

**TERMS AND CONDITIONS OF SALE**

**1. Conditions of Sale.** These Terms and Conditions of Sale shall apply exclusively to the entire business relationship between W & T Seafood Corp. ("Company", "we" or "us") and its customer ("Customer" or "you"), unless otherwise agreed to in writing by the Company. Customer is bound by any order placed. Unless confirmed otherwise in writing by Company, orders are accepted by the Company upon order confirmation or invoice, which is issued by us and forwarded to Customer with delivery. Any purchase conditions or other general conditions of Customer shall not apply. Each order placed will be seen as a new contract unless otherwise agreed with one of Company's sales representatives in advance.

**2. Availability and Variations of Product.** All merchandise is offered subject to availability. All prices will be charged at the published price list current as of the date of your order. Photographs and samples provided are for illustrative purposes only. Any public advertising or product description given by third parties and/or Company is not binding and shall not be considered as a contractually agreed product specification. Product descriptions by Company do not constitute any guarantee or express representation, unless included in a specific separate agreement. Company shall not be liable for normal variations in type, weight, size and yield of the product. If, however, Company proposes a substitution of the product, Customer will be notified and may decline the substitution. All orders are taken subject to delays or events caused by any reason beyond Company's reasonable control, including, but not limited to, labor strikes, war, terrorist attacks, lock-outs, industrial actions, fire or acts of God. Seller will be allowed to ship up to fifteen (15) days after the agreed to delivery date, if there are such delays or such other events.

**3. Perishability and Return Policy.** In general, seafood and shellfish products are very perishable, and therefore Customer should be present at the time of delivery. All shipments are packed with ample refrigerant to maintain the product in average weather conditions for the shipping period (estimated conservatively to allow for some extra time). Shipping containers used are not suitable for storing the product after receipt, so Company recommends that Customer unpack the shipper contents as soon as possible and store the seafood in cold storage and/or freezer, as appropriate, to maintain optimum freshness. Customer is responsible for taking the temperature of the product and inspecting the product prior to accepting the order; Customer is obliged to examine the delivered goods, including any partial delivery, immediately (at the latest within 24 hours after delivery), and at Customer's expense, and to inform (orally with written confirmation) Company immediately (or at the latest within 24 hours after delivery) of any defects in quality or deficiency in quantity. Company may request that Customer take photographs of the product and send them to Company. If it is apparent that the goods are not in conformity with the order placed, Customer may not remove them, nor have them removed, from the place of inspection before their kind and quality have been established conclusively by Company or its representative, who may inspect the product on-site at the Customer's location. Company will accept return of product only if shipped in error, spoiled or defective and only within 24 hours of delivery and provide replacement product or a credit against invoice, in Company's sole discretion. For frozen products, the product must still be frozen; it may not be accepted for return if thawed. If Customer is not present at the time of delivery, Company cannot guarantee the freshness of the product and will accept no returns and provide no replacements or credits based on spoilage.

**4. No Warranties.** COMPANY WARRANTS THAT ALL GOODS WILL CONFORM TO INDUSTRY STANDARDS FOR THE PARTICULAR TYPE OF PRODUCT ORDERED. ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED.

**5. Limitations on Liability.** Claims of Customer are limited to return of goods against credit of invoice amount or replacement delivery, in Company's sole discretion. Any warranty claims of Customer are time-barred one year after transfer of risk, unless the warranty claims are caused by intentional acts or gross negligence of Company, its representatives, employees or agents, and have caused death or personal injury. Any further claims of Customer, in particular for compensation or damages, are limited to the amounts paid by Customer to Company for the particular order in

question. In no event shall Company be liable for lost profits, injury to good will or any other special or consequential damages. Failure of Customer to be present to receive delivery and improper storage by Customer relieves Company of any liability for any damages associated with deterioration of the product due to changes in physical conditions.

**6. Title and Risk of Loss.** Terms are FOB shipping point, and title passes to Customer upon delivery to Customer's carrier or, if delivered by Company, at the time the products are placed on the delivery vehicle. The risk of transport and shipping is with Customer, even if Company agrees separately to bear transport costs or obtain transport insurance. Except as provided here, Company shall not be responsible for freight, transportation, insurance, shipping, storage, handling and similar charges.

**7. Payments.** Customer must make all payments in U.S. dollars. Payments must be made by wire transfer, certified check, cashier's check, business check or cash. All returned checks will be assessed a \$25 returned check fee. Payment in full is required by the date determined by any applicable credit agreement or as otherwise stated on the invoice. The invoice will be noted as "past due" 15 days after the due date and may, Company's sole discretion, result in suspension of deliveries on Customer's account, or Company may require that the balance be paid and the next shipments be sent cash on delivery ("COD") until further notice; additionally, for past due invoices there will be an assessment of interest at the rate of 10% annually, prorated monthly until the invoice has been paid. In the event of default in payment and the account is submitted to a collection authority or attorney, Customer shall pay an additional charge equal to the cost of collection, including, but not limited to, all commissions, expenses, attorneys' fees and court costs. Company may, in its sole discretion, give Customer an extension to pay, without interest; Company does not waive any of its rights to collect all sums due as provided above by providing special accommodations to any Customer. Customer may not withhold payment of the invoice amount by declaring an off-set with counterclaims or a right of retention.

**8. Insolvency of Customer.** In the event Customer files for protection under the bankruptcy laws or any bankruptcy proceeding is commenced by a third party against Customer; or if Customer liquidates or dissolves, or if Company reasonably anticipates that any of the events mentioned above is about to occur, Company may, in Company's sole discretion, suspend any further deliveries without any liability to Customer.

**9. Governing Law.** The parties' relationship is governed by New York law, without regard to conflicts of law principles. The place of performance for payment and delivery is Brooklyn, New York. Exclusive place of jurisdiction for both parties is in the federal or state courts located in Kings County, New York. Notwithstanding the foregoing, Company is also entitled to file suit against Customer in the jurisdiction of Customer's headquarters or place of business.

**10. Miscellaneous.** The headings are inserted for convenience only and shall not be used to define, limit or describe the scope of these terms and condition or any of the obligations contained in them. The singular shall include the plural, and vice versa, as the context requires. All references to days are to calendar days, unless otherwise specified. The failure by Company to enforce at any time any of the provisions of these terms and conditions, or to require at any time performance by Customer of any of these provisions, shall in no way be construed to be a waiver of such provision or the right of Company to enforce each and every provision. The waiver by Company of any of these provisions shall not operate or be construed as a waiver of any subsequent breach. None of these provisions may be waived except by a written waiver executed by Company. The invalidity of all or any part of any provision shall not render invalid the remainder of such provision or any other provision. If any provision is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable. Under no circumstances shall a severed provision be replaced by terms and conditions of Customer.

**11. Entire Agreement.** This is the entire agreement between Customer and Company pertaining to the delivery of the order invoiced here and may not be modified by Customer unless agreed to by Company. Company may from time to time update the Terms and Conditions of Sale by posting the new terms on its website at <http://www.wtseafood.com/products>.