



## GENERAL TERMS AND CONDITIONS OF SALE

### GTC applicable to sales of Marine Fuels Sept 1, 2006

It is agreed on the date shown in the Sale Contract between the party named as Seller and the party named as Buyer, that the Seller shall sell and deliver to the nominated vessel and the Buyer shall purchase, the Marine Fuels (as defined below) under the following general terms and conditions, (the "General Terms and Conditions"). Headings in these General Terms and Conditions are for identification purposes only and shall not be deemed to be part, or be taken into consideration in the interpretation or construction, of them. Unless the General Terms and Conditions expressly requires otherwise, any words denoting the singular shall include the plural and vice-versa.

#### 1 – DEFINITIONS

Throughout these General Terms and Conditions and the Sale Contract, except where the context expressly requires otherwise, the following definitions shall be applied:

- • "Marine Fuels" means products derived from crude oil, delivered or to be delivered to the Vessel for consumption.
- • "Seller" means the party contracting to sell and deliver or to arrange to sell and deliver Marine Fuels.
- • "Buyer" means the party contracting to purchase, take delivery of and pay for the Marine Fuels.
- • "Bunker Delivery Note" means the document signed and stamped by: the Master of the Vessel or his representative, and by the Seller or its representative, and returned to the Seller or its representative, as acknowledgement of the delivery.
- • "Bunker Requisition form" means the document signed by the Master of the Vessel or his representative, and the Seller or its representative, which shall contain the quantities and the grades of the Marine Fuels to be delivered.
- • "Bunker Tanker Safety Check List" means the document signed by the Master of the Vessel or his representative, and the Seller or its representative, which shall enable them to check that all the safety requirements have been met.
- • "Master of Vessel" means the individual authorised to represent the Vessel.
- • "Vessel" means the vessel to which the Marine Fuels are physically delivered.
- • "Sale Contract" means any contract created by acceptance by the Seller of an order placed by the Buyer for Marine Fuels.

Each delivery shall be governed by these General Terms and Conditions, which supersede any earlier general terms and conditions. Where there is a conflict between the General Terms and Conditions and any special conditions that may have been agreed in writing by Seller in the Sale Contract, the latter shall prevail.

#### 2 - GRADES/QUALITY

- (a) The Buyer shall have the sole responsibility for the nomination of the grades of Marine Fuels suitable to the Vessel, including determination of compatibility with marine fuels already on board the Vessel. The Buyer shall accordingly state the grades required in the Sale Contract.
- (b) The Seller warrants that the Marine Fuels will comply with the grades nominated by the Buyer, will be of a satisfactory quality and that their characteristics will correspond to those generally offered in the relevant port of delivery. Unless otherwise agreed and stated in the Sale Contract, the Marine Fuels shall be described using ISO Standard 8217/2005 or any subsequent amendment at the time of the Sale Contract.
- (c) Except as specifically provided in Clause 2 (b), the Seller does not provide any guarantees or warranties, whether, expressed or implied, as to the merchantability, fitness or suitability of the Marine Fuels for any particular purpose or otherwise.
- (d) The Buyer shall take all reasonable action, including retention and burning of Marine Fuels in order to eliminate or minimise any costs associated with off-specification, or suspected off specification, Marine Fuels. To this end, the Buyer shall cooperate with the Seller in achieving the most cost-effective solution. In any event, the Seller's obligations shall not exceed direct expenses incurred for the removal and replacement of Marine Fuels and shall not include any consequential or indirect damages or injuries, including without limitation, demurrage claims, loss of contract or loss of profit. If the Buyer removes such Marine Fuels without the consent of the Seller, then the Buyer shall pay all related costs

#### 3 – QUANTITIES

The quantities of Marine Fuels to be delivered by the seller are those stated in the Sale Contract, more or less five percent, unless agreed otherwise.

#### 4 – MEASUREMENTS

- (a) Subject to the provisions of Clauses 7 (d) and 10, the quantities of Marine Fuels delivered shall be determined from the official gauge or meter of the bunkering barge or tank truck effecting delivery, or of the shore-tank in case of delivery ex-wharf. The Seller's measurements shall be deemed to be correct and binding.
- (b) The Buyer and the Seller shall both have the right to be present or represented when such measurements are taken and shall be given sufficient information and facilities to verify the quantity delivered.
- (c) The Marine Fuels to be delivered under the Sale Contract shall be measured and calculated in accordance with the ISO 91 – 1/1992 and ISO 91 – 2/1991 Petroleum measurements tables.

#### 5 – SAMPLING

- (a) The Seller shall arrange for four (4) identical representative samples of not less than 400 ml each for each grade of Marine Fuels to be drawn during the entire bunkering operation in the presence of both the Seller and the Buyer or their respective representatives.
- (b) The samples shall be drawn according to MARPOL 73/78 Annex VI.
- (c) These samples shall be securely sealed and provided with labels according to MARPOL 73/78 Annex VI requirements including, but not limited to, the Vessel's name and IMO number, identity of delivery facility, product name and grade, delivery date and place and seal number, authenticated with the Vessel's stamp and signed by the Seller's representative and the Master of the Vessel or his authorised representative.
- (d) The samples shall be retained by the Seller and by the Vessel and securely stored for the period after the delivery of Marine Fuels to the Vessel as defined below:
  - \* samples 1 and 2: 60 days by the Seller
  - \* sample 3: 12 months by the Vessel, (the "Marpol Sample")
  - \* sample 4: 60 days by the VesselAt the end of those periods, the remaining quality samples 1, 2 and 4 may be discarded unless the Buyer has made a complaint or claim under Clause 10.

#### 6 - DELIVERY

- (a) The Marine Fuels shall be delivered to the Vessel at the port or place stated in the Sale Contract. Notwithstanding the Clause 8 (c) below, subject to the regulations of the port, delivery shall be made day and night, Sundays and holidays included.
- (b) The Vessel's estimated time of arrival ("ETA") shall be as stated in the Sale Contract. The Seller shall use its reasonable efforts, but shall be under no obligation to deliver if the Vessel arrives outside the estimated time of arrival and the Buyer shall reimburse any costs incurred by the Seller in delivering after late arrival.
- (c) The Buyer, or its agents (the identity of which the Buyer shall inform the Seller upon signature of the Sale Contract) at the port or place of delivery, shall give the Seller, or its representatives at the port or place of delivery, 72, 48 and 24 hours prior written notice before arrival, indicating the exact location at the port of delivery, and the exact time within the estimated time of arrival, at which deliveries are required. If the Buyer or its agents fail to do so, the Seller shall not be liable for any resulting delay in delivery and the Buyer shall reimburse any costs incurred by the Seller.
- (d) The Marine Fuels shall be delivered:
  - (i) ex-pipe or
  - (ii) by tank trucks or
  - (iii) by bunkering bargeas stated in the Sale Contract.
- (e) The Seller shall have all permits required to comply with all relevant regulations relating to delivery of Marine Fuels at the port or place of delivery.
- (f) The Buyer shall ensure that the Vessel has all certificates required to comply with all relevant regulations relating to delivery of the Marine Fuels at the port or place of delivery and shall instruct the Master of the Vessel to:
  - (i) advise the Seller in writing, prior to delivery, of the maximum allowable pumping rate and pressure and to agree on communication and emergency shut-down procedures;
  - (ii) notify the Seller in writing prior to delivery, of any special conditions, difficulties, peculiarities, deficiencies or defects in respect of, and particular to, the Vessel, and which might adversely affect the delivery of the Marine Fuels,
  - (iii) provide a free side to receive the Marine Fuels and to render all necessary assistance which may reasonably be required to moor or unmoor the delivery vessel or to connect or disconnect the delivery hose(s).

The Buyer and Vessel shall be solely responsible for making all connections and disconnections between the delivery hose(s) and the Vessel's intake pipe and shall require the hose(s) to be properly secured and connected to the Vessel's manifold prior to the commencement of delivery of Marine Fuels to the Vessel.

- (g) The Vessel shall provide sufficient segregated tankage to receive the contracted quantity of Marine Fuels, plus five (5) percent (see also Clause 3). The Buyer shall pay any cost or expenses incurred by the Seller resulting from short storage capacity of the Vessel's tankage.
- (h) The Seller shall not be responsible for on-board safety or storage failures that may affect the delivery as requested and shall have the right to recover from the Buyer any resulting cost incurred (see also Clause 10 (b) for quality claims). In the event of delay in the use of delivery or barging facilities due to the Buyer or to the Vessel for any reason whatsoever, the Buyer shall reimburse the Seller for any expenses, including demurrage, incurred due to such delay. The Seller shall not be liable for delays due to congestion of ports and terminal installations or of bunkering pier.

## **7 – DOCUMENTATION**

- (a) Before commencement of delivery, the Seller or its representative shall present for acknowledgement by the Master of the Vessel or his representative, a Bunker Requisition Form or similar document, duly signed by the Seller or its representative and by the Master of the vessel or his representative and containing the quantities and the grades of the Marine Fuels to be delivered.  
Before commencement of delivery, the Seller or its representative shall also present for acknowledgement by the Master of the Vessel or his representative, a Vessel / Bunker Tanker Safety Check List or similar document, duly signed by the Seller or its representative and by the Master of the vessel or his representative, which shall enable to check that all the safety requirements have been met.
- (b) Once the delivery is completed and quantities measured, a Bunker Delivery Note shall be signed and stamped by the Master of the Vessel or his representative and by the Seller or his representative, and returned to the Seller or its representative, as acknowledgement of the delivery. A Bunker Delivery Note shall also be retained by the Master of the Vessel and kept on board the Vessel for a minimum of three (3) years from the date of delivery. The Bunker Delivery Note shall contain the following minimum information:
  - Viscosity
  - Delivered quantity in volume units
  - Density in kg/m<sup>3</sup> at 15°C.
  - Delivered quantity in metric tons
  - Temperature observed
  - Flash point
  - Sulphur content
  - Vessel name and its IMO numberas well as any other information required by MARPOL 73/78 Annex VI.
- (c) If the Master of the Vessel is not satisfied with the Marine Fuels, sampling, quality, quantity or any other matter concerning the Marine Fuels or their delivery, he shall make appropriate remarks in the Bunker Delivery Note, either detailing the complaints or referring to a separate letter of protest to be issued and delivered immediately.

## **8 – PRICE**

- (a) The prices applicable to any delivery are the prices applicable on the date of delivery and for the specified location within the delivery country.
- (b) The price of the Marine Fuels shall be in the amount expressed per unit and in the currency stated in the Sale Contract for each grade of Marine Fuels delivered free on board or ex-wharf as applicable and stated in the Sale Contract. The price shall be valid for the time range stated in the Sale Contract (the "price validity time range").  
The Seller shall be under no obligation to deliver if the Vessel arrives outside the price validity time range as stated in the Sale Contract.  
If the Vessel does not arrive within the specified time range, the Sale Contract shall be considered terminated unless the Seller elects to accept a new readiness date as the basis of a new contract, for which a new price can be agreed upon with the Buyer.
- (c) The Buyer shall pay any and all additional charges, if applicable including but not limited to:
  - (i) Wharfage charges, barging charges or other similar charges,
  - (ii) Mooring charges or port duties incurred by the Seller which are for Buyer's account,
  - (iii) Duties, taxes, charges, freights or other costs in the country where delivery takes place, for which the Seller is accountable but which are for the Buyer's account.

Delivery is to take place during working days and hours at the relevant port of delivery. Any delivery outside these periods, if permitted by port regulations, may give rise to overtime charges which the Buyer must pay.

- (d) If the Buyer fails to take delivery, in whole or in part, of the specified quantities, the Buyer shall be responsible for any costs resulting from their failure to take delivery, as well as for any losses incurred by the Seller to downgrade the fuels.
- (e) If the order is cancelled, and therefore the Sale Contract terminated, and if the Vessel still calls at the contractual port within the contractual estimated time of arrival and/or price validity time range, the Buyer shall pay to the Seller a minimum of three thousand (3000) US dollars as liquidated damages, and the Buyer agrees that this is a fair assessment of the damages so caused to the Seller. That amount could be increased in proportion to the cost and damages incurred by the Seller.

## **9 – PAYMENT**

- (a) The Buyer shall pay for the Marine Fuels within 30 days from the date of delivery (electronic or telegraphic invoice is acceptable, at the option of the Seller) unless otherwise agreed in the Sale Contract. If the Buyer has paid in advance of delivery, it shall be adjusted on the basis of the actual quantities of Marine Fuels delivered and any additional payment/refund, as the case may be, shall be made in accordance with this Clause 9.
- (b) Payment shall be made in full, without set-off, counterclaim, deduction or discount, free of bank charges in the manner and at a place indicated on the invoice.
- (c) Payment shall be deemed to have been made on the date the payment is credited to the account of the bank designated by the Seller. If the payment date falls on a non-business day, the Buyer shall pay on or before the business day nearest to the due date. If the preceding and succeeding business days are equally near to the due date, then payment shall be made on or before the preceding business day.
- (d) Any delay in payment shall entitle the Seller to claim an interest at the rate of 1.5% (one and a half per cent) per month. Without prejudice to the foregoing, the Seller is entitled to suspend deliveries or to require prior payment in cash for any further deliveries as long as any amount remains overdue, regardless of the cause of the delay in payment.
- (e) In case of a dispute involving one or more items of an invoice, the Buyer shall pay the full amount to the Seller according to the payment terms and shall notify the Seller in writing of any disputed items before paying the Seller.

## **10 – CLAIMS**

- (a) Any dispute as to the quantity delivered must be noted at the time of delivery in the Bunker Delivery Note or in the letter of protest referred to in Clause 7(c) above in order to be admissible. Any claim as to short delivery shall be presented by the Buyer in writing within 15 days from the date of delivery, failing which any such claim shall be deemed to be waived and absolutely barred. Any check by the Buyer of the quantity delivered shall not be taken into consideration unless it is made by a specialist organisation of international reputation approved by Seller and in the presence of a representative of the Seller. Failing this acknowledgement, the Seller's quantity determination shall be conclusive.
- (b) (i) Any claim as to the quality or description of the Marine Fuels must be notified in writing with all documentary evidence, as per Clause 7(c) or promptly after the circumstances giving rise to such claim have been discovered. If the Buyer does not notify the Seller of any such claim within 30 days of the date of delivery, then those circumstances shall be presumed not to have been caused by any deficiency in the quality or description of the Marine Fuels supplied and any such claim shall be deemed to be waived and absolutely barred. Equally, no claim will be admissible if the product delivered is found to have been mixed with another product on board the Vessel supplied.  
(ii) In such event the parties shall have the quality of the Marine Fuels analysed by a mutually agreed, qualified and independent laboratory. The Seller shall provide this laboratory with one of the samples retained by them as per Clause 5(d) If ISO grades have been specified the analysis shall be established by tests in accordance with ISO 8217/2005 and ISO 4259, as amended. Unless otherwise agreed, the expenses of the analysis shall be borne equally by the Seller and the Buyer. The result of this joint quality inspection shall be final and binding as evidence of the quality of the product delivered.
- (c) The Buyer's submission of any claim does not relieve it of responsibility to pay in full as required under Clauses 8 and 9.

## **11 - RISK/TITLE**

Risk in the Marine Fuels shall pass to the Buyer once the Marine Fuels have passed the flange connecting the Vessel's bunker manifold with the delivery facilities provided by the Seller. Title to the Marine Fuels shall pass to the Buyer upon payment for the value of the Marine Fuels delivered, pursuant to the terms of Clause 9.

Until such payment has been made, the Seller shall have a right of lien over the Vessel for the value of the Marine Fuels delivered. If the Marine Fuels have been commingled with other bunkers on board of the Vessel, the Seller shall have the right of lien over such part of the commingled bunkers as corresponds to the value of the quantity of the Marine Fuels delivered.

## **12 – TERMINATION**

Without prejudice to accrued rights, either party shall be entitled to terminate the Sale Contract by means of a written notice in the event of:

- (a) breach of the General Terms and conditions or of the Sale Contract by the other party, but only insofar the other party has not cured its breach, if curable, within 30 days of receiving written notice of the default from the first party.
- (b) any application being made or any proceedings being commenced, or any order or judgement being given by any court, for:
  - (i) the liquidation, winding up, bankruptcy, insolvency, dissolution, administration or re-organisation or similar, or
  - (ii) the appointment of a receiver, liquidator, trustee, administrator, administrative receiver or similar functionary of the other party or all or a substantial part of its assets (otherwise than for the purpose of reconstruction or amalgamation)
- (c) any suspension of payment, cessation to carry on business or compounding or making any special arrangement with its creditors by the other party.
- (d) any act being done or event occurring which, under the applicable law, has a substantially similar effect to any of those acts or events.

Termination by a party under this Clause 12 shall not affect any other rights or remedies of such party under the law or otherwise.

## **13 – COLLECTION**

Deliveries of Marine Fuels are made not only on the credit of the Buyer but also on the faith and credit of the Vessel and the Seller will have, and may assert a lien against, such Vessel for the amount of the delivered price of said Marine Fuels.

Additionally, the Seller will have and may assert a lien for the said amount of the delivered price against such Vessel, if the laws applicable at the place of Seller's address, at the place of delivery of the Marine Fuels and/or at the place of seizure of such Vessel, grant or recognise a lien for Marine Fuels delivered to a vessel. All costs associated with the seizure of the Vessel shall be for the Buyer's account. Any additional security measures taken by the Seller shall not operate as a waiver of this provision. If at any time a price provided under these General Terms and Conditions and/or the Sale Contract shall not then conform to the applicable laws, regulations or orders of a Government or other competent authority, appropriate price adjustments will be made. The Buyer shall not be entitled to cancel the effect of the lien by wording on the delivery ticket or otherwise.

## **14 - INDEMNITY/ LIABILITY**

Each of the parties shall be liable, pursuant to the commonly applicable provisions of the law, for breach of its duties towards the other party as regards performance of the Sale Contract.

Except as otherwise provided in the General Terms and Conditions or in the Sale Contract, the Buyer will indemnify, defend and save harmless the Seller from and against any claims, demands, proceedings, damages and liabilities for loss of, or damage to, property or for death of or injury to any person and against all associated direct costs (including reasonable attorney's fees), losses and expenses incurred or sustained arising out of or in connection with any Sale Contract except to the extent caused by the negligence or the wilful misconduct of the Seller.

Notwithstanding anything to the contrary in these General Terms and Conditions or in the Sale Contract, the Seller shall have no liability to the Buyer under or in connection with the Sale Contract for any loss or damage of any kind, direct or indirect, special, incidental or consequential, or for loss of profit sustained by the Buyer.

## **15 – SUBSTITUTION**

The Seller reserves its right to substitute for itself a third party for the performance of all or part of its obligations. The Seller shall remain responsible for the performance of the Sale Contract.

## **16 - FORCE MAJEURE**

- (a) In addition to any other excuse provided by law, no failure or omission by either party to carry out or observe any of the provisions of the Sale Contract shall give rise to any claim against that party, or be deemed to be a breach of contract, if the same shall arise out of force majeure, which is defined as any cause not reasonably within the control of that party, whether or not foreseen, including (without limitation) such causes as labour disputes, strikes or other differences with workmen or unions, governmental intervention, or the party's response to the insistence of any governmental instrumentality or person purporting to act for it, acts of administrative authorities, decisions of the courts, embargo, requisition, mobilization, quarantine, blockade, riot, wars, military operations, national emergency, terrorism actions, civil commotion, hijacking, fire, explosion, mechanical breakdown, flood, accident, storm or any act of God.
- Any curtailment, failure or cessation of supplies of Marine Fuels from any of the Seller's sources of supply (whether in fact sources of supply for the purpose of any Sale Contract or not), provided that such curtailment, failure or cessation is related to a circumstance which is outside the control of the Seller, shall be considered as an event of force majeure for the purpose of these General Terms and Conditions.
- (b) If by reason of any of the causes referred to in Clause 16(a), either the availability from any of the Seller's sources of supply of Marine Fuels, whether deliverable under any Sale Contract or not, or the normal means of transport of such Marine Fuels is delayed, hindered, interfered with, curtailed or prevented, then the Seller shall be at liberty to withhold, reduce or suspend deliveries under any Sale Contract to such extent as the Seller may in its absolute discretion think fit and the Seller shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. Any additional quantities which the Seller does acquire from other suppliers or from alternative sources may be used by the Seller at its complete discretion and need not to be taken into account by the Seller for the purpose of determining the extent to which it is to withhold, reduce or suspend deliveries under any Sale Contract. The Buyer shall be free to purchase from other suppliers any deficiencies of deliveries of Marine Fuels caused by the operation of this Clause 16 but the Seller shall not be responsible for any additional cost thereby incurred by the Buyer.
- (c) The Seller 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 the Seller in making the relevant supply due to factors which are beyond the control of the Seller.
- (d) The obligations of the party affected by a case of force majeure shall be suspended during the period of continuance of such a case of force majeure.
- (e) Where the event of force majeure continues for more than one (1) month, and in the absence of an agreement between the parties, each of them may then terminate the Sale Contract fully and automatically, by simple written notice to the other.
- Such termination shall not give rise to any compensation or indemnity of any kind.

## **17 - SAFETY AND ENVIRONMENT**

In the event of any spillage (which for the purpose of this Clause 17 shall mean any leakage, escape, or overflow of the Marine Fuels) causing or likely to cause pollution occurring at any stage of the bunkering operation, the Buyer and the Seller shall jointly, and regardless as to whether the Buyer or the Seller is responsible, immediately take such action as is necessary to clean up, which shall always be conducted in accordance with such local laws and regulations that may apply.

If the pollution is caused by an act or omission of the Buyer, its servant or agents (other than the Seller), the Buyer shall indemnify the Seller for the cost incurred by the Seller in connection with it.

## **18 - MATERIAL SAFETY DATA SHEETS**

Material Safety Data Sheets (M.S.D.S.) are available on the websites [www.quickfds.com](http://www.quickfds.com) and [www.marinefuels.total.com](http://www.marinefuels.total.com). Seller will send a hard copy of the M.S.D.S. upon request.

## **19 - LAW AND JURISDICTION**

Any dispute arising out of the Sale Contract or of these General Terms and Conditions shall be exclusively referred to the Tribunal de Commerce of Le Havre, France, subject to the procedures applicable there. The laws of France shall govern the Sale Contract and these General Terms and Conditions.