



Master Agreement

Effective Date: 11/01/18

Expiration Date: 10/31/20

Master Agreement Description: Fish Food - Bio-Oregon - No Substitutions

Buyer Information

William Allen 207-624-7871 ext. NULL WJE.Allen@maine.gov

Issuer Information

Karen Estabrook 207-287-5252 ext. Karen.Estabrook@maine.gov

Requestor Information

Karen Estabrook 207-287-5252 ext. Karen.Estabrook@maine.gov

Agreement Reporting Categories

Reason For Modification: Extend one year at increased pricing

Authorized Departments

09A INLAND FISHERIES & WILDLIFE

Vendor Information

Vendor Line #: 1

Vendor ID

VC1000065853

Vendor Name

MOORE CLARK USA INC

Alias/DBA

BIO OREGON

Vendor Address Information

15 Saunders Way
Suite 500-E
Westbrook
US

Vendor Contact Information

RON GOWAN
360-425-6715 ext.

Commodity Information

Vendor Line #: 1

Vendor Name: MOORE CLARK USA INC

Commodity Line #: 1

Commodity Code: 32528

Commodity Description: Fish Food

Commodity Specifications:

Commodity Extended Description: Fish Food - Bio-Oregon - No Substitutions.

Quantity	UOM	Unit Price
0.00000		0.000000
Delivery Days	Free On Board	
0		
Contract Amount	Service Start Date	Service End Date
0.00		
Catalog Name	Discount	
Bio Oregon / Skretting diets	0.0000 %	
	Discount Start Date	Discount End Date
	11/01/18	10/31/20

TERMS & CONDITIONS
MA 180905-022

COMMODITY ITEM: Fish Food - Bio-Oregon

CONTRACT PERIOD: November 1, 2018 through October 31, 2019. The State of Maine with vendor approval can opt to issue up to two (2) one (1) year extensions. *First Extension through October 31, 2020.*

VENDOR CONTACT PERSON: The contact person will help consumers place orders, inquire about orders that have not been delivered, all shipping issues, quality issues, and any issues pertaining to this Master Agreement. All orders not submitted through a DO will be sent through the contractor's contact person. The contact person will be: **George Demos Phone: 207-951-1622**
Email: George.demos@bio-oregon.com

EXTENSION OF CONTRACT: The Director of Procurement Services may, with the consent of the contractor extend the Contract period beyond the indicated expiration date.

CANCELLATION OF CONTRACT: The Division of Procurement Services reserves the right to cancel a contract with a thirty-day written notice OR cancel immediately if the contractor does not conform to terms and conditions and specifications of contract.

PRICES: Prices shown are to be net including transportation charges fully pre-paid by the contractor FOB destination. Prices are to remain firm for the duration of the contract.

QUANTITIES: It is understood and agreed that the contract will cover the **actual quantities** required by State Agency over the length of the contract.

ORDERING PROCEDURE: Delivery orders (DO) will be created in AdvantageME for all orders over \$5000.00. If a DO is used, the DO will be e-mailed to the email address set up in AdvantageME by the Vendor as a .pdf file. Orders less than \$5000.00 can be ordered using a P-Card.

INVOICES and PAYMENT: The Contractor shall submit an itemized bill to the Department for materials following delivery for approval and payment. Invoices shall minimally include the following:
Contractor name, address & Contract Number 18P 181011-042, Invoice Date & Number

DELIVERY: The Contractor will be responsible for the delivery of material in first class condition at the point of delivery, and in accordance with good commercial practice.

QUARTERLY REPORT: The Division of Procurement Services **requires a quarterly report of sales** be faxed to 207-287-6578 within 30 days of the end of each calendar quarter. It will be the responsibility of the vendor to produce a quarterly report. The report must include the dollar value of goods purchased, broken down by Department as well as the total dollar value of purchases made by all Departments.

PROCUREMENT CARD: State policy requires vendors to accept the State of Maine Procurement Card (P-Card) as a form of payment, with very rare exceptions. Your company will be required to accept these cards. The pricing offered to the State of Maine shall be the final cost to the State of Maine regardless of payment method. No surcharge or other compensation will be allowed. The State of Maine reserves the right to reject your bid if you are unwilling to accept this condition.

SPECIFICATIONS
For
“Nutritionally Complete Salmonid Diets”

This bid is to supply the Maine Department of Inland Fisheries and Wildlife (IFW) with nutritionally complete diets for hatchery reared trout and salmon. Diets are to be supplied using high quality ingredients processed by certified manufacturing facilities with appropriate quality controls for ingredient sourcing and traceability, bio-security and Hazard Analysis and Critical Control Point certification.

Quantities & Value – The contract will cover the actual quantities ordered for delivery during the contract period whether more or less than the estimated value of \$300,000.00. IFW reserves the right to use multiple suppliers in order to fulfill hatchery specific requirements should that need arise.

Packaging – All products are to be provided in water resistant bags or units weighing less than 60 lbs on pallets in accordance with prevailing commercial practice in such a manner as to insure delivery in good condition. Each bag or unit shall be marked with the manufacturers name, type of commodity, size, quantity contained, guaranteed analysis of ingredients and the date manufactured. Each pallet shall be marked with its contents, including feed type, size, and requesting hatchery/facility. Pallets shall also be separated by hatchery/facility as pallet amounts dictate.

Ordering Procedure – Delivery Orders (DO) will be created in AdvantageME for all orders against Master Agreements (MA), unless the State of Maine Procurement Card is used for payment.

Procurement Card – State policy requires vendors to accept the State of Maine Procurement Card (Mastercard) as a form of payment, with very rare exceptions. Your company will be required to accept these cards. The pricing offered to the State of Maine shall be the final cost regardless of the payment method. No surcharge or other compensation will be allowed.

Shipping and Receiving – Bid prices shall include all shipping and handling cost to the following facilities:

- A. Casco Hatchery: 70 Fish Hatchery Road, Casco, ME 04015
- B. Dry Mills Hatchery: 158 Weymouth Road, Gray, ME 04039
- C. Embden Rearing Station: 809 Cross Town Road, Embden, ME 04958
- D. Enfield Hatchery: 45 Cobb Road, Enfield, ME 04493
- E. Governor Hill Hatchery: 82 Hatchery Road, Augusta, ME 04330
- F. Grand Lake Stream Hatchery: 14 Hatchery Lane, Grand Lake Stream, ME 04637
- G. New Gloucester Hatchery: 312 Fish Hatchery Road, New Gloucester, ME 04260
- H. Palermo Rearing Station: 200 Gore Road, Palermo, ME 04354

All deliveries of fish feed must be made within (1) month of ordering and deliveries are to be prearranged between the Supplier and IFW. The Supplier must notify the receiving facility at least 24 hours prior to delivery. Shipments are to be unloaded between the hours of 7 am to 2 pm, Tuesday thru Thursday. Any delivery made at other times will not be unloaded unless specifically prearranged with the receiving facility. It is the responsibility of the Supplier to ensure that their selected feed shipping agents are informed of and adhere to the terms and conditions of this contract. To ensure the prevention of the transmission of fish or aquatic pathogens it is a requirement that no other fish, shellfish, crustacean or other aquatic organism or byproduct of the above be shipped with the fish feed designated for IFW facilities. IFW reserves the right to use their own shipper at their discretion which shall have no effect on feed prices.

PRODUCT COMPONENTS: The Supplier must provide a nutritionally complete diet with appropriate pellet and/or crumble sizes to satisfy the growth and development needs of salmonids through fry, fingerling, yearling, and broodstock life stages. All pelleted fish feed is to be extruded. A certified manufacturing designation (e.g., ISO 9001), BAP certification, and proven experience with diets for trout and salmon are preferred. Preference will be given to manufactures with a track record and focus of producing high quality salmonid feeds as demonstrated by the supplying feed mill having 50% or more of its production dedicated to the production of such feeds on an annual basis. Preference will also be given to suppliers that operate their own aquatic research labs with a primary focus on salmonid research. Preference will also be given to suppliers that have USA manufacturing capability to ensure continuity of being a provider in the event of cross border trade restrictions.

The feed label must list all ingredients printed legibly using the official Association of American Feed Control Officials (AAFCO)-defined ingredient name or common or usual name of the ingredient. The first five ingredients must be listed in decreasing order of percentage of diet. Fishmeal shall be one of the first three ingredients. Feather meal should not be listed as one of the first five ingredients. Variable formulations shall be based on maintaining digestible energy to protein ratios and minimum nutrient, fatty acid, and amino acid levels with a profile and overall composition that has a proven track record of good performance for the life stage in which it is destined for use.

The diet should be formulated to result in a fatty acid profile in fed hatchery fish that is consistent with that which is found in wild salmonids in the freshwater environment in regard to docosahexaenoic acid, eicosapentaenoic acid, and omega 3 to omega 6 ratios. Dietary oils must remain soluble at ambient winter hatchery water temperatures and cannot form lipid plaques on raceway walls, clog screens, or foul wastewater treatment equipment.

The Supplier will provide IFW with a statement regarding the availability of both floating and low phosphorus salmonid diets.

The Supplier will provide IFW with assurance that fishmeal is obtained from a source that abides by the Global Standard for Responsible Supply as developed by the International Fishmeal and Fish Oil Organization (IFFO). **The Supplier must disclose** the percentage of plant protein sources being used in the formulation of the diets. Diets (3.0mm and greater) must be available with 40 - 60 PPM astaxanthin or 60-80 PPM pigment as a combination of astaxanthin and canthaxanthin.

The Supplier should use:

- only fishmeal with crude protein >68%.
- only fishmeal with histamine level <1200 PPM.
- fishmeal with pepsin solubility >92%.

The Supplier will provide the most updated feed analysis sheet for each feed type and size contracted for, listing the percentages of the ingredients incorporated in the formulated diet. Information to include % protein, % fat, % fiber, % ash, % moisture, % carbohydrate, % phosphorous, as well as any vitamins, minerals, or additional additives the types and levels. If feed ingredient levels or percentages change during the contract period, IFW will be notified and an updated analysis sheet will be provided.

PRODUCT PERFORMANCE: **The Supplier will provide** sufficient information to IFW that the trout or salmon diet is designed to give the lowest cost of production (feed cost/pounds of fish produced) by delivering excellent growth rates and low feed conversion rates (goal 1:1 FCR) in salmonid hatcheries

located in latitudes >45° N. Cold water temperatures (ground water = 49 °F; surface water ranges 0 – 75° F) affect the solubility and digestibility of fish diets.

The Supplier will provide an amino acid profile for the separate feed products that match the requirements for trout and salmon to ensure that the maximum amount of dietary protein is used for muscle growth and the least possible amount is converted to body fat or excreted as nitrogenous waste in hatchery effluent water. Diets that prove to be unpalatable, deliver unacceptable growth rates (based on three-year average growth rates for that species and location using other diets), result in poor feed conversions, that utilize ingredients at inclusion levels known to result in enteritis in salmonids, or abnormally decrease water quality (total solids, pH, ammonia levels, or phosphorus levels) will not be used.

PRODUCT QUALITY ASSURANCE: The Supplier will provide Hazard Analysis Critical Control Point (HACCP) documentation (e.g., product temperature, moisture, microbial count, etc.) for products manufactured under this contract. Product quality assurance will include traceability of fishmeal and fish oil from the feed compounder back to the producer, all transporters, and any storage facility. Ingredients must not contain contaminants, impurities, pesticides, microorganism, natural toxins (e.g., nitrosamine, histamine, cadaverine, putrescine), mycotoxins or aflatoxins at levels detrimental to fish health or to the consumers of product reared with feeds made with said ingredients. **The Supplier will provide** written verification that feeds are not impure or contaminated with that which will cause harm to fish or humans which consume fish produced with said feed. Contaminant concentrations are to be less than maximum levels expressed as allowable by the European Union. Total Dioxins, Furans, and Dioxin like PCB's of the feed shall be less than 6 ng WHO- TEQ/kg. **The Supplier will disclose** any problems with feed impurities (e.g., melamine, pesticides, or heavy metals) that reached other customers occurring within the past three years and how the problem was remediated.

PRODUCT SUPPORT: The Supplier will provide information regarding available product support including availability and qualifications of local feed representatives, company web based support, fish diet feeding training, availability of medicated feeds (FDA-1900 certification), product technical information, and fish nutrition training printed materials, videos, webinars, etc.

Appendix E

**STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
DIVISION OF PROCUREMENT SERVICES**

**MUNICIPALITY POLITICAL SUBDIVISION and SCHOOL DISTRICT PARTICIPATION
CERTIFICATION**

**RFQ # 09A 180907-079
Fish Food - Bio-Oregon – No Substitutions**

The Division of Procurement Services is committed to providing purchasing opportunities for **municipalities, political subdivisions and school districts** in Maine by allowing them access, through our vendors, to our contract pricing. A bidder's willingness to extend contract pricing to these entities will be taken into consideration in making awards.

Will you accept orders from political subdivisions and school districts in Maine at the prices quoted?

Yes

Yes, with conditions as follows:

No

Name of Company:

Address:

Signature:

Date:

Bureau of Business Management – Division of Procurement Services
State of Maine – Department of Administrative and Financial Services
9 State House Station
Augusta, Maine 04333-0009

Contract Number
MA 181011*042

Tel. (207) 624-7340
Fax.# (207) 287-6578

EXTENSION OF ANNUAL CONTRACT

Commodity Item: Fish Food - Bio-Oregon

Contractor: Moore Clark USA Inc dba Bio Oregon

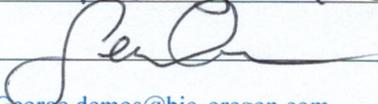
Contract Period Extended To: 10/31/20

New Lower Pricing: Need to increase pricing

Extension Clause: The State reserves the right to extend this contract for a period of one year, with the consent of the contractor.

Agreement to Extend Contract:

In accordance with the above referenced Extension Clause, the undersigned agrees to continue in effect said Contract No # MA 181011*042 through October 31, 2020 with all terms, conditions remaining as shown in the original contract.

By: (Print Name) George Demos
By: (Signature) 
E-mail Address: George.demos@bio-oregon.com
Date: 10/10/19

Dollar value the State has spent on this contract from **11/01/18** to present: \$ 337,443

SUPPLIER PART NUMBER	SUPPLIER NAME	MANUFACTURER NAME	ITEM DESCRIPTION	EXTENDED DESCRIPTION	UNIT OF MEASURE	LIST PRICE	DELIVERY DAYS
11702385	MOORE CLARK USA INC	BIO OREGON	Classic Brd Float 5.5 mm, 46/12 Protein/oil, 40lb.bag	Classic Brood Fish Food 36A 46/12 Protein/oil, 40lb.bag	LB	0.87	28
11702415	MOORE CLARK USA INC	BIO OREGON	Classic Brd Float 6 mm, 46/12 Protein/oil, 50lb.bag	Classic Brood Fish Food 36A 46/12 Protein/oil, 50lb.bag	LB	0.87	28
11702425	MOORE CLARK USA INC	BIO OREGON	Classic Brd Float 7.5 mm, 46/12 Protein/oil, 40lb.bag	Classic Brood Fish Food 36A 46/12 Protein/oil, 40lb.bag	LB	0.87	28
11702445	MOORE CLARK USA INC	BIO OREGON	Classic Brd Float 8 mm, 46/12 Protein/oil, 50lb.bag	Classic Brood Fish Food 36A 46/12 Protein/oil, 50lb.bag	LB	0.87	28
11700345	MOORE CLARK USA INC	BIO OREGON	BioBrood 12 mm, 48/20 Protein/oil, 44lb.bag	Fish Food 60A 48/20 Protein/oil, 44lb.bag	LB	1.55	28
11700365	MOORE CLARK USA INC	BIO OREGON	BioBrood 4 mm, 48/20 Protein/oil, 44lb.bag	Fish Food 60A 48/20 Protein/oil, 44lb.bag	LB	1.50	28
11700385	MOORE CLARK USA INC	BIO OREGON	BioBrood 6 mm, 48/20 Protein/oil, 44lb.bag	Fish Food 60A 48/20 Protein/oil, 44lb.bag	LB	1.50	28
11700405	MOORE CLARK USA INC	BIO OREGON	BioBrood 9 mm, 48/20 Protein/oil, 44lb.bag	Fish Food 60A 48/20 Protein/oil, 44lb.bag	LB	1.50	28
11700455	MOORE CLARK USA INC	BIO OREGON	BioClark Fry 1.2 mm, 47/18 Protein/oil, 44lb.bag	Fish Food 20kg 47/18 Protein/oil, 44lb.bag	LB	1.30	28
11700475	MOORE CLARK USA INC	BIO OREGON	BioClark Fry 1.5 mm, 47/18 Protein/oil, 44lb.bag	Fish Food 20kg 47/18 Protein/oil, 44lb.bag	LB	0.98	28
11700505	MOORE CLARK USA INC	BIO OREGON	BioClark Fry 2.0 mm, 47/18 Protein/oil, 44lb.bag	Fish Food 20kg 47/18 Protein/oil, 44lb.bag	LB	0.93	28
11700525	MOORE CLARK USA INC	BIO OREGON	BioClark Fry 2.5 mm, 47/18 Protein/oil, 44lb.bag	Fish Food 20kg 47/18 Protein/oil, 44lb.bag	LB	0.96	28
11700555	MOORE CLARK USA INC	BIO OREGON	BioClark Fry 3.0 mm, 47/18 Protein/oil, 44lb.bag	Fish Food 20kg 47/18 Protein/oil, 44lb.bag	LB	0.88	28
11719355	MOORE CLARK USA INC	BIO OREGON	BioClark Fry 4.0 mm, 47/18 Protein/oil, 44lb.bag	Fish Food 20kg 47/18 Protein/oil, 44lb.bag	LB	0.85	28
11700685	MOORE CLARK USA INC	BIO OREGON	BioDry1000LP 1.2 mm, 50/18 Protein/oil, 44lb.bag	Fish Food 20kg 50/18 Protein/oil, 44lb.bag	LB	1.88	28
11700695	MOORE CLARK USA INC	BIO OREGON	BioDry1000LP 1.5 mm, 50/18 Protein/oil, 44lb.bag	Fish Food 20kg 50/18 Protein/oil, 44lb.bag	LB	1.69	28
11700705	MOORE CLARK USA INC	BIO OREGON	BioDry1000LP 2.5 mm, 50/18 Protein/oil, 44lb.bag	Fish Food 20kg 50/18 Protein/oil, 44lb.bag	LB	1.59	28
11700715	MOORE CLARK USA INC	BIO OREGON	BioDry1000LP 2 mm, 50/18 Protein/oil, 44lb.bag	Fish Food 20kg 50/18 Protein/oil, 44lb.bag	LB	1.65	28
11700725	MOORE CLARK USA INC	BIO OREGON	BioDry1000LP 3 mm, 50/18 Protein/oil, 44lb.bag	Fish Food 20kg 50/18 Protein/oil, 44lb.bag	LB	1.54	28
11700745	MOORE CLARK USA INC	BIO OREGON	Bio-Olympic Fry 1.2 mm, 50/20 Protein/oil, 44lb.bag	Fish Food 20kg 50/20 Protein/oil, 44lb.bag	LB	1.52	28
11700765	MOORE CLARK USA INC	BIO OREGON	Bio-Olympic Fry 1.5 mm, 50/20 Protein/oil, 44lb.bag	Fish Food 20kg 50/20 Protein/oil, 44lb.bag	LB	1.38	28
11700795	MOORE CLARK USA INC	BIO OREGON	Bio-Olympic Fry 2.0 mm, 50/20 Protein/oil, 44lb.bag	Fish Food 20kg 50/20 Protein/oil, 44lb.bag	LB	1.34	28
11700785	MOORE CLARK USA INC	BIO OREGON	Bio-Olympic Fry 2.5 mm, 50/20 Protein/oil, 44lb.bag	Fish Food 20kg 50/20 Protein/oil, 44lb.bag	LB	1.33	28
11700815	MOORE CLARK USA INC	BIO OREGON	Bio-Olympic Fry 3 mm, 50/20 Protein/oil, 44lb.bag	Fish Food 20kg 50/20 Protein/oil, 44lb.bag	LB	1.31	28
11700975	MOORE CLARK USA INC	BIO OREGON	BioTrout 1.5 mm, 47/24 Protein/oil, 44lb.bag	Fish Food 20kg 47/24 Protein/oil, 44lb.bag	LB	0.93	28
11701005	MOORE CLARK USA INC	BIO OREGON	BioTrout 2 mm, 47/24 Protein/oil, 44lb.bag	Fish Food 20kg 47/24 Protein/oil, 44lb.bag	LB	0.80	28
11701025	MOORE CLARK USA INC	BIO OREGON	BioTrout 3 mm, 47/24 Protein/oil, 44lb.bag	Fish Food 20kg 47/24 Protein/oil, 44lb.bag	LB	0.76	28
11701055	MOORE CLARK USA INC	BIO OREGON	BioTrout 4 mm, 45/24 Protein/oil, 44lb.bag	Fish Food 40A 20kg 45/24 Protein/oil, 44lb.bag	LB	0.78	28
11701085	MOORE CLARK USA INC	BIO OREGON	BioTrout 6 mm, 43/24 Protein/oil, 44lb.bag	Fish Food 40A 20kg 43/24 Protein/oil, 44lb.bag	LB	0.73	28
11701395	MOORE CLARK USA INC	BIO OREGON	BioVita Fry 1.2 mm, 50/22 Protein/oil, 44lb.bag	Fish Food 20kg 50/22 Protein/oil, 44lb.bag	LB	1.68	28
11701435	MOORE CLARK USA INC	BIO OREGON	BioVita Fry 1.5 mm, 50/22 Protein/oil, 44lb.bag	Fish Food 20kg 50/22 Protein/oil, 44lb.bag	LB	1.62	28
11701475	MOORE CLARK USA INC	BIO OREGON	BioVita Fry 2 mm, 50/22 Protein/oil, 44lb.bag	Fish Food 20kg 50/22 Protein/oil, 44lb.bag	LB	1.54	28
11701455	MOORE CLARK USA INC	BIO OREGON	BioVita Fry 2.5 mm, 50/22 Protein/oil, 44lb.bag	Fish Food 20kg 50/22 Protein/oil, 44lb.bag	LB	1.53	28
11701505	MOORE CLARK USA INC	BIO OREGON	BioVita Fry 3 mm, 50/22 Protein/oil, 44lb.bag	Fish Food 20kg 50/22 Protein/oil, 44lb.bag	LB	1.51	28
11718755	MOORE CLARK USA INC	BIO OREGON	BioVita Starter Mash	Fish Food 10kg	LB	1.90	28
11701625	MOORE CLARK USA INC	BIO OREGON	BioVita Starter No.0, 53/18 Protein/oil, 44lb.bag	Fish Food 20kg 53/18 Protein/oil, 44lb.bag	LB	1.90	28
11718745	MOORE CLARK USA INC	BIO OREGON	BioVita Starter No.1	Fish Food 20kg	LB	1.90	28
11701655	MOORE CLARK USA INC	BIO OREGON	BioVita Starter No.2, 52/20 Protein/oil, 44lb.bag	Fish Food 52/20 Protein/oil, 44lb.bag	LB	1.90	28
11701665	MOORE CLARK USA INC	BIO OREGON	BioVita Starter No.3, 52/20 Protein/oil, 44lb.bag	Fish Food 52/20 Protein/oil, 44lb.bag	LB	1.90	28

SUPPLIER PART NUMBER	SUPPLIER NAME	MANUFACTURER NAME	ITEM DESCRIPTION	EXTENDED DESCRIPTION	UNIT OF MEASURE	LIST PRICE	DELIVERY DAYS
11704815	MOORE CLARK USA INC	BIO OREGON	Oncor Float 3.5 mm, 45/19 Protein/oil, 40lb.bag	Fish Food 45/19 Protein/oil, 40lb.bag	LB	0.78	28
11705025	MOORE CLARK USA INC	BIO OREGON	Oncor Float 4.5 mm, 44/20 Protein/oil, 40lb.bag	Fish Food 44/20 Protein/oil, 40lb.bag	LB	0.78	28
11705165	MOORE CLARK USA INC	BIO OREGON	Oncor Fry Float 1.5 mm, 47/17 Protein/oil, 40lb.bag	Fish Food 47/17 Protein/oil, 40lb.bag	LB	1.02	28
11705175	MOORE CLARK USA INC	BIO OREGON	Oncor Fry Float 2.5 mm, 46/18 Protein/oil, 40lb.bag	Fish Food 46/18 Protein/oil, 40lb.bag	LB	1.02	28
11707285	MOORE CLARK USA INC	BIO OREGON	Oncor Float 5.5 mm, 41/22 Protein/oil, 40lb.bag	Fish Food 41/22 Protein/oil, 40lb.bag	LB	0.75	28
11707305	MOORE CLARK USA INC	BIO OREGON	Oncor Fry Sink 1.0 mm, 47/17 Protein/oil, 50lb.bag	Fish Food 47/17 Protein/oil, 50lb.bag	LB	1.04	28

STATE OF MAINE

GENERAL TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES UNDER BUYER PURCHASE ORDERS (BPOs) AND MASTER AGREEMENTS (MAs)

1. **DEFINITIONS:** The following definitions are applicable to these standard terms and conditions:
 - a. The term “Buyer” or “State” shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
 - b. The term “Department” or “DAFS” shall refer to the State of Maine Department of Administrative and Financial Services.
 - c. The term “Bureau” or “BGS” shall refer to the State of Maine Bureau of General Services.
 - d. The term “Division” shall refer to the State of Maine Division of Purchases.
 - e. The term “Contractor”, “Vendor”, or “Provider” shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
 - f. The term “Contract” or “Agreement” shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.

2. **WARRANTY:** The Contractor warrants the following:
 - a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and
 - b. That all goods and services covered by this Contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and
 - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
 - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
 - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

3. **TAXES:** Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

4. **PACKING AND SHIPMENT:** Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest

transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. DELIVERY: Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, the Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

6. FORCE MAJEURE: The State may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The State may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

7. INSPECTION: All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Division of Purchases, at its option, may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.

8. INVOICE: The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars, must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.

9. ALTERATIONS: The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreements, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

10. TERMINATION: The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.

In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

11. NON-APPROPRIATION: Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

12. COMPLIANCE WITH APPLICABLE LAWS: Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are

contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

13. INTERPRETATION: This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

14. DISPUTES: The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

15. ASSIGNMENT: None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.

16. STATE HELD HARMLESS: The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

17. SOLICITATION: The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

18. WAIVER: The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.

19. MATERIAL SAFETY: All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

20. COMPETITION: By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.

21. INTEGRATION: All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.