasonably necessary in connection with any efforts by Seller to collect past-due amounts owed by Customer.

**10. Pacific Guarantee:** Unless otherwise specified or agreed, Seller guarantees and warrants that, at the time of delivery to the final destination identified in the Order or otherwise specified by Customer (the "Delivery Point"), all Products will be of good quality, free from material defects, and safe for human consumption if properly cooked (the "Pacific Guarantee").

**11. Seller's Indemnity:** Seller agrees to indemnify, defend, and hold harmless Customer from and against any Claim caused by a material breach by Seller of the Pacific Guarantee. A "Claim" is any claim, loss, cost, liability, demand, action, suit, damage or expense arising from a physical injury, illness, or death of a human consumer of Products within the regular chain of commerce. The foregoing indemnity obligation shall not apply: (a) unless Customer promptly notifies Seller and Pacific of any such actual or threatened Claim; (b) to the extent that the Claim arises in whole or in part from Products not processed or manufactured by Pacific; or (c) to the extent that the Claim arises in whole or in part from the negligence or intentional conduct of Customer or any third party. Seller shall have the absolute right to defend, resolve, or otherwise handle any Claim which Seller is required to defend under this section in Seller's sole discretion with or without reservation of rights. In the event of a Claim, Customer shall provide Seller with all relevant information and shall fully cooperate with and assist Seller in resolving the Claim.

**12. Customer's Indemnity.** Customer, at its sole cost and expense, shall defend, indemnify, and hold harmless: 1) Seller, Pacific, and its Affiliates; 2) any and all other parties which Seller, Pacific, and/or its Affiliates are required to defend, indemnify, or hold harmless; and 3) each of their respective owners, directors, officers, employees, and agents, from and against all loss, direct or consequential

damage, cost, expense, claim, or other liability of any kind whatsoever (including attorney fees), actual or alleged, caused by, arising out of, resulting from, or occurring in whole or in part in connection with: (a) Customer's failure to comply with any obligation under these Terms (b) any failure or omission to perform any act that, as between Seller and Customer, was Customer's obligation to perform; or (c) bodily injury, death, or damage to property of any person caused by or arising out of negligence or willful misconduct of Customer or any person for whom Customer is responsible.

**13. English Language.** All correspondence, statements, notices, and other documents associated with any Products, Order, and/or Sale shall be in American English. *Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.* In the event of a dispute regarding any Product, Order, and/or Sale, the English language shall govern the interpretation and meaning of these Terms.

**14. English Measurements.** Seller may, in its sole discretion, determine whether measurements associated with any Products, Order, and/or Sale are in the English system, the metric system, or some combination of the two. Customer shall not convert any measurements that Seller states in the English system into the metric system in any documents provided to Seller.

**15. Government Contracts.** Pacific does not knowingly participate in contracts with the government of the United States of America as either a contractor or subcontractor of any tier and makes no effort to monitor or guarantee compliance with the laws, rules, ordinances, codes, and orders and decrees applicable in connection with such federal government contracts, including, without limitation, Executive Order 11246, as amended, and its implementing regulations. Customer shall immediately notify Seller in writing if all or any portion of the Products or Order are or may be necessary for the performance of one or more contracts or subcontracts with the government of the United States of America.

**16. Insurance:** Customer shall obtain and maintain throughout the term of any Order, at Customer's sole expense and with insurance companies reasonably satisfactory to Seller and authorized to do business in the jurisdiction in which the Delivery Point is located, insurance coverage of the types and limits described below in U.S. dollars. The limits set forth below are minimum limits and shall not be construed to limit Customer's liability. Limits may be satisfied through any combination of primary and umbrella policies.

a. Commercial General Liability insurance with a combined single limit of \$5,000,000 per occurrence and coverage for all liability associated with the Order, including, without limitation, bodily injury or property damage, personal injury, products, completed operations, sudden and accidental pollution, and Customer's indemnity obligations;



b. If Customer's employees or agents will drive on Pacific's property and/or premises, or take deliveries from Pacific's property and/or premises, Business Auto Liability insurance complying with the requirements of all regulatory bodies having jurisdiction, or a combined single limit of \$1,000,000 per occurrence for bodily injury or property damage, whichever is greater, including coverage for all vehicles used in the performance of any services related to the Order, whether owned, non-owned, or hired; and

c. If Customer's employees will enter onto Pacific's property and/or premises, Workers Compensation insurance complying with the laws having jurisdiction over each employee, whether or not Customer is required by such laws to maintain such insurance, and Employer's Liability (if applicable) with limits of not less than \$1,000,000 per occurrence.

In each of the above described policies, Customer shall waive, and shall require its insurers to waive, any rights of subrogation or recovery they may have against Seller, Pacific, and/or its Affiliates. Under the policies described in (a) and (b) above, Seller, Pacific, and its Affiliates shall be named as additional insureds. Any cost associated with naming these additional insureds shall be the sole responsibility of Customer. Such policies shall be primary insurance with respect to Seller, Pacific, and its Affiliates, and any other insurance maintained by Seller, Pacific, and/or its Affiliates shall be excess and not contributory with this insurance. Non-renewal or cancellation of the policies described above shall be effective only after written notice is received by Seller THIRTY (30) days in advance of any such non-renewal or cancellation. Customer shall deliver to Seller certificates of insurance evidencing the existence of all insurance required above as a condition precedent to the rendering of any services by Seller related to any Order. If the insurance policies described in this section are not obtained and maintained as provided, then Seller, in its sole discretion, shall have the right to immediately terminate the Order or to suspend delivery of the Products until such time as the obligations of this section are satisfied without any liability to Seller whatsoever.

**17. Limitation of Liability:** In no event shall Seller, Pacific, and/or its Affiliates be liable to Customer or any other person or entity, and Customer hereby releases Seller, Pacific, and its Affiliates from, any penalties and fines and any consequential, incidental, indirect, punitive or exemplary damages (including, without limitation, lost profits and injury to business reputation) whether arising out or otherwise relating to any Order, these Terms, or any other contract or sale between Customer and Seller, or from breach of the Pacific Guarantee, or arising in tort (including negligence or product liability or strict liability), and regardless of whether any person or entity has been advised of the possibility of any such loss or damage. IN NO EVENT SHALL SELLER, PACIFIC, OR ANY AFFILIATE BE REQUIRED TO INDEMNIFY OR OTHERWISE BE LIABLE TO ANY CUSTOMER THAT HAS FAILED OR REFUSED TO PAY FOR PRODUCTS AS INVOICED. THE TOTAL LIABILITY OF SELLER,

PACIFIC, AND ITS AFFILIATES FOR CLAIMS OF ANY KIND ARISING OUT OF OR RELATED TO ANY PRODUCTS AND/OR ORDER SHALL NOT EXCEED THE TOTAL PRICE ACTUALLY PAID BY CUSTOMER TO SELLER FOR THE PRODUCTS AND/OR ORDER TO WHICH SUCH CLAIM RELATES.

**18. LIMITATION OF WARRANTIES.** TO THE EXTENT PERMITTED BY LAW, THE GUARANTEES, WARRANTIES AND REMEDIES SET FORTH IN THESE TERMS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER GUARANTEES, WARRANTIES, REMEDIES, AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. SELLER DISCLAIMS ALL STATUTORY AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS, TO THE EXTENT PERMITTED BY LAW.

**19. Recall.** Upon learning or receiving notice of a credible claim or potential claim of a defect in, or tampering with, any Products, Customer shall promptly notify Pacific and shall immediately conduct at its expense sufficient analyses of such Products to reliably determine the accuracy of such claim and the cause of any such defect or tampering. Customer and Seller shall assist each other in all reasonable ways to resolve any claims involving Products subject to a recall or safety notice.

**20. Risk of Loss.** Cost allocation and risk of loss to Products shall pass from Seller to Customer when Products are first loaded onto carrier equipment at the point of origin with fixed and persisting intent to deliver such Products to the Delivery Point. If not otherwise specified in the Order, then delivery of the Products from Seller to Customer shall be F.O.B. origin, freight prepaid and charged back.

**21. Taxes and Other Fees.** Customer will pay or cause to be paid all taxes, fees, levies, penalties, licenses, charges, or interest imposed by any government authority ("Taxes") on or with respect to the Products prior to or at the Delivery Point. If either party is required to remit or pay Taxes that are the other party's responsibility under these Terms, then the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes shall furnish the other party with any documentation necessary to evidence such exemption.

**22. Termination for Convenience.** Seller reserves the right to cancel any Order, in whole or in part, for its own convenience without cause at any time by giving Customer written notice of such cancellation. Customer shall pay for Seller's performance under the Order satisfactorily completed as of the date of receipt of Seller's notice of cancellation as Invoiced by Seller. Under no circumstances shall Customer be entitled to any prospective profits or other damages because of such Seller cancellation. In no event shall Customer have the right or ability to cancel any Order and/or reject conforming Products, either in whole or



in part, without Seller's prior written consent, which may be withheld in Seller's sole and absolute discretion. Should Customer attempt to cancel any Order and/or refuse to accept any conforming Products, then Customer shall be in default of its obligations under these Terms and any and all amounts owed in connection with such Order and/or Products shall become immediately due and payable. Customer shall pay a restocking charge to Seller in the amount of TWENTY PERCENT (20%) of the value of any cancelled Order and/or rejected conforming Products as liquidated damages for administrative expenses associated with such cancellation and/or rejection, and not as a penalty (the "Restocking Charge"). Customer agrees that the Restocking Charge is a reasonable estimate and fair compensation of the administrative costs, expenses, and other losses, which are incapable of exact determination, incurred by Seller as a result of cancellation and/or rejection by Customer. The Restocking Charge shall not prejudice Seller's right to recover any and all other and/or additional damages that may be available in connection with default by Customer, all of which are expressly reserved.

### 23. Termination for Cause.

a. Default. Customer shall be in default if Customer: (i) fails to make any payment to Seller when due; (ii) makes an assignment for the benefit of creditors or consents to or acquiesces to the appointment of a receiver, liquidator, fiscal agent, or trustee; (iii) becomes insolvent or enters into a voluntary or involuntary bankruptcy or receivership; or (iv) fails to fully and faithfully perform and observe all covenants and obligations under these Terms (singularly and collectively, a "Default").

b. Remedies. If Customer is in Default, Seller may, in its sole discretion, avail itself to any or all of the following remedies: (i) elect not to pay Customer any amounts due for the purpose of setoff against and to the extent of Seller's damages caused by Customer's Default; (ii) terminate or suspend Seller's performance under any Order, in whole or in part, effective immediately upon Customer's receipt of Seller's notice of termination/suspension; or (iii) pursue and enforce any and all other rights or remedies available to Seller at law or equity.

c. Wrongful Cancellation. Should a court or arbitrator determine that Seller's alleged termination for cause was wrongful or otherwise improper, then Seller's termination shall be deemed a termination for convenience.

24. **Confidentiality.** Customer shall: (a) maintain as confidential and proprietary all information provided by Seller pursuant to or otherwise in connection with any Order and/or any dispute or claim that arises out of or relates to any Products, Order, Sale, and/or these Terms ("Seller's Information"); (b) not divulge or disclose any of Seller's Information to third parties without prior written consent of Seller; (c) not use any of Seller's Information to the detriment of Seller or to the benefit of third parties; and (d) return all of Seller's Information to or as directed by Seller upon termination or expiration of the Order or as otherwise requested by Seller.

25. **Disputes.** In the event of a dispute or claim that arises out of or relates to the purchase of any Products, an Order, a Sale, and/or these Terms, or to the existence, validity, or scope of these Terms, Customer and Seller agree to first negotiate, in good faith and through representatives with appropriate decision making authority, in an attempt to resolve such dispute among themselves. Said negotiations shall continue for a period of at least SIXTY (60) days following receipt of written notice from either party to the other describing the nature of the dispute(s), the action(s) or inaction(s) which gave rise to the dispute(s), and the relief or remedy requested by the notifying party.

26. **Arbitration.** Any dispute or claim not otherwise resolved between the parties that arises out of or relates to the purchase of any Products, an Order, a Sale, and/or these Terms, may, in Seller's sole discretion, be resolved by arbitration in accordance with the rules of the ARBITRATION SERVICE OF PORTLAND. The option to elect arbitration shall be vested exclusively in Seller and shall exist regardless of whether Seller is asserting or defending claims in the matter in dispute. Seller shall have SIXTY (60) days within which to make its election after receiving notice of any claims.

27. **Assignment.** Customer may not assign any of its rights or obligations under any Order, Sale, and/or Terms without Seller's prior written consent. Any attempted assignment of such rights or obligations without Seller's prior written consent shall be void. Seller, however, may assign, delegate, or transfer its rights and obligations under any Order, Sale, and/or Terms, in whole or in part, to any Affiliate.

28. **Binding Effect.** These Terms shall apply to and bind the successors and permitted assigns of the parties.

29. **Change of Terms.** Pacific may change these Terms at any time by publishing the updated Terms to its Website. Customer's acceptance of delivery of, retention, or use of all or any portion of Products sold by Seller, whichever occurs first, shall constitute acceptance of the amended Terms.

30. **Costs/Attorney Fees.** Customer agrees to compensate Seller for all reasonable costs and expenses of any kind, including, without limitation, attorney, paralegal, and other professional fees, actually incurred and reasonably necessary in connection with any efforts by Seller to enforce a right or obligation relating to any Order or Sale which take place outside of suit, action, arbitration, or other legal proceeding. In the event that a suit, action, arbitration, or other legal proceeding of any nature whatsoever is brought relating to an Order, a Sale, and/or these Terms, or any of the rights or obligations under a Sale and/or these Terms, each party shall pay its own attorney, paralegal, and other professional fees, as well as any and all other fees, costs, and expenses of any kind actually incurred and reasonably necessary in connection herewith, and including such fees, costs, and expenses incurred in any appellate or review proceeding, or in collecting any



judgment or award, or enforcing any decree rendered with respect thereto.

**31. Force Majeure.** Seller shall not be responsible for, and no liability shall result to Seller in connection with, any delays in delivery or in performance which result from any circumstances beyond Seller's immediate control, including, without limitation, carrier delays, foreign or domestic embargoes, seizures, acts of God, insurrections, wars, adoption or enactment of any new laws, ordinances, or regulations, fires, floods, explosions, strikes, extraordinary currency devaluations, taxes or custom duties, or any other similar events or contingencies.

**32. Governing Law and Venue.** Pacific operates the Website from its offices in Clackamas, Oregon in the United States of America. These Terms shall be construed and enforced according to the laws of the STATE OF OREGON notwithstanding any conflict-of-law principle that might implicate the laws of any other jurisdiction governing the same. The United Nations Convention for the International Sale of Goods shall not apply to these Terms or any Sale. Venue for legal proceedings of any nature whatsoever relating to or otherwise involving a Sale and/or these Terms shall be CLACKAMAS COUNTY, OREGON. Customer consents and submits to the jurisdiction of any state or federal court located in the STATE OF OREGON.

**33. Merger.** These Terms constitute the entire agreement between Customer and Seller pertaining to the Order, Sale, Invoice, and Products and supersede any prior or contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, except as specifically set forth herein.

**34. Modification.** No change, modification, or amendment of these Terms shall be effective unless made via separate written agreement signed by authorized representatives of both Seller and Customer. Each such change, modification, or amendment shall apply only to the specific Sale or Order to which the change, modification, or amendment relates and shall not apply to any future Sale or Order.

**35. Notices.** Any notice to Seller in connection with any Order or Sale shall be in writing and delivered to the Seller's Contact listed on the Invoice, with a copy to Pacific Seafood Group, Attn: Legal Department, 16797 SE 130<sup>th</sup> Ave., Clackamas, OR 97015. All notices to Seller shall be delivered via overnight courier requiring a signature for delivery, or received by Registered or Certified Mail, postage prepaid, return receipt requested.

**36. Set Off.** Seller, Pacific, and/or its Affiliates shall have the right at all times to set off any amount owing to or from Customer in connection with any Order, any Sale, or pursuant to any other agreement with Customer.

**37. Severability.** If any provision becomes or is found to be illegal, unenforceable, void, or voidable, then such clause or provision shall be modified to the extent necessary to make it legal and enforceable. If modification of such provision is not possible, then it shall be severed from the

remainder of the Order and/or Terms so that the remainder may remain in full force and effect.

**38. Waiver.** No waiver of any breach shall be deemed to be a waiver of any other or any subsequent breach, whether or not similar, nor shall such waiver constitute a continuing waiver unless expressly provided. The failure of either party to exercise or enforce any provision shall not constitute a waiver of the provision and shall not preclude or prejudice such party from later enforcing or exercising the same, or any other, provision.