

# General Terms and Conditions of the United Fish Auctions

These general terms and conditions shall apply to all legal actions undertaken by United Fish Auctions NV ("UFA") and its group companies.

**Table of contents:**

1. Definitions	2-3
2. General	3
3. Director and staff	3
4. Opening hours	4
5. Rights and obligations of the Supplier	4
6. Rights and obligations of the Buyer	5
7. Transport to and from the Fish Auction	5
8. Sorting	6
9. Auction, bidding and sales / purchase	6
10. Suspension	7
11. Sales agreement, delivery and transfer of ownership	7
12. Claims	8
13. Costs and Payments	9
14. Use of crates, tubs and materials	11
15. Force majeure	11
16. Auction Liability	12
17. Maintaining order	12
18. Access to Fish Auction premises	13
19. Traffic rules on Fish Auction premises	13
20. Customary practices	13
21. Applicable law	13
30. Settlement of disputes	13
31. Final provisions	13

## 1. Definitions

Unless explicitly stated otherwise, the following definitions shall apply in these general terms and conditions:

Supplier	The (legal) person who offers Fish for sale through the Fish Auction.
Bidding	The sale of Fish through mediation by the Fish Auction using an auction system.
Auctioneer	The Fish Auction employee responsible for auctioning Fish during an auction organised by the Fish Auction.
Mediation	All factual and legal actions of the Fish Auction aimed at establishing one or more sales agreements between Suppliers and Buyers.
Proceeds	The revenue from sold Fish, minus fees, taxes, and costs (including but not limited to sorting and auction fees) payable under these general terms and conditions to the Supplier, as stated in the Disbursement Schedule.
Disbursement Schedule	Specification of the proceeds prepared by the Fish Auction.
Commission agent	The authorised Buyer who buys in his or her own name but on behalf of another Buyer.
Director	The person appointed as such according to the internal organisation of the Fish Auction.
Buyer	The (legal) person who purchases (or indicates a desire to purchase) Fish through Mediation by the Fish Auction.
Suspension	(The act of) halting the sale of a specific batch of Fish by a Supplier.
Suspension price	The minimum price set by a Supplier or producer organisation at which Fish may be sold.
Period price	The average selling price of a particular type and quality of Fish, based on the overall sales of that type of Fish at the Fish Auction for one week.
Inspection	The opportunity to view Fish before it is auctioned at the Fish Auction.
Sorting	The sorting of Fish according to applicable rules or established customs into Fish Crates by class, type, and size or weight.
Sorters	Natural persons or legal entities designated by the Director of the Fish Auction to perform sorting.
Lot	The quantity of (packaged) Fish determined by the Fish Auction.
Strategic Bidding Behaviour	Any coordinated behaviour or agreement among Buyers that distorts fair competition.
Rate list	The periodically updated list of fees charged by the Fish Auction for Mediation and/or other services.

Home Purchase System	The electronic system that enables a Buyer to enter into a sales agreement remotely at an Auction without being physically present.
Auction	The event organised by the Fish Auction where Fish is auctioned.
Sale/Purchase	The sale of Fish by Suppliers to Buyers through the Mediation of the Fish Auction.
Carrier	The (legal) person who transports Fish from the Supplier to the Fish Auction with or without the Mediation of the Fish Auction.
Fish	All Fish and fish products, including shellfish and crustaceans.
Fish Auction	United Fish Auctions and its group companies engaged in Mediation in the sale of Fish
Working days	The days on which the Fish Auction is open according to internal organisation.

## 2. **General**

- 2.1. These terms and conditions shall apply to all legal relationships between Suppliers and Buyers with the Fish Auction in relation to the Sale of Fish and shall also apply mutually between the parties involved in the Sale of Fish, including the Sorters.
- 2.2. The Rate List in force at any time shall be considered part of these general terms and conditions.
- 2.3. Deviations from these general terms and conditions and/or the current Rate List can be proven only if agreed in writing. This is an evidence agreement.
- 2.4. These general terms and conditions shall be deemed to have been accepted without any reservations if the services of the Fish Auction are used.
- 2.5. The purpose of the Fish Auction is to mediate in the establishment of sales agreements between Suppliers and Buyers of Fish, as well as to carry out related actions on behalf of the Supplier and/or Buyer.
- 2.6. The Fish Auction, Suppliers, Carriers, Buyers, Sorters, and other individuals or entities working within or with the Fish Auction shall be required to comply strictly with the applicable laws and regulations. The aforementioned (legal) persons shall moreover be bound by all regulations announced by the Fish Auction.
- 2.7. These general terms and conditions and the Rate List are available for perusal in the buildings of the Fish Auction and are published on the Fish Auction's website. Digital copies of one or more of these documents will be sent free of charge by e-mail by the Fish Auction upon request.

## 3. **Director and staff**

- 3.1. The policy and organisation of the Fish Auction are managed by the body appointed as such and/or registered in the appropriate registers of the Chamber of Commerce.
- 3.2. The daily and general management of the Fish Auction is entrusted to the Director.
- 3.3. If absent, the Director shall be replaced by his or her deputy, appointed according to the internal organisation of the Fish Auction, to whom all powers under these general terms and conditions shall be transferred during the replacement period.

- 3.4. The Fish Auction shall be authorised to set additional rules, including by establishing house rules and a hygiene code.

#### **4. Opening hours**

- 4.1. The opening hours of the Fish Auction and the times at which Fish Sales take place shall be determined by the Director.
- 4.2. The Fish Auction is closed on Sundays, New Year's Day, Ascension Day, Easter Monday, Whit Monday, Christmas Day, and Boxing Day, as well as on other national (and local) holidays as determined by the Director. The Fish Auction shall nonetheless be authorised to open on different occasions.

#### **5. Rights and obligations of the Supplier**

- 5.1. Without prejudice to the rights and obligations of the Supplier from other articles of these general terms and conditions and/or from rules established by the competent (government) authorities, the provisions in this article shall apply.
- 5.2. The Supplier shall be required to notify the Fish Auction of its intention to offer Fish for sale and how it wishes to do so in a manner determined by the Fish Auction. The method of registration may vary depending on the type of Sale to take place. This shall be determined and communicated periodically by the Fish Auction.
- 5.3. By simply delivering Fish to the Fish Auction, the Supplier shall be deemed to have instructed the Fish Auction to sell that Fish. Withdrawing Fish offered for sale at the auction in whole or in part without the Director's permission shall be prohibited.
- 5.4. The Fish Auction shall be authorised to set additional requirements regarding the delivery method and/or packaging (including the Fish Crates in which Fish is delivered).
- 5.5. The Supplier shall be required to label the Fish it delivers with sufficient identification as stipulated in the applicable regulations of the competent authority and/or as specified by the Fish Auction.
- 5.6. The Supplier shall be responsible and bears the risk for transporting the Fish to the unloading point of the Fish Auction. The Supplier shall be responsible and liable for the Fish it delivers to the Fish Auction until it is delivered to the Buyer.
- 5.7. If an agreement for the storage of Fish has been concluded by and between the Supplier and the Fish Auction, in deviation from the previous paragraph, responsibility for correct storage shall rest with the Fish Auction.
- 5.8. During opening hours, the Fish Auction is required to unload the registered and delivered Fish immediately and to ensure that it is stored properly until it is delivered to the Buyer.
- 5.9. The Fish Auction is not required to unload and/or store Fish delivered to the Fish Auction if it appears that the regulations set by the Fish Auction and the competent (government) authorities have not been complied with, or if there is reasonable doubt regarding compliance. In such a case, the Supplier must demonstrate to the Fish Auction's satisfaction that all rules have been observed.
- 5.10. By simply delivering Fish to the Fish Auction, the Supplier shall be deemed to have instructed the Fish Auction to have the delivered Fish sorted by the Sorters unless the Fish has been properly sorted according to the applicable rules before being delivered to the Fish Auction, which must be reported prior to delivery, or sorting has not been agreed upon.

## **6. Rights and obligations of the Buyer**

- 6.1. Without prejudice to the rights and obligations of the Buyer from other articles of these general terms and conditions and/or from rules established by the competent (government) authorities, the provisions in this article shall apply.
- 6.2. The Fish Auction shall decide whether a Buyer is allowed to purchase Fish through the Fish Auction. As a buyer shall be permitted only a person who:
  - A. In the opinion of the Fish Auction, has provided a satisfactory, immediately claimable bank guarantee for the benefit of the Fish Auction to secure the Buyer's obligations further. The bank guarantee must cover at least the maximum debit balance of the Buyer at the Fish Auction at any time and must be issued by a bank institution accredited in the Netherlands;
  - B. In the opinion of the Fish Auction, in the absence of a bank guarantee, the Buyer has provided sufficient security by other means;
  - C. It is registered in the Chamber of Commerce registry and has submitted an original extract of this registration. For foreign (legal) persons, an original extract from a comparable foreign registry will suffice; and
  - D. It is familiar with the functioning of the relevant (electronic) sales/auction system.
- 6.3. The Fish Auction shall be authorised to require additional security for payment of amounts owed if it considers that the security provided under the previous clause is insufficient.
- 6.4. The Fish Auction shall be authorised to prohibit the Buyer from making (further) purchases at the Auction, via the Home Purchase System ("purchase stop"), or to deny access to the auction or remote electronic purchasing systems if the Buyer fails to meet its obligations.
- 6.5. The Buyer acknowledges and agrees that the purchase amounts it owes to the Supplier are to be collected by the Fish Auction on behalf of the Supplier. Payment to the Fish Auction must be made in a manner determined by the Fish Auction.
- 6.6. The Buyer may be represented at the Auction by a Commission Agent for concluding a purchase agreement, provided this authorisation is documented in writing in a manner determined by the Fish Auction and the authorisation is in the possession of the Fish Auction before the auction. The authorisation shall remain valid until the Buyer notifies the Fish Auction in writing that it has been revoked.
- 6.7. The Commission Agent shall be responsible to the Fish Auction at all times for its authority of representation and the scope of said authority, even if the written authorisation mentioned above is missing.
- 6.8. The Buyer shall be required to follow all instructions from the Fish Auction staff. The Buyer shall accept that decisions made by or on behalf of the Director are binding.

## **7. Transport to and from the Fish Auction**

- 7.1. If a transport agreement is concluded by and between a Supplier and a Carrier through mediation by the Fish Auction, the Fish Auction shall at no time be liable for any shortcomings in the context of (mediation in) the transport agreement, except when the Fish Auction is at fault due to gross negligence or wilful intent.
- 7.2. The Carrier and the Supplier shall be required to follow the Fish Auction's instructions regarding the method and location of transport to and from the Fish Auction.
- 7.3. If a transport agreement is concluded by and between a Carrier and a Buyer through mediation by the Fish Auction, the Fish Auction shall at no time be liable for any shortcomings in the context of (mediation in) the transport agreement, except when the Fish Auction is at fault due to gross negligence or wilful intent.

7.4. The Carrier and the Buyer shall be required to follow the Fish Auction's instructions regarding the method and location of transport to and from the Fish Auction.

## 8. **Sorting**

8.1. Sorting must be conducted in accordance with applicable rules issued by the competent (government) authorities.

8.2. The sorting of (unsorted) Fish offered at Auction shall be deemed to be performed by Sorters designated by the Fish Auction on behalf and at the expense of the Supplier.

8.3. Sorting may take place only in areas designated for this purpose by the Fish Auction. The sorted Fish must be placed in designated packaging units (Fish Crates, tubs, etc.) approved by the Fish Auction.

8.4. Sorting shall take place in a manner (including mechanically and/or manually) and order determined by the Fish Auction.

8.5. After sorting, Fish from one Supplier must form a homogeneous batch per type. The Fish Auction may set additional rules regarding the method of sorting.

8.6. If sorting is done incorrectly, the Fish Auction and/or the competent authority may require re-sorting without allowing the Sorters involved to charge a fee (provided that the Sorters are not employed by the Fish Auction).

8.7. The Fish Auction shall at no time be liable to the Supplier, Carrier, or Buyer for any damage relating to (the manner of) sorting operations.

8.8. The sorting fee is periodically specified in the Rate List and is itemised on the Disbursement Schedule.

## 9. **Auction, bidding and sale/purchase**

9.1. The supplied Fish shall be auctioned at the Auction in a manner and order to be determined by the Fish Auction.

9.2. Fish brought to the Auction that, in the opinion of the competent (government) authorities and/or the Fish Auction, is not in sound condition shall not be sold at the Auction and must be removed from the Auction by the Supplier as directed by the Fish Auction, unless the competent (government) authorities proceed with confiscation and/or destruction.

9.3. A Buyer intending to purchase Fish via the Fish Auction in any manner shall be deemed to be familiar with the functioning of the relevant (electronic) purchase/auction system. The Fish Auction shall not be liable for any damage resulting from errors or mistakes made by the Buyer in purchasing Fish through the respective purchase or auction system.

9.4. The Buyer shall be deemed to be aware that the relevant (electronic) purchase/auction system is technically configured to allow purchase agreements only up to the amount of the Buyer's bank guarantee or other security provided.

9.5. If the Buyer wishes to be physically present at the Auction, it shall be provided by the Fish Auction with a pass/key/login code for temporary use to identify themselves on the auction system. If lost, the Fish Auction shall issue a new tool for temporary use, for which the Buyer shall pay the fee specified in the Rate List.

9.6. The Fish Auction shall be authorised to set a minimum purchase quantity for certain types of Fish.

9.7. The Auctioneer shall announce or display electronically the number of units being auctioned and indicate clearly the type and/or weight of the batch offered, as well as the location where the Fish is ready for sale.

- 9.8. When using the (electronic) auction system at the auction, the purchase agreement by and between the Supplier and the Buyer shall be concluded at the moment the Buyer or its representative stops the clock at the price displayed thereon. The Auctioneer's judgment that a purchase agreement has been concluded by and between a specific Supplier and a specific Buyer shall be binding.
- 9.9. In the event of an obvious error by the Auctioneer or the Buyer during an Auction, a clear misunderstanding, or a malfunction or (temporary) failure of an (electronic) auction system, the Auctioneer shall have the right to determine that no purchase agreement has been concluded, or to declare it void. In such cases, neither the Supplier nor the Buyer may claim any compensation (for damages). The relevant batch of Fish shall then be re-auctioned promptly, and the original Buyer may bid again unless, based on the circumstances, the Auctioneer decides that the Buyer may not participate in the re-auction.
- 9.10. When using an (electronic) remote purchasing system, the purchase agreement by and between the Supplier and the Buyer shall be concluded with the Buyer who has placed the highest bid at the end of the bidding period through that system. The Auctioneer's judgment that a purchase agreement has been concluded by and between a specific Supplier and a specific Buyer shall be binding.
- 9.11. In other purchases, the purchase agreement by and between the Supplier and the Buyer shall be concluded by an offer from the Supplier and acceptance by the Buyer.
- 9.12. In contract sales, the Supplier shall offer a specified quantity of a certain type of Fish at a fixed price to be caught during a specific future period. The Fish must meet the quality requirements published by the Fish Auction. Buyers may subscribe to the offer. Upon the Buyer's subscription, an agreement shall be concluded by and between the Buyer and the Supplier. If more Fish is subscribed to than offered, the agreement shall apply to the available quantity. The Auctioneer's judgment that a purchase agreement has been concluded by and between a specific Supplier and a specific Buyer shall be binding.
- 9.13. Buyers shall refrain from Strategic bidding behaviour before and during an auction. They shall also refrain from paying fees for specific bidding behaviour before and after an auction. For each violation of this provision, each Buyer involved in the behaviour or agreement shall be liable to the Fish Auction for an immediately payable fine of €10,000 per act or agreement. The Fish Auction also reserves the right to deny the involved Buyers access to the Auction for a specified or unspecified period.

## 10. **Suspension**

- 10.1. The Supplier shall be entitled to suspend the sale of a batch of Fish to be auctioned or sold through the Auction by setting a minimum price. The Supplier shall notify the Fish Auction of this before the sale of the relevant batch of Fish.
- 10.2. The Supplier shall owe a fee on the value of the relevant batch of Fish as specified in the applicable Rate List.

## 11. **Purchase agreement, delivery and transfer of ownership**

- 11.1. The purchase agreement by and between the Supplier and the Buyer shall be concluded in the manner described in Article 9.
- 11.2. Unless otherwise agreed in writing by the parties involved, the delivery and transfer of ownership of Fish sold at the Fish Auction shall take place on the premises of the Fish Auction.
- 11.3. The Fish Auction shall deliver the sold Fish on behalf of the Supplier to the Buyer. The Fish Auction shall not be required to comply with a request from the Buyer to register part of the sold Fish in the name and on behalf of another party.

- 11.4. Fish sold at the Auction shall be considered to be delivered and transferred in ownership when the sold Fish has been marked with the Buyer's name label. If, for any reason, the Fish is not marked with the Buyer's name label, the delivery and transfer of ownership shall be deemed to have taken place when the purchased Fish is loaded by, on behalf of, or for the Buyer into the vehicle designated by or on behalf of the Buyer. The purchased Fish is at the Buyer's risk from the moment of delivery.
- 11.5. Ownership of fish purchased through the mediation of the Fish Auction that was not physically present in the Fish Auction building shall be considered to be transferred the Buyer upon delivery.
- 11.6. The Buyer shall make sure that Fish purchased at the Auction is removed from the Fish Auction premises no later than 1 (one) hour after the last Purchase Agreement concluded with the Buyer via Mediation at the Fish Auction on that day, unless an agreement for additional services (such as storage) has been concluded with the Fish Auction.
- 11.7. If the Buyer fails to remove the purchased Fish located in the Fish Auction building by the time specified in the previous clause (or fails to arrange for storage), it shall be in default, and the Fish Auction shall be entitled (also in order to limit damages) to store the Fish at the Buyer's expense. If the Buyer remains in default after being served relevant notice, the Fish Auction shall be entitled to sell the Fish to a third party or have it destroyed. Any proceeds shall be used to offset the incurred costs. The Buyer shall be liable for all damages suffered by the Supplier and/or the Fish Auction, including but not limited to storage costs, transportation costs, etc.
- 11.8. The Fish Auction shall be entitled to terminate the purchase agreement on behalf of the Supplier if it should appear that the Buyer acted in violation of these general terms and conditions before, during, or after the purchase agreement concerning the sold Fish was concluded, or if it becomes clear that the bank guarantee was insufficient to make purchases.

## 12. **Claims**

- 12.1. The Fish Auction lets the Buyer inspect the Fish to be sold at the Auction before the auction ("inspection"). The Buyer shall be deemed to have inspected or arranged for the inspection of the purchased Fish before the sale and to be familiar with the quality, quantity, and sorting of the Fish.
- 12.2. The Buyer shall accept the Fish purchased at the Auction in the condition it is in at the time of sale, unless there is a demonstrable difference in quality, quantity, or sorting thereof between the time of sale and the time of delivery. If the Buyer believes the purchased Fish does not demonstrably meet the terms of the purchase agreement, it must notify the Fish Auction immediately after delivery, after which the Fish in question will be inspected by a person or body agreed upon in consultation, and a written report shall be prepared. The result of this inspection shall be binding on all parties involved.
- 12.3. If the purchase agreement was concluded electronically and/or if the Buyer was otherwise unable to inspect the Fish, the Buyer must check the purchased Fish immediately after delivery.
- 12.4. Any right of the Buyer to make a claim based on the quality, quantity, or sorting of the delivered Fish shall expire as soon as the purchased Fish leaves the Fish Auction premises, or in the case of Article 12.3, two hours after delivery.
- 12.5. The Buyer shall not have the right to make a claim as set out in Article 7:39 ff. of the Civil Code.

### 13. **Costs and Payments**

#### General

- 13.1. The invoice amount owed by the Buyer shall be credited to the Fish Auction's bank account within five working days as of the invoice date. The Fish Auction shall be authorised to set a shorter payment term if it has reasonable grounds to doubt the Buyer's financial solvency. Payment shall be made only by transfer to the Fish Auction's bank account as indicated on the invoice.
- 13.2. If payment is not made on time, the Buyer shall be in default by operation of law without the need for a notice of default, and shall be liable to pay penalty interest as stipulated in the Rate List. Penalty interest shall be due on all invoices that are not paid or not fully paid and that have exceeded the payment term. All extrajudicial or judicial (collection) costs incurred in collecting the claim shall be borne by the Buyer.
- 13.3. The Fish Auction shall be authorised to apply payments made by the Buyer first to accrued interest and costs, and then to the oldest outstanding invoices, even if the Buyer specifies that the payment pertains to a later invoice.
- 13.4. If the Buyer is in default with one or more of its obligations under these general terms and conditions and/or if the Buyer's bank guarantee is exceeded, the Fish Auction shall have the right to refuse or technically prevent the conclusion of further purchase agreements until the default is resolved and/or the bank guarantee is again sufficient, or, as otherwise deemed by the Fish Auction, adequate security has been provided by the Buyer.
- 13.5. If the Buyer defaults on a payment obligation, the Fish Auction shall have the right to draw on the Buyer's bank guarantee immediately.
- 13.6. If the Buyer opts for an online automatic direct debit or signs a contract digitally, it shall be referred to our partner Twikey for signing the standing order or contract. By using this service, the Buyer shall agree to Twikey's General Terms and Conditions. View Twikey's general terms at <https://www.twikey.com/nl/tc.html>.

#### **Transport costs for the Supplier**

- 13.7. The transport costs shall be based on the Rate List applicable at the time, unless otherwise agreed upon in writing by the parties involved and specified in writing to the Fish Auction.
- 13.8. The fee owed by the Supplier to the Carrier for transporting Fish shall be collected by the Fish Auction on behalf of the Carrier, unless otherwise agreed in writing and specified to the Fish Auction.
- 13.9. The transport costs shall be paid by being offset against the proceeds due to the Supplier, for which the Supplier shall be deemed to have authorised the Fish Auction. The Supplier shall be considered to have authorised the Fish Auction to pay the transport costs to the Carrier on its behalf.
- 13.10. After the relevant batch of Fish has been delivered, the Fish Auction shall be liable to the Carrier and the Supplier to pay the total collected transport fees to the Carrier in accordance with the payment arrangements made by the Fish Auction with the Carrier.

#### **Transport costs for the Buyer**

- 13.11. The transport costs shall be based on the Rate List applicable at the time, unless otherwise agreed upon in writing by the parties involved and specified in writing to the Fish Auction.
- 13.12. The fee owed by the Buyer to the Carrier for transporting Fish shall be collected by the Fish Auction on behalf of the Carrier, unless otherwise agreed in writing and specified to the Fish Auction.

- 13.13. The Buyer shall be considered to have authorised the Fish Auction to pay the transport costs to the Carrier on its behalf.
- 13.14. After the relevant batch of Fish has been delivered, the Fish Auction shall be liable to the Carrier and to the Buyer to pay the total collected transport fees to the Carrier in accordance with the payment arrangements made by the Fish Auction with the Carrier.

#### **Sorting costs**

- 13.15. The sorting costs shall be based on the Rate List applicable at the time, unless otherwise agreed upon in writing by the parties involved and specified in writing to the Fish Auction.
- 13.16. The fee owed by the Supplier to the Sorters for sorting Fish shall be collected by the Fish Auction on behalf of the Sorters from the Supplier, unless otherwise agreed in writing and specified to the Fish Auction. If the sorting fee is owed to the Fish Auction (if the Sorters are employed by the Fish Auction or an affiliated company), the sorting costs specified in the Rate List shall be charged to the Supplier by the Fish Auction.
- 13.17. The sorting costs shall be paid by being offset against the proceeds due to the Supplier, for which the Supplier shall be deemed to have authorised the Fish Auction. If the sorting costs must be paid to the Sorters, the Supplier shall be considered to have instructed the Fish Auction to pay the sorting costs on behalf of the Supplier to the Sorters.
- 13.18. The Fish Auction shall be required to pay the total collected sorting fees to the Sorters within five working days after the relevant sorting to the bank/giro account indicated by the Sorters or to the legal entity to which the Sorters are affiliated, unless other arrangements have been made by and between the Sorters and the Fish Auction.

#### **Auction fees, duties and surcharges**

- 13.19. The Supplier and the Buyer shall be liable for auction fees ("duties") for purchasing Fish through the Fish Auction and/or for sorting and weighing Fish for which the sale has been suspended by the Supplier, and/or for trading Fish through the Fish Auction. The auction fees and surcharges are included in the Rate List.
- 13.20. The Fish Auction shall be entitled to charge the Buyer surcharges on the (clock) price of the purchased Fish, including a fuel surcharge, based on an amount per kilogram to be determined.

The auction fees shall be paid by being offset against the proceeds due to the Supplier, for which the Supplier shall be deemed to have instructed and authorised the Fish Auction. Insofar as the auction fees and surcharges cannot be deducted from the proceeds, they shall be invoiced to the Supplier.

#### **Water, electricity and waste**

- 13.21. The Supplier shall be liable for the rates listed in the Rate List for the use of water, electricity, and for waste disposal.
- 13.22. The costs for water, electricity, and waste disposal shall be paid by being offset against the proceeds due to the Supplier, for which the Supplier shall be deemed to have instructed and authorised the Fish Auction. Insofar as the costs for water, electricity and waste disposal cannot be deducted from the proceeds, they shall be invoiced to the Supplier.

#### **Auction proceeds**

- 13.23. The proceeds due to the Supplier shall consist of the revenue from the sale of the relevant batch of Fish, plus surcharges, including the fuel surcharge, and minus the (auction) fees, charges, and taxes owed by the Supplier under these general terms and conditions and under regulations of the competent (government) authorities, as specified by the Fish Auction on the Disbursement Schedule.

- 13.24. The Supplier shall be deemed to have instructed the Fish Auction to collect the auction proceeds of the relevant batch of Fish, plus surcharges including the fuel surcharge, from the Buyer on their behalf, in the name of the Supplier.

**Proceeds**

- 13.25. The Fish Auction shall be required to pay the net amount stated on the Disbursement Schedule to the Supplier within four working days after the sale of the relevant batch of Fish.
- 13.26. The Fish Auction cannot cite non-payment by the Buyer against the Supplier.

**14. Use of crates, tubs and materials**

- 14.1. The Fish Auction may provide fish crates, tubs, and other materials ("Fish Crates") as needed to the Supplier, Carrier, or Buyer (collectively referred to in this article as "the user"), for which the Fish Auction shall charge a fee. The Fish Auction shall be required to maintain an accurate record thereof. The amount of the fee shall be determined by the Fish Auction and listed in the Rate List.
- 14.2. The fee owed by the user shall, where possible, be offset against amounts due to the user that the Fish Auction is required to pay, for which the user shall be deemed to have instructed and authorised the Fish Auction.
- 14.3. The Fish Crates are and shall remain the property of the Fish Auction. The user shall be prohibited from making the Fish Crates available to third parties without written permission from the Fish Auction. If no written permission has been given, the Fish Crate must be returned to the Fish Auction within four working days, and a set penalty amount must be paid, which corresponds to half the replacement rate listed in the current Rate List for a lost Fish Crate.
- 14.4. If the Fish Auction grants permission for third-party use, the user shall be expressly required to inform the third party that the Fish Auction retains ownership and that the third party shall not be authorised to encumber, pledge, rent, sell, lend, or engage in any actions that would compromise the ownership rights of the Fish Auction.
- 14.5. The Fish Auction shall conduct the administration of the Fish Crates it has put in use. An inventory shall be taken at least once a year at a time determined by the Fish Auction to verify the number of Fish Crates the user has in use. The user shall be required to cooperate with the Fish Auction in determining the Fish Crates they have in use. If the user has fewer Fish Crates in possession than they have received according to the Fish Auction's records in any given year, the user shall owe a specified amount per missing Fish Crate, as listed in the current Rate List.

The administration of the Fish Auction shall be binding, except for any counter-evidence provided by the user.

- 14.6. If Fish Crates are made available to the user, they are intended exclusively for transport to and from the Fish Auction. Any other use shall be prohibited.

**15. Force majeure**

- 15.1. Force majeure shall be deemed to refer to any circumstances that were not foreseeable at the time of undertaking the obligation and cannot be attributed to the Fish Auction, whereby the fulfilment of obligations becomes practically impossible or so burdensome that fulfilment cannot reasonably be demanded from the Fish Auction. Force majeure shall include but not be limited to, war, mobilisation, strikes, power outages, failure of the computer systems and/or internet connection, malfunction of any (electronic) auction system, fire, weather, and/or other circumstances that prevent the adequate supply of Fish, as well as any other circumstances that hinder the normal functioning of the Fish Auction and cannot be attributed to it, including failure by third parties to fulfil their obligations toward the Fish Auction, resulting in the Fish Auction being unable to function in the usual or expected manner.

- 15.2. In the event of force majeure, the Fish Auction shall be entitled to suspend its obligations for the duration thereof.
- 15.3. If the force majeure lasts longer than one week, or if it becomes immediately clear that it will last this long, the Fish Auction shall have the right to dissolve the agreement for the part that has not yet been executed without being required to compensate for any damages of any nature or extent.
- 15.4. The Fish Auction shall inform the parties involved without delay when it exercises the rights mentioned in this article.
- 15.5. Government measures that hinder and/or financially disadvantage the fulfilment of the Fish Auction's obligations give it the right to dissolve the relevant agreement(s), insofar as they have not yet been executed, without the Fish Auction being liable to pay compensation or to require, at its discretion, that the counterparty reimburse the Fish Auction for any losses resulting from such measures.

## 16. **Auction Liability**

16.1. The Fish Auction shall be liable to Suppliers and Buyers only for direct damage that is a direct result of intent or wilful recklessness by the Fish Auction, unless liability cannot be excluded by law. Exclusively for the sake of clarification, and without prejudice to the foregoing, the Fish Auction shall not be liable for:

- I. Indirect damage, such as lost income;
- II. Accidents in the buildings and/or on the premises of the auction;
- III. The consequences of fire, theft, collapse, loss, and vandalism in the buildings or on the premises of the auction;
- IV. The legal consequences arising out of violations of product liability laws and/or the Goods Act;
- V. Direct and indirect damage due to lost or missing Fish;
- VI. The quality of the Fish;
- VII. Damage incurred because the Fish was not compliant with the agreement between the Buyer and the Supplier;
- VIII. The consequences of advice and statements made by employees of the Fish Auction;
- IX. The consequences of disruptions in the supply of water, energy, and in data and telecommunications equipment or malfunctions in any (electronic) sales/auction system;
- X. Any disputes between Buyer and Supplier.

16.2. In the event that the Fish Auction is liable for any damage to a Supplier or Buyer, this liability shall be limited, if an insurance policy has been taken out by the Fish Auction to cover the damaging event(s), to the amount paid out by the Fish Auction's insurer in the case, plus the Fish Auction's (potential) excess. In all other cases, the liability of the Fish Auction shall be limited to a maximum of €50,000 per incident, where related incidents shall be considered a single incident.

## 17. **Maintaining order**

- 17.1. The Director shall be tasked with maintaining order in and around the Fish Auction building.
- 17.2. Everyone present on the premises of the Fish Auction shall be required to comply immediately with any instructions given by or on behalf of the Director in the interest of order in and around the Fish Auction. They must moreover refrain from any (legal) actions that could potentially cause damage to the property of the Fish Auction and/or third parties.

18. Access to Fish Auction premises

- 18.1. The Fish Auction shall have the right to deny access to its buildings to Suppliers, Carriers, Buyers, and other persons for a specified or unspecified period if they fail to comply, including after a warning, with the rules set by the competent (government) authorities, the stipulations in these general terms and conditions, additional rules, or instructions from the Director.
- 18.2. It is prohibited to be in the Fish Auction buildings with (motor) bikes or (motor) vehicles, unless permission has been granted by the Fish Auction.

19. **Traffic rules on Fish Auction premises**

- 19.1. Insofar as they are not public roads, the entire grounds of the Fish Auctions shall still be subject to the traffic regulations of the Road Traffic Act.
- 19.2. The Fish Auction shall not be liable for damage resulting from (traffic) accidents occurring on its premises, except in cases of intent or gross negligence by the Fish Auction.

20. **Customary practices**

- 20.1. In cases not covered by these general terms and conditions, applicable legislation, or the rules set by the Fish Auction, decisions shall be based on the customary practices of the (location of the) relevant Fish Auction.
- 20.2. If custom or usage also fails to provide a solution, the Director shall decide on the basis of reasonable and fair criteria.

21. **Applicable law**

- 21.1. All legal relationships between the Fish Auction and its personnel, Suppliers, Carriers, Buyers, and Sorters, as well as the relationships between them, shall be governed exclusively by Dutch law.
- 21.2. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention 1980) and statutory provisions regarding distance selling shall be expressly inapplicable.

22. **Settlement of disputes**

- 22.1. In the event of a dispute between parties involved with the Fish Auction, said parties must first present their dispute to the Director, who shall initially attempt to resolve it amicably.
- 22.2. If the dispute remains unresolved, only the Court in the location of the Fish Auction (concerned) shall have jurisdiction to handle the dispute in the first instance.

23. **Final provisions**

- 23.1. These general terms and conditions shall enter into force as of 1 December 2022, and shall replace any previous general terms and conditions.