



# Business Rules 2016



# BUSINESS RULES – UPDATED 1 JANUARY 2016

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Definitions

Special Regulations applicable to Own At-Sea/On-Shore Processing

Schedule 1

**In the event of any discrepancy between the original Norwegian and the translated English text of these Business Rules, the Norwegian version shall prevail.**

## **§ 1. BUSINESS RULES – OBJECTS AND AUTHORITY IN LAW**

Norges Sildesalgslag ("**NSS**") is a nationwide, self-financed, fishermen-owned sales organisation for fishermen of pelagic fish. In its capacity as an independent legal entity, NSS also acts as a public body pursuant to legislation including the Act of 6 June 2008 no. 37 on the management of wild marine resources (Marine Resources Act) and the Act of 21 June 2013 no. 75 relating to first-hand sales of wild marine resources (Fishermen's Sales Organisation Act).

NSS's business rules ("**Business Rules**") lay down the general conditions for the Delivery and First Sale of catch through or with the approval of NSS. The Business Rules derive authority from Article 10 of the Fishermen's Sales Organisation Act and from NSS's commercial expertise.

Words and expressions in the Business Rules shall be interpreted according to the definitions set out under Definitions.

## **§ 2. RIGHT TO AMEND THE BUSINESS RULES AND PROVISIONS MADE IN PURSUANCE THEREOF**

The Board draws up the Business Rules and in accordance with Article 14, Section 8 of the Articles of Association, may delegate tasks to designated committees.

NSS may append special regulations to the Business Rules in the form of Special Sales Conditions for individual fish species, usages, trading forms, or by other means, including by circulars.

NSS may amend the Business Rules and provisions made in pursuance thereof with due notice to the actors, and where possible, following prior consultation. If developments in fishing and delivery capacity should entail unreasonable conditions for fishermen, or an inappropriate fishing or trading situation, or in the event of other unforeseeable circumstances, NSS may vary from the rules without notice.

## **§ 3. SCOPE AND APPLICABILITY**

Under the Fishermen's Sales Organisation Act and Regulations of 20 December 2013 no. 1665 relating to first-hand sales of wild marine resources, pursuant to Section 1, the following species shall be sold through or with the approval of NSS:

- European anchovy (*Engraulus encrasicolus*)
- European sprat (brisling) (*Sprattus sprattus*)
- Horse mackerel (*Trachurus trachurus*)
- Blue whiting (*Micromesistius poutassou*)
- Mueller's pearlside (*Maurolicus muelleri*)

- Capelin (*Mallotus villosus*)
- Lanternfishes (*Myctophidae*)
- Mackerel (*Scomber scombrus*),
- Polar cod (*Boreogadus saida*)
- Pilchard (*Sardina pilchardus*)
- Sandeel (*Ammodytidae*), including the lesser sandeel (*Ammodytes tobianus*)
- Atlantic herring (*Clupea harengus*)
- Argentines (*Argentina sphyraena*)
- Silvery cod (*Gadiculus argenteus*)
- Norway pout (*Trisopterus esmarkii*)
- Longspine snipefish (trumpetfish) (*Macroramphosus scolopax*)
- Boar fish (*Capros aper*)

Section 2 of the Fishermen's Sales Organisation Act specifies the scope of the sales and Section 3 their geographical applicability. Reference is also made to Section 2 of the Regulations relating to first-hand sales.

#### **§ 4. TERMS & CONDITIONS OF PARTICIPATION IN SALES THROUGH NSS**

- 4.1 Any Norwegian Buyer who wishes to purchase raw materials such as those named in Section 3 of the present Business Rules must be registered as a Buyer with the Directorate of Fisheries in accordance with the Regulations of 26 November 2010 no. 1475 relating to registration as a buyer in first-hand sales of raw fish etc.
- 4.2 Any foreign Buyer seeking access to the NSS auctioning system may be required to furnish documentation so that Fishermen, on selling raw materials to that Buyer, will be capable of fulfilling: (i) their obligations in accordance with Regulations no. 607 of 6 June 2014 concerning Landing and Delivery Notes for the landing and sale of fish and (ii) NSS documentation requirements.
- 4.3 In applying for access to the NSS auctioning system, the Buyer thereby undertakes to comply with NSS's Business Rules and provisions made in pursuance thereof and to keep himself apprised of any subsequent amendments thereto. NSS may nonetheless require specific confirmation that Buyer has familiarised himself with and accepts the Business Rules and provisions made in pursuance thereof before the Buyer can be granted access to the auctioning system, or as a condition on his continued access to the auctioning system.
- 4.4 Similarly, Norwegian and foreign Fishermen shall comply with NSS's Business Rules and provisions made in pursuance thereof and keep themselves apprised of any subsequent amendments thereto.

## **§ 5. ADJUSTMENTS TO RULES**

- 5.1 Pursuant to Sections 13 and 14 of the Fishermen's Sales Organisation Act , NSS may at short notice and with binding effect on Fishermen introduce Trip Quotas/Vessel Quotas/Max. Quotas/Turn Quotas, grouped departures, closed seasons, order that all catches should be penned, vessel movement control or other measures deemed necessary out of concern for the offtake. Such measures will be notified separately by radio announcement, circular, notice in the press, electronically on NSS information systems, by SMS where Fishermen subscribe to this form of notification or by direct contact from NSS to the individual vessel. The Fisherman and the Buyer undertake to keep themselves informed of such notices and to comply with any notices issued.
- 5.2 NSS may instruct where catches taken or delivered in breach of the applicable regulations are to be landed or delivered.
- 5.3 Before fishing is undertaken, the Fisherman shall inquire with NSS whether delivery or sales opportunities exist. Non-sales, irregularities or losses arising as a result of the Fisherman or Buyer being unfamiliar with measures announced by NSS are the liability of the Fisherman and Buyer, respectively.

## **§ 6. NSS SALES SYSTEM**

- 6.1 Organisation: NSS provides an auctioning system for Fishermen and Buyers and administrates the trading process.
- NSS is not a party to the individual contracts of sale concluded between any Fisherman and Buyer at an auction or other form of trading approved by NSS. Contracts and agreements between Fishermen and Buyers shall be concluded on and in compliance with the terms and conditions applicable under NSS's Business Rules and Special Sales Conditions and any guidelines laid down in pursuance thereof and current pricing regulations.
- 6.2 NSS's involvement in sales: Within the sales period, NSS shall as far as possible organise and make every effort to facilitate Fishermen's sales of catch, but assumes no obligation to Fishermen for ensuring sales of catch. The possibility of selling catch will at any time be dependent on factors such as the buyer's market and composition and the quality of catch and in which bidding area it is put up for sale.
- 6.3 Trading form: First Sales of fresh fish are as a rule sold at auction unless otherwise prescribed in the Business Rules or in Special Sales Conditions or decided by NSS pursuant to NSS's ordinary authority to introduce adjustments.

- 6.4 Auction: Auctions are normally held as online auctions. Fish registered for auction by the required time for the auction in question will be offered to the buyers. Fish registered for auction without data as mentioned in Section 8, item 8.2, may at NSS's discretion be refused for inclusion in the auction/sale.

The fish will be posted on the NSS auction site immediately after the last registration deadline. The Fisherman has a duty to check, where possible, that the data on the fish registered for auction matches that reported by the Fisherman.

NSS accepts no liability for errors due to failures in technical resources or defective or inaccurate communication. NSS reserves the right to correct any errors in auction data as a result of inaccurate or defective registration of information caused by printing errors, communication failures or the like.

In the event that significant errors are discovered in auction data, NSS may opt to withdraw the fish from the auction and may reassign the fish to a different auction.

Inaccuracies in auction data that are discovered after the auction has closed must be resolved between the Fisherman and the Buyer. NSS will, at the request of the Fisherman and the Buyer, and as far as it deems feasible, assist the Fisherman and the Buyer in rectifying or remedying any inaccuracy at issue between them.

- 6.5 Auction time:  
The auction time is set by NSS in consultation with buyer organisations.

- 6.6 Bidding area:  
General bidding areas are detailed in circulars. Bidding areas for the individual catches are determined by NSS in consultation with the Fisherman. The bidding area must be set so that several Buyers have the opportunity to bid for the catch with a view to maximising competition. Facilities passed by vessels shall be included in the bidding area. NSS may however prescribe special bidding areas for individual catches and/or auctions.

- 6.7 Minimum prices:  
The setting of minimum prices must take place, as far as possible, well in advance of each main season, and as a rule following talks with the buyer organisations. NSS sets the prices for First Sales of those fish species, including individual sizes and by-products of these, comprised by Section 3. The set prices and provisions will be notified by circular or by whatever method NSS deems necessary.

Prior to sales for human consumption, NSS may, as dictated by the sales and or work situation, accept individual minimum prices at the first auction attempt after registration of fish for auction provided that this is higher than the ordinary

minimum prices. A Fisherman may not subsequently accept a lower bid than the minimum price offered at auction. If fish brought directly on board is put up for later auction this must be sold in the ordinary manner and according to NSS set minimum prices.

For sales at auction, First Sale prices for catch brought directly on board shall be for carriage-free delivery to the quayside by the Buyer's facility. For net-penned fish sold at auction, first-sale prices shall comprise collection by the Buyer from the net pen.

6.8 Bid monitoring:

Incomplete or imprecise bids may be rejected by NSS.

The total average bid in Norwegian Kroner (NOK)/kg of fish for direct human consumption will be validated by two decimals and by four decimals for fishmeal and oil raw materials according to the standard rules for decimal rounding. There must be a correspondence between the size and the grade offered for the different sizes. Where this is not the case, NSS may depart from the regulation of accepting the highest average bid. The basis for calculation of the highest bid is a weighted average price based on the dimensions specified. It is preferable for the Buyer to also quote the weighted average price in his bid.

6.9 Transacting sales:

The highest bid matching or exceeding the NSS minimum price, or an individual higher minimum price is binding on the Fisherman. In the event of equal bids, or where the highest bid is outside of the bidding area (where this is permitted), NSS, in consultation with the Fisherman, will decide which Buyer the fish is to be awarded to. NSS will observe who obtains the winning bid for the individual lot. Without undue delay at the end of the auction, the Fisherman will be notified of the winning bid and the conditions that apply.

6.10 Supplemental auction:

Any fish not sold at ordinary auction at set minimum prices may be offered at supplemental auction at the Fisherman's request, or the fish may be offered directly to a Buyer subject to agreement with NSS.

6.11 Line and net-caught fish:

Fishermen who use hook-and-line gear and nets are permitted to deliver their catch directly to an approved Buyer without putting it up for auction through NSS. Before fishing commences, the Fisherman must contact the Buyer to agree on delivery of fish that will not be offered for sale by auction. Delivery agreements

may be made exclusively with approved Buyers who use NSS Sale Notes and have provided collateral coverage for the purchase.

Prior to delivery of the catch, the Fisherman must verify that the Buyer has collateral coverage.

## **§ 7 OWN AT-SEA/ON-SHORE PROCESSING**

Fishermen who process their own catch must sell the processed product through NSS except in cases where dispensation from this requirement has been granted. NSS may set minimum prices for own-processed products. See also the Special Regulations applicable to Own At-Sea/On-Shore Processing.

## **§ 8. CATCH REPORTING AND BID RESERVATION**

### **8.1 Catch reporting:**

Immediately after completing fishing, the Fisherman must report the entirety of his catch to NSS and must not deliver any catch without authorisation from NSS unless otherwise determined.

- Fish caught by seine and trawl (and purse seine) shall be reported on departure from the fishing area. This applies equally to delivery to a factory ship or to a foreign port.
- For own at-sea/on-shore processing and products thereof, see the Special Regulations applicable to Own At-Sea/On-Shore Processing.
- Penned fish must be reported as soon as the catch has been confined to a pen/bag. Fish held in a purse seine alongside a vessel are not regarded as penned.

In reporting catch, the Fisherman undertakes to comply with NSS's Business Rules and provisions made in pursuance thereof and to keep himself apprised of any subsequent amendments.

### **8.2 Reports submitted shall state the following:**

- Vessel name and registration number
- Fish species – main species and any by-catch
- Whether the catch is for consumption or fishmeal and oil
- Whether the catch was hauled aboard directly, penned or processed at sea



- Whether the catch has been pumped from another vessel or is the vessel's own catch
- Quantity of each fish species, sorted/offcuts etc.
- Size distribution and average size per fish in the whole catch (in grams)
- Assortment in the entire catch
- Fishing area – correct route position (including within/outside of 12NM/Economic Zone/Quota Zone)
- Specification of pen location with coordinates and municipality
- Catch date
- Gear
- Number of casts/hauls
- Number of tanks in which catch is stored
- Whether catch was overcrowded and if so for what duration
- Feed content in stomach
- Preservation method
- Log No. and Trip No.
- Bidding area with estimated arrival times at outer limits of bidding area, and any other information required by the prevailing regulations.

8.3 Special requirements for fish caught by seine/rawl (excl. penned fish):  
If the quantity taken on board is greater than the applicable Trip Quota/Vessel Quota/Max. Quota/Turn Quota, the quantity must be reported in full.

8.4 Special requirements for penned catch:  
On registration with NSS, the Fisherman will be assigned a pen number to be used as a reference when selling the fish. Shore seine catches are only put up for auction once the fish have been confined to a bag/pen. Penned fish intended for long-term holding are to be registered with NSS as soon as the fish has been penned in. The Fisherman must then notify NSS when he wishes the fish to be put up for sale at auction.

- 8.5 Catches offered for sale by the Fisherman at auction through NSS cannot be withdrawn from the auction once this has commenced.
- 8.6 Right of reservation:  
A Fisherman may, by notifying NSS, reserve the right not to accept a bid from an individual Buyer within a bidding area. The following criteria must be met:
- a) A reservation within a bidding area against bids from an individual buyer must be notified in writing to NSS. The reservation must apply to a specific vessel and a specific processing facility, and must be applicable only for a limited period of not more than six months.
  - b) The reservation must be for due cause attributable to the Buyer's circumstances. The reservation must be based on the Fisherman's experience in the period of time immediately preceding when the reservation is to apply. A vessel's grounds for exercising its right to reservation may not be transferred to other vessels owned by the same company.
  - c) The reservation is not binding until the date on which it is accepted by NSS, and the parties to which the reservation applies have been notified. The Buyer shall be given the opportunity to comment on the reservation prior to decision by NSS on the matter, unless special circumstances indicate that the reservation request is to be granted with immediate effect, based on the information provided by the Fisherman.
  - d) The Fisherman bears the responsibility for the validity of the reservation. NSS accepts no liability for the consequences resulting from a decision in a reservation case. However, to the extent that NSS incurs expenses and losses ensuing from a decision in a reservation case, NSS may demand that such loss be compensated by the Fisherman, and may be set against future amounts payable to the Fisherman.

## **§ 9. BUYING PROCEDURE AT AUCTION**

- 9.1 Bidding:  
Bids are placed as NOK/kg with two decimals for fish for consumption and with four decimals for fishmeal and oil raw material for each assortment and for the entire catch. If a Buyer bids simultaneously for the catch from several boats, for each fish species and in total for all fish species, the Buyer may reserve the right to restrict his purchase to a maximum quantity, minimum quantity and/or maximum number of vessels. A Buyer who enters a maximum amount may be

allocated up to 10% additional quantity without the right to object either to NSS or the Fisherman.

The Buyer also has the option of prioritising the order of his purchases. Every effort will be made to take these priorities into consideration. The priorities may however be waived if the Fisherman has the option of selecting a Buyer as a result of equal bids or bids outside the bidding area or on other justified grounds.

**9.2 Corrections:**

The Buyer must keep himself continuously informed of any corrections to and/or notices concerning the terms and conditions of auction. Without any waiver of the Buyer's responsibility to keep himself informed as mentioned in the foregoing, the Buyer may sign an agreement with NSS for SMS notification of corrections to and/or notices concerning the terms and conditions of auction.

**9.3 Binding bids:**

Any bid placed at NSS auction is binding on the part of the Buyer until the time the Buyer is notified by NSS that the bid has not been accepted. Only in the event of material changes to the data registered for the auction, will the Buyer be permitted to withdraw or amend his bid in the auction.

**§ 10. BUYER COOPERATION AND TRANSFER OF SALE**

10.1 Buyer cooperation on a First Sale of catch may take place only following prior permission from NSS. NSS may impose terms for its permission for Buyer cooperation. In this clause, "buyer cooperation" is taken to mean the sharing and/or transfer of catch between multiple Buyers.

10.2 In the event of buyer cooperation, the Buyer who places the bid in the auction/signs for the sale will be the legal Buyer vis-à-vis the Fisherman.

10.3 The transfer of a sale may take place after the catch has been assigned, contingent on the original Buyer remaining liable to NSS for the original sales amount, including that guarantees remain in place to cover the settlement, until NSS has authorised the transfer and any terms of such authorisation have been complied with.

10.4 Buyer cooperation and transfer of sales shall not impose any obligation on the Fisherman beyond what would ensue from the First Sale if it were not a transaction in a buyer cooperation or without transfer of contract.

- 10.5 Buyer cooperation and the transfer of a sale is otherwise subject to the regulations ensuing from the Business Rules and provisions made in pursuance thereof.

## **§ 11. TRANSPORTATION SCHEME – TRANSPORTATION SUBSIDY – EQUALISATION CHARGES**

NSS may implement transportation schemes and apply an equalisation charge to the financial settlement. Information concerning transportation schemes and equalisation charges is issued in circulars or other notices to Fishermen/Buyers.

In the event that NSS implements transportation schemes whereby the Fisherman is to pay the excess on any subsidy to a third party for his transportation expenses, the Fisherman is not under obligation to make delivery under such transportation schemes. If a Fisherman declines the offer of effecting delivery under a transportation scheme whereby the excess after subsidy is payable by the Fisherman, the following applies: (i) NSS cannot be made liable to contribute to another sale and (ii) the Fisherman is disqualified from participating in any scheme to equalise the Fisherman's own transportation expenses if such a scheme has been introduced by NSS.

The Fisherman is under obligation to participate in a general scheme for deductions from settlements introduced by NSS in order to equalise the differences in transportation expenses between Fishermen in the interests of fisheries efficiency and trade.

## **§ 12. DELIVERY**

- 12.1 Obligation to deliver and to receive:  
Once the sale has been concluded, the catch must be supplied without delay from the Fisherman to the Buyer who is under obligation to take receipt of the catch. The Buyer is under obligation to take receipt of all fish and any by-catch included in the catch. Hand-over is a matter between the Fisherman and Buyer and NSS accepts no liability for any failure on the part of the Fisherman to deliver or on the part of the Buyer to take receipt.
- 12.2 Impediment to delivery and receipt:  
The obligation to supply and take receipt of catch, respectively, shall be suspended only in cases where the party who defaults on his obligation does so under conditions of Force Majeure. Force Majeure is taken to mean conditions that are beyond the control of the affected party and which prevent him from fulfilling his contractual obligations. The conditions must be of such a nature that they could not have been prevented or reasonably foreseen or that the consequences of them could have been remedied. Force Majeure will in any

event include destruction following natural disasters, extreme weather conditions, war, mobilisation, requisitioning and public restrictions (for which the affected party has no responsibility whatsoever). The party invoking Force Majeure shall immediately inform the other party with a carbon copy to NSS that he is invoking Force Majeure and shall give the reasons for that Force Majeure.

12.3 Delivery location:

Fresh fish and processed products shall be supplied, as instructed by NSS, or in accordance with any NSS policies to the Buyer's product reception facilities and the Buyer shall duly take receipt of them. The catch must at all times be delivered within the bidding area unless the Fisherman has accepted a bid outside of that area.

12.4 Delivery time:

The catch shall be delivered by the estimated time of arrival. The Fisherman shall notify NSS and the Buyer directly and immediately in the event of any changes in relation to the estimated arrival time and shall indicate the reason for any such change including if the grounds are Force Majeure.

12.5 The Fisherman and the Buyer are required to provide accurate information on the vessel's draught and on the depth of water at the unloading site.

12.6 Arrival and unloading turn:

The Fisherman shall, immediately upon his arrival at the delivery site notify his arrival to the recipient and his unloading turn will be determined by his arrival time.

For combined catches of fishmeal/oil and fish for consumption, the Fisherman will be assigned his turn at the consumption fish reception facility upon arrival at the facility and for fishmeal/oil delivery upon arrival at the factory. On arrival, the Fisherman has the right to take his unloading turn at both sites, but must be ready to unload as soon as it is his turn. If not, the Fisherman will be assigned a new turn when he is ready to unload at the right site.

If a Buyer specifies deferred unloading at the time of bidding due to earlier raw materials purchases, the unloading turn upon arrival may be departed from. In that event, the Buyer cannot subsequently purchase raw materials for delivery at a time earlier than or coinciding with the deferred unloading time unless NSS gives its approval and it is apparent that an earlier or coincidental unloading time will not come into conflict with the unloading time for the catch for which the unloading time was deferred.

12.7 Unloading:

Unloading is the responsibility of the Buyer. Catch landed for delivery as fishmeal and fish oil shall be unloaded using equipment owned and operated by the Buyer. Catch delivered as fish for consumption shall be unloaded from the vessel to holding tanks using equipment owned and operated by the Fisherman, except for catch from small vessels which shall be unloaded using equipment owned and operated by the Buyer.

12.8 All fresh products not destined for processing shall be unloaded before departure from the last unloading site.

12.9 Pens:

Penned catch shall be delivered from the pens according to the instructions of NSS unless otherwise decided. By agreement with NSS, the Fisherman may supply the catch to the Buyer's product reception facilities. Any transportation shall in that event be agreed in advance between the Buyer and the Fisherman or shall be covered by the Buyer in accordance with rates in the pricing agreement. Withdrawal from the pens may take place only on NSS orders. The transportation vessel shall carry suitable and approved scales on board and be equipped for collection and transportation of this type of product. The master of the transportation vessel shall be regarded as the Buyer's representative unless no other representative of the Buyer is present. The master of the transportation vessel shall have familiarised himself with NSS's Business Rules and provisions made in pursuance thereof. The product shall be approved upon receipt. The Delivery Note shall be printed immediately by the Buyer's representative (the transportation vessel's skipper) and the Fisherman on withdrawal of fish from the pen, and shall state the pen number; see the Regulations concerning Landing and Delivery Notes.

If the Buyer has purchased several pens, the first withdrawal shall be from the oldest pen. NSS may grant dispensation from this requirement if there are reasonable grounds for withdrawing fish out of age-sequence. If the Buyer is unable to effect withdrawal at the agreed time, NSS shall be notified immediately.

If the pen cannot be delivered at the agreed time for reasons attributable to the Fisherman, the pen will be re-registered using the last pen number. In the event of any change in quantity in the pen, this shall be notified to NSS immediately. If the fish at the time of withdrawal are not free from feed content, this shall be notified to NSS immediately. Refilling of a pen that has been sold but not yet collected is not permitted.

Penned fish that have been sold at auction shall be collected as soon as possible. For herring, the time limit for collection is maximum 3 days after the time of the auction and for mackerel the collection time limit is maximum 5 days after the time of the auction.

Collection of penned fish after the collection deadline may take place only by agreement with NSS. NSS may also deny permission for the sale to proceed, and may then at its discretion, in consultation with the Fisherman, sell the fish to another buyer. In the event of failure to collect or transgression of the specified collection deadline, the Buyer may be liable to pay damages to the Fisherman for losses sustained as a result of the penned fish being rendered unsaleable or only saleable at a reduced price.

12.10 In the case of delivery abroad or to a foreign vessel, the Buyer is responsible for clearing the fish through customs.

12.11 Passing of risk:

Where the Buyer independently or with the assistance of other parties than the Fisherman carries out the unloading/withdrawal from the pen, risk is regarded to have passed to the Buyer as soon as the catch is placed in the unloading device. In cases where the Buyer does not have or is unable to provide the necessary equipment for unloading, and unloading thus has to be performed by the Fisherman, the risk in the catch passes to the Buyer in the instant the catch is delivered over the vessel's guard rails at the agreed delivery site/withdrawn from pen unless otherwise agreed between the Buyer and the Fisherman with the consent of NSS.

If the Buyer fails to honour his obligation to take receipt of the catch, including to effect unloading/withdrawal from a pen without undue delay, the risk in the catch shall nonetheless pass in full to the Buyer as of the time the Fisherman made the catch available to the Buyer for unloading/withdrawal from the pen.

## **§ 13. WEIGHTS AND MEASURES**

13.1 All raw material – primary catch and by-catch – shall, prior to sorting, be weighed and measured consecutively in accordance with the Regulations concerning Landing and Delivery Notes at the Buyer's reception facility, regardless of whether the catch is delivered to a bilge well vessel, tender or on-shore facility. The Buyer shall be held liable for the Fisherman's loss if delivery cannot be completed as a result of the absence of scales at the Buyer's reception facility (bilge well vessel, tender, on-shore facility).

- 13.2 The deduction for water on supply of fish for consumption is currently 2%; see Regulations no. 627 of 15 April 2004 concerning water deductions when landing pelagic-caught raw materials.
- 13.3 The Fisherman has the right and duty to check and supervise the measurement and weighing of the supplied quantity; see Section 6 of the Regulations concerning Landing and Delivery Notes.
- 13.4 The scales employed shall be regulated, and approved for buying and selling. The Directorate of Fisheries may, upon application, grant dispensation from the regulations regarding consecutive weighing of catch at the time of delivery. The scales shall at all times be approved in accordance with rules in or pursuant to the Act of 26 January 2007 relating to units of measure, measurement and standard time.
- 13.5 Where catch is landed abroad or delivered to a foreign vessel, the Fisherman is responsible for ensuring that weighing is performed.

#### **§ 14. DELIVERY NOTE AND LANDING NOTE**

- 14.1 All deliveries made to Norwegian Buyers shall immediately be entered in the prescribed log in accordance with the provisions of the Regulations concerning Landing and Delivery Notes.

The Buyer shall provide details of utilisation, stated on the Delivery Note/Landing Note. The Buyer shall make such documentation available to officials in the event of an inspection to verify that the raw material will be utilised in compliance with the terms of the purchase.

- 14.2 The Buyer shall complete NSS's Delivery Note/Landing Note immediately upon delivering the catch. The Delivery Note/Landing Note shall be signed by the Buyer or whomsoever the Buyer has authorised to sign on his behalf, and by the Fisherman before they depart from the reception site.

The Fisherman and Buyer are responsible for:

- entering the correct quantity (less any water deduction) and
- entering the assortment on the Delivery Note/Landing Note and
- entering, on the Delivery Note, the various fractions of intended utilisation, and



- ensuring that the Delivery Note/Landing Note otherwise comply with the Regulations of 6 May 2014 no. 607 concerning Landing and Delivery Notes and any other applicable regulations currently in force.

In the case of delivery of raw material for fishmeal and oil, the Fisherman must also check the conservation method, TVN and temperature.

If the Fisherman or Buyer has any remarks concerning the Delivery Note/Landing Note, these shall be entered on the Delivery Note/Landing Note and NSS must be notified immediately.

- 14.3 The Fisherman shall be in receipt of his copies of the Delivery Note/Landing Note before he departs from the reception site. In signing the Delivery Note, the Buyer also declares that the fish will be utilised for the purpose for which it was purchased.

NSS may require the completion of multiple Delivery Notes/Landing Notes for the same delivery if the fish are from different fishing zones or the fish are to be utilised in different ways.

- 14.4 The Buyer shall continuously send in Delivery Notes/Landing Notes to NSS. NSS reserves the right to hold the Buyer and/or the Fisherman financially liable in the event that any failure to submit or inaccurately complete a Delivery Note/Landing Note results in financial loss for NSS or for the Fisherman.

- 14.5 In the case of delivery abroad, in accordance with the Regulations of 6 May 2014 no. 607 concerning Landing and Delivery Notes, the Fisherman is responsible for completing and submitting the Delivery Note/Delivery Note. See also Item 14.2 above.

- 14.6 NSS disclaims all liability for losses caused by any omissions or inaccuracies on the completed Delivery Note/Landing Note.

## **§ 15. QUALITY, ASSORTMENT AND CLAIMS ETC.**

- 15.1 The Fisherman and Buyer are mutually subject to the Sale of Goods Act (1988) with such express provisions and exceptions as are incorporated in the Business Rules, Special Sales Conditions and special provisions in circulars/notices.

- 15.2 Binding purchase agreement:  
The purchase agreement shall be binding between the Fisherman and Buyer from when the Buyer has had his bid accepted at auction, and, for catch that is legally exempt from sale at auction, from when a binding agreement has been concluded

between the Fisherman and the Buyer. The Delivery Note signed by the Fisherman and the Buyer supplemented by NSS's Business Rules and relevant Special Sales Conditions constitute the Contract of sale. No party may invoke any individual or standard contract terms at variance with the contract of sale.

The parties may withdraw from a binding contract of sale solely in the case of a breach of contract, which under the Sale of Goods Act is due grounds for termination of contract, or if the parties agree to terminate the contract. NSS shall be notified if any contract is terminated.

**15.3 Product characteristics:**

The Fisherman is responsible for and shall handle the raw material in such a way that its quality upon delivery is as high as possible in accordance with quality regulations in force.

The Fisherman and the Buyer or his representative shall be agreed on the assortment and quality on delivery in compliance with these Business Rules and separate circulars.

The Buyer of raw material for consumption is under obligation to take receipt of the catch at the closing bid price at auction, provided that it conforms to the consumption quality stipulated by Norwegian quality regulations and the Fisherman has provided accurate information on entering the raw material for auction, regardless of what usage/which market the catch was intended for on the part of the Buyer. Where delivery is made abroad or to a foreign vessel, the Fisherman must exercise care and keep himself informed as to whether the quality is approved as unloading proceeds. If the Buyer contends that the raw material is not of consumption quality, the burden of proof rests on the Buyer.

A representative number of specimens for determination of the quality and assortment of fresh raw material for consumption shall be obtained immediately when unloading commences and continuously during unloading in compliance with provisions in separate circulars.

**15.4 Variances:**

The Buyer shall accept a reasonable degree of variation between the information provided by the Fisherman when the catch was registered for auction and what proves to be accurate information at the time the catch is delivered to the Buyer.

**15.5 Fishmeal/oil:**

For deliveries for fishmeal and oil production, special regulations apply to grading, pricing and claims.

#### 15.6 Claims:

Any claim is a matter between the Fisherman and Buyer, although in such a way that the handling of any claim shall proceed as stipulated in the present Business Rules.

The Buyer shall, regardless of whether the catch is delivered to the Buyer or the Buyer collects it himself, including by taking receipt of it from a vessel or pen, immediately and in any event before delivery has been completed, perform a conscientious physical and organoleptic examination of the fish. If the catch has been resold, the Buyer shall examine the catch prior to forwarding/handover to the third party. Any claims shall be raised immediately. It is the responsibility of the Buyer to document any defect.

Any matters concerning the catch which were known to or should have been known to the Buyer at the time of handover may not be claimed as defects. This applies irrespective of the examination actually performed.

Hidden defects include those that cannot be demonstrated by careful examination. Feed content in the stomach and bruising do not constitute hidden defects.

The Buyer forfeits his right to claim for hidden defects if the Buyer does not, immediately after he discovered or should have discovered the defect, make a written claim on account of a defect to the Fisherman indicating what type of defect is at issue.

Sampling and the storage of specimens must be performed in such a way that any subsequent claim of hidden defects may be verified/rejected.

Where penned fish are collected after the stipulated deadline, the Buyer may raise no claims in respect of defects in quality, assortment and/or quantity.

#### 15.7 Dispute resolution:

In case of any dispute, the matter must be resolved in situ between the Buyer and the Fisherman and the agreed outcome must be stated on the Delivery Note/Landing Note. If the Buyer or his representative makes a claim for a reduction in price, any agreement to that effect shall be approved by NSS before unloading can resume. If the Fisherman disagrees with the claim made, he shall halt delivery and notify NSS of the claim. If the Fisherman allows unloading to resume after the Buyer has made his claim and without any decision having been made with regard to the claim, the Fisherman should be aware that even if he disputes the claim he risks having to make a price reduction.

Any dispute between the Buyer and the Fisherman in respect of grade, assortment or quantity shall be resolved by a representative of an official body or other individual approved by both parties to the dispute. If, for practical reasons, it is not feasible to summon an inspector to the location at which delivery is taking place, specimens must be obtained of the catch at issue in the claim in accordance with the applicable regulations in force for sampling, and the specimens shall be stored (frozen) and labelled for subsequent inspection. Any costs incurred from resolution of any claims dispute shall be covered by the parties.

Reference is also made to separate circulars concerning the treatment of claims, quality and determination of assortments.

**15.8 Withholding of settlement:**

In the event of a claim for a price rebate, the Buyer is not entitled to withhold the purchase price payable either in full or in part. At the Buyer's demand, NSS shall withhold on a separate account the proportion of the purchase price that corresponds to the claim for a price rebate until such time as the rebate-claim dispute has been resolved between the parties. The party entitled to the withheld amount is entitled to default interest in addition to the interest accrued on the withholding account.

**§ 16. SETTLEMENT**

- 16.1 NSS performs the settlement and payment service for catches sold through NSS. All settlements shall be made through NSS save in individual instances where a dispensation to this requirement has been granted upon application or ensues from Special Sales Conditions. For Buyers with whom trading is an exception, NSS may, in special instances, permit the Fisherman to supply the catch at his own risk, provided that such risk is accepted by the Fisherman.

For all catches sold through NSS, the Fisherman and the Buyer shall use NSS settlement documents, including, but not limited to, invoices and settling documents.

- 16.2 For catch sold through NSS in accordance with the current Business Rules and in accordance with the NSS Delivery Note/Landing Note, NSS is liable for payment to the Fisherman unless otherwise determined by NSS. NSS will not be held liable for settlement of catch sold in contravention of NSS regulations.
- 16.3 All deliveries will be settled individually unless otherwise determined. On settling with the Fisherman, NSS subrogates the Fisherman's claims against the Buyer.

Such subrogation may be reversed and the Fisherman made liable to NSS, including for reimbursement of a settlement, in the event of the Buyer's legal objections to, or the non-existence of, a claim.

- 16.4 The settlement will be made to the person named on the Delivery Note/Landing Note unless the Fisherman instructs otherwise.
- 16.5 The Fisherman has a duty to check the settlement immediately upon receipt and to notify NSS of any discrepancies whether or not these favour the Fisherman. NSS has the right within a reasonable space of time to correct any errors in the settlement.

Complaints concerning settlement must be made in writing and received by NSS within 30 days of settlement being made by NSS. If, following a claim, the Fisherman and the Buyer agree on a price rebate without the approval of NSS, NSS will invoice the full auction price for the catch at issue.

- 16.6 NSS may make deductions from any settlement with a Fisherman for any NSS commission fee outstanding, fines and any and all other debts which NSS is entitled to collect by law or agreement, either on behalf of itself or others regardless of whether the outstanding claim refers to the same or previous transactions. Further, NSS is entitled to make deductions from any settlement with a Fisherman, and to demand repayment of monies paid for entitled claims or other circumstances attributable to the Fisherman, including expenses on the representative of an official body or other person approved by the parties in connection with the resolution of a claims dispute.

Similarly, NSS will exert its right of redress vis-à-vis the Buyer.

- 16.7 NSS may release itself from any claim by making the settlement in whole or in part to a third party provided that this is lawful or by agreement in accordance with a notification/transport declaration received.

In the case of any dispute as to the priority between several transports concerning amounts payable for catch that has been delivered, NSS may withhold the amount until the dispute has been resolved. NSS accepts no liability for any ensuing delay in payment.

If NSS effects payment in accordance with a transport notification in spite of a dispute concerning that transport, or objections are raised for other reasons concerning transportation, NSS will under no circumstances accept any liability for that payment. The same applies to any payment concerning the correct payee.

16.8 In the interests of fishery trade and sales, or in order to maintain profitability for the Fishermen, or groups of Fishermen, NSS may make deductions to the catch settlement from the Fisherman to cover transportation costs at a percentage determined per gear group. Similarly, deductions may be made for financing subsidies to a third party for his expenses in connection with an introduced transportation scheme.

16.9 It is not permitted for a Buyer to pay cash in advance for a catch settlement to a Fisherman without the express authorisation of NSS in each individual instance.

By agreement, NSS may make offsets in the catch settlement for the Fisherman's expenses in connection with delivery of catch. NSS makes offsets for cash in advance and expenses solely insofar as these may be made to the current catch settlement to the Fisherman.

Any claim for offsets for cash in advance and expenses in connection with delivery shall be submitted to NSS not later than 10 days after delivery.

## **§ 17. TERMS OF PAYMENT/CREDIT**

17.1 The terms of payment applied to the Fisherman are net 14 days from the Delivery Date.

17.2 The terms of payment applied to the Buyer are net 30 days from the Delivery Date.

17.3 In case of any overdue payment (30 days after delivery), the Buyer is charged Default Interest as determined by the Ministry of Finance (default interest rate).

17.4 The Buyer shall provide collateral coverage for his purchases through NSS. NSS will grant a limit to the Buyer's purchasing credit based on the collateral coverage provided. The following collateral coverage is accepted by NSS:

- A bank guarantee based on a surety (Norwegian: "Selvskyldnergaranti"). The Buyer covers the costs.
- Credit insurance if an active policy is held by NSS at the time. NSS will charge the cost of the insurance premium to the Buyer in each raw materials invoice according to a specified rate.
- Advance payment documented by bank prior to the auction.
- Cash deposit lodged with NSS. Interest to be refunded to the Buyer according to a specified rate.

NSS may ad hoc accept other form of collateral coverage under conditions determined by the Board subject to special agreement with the Buyer in question.

- 17.5 A deficiency in purchasing credit may entail suspension from buying through NSS.

## **§ 18. NSS COMMISSION**

- 18.1 NSS's commission is determined annually at the annual general meeting. The commission basis and commission rates will be notified in separate circulars.
- 18.2 The Board may at its discretion stipulate other charges to Fishermen for coverage of extraordinary expenses incurred from sales.

## **§ 19. INSPECTIONS**

NSS performs inspections to ascertain compliance with the provisions of the Fishermen's Sales Organisation Act and the Marine Resources Act and legal provisions pursuant to these Acts.

In performance of its inspection duties, NSS may require unimpeded access to vessels and to the Buyer's or recipient's offices, storage and production facilities. The same shall apply when catch is transferred from or to holding nets or pens. During inspection, NSS shall have the right of unimpeded access to the log, landing journal, Delivery/Landing notes and accounts. Any person comprised by an NSS inspection has a duty to cooperate during an inspection. See Section 48 of the Marine Resources Act.

NSS inspectors have a duty of confidentiality concerning operating or business matters that come to their knowledge in their inspection capacity. The same duty of confidentiality applies equally to NSS delegates and officials to whom such information might be disclosed.

## **§ 20. BREACH OF THE BUSINESS RULES**

- 20.1 In the event of breach by the Buyer of the Business Rules or provisions made in pursuance thereof, NSS may request the Directorate of Fisheries to revoke the Buyer's registration pursuant to Regulations no. 1475 of 26 November 2010 concerning registration as a buyer of catches.
- 20.2 In accordance with Article 18 of the Articles of Association of Norges Sildesalgslag, the Board may impose a fine on any member vessel for contravention of the Articles of Association or provisions made in pursuance thereof.

- 20.3 Catches in contravention of the NSS's Business Rules or provisions made in pursuance thereof, may be called in or withheld pursuant to Section 21 of the Fishermen's Sales Organisation Act. Decisions will be individual decisions under the provisions of the Public Administration Act and may be appealed.
- 20.4 Criminal offences: Any Fisherman, Buyer or recipient of catch who provides false information or who obtains or attempts to obtain a more advantageous delivery than others will be liable for prosecution.

Wilful or negligent contravention of the provisions laid down in the Business Rules may be a punishable offence under the provisions of or in pursuance of the Fishermen's Sales Organisation Act and/or the Marine Resources Act. The same shall apply to any contribution and attempt to contravene the foregoing provisions.

- 20.5 If any contravention of the current Business Rules and sales regulations is discovered, NSS must be notified as soon as possible, with an account of the contravention.

## **§ 21. GOVERNING LAW AND LEGAL VENUE**

- 21.1 The Business Rules and schedules and special provisions to the Business Rules in the form of Special Sales Conditions for individual species of fish, forms of sale, including circulars, are governed by Norwegian Law.
- 21.2 Any dispute that might arise and that cannot be settled amicably shall be adjudicated by a Norwegian Court of Law and the legal venue shall be Bergen.



## **Definitions**

<b>Articles of Association</b>	the Articles of Association of Norges Sildesalgslag of 17 November 1988 with subsequent amendments.
<b>Board</b>	the Board of Norges Sildesalgslag as authorised by the Articles of Association.
<b>Buyer</b>	in the case of First Sales, the buyer of fish sold in accordance with the Business Rules.
<b>Delivery date</b>	the date on which the risk associated with the catch passes to the Buyer in accordance with Section 12.11 of the Business Rules, unless otherwise stipulated in Special Sales Conditions applicable to certain species of fish, utilisation, sales forms or otherwise, including by circular.
<b>Delivery note</b>	the Delivery Note drawn up by NSS and approved by the Directorate of Fisheries for use on Delivery and Sale of fish, and stipulating the information requirements for sales and fish stocks inspections.
<b>First Sales</b>	sales as defined in Section 2 of the Fishermen's Sales Organisation Act.
<b>Fisherman</b>	the owner or user of a fishing vessel who has fishing as his sole occupation or who combines fishing with another occupation and who sells catch comprised by NSS sales, and their representatives vis-à-vis NSS, Buyers or the fisheries supervisory system.
<b>Landing</b>	all instances in which fish are unloaded from vessels, including where they are transferred from one vessel to another, the unloading of fish from vessels that transport fish such as tenders, transport vessels, factory vessels etc., harvesting of farmed fish from pens and withdrawal directly from the fishing gear of another vessel where this is permitted.
<b>Landing note</b>	the delivery note prepared by NSS and approved by the Directorate of Fisheries containing information

requirements concerning catch for sales and fish stocks inspections and used in all instances where delivery takes place without a simultaneous sale.

**Organoleptic** sense-based as opposed to chemical analysis.

**Own At-Sea/On-Shore Processing** Own At-Sea/On-Shore Processing includes the processing, preservation, packing by fishermen of their own catch which entails that the product is also made preservable for storage. Wet fish not made preservable for beyond the normal storage time for fresh, chilled products falls outside of the definition of own processing in the sense employed by the Fishermen's Sales Act. In the case of salted products, the products are required to be packaged for ripening or sale.

**Special Sales Conditions** sales regulations drawn up pursuant to the Business Rules to apply to a more restricted and specific area, as opposed to the present Business Rules themselves which are regarded as general provisions.

**Trip Quota** the maximum quantity a vessel is permitted to fish on a single trip/excursion between one delivery and the next.

**Turn Quota** the maximum quantity a vessel is permitted to catch on one or more trips until the specified turn quota has been delivered.

**Vessel Crew** persons who are employed on a given vessel and paid in the form of crew shares, including the master of the vessel/vessel owner/company who participates personally in the fishing.

**Vessel Quota/Max. Quota** the quantity the Director General of Fisheries has determined that a vessel may fish as a maximum of a given species.



Norges SildeSalgslag  
Postboks 7065  
5020 Bergen

Besøksadresse:  
Slottsgaten 3

Tlf: +47 55 54 95 00  
Salgstelefon: +47 55 54 95 50  
Faks: +47 55 54 95 55

Epost: [sildelaget@sildelaget.no](mailto:sildelaget@sildelaget.no)  
[www.sildelaget.no](http://www.sildelaget.no)