



## **CONDITIONS OF BUNKERING SERVICES EDITION DECEMBER 2010**

### **1. DEFINITIONS**

**Buyer** shall mean the party purchasing the Product from the Seller, being whether the registered owner, disponent owner, charterer (by demise or otherwise), operator, manager of the vessel receiving the Product, or a trader who is acting as a principal and has contracted to supply the Product to the vessel receiving the supply; **Buyer's vessel** shall mean the vessel, ship, barge or off-shore unit that receives the Product; **Contract** shall mean each separate written confirmation as sent by the Seller to the Buyer as per clause 3(i) of these GTCs containing the details of Delivery, including the price, the place of Delivery, grades and quantities to be delivered, as well as other agreed terms; **Delivery(ies)** shall mean each separate delivery of the Product for bunkering purposes, collectively called as Deliveries, made to the Buyer in frame of each separate Contract; **Delivery Date** – the date range on which the Product supply shall be executed; **GTCs** shall mean these General Terms and Conditions which shall govern the contractual relations between the Seller and the Buyer; **Product** shall mean any and all commercial grades of diesel oils, gasoil, intermediate fuel oil as offered by the Seller for bunkering purposes at the time and place of Delivery; **Seller** shall mean any office, branch office, affiliate or associate of Addax Bunkering Services, a division of Addax B.V. the company duly incorporated in The Netherlands;

### **2. GENERAL INTRODUCTION**

(i) These GTCs shall apply to all Deliveries of the Product made by the Seller, and shall be incorporated into each Contract pertinent to the Delivery, by reference in writing.

(ii) No variation of these GTCs shall be valid and binding unless expressly agreed in writing by the Seller.

### **3. BUNKERING SERVICES**

(i) As soon as the Seller's offer is accepted by the Buyer, in verbal or written form, the Seller shall forward a written Contract (in the form of e-mail or fax) to confirm Delivery Date, place of Delivery, grades and quantities to be delivered, as well as other agreed terms. This Contract shall be final and binding on both the Seller and the Buyer.  
(ii) The Buyer shall subsequently reconfirm the Delivery Date by confirmations given in writing (in the form of e-mail or fax) 4 (four) and 2 (two) working days prior to the Delivery Date.

(iii) The Seller is entitled to cancel the Delivery without giving prior notice and incurring any liability whatsoever if the Buyer's vessel is

not presented within 2 (two) calendar days (Sundays and holidays inclusive) from the Delivery Date, in which case demurrage costs incurred by the Seller shall be at the Buyer's account

(iv) In the event of Delivery by barge(s), the Buyer shall provide free of expense a clear and safe berth for the barge(s) alongside the Buyer's vessel's receiving lines.

(v) The Buyer's vessel shall moor, unmoor, hoist the bunkering hose(s) from the barge(s) and lower the hose(s), day or night, Sundays and holidays inclusive, whenever required by the Seller and the crew of the Buyer's vessel to assist the barge(s) in order to ensure a smooth supply.

(vi) The Buyer shall provide the connections between the pipeline delivery hose(s) and the Buyer's vessel's lines and shall provide sufficient tankage and equipment to receive promptly day or night, Sundays and holidays inclusive, all deliveries hereunder.

(vii) The Buyer shall be responsible for the safe receipt of the Product by the Buyer's vessel, including the readiness of all pipes, manifolds and receiving tanks, relevant valves, in order to exclude any risk of spillage during the bunkering

(ix) The Seller shall conclude Deliveries subject to the availability to the Seller of the particular grade(s) of the Product requested by the Buyer.

(x) Each Delivery shall be made in a separate lot at wharf or at shore terminal of the Seller, by bunker barge or by a combination of the above-mentioned supply methods, at Seller's option.

(xi) The Seller shall not be required to deliver the Product into any of the Buyer's vessel's tanks which are not regularly used for bunkers;

(xii) The Seller shall not be required to deliver any Product for export for which a special governmental authorisation is required and has not been received by the Seller.

#### **4. TITLE AND RISK**

(i) The Seller shall remain the sole and absolute owner of the Product delivered to the Buyer's vessel in terms of its title until such time as the agreed price of the Product has been paid to the Seller by the Buyer.

(ii) The Product shall be at the risk of the Buyer as soon as it is delivered by the Seller to the Buyer's vessel and reached the flange connection of the Buyer's vessel.

(iii) The Buyer shall be at liberty to mix the Product with other petroleum products on board the Buyer's vessel subject to the condition that in the event the Product, being the property of the Seller in terms of title, is united with the other petroleum product, the product thereof shall be deemed to be for all purposes the property of the Seller in the quantity in which the net quantity of the delivered Product is contained.

#### **5. QUANTITY DETERMINATION**

(i) The Quantity of the Product shall be determined by the Chief Engineer of the Buyer's vessel or his representative, by the reading or metering from the gauge of the Seller's barge or tank, and verifying, jointly with the Seller, the quantities of the Product actually delivered.

(ii) Should such Chief Engineer of the Buyer's vessel or his representative fail or refuse to so verify the quantities, all the measurements of the quantities made by the Seller shall be final and conclusive as to the quantities sold and delivered hereunder and no claims for any difference/discrepancies between the Seller's the Buyer's figures shall be made or allowed after Delivery Date.

(iii) The content of 0.5% (zero point five percent) of water in the Product shall be allowed in the Product and accepted by the Buyer, with no additional liabilities whatsoever.

(iv) The variation of 10% (ten percents) from the agreed Quantity shall be allowed in the Product and accepted by the Buyer in the corresponding invoice from the Seller pursuant to the Delivery, with no additional liabilities whatsoever.

#### **6. QUALITY DETERMINATION**

(i) The Quality of the Product shall be determined by the Seller in the Contract..

(ii) The content of 1.5% (one point five percents) of any acid sediment in the Product shall be allowed in the Product and accepted by the Buyer with no additional liabilities whatsoever.

(iii) The Quality tolerance of 5% (five percents) in the Quality shall be allowed in the product and accepted by the parties to the standard specification referred to in each Delivery, with no additional liabilities whatsoever.

#### **7. QUANTITY AND QUALITY CLAIMS**

(i) Any claim related to the Quantity of the Product, shall be made immediately upon the delivery. Unless the Buyer claims strictly in accordance with this clause, all other Quantity claims shall be waived and barred.

(ii) Any claim related to the Quality of the Product, shall be made within 15 (fifteen) calendar days (Sundays and holidays inclusive) of delivery, giving full details of the nature of the claim and

supported by independent laboratory sample analysis report(s), failing which any Quality claim will be absolutely waived and barred.

#### **8. SAMPLES**

(i) Four (4) samples shall be taken by the Seller from the product delivered as per each separate Delivery. Such samples shall be dated, labelled with the name of the vessel, bunkering method, product name, delivery date, seal number, sealed and confirmed by the Vessel's stamp, signature of the Seller and the Master of the Vessel. Two samples shall be kept with the Seller, two samples shall be kept at the Buyer's barge or vessel from which the bunkering had been performed.

#### **9. PAYMENT**

(i) The Seller shall invoice the Buyer for the entire Product delivered hereunder in U.S. Dollars or any other currency agreed, and the Buyer shall pay to the Seller the full amount thereof, on or before the due date indicated in the invoice. Such payment shall be made to the Seller's bank account with the bank designated by the Seller.

(ii) Payment shall be made without any discount or deduction whatsoever prior to the date of delivery. If the Seller agrees in writing to grant the Buyer a period of credit, the Buyer shall pay the full amount without any discount or deduction whatsoever promptly on the agreed due date.

(iii) All overdue payments shall bear interest at the rate of 2% (two percents) per month or pro rata.

(iv) For Deliveries made in the port, in the event the delivery falls in outside normal business hours or on local weekends, Saturday, Sunday or national holidays, the Seller shall invoice the Buyer with all extra charges associated with such Deliveries.

(v) In the event of default by the Buyer or any of its affiliated companies in any way in the payment of any indebtedness whatsoever to the Seller, the Seller is entitled to claim the return of Product or, in case this is not possible, its money equivalent, in both cases increased with all costs of delivery of the Product on the Buyer's vessel. The Seller may secure such claim with the lien/arrest, at any place in the world, a maritime lien against the Buyer's vessel, her sister vessels and against her reserves of the Product for all amounts due to the Seller.

#### **10. CANCELLATION/SUSPENSION**

(i) In the event the Buyer wishes to cancel or reduce the quantity of the Product ordered, more than three (3) working day before the Delivery Date, the Buyer shall pay to the Seller a cancellation fee in the amount of US\$ 5.00 (five US Dollars) per metric ton of the Product cancelled or reduced ("**Cancellation fee**"), provided that the minimum amount of such Cancellation fee shall be in any event not less than the 1500 USD (one thousand five hundred US Dollars) ("**Minimum cancellation fee**"). The Minimum Cancellation fee and further Cancellation fee, is due and payable within 15 (fifteen) calendar days from the Delivery Date.

(ii) In the event the Buyer wishes to cancel or reduce the quantity of the Product ordered 3 (three) or less working days before the Delivery Date, the Buyer shall pay to the Seller the Minimum cancellation fee, further Cancellation fee if occurs, plus any additional costs the Seller may request in association with the losses, expenses, demurrages and claims of whatsoever nature arising out of such short-notice cancellation or reduction.

(iii) The Seller may, by giving written notice immediately cancel the Delivery(s) in full or in part, or suspend the Delivery(s) until further notice without prejudice to any right of action or claim accrued at the date of termination or suspension, in case the Buyer goes for liquidation or if the Buyer should become bankrupt or insolvent, or should enter into a deed of arrangement or a composition for the benefit of its creditors, or should do or suffer any equivalent act or thing under any applicable law, or if the Seller has good reason to anticipate any such act or thing, the other party may, by written notice, immediately terminate the Agreement;

(iv) The Seller may, by giving written notice, immediately suspend Delivery(s) in case the Seller has good reason to doubt the continuing ability or willingness of the Buyer to perform its obligations, until the Buyer makes payment in advance for future deliveries or provides such other security as the Seller may, in its absolute discretion require. In the absence of payment in advance or such other security required by the Seller being received within 72 hours of the Seller's written notice pursuant to this clause, the Seller may terminate the Delivery(s) by written notice without prejudice to any right of action or claim accrued to the benefit of the Seller at the date of termination.

#### **11. LIABILITY, TAXES AND OTHER CHARGES**

(i) If the Buyer fails to take delivery of the full quantity of the Product ordered and tendered or if the Buyer is outside the delivery dates range, the Buyer shall compensate the Seller all losses associated with: (a) any demurrage claims to the Seller; (b) transportation of the Product from the storage tanks to the Buyer's vessel and back again, and (c) with the subsequent sale of the non-shifted Product in a degraded form at a price lower than that applicable to the grade originally nominated by the Buyer, without prejudice to the Seller's other rights under this agreement for damages or otherwise.

(ii) The Buyer shall indemnify and hold harmless the Seller in respect of all claims of whatsoever nature made by any third party against the Seller.

(iii) The maximum liability of the Seller shall be limited to an amount equal to the purchase price of the Product delivered or intended to be delivered under each separate Delivery. No claim against the Seller shall be in excess of the limit set out in this clause.

(iv) The Seller shall not be responsible for any expenses, claims, damages, consequent losses howsoever arising in connection with the Buyer's receipt, use, storage and transportation of the Product, including the demurrage costs incurred by the Buyer and/or the Buyer's vessel for the reason that the Buyer is not able to receive the product promptly, congestions, prior commitments of the available barge(s), special requirements for receiving the Product, unless such liabilities result from the Seller's personal gross negligence.

(v) In the event the delivery is concluded by an agent acting on behalf of the Buyer and/or a principal, and/or by the Buyer acting on behalf of itself or on behalf of a principal(s), disclosed or undisclosed, such agent and/or the Buyer, as the case may be, shall be jointly and severally liable with such principal(s), for the due and proper performance of these GTCs.

(vi) Notwithstanding any agreement to the contrary, the Seller shall be liable for the payment of all taxes, duties, costs, charges on the Product arising before the Delivery(s) and the Buyer shall be liable for the payment of all taxes, duties, costs, charges on the Product arising after Delivery(s).

Should any tax, freight, insurance premium, pilotage, port dues or other extra expenses at the time of delivery under this contract be raised or charged after this contract is made, such additional expenses shall be borne by the Buyer.

(vii) All prices and/or tariffs shall be VAT exclusive, unless specifically stated otherwise.

#### **12. FORCE MAJEURE**

(i) No failure, omission or delay by the Seller to carry out or observe any of the terms and conditions of this contract shall give rise to any claim against the Seller or be deemed a breach of contract if such failure, omission or delay arises, directly or indirectly, from any cause beyond the control of the Seller including, but without limitation to the generality of the foregoing, any regulation or embargo issued by any government (or person purporting to act as such) interfering with or affecting, directly or indirectly, the supply of the Product, any suspension or reduction in production of the Product by the Seller occurring at any time, any acts of God, strikes, lock outs, work stoppages or other industrial disturbances or difficulties, wars, civil wars, warlike activities, insurrections, rebellions, public disorders, acts of sabotage, civil commotions, riots, disturbances, fires, quarantine, restrictions, epidemics, lightning, earthquakes, storms, floods, weather conditions, explosions, accidents, breakdowns or any other cause of whatsoever kind ("Force Majeure").

(ii) Should there be any delay, curtailment or interference with the Seller's supply pursuant for the reason of Force Majeure as stipulated in this clause, the Seller shall not be required to increase supplies or obtain supplies from other sources or to purchase the Product or to replace the supplies so curtailed or interrupted.

(iii) In the event that the Force Majeure event cannot be permanently removed, or in a Force Majeure event results in a delay of Delivery(s) extending beyond ten (10) days, either party may terminate the Delivery(s) upon notice and both the parties will be relieved of their further contractual obligations, except for their accrued rights and obligations which shall survive the termination of the Delivery(s) in accordance with this provision.

#### **13. ENVIRONMENT**

(i) The Seller shall be under no liability to the Buyer in respect of any claim whatsoever for any loss, damage or personal injury resulting from any hazards inherent in the nature of the Product.

(ii) In the event of a spill of the Product, any expenses, damages, costs, fines and penalties arising from the spill shall be paid for by the Buyer unless the spill arose out of the Seller's negligence in which case the Seller will be liable, provided that the Buyer shall prove such negligence.

#### **14. JURISDICTION**

(i) These GTCs shall be governed by and interpreted in accordance with English law and both parties submit to the jurisdiction of the High Court of Justice in London. It is further agreed that the Seller may in any jurisdiction (i) assert his lien over the Buyer's vessel, sister vessel(s) and/or their reserves of the Product and/or (ii) arrest the Buyer's vessel or sister vessel(s) and/or their reserves of the Product to secure the Seller's claims for any amounts, costs, expenses, losses or damages payable to him under this contract and/or (iii) enforce any judgment and/or (iv) take any other proceedings.