



## **General Terms & Conditions of Sale and delivery**

### **1.-DEFINITION**

1.1. Marine fuel is defined as commercial grades of bunker fuel oil or their mixtures offered at the time and place of delivery by Seller.

### **2.-PRICE**

2.1. The applicable price shall be the one agreed upon at the time and place of nomination for the grade of marine fuel to be delivered. Stemmed prices will be valid no more than seven days from nomination.

2.2 The price excludes government duties or taxes that may be levied by the Colombian government.

### **3.- NOMINATIONS**

3.1 Buyer shall have the sole responsibility for the selection and acceptance of marine fuels. The quality of each grade of marine fuel shall be the usual production quality of that grade being sold by Seller at the time and place of delivery. The Buyer shall have the sole responsibility for any determination of compatibility of marine fuel purchased from CODIS LTDA, with marine fuel already on board the vessel. **THERE ARE NO GUARANTEES OR WARRANTIES EXPRESS OR IMPLIED OF MERCHANTABILITY FITNESS OR SUITABILITY OF THE MARINE FUEL FOR ANY PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTENDS BEYOND THIS SUBSECTION.**

3.2 Buyer shall provide Seller at least three (3) days prior written notice of the vessel's agent, date of arrival, bunkering Port, grade and quantity of marine fuel and Buyer's address for invoicing.

3.3 Buyer shall insure that either the Master of a nominated vessel or vessel's agent give not less than two effective working days advance notice to the Seller's local office at each delivery Port, which notice shall identify the buyer and specify place where and time of delivery is required, time have to be within days well specified in bunker nomination from Buyer. The Master of vessel or vessel's agent shall give immediate notice to Seller of any delays of time of arrival. In case of failure to arrive at the contracted day, Seller will use its best efforts to reschedule Buyer's vessel, but shall be not responsible for any attendant delays or for any damages resulting therefrom. In the specific case of reschedules of Vessels, delayed by weather conditions, berth congestions, draft restriction, etc for taking bunkers, the Seller will use the politics of first in, first out.

3.4 If any nomination is given by an agent for the buyer hereunder, then such agent shall be independently liable, as if it were the principal, for the performance of all the obligations hereunder. Should the quantity requested locally exceed by 10 per cent (10 %) the nominated quantity in any grade, Buyer shall give to the seller, fax authorisation to supply such increased quantity.



#### 4. DELIVERY

4.1 Buyer shall without charge immediately furnish clear and safe berth alongside vessel's receiving lines and shall render all other necessary assistance to the barge effecting delivery on a 24 hours per day basis.

4.2 Seller shall have the right to shift or require Buyer to shift its vessel at load port, from one berth to another or to anchorage.

4.3 Buyer shall make all connections and disconnection between the delivery hose and vessel's intake pipe, if necessary, and provide sufficient tanks equipment to receive promptly all deliveries.

4.4 The delivery shall be made during normal working hours unless required and available at other times (holidays, Saturday afternoons and Sundays) and permitted by port regulations, in which event Buyer shall reimburse Seller for any and all additional expenses incurred in connection therewith, including overtime.

4.5 Vessel's will be bunkered as promptly as possible, but Seller shall not be liable for demurrage, detention, or any other or different damages due to any by weather (weather usual or unusual) congestion at the terminal or prior commitments of available barges or existing facilities, howsoever caused.

4.6 Anything herein to the contrary notwithstanding, Seller obligation to make any delivery hereunder is all times subject to the availability to Seller at the port at which delivery is requested of the particular grade of marine fuel requested by Buyer.

#### 5. QUANTITY AND QUALITY

5.1 The quality and quantity of the marine fuel shall be determined by Seller's personnel using Seller's equipment according to Seller's official methods.

Buyer shall be present or represented when such quality determination and quantity measurements are taken, but whether or not Buyer or Buyer's representative accepts or declines such invitation, Seller's determination of quality and quantity shall prevail and be binding.

5.2 Seller shall draw two representative sealed samples of each marine fuel delivered. Buyer may attend or be represented during such sample taking in which event he shall countersign each sample and may retain one sealed and countersigned sample. The sealed samples shall be deemed conclusive and binding as to quality of the delivered marine fuel.

5.3 Seller or Seller's agent may inspect Buyer's vessel in the event of any complaint, whether at request of Buyer or otherwise. Such inspections or any analysis made in connection therewith shall be entirely without any obligation on behalf of Seller to consider or act upon any claim or complaint by Buyer or otherwise and shall be entirely without prejudice to Seller's position.



## 6.-PAYMENT

6.1 Buyer shall make payment (without any deduction, discount, or set of whatsoever) U.S. DOLLARS TO Seller's account at a Bank designated by Seller.

Payment shall be deemed to have been made on the date when full payment is credited to Seller's account and Seller's head office has been duly informed that payment has been received.

6.2 Buyer may not at any time or for any reason assert a set off or invoke any counterclaim or other right as basis for withholding payment.

### 6.3

When marine fuel is supplied on a credit basis, full payment shall be received by the due date specified in Seller's fax invoice. If the established credit period expires on a day when Seller's bank is closed for business, then credit period end at the day before the Seller's Bank is open for business.

Seller will in due course provide Buyer by ordinary mail with a commercial invoice and a copy of a bunker receipt.

6.4 Seller's fax invoice, shall be based on advise as to the quantity delivered and other charges and surcharges if incurred, and payment made pursuant to 5.1 above shall be subject to such subsequent adjustment as may be necessary on receipt by the Seller of further delivery details.

6.5 If marine fuel is supplied on a credit basis and full payment is not received by the due date, Buyer shall immediately be in default. A service charge of 2 % a month will be assessed on all late payments and shall be payable as subsequently directed to Seller. This shall be in addition to any other remedies which Seller may have by reason of such default.

6.6 If buyer is in default of full payment, or if its financial condition in the Seller's opinion becomes impaired, or if proceedings in bankruptcy or insolvency are instituted by and or against Buyer, or in the cause of liquidation or dissolution of Buyer, any all postponed or deferred payments including interest thereon, shall become immediately due and payable and Seller reserves the right to offset same against any debts to Buyer or its affiliates. Exercise of any such rights shall be without prejudice to Seller's rights to recover damages or losses sustained and resulting from any default by Buyer, and Seller shall have the right to suspend deliveries hereunder.

6.7 Seller reserves the right to modify or terminate any credit arrangement without notice and to demand payment in advance, further security or payment in anticipation of maturing invoices prior to accepting any fuel nomination. The amount due and payable by Buyer hereunder shall become a maritime lien on the vessel to which the marine fuel is delivered; and taking of any additional security measures by Seller shall not operate as a waiver of this provision.



Buyers agreed that Seller may set off any claim against Buyer, against any amount due and owing to any Buyer's affiliates.

## 7.- TITLE AND RISKS

7.1.- Risk in the Marine Fuels shall pass to the Buyers once the Marine Fuels have passed the Sellers' flange connecting the Vessel's bunker manifold with the delivery facilities provided by the Sellers.

7.2.- Title to the Marine Fuels shall pass to the Buyers upon payment for the value of the Marine Fuels delivered, pursuant to the terms of Clause 8 hereof. Until such time as payment is made, on behalf of themselves and the Vessel, the Buyers agree that they are in possession of the Marine Fuels solely as Bailee for the Sellers.

## 8.- LIABILITY

8.1 Seller shall not be liable for any damage which the Buyer or any third parties sustain because of the alleged negligence or misconduct of Seller's contractors in the execution of the nomination or delivery.

8.2 Seller does not warrant, nor shall be deemed to warrant the safety of any place (s) or facility (ies) where Buyer's loads and assumes no liability in respect thereof.

## 9.- DELAY

9.1 If Buyers, agents, its servants, vessel's officers or vessel crew causes any delay to Seller's facilities in effectuating deliveries of fuels oils, Buyer shall pay demurrage to Seller at Seller's established rates and reimburse Seller for any and all other expenses in connection therewith.

## 10.- FORCE MAJEURE

10.1 Neither party hereto shall be responsible for any loss, damage, delay or failure in performance under this Contract resulting from an act of God, or the port of delivery being affected by war, civil commotion, riot, quarantine, strike, stoppage, lock-out, arrest, restraint of princes, rulers and people, or any other event whatsoever which cannot be avoided or guarded against by the exercise of due diligence.

10.2 Seller shall not be in breach of its obligations hereunder the extinction if that performance is prevented, delayed or (in the sole, but reasonable judgement of Seller) made substantially more expensive as a result of any or more of the following contingencies:

- a.) Any cause beyond reasonable control of the Seller.
- b.) Labour disturbance, whether involving the employees of Seller otherwise and regardless

whether the disturbance could be settled by acceding to the demand of a labour group.



c.) Compliance with a request or order of a government authority or person purporting to act therefor.

d.) Shortage on raw material, transportation, equipment, manufacturing capacity, or marine fuels from Seller's then contemplated source of supply thereof or generally, not demonstrated by Buyers to be due to Seller's lack of diligence.

e) Any other contingency established by law.

## 11.- CLAIMS

11.1 Buyer waives any and all claims against Seller with respect to any claimed shortage on quantity, unless Buyer or Buyer's representative shall give written notice both to the terminal operator and to the Seller at the time of loading. In all cases the Seller's figures under local Customs survey will prevail, and in no case vessels figures should be taken into consideration- Seller shall also be notified in writing of any claimed defect in the quality immediately after such alleged defects are discovered. Each of the forgoing 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 BUT THE SELLER WITHIN TEN (10) DAYS AFTER DELIVERY OF THE MARINE FUELS TO VESSEL, ANY CLAIM SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN WAIVED.

## 12.- WAIVER

12.1 No waiver by either party of any breach of any of the terms and conditions herein contained to be performed by the other party shall be constructed as a waiver of any succeeding breach of the same or any other term and condition.

## 13.- INDEMNITY

13.1 Buyer shall indemnify Seller against any and all damages and liabilities arising out of resulting any act (s) or omission (s) of Buyer, its servants, agents, vessel's officers or vessel's crew in connection with marine fuel delivery. All damages or loss of hire shall include all costs, reasonable attorneys' fees and other damages included but not limited to, the cost of compelling Buyer's compliance with these terms and conditions of sale and delivery.

## 14.- ENVIRONMENTAL PROTECTION

14.1 If any spills occur while marine fuels are being delivered, Buyer shall promptly take such action as is reasonably necessary to remove the spilled marine fuel and to mitigate the effects of such spills. 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, liabilities and penalties arising from such spills shall be borne by the party that caused the spill as a result of a negligent act or omission. If both parties have acted negligently, all expenses, claims, damages, liabilities and penalties shall be divided between the parties in accordance with the comparative degree of negligence. Buyer shall give Seller all documents and other information concerning any spill, any program for the prevention thereof, that are required by Seller or required by law or regulation applicable at the time and place of delivery.

## 15.- NOTICES

15.1 Unless otherwise provided, all notices, statements and other communications including invoices to be given, submitted or made hereunder by either party to the other, shall be sufficiently given if in writing and send by post, to the address designated by Buyer for invoicing or to the Seller at the address stated in the opening of the Terms & Conditions herein. Either party may change its designated address by giving fifteen (15) days prior written notice of its new address to the other party.

## 16.- CANCELLATION AND BREACH

16.1. If because of the occurrence of any of the events referred to Section 10.1 there is in Seller's sole discretion such a shortage of Seller's supply of the quality and grade of marine fuel or other petroleum products sold hereunder at the loading ports designated herein the Seller is unable to meet its own planned requirements and those of this subsidiary and affiliates companies and its requirements for sales to the other customers of all kind or otherwise. Seller may without liability withhold, reduce, suspend or cancel deliveries hereunder to such extent as Seller consider necessary in the circumstances.

16.2. Notwithstanding the provisions of Section 10.1 and 16.1 Buyer shall not be relieved of any obligation to make payments hereunder in US Dollars for all marine fuels delivered hereunder.

16.3 Under no circumstances shall Seller be obligated to purchase or acquire marine fuels to replace supplies lost as a result of any of the events enumerated in Section 10.1 Should Seller thereafter purchase or otherwise acquire additional marine fuels of the same grade and quality, whether from a current supplier or otherwise. Seller shall not be required to allocate any such marine fuel to Buyer.

16.4 Performance shall be excused as provided herein even though the occurrence of the contingency in question may have been foreseeable all the time of nomination acceptance or subsequently become foreseeable.

## 17.- ADDITIONAL PROVISIONS

17.1 This terms and Conditions of Sale shall be governed by Colombian law; each party expressly submits itself to the jurisdiction of Colombian Courts.



17.2 There is no implied warranty of workmanlike performance with respect to this Terms and Conditions of Sale other than services provided by employees of Seller in conjunction with the delivery of marine fuels as provided for in this Terms and Conditions of Sale.

17.3 This Terms and Conditions of Sale contains the entire agreement of the parties with respect the subject matter hereof and there are no other promises, representations or warranties affecting it and shall not be modified or amended in any except in writing signed by both parties.

17.4. The parties hereby agree that any bill produce by the Seller and address to the buyer, during the execution of this contract, can be executed directly according to the Colombian Law.

## 18. – ARBITRATION

All disputes arising out of this contract shall be arbitrated at Cartagena, Colombia in the following manner, and subject to the rules of Camara de Comercio de Cartagena and to the Colombian Law:

18.1.- One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court.

18.2.- The Arbitrators shall be lawyers, conversant with commercial matters. Such Arbitration is to be conducted in accordance with the rules of the Camara de Comercio de Cartagena.

The defeated party shall pay for all cost and expenses incurred by the Tribunal.

Barranquilla, February 2006

For and on behalf of Codis ltda

Customer sign and seal