

Terms and Conditions for Online Auction

Brixham Trawler Agents Limited



The Buyer's attention is drawn in particular to the provisions of clause 11.

1. Interpretation

1.1 Definitions:

Auction: the online auction for the Goods via the Platform

Auctioneer: Brixham Trawler Agents Limited (registered in England and Wales with company number 02147074) whose registered office is at New Fish Quay, Brixham, Devon, UK, TQ5 8AW.

Bid: the Buyer's order for the Goods placed via the Platform in the course of the Auction.

Buyer: the person or firm who purchases the Goods via the Platform.

Conditions: the terms and conditions set out in this document.

Contract: the contract between the Auctioneer, acting as agent for the Seller, and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.

Cuttlefish: the species *sepia officinalis*.

Dutch Auction: a descending price auction, being an auction which the price for the goods descends until a buyer places a bid and the auctioneer stops the auction.

Force Majeure Event: an event or circumstance beyond a party's reasonable control.

Goods: the goods (or any part of them) which are the subject of a Bid.

Platform: the online auction site at <https://kosmos.aucxis.com/> or via <https://brixhamfishmarket.co.uk/>

Seller: the supplier of the Goods to the Auctioneer for sale.

1.2 Interpretation and E-Commerce information:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) a reference to **writing** or **written** includes faxes and emails.
- (d) a reference to **Incoterms** means Incoterms 2020.

1.3 Information required to be provided under the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013):

Name and geographic address of Auctioneer:	Brixham Trawler Agents Limited of New Fish Quay, Brixham, Devon, United Kingdom, TQ5 8AW
Contact details for electronic communications:	<u>info@bxta.co.uk</u> <u>john@bxta.co.uk</u>
VAT number:	322 770 614

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Auctioneer provides the Auction on the Platform by way of a Dutch Auction.
- 2.3 The Bid constitutes an irrevocable offer by the Buyer to purchase the Goods in accordance with these Conditions, irrespective of whether the Buyer has made an error in the placing of the Bid.
- 2.4 the technical steps to follow to conclude the Contract are the placing of a bid using the Dutch Auction method on the Platform, as notified by the Platform's terms of use.
- 2.5 the concluded Contract will not be filed by the auction provider but a copy of the concluded bid can be downloaded from the Platform by the Buyer.
- 2.6 The language offered for the conclusion of the Contract is English.
- 2.7 The Bid shall only be deemed to be accepted when the Auctioneer confirms the bid, at which point the Contract shall come into existence.
- 2.8 Any samples, drawings, descriptive matter or advertising produced by the Auctioneer and any descriptions or illustrations contained in the Auctioneer's sales catalogues are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.9 Where there is a conflict between these conditions and the Incoterms, these conditions prevail.

3. Buyers

- 3.1 The Auctioneer shall in its sole discretion decide whether a buyer shall be entitled to participate in an online auction.
- 3.2 The Buyer shall only be entitled to participate in an online auction if:
- (a) it has put up a bond or other security which is sufficient to cover its transactions.
 - (b) it has acquired the relevant licences from;
 - (i) the relevant authorities to enable it to buy the Goods, specifically fish; or
 - (ii) the Auctioneer.
 - (c) it knows and understands the electronic auction system.
 - (d) it accepts these Conditions.
- 3.3 The Auctioneer is entitled to refuse the Buyer's participation in an Auction if the buyer is not fulfilling its obligations to the Auctioneer under this agreement or otherwise.
- 3.4 The Buyer may participate in an Auction by means of an agent. By appointing an agent, the Buyer authorises the Auctioneer to deal with the agent as if it were the Buyer unless the Buyer advises the Auctioneer in writing to the contrary.

4. Goods

- 4.1 The Goods are described in the Auctioneer's sales catalogue
- 4.2 The Auctioneer is entitled to sort and grade the Goods prior to the Auction in accordance with applicable rules and regulations.
- 4.3 The Auctioneer will decide in its sole discretion in which way and which order it will put up landed fish for sale.
- 4.4 The Auctioneer will make available to the Buyer a sales catalogue setting out details of the Goods.
- 4.5 The Auctioneer may at its sole discretion cancel a transaction in a clear case of misunderstanding or mistake on its part or that of the Buyer. The Auctioneer will put up for resale the respective lot without delay and neither the Seller nor the Buyer are entitled to any claim against the Auctioneer in these circumstances.

- 4.6 Where the Auctioneer has actioned a cancellation under clause 4.5 the Auctioneer has the absolute right, should they wish, to refuse any attempt by the Buyer to re-purchase the respective lot.
- 4.7 The Auctioneer may allow the Buyer or its agent to use fish boxes which are the property of the Auctioneer (the Boxes). Where a Buyer uses the Boxes for any purpose, the Boxes remain the property of the Auctioneer at all times.

5. Collection and Delivery

5.1 Where the Goods:

- (a) are sold to a Buyer for onward transportation within the United Kingdom; or
- (b) consist of a quantity of Cuttlefish in excess of three tonnes (3000kg) (whether or not to be transported within the United Kingdom or outside it);

the Goods are sold to the Buyer in accordance with Incoterm EXW and clause 5.4 – 5.15 setting out the terms for collection of the Goods shall apply.

- 5.2 Where the Goods are sold to a Buyer for onward transportation outside the United Kingdom, the Goods are sold to the Buyer in accordance with Incoterm DDP except any part of the Goods which is a quantity of Cuttlefish in excess of three tonnes (3000kg) shall be sold EXW in accordance with clause 5.1 and shall be invoiced to the Buyer separately.
- 5.3 Unless Incoterm DPP applies to the Goods in accordance with clause 5.2, the Buyer shall collect the Goods from the Auctioneer's premises at New Fish Quay, Brixham, Devon, United Kingdom, TQ5 8AW (or such other location as may be advised by the Auctioneer prior to collection) (Collection Location) by midday on the date of the Auction.
- 5.4 The Buyer hereby indemnifies the Auctioneer and its associated companies against any breach of the local council harbour byelaws by the Auctioneer or its associated companies due to the failure of the Buyer to collect the Goods, or in connection with any other breach of these terms.
- 5.5 Collection is completed on the completion of loading of the Goods at the Collection Location.
- 5.6 Time for collection is of the essence.
- 5.7 If the Auctioneer fails to make the Goods available for collection, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Auctioneer shall have no liability for any failure to make the Goods available for collection to the extent that such failure is caused by delays at any ports whether in the UK or Europe or in the event of a Force Majeure Event.

- 5.8 If the Buyer fails to collect the Goods as set out in clause 5.1, then, except where such failure or delay is caused by a Force Majeure Event or the Auctioneer's failure to comply with its obligations under the Contract or otherwise agreed between the Buyer and the Auctioneer, the Auctioneer may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Buyer for any shortfall below the price of the Goods.
- 5.9 The Buyer or its agent shall comply with all health and safety regulations at the Auctioneer's premises and shall comply with all reasonable instructions of the Auctioneer's staff. Where the Buyer fails to comply with this clause 5.7 then the Auctioneer shall be entitled to remove the Buyer or its agent from its premises and terminate the Contract without liability to account to the Buyer for the price of the Goods or otherwise.
- 5.10 The Buyer shall ensure that they take reasonable care when loading the Goods at the Location Site. The Buyer is liable for any damages caused by the Buyer when collecting the Goods at the Location Site and shall pay all amounts necessary to repair any said damage immediately upon being requested.
- 5.11 The Auctioneer has, at their discretion, the absolute right to refuse entry to a Buyer to the Collection Location, or ask the Buyer to leave the Collection Location if they believe that;
- (a) The Buyers entry to, or remaining in the Collection Location may lead to a breach of the Auctioneers obligations under their lease over the Collection Location,
 - (b) Entry of the Buyers loading equipment is not deemed appropriate and could lead to damage of the Collection Location,
 - (c) The Buyer does not comply with any rules and requests made of them by either any signage or persons acting on the Auctioneers behalf, or
 - (d) The Buyer has been in breach of any of the terms of this Agreement or any other applicable laws which may apply to them.
- 5.12 Refusal of entry to the Buyer to the Collection Location will effect a Termination under Clause 10.
- 5.13 The Auctioneer and those acting on their behalf at the Location Site will take reasonable care when loading any Goods onto the Buyers equipment or property. The Auctioneer cannot however be held responsible for any damage caused to the Buyers equipment or property and the Buyer shall bear any costs incurred under such circumstances.
- 5.14 The Buyer must wear appropriate clothing at all times at the Collection Location and specifically must wear Personal Protective Equipment at all times. The Auctioneer and those acting on their behalf have the absolute right to refuse entry to a Buyer for failing to comply with this clause and such a refusal will effect a Termination under Clause 10.

6. Quality

- 6.1 The Auctioneer shall allow the Buyer or its agent to view and inspect the Goods before the auction and before placing a Bid the Buyer is deemed to have inspected the fish and to be familiar with the quality, the sorting and the grading of the species.
- 6.2 The buyer accepts the Goods as they were at the moment of the Bid.
- 6.3 Where the Buyer, on collection of the Goods, believes that the Goods are of a quality less than was implied by the Auctioneer at the point of the Bid, it shall immediately notify the Auctioneer and the Goods will be inspected by both parties who will try to find an amicable solution. If necessary, this can be done by obtaining the opinion of an agreed third party.

7. Title and risk

- 7.1 Subject to clause 7.2, the risk and title in the Goods shall pass to the Buyer when the Auctioneer places a ticket on the Goods displaying the name of the Buyer.
- 7.2 Title to the Goods shall not pass to the Buyer until the Auctioneer receives payment in full (in cash or cleared funds) for the Goods.

8. Price and payment

- 8.1 The Buyer shall pay to the Auctioneer a premium of 1% of the total cost of the Goods or such other amount as notified to the Buyer from time to time, (the Premium), which shall be paid directly to the Auctioneer by the Buyer under the terms of the Buyer's account.
- 8.2 The guide price of the Goods shall be the price set out in Auctioneer's sales catalogues and price lists in force on the Auction date and the final price of the Goods is determined by the Buyer's Bid.
- 8.3 The Buyer must pay for the Goods by electronic means or otherwise under the Auctioneer's separate credit terms and by the due date set out in any invoice.
- 8.4 The Auctioneer shall invoice the Buyer in pounds sterling and convert the sum due into Euros, calculated as at the official rate on the morning of the Auction.
- 8.5 The Auctioneer reserves the right to deduct payment for the Goods and the Premium from any bond payment or guarantee supplied by the Buyer.
- 8.6 Time for payment is of the essence.
- 8.7 If the Buyer fails to make any payment due to the Auctioneer under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum

above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

8.8 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Auctioneer may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Auctioneer to the Buyer.

8.9 The Buyer agrees to pay the Auctioneer a reasonable amount for use of the auction software, such amount to be notified to the Buyer by the Auctioneer from time to time.

9. Buyers Legal Obligations

9.1 The Buyer agrees to comply with all legal requirements as may apply to them under UK law or any other laws that may apply to them from time to time.

9.2 The Buyer's attention is expressly drawn to Competition Laws. If the Auctioneer considers that the Buyer is in breach of any Competition Laws including the appearance of "cartels" and "bid-rigging" such as cover pricing they will not hesitate to contact the Competition and Markets Authority. The Buyer will be aware that significant fines may be imposed on businesses by the Competition and Markets Authority and fines and potentially imprisonment if the Buyer is a sole person.

9.3 If the Auctioneer suspects that the Buyer is in breach of Competition Laws then they have the right to automatically terminate this Agreement.

9.4 The Buyer or Agent must not misuse this site by knowingly introducing viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful. The Buyer or Agent must not attempt to gain unauthorised access to this site, the server on which this site is stored or any server, computer or database connected to this site. The Buyer or Agent must not attack this site via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, the Buyer or Agent would commit a criminal offence under the Computer Misuse Act 1990. The Auctioneer will report any such breach to the relevant law enforcement authorities and they will co-operate with those authorities by disclosing the Buyer or Agents identity to them. In the event of such a breach, the Buyer or Agents right to use our site will cease immediately.

10. Termination

10.1 The Buyer does not have the right to cancel a Bid.

10.2 Without limiting its other rights or remedies, the Auctioneer may terminate the Contract with immediate effect by giving written notice to the Buyer if;

- (a) the Buyer fails to pay any amount due under the Contract on the due date for payment,
 - (b) the Buyer breaches any clauses under this Agreement.
 - (c) The Auctioneer suspects the Buyer to be in breach of any applicable laws.
- 10.3 On termination of the Contract for any reason the Buyer shall immediately pay to the Auctioneer all of the Auctioneer's outstanding unpaid invoices and interest.
- 10.4 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 10.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. Limitation of liability

- 11.1 Nothing in these Conditions shall limit or exclude the Auctioneer's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) any matter in respect of which it would be unlawful for the Auctioneer to exclude or restrict liability.
- 11.2 Subject to clause **11.1**:
- (a) the Auctioneer shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Auctioneer's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.
- 11.3 The Auctioneer cannot be held responsible for any delays caused in transporting the goods. Except as stated in clause 5.5, any delays to the delivery of the goods and consequences thereof are not the responsibility of the Auctioneer and no costs will fall due to the Buyer under this clause.
- 11.4 The Auctioneer does not guarantee that this site will be secure or free from bugs or viruses. The Buyer or Agent is responsible for configuring their own information technology, computer

programmes and platform to access this site. The Buyer or Agent should use their own virus protection software.

12. Force majeure

The Auctioneer shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for two weeks, the party not affected may terminate this Contract by giving two days' written notice to the affected party.

13. Import and Export

13.1 The Buyer and the Seller shall comply with all applicable laws of the United Kingdom, the European Union and the World, as applicable, in relation to the import and export of the Goods.

13.2 The Auctioneer reserves the right to cancel or rescind a Contract where there is, in its reasonable opinion, a potential breach of import or export control regulations, although nothing in this clause shall transfer any liability to the Auctioneer in respect of the responsibility of the Buyer and Seller for checking compliance with the applicable laws and regulations.

13.3 The Buyer and Seller both warrant and represent to the Auctioneer that they hold the necessary licences and permits required for their performance of this Contract and indemnify the Auctioneer against all liability for breach of this clause.

13.4 If the Auctioneer agrees to arrange carriage of the Goods to Europe, then in the event of loss or damage to the Goods the insurance liability of the Auctioneer shall be limited to that which is set out in Road Haulage Association terms.

14. General

14.1 Assignment and other dealings.

(a) The Auctioneer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Auctioneer.

14.2 Entire agreement.

(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations

and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

14.3 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.6 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.6(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.7 Third party rights. No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

14.8 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

14.9 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

We acknowledge and accept the terms of this agreement.

Signed by the Buyer:

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Name:

For and on behalf of:

Date: