

ENJET, INC.

**GENERAL TERMS AND CONDITIONS  
APPLICABLE TO BUNKERING ONLY  
EFFECTIVE APRIL 2007**

- (1) **Quantity/Quality:** Selection of the proper marine fuel for use in Buyer's vessel is the Buyer's sole responsibility. Buyer has the right to appoint, at its own expense, an approved independent petroleum inspector to inspect the marine fuels to be delivered. Any such inspection will take place in the presence of a representative of Seller prior to the marine fuel leaving shore tank, tank trucks or barges. In the absence of specific agreement as to quality, Seller warrants only that fuel sold will be of the quality generally offered by Seller at the time and place of delivery for the grade sold.

Buyer has the opportunity to inspect the marine fuel sold by Seller prior to delivery and acceptance by Buyer. In the event of a dispute as to quality or alleged contamination, Seller shall never be responsible for any debunkering costs, delays, diversion costs, testing, lightering, demurrage, alleged damages to engines, boilers or associated machinery or equipment, or for any other costs whether similar or dissimilar from those enumerated. Seller may, at its option, offer a price discount to Buyer to settle any such dispute. Such proffered discount shall constitute Buyer's sole remedy for any alleged damages or costs. In no event shall Seller ever be liable to Buyer in connection with any such dispute for an amount in excess of \$1.00 per barrel.

The quantity of marine fuels delivered will be determined by measurements of shore tanks, lighters or meters, at Seller's option, and Buyer has the right to have its representative present during such measurement, but determination of quantity will be made solely by Seller and will be conclusive. Adjustments in volume owing to difference in temperature will be made in accordance with API/ASTM-IP Petroleum Measurement Standards for generalized products. Seller will make allowance for all water and non-petroleum sediment in excess of one percent.

- (2) **Agents also Liable:** Should marine fuels be ordered by an agent, both the principal and such agent will be considered as the Buyer under the contract and both of such parties shall be jointly and severally liable for all of the Buyer's obligations there under.

Deliveries of Marine Fuels made hereunder, if sold on a credit basis, are delivered not only on the credit of Buyer, but also on credit of the Vessel and Buyer warrants that Seller will have and may assert a lien against the Vessel for the amount of the purchase of said Marine Fuels.

- (3) **Payment Terms:** Unless otherwise agreed, payment is due within 30 days from delivery date without discount, offset or deduction via wire transfer in same day funds per instruction furnished by Seller. If payment due date falls on a Saturday or a banking holiday other than a Monday, then payment will be due on the

preceding business day. If payment due date falls on a Sunday or a Monday banking holiday, then payment will be due on the following business day. All banking charges will be for the account of the Buyer. Overdue payments shall be subject to an interest charge of 2% per thirty (30) calendar day period compounds or the maximum rate permitted under applicable law, running from the due date of payment. Seller shall have the right to require Buyer to prepay in advance of delivery or open a stand by letter of credit in a form and at a bank acceptable to Seller should Seller, in its sole judgment, deem such security necessary.

- (4) **Title and Risk of Loss:** Seller has good and marketable title to all marine fuels delivered hereunder. Delivery will be complete and risk of loss will pass to Buyer as the marine fuels pass the intake flange of Buyer's vessel or nominated barge. The products shall remain the Seller's property until Buyer has paid for them in full. Until that time Buyer shall hold them as bailee, store them in such a way that they can be identified as Seller's property, and keep them separate from Buyer's own property and the property of any other person. Although the Products remain the Seller's property until paid for, they shall be at Buyer's risk from the time of delivery and Buyer shall insure them against loss or damage accordingly and in the event of such loss or damage it shall hold the proceeds of such insurance on behalf of Seller as trustee of Seller.

Buyer's rights to possession of the Products shall cease if: a) Buyer has not paid for the Products in full by the expiry of any credit period allowed by the Contract or b) Buyer is declared bankrupt or makes any proposal to his creditors for a reorganization or other voluntary arrangement, or c) A receiver, liquidator or administrator is appointed in respect of Buyer's business. Upon cessation of Buyer's right to possession of the Products in accordance with clause 17.2, the Buyer shall at his own expense make the Products available to the Seller and allow Seller to repossess them. Buyer hereby grants Seller, his agents and employees an irrevocable license to enter any premises where the Products are stored in order to repossess them at any time.

- (5) **Notice and Deliveries:** Buyer will give Seller at least five days prior written notice of the delivery desired, specifying the vessel, the estimated date of arrival, the vessel's location and grade and quantity of marine fuel requested. Buyer will give Seller's local representative at the delivery port concerned not less than 36 hours advance notice by written email followed by phone call of firm delivery information excluding Sundays and Holidays. Notwithstanding anything else herein, should the Vessel not arrive within the determined time range the Contract shall be considered null and void unless Seller elects to accept the new arrival date of the Vessel as the basis of a new contract for which a new price can be agreed upon with the Buyer.

In the event that delivery is effected outside normal working hours and is permitted by port regulations, Buyer will pay all overtime and additional expenses incurred in connection therewith, in addition to the agreed product price.

Buyer will make all connections and disconnections of the delivery hose to Buyer's vessel or barge and will render all other necessary assistance and equipment to receive promptly all deliveries hereunder. Responsible for cost for additional hoses, flanges or equipment necessary to secure delivery.

Seller will not be liable for any demurrage or loss incurred by Buyer due to congestion affecting Seller's delivery facilities, prior commitments of available barges or to any other delay in delivery. Buyer will be liable for all demurrage or additional expenses incurred by Seller if Buyer causes delays to Seller's facilities in effecting delivery. Buyer will also pay any charges for mooring, unmooring and port dues incurred. Buyer will be liable for any expenses incurred by Seller resulting from Buyer's failure to take delivery to its full contract quantity.

- (6) **Safety and Environmental:** in the event of any spill during delivery of marine fuels, Buyer will immediately take all action necessary to effect clean-up at Buyer's expense. Failing prompt action by Buyer, Seller is authorized to conclude such clean-up at Buyer's expense. The Buyer shall indemnify and hold Seller and/or Supplier harmless against any claims or liability, expenses, damages, costs, fines and penalties arising out of or in connection with any leakage, spillage or overflow unless such leakage, spillage or overflow shall be proven to be wholly caused by Seller's gross negligence.

Buyer warrants that the marine fuels purchased hereunder will be utilized for the operation of the receiving vessel and that vessel only. Buyer warrants that the vessel nominated is in compliance with all applicable regulations. The vessel is subject to Seller's acceptance and will not be bunkered unless in Seller's sole judgment the vessel is free and clear of all conditions, difficulties, peculiarities, deficiencies or defects which might impose hazards in connection with mooring, unmooring or bunkering of vessel.

- (7) **Force Majeure:** Neither Seller nor Buyer shall be responsible or liable in damages or otherwise for any delay or failure to perform any obligations hereunder, other than the Buyer's obligation to make payment, where performance is delayed, prevented or made substantially more expensive by circumstances beyond that party's control, including acts of God, strikes, fires, floods, wars (whether declared or undeclared), riots, destruction of the oil, delays of carriers due to breakdown or adverse weather, perils of the sea, embargoes, accidents, restrictions imposed by any governmental authority (including allocation, priorities, requisitions, quotas) or other conditions of force majeure. Notwithstanding the foregoing, Buyer shall be responsible for any demurrage charged by Seller's delivery vessel caused by or during conditions of force majeure, where such charges are usual and customary in the industry. The time of Seller to make, or Buyer to receive, delivery hereunder shall be extended during any period in which delivery shall be delayed or prevented by reason of any of the foregoing causes, up to a total of thirty (30) days. If any delivery hereunder shall be so delayed or prevented for more than 30 days, either party may terminate this contract with respect to such delivery upon written notice to the other party. If price controls are imposed, Seller shall not be required to deliver the maximum price is below that previously established with the Buyer.

- (8) **Governing Law:** This contract shall be governed by and construed in accordance with the laws of the United States of America. However, nothing in this clause shall preclude Seller, in event of a breach of this Agreement by the Buyer, from taking any such action or actions as it shall in its absolute discretion consider necessary to enforce, safeguard or secure its rights under this Agreement in any court or tribunal of any state or country, including, but not limited to the action to enforce its rights of lien against ships, the existence and procedure of enforcement of such right of lien being determined by the local law of the place where enforcement is sought, or to otherwise obtain security by seizure, attachment or arrest of assets for any amount(s) owed to Seller.
- (9) **Claims:** Any claims for shortage must be made within ten days after Buyer's receipt of product, accompanied by proper written documentation. All other claims including claims for alleged off-spec material must be in writing and made within fifteen days after delivery of such claims will be deemed waived in their entirety. These conditions constitute an integral part of any offer and/or Contract made for Products and/or Services provided by Seller to Buyer and override any terms and conditions incorporated or referred to by the Buyer whether in its order or elsewhere. Failure by either party at any time to enforce any of these Conditions shall not be considered as a waiver by such party of such provisions or in any way affect the validity of these Conditions. If any provision of the Contract is invalid, void, or unenforceable, it will not affect the validity, legality or enforceability of any other provision of the Contract. Product delivered under the Contract shall be segregated from Product(s) already on board the receiving Vessel. Any consequences arising from commingling Products aboard the Vessel shall remain the joint responsibilities of the receiving Vessel and the Buyer. In any event, the Seller's obligation hereunder shall not exceed the direct expenses incurred for the removal and replacement of the Products, and shall not include any consequential or indirect damages, including, without limitation, demurrage claims, loss of opportunity or loss of profit. Should the Buyer remove the Products without the prior consent of the Seller, all such costs incurred in doing so shall be for Buyer's account. The Buyer shall defend, indemnify and hold Seller harmless with respect to any and all liability, loss, claims, expenses, or damage whatsoever that the Seller may suffer or incur by reason of, or in any way connected with the fault or default of Buyer, its employees, servants, officers, or crew of the Vessel, agents and representatives in the purchase of, receipt, use storage, handling or transportation of the Products. The Seller and/or Supplier shall not be liable for any special, indirect, consequential, punitive or exemplary damage of any kind including but not limited to loss of prospective profits, anticipated cost savings, contracts or financial or economics loss, claims in tort including negligence of the Seller and/or Supplier, its agents, servants, or sub-contractors, arising out of, or in connection with the performance or non-performance under the Contract. In any event, the liability of the Seller and/or Supplier shall be limited to the piece of the products supplied under the contract.
- (10) **NO WARRANTY:** EXCEPT FOR THE WARRANTY OF TITLE, NO CONDITIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF

MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE OR OTHERWISE, ARE MADE BY SELLER OTHER THAN THAT THE OIL CONFORMS, WITHIN TOLERANCE STATED, TO THE DESCRIPTION STATED HEREIN.

- (11) **No Assignment:** Neither party shall assign this contract or any part thereof without the prior written consent of the other party.
- (12) **Taxes:** In addition to the stated price, Buyer shall pay Seller all applicable federal, state and local excise, gross receipts, import, motor fuel, superfund, spill or other taxes, other than taxes on income.
- (13) **Material Safety Data Sheets:** Buyer acknowledges that Seller has provided or made available an appropriate material safety data sheet (MSDS), in accordance with the applicable requirements of the Occupational Safety and Health Administration at or prior to the time of delivery. Buyer will comply with all handling and usage requirements for the product.
- (14) **Breach by Buyer:** Seller may terminate the Contract in whole or in part, at its own discretion upon the breach of any provision hereof by Buyer. Seller reserves the right to recover from Buyer all damages and costs (including but not limited to loss of profit) resulting from any breach of the contract.