

# **GENERAL TERMS AND CONDITIONS FOR THE SALE AND DELIVERY OF BUNKER OIL FROM A/S DAN-BUNKERING LTD.**

March 2010

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## 1. General Terms and Conditions

- 1.1 These general terms and conditions shall apply to the sale and purchase of marine bunker oil and related products of whatever type or grade by A/S Dan-Bunkering Ltd. to any buyer as defined below.

## 2. Definitions

- 2.1 In this document the following terms shall have the following meanings:

<b><i>Bunker Confirmation</i></b>	means a confirmation in writing from the Seller to the Buyer setting forth the particular terms of each sale of Bunker Oil
<b><i>Bunker Contract</i></b>	means the Bunker Confirmation and the General Terms
<b><i>Bunker Oil</i></b>	means marine bunker oil and related products of whatever type or grade delivered by the Seller
<b><i>Buyer</i></b>	means the Buyer under each Bunker Contract, including the entity or entities named in the Bunker Confirmation, together with the Vessel, her master, owners, operators, charterers, any party benefitting from consuming the Bunker Oil, and any other party ordering the Bunker Oil, all of whom shall be jointly and severally liable as Buyer under each Bunker Contract
<b><i>General Terms</i></b>	means these terms and conditions in force as of March 2010
<b><i>Seller</i></b>	means A/S Dan-Bunkering Ltd., with Danish company registration (VAT No. DK-67226917) and registered address at Strandvejen 5, 5500 Middelfart, Denmark acting through any of its offices as indicated on the front page of these General Terms
<b><i>Vessel</i></b>	means the Vessel to which a delivery of Bunker Oil is made and/or onboard which it is consumed, which shall include any on-shore tank, train, rig, helicopter, aircraft or other unit or installation supplied by the Seller.

## 3. Bunker Transactions

- 3.1 Each sale of Bunker Oil shall be confirmed by a Bunker Confirmation. The Bunker Confirmation shall incorporate the General Terms by reference and the Bunker Confirmation and the General Terms together constitute the complete Bunker Contract. The Bunker Contract shall supersede any conflicting terms of other contracts which the Buyer may seek to enforce against the Seller. In particular, any terms not directly aimed at bunker sales transactions may not be enforced against the Seller to the effect they contravene the Bunker Contract.
- 3.2 If a purchase of Bunker Oil is contracted for by a broker, an agent or a manager for a principal, each such broker, agent or manager shall be bound by and be fully liable for the obligations of the Buyer. Furthermore, delivery shall always take place for the account of the registered owners and for the account of the current charterers all of whom shall be jointly and severally liable for the payment of the delivery as Buyers. The Buyer warrants that it is authorized as agent to order the Bunker Oil for delivery to the Vessel, and that the Seller has a lien in the Vessel for its claim.
- 3.3 Any notice or any stamp in the Bunker Delivery Receipt or similar cannot waive the Seller's maritime lien on the Vessel.

#### **4. Bunker Oil Grade and Quality**

- 4.1 The Buyer alone shall be responsible for and bear the risk of the grade of Bunker Oil ordered from the Seller, and the Seller shall not be under any obligation to check whether the grade of Bunker Oil is suitable for the Vessel. The Bunker Oil shall be of the same quality generally offered for sale at the time and place of delivery, for the grade of Bunker Oil ordered by the Buyer.
- 4.2 **DISCLAIMER.** Any implied warranties, including the warranties of merchantability and fitness for a particular purpose that the Seller may be deemed to have made, are expressly excluded and disclaimed.
- 4.3 The Buyer shall be responsible to keep the delivered Bunker Oil segregated from any Bunker Oil(s) onboard the Vessel or from a different delivery to the Vessel. In no event shall the Seller be responsible for the quality and compatibility of the Bunker Oil delivered if the Seller's product is mixed or comingled with any other product(s) onboard the receiving Vessel. The Buyer shall be solely responsible for any losses caused by mixing or comingling the Bunker Oil with any other oil, including any damage the Bunker Oil may cause on other products on board the receiving vessel.
- 4.4 If the Bunker Oil deviates from specifications, the Buyer shall use all reasonable endeavours to mitigate the consequences hereof and shall burn the Bunker Oil if possible even if this requires employment of purification tools or other similar measures. The Seller shall cover reasonable costs related hereto provided that the Seller is given opportunity to assist and suggest methods of handling the Bunker Oil.

#### **5. Delivery**

- 5.1 Unless otherwise requested by the Seller, the Buyer and/or its representatives shall give the Seller and/or Seller's nominated representatives at the place of delivery 48 (forty-eight) hours written notice of arrival of the Vessel at the place of delivery.
- 5.2 The Buyer shall be responsible for all connections and disconnections of the delivery hose(s) to the Vessel, and shall ensure that the Bunker Oil is received by the Vessel at the time for delivery. In the event the delivery is requested outside normal working hours or normal working days and is permitted by local port regulations to be so delivered, the Buyer shall pay all overtime and additional expenses incurred in connection therewith.
- 5.3 The Buyer shall be responsible for any and all demurrage, detention or additional expenses incurred by the Seller if the Buyer or the Vessel fails to receive the Bunker Oil at the time for delivery. In addition, if the Vessel fails to take delivery of the Bunker Oil or any part thereof, the Buyer shall compensate the Seller for any loss or damage which the Seller may suffer as a result of such failure, including but not limited to any loss of profit on any resale of the Bunker Oil, and the Buyer shall bear the risk of the return transport, storage or selling of the Bunker Oil.
- 5.4 In case of delay or failure to deliver the Bunker Oil the Seller shall not be liable to the Buyer or any other entity for any claim, loss or damage unless such delay or failure to deliver is caused by the Seller's negligence.

#### **6. Risk of Loss**

- 6.1 Risk in the Bunker Oil, including loss, damage, deterioration, evaporation, or any other condition or incident related thereto shall pass to the Buyer at the time the Bunker Oil passes the fixed bunker connections of the delivering Vessel. The Buyer warrants that representatives from the Vessel shall be responsible for ensuring that the Bunker Oil is received in a safe way.

## **7. Payment**

- 7.1 The Buyer shall pay for the Bunker Oil at the price agreed in the Confirmation as set forth in Seller's invoice(s) (hereinafter the "Invoice"). In addition, the Buyer shall pay the costs of the delivery irrespective of whether the delivery takes place from a terminal facility, barge, lorry, or other method of delivery. The delivery costs shall be set forth in the Confirmation and/or in the invoice. Unless otherwise agreed, the final volume stated in Seller's or its representative's delivery documentation is to be considered final in respect of the quantity to be invoiced.
- 7.2 All prices are excluding VAT and/or taxes. The Seller is entitled, at any time, to charge additional VAT and/or taxes.
- 7.3 If not otherwise specifically agreed between Buyer and Seller at time of ordering, the confirmed costs including possible additional extra costs are only valid for delivery performed to the Vessel on the agreed and confirmed delivery date(s). Should the date(s) of delivery for any reason change, the Seller is entitled to change the price.
- 7.4 Payment shall be made in full, free of bank charges, without discount or deduction, and without set-off for any claim or counterclaim of any nature whatsoever. Should the Buyer nevertheless set-off any amount; the Seller's claim will be increased by 20 (twenty) percent as a penalty.
- 7.5 Payment shall be made to the Seller by bank transfer, according to the payment instructions contained in the Seller's Invoice or any copy hereof forwarded by fax, e-mail or by any other means. The Seller shall be under no obligation to provide any accompanying documents with the Invoice such as a bunker delivery receipt or other documents.
- 7.6 If the Buyer fails to pay any Invoice at the time of maturity set forth in the Invoice, the Buyer shall pay interest at the rate stated in the Invoice. In the absence of an indication in the invoice the Seller shall be entitled to 3 (three) percent monthly interest. The interest rate will be charged monthly from the date of maturity, without prejudice to any other right or claim of the Seller. Interest will be added to the principal as it falls due.
- 7.7 In the event that any Invoice is not paid in due time, the Seller shall be entitled, at its sole discretion, to specify any particular Invoice or part thereof to which any subsequent payment(s) shall be applied, including, but not limited to, payment covering interest charges, legal fees and other charges. Moreover, the Buyer shall indemnify the Seller against any loss which is caused by adverse currency fluctuations between the Invoice currency and the value of the Danish Kroner from the latest due date of the Invoice until the date on which payment is made.
- 7.8 Notwithstanding any agreement to the contrary, payment will be due immediately and the Seller shall be entitled to cancel all outstanding stems and/or withhold future deliveries in case of (i) bankruptcy, liquidation or suspension of payment or comparable situation of the Buyer, (ii) arrest of assets of the Buyer, (iii) if the Buyer fails to pay any invoice to the Seller at the time of maturity set forth in such invoice, (iv) if the Buyer fails to comply with any other obligation pursuant to the Bunker Contract, including, but not limited to, the Buyer's failure to take delivery of Bunker Oil in full or in part, or (v) in case of any other situation, which in the sole discretion of the Seller is deemed to adversely affect the financial position of the Buyer. In any of the foregoing situations the Seller shall have the option to either (a) cancel the Bunker Contract, (b) to store the Bunker Oil in full or in part for the Buyer's account and risk, (c) to demand that the Buyer complies with its obligations pursuant to the Bunker Contract or (d) to make use of any other remedy available under the law.

## **8. Title**

- 8.1 The Seller retains title to the Bunker Oil delivered to the Vessel until the Invoice has been paid in full in so far as the Seller has this right according to the law of the place of delivery or according to the law of the Vessel's flag state or according to the law at the location where the Vessel is found.

## **9. Arrest of Vessel**

- 9.1 The Bunker Oil supplied to the Vessel is sold and delivered on the credit of the Vessel, as well as on the promise of the Buyer to pay therefore, and the Buyer agrees and warrants that the Seller shall have and may assert a maritime lien against the Vessel and may take such other action or procedure against the Vessel and any other vessel or asset beneficially owned or controlled by the Buyer, for the amount due for the Bunker Oil and the delivery thereof. The Seller is entitled to rely on any provisions of law of the flag state of the Vessel, the place of delivery or where the Vessel is found and shall, among other things, enjoy full benefit of local rules granting the Seller maritime lien in the Vessel and/or providing for the right to arrest the Vessel. Nothing in this Bunker Contract shall be construed to limit the rights or legal remedies that the Seller may enjoy against the Vessel or the Buyer in any jurisdiction.

## **10. Sampling**

- 10.1 The Seller or its representatives shall arrange for samples to be drawn at the time of delivery of the Bunker Oil. Unless otherwise agreed between the Seller and Buyer prior to entering into the Bunker Contract, the samples shall be drawn from a point and in a manner chosen by the Seller or its representatives in accordance with the customary sampling procedures at the port or place of delivery of the Bunker Oil.
- 10.2 The sampling mentioned in paragraph 10.1 shall be performed in the presence of the Seller or its representatives and the Buyer or its representatives, but the absence of the Buyer or its representatives during all or any part of the sampling process shall not prejudice the validity of the samples.
- 10.3 On completion of sampling, all samples drawn by the Seller or its representatives are to be sealed, labelled and signed by both Seller or its representatives and Buyer or its representatives. One sample shall be retained by the Buyer or its representatives. The remaining samples shall be retained by the Seller or its representatives.
- 10.4 In the event of a dispute concerning the quality of the Bunker Oil, the results of analysis of the Seller's or its representative's drawn samples performed by an independent laboratory mutually appointed by the Buyer and Seller shall be conclusive to determine the quality of the Bunker Oil supplied. Analysis results of the Seller's or its representative's drawn samples will be the sole binding evidence for the quality of the Bunker Oil supplied to the Vessel.
- 10.5 If the Seller and the Buyer cannot agree on an independent laboratory to perform mutual analysis or if the Buyer fails to reply to the Seller's notice hereof within 7 (seven) days from receipt of such notice, the Seller can at its sole discretion decide which laboratory to perform the analysis, which shall be final and binding for all parties involved.

## **11. Claims**

- 11.1 If not otherwise agreed, the final supplied volume is to be determined by the Seller's or its representative's measurements. Any claim regarding the quantity of the Bunker Oil delivered shall be notified verbally as well as in writing by the Buyer or the master of the Vessel to the Seller immediately during delivery of the Bunker Oil. In the event immediate verbal as well as written notice is not made, such claim shall be deemed to be waived and barred. A notification inserted in the Bunker Delivery Receipt or in a separate protest handed to the physical supplier of the Bunker Oil shall not qualify as notice under this section 11.1 and the Seller shall under no circumstances be deemed to have accepted such notice or protest handed to the physical supplier.
- 11.2 Any claim regarding the quality of the Bunker Oil delivered shall be presented in writing to the Seller as soon as an alleged problem has occurred or the Buyer is notified of any alleged problem and in any event no later than within 14 (fourteen) days from the date of delivery to the Vessel. Should the Buyer fail to make timely notification of any claim regarding the quality of the Bunker Oil the claim shall be deemed waived and barred.

- 11.3 In the event of any claim presented in accordance with Section 11.1 and 11.2, the Buyer shall:
- Cooperate with the Seller and make all necessary arrangements for the Seller or its representatives to investigate such claim, including but not limited to the boarding and inspection of the Vessel, the interviewing of crew, and the review and copying of Vessel documents. Failure to provide boarding and inspection and copying shall constitute a waiver and bar of any such claim.
  - Take all reasonable steps and actions to mitigate any damages, losses, costs and expenses related to any claim of alleged off-specification or defective Bunker Oil.
- 11.4 The Seller shall not be liable to pay damages if the Buyer has failed to safeguard the Seller's recourse against the physical supplier of the Bunker Oil or any other wrongdoer, or has failed to ensure the existence of the necessary evidence.
- 11.5 Any claims against the Seller in respect of this contract shall be brought before the relevant court or arbitral tribunal in accordance with Section 16 within 1 (one) year of the date of delivery of the Bunker Oil, failing which such claims shall be time barred.

## **12. Liability**

- 12.1 The Seller's liability for any damage whatsoever arising under this contract whether caused by negligence or not, whether based in tort or contract and whether falling on the Buyer or third party shall be limited to a maximum of the aggregate of 3 (three) days of time charter equivalent in the charter agreement in which the Vessel is employed. For the avoidance of doubt the foregoing shall include product liability claims.
- 12.2 The Seller shall under no circumstances be held liable for any consequential losses whatsoever, including, without limitation, delay, detention, demurrage, charter hire, crew wages, pilotage, towage, port charges, lost profits or increased cost or expenses for obtaining replacement fuel.
- 12.3 Any liability for damages to the Vessel shall in any event be reduced by 20 (twenty) percent of the invoice value of spare parts for each year or fraction thereof in which the replaced part has been in use.
- 12.4 The Buyer undertakes to indemnify the Seller against any claims, losses or costs of whatever kind related to the Bunker Contract instituted by third parties against the Seller to the extent such claims exceeds the Seller's liability towards the Buyer according to this Clause 12.

## **13. Force Majeure**

- 13.1 The Seller shall not be liable for any loss or damage of whatever nature resulting from any delay or failure in performance under the Bunker Contract (i) caused by any circumstance beyond the Seller's direct control, or (ii) if the supply or source of the Bunker Oil from any facility of production, distribution, storage, transportation or delivery contemplated or intended by the Seller's supplier is disrupted, unavailable or inadequate due to war or war-like situations, riots, strikes, congestion, governmental order or intervention, unavailability of barges or other means of transport or stem, weather, act of God, changed market conditions, or similar situations.
- 13.2 In the event of a failure of performance as provided in Section 13.1, the Seller may, but is under no obligation, to source, procure or obtain alternative Bunker Oil or product, and in such case the Seller shall be entitled to receive from the Buyer payment of any additional costs of performance.
- 13.3 The Buyer shall have no right of cancellation of the Bunker Contract.

## **14. Safety and Environmental Protection**

- 14.1 It shall be the sole responsibility of the Buyer to ensure that the Vessel, its crew and those responsible for its operation and management observe and comply with all health, safety and environmental laws and regulations with regard to the receipt, handling and use of the Bunker Oil. The Buyer warrants that the Vessel is in compliance with all national and international trading and pollution regulations.

- 14.2 In the event of a spill or discharge occurring before, during or after the delivery of the Bunker Oil, the Buyer shall, in addition to any other obligations imposed by law, immediately notify the appropriate governmental authorities and take or arrange whatever action is necessary to respond and clean-up such spill or discharge, and shall pay all costs and expenses in connection therewith. If the Buyer fails to take such prompt action, the Buyer authorizes the Seller, the supplier, and others appointed by the Seller, to take such action on behalf of the Buyer, at the Buyer's risk and expense, and the Buyer shall indemnify and hold the Seller, the supplier, and others harmless against any damages, expenses, claims, or liabilities, of whatever nature, unless such spill or discharge is proven to be solely caused by the Seller's negligence.

## **15. Collection and Indemnity**

- 15.1 The Buyer agrees to pay any and all expenses, legal fees and court costs incurred by the Seller (i) to collect and obtain payment of any amount due to the Seller, including but not limited to legal fees and court costs associated with enforcing a maritime lien, attachment, right of arrest, or other available remedy in law, equity or otherwise; and (ii) to recover any damages or losses suffered by the Seller as a result of any Breach by the Buyer of any provision of the Bunker Contract.

## **16. Law and Jurisdiction**

- 16.1 The Bunker Contract shall be governed by the laws of Denmark. However, the choice of law is for the sole benefit of the Seller and the Seller may apply and benefit from any law granting a maritime lien and/or right to arrest the Vessel in any country as stipulated in Section 9 hereof.
- 16.2 Any dispute between the Seller and a Buyer domiciled in the European Union, Norway, Switzerland, Lichtenstein or Iceland arising out of or in connection with any Bunker Contract shall be determined by the Maritime and Commercial Court in Copenhagen, Denmark.
- 16.3 Any dispute between the Seller and a Buyer domiciled outside the European Union, Norway, Switzerland, Lichtenstein or Iceland arising out of or in connection with any Bunker Contract, including any disputes regarding the existence, validity or termination, shall be settled by arbitration in Copenhagen arranged by Danish Arbitration in accordance with the rules of arbitration procedure adopted by Danish Arbitration and in force at the time when such proceedings are commenced.
- 16.4 Section 16.2 and 16.3 above shall be for the sole benefit of the Seller and the Seller shall have the right to take any legal action before the courts in any country either to (a) pursue the merits of a claim against a Buyer before such courts or (b) as an interim measure of protection in order to securing payment of any amount due from the Buyer.

## **17. Section Headings**

- 17.1 The headings of each section herein are descriptive only, and are provided for organisational purposes.

## **18. Entry into Force**

- 18.1 These terms and conditions shall be effective as of March 15th 2010 at 00:01 hours central European time and shall apply to any contracts concluded after this time.