

General Terms and Conditions

1. Agreement

- (a) In agreeing to supply the Customer with marine fuels Australia Bunkering Pty Limited (hereinafter "**AB**") does so in accordance with the following terms and conditions and, also, in accordance with the terms and conditions of any supplier to it, whose terms and conditions are deemed incorporated in this Agreement.
- (b) No binding agreement is entered into between AB and the Customer until AB has sent its confirmation of nomination.

2. Price

- (a) AB shall invoice the Customer in US\$ or any other pre agreed currency for the price which it has agreed in writing to supply the Customer. In the absence of such agreement the price of the marine fuel delivered to the Customer shall be that price which is the standard selling price effective at the place of delivery at the time of delivery by AB to the Customer for the grade of marine fuel which AB has delivered.
- (b) The Customer shall also pay:
 - the costs of delivery of the marine fuel, including payments for overtime;
 - any duties, taxes, impositions, charges, freights, premiums or other costs incurred by AB, or for which it is accountable, in respect of deliveries to the Customer, such as those imposed by government and authorities as well as barging and other delivery charges;
 - any expenses incurred by reason of the master of the vessel rejecting the whole or any part of the delivery;
 - if AB or its supplier does not have duty free stocks available and delivers from duty paid stocks to the Customer, the Customer first having been advised, the Customer shall pay the amount of any such duty;
 - any additional charges identified in the **Port Guide**;
 - all costs, expenses and all charges incurred by AB on account of the Customer's failure and/or breach and/or non-compliance with its obligations in this Agreement for whatever reason;

General Terms and Conditions

- any overtime and/or additional expenses incurred by AB by reason of the Customer's failure, or that of its employees or agents, to provide AB or its supplier with sufficient prior notice of any changes to previously notified delivery times, quantity or cancellations;
 - all applicable barging charges together with transportation taxes and pumping charges if required.
- (c) AB reserves the right to increase the price charged for any marine fuel if there is any increase in the costs incurred or to be incurred by AB in making the relevant supply due to factors beyond its control. Such factors include, without limitation, any increased taxes, duties, the making of any law, order, by-law or other regulation, the occurrence of any currency fluctuation affecting the cost of any imported items and any increase in costs charged by its supplier for any reason whatsoever.

3. Payment

- (a) Payment shall be made by the Customer in the agreed currency in accordance with AB's invoice, and without any discount, withholding, offset or allowance, and should be made by means of electronic wire transfer to the bank account stated on the invoice.
- (b) All payments shall be made in accordance with AB's confirmation of nomination and invoice.
- (c) The Customer is in default of this Agreement if payment is not received by the due date. In addition to any other rights which AB may have it may charge the Customer interest on the overdue money at a rate equivalent to the then current maximum overdraft rate of Westpac Banking Corporation plus 2% per annum from the due date for payment of the overdue money until it is received in full by AB.

4. Deliveries

- (a) The Customer shall make all necessary connections and disconnections between the delivery hose and the vessel's intake pipe and shall render all other necessary assistance and provide sufficient tankage and equipment to receive all the delivery promptly.

General Terms and Conditions

- (b) The delivery date shall be deemed to be the date of completion of delivery as stated on the bunker delivery note.

5. **Samples**

AB or its supplier shall take one primary sample of each grade of marine fuel delivered from which four representative samples shall be taken by AB or its supplier. The Customer, or its representative, shall be at liberty to witness the sampling. Three of those samples are taken for quality purposes and the fourth is to be the MARPOL Control Sample. One sealed quality sample and the MARPOL Control Sample shall be handed to the master of the vessel and the other two quality samples retained by AB or its supplier for a thirty day period.

6. **Measurement of quantity**

The quantity of marine fuel delivered shall be measured by the barge effecting delivery or by gauging in the supplier's store tank or oil meter, in accordance with the ASTM-IP Petroleum Measurement Tables, or the methods of any other recognised standards authority at the discretion of AB or its supplier.

7. **Safety**

- (a) The Customer shall take all necessary measures and precautions to provide a safe environment for the vessel prior to and during the delivery of marine fuel.
- (b) AB and its supplier reserve the right not to commence delivery or to terminate delivery in the event that it is reasonably determined that the environment for delivery is unsafe.

8. **Title and risk**

Delivery of marine fuel shall be deemed to be complete and title and risk shall pass from AB or its supplier to the Customer as the marine fuel passes the flange connecting the delivery facilities provided by AB or its supplier with the receiving facilities provided by the Customer.

9. **Claims**

- (a) Any claim by the Customer concerning:

General Terms and Conditions

(i) quantity must be notified to AB or its supplier prior to the signing of delivery receipts;

(ii) quality or price must be made in writing to AB within fourteen (14) days after the date of delivery,

(b) In default of the relevant notices the Customer shall be deemed to have waived all claims in relation to the quality or quantity of the marine fuel delivered.

(c) Disputes as to quality shall be determined in the following manner:

- a sample retained by AB or its supplier shall be analysed by an independent laboratory in accordance with ISO 8217 or any other specification as agreed between AB and the Customer. Such test results are to be interpreted in accordance with ISO 4259 Sections 9 and 10 and the results of the analysis shall be conclusive as to the quality of marine fuel delivered. The expense of the analysis shall be borne equally by AB and the Customer.
- in the event of any claim as to quality the Customer shall permit AB or its supplier and/or their representatives to attend on board the vessel, carry out all necessary inspections and investigations, including taking whatever samples they consider necessary and have access to any relevant documentation.
- in the event that AB and the Customer are unable to resolve any dispute which has been the subject of the requisite notice within thirty days following the date of delivery, any legal action to be brought by the Customer shall be time barred unless commenced within six (6) months after delivery or other event, action, or omission from which such claim arises.

10. Exclusion clause

(a) AB gives no guarantee or warranties as to, and shall have no liability for, the satisfactory quality, merchantability, fitness or suitability of the marine fuel for any particular purpose or otherwise.

General Terms and Conditions

- (b) AB shall not have any responsibility or liability for the choice of marine fuel made by the Customer or its suitability for the vessel, including compatibility with fuel already on board.
- (c) AB shall not be responsible for any claim as to quality arising from the co-mingling of the marine fuel with other products or materials by the Customer on board the receiving vessel.
- (d) AB's obligation to deliver is subject to availability to it and/or its supplier at the delivery port.
- (e) Neither AB nor its supplier shall have any liability to the Customer under or in connection with this Agreement for:
 - (i) loss of actual or anticipated profit;
 - (ii) losses caused by business interruption;
 - (iii) loss of goodwill or reputation; or
 - (iv) any indirect, special or consequential cost, expense, loss or damage, even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by AB or its supplier and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.
- (f) In circumstances where price controls are imposed AB and/or its supplier shall not be required to deliver if the maximum permissible price is below that agreed with the Customer.
- (g) Without prejudice to the above provisions AB and its supplier's maximum aggregate liability to the Customer under, or in connection with, any delivery howsoever arising shall not exceed three days charter hire of the vessel.

11. Rights of AB

- (a) AB shall have the right to assert a lien against the vessel which uses the marine fuel supplied pursuant to this Agreement for the amount of the delivered price of the marine fuel. All costs associated with the arrest, seizure or detainment of the vessel are to be for the Customer's account.
- (b) AB will not accept bunker delivery receipts endorsed with "No-Lien" stamps, or words to that effect.

General Terms and Conditions

12. Force majeure

Neither AB nor the Customer shall be responsible for any failure to fulfil their obligations under this Agreement if they have been prevented from doing so by reason of:

- (a) any circumstance whatsoever which is not within their control; or
- (b) by any curtailment, failure or cessation of supply of marine fuel from any of AB's sources of supply provided it is outside the control of AB; or
- (c) by any compliance with any law, regulation or ordinance, or with any order, demand or request of any international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them;
- (d) or by any circumstance which is outside its control which it reasonably considers makes performance of this Agreement uneconomic to it.

13. Indemnity

- (a) The Customer shall indemnify AB and/or its supplier against any claims, losses, costs (including costs as between attorney or solicitor and client), damages, liabilities, fines, penalties and expenses incurred and sustained, arising out or in connection with this Agreement except to the extent that such claims, losses, costs, damages, liabilities and expenses arise through the negligent act or omission of AB or its supplier.
- (b) The Customer shall indemnify AB and its supplier against all expenses, disbursements and all costs which it incurs in taking any measures to remove marine fuel or mitigate the effect of any escape, spillage or discharge which has been caused or contributed to by the Customer.

14. Agents

If this contract is entered into by the Customer as an agent for a principal, whether such agency is disclosed or undisclosed, then such agent shall be liable, as well as the principal, not only as agent but also for the performance of all obligations of the principal.

General Terms and Conditions

15. Termination

This Agreement may be terminated by AB if:

- (a) the Customer breaches any obligation under this Agreement;
- (b) the Customer is placed into liquidation, receivership, administration, or enters into any arrangement or compromise with its creditors or anything analogous to any of the events just described happens to the Customer.

16. Effects of Termination

On any termination of this Agreement:

- (a) all sums owed to AB shall become immediately due and payable;
- (b) AB may suspend delivery or vary the stipulated method of payment with immediate effect if the Customer is in breach of any of its obligations under this Agreement or any of the events described in clause 15 take place.

17. Assignment

Prior to any assignment of this Agreement, the Customer must obtain AB's written consent.

18. Environmental protection

- (a) In the event of any escape, spillage or discharge of marine fuel while delivery is taking place under this Agreement, the Customer shall promptly take such action that is reasonably necessary to remove the marine fuel and mitigate the effects of any such occurrence.
- (b) AB and its supplier are hereby authorised, at their option, to take such measures as are reasonably necessary to remove the marine fuel and mitigate the effects of such an occurrence.
- (c) Any expenses, damages, costs, fines and penalties arising from such occurrence shall be paid by the company or person whose negligent act or omission caused or contributed to it.

General Terms and Conditions

19. **Governing law and jurisdiction**

This Agreement is governed by the laws of New South Wales, Australia.

20. **Entire Agreement**

This Agreement constitutes the entire agreement of the parties concerning its subject matter and any previous agreements, understandings and negotiations on that subject matter are of no effect.

July 2007