

# Terms and Conditions of Sale - Marine Fuels.

BP Marine. People with Energy.





## 1. Application of Terms of Sale and BP Marine Fuels Global Service Guide

These terms of sale and the terms and conditions of the BP Marine Global Services Directory (including any revisions to the BP Marine Global Services Directory) current on the date of delivery apply to all deliveries contracted for unless the Seller expressly agrees otherwise in writing. In the event of any conflict between these terms of sale and the terms and conditions of the BP Marine Global Services Directory, these terms of sale shall prevail. Each delivery shall be a separate contract. The BP Marine Global Services Directory can be accessed on BP Marine's web site [www.bpmarine.com](http://www.bpmarine.com).

## 2. Price

**(a)** Unless otherwise stated in the Seller's quotation, the Seller's prices are for delivery ex-wharf in bond and exclude taxes, duties, wharfage dues, delivery charges (including any pipeline charges specified in the BP Marine Global Services Directory) and any other charges leviable in respect of Marine Fuels for the time of delivery. Any such taxes, duties, wharfage dues, delivery charges and other charges shall be paid by the Buyer at the rate applicable for the actual date of delivery. Prices quoted as "delivered" comprise the ex-wharf price and delivery charges only.

**(b)** The Buyer shall notify the Seller of the earliest estimated lifting date which the Seller will confirm in writing on conclusion of the contract. The Buyer shall begin to take delivery within the 4-day period commencing one day before the agreed earliest estimated lifting date and ending on the day two days after the agreed earliest estimated lifting date.

**(c)** If after the contract is concluded, the Buyer begins to take delivery, or requires delivery to begin, outside the 4 day range in sub-section (b), the Seller shall be entitled to amend its quoted price to take account of prevailing market prices. This right is without prejudice to any claim the Seller may have against the Buyer for damages for failing to take delivery within the 4 day period.

## 3. Grades

**(a)** The Marine Fuels supplied hereunder shall be the Seller's commercial grades offered to customers generally at the time and delivery location from time to time. The Buyer shall be solely responsible for nominating to the Seller the grade of Marine Fuels for each delivery from the range of fuels supplied by the Seller at the location in question. The Seller warrants that the Marine Fuels supplied hereunder shall be within the specification set out in the BP Marine Global Services Directory for the grade nominated by the Buyer unless otherwise agreed in writing by the Seller.

**(b)** Information regarding the typical characteristics of the Marine Fuels at any delivery location shall only be indicative of the Marine Fuels that have been available at that location from time to time and shall not form part of the specification of Marine Fuels to be delivered.

**(c)** All other warranties and all conditions relating to quality, fitness for purpose, description or otherwise, whether expressed or implied by common law, statute, or otherwise are hereby excluded.

**(d)** The Buyer hereby warrants that it has not relied upon any representations made by or on behalf of the Seller but has relied exclusively on its own knowledge and judgement as to the fitness for its purpose of the Marine Fuels ordered. Nothing in this sub-section (d) shall exclude any liability for fraudulent misrepresentation.

## 4. Notice to Port

The Buyer or its representative shall give the Seller's local representative at least 48 hours notice (unless otherwise specified in the BP Marine Global Services Directory), excluding Saturdays, Sundays and holidays, of the exact time and location at which delivery is required and (subject to Section 5) confirmation of the quantities of each grade of Marine Fuels contracted for.



## 5. Reception

**(a)** The Buyer shall be responsible for providing safe reception of the full quantity of Marine Fuels contracted for without risk to the Buyer, the Seller, any agent, employee or supplier of the Buyer or Seller or to the property of any such parties (negligence by the Seller or failure of or defect in the Seller's equipment being solely excepted). The Buyer shall ensure that the vessel to be supplied with Marine Fuels shall be free from all conditions or defects which might give rise to any hazard in connection with the delivery of Marine Fuels to such vessel. The Seller reserves the right not to supply without thereby incurring any liability where it reasonably believes that the Buyer has failed to ensure the safe reception of Marine Fuels.

**(b)** The Buyer shall provide a free side for barge deliveries and prompt the safe passage between the public roadway and the actual place of unloading for road vehicles. The Seller reserves the right not to deliver in locations or over roadways which in its opinion are unsafe for its barges or vehicles without thereby incurring any liability.

**(c)** If a spill occurs during supply the Buyer shall promptly take all action reasonably necessary to remove the spillage and mitigate its effect. If the Buyer fails to promptly take such action, the Seller may, at its option, take such measures it considers to be necessary or desirable in connection with the removal of the spillage and the mitigation of its effects by employing its own resources or contracting with others. The Seller shall indemnify the Buyer against all liability, costs and expenses (including but not limited to those incurred by the Buyer in accordance with this sub-clause (c)) arising from any spillage to the extent that such spillage or any failure to remove the spillage or mitigate its effects has been caused or contributed to by the negligence of the Seller or failure of or defect in the Seller's equipment. The Buyer shall indemnify the Seller against all liability, costs and expenses (including but not limited to those incurred by the Seller in accordance with the provisions of this sub-clause (c)) arising from any spillage except to the extent that such spillage or any failure to remove the spillage or mitigate its effects has been caused or contributed to by the negligence of the Seller or failure of or defect in the Seller's equipment. The Buyer shall promptly provide the Seller with any requested documents and information regarding a spill including the vessel's spill contingency plan or any other applicable programme for the prevention or mitigation of pollution as required by any applicable laws or regulations.

**(d)** If the Buyer fails to take delivery of or rejects any amount of the Marine Fuels contracted for, the Buyer shall be liable for all expenses and loss incurred by the Seller and arising out of such failure or rejection by the Buyer.

## 6. Delivery

**(a)** If delivery is to be made by barge or road vehicle the Buyer shall (except in respect of any port for which it is specified in the BP Marine Global Services Directory that delivery by barge or road vehicle as the case may be is the only method of delivery available) notify the Seller when making its enquiry. The Seller undertakes to provide such delivery only within normal harbour limits. If the Buyer or its representative requests delivery by barge or road vehicle after conclusion of the contract such delivery shall be subject to the reasonable availability of the necessary facilities and payment by the Buyer of any additional costs.

**(b)** Where the Buyer or its representative requests a time of delivery, the Seller's obligation shall be to use reasonable endeavours to deliver as soon thereafter as reasonably practicable having regard to congestion affecting the delivery facilities of the Seller, its suppliers or agents and to prior commitments of barges and vehicles. The Buyer shall not be entitled to demurrage or other compensation for delay unless expressly agreed and confirmed by the Seller in writing.

**(c)** The Seller shall not be liable for inability to deliver on public or dock holidays or on customary non-business days of the week.

**(d)** The Buyer shall pay the Seller for delivery services at the rates applicable on the date of delivery and for all additional charges incurred in connection with the delivery, including but not limited to, port dues, wharfage, demurrage, provision of additional hose in excess of that normally available and the use of all oil pollution control equipment required to effect delivery. Where work is carried out in connection with deliveries outside normal working hours at the port or outside normal harbour limits the Buyer shall be liable for all additional charges.



## 7. Quality, Quantity and Sampling

**(a)** The Seller shall take three samples of the Marine Fuels delivered and the Buyer (or its representative) may witness such sampling. The Seller shall provide the Buyer (or his representative) with a sealed sample of the fuel supplied, such that in the event of a dispute relating to fuel quality the Buyer can send this sample to an independent fuel analysis company. The Seller shall seal all the samples taken by the Seller and record the seal numbers on the delivery receipt note. The Seller's samples will be taken in accordance with one of the following procedures:-

**(i)** Marpol Regulations

**(ii)** Statement of equivalence for sampling of Fuel Oil: Special Circumstances, or equivalent, issued by the regulatory authority responsible for Marpol.

**(iii)** Normal sampling procedures where no Marpol regulations apply at the port in question. The results of the analysis of a sample taken by the Seller with the Seller's seal number recorded on the bunker delivery receipt note shall be conclusive of the quality of the Marine Fuel delivered.

**(b)** When the Buyer (or its representative) or the Master of the vessel requests that sampling is carried out in accordance with the Marpol requirements and the Seller confirms it is safe to do so, the Seller reserves the right to appoint an independent surveyor to take such samples. The costs incurred by the Seller for this service and any consequential costs will be charged to the Buyer. In making such arrangements, no liability for delaying the vessels will be accepted by the Seller.

**(c)** The Seller shall measure the quantity of the Marine Fuels delivered and the Buyer (or its representative) may witness such measurement. The Seller's measurements of volume and calculations of quantity shall, subject to the provisions of sub-section (d), be conclusive of the volume and quantity of Marine Fuels delivered.

**(d)** The Buyer shall not be entitled to complain of an incorrect measurement of the volume of Marine Fuels delivered unless the Buyer or its representative has witnessed such measurement and has made the complaint in writing at the time of delivery.

**(e)** The Seller shall not be liable for any defects in the quality of Marine Fuels unless the Seller receives notice in writing of a complaint within 21 days of delivery and receives full details of the claim with supporting evidence within 90 days of delivery.

## 8. Risk and Property

**(a)** Risk and property in the Marine Fuels delivered shall pass to the Buyer as the Marine Fuels pass the vessel's permanent hose connection.

**(b)** If the Seller agrees to deliver Marine Fuels to the Buyer's nominated barge or coastal lighter, risk and property shall pass to the Buyer as the Marine Fuels pass the final permanent hose connection of the Seller's delivery facility.

## 9. Health, Safety and the Environment

**(a)** The Buyer shall provide its employees, users and customers with health, safety and environmental information (including without limitation Material Safety Data Sheets) ("HSE Data") provided by the Seller from time to time. The Buyer shall ensure that its employees comply fully with all requirements, obligations and recommendations relating to the handling and use of the Marine Fuels delivered hereunder and shall impose upon all of its customers to whom the Marine Fuels are to be supplied the same obligation to comply fully with the requirements, obligations and recommendations of HSE Data.

**(b)** The Seller shall not be responsible in any respect whatsoever for any loss, damage or injury resulting from any hazards inherent in the nature of any Marine Fuels.

**(c)** The Buyer shall at all times comply with any obligations, requirements or recommendations contained in any law, statute, directive or regulation of any territory, state or jurisdiction in or through which the Marine Fuels may be delivered, sold, transported or used and all Government, state or local regulations at the port such as, but not limited to, those related to fire, or spillage or loss of Marine Fuels. Compliance by the Buyer with the recommendations in HSE Data shall not excuse the Buyer from its obligations under this sub-section (c).

**(d)** The Buyer shall indemnify and keep indemnified the Seller against any liability, claim or proceedings whatsoever arising out of or in connection with any failure by the Buyer to comply with its obligations under this Section 9.



## 10. Seller's and Buyer's Liabilities and Consequential Loss

**(a)** The liability of the Seller for any loss, damage, claim or other expenditure arising out of or in connection with the failure by the Seller to perform its obligations under this Agreement shall not be greater than and shall be limited to:-

- (i)** the removal at a reasonable location to be agreed between the Seller and Buyer of, and the replacement by the Seller at a reasonable location to be agreed between the Seller and Buyer of, any Marine Fuel supplied which is not in accordance with this Agreement or, with the Seller's agreement, the removal at a reasonable location to be agreed between the Seller and Buyer of, and reimbursement for the cost of, any Marine Fuel supplied which is not in accordance with this Agreement; and
- (ii)** the reasonable repair costs of any components that are physically damaged as a direct result of using any fuel that is supplied by the Seller and is not in accordance with this Agreement; and
- (iii)** those losses, damages, claims or expenses arising from the death or personal injuries to any person caused by Seller's negligence. Nothing in this Agreement shall in any way limit the Buyer's obligation to mitigate any of its losses.

**(b)** The Buyer shall not assign, transfer or novate the contract or any of its rights and obligations under it without the express consent of the Seller. Seller may assign, transfer or novate all or any part of its rights, liabilities or obligations under this Agreement without Purchaser's written consent to any of its Affiliates. In these terms and conditions, "Affiliate" means any company that directly or indirectly controls, is controlled by or is under common control with a party; for this purpose one company controls another if it holds 50% or more of the voting rights in the other.

**(c)** Any addition to or deletion from the Bunker Receipt made by the Buyer or its representative and/or any documents presented by the Buyer or its representative at the time and place of delivery which purport to alter the terms of the contract shall have no validity.

**(d)** The Seller shall not be liable for any consequential, indirect, incidental, punitive or special losses or special damages, arising out of or in any way connected with its performance of, or failure to perform the contract howsoever arising whether as a result of breach of this agreement, negligence, gross negligence, or wilful default. This includes, without limitation, loss of profit or anticipated profit, loss of time or hire, loss of schedule costs of substitute vessel(s), loss related to the loss of operational use of vessel, physical loss or damage (in whole or in part) of or to cargo, loss of contract(s) or losses associated with business interruption. Nothing in this sub-section (d) shall exclude or limit Seller's liability for death or personal injury caused by Seller's negligence.

## 11. Agency

If the delivery is contracted for by the Buyer as an agent of any other person or by any person as an agent of the Buyer, whether such agency is disclosed or not, such agents and principals shall be jointly and severally liable with the Buyer for all obligations expressed to be those of the Buyer under the contract and for the due and proper performance of the contract.

## 12. Force Majeure

No failure or omission by either party to carry out or observe any of the terms or conditions of the contract shall, except in relation to obligations to make payments under it, give rise to any claim against the party in question or be deemed a breach of the contract if such failure or omission arises from any cause reasonably beyond the control of that party.



## 13. Payment Terms

**(a)** Payment for the delivery and of all other charges shall be made in full (without any abatement, deduction, set-off or counter claim whatsoever) in cleared funds in US dollars in New York. Payment shall be due with effect from the date of delivery and shall be made by means of telegraphic transfer, automated credit transfer or electronic transfer of same day funds quoting the Seller's invoice number and the Buyer's name to Citibank N.A., 399 Park Avenue, New York, NY 10022 (ABA number 021000089) for the account of BP Marine Limited (account number 40550461) or such other bank and/or account as the Seller may specify value dated no later than 30 days (or such other period as is agreed by the parties) from commencement of loading of the delivery in question. If, however, the Seller's bank is closed for business on the last day of the applicable credit period, the Buyer shall make its payment by the last day within such credit period when the Seller's bank is open for business. All bank charges in respect of such payments shall be for the remitter's account. Should any dispute arise between the parties in relation to any item on an invoice under this agreement, the Buyer will make payment in full as set out above. The dispute will be resolved separately and the Seller will issue a debit or credit note as appropriate to the Buyer when the dispute is resolved.

**(b)** The Buyer shall notify (or shall instruct its bank to notify) the Seller as soon as payment has been made, quoting the date on which payment was made, the amount, the name of the bank effecting payment and details of each invoice to which the payment relates. Such notification shall be sent to BP Marine, Building 200, Chertsey Road, Sunbury, Middlesex TW16 7LN and by email to GOMICRED@bp.com.

**(c)** If the Buyer has not by the expiration of the applicable credit period, or any credit period in any other contract between the Seller and the Buyer, paid any amount due to the Seller in respect of any delivery of Marine Fuels by the Seller to the Buyer, the Seller, in addition to and without prejudice to any other rights it may have, shall have the right:

**(i)** if delivery hereunder has been made, notwithstanding the credit period referred to above, to notify the Buyer that the amount due in respect of the delivery hereunder is immediately due and payable whereupon it shall so be paid and

**(ii)** if delivery hereunder has not been made, to notify the Buyer of the termination with immediate effect of the contract for such delivery whereupon it shall so terminate, and, in each case, the Seller shall have the right to set off any amounts that it owes the Buyer, whether under this contract or otherwise, against the amount that the Buyer owes the Seller and to require the Buyer to pay in advance or provide some other security for any future deliveries.

**(d)** The Seller's invoice (which may be sent by telex or by facsimile transmission) shall be based on telex or other advice of the quantity delivered and of other charges if incurred, and payment made pursuant to sub-section (a) shall be subject to such subsequent adjustment as may be necessary on receipt by the Seller of further details or as may be agreed by the parties to be necessary after detailed checking of the invoice. The conversion rate for sums to be paid by the Buyer which have been incurred other than in U.S. dollars shall be the mean of the closing spread for that conversion for the date of delivery reported in the "Financial Times" newspaper of London. If the said rate is not reported the conversion rate shall be the average of all such rates so reported for the calendar month preceding the date of delivery or if no such rates are reported a reasonable rate. Delivery documents may be provided to the Buyer if requested but payment shall not be conditional upon Buyer's receipt of such documents.

**(e)** If the Buyer's credit is deemed by the Seller to be impaired or unsatisfactory, the Seller may (without prejudice to its other rights) require the Buyer at the Seller's option either to pay cash before delivery or to provide security satisfactory to the Seller and to effect immediate payment of any outstanding amount due to the Seller in respect of any other delivery of Marine Fuels by the Seller to the Buyer. In the event of failure by the Buyer to comply with the Seller's requirement the Seller shall have no obligation to make delivery and may terminate the contract on giving notice to that effect to the Buyer.

**(f)** Without limitation to the foregoing or to the Seller's other rights under the contract or otherwise the Seller shall have the right to require, in respect of any payment not made by the due date, the payment by the Buyer to the Seller of interest thereon at 10% per cent per annum, and pro rata for part thereof, such interest to run from the due date until the date payment is received in cleared funds by the Seller's bank.



## 14. Termination in the Event of Liquidation etc.

Notwithstanding anything to the contrary express or implied elsewhere herein, the Seller (without prejudice to its other rights) may at its sole discretion terminate the contract forthwith on notifying the Buyer either orally (confirming such notification in writing) or by notice in writing in the event that a liquidator, trustee in bankruptcy, receiver or receiver and manager or equivalent officer is appointed in any jurisdiction in respect of any assets or undertaking of the Buyer or any of its associated companies, or the Buyer or any associated company enters into an arrangement or composition with its creditors, or any similar appointment, arrangement, or composition is made under any applicable law, or if the Seller has a reason to anticipate any such appointment, arrangement or composition.

## 15. Application of Terms of Sale and BP Marine Fuels Global Service Guide

- (a)** No waiver by either party of any provision of the contract shall be binding unless made expressly and expressly confirmed in writing. Any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.
- (b)** No amendment to any provision of the contract shall be binding unless expressly confirmed in writing by the Seller.
- (c)** If any provision of the contract is invalid, void or unenforceable, this will not affect the validity, legality or enforceability of any other provision of the contract.
- (d)** Without excluding any liability for fraudulent misrepresentation, this Agreement constitutes the entire agreement between Seller and Buyer in relation to its subject matter.

## 16. Notice

Any communication (including without limitation invoices) by either party to the other shall, unless otherwise provided herein, be sufficiently made if sent by post (by airmail where airmail is possible), postage paid or by email transmission to the address of the other party and shall, unless otherwise provided herein, be deemed to have been given on the day on which such communications ought to have been delivered in due course of postal or email communication. Unless otherwise specified by no less than 15 days' notice in writing by the Seller to the Buyer, the address of the Seller to which communications shall be sent by post shall be BP Marine, Building 200, Chertsey Road, Sunbury, Middlesex TW16 7LN and by email to GOMICRED@bp.com.

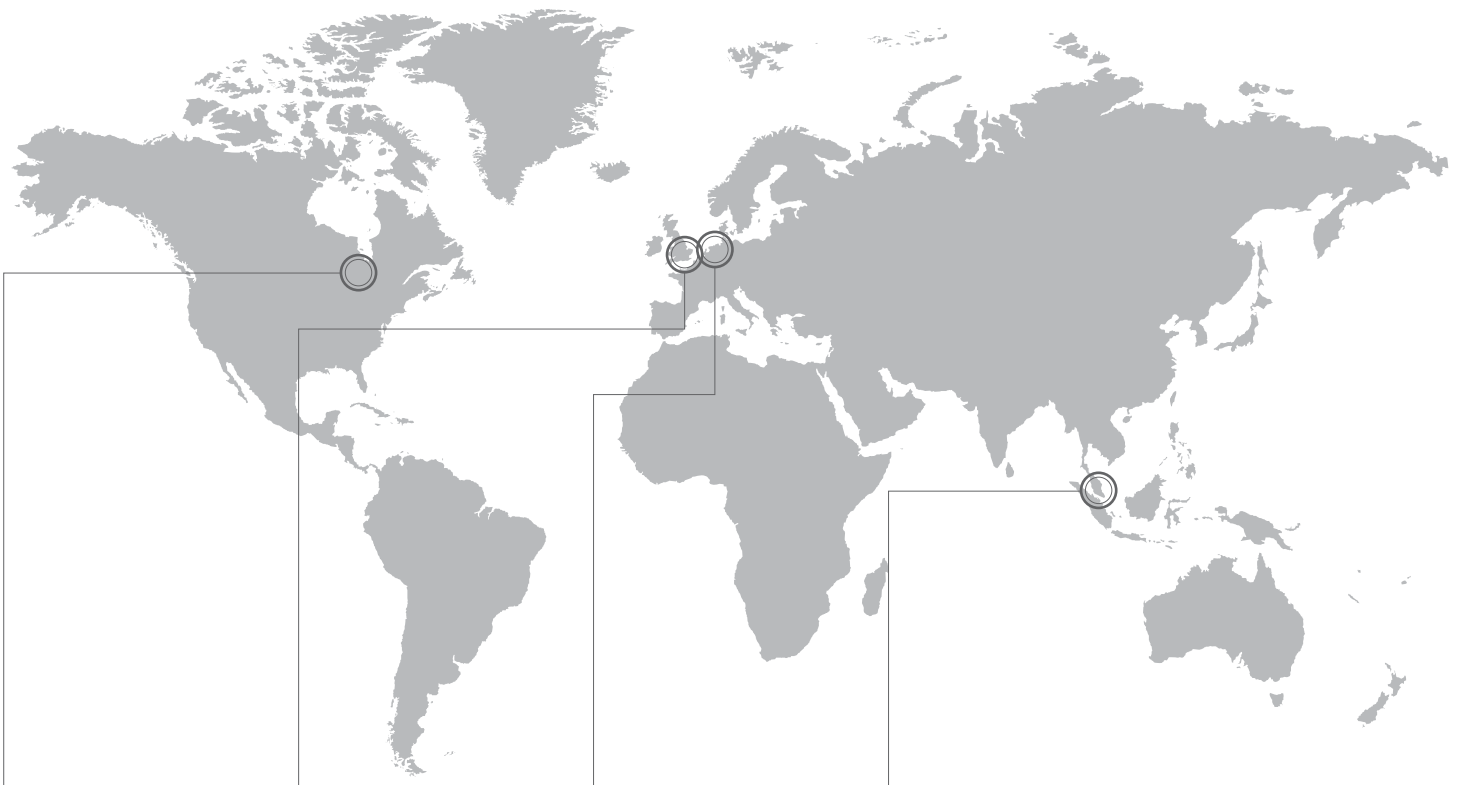
## 17. Arbitration and Governing Law

- (a)** Any dispute arising out of or in connection with the contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this Section. The tribunal shall consist of 3 arbitrators. The place of arbitration shall be London. A claim by the Seller arising from a failure by the Buyer to make payment as provided in Section 13 hereof shall, at the Seller's option, not be a dispute for the purposes of this sub-section (a).
- (b)** The construction, validity and performance of the contract shall be governed by English law.

## 18. Rights of Third Parties

Except for the provisions of sub-sections 3(d) and 10(d) of these terms of sale which may be enforced by the Seller, its Affiliates and its and their directors, employees and agents, the parties do not intend any term of the contract to be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person (a "third party") who is not a party to the contract. The parties may rescind or vary the contract, in whole or in part, without the consent of any third party including, without limitation, those listed above.

## Contact us around the globe



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