

# **ESTIMAR S.A.**

## **TERMS AND CONDITIONS FOR THE SALE OF MARINE BUNKER FUELS, LUBRICANTS AND OTHER PRODUCTS.**

### **INTRODUCTION**

These Terms and Conditions, para one through 15, may be referred to as “**ESTIMAR S.A. Terms and Conditions 1999**”. Each Agreement will be as negotiated between ESTIMAR SA, Rincon 602 Piso 11, CP 11000 Montevideo, URUGUAY hereinafter called the Seller and the Customer, hereinafter called the Buyer as confirmed by fax or telex. In the event of any conflict between the below terms and conditions and the terms of the Confirmation fax or telex from the Sales Agent, Scandinavian Bunkering AS, the terms of the latter shall be the ruling.

### **1. Agreement**

The present Conditions shall be binding between the Seller and the Buyer of bunker oils and/or other products unless anything to the contrary has been agreed to in writing. It is the Buyer's responsibility to request a copy of Sellers terms and Conditions if they are not in the Buyer's position or known to the Buyer.

### **2. Choice of bunker oil**

The Buyer shall alone bear the responsibility and risk for the choice of bunker oil, and the Seller shall not be obliged to check whether said choice is suitable for the vessel in question. If the oil lives up to its specifications and is generally of the same quality as the oil marketed in the geographical area concerned, the Seller shall have performed correctly in this respect.

### **3. Delay**

If the bunker oil is not supplied in time, and it is proved that this is due to error or neglect on the part of the Seller, the Seller shall be liable for any substantiated loss caused thereby. Vessels shall be bunkered as promptly as circumstances permit, but Seller shall not be liable for demurrage or any loss due to congestion at the terminal or prior commitments of available barges. If the Buyer cancels the Agreement, the liability shall be limited to two days of lost time, calculated as time charter equivalents in the Chartering Agreement to which the Buyer is a party, with an addition of 2.5 per cent of the price stipulated for the consignment.

If the buyer maintains the Agreement, the liability shall be limited to the mentioned two days of lost time.

It is a condition for the right claim compensation as well as the right to cancel the contract legally that delivery has been agreed for a definitely specified date and hour and that this time of delivery is exceeded by twelve hours, and further that the Buyer has given 48 hours notice to the Seller or to whom the Seller has directed of the vessel's

arrival at the point of delivery. This notice may, however, only be given on normal workdays between 09.00 a.m. and 4 p.m., and it shall be given by fax or telex.

#### **4. Quality**

If it is substantiated, cf. point 12, that the Seller due to error or neglect has supplied bunker oil which does not live up to the quality, as stated under point 2, the Seller shall be liable for any substantiated loss caused thereby; the Seller shall, however, not be liable for any loss of the Buyer through lost contracts, and the liability shall be limited to the cost of repairing machine parts plus five days of lost time, as defined under point 3.

In the case of repairs, 10 per cent of the invoice value of the spare parts shall be deducted for each year and part thereof during which the part concerned has been used.

#### **5. Force Majeure**

The Seller shall not be liable for any failure to fulfil any term or condition of the Agreement if fulfilment has been delayed, hindered or prevented by any circumstances whatsoever which are not within the immediate control of the Company including, but without limiting the generality of the foregoing, any strike, lockout or labour dispute or reasonable result thereof, any governmental order, request or restriction, any limitation, restriction or interruption to existing or contemplated sources of supply of product or the means of supply.

#### **6. Payment**

The Buyer shall, however, have 30 calendar days from the date of delivery to make the payment, unless otherwise agreed. If this term is not adhered to, interest shall be charged on the amount due at a rate of 2 % per month or the maximum permitted by law. The Buyer is also committed to pay any collection or attorney fee if incurred in collection of the invoice.

The Buyer shall not be entitled, without the Seller's consent in writing, to offset any claims against the Seller, whether or not these claims are connected, and whether or not they arise out of the consignment concerned. Should the Buyer nevertheless offset an amount, the Seller's claim shall be increased by 20 per cent as a penalty.

If the Seller has not received full payment within five days from the agreed date of payment or the Buyer's financial condition in the Seller's opinion becomes impaired, or if proceedings in bankruptcy or insolvency are instituted by or against the Buyer, or in the case of liquidation or dissolution of buyer, or any other reason at Seller's sole discretion, any and all postponed or deferred payment including interest thereon, shall become immediately due and payable. The Seller reserves the right to offset the same against any debts and to secure any outstandings by arrest of any assets World Wide to the Buyer or its holding or subsidiary companies, affiliates, associated or related companies. Exercise of any such rights shall be without prejudice to the Seller's right to recover damages or losses sustained and resulting from any default by the Buyer and the Seller shall have the right to suspend/and to cancel deliveries hereunder..

## **7. Cancellation and Breach**

In the event of the buyer at any time cancel a nomination or the vessel fails to take delivery of part or all of the nominated products the Seller shall have the right to claim against the buyer and the vessel for all loss and damage thereby suffered including loss of profit. The Seller may treat any other breach by the buyer of any express term of the agreement as a breach of a condition and it may at its discretion thereupon accept the breach, treat the agreement as repudiated and seek such remedies as it considers appropriate.

## **8. Title and Risk**

Delivery shall be deemed complete when the oil has passed the physical supplier's delivery facilities with the receiving facilities provided by the buyer. However, ownership of the product shall only pass to the buyer after the Seller has received the full payment as agreed. Until such time as the payment is received by the Seller, the party in possession of the product delivered, shall hold the product for the Seller.

The risk for the bunker oil shall be transferred successively, as it passes through the fixed receiving connector in the Buyer's vessel.

## **9. Delivery**

If nothing is mentioned when the purchase is contracted, the Buyer shall in addition to the purchase price pay the costs of the delivery, whether it takes place from a fixed installation, a barge or a tank lorry, and the Buyer shall furthermore pay any extra costs connected with supplies made on Sundays and holidays, and outside of normal working hours at the place of work. Payments according to the present provision shall be made pursuant to the rules stipulated under point 6.

## **10. Lien**

In addition to the Buyer being responsible for payment of the purchase price and any costs pursuant to point 9, the Seller reserves the right to look to the Owner of the vessel to the extent the Shipowner is responsible pursuant to the legislation of his homeland, and the Seller furthermore reserves the right to safeguard himself by maritime lien or the link in the vessel to the extent that this is authorised in a jurisdiction where the vessel can be found. It is noted that the rule concerning venue and choice of law mentioned under point 15 shall be considered unwritten in relation to the rights conferred on the Seller according to the present point.

## **11. Claim**

Complaints on quantity must be notified in writing to the physical supplier, immediately upon delivery, with copy to the Seller. Complaints on quality must be presented to the Seller in writing within 14 days after delivery. If the Buyer does not lodge a claim in writing about the quality or specifications of the oil supplied within 14 days from the date of delivery, any claim for damages against the Seller shall have lapsed.

**12. Samples**

The parties agree that only analyses of sealed samples taken as “drip samples” at the suppliers manifold shall form the basis of documentation that the bunker oil was substandard or “off spec.” when delivered.

**13. Transfer of Payment**

Payment shall be made in full without any deductions, by cable bank transfer according to the payment instructions in the invoice. All transfer charges to be for Buyers account. Checks are not acceptable as payment.

**14. Pollution**

In case of spillage when bunker oil is taken on board the vessel, the Buyer and the Seller shall be jointly obliged to co-ordinate their efforts to limit the damage as much as possible, whether or not one party maintains that the other party is responsible for the accident. Positive disbursements for combating the pollution shall be born equally by the parties, until the degree of guilt on both sides has been established through an agreement or a judgement. Half reimbursement of amounts disbursed shall be payable on demand.

If a third party, including public authorities, should look to one party or the other, or to both off them jointly, in connection with a pollution claim, the internal settlement shall take place following an evaluation of the degree of guilt. If the liability can be imposed on the parties or an objective basis, the loss shall be born by the Buyer.

**15. Law**

All conflicts between the Buyer and the Seller shall be settled according to the Laws of Republica Oriental del Uruguay, apart from what is mentioned under point 10.

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