

**J.A.M. Marine Services, L. L. C.**  
**Conditions of Sale**

**These conditions constitute an integral part of our offers and contracts for deliveries and services, both in current and future commercial relations. All divergent agreements, and in particular any of our customers' conditions of business which conflict with our own, as well as any ancillary agreements, shall require our express written approval.**

**1. Definitions**

1.1 "Seller" shall mean J.A.M. Marine Services, L.L.C. and its suppliers and/or contractors.

1.2 "Buyer" shall mean the party contracting to buy Marine Fuels under this Agreement.

1.3 "Marine Fuels" shall mean the Seller's commercial grades of fuel oils as currently offered generally to its customers for similar use at the time and place of delivery.

1.4 "The Contract" shall mean a separate written agreement and/or written confirmation, purchase order or invoice relating to the purchase and sale of Marine Fuels between the Buyer and the Seller.

1.5 "These Conditions" shall mean this document entitled "J.A.M. Marine Services, L.L.C. Conditions of Sale."

1.6 "Goods" shall mean the Marine Fuels and ancillary goods and services to be purchased by Buyer pursuant to The Contract.

1.7 "Vessel" shall mean the vessel to which the Marine Fuels are to be delivered by the Seller.

**2. Seller's Terms Prevailing**

2.1 The supply by Seller of Goods and every quotation, pro-forma invoice, order confirmation, price list or other similar document relating to Goods is made or solely subject to these Conditions and no representation or warranty, collateral or otherwise, shall bind Seller and no statement made by any representative by or on behalf of Seller shall vary these Conditions, unless such representation, warranty or statement shall be made in writing and signed by an officer of Seller and stated to be made specifically in connection with this Article 2.

2.2 Where there is any variance between these Conditions and Buyer's conditions of business, these Conditions shall prevail.

2.3 These Conditions embody all the terms and conditions and supersede and cancel in all respects all previous agreements, conditions and understandings between Seller and Buyer, whether oral or in writing.

2.4 No oral explanation or oral information by the parties hereto, or any of them, shall alter the meaning or interpretation of these Conditions.

**3. Terms of Offers and Contracts**

3.1 Seller's offers and estimates of costs of Goods are to be understood as being conditional and subject to availability and alteration and shall include only such services as are expressly specified.

3.2 The Contract shall be deemed made with effect from the date that Seller provides to Buyer notice of reconfirmation of Buyer's order for Marine Fuels. This same provision shall also apply with regard to additions and alterations to The Contract.

3.3 Except where otherwise expressly provided for in The Contract, all particulars notified to the Buyer (e.g. Analytical Data) and all documents to which access has been given shall be deemed to contain only

those approximate values customary in the trade. Seller reserves the right to make alterations to such particulars or documents or the Goods. This same provision shall apply also to industry standard changes in the quality of Goods. For this purpose it is not basic alteration if the altered quality will not affect or be generally so regarded in the trade as not affecting its ordinary and customary uses.

3.4 Agreed commercial terms of payment shall be deemed to have the meaning contained in the invoice generated for the particular sale. Said terms are normally 10 days from date of delivery but may be altered at the sole discretion of the Seller.

3.5 In the case of imported goods, the Contract shall be deemed to be concluded subject to the provision that Seller is granted any export or import licenses, which may be necessary. Without prejudice to paragraph 4.1 below, Buyer shall indemnify Seller for any such expenses incurred in connection with the securing or delay in incurring of the aforementioned licenses.

3.6 Seller shall be entitled to recover from Buyer all losses, costs, and expenses incurred as consequences of cancellations for whatever reason.

#### **4. Price**

4.1 Unless where otherwise agreed, prices shall be deemed to be in U.S. Dollars. All applicable taxes, levies, duties and other costs including transportation and those imposed by governments, state or local authorities will not ordinarily be included in the price quoted.

4.2 Buyer is responsible for ensuring that appropriate tax, duty or other exemption filings are made with the appropriate authorities.

#### **5. Quality**

5.1 The Marine Fuels to be delivered hereunder shall be Seller's commercial grades of Marine Fuels as currently offered generally to its customers at the time and place of delivery. **SAVE FOR THE TRANSPORTING IN A COMMERCIALY REASONABLE MANNER, SELLER GIVES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF PURPOSE OF GOODS SUPPLIED UNDER THE CONTRACT.**

5.2 Buyer shall have the sole responsibility for the selection and acceptance of Marine Fuel, including determination of compatibility with Marine Fuel already on board the Vessel, for use in the Vessel to which such Marine Fuel is delivered.

5.3 In order to determine the quality of Marine Fuel, Seller shall be entitled to draw, or cause to be drawn, samples from each delivery and to have them sealed. One of these samples will be handed to the master of the Vessel which has received the delivery, the remaining samples will be held by Seller. In the event of a quality complaint, Buyer shall agree with Seller upon the appointment of an independent report to be entrusted with examination of the quality of Marine Fuel. This quality examination shall be effected solely on the basis of the sealed samples, the result of which shall be binding upon both parties. Buyer shall pay the cost of analysis, unless the complaint as to quality is shown to be justified. In the event that Seller and Buyer are unable to agree upon the appointment of an independent report, within twenty-four (24) hours from the need for same, Seller, in Seller's sole discretion, shall thereafter appoint an independent report which shall be binding on Seller and Buyer.

5.4 Seller's transportation warranty obligation under paragraph 5.1 shall lapse if the Goods are altered, improperly handled, or processed or combined with other goods or materials. Such obligation shall also lapse if Buyer has neglected to protect any of Seller's claim of rights against all persons affiliated with shipment of the goods (e.g. forwarding agents, carriers, suppliers, warehouseman, federal railways etc.) or against their insurer or has failed to safeguard all documentary evidence necessary to determine any loss or damage (e.g. recognizance of damage on waybills, items written off on tally notes or bills of lading, bunker receipts or warehouse receipts) or failed to immediately notify Seller in writing of such loss, damage, factual records of loss or damage, etc.

## 6. Quantity

6.1 All quantities referred is in The Contract are to be approximate with a margin of 10 percent more or less at Seller's sole option.

6.2 The quantity of Marine Fuels delivered shall be determined from the tank dips or gauges of equipment offloading delivery or by gauging in Seller's shore tank or by Seller's oil meter at Seller's election. Except where government regulations or local authorities determine otherwise, adjustment in volume owing to difference in temperature shall be made in accordance with API/ASTM/IP petroleum measurement standards for generalized petroleum products. In the measurement of Marine Fuel, Seller shall make allowances for all water and non petroleum sediment in excess of one percent (1%). Buyer may be present or represented by properly accredited agent when such measurements are taken but if Buyer is not present or represented then Seller's determination of quantities shall be deemed to be correct and final. Buyer shall inspect Marine Fuels delivered hereunder before it is pumped out of Seller's shoretank or barge, or any other accredited method of delivery provided such ability to inspect is available.

## 7. Deliveries

7.1 Where under the Contract a supply date has been nominated by Buyer such date is not guaranteed and time shall not be of the essence in respect thereof or of any other obligation on Seller's part contained in Buyer's conditions. Seller shall not be liable to make good any damage or loss whether arising directly or indirectly out of delays in delivery of Goods.

7.2 If within the framework of a covering transaction, and for which Seller is not responsible, Seller is not, or is not with sufficient punctuality, so supplied by Seller's contractor that Seller is able punctually to discharge delivery/service obligation vis-à-vis Buyer, Seller shall be entitled to withdraw from The Contract entered into with Buyer, provided it relates to non-deliverable goods.

7.3 Vessels shall be bunkered as promptly as circumstances permit but neither Buyer nor Seller's agents shall be liable for damage or for any loss due to congestion at loading terminals or prior commitments of available barges.

7.4 If Seller at any time for any reason believes there may be such a shortage of supply at any port that it may be unable to meet the demands of all its customers, Seller may allocate its available and anticipated supply among its customers in such a manner as it may in its sole discretion determine.

7.5 If Buyer causes delays to Seller's facilities in effecting deliveries Buyers will pay demurrage to Seller on the basis of actual cost incurred and reimburse Seller for all other losses and expenses arising there from.

7.6 Seller shall not be required to deliver Marine Fuels into any of the Vessels tanks which are not regularly used for bunkering.

7.7 If a government license or permit is required for deliveries hereunder, no delivery shall be made until appropriate license or permit has been obtained by Seller and/or issued to Buyer.

7.8 Delivery should be made in bunker lots at wharf or shore terminal of Seller or by any other accredited methods of delivery at Seller's sole discretion.

7.9 When deliveries are made by barge, Buyer should provide free of cost a clear, safe, birth position or anchorage for the barge(s) along side the Vessel's receiving lines. Seller shall be under no obligation to make a barge delivery when in it's opinion a clear and safe birth, position or anchorage is not available. **BUYER SHALL AGREE TO PAY, INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS AGAINST ALL CLAIMS AND EXPENSES FOR ANY LOSS, DAMAGE, DEMURRAGE OR DELAY CAUSED BY BUYER'S VESSEL TO BARGING EQUIPMENT.**

7.10 Buyer shall make all connections and disconnections between the delivery hoses and vessels intake lines and shall render all other necessary assistance and provide sufficient tanking and equipment and receive promptly all deliveries hereunder.

7.11 Delivery shall be deemed complete as the Marine Fuel passes the flanges connecting the pipeline or delivery hoses with the intake lines of the Vessel. At which point Seller's responsibilities cease and Buyer shall assume all risks and responsibility.

7.12 On completion of delivery to the Vessel the master of the Vessel or authorized representative of the Buyer shall thereafter give to Seller a signed receipt therefor in the form required by Seller. Seller shall not be deemed to have any constructive knowledge of the authority or lack of authority of any representative of Buyer and shall be under no duty to verify the authority of such representative. The acceptance of the aforesaid signed receipt in good faith by Seller, shall bind Buyer.

7.13 If Buyer fails to take delivery of the Marine Fuels or any part thereof, Seller shall be entitled to return the undelivered Goods to storage and recover any costs incurred including loss of product value through downgrading from Buyer.

7.14 Delivery shall take place as permitted by port regulations, unless otherwise agreed by Buyer and Seller, during local normal working hours. Any expenses arising from compliance of port regulations and overtime charges will be for Buyer's account.

7.15 Seller, at Seller's sole discretion, may elect to discontinue operations at any delivery location for any reason without obligation to Buyer.

**7.16 MARINE FUEL AND GOODS ARE DELIVERED HEREUNDER NOT ONLY UNDER THE CREDIT OF BUYER BUT ALSO ON THE CREDIT OF VESSEL RECEIVING DELIVERY OF THE MARINE FUELS AND GOODS AND IT IS AGREED AND BUYER WARRANTS THAT SELLER WILL HAVE AND MAY ASSERT A LIEN AGAINST THE RECEIVING VESSEL FOR THE AMOUNT OF THE INVOICE VALUE ARISING FROM THE DELIVERY OF SAID MARINE FUEL AND GOODS.**

7.17 If Buyer fails to accept/collect the delivery/service on the date of delivery whether it merely be the nominated date, or otherwise, Seller shall be entitled but not obliged to repudiate performance of The Contract and to claim damages for nonperformance and in Seller's discretion compensate for the loss caused -or without an evidence of loss - 10% of the agreed price

## **8. Claims**

8.1 Any claims by Buyer as to shortages of quantity must be made at time of delivery. Seller shall be notified in writing of any claimed defects in the quality immediately after such alleged defects are discovered. Each of the foregoing preliminary notices shall be followed by a formal written notice of claim to Seller containing all details necessary to allow evaluation of the claim. **IF BUYER FAILS TO GIVE ANY INITIAL NOTICE OR IF THE FORMAL WRITTEN NOTICE IS NOT RECEIVED BY THE SELLER WITHIN FOURTEEN (14) DAYS AFTER DELIVERY OF THE MARINE FUEL TO VESSEL ANY CLAIM SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN WAIVED.**

## **9. Payment**

9.1 Payment shall be made by Buyer as directed by Seller and shall include the amount of any taxes payable by Seller in relation to the sale of goods.

9.2 Unless otherwise agreed, payment to Seller shall be made by wire transfer. Delivery documents may be provided to Buyer at its request; however, payment shall not be conditional upon Buyer's receipt of such documents.

9.3 Overdue payments shall at Seller's sole discretion be subject to an interest charge running from the due date of payment, at the rate of two percent (2%) per thirty days (30) period compounded or the maximum rate permitted under applicable law.

9.4 If Buyer is in default of full payment or if Buyer's financial condition in Seller's sole opinion, becomes impaired, or if proceedings in bankruptcy or solvency are instituted by/or against the Buyer, or in a case of liquidation or dissolution of Buyer, or any other reason at Seller's sole discretion, any and all postponed or deferred payments including interest thereon, shall become immediately due and payable and Seller reserves the right to claim the same against any debts to Buyer or its holdings or subsidiary companies, affiliates, associated or related companies. Exercise of any such rights shall be without prejudice to Seller's right to recover damages or losses sustained and resulting from any default by Buyer and Seller shall have the right to suspend or to cancel deliveries hereunder.

9.5 When paying, Buyer shall not be entitled, without Seller's consent in writing, to offset any amounts for claims against Seller, whether or not these claims are connected, and whether or not they arise out of The Contract.

9.6 Seller has the right to offset any claims, for whatever legal grounds against claims the Buyer may have against Seller, its holding or subsidiary companies, affiliates, associated or related companies.

9.7 Seller shall be entitled absolutely to payment in full without discount, reduction, withholding or set off (whether legal or equitable), which shall be made by wire transfer to Seller's bank account. Should the due date for payment fall on a Saturday, Sunday or public holiday then payment should be received by the previous day of working.

## **10. Notice**

10.1 Buyer shall give Seller directly or through Buyer's agent at least 72 hours notice (Saturday, Sunday and holidays excluded) of Vessels readiness to receive delivery and exact required quantity to enable Seller to make necessary arrangements for the delivery.

10.2 Buyer shall give Seller final notice of requirement directly or through Buyer's agent at least 48 hours (Saturday, Sunday and holidays excluded) before loading Marine Fuels into barge or other accredited methods of transportation.

## **11. Pollution**

11.1 In the event of any leakage, spillage or overflow of bunkers causing or likely to cause pollution occurring at any stage, Buyer shall regardless of whether Buyer or Seller is responsible, immediately take such action as is necessary to effect clean up and failing prompt action, Buyer (who hereby warrants that it has been authorized by the Vessels owners) authorizes Seller to take whatever measure Seller deems fit to effect cleanup at Buyer's expense.

11.2 Buyer warrants that the Vessel at all material times will be in compliance with all national and international regulations. It shall be the responsibility of the master of the Vessel to notify Seller of any special conditions, difficulties or defects with respect to the Vessel or any part thereof which might adversely affect the delivery of bunkers. Seller has the right to refuse to deliver bunkers to the Vessel if in the sole discretion of the Seller, supply of all or any part thereof renders it probable that such delivery will result in adverse consequences of any kind whatsoever.

## **12. Assignments**

12.1 Seller may assign all or any of its rights and obligations hereunder. The Contract shall not be assigned or transferred by Buyer without the written consent of Seller.

**13. Indemnity**

**13.1 WITHOUT PREJUDICE TO ANY CONDITIONS OF THE CONTRACT, SELLER SHALL NOT BE LIABLE FOR EXPENSES, CLAIMS, DAMAGES, AND LIABILITIES ARISING IN CONNECTION WITH BUYER'S RECEIPT, USE, STORAGE, AND TRANSPORTATION OF MARINE FUELS OR GOODS DELIVERED UNDER THE CONTRACT, UNLESS THE SAME IS DUE TO SELLER'S WILLFUL MISCONDUCT. IN THE COURSE OF BUSINESS WITH TRADERS, SELLER WILL BE LIABLE ONLY FOR THE WILLFUL MISCONDUCT OF ITS LEGAL REPRESENTATIVES AND EMPLOYEES. IN ALL OTHER CASES SELLER SHALL NOT BE RESPONSIBLE AND BUYER SHALL PAY, INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS AGAINST ALL LOSSES, CLAIMS, DEBTS AND COST ARISING FROM ACTIONS FROM ANY THIRD PARTY.**

**13.2 SELLER'S SUPPLIER OF MARINE FUEL, AND ALL EMPLOYEES, REPRESENTATIVES OR AGENTS OF SELLER AND OF SUCH SELLER'S SUPPLIERS WILL HAVE THE BENEFIT OF ANY AND ALL RIGHTS STIPULATED FOR SELLER UNDER THESE CONDITIONS WITH RESPECT TO EXCLUSION OF LIABILITY AND WITH RESPECT TO INDEMNIFICATION OF SELLER THEREOF.**

**13.3 IN THE EVENT THAT SELLER OR ANY OTHER PERSON WHO MAY BENEFIT FROM SELLER'S STIPULATIONS IN THIS CONNECTION WOULD BE HELD LIABLE, THE TOTAL LIABILITY SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE NET PRICE OF THE DELIVERY INVOLVED AND IN ANY EVENT SELLER SHALL HAVE NO LIABILITY FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGE (INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE) OR ANY NATURE WHATSOEVER.**

**14. Liability**

**14.1 ANY CLAIMS FOR DAMAGES BY BUYER SHALL BE LIMITED TO THE VALUE OF THE RELEVANT CONTRACT.**

**15. Force Majeure**

**15.1 In the case of extraordinary events which are beyond the control of Seller and are unforeseeable in spite of the necessary care and which do not allow Seller with due consideration of its other delivery obligations to make contractual deliveries or which would allow Seller to make such deliveries only at economically unreasonable conditions, Seller shall be entitled for the duration of such obstruction to restrict or discontinue deliveries of - in the case of prolonged obstruction - to terminate them without notice. This shall apply without limitation for instance in the case of war or warlike conditions and their consequences, civil unrest, sabotage, operations disturbances, labor disputes, measures by law or order by the authorities, obstruction or delay in transportation, disturbance in supply including events in the area of the crude oil producing countries. The same shall also apply if Seller is forced by market conditions to change its source of resources in such a way that Seller can no longer reasonably be expected to continue deliveries. The quantity of Marine Fuel which has not been delivered for the reasons stated in this clause shall be deducted from the quantity of Marine Fuel to be sold and purchased under The Contract. Failure in delivery or accept delivery of Marine Fuel which is caused by or results from the operating of this clause shall not extend the term of The Contract.**

**16. Breach**

**16.1 Seller may terminate The Contract in whole or in part at its own discretion upon the breach of any provision thereof or hereof by Buyer.**

**16.2 Seller reserves the right to recover from Buyer all damages and costs (including but not limited to loss of profit and attorney's fees) resulting from any breach by Buyer of The Contract.**

**17. Waiver**

17.1 Failure by either party at any time to embrace 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.

## **18. GOVERNING LAW AND GENERAL**

18.1 The proper law of these conditions shall be Texas Law and any dispute arising hereunder shall, except where otherwise herein provided, be dealt with exclusively by mediation and arbitration in Texas save that Seller shall be entitled to bring proceeding against Buyer in the Courts of the jurisdiction where Buyer resides or carries on business or in the Courts of the jurisdiction where any maritime lien is to be served against or arrest made to Buyer's Vessel.

18.2 If any term or provision or any part thereof in these conditions shall be held to be illegal and unenforceable in any enactment or rule of law, such term or provision or part thereof shall to that extent, be deemed not to form part of these Conditions and the enforceability of the remainder of these Conditions shall not be affected thereby.

18.3 The parties hereby submit all controversies, claims and matters of difference either directly or indirectly related to this Agreement to non-binding mediation and binding arbitration in Houston, Harris County, Texas in accordance with the Alternative Dispute Resolution Procedures Act of the state of Texas and the Texas General Arbitration Act and pursuant to the Commercial/Business rules and procedures for mediation and arbitration of the American Arbitration Association. This submission and agreement to mediate and arbitrate shall be specifically enforceable. The parties hereto agree to submit all controversies to a one day mediation as a condition precedent to any arbitration proceeding. Arbitration may, thereafter, proceed in the absence of any party if written notice (pursuant to the American Arbitration Association's rules and regulations) of the proceedings has been given to such party. The parties agree to abide by all awards rendered in such arbitration proceedings. Such awards shall be final and binding on all parties to the extent and in the manner provided by the Texas General Arbitration Act and the prevailing party in any such proceeding shall be entitled to recover any and all reasonable attorneys' fees, expert witness fees and any and all other expenses and costs associated or in connection with such proceeding. All awards may be filed with the Clerk of the District Court in Harris County, Texas, as a basis for judgment and the issuance of execution for collection and, at the election of the party making such filing, with the clerk of one or more other courts, state or federal, having jurisdiction over the party against whom such an award is rendered, or his property.