



## GENERAL CONDITIONS OF THE DUTCH ASSOCIATION OF INDEPENDENT BUNKER SUPPLIERS

### 1. Applicability of conditions

1.1.

These conditions apply to all offers, quotations, orders, agreements, services and all subsequent contracts of whatever nature, except where expressly agreed in writing otherwise, made by or to or entered into by a member of the association.

1.2.

General trading conditions of another party shall not apply and are being rejected explicitly, unless expressly accepted in writing by the member of the association.

1.3.

In case for whatever reason one or more of the (sub) clauses of these general conditions are invalid, the other (sub)clauses remain valid.

### 2. Definitions

2.1.

Seller: the member of the association using these trading conditions.

2.2.

Buyer: any party asking offers or quotations for ordering bunkers and/or services and any party on whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made.

2.3.

BUNKERS: The bunker fuel and/or lubricating oils which is subject to an offer, quotation, order or agreement, including services.

### 3. Offers, quotations and prices

3.1.

All offers and quotations submitted by the seller are without engagement to the seller unless stated otherwise.

3.2.

An agreement shall only be binding to the seller upon written confirmation by the seller thereof, or alternatively upon commencement by the seller of the execution of the agreement. If buyer begins to take delivery or requests delivery to begin outside the running 48 hours range of the stated ETA of the vessel, seller shall be entitled to amend its agreed selling price under the contract. This entitlement is without prejudice to any claim seller may have against buyer for failing to take delivery within the 3 calendar days' range referred to before in this clause.

3.3.

Agreements entered into by brokers or other representatives on behalf of the seller will only bind the seller upon written confirmation by the seller.

3.4.

The seller's prices are based on taxes, duties, costs and charges and on the price level of crude oil or components for bunkers existing at the time of the conclusion of the agreement. Any later or extra tax, assessment, duty or other charge, of whatever nature and however named, or any increase thereof, or any price increase of crude oil or components for bunkers and any increase in additional costs borne by the seller caused by any change in the seller's contemplated source of supply, coming into existence after the agreement has been concluded, shall be added to the agreed purchase price, provided that the seller shall give the buyer prior notice to this effect.

3.5.

All prices and/or tariffs are exclusive VAT, unless specifically mentioned otherwise.



#### **4. Specifications (quality-quantity)**

4.1.

The specifications as given to the buyer are approximate analyses, unless stated otherwise by the supplier.

4.2.

The grades of bunkers and the quantity thereof available at the port of loading shall be the grades and quantities of bunkers as agreed upon between the seller and the buyer.

4.3.

Where standard specifications are being given, quality tolerances are accepted within the reproducibility and repeatability of the applicable test methods described in ISO 8217, without compensation.

4.4.

In respect of the quantity agreed upon, the seller will be at liberty to provide, and the buyer will then have to accept, 5% more or less, with no other consequences than corresponding invoicing.

#### **5. Loading conditions, delivery and risk**

5.1.

The buyer shall accept actual delivery of the BUNKERS at the permanent intake connections of the relevant vessel at wharf or marine loading terminal at the port of delivery or, as the case may be, alongside barges or upon passing of the ships' rail, whichever is the earlier.

5.2.

In all cases, risk in the BUNKERS will pass from the seller to the buyer at actual delivery.

5.3.

The buyer warrants that respective vessel will provide and keep provided throughout the delivery manipulations a free and safe side for the purpose of delivery.

5.4.

Connection of the delivery hose to the intake of the respective vessel and disconnection therefrom as well as pumping and all other acts shall be performed under the direction and supervision of the officers of the respective vessel and under responsibility of the vessel and the buyer.

5.5.

In case the buyer for whatever reason fails to accept the BUNKERS in full or in part at the place or time designated for delivery, the seller shall, without prejudice to all its other rights, be at liberty to either dispose of or store the BUNKERS or take any other action which it may deem appropriate, such as the seller's sole discretion, leaving unaffected all the seller's rights as set out in these conditions.

#### **6. Delivery**

6.1.

The time of delivery as given by the seller will have been given approximately, unless specifically agreed otherwise.

6.2.

The time of delivery will only be binding upon the seller when all information, necessary for the seller to comply with its obligations, has timely come into the possession of the seller.

6.3.

In any case the buyer must give not less than 48 hours notice, in writing by telefax, telex or confirmed E mail, (Sundays and holidays, whether by law or by custom of the port, excepted) to the seller and/or the seller's agent in the port of loading of vessel's readiness to receive delivery.

The buyer guarantees that the ship will be ready for taking delivery on the agreed time of delivery.

6.4.

The seller shall be entitled to deliver the BUNKERS in part deliveries, in which case each part delivery shall be construed as a separate agreement.



6.5.

Vessels shall be supplied as promptly as circumstances permit. Any supply within the contract is not guaranteed and time shall not be of essence in respect thereof. Seller shall not be liable for demurrage or for any losses due to congestion at seller's storage or delivery facilities or due to any prior commitment or unforeseen inflicted delay of available transportation. Notwithstanding the provision of article 11 hereof, the seller can only be held liable for damages due to late delivery, when after renewed and explicit notice, the seller fails to effect delivery.

6.6.

One delivery receipt will be handed to the vessel's representative. A copy may be forwarded to the buyer by telefax, E mail or in hardcopy by mail at buyer's request. Failure to produce the second copy does not exempt buyer from his obligation to pay the invoiced amount in full within the agreed term.

## **7. Measurements/quality control**

7.1.

Densities determined for the purpose of converting volumes into weight shall always be determined in vacuum. The quantity of BUNKERS delivered shall be determined from the gauges of seller's shore tanks, or the barges effecting delivery or by the seller's oil meter, at the seller's option. In gauging shore tanks or barges the chief engineer of the respective vessel or his representative shall jointly with seller's representative measure and verify the quantity of BUNKERS delivered from tanks from which deliveries are being made. Should said chief engineer or his representative fail or decline to verify quantities, measurements of quantities made by the seller as aforesaid shall be final, conclusive and binding as to quantities sold and delivered, and in any such event the buyer shall have waived all claims for variance.

7.2.

Adjustment in volume owing to differences in temperature shall be made in accordance with the abridged volume correction table of the ASTM-IP petroleum measurement tables.

7.3.

Unless quality shall compulsorily be determined at the receiving vessel's manifold (but only to the extent that this is the case), the barge sample shall be conclusive and binding evidence of the quality of the BUNKERS delivered. Two representative samples will be drawn from the barge, and, in as far as applicable, from the receiving vessel's manifold. The samples will be properly sealed, signed and labelled. One sample (or, in as far as applicable, one of each samples) shall be handed over to the ship's officer responsible for accepting the delivery of BUNKERS and/or to buyer's representative. The other sample(s) will be retained by the seller for a period of 3 months. In case the BUNKERS have been delivered from a land tank (whether directly ex land tank or through a barge), at the option of the seller, the land tank sample will be conclusive and binding evidence of the quality of the BUNKERS delivered instead of the barge's sample. No samples subsequently taken will be allowed as (additional) evidence.

## **8. Complaints**

8.1.

Complaints concerning quantity shall have to be submitted to the seller immediately upon completion of delivery, failing which the rights to complain or to claim compensation of whatever nature will be waived for all times.

8.2.

Complaints concerning quality shall have to be submitted to the seller in writing within 14 days after delivery, failing which the rights to complain or claim compensation of whatever nature will be waived for all times.

8.3. The buyer shall be obliged to make payment in full and fulfill all other obligations in accordance with the terms hereof, whether or not he has any complaints.

8.4.

In any case, claims will cease to exist unless legal proceedings will have been instituted before the competent Court within 12 months after the date of delivery or the date that delivery should have been made.



## **9. Payment terms**

9.1.

Payment of the agreed purchase price and all extra costs incurred is due immediately against presentation of the seller's commercial invoice in the manner as agreed at the time of the conclusion of the contract (i.e. by telefax, E mail or in hardcopy by mail). Under normal circumstances and without prejudice of the other stipulation of these conditions, the seller will not take collection measures within a period of 30 days after the delivery - unless a specifically different payment term has been agreed and confirmed in writing. In case of payment later than the 30th day - or the different payment day agreed - of the delivery date, interest of 1,5% per month or part thereof will be due.

9.2

However, payment shall be made immediately in case of bankruptcy, liquidation or suspension of payment or comparable situation of the buyer, or arrest upon assets and/or claims of the buyer, or in case of any other situation, which, in the sole discretion of the seller, adversely affects the financial position of the buyer.

9.3.

Payment must be made without any set-off or deduction or compensation, at the bank account, indicated by the seller on the respective invoice (sub 9.1).

9.4.

In case of late or non-payment of any (part) amount due to the seller, the buyer will be considered to be in default, without any notice being required. In such case the seller has the right to cancel discount, if any. Interest of 1,5% per month or part thereof will be due over the overdue amount as of the date of default.

9.5.

Payments made by the buyer shall, notwithstanding the description, be credited with costs, subsequently with interest, and thereafter with invoices in the order of their age, also if not yet mature.

9.6.

All costs borne by the seller in connection to the collection of overdue payments, whether made in or out of Court and in general all costs in connection to any breach of this agreement by buyer, shall be for buyer's account.

9.7.

The seller shall at all times be entitled to require of the buyer to give, in such manner as shall be deemed sufficient by the seller, security for the proper performance of all its obligations under the agreement. Failing immediate provision of such security, the seller shall be entitled to stall further execution of the agreement(s) until such time as the buyer will have provided the required security.

9.8

Notwithstanding any other rights of the seller, the buyer will forfeit a sum of US\$ 1,500 in case of an unjustified complaint.

## **10. Title**

10.1

Title in and to the BUNKERS delivered and/or property rights in and to such BUNKERS shall remain vested in the seller until payment has been received by the seller of all amounts due in connection to the respective delivery.

10.2.

Until full payment of everything due to the seller, for whatever nature, has been made, the buyer shall not be entitled to use the BUNKERS other than for the propulsion of the vessel, nor mix, blend, sell, encumber, pledge, alienate, or surrender the BUNKERS to third parties.

10.3.

In case of breach of agreement by the buyer the seller is entitled to take back the BUNKERS without prior judicial intervention, notwithstanding all other seller's rights.

10.4.

In case the BUNKERS, in part or in full, are no longer (definable) present, the seller has the right to attach the vessel to which the BUNKERS have been supplied and/or any other vessels owned, operated or controlled by the buyer, and/or any other assets of the buyer wherever situated in the world without prior notice.



10.5.

Where title in and to the bunkers delivered has passed to the buyer and/or others, the buyer grants a pledge on such bunkers. The buyer furthermore grants a pledge on any other bunkers present in the respective vessel, inclusive of mixtures of the delivered bunkers and other bunkers. Such pledge will be given for any and all claims, of whatever origin and of whatever nature, that the seller may have against the buyer.

10.5a

Buyers shall not blend the BUNKERS with bunker onboard for the express purpose of maintaining full title on the BUNKERS until final payment.

Remaining quantities onboard prior to delivery by sellers shall be considered to be used first before replenishment.

## **11. Liability**

11.1.

The seller shall only be liable for damages in case of willful misconduct or gross negligence on the side of the seller itself.

11.2.

Liability of seller for delay or consequential damages, including but not limited to loss of profit or loss of income and immaterial damages, is excluded. In any event the liability of the seller shall not exceed the invoice value of the BUNKERS supplied under the relevant agreement.

11.3.

The buyer shall be liable towards the seller and herewith undertakes to indemnify the seller for any and all damages and/or costs (to be) suffered and/or (to be) made by the seller due to a breach of contract and/or fault or neglect of the buyer, its agents, servants, employees and the officers, crews and/or other people whether or not on board of the respective vessel(s). The buyer furthermore undertakes to hold the seller harmless in case a third party institutes a claim against the seller in connection to an agreement under the terms of these conditions. Third party shall mean any other (legal) person than the buyer.

11.4.

No servant or agent of the seller (including independent (sub)contractors from time to time employed by the seller) shall be under any liability to the buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence or immunity of whatever nature applicable to the seller or to which it is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the seller acting as aforesaid.

## **12. Force majeure**

12.1.

Force majeure shall be considered to exist in all those circumstances which prevent or render impossible or make unreasonably burdensome to the seller the execution of the agreement or any part thereof, in and as far as such circumstances occur beyond the reasonable control of one or both parties.

12.2.

As force majeure will be considered amongst others acts of God of the public enemy, hostilities, conditions of war (declared or undeclared), mobilization, insurrections, riots and civil commotions, perils of navigation, governmental measures, expropriation, confiscation, requisition, shortage or obstruction or delay in the supply of basic and auxiliary materials, or of producing, manufacturing, blending, selling, transportation, or delivery facilities and equipment, or of fuel and electricity, blockades, embargoes, labour conflicts, strike, shortage of labour, fire, flood, storm, snow, frost, and other catastrophes of nature, accidents, machine failure and other operational failure, disturbance of road-, inland-waterways and sea traffic, e.g. (floating) ice, prohibition of manufacturing and supply, non-observance or obligations and/or a breach of contract by (sub)suppliers, prohibition of export or import, failure to obtain import or export licenses, unforeseen economic conditions, market disturbing, governmental measures of national or international nature, quarantine, epidemics,



contagious disease, veterinary measures, as well as circumstances which aggravated any disturbance, and further all other circumstances considered as force majeure in the trade. Non-providing by the buyer of data relevant for the seller in connection to the fulfillment of the seller's obligations, will constitute force majeure on the side of the seller.

12.3

In case of force majeure, the execution of the agreement shall be suspended for the duration of the said circumstances.

12.4.

The party which invokes force majeure shall immediately notify the other party in writing of the occurrence and cessation of any circumstances as aforesaid.

12.5.

In the event that the seller as a consequence of force majeure does not have sufficient quantities of bunkers available to supply all its buyers, the seller shall have the right to choose which obligation(s) to meet and in which order, and/or to pro-rate the quantity of bunkers available between the various buyers whereby the seller shall not be required to purchase bunkers to replace its supplies so curtailed or to make use of other than its normal transportation and/or other facilities.

12.6.

In the event that the seller, as a result of force majeure, can only deliver a superior grade of bunkers, the seller is entitled to offer the said grade, and the buyer must accept delivery thereof and pay the then applicable price.

### **13. Cancellation**

13.1.

The seller shall have the option to immediately cancel the agreement in full or in part, or to store or procure the storage of the BUNKERS in whole or in part for the account and risk of the buyer and to charge the buyer the expenses thereby incurred, or to hold the buyer fully to the agreement, or to take any other measures the seller deems appropriate, without prejudice to its rights to indemnification, without any liability on the side of the seller, in any (but not limited to) one of the following cases:

- a) when the buyer, for whatever reason, fails to accept the BUNKERS in part or in full at the place and time designated for delivery;
- b) when the buyer fails in part or in full to comply with its obligations to pay any amount due to the seller and/or to provide security as set out herein;
- c) when, before the date of delivery, it would become apparent that the financial position of the buyer, in the seller's judgment, entails a risk for the seller;
- d) when, in case of force majeure, the seller is of the opinion that the nature or the duration of the circumstances is such, that the execution of the agreement can no longer be demanded.

### **14. Environmental Protection**

14.1.

If a spill occurs while BUNKERS are delivered, the buyer shall promptly take such action as is reasonably necessary to remove the spilled BUNKERS and mitigate the effects of such spill. The seller is hereby authorised at its option on notice to and at the expense of the buyer to take such measures and incur such expenses (whether by employing its own resources or by contracting with others) as are reasonably necessary in the judgment of the seller to remove the spilled BUNKERS and mitigate the effects of such spill. The buyer shall co-operate and render such assistance as is required by the seller in the course of such action. All expenses, claims, losses, damages, liability and penalties arising from spills shall be borne by the party that caused the spill by a negligent act or omission. If both parties have acted negligently, all expenses, claims, losses, damages, liability and penalties, shall be divided between the parties in accordance with the respective degree of negligence. The burden of proof to show the seller's negligence shall be on the buyer. The buyer shall give the seller all documents and other information concerning any spill or any program for the prevention thereof, that are required by the seller, or are required by law or regulation applicable at the time and place of delivery.



## **15. Lien**

### **15.1**

Seller has a lien on the vessel to which the bunker have been supplied.

## **16. Law and jurisdiction**

### **16.1.**

The agreement entered into with the buyer shall be governed by the laws of the Netherlands. However, the federal laws of the United States of America shall apply to the substantive issue of whether a maritime lien exists. Applicability of the CISG is excluded.

### **16.2.**

All disputes between the seller and the buyer shall, at the seller's option, be settled (i) by arbitration as per TAMARA Rules or (ii) by the competent Rotterdam Court. In case the buyer intends to start legal action against the seller, the seller shall declare within 8 working days after a notice of intended legal action by the buyer (such notice to be sent by registered mail) whether it opts for arbitration or the competent Rotterdam court. Notwithstanding this provision, the seller shall at all times be entitled to start legal action before courts which otherwise would have jurisdiction.

### **16.3.**

Where the buyer has its principal place outside of the Netherlands, it chooses domicile at the office of the Dutch Association of Independent Bunker Suppliers/NOVE, Max Euwelaan 35, 3062 MA Rotterdam, for all matters relating to the offers, quotations, agreements or contracts described herein.

## **17. The text of these conditions**

### **17.1.**

The text of these conditions has been filed at the office of the clerk of the District Court of Rotterdam on January 17th 2011.