

1. Agreement

The legal agreement between You and Us is comprised of these terms and conditions and the Schedule. By signing the Schedule You agree to be bound by this Agreement. You agree that this Agreement applies every time You sign a Schedule, even if You do not receive a copy of these terms and conditions at that time.

2. Definitions & Interpretation

2.1 Definitions

In this Agreement:

Act means the *Living Marine Resources Management Act 1995* (Tasmania) as amended or replaced from time to time.

Agreement means this agreement and includes any Schedule signed by You.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, and statute or otherwise.

Commencement Date means the commencement date set out in the Schedule.

Department means the Department of Primary Industries, Parks, Water & Environment Tasmania.

Encumbrance includes any Interest, any security interest (as that term is defined by the PPSA) and any other right or interest to any third party.

Expiry Date means the expiry date set out in the Schedule.

Insolvency Event means the happening of any of these events: (a) in the case of a corporation: (i) an application is made to a court for an order or an order is made that the corporation be wound up; (ii) an application is made to a court for an order appointing a liquidator or provisional liquidator with respect to that corporation or one of them is appointed, whether or not under an order; (iii) a meeting is convened or a resolution is passed to appoint an administrator with respect to that corporation; (iv) except to reconstruct or amalgamate while solvent on terms approved by the other party, the corporation enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration or arrangement involving any of them; (v) the corporation proposes or enters into a deed of company arrangement with or for the benefit of all or any class of its creditors; (vi) a resolution is passed to wind up or dissolve that corporation; (vii) the corporation is dissolved; (viii) the corporation is or becomes insolvent within the meaning of that expression in Section 95A(2) of the Corporations Law or any of the events mentioned in paragraphs (a) to (f) inclusive of section 459C(2) of the Corporations Law occurs in respect of the corporation; (ix) the appointment of an administrator in respect of the corporation or a receiver and manager or a receiver over the whole or part of the assets and undertaking of the corporation or the appointment of an administrator of the corporation; or (x) anything having a substantially similar effect to any of the events specified above happens under the laws of any applicable jurisdiction; and (b) in the case of an individual: (i) the individual proposes or enters into a deed of arrangement, composition with or deed of assignment or an assignment for the benefit of all or any of his creditors or any class thereof; (ii) the individual commits an act of bankruptcy; or (iii) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Interest means an interest registered by a person pursuant to section 7(4) of the Registration Act.

Licence means the Fishing License (Rock Lobster) granted to the You to enter Tasmanian fishing waters and to take rock lobster in accordance with the terms of that licence.

Minister means the Minister for Primary Industries, Water and Environment, Tasmania.

PPSA means the *Personal Property Securities Act 2009*.

Price means, as applicable, either the price stated in Your Offer made pursuant to clause 5.1 or, if You have not made Us an Offer then Our current price for rock lobster applying on the date that You deliver Rock Lobster to Us, as notified by Us to You.

Quota Fee means the quota fee set out the Schedule.

Quota Unit Holder means the holder of the Quota Units from whom We will procure the seasonal transfer of the Quota Units to You.

Quota Units means that number of rock lobster quota units, as that term is defined in the Act, set out in the Schedule, which entitles the holder to make the allowed catch set out in the Schedule.

Registration Act means the *Fishing (Licence Ownership and Interest) Registration Act 2001* (Tasmania) as amended or replaced from time to time.

Regulations means the *Fisheries (Rock Lobster) Rules 2011* as amended from time to time and any other regulations or rules made under the Act in relation to rock lobster.

Schedule means the document so titled exchanged by You and Us which incorporates these terms and conditions.

Season means the open season for all or part of the rock lobster fishery determined from time to time by the Minister pursuant to the Regulations.

Sub-Licence has the meaning given in clause 3(a).

Term means the term commencing on the Commencement Date and ending on the Expiry Date.

You/Your means the Licence Holder as named in the Schedule.

Us/Our/We means Craig Mostyn & Co. Pty Ltd (ACN 000 047 745).

2.2 Interpretation

The use of the singular in number will include the use of the plural in number and vice versa. The use of any particular gender will import the use of any more appropriate gender. The reference to the parties will include their personal representatives or permitted successors and assigns and nominees.

3. Transaction

3.1 By signing the Schedule and delivering it to Us, You agree to: (a) take from the Quota Unit Holder a sub-licence of the Quota Units for the Quota Price (**Sub-Licence**); and (b) supply Us with rock lobster for the Price, for the Term, subject to the terms set out in this Agreement.

3.2 You acknowledge that, while the Sub-Licence runs for the Term, the Quota Units will revert to the Licence Holder at the expiration of each Season during the Term. At the commencement of each Season during the Term, We will procure that the Quota Units will be allocated to Your Licence. You must do all things that We reasonably request to assist with the allocation of Quota Units to Your Licence, including signing any form required by the Department.

4. Sub-Licence

4.1 In consideration for the procurement by Us of the grant of the Sub-Licence to You, You must pay Us the Quota Fee, at Our election, either:

- (a) pursuant to clause 5.3;
- (b) by one or more cheques in instalments as You catch the Quota Units; or

in full in advance on or before the Commencement Date.

4.2 You must pay Us the Quota Fee in full even if You do not catch the total Quota Units or if You have supplied rock lobster to an alternative processor and have not been paid for the rock lobster.

4.3 If We have elected to accept payment of the Quota Fee pursuant to clause 5.3, and You sell the rock lobster to an alternate processor, You must pay Us the Quota Fee within seven (7) days of delivery of the rock lobster to an alternative processor.

5. Supply

5.1 You are free to supply the rock lobster to any processor. However, if You wish to supply any rock lobster to an alternative processor You must first offer to supply to Us the rock lobster for a price equal to the price You have been offered by that third party (**Offer**). If We do not accept Your Offer You can supply the rock lobster to that third party. You must not supply the rock lobster to the third party for a price less than the price in Your Offer unless You again offer to supply the rock lobster to Us for that lower price.

- 5.2 If We agree to buy rock lobster from You, You must supply the rock lobster to Us:-
- alive;
 - in good condition;
 - of legal size;
 - with all Department documents and records accurately completed; and
 - otherwise complying with the Act & Regulations.
- 5.3 We will pay You the Price for all rock lobster You supply to Us. We will, at Our election, pay the Price either:
- by cheque to You promptly following delivery of the rock lobster; or
 - by way of a deduction from outstanding Quota Fees payable by You.
- 5.4 You must make the rock lobster available for collection by Us at such place as We nominate from time to time.
- 6. Interest**
In the event that any monies payable in respect of this Agreement are in arrears or unpaid then interest at the rate of 9% per annum is payable until such time as the monies are paid in full. Interest is calculated on the daily balance and capitalised on the 1st day of each month.
- 7. Department Approval**
The Sub-Licence is subject to and conditional on all necessary approvals being given by the Department and the registration by the Department of the seasonal transfer of the Quota Units to You each Season during the Term. If on any occasion during the Term, the Department refuses to approve the seasonal transfer of Quota Units to You, We may terminate this Agreement by written notice to You.
- 8. Your obligations**
- 8.1 You warrant to Us that You will comply with and observe all covenants, conditions, agreements, statutory requirements, by-laws, orders and regulations affecting Your Licence, including the Act, the Registration Act and the Regulations.
- 8.2 You covenant with Us that, unless Our prior written consent is first obtained, at all times during the Term, You will:
- maintain Your Licence in good standing;
 - not permit or omit any act, matter or thing whereby the Quota Units shall or may be forfeited, cancelled, become void or taken away in any manner whatsoever;
 - not catch in excess of the quantity of rock lobster lawfully entitled to be caught pursuant to the Quota Units;
 - not transfer, assign, or allow any other person to catch or attempt to catch the Quota Units;
 - not create any Encumbrance over the Quota Units;
 - observe and comply with the Act and Regulations and obey all lawful directions and orders in relation to Your authority as the holder of a Fishing Licence (Rock Lobster); and
 - notify Us within 48 hours of any breach of the Act or Regulations or charges or complaints alleged against You.
- 8.3 If You incur a deduction for excess taking of rock lobster during the Term and any such deduction is deducted against the Quota Units, You must pay to Us, within fourteen (14) days of the excess deduction being imposed by the Minister, a sum equivalent to the number of kilograms deducted from the Quota Units multiplied by the highest price per kilogram of rock lobster paid by Us during the term (as notified in writing by Us to You).
- 8.4 You and We agree that the sum payable by You to Us pursuant to clause 8.3 is a genuine pre-estimate of Our loss and is recoverable as a liquidated sum.
- 9. Indemnity**
You agree to indemnify Us and keep Us indemnified from any Claims which may be brought against Us or suffered by Us arising out of or in relation to any failure by You to fulfil Your obligations under this Agreement.
- 10. Termination**
- For the purposes of this clause 10 each of the following is an **Event of Default**:
 - You fail to pay an amount when due under this Agreement;
 - You fail duly and punctually to observe or perform any other obligation on its part to be performed or observed under this Agreement and the failure continues for a period of seven (7) days after We give You notice requiring the failure to be remedied; or
 - (iii) an Insolvency Event occurs in relation to You.
 - At any time after the occurrence of an Event of Default We may terminate this Agreement by giving written notice to You and this Agreement will terminate on the date stated in the notice.
 - If:
 - Our agreement with the Quota Unit Holder is terminated for any reason; or
 - we are unable to procure the grant of the Sub-Licence to You due to any matter beyond our control, we may terminate this Agreement by 2 Business Days notice to you and this Agreement will terminate on the expiration of that notice.
 - Termination of this Agreement pursuant to clause 7 or this clause 10 will not affect any rights or obligations of You or Us that accrue prior to termination.
- 11. GST**
All amounts in this Agreement are exclusive of GST. If GST is payable by a party (**Supplier**) on a taxable supply under this Agreement then the Supplier can collect from the other party (**Recipient**) the GST which is payable by the Supplier. The Recipient is not obliged to pay the Supplier any amount for GST until the Supplier gives the Recipient an appropriate tax invoice so that the Recipient can re-claim the GST where applicable.
- 12. Set off**
We will be entitled to deduct from any payment due to You any monies payable by You to Us and any unpaid fees, charges or levies payable by You in respect to the Quota Units provided that We promptly remit the same to the relevant statutory authority in payment thereof.
- 13. Licence Fees and Transfer Fees**
- 13.1 We will ensure that all annual fees, levies or charges payable in respect to the Quota Units are paid or will be paid by the due dates.
- 13.2 You will pay all transfer fees, attachment or assignment fees and stamp duties on this Agreement and any other fee, levy or charge as a consequence of You attaching the quota units to Your Fishing Licence (Rock Lobster) or re-transferring the quota units to the Quota Unit Holder or as We direct. We will deduct the initial Licence Variation Transfer Fee from Our first payment to You for rock lobster supplied to Us pursuant to this Agreement.
- 14. PPSA**
As security for Your obligations and liabilities under this Agreement You hereby charge all of Your interest in the Quota Units and consent to Us effecting and maintaining a registration on the Personal Property Securities register in any manner We consider appropriate and as permitted by the PPSA. To the maximum extent permitted under the PPSA You waive the right to receive notices under sections 95, 96, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142, 143 and 157 of the PPSA.
- 15. Dispute Resolution**
All questions and disputes which arise between the parties and whether during or after the determination of this Agreement shall be referred to the arbitration of a single Arbitrator to be agreed on by the parties and failing agreement, to be nominated by the President of the Law Society of Tasmania and in accordance with and in the manner provided by the Commercial Arbitration Act 1986.
- 16. General**
The parties agree to submit to the jurisdiction of the Courts of Tasmania.
- 17. Privacy**
- 17.1 You acknowledge that in entering this Agreement, We may collect personal information from You including Your name and address.
- 17.2 If You do not provide this information, We may be unable to proceed with the transactions set out in the Agreement.
- 17.3 We agree that, in dealing with information disclosed to Us by You, We will act in accordance with the National Privacy Principles and with the Privacy Act 1988.
- We are not likely to disclose Your personal information to overseas recipients.