



FAIRDEAL MARINE SERVICES LLC  
Port of Fujairah, Fairdeal building  
P.O.Box 298, Fujairah  
United Arab Emirates  
tel: +971 9 2282800  
fax: +971 9 2778383  
e-mail: [bunkering@fairdeal.ae](mailto:bunkering@fairdeal.ae)  
[www.fairdeal.gr](http://www.fairdeal.gr)

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**GENERAL TERMS AND CONDITIONS**  
**FOR SALE AND DELIVERY**  
**OF MARINE FUELS**

**April 2014 edition**



## 1. INTRODUCTION:

These terms and conditions are the general, standard terms and conditions under which Fairdeal Marine Services (collectively the "Seller") will sell and deliver or to arrange for the sale and delivery of Marine Fuels and/or other products to a party (collectively the "Buyer") and Buyer will purchase, accept delivery of and pay Seller for the Marine Fuels.

Unless otherwise agreed in writing between the Seller and the Buyer, the latest edition of these terms and conditions will supersede any earlier terms and conditions issued by the Seller, shall override any terms and conditions stipulated, incorporated or referred to by the Buyer whether in its order, stamping of documentation or elsewhere and shall apply to all sales of Marine Fuels.

## 2. DEFINITIONS:

Throughout this document, the following definitions (singular shall include plural and vice versa) shall apply:

"Seller"	means	Fairdeal Marine Services LLC P.O. Box 298, Fujairah, United Arab Emirates  or its nominees.
"Buyer"	means	the party, including its assignees and successors, that contracting the purchase, accept delivery and pay for the Marine Fuels. The receiving vessel, her master, owners, managers, operators, charterers and any party benefited from the Marine Fuels under the sale, shall be jointly and severally liable as Buyer.
"Sales Order Confirmation" "Sales Confirmation" "Bunker Confirmation" "Bunker Nomination" "Order Confirmation"	means	a confirmation in writing from the Seller to the Buyer setting forth the particular terms of each sale of Marine Fuels.
"Bunker Sales Contract" "Bunker Contract" "Agreement" "Contract"	means	the Bunker Confirmation and the General Terms and Conditions, which are integral part of each sale of Marine Fuels.
"Marine Fuels" "Bunker Oil" "Bunkers" "Product" "Fuel"	means	the commercial oil products derived from crude oil, of whatever type or grade delivered or to be delivered to the Vessel.
"Receiving Vessel" "Vessel"	means, but it is no limited to,	the Vessel, <b>ship, barge or off-shore unit</b> to which the Marine Fuels delivered or to be delivered.
"Delivering Vessel" "Bunker Tanker" "Bunker Barge" "Barge"	means, but it is no limited to,	the vessel, <b>ship, barge, off-shore unit, truck</b> by which the Marine Fuels delivered or to be delivered to the Vessel.



### **3. SALES ORDER REQUEST:**

All sales of Bunkers require a written request to be submitted by the Buyer to the Seller (a "Sales Order Request").

The Buyer shall give the Seller written confirmation of any verbal Sales Order Request on the same Working Day as it was verbally placed). The Buyer's written Sales Order Request shall include the following:

- a) Name and IMO code of the Receiving Vessel.
- b) Details of the place where the Bunkers are requested to be supplied.
- c) Local Agent – including full telephone, fax, email and postal details.
- d) ETA/ETD of the Receiving Vessel at the Place of Delivery.
- e) Full title of the Buyer.
- f) Registered office address of the Buyer and principal place from where business is conducted.
- g) Relationship of the Buyer with the Receiving Vessel (registered owner, despondent owner, manager, agent etc).
- h) Quantities and grades of Bunkers to be supplied.
- i) Qualities and standards of Bunkers to be supplied.
- j) Unit Price required.
- k) Indicative additional delivery charges including but not limited to baring, taxes, and/or wharfage.
- l) Required payment terms.

The Seller shall have the option, to be exercised within the same or the following Working Day as the Working Day upon which the Sales Order Request is received, to refuse such Sales Order Request if it does not comply with the provisions of clause above or it is not in accordance with the terms of any agreement previously made between the Buyer and Seller. The compliance of the Sales Order Request with all requirements of above clause shall be a condition of this Sales Agreement. The Seller reserves its right to, and may, in its absolute discretion reject any Sales Order Request.

### **4. PRE-DELIVERY ADVICE:**

The Seller normally requires five days notice of Buyer's requirements, which requirements are also to be confirmed by a Sales Order Request at least forty-eight (48) hours (excluding local non-business days) prior to the time of requested delivery. The time of delivery will only be binding upon the Seller when all information necessary for the Seller to comply with its obligations hereunder, has been properly delivered to the Seller in reasonable time before the delivery.

The Buyer or the Vessel shall provide not less than seventy-two (72) hours (approximate) notice of delivery, which is to be followed by a forty-eight (48) hours, twenty-four (24) hours, and twelve (12) hours notice, where the last notice shall specify the Vessel's readiness and the exact place of delivery. The notices of delivery must be given to the Seller.

In addition to the notices set out in clause above, the Vessel shall, as close to the time of agreed delivery as possible, give notice of its readiness to receive Bunkers in accordance with the local provisions applicable and as set out in the Seller's confirmation. For the dedicated area offshore the Port of Fujairah to receive and deliver Bunkers, the Buyer shall provide notice of readiness as set out in the Seller's confirmation two (2) hours prior to the expected time of delivery, and acknowledges that for the safe navigation within the dedicated bunker anchorage area a period of up to six (6) hours from when such notice of readiness is given is required for the Bunker Tanker to berth alongside the Vessel.



## 5. DELIVERY:

The Seller shall endeavor to comply with the agreed time of delivery. Failure to comply with the time of delivery shall not of itself entitle Buyer to cancel the agreement. The Seller shall not be liable to the Buyer, the Vessel or any other third party for any loss, expense (including demurrage) or damage, howsoever arising, and including (but not limited to) delays in the availability of the bunkering pier, Bunker Tanker, weather conditions, late delivery of Bunkers, refusal of Vessel to follow Seller's instructions, directions or orders.

The Seller shall be entitled to deliver the Bunkers in several part deliveries, in which case each part delivery shall be construed as a separate delivery.

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

The Buyer shall ensure that the Vessel provides a free side for the delivery of the Bunkers and that all necessary assistance required by the Seller or the Seller's representative is rendered in connection with the delivery.

The Vessel shall moor, unmoor, hoist and lower bunkering hose(s) from the Bunker Tanker(s) whenever required by the Seller or the Seller's representative, free of expenses, and shall in any way requested, assist the Bunker Tanker to achieve a smooth supply. The Buyer shall make and be responsible for all connections and disconnections between the bunkering hose(s) and the Vessel's intake pipe and ensure that the bunkering hose(s) are properly secured to the Vessel's manifold prior to the commencement of delivery.

Delivery shall be deemed completed and all risk, including loss damage, deterioration, depreciation, evaporation, or shrinkage as to the Bunkers delivered shall pass to the Buyer from the time the Bunkers reach the Vessel's rail.

If the Buyer for whatever reason is unable to receive the full quantity ordered and tendered, the Seller shall have the right to invoice the Buyer for the loss incurred by having to transport the Bunkers or any part thereof back to the storage or having to sell the Bunkers at a lower price than that applicable to the Buyer. The Seller may use this right without prejudice to the Seller's other rights to damages or otherwise pursuant to these terms.

If delivery is required outside normal business hours or on local public holidays the extra expenses incidental to such delivery shall be reimbursed by the Buyer as additional costs.

In the event of the Vessel not taking delivery of the Bunkers within seventy-two (72) hours of the confirmed delivery period as set out in the Seller's written confirmation, the Seller shall be entitled in its absolute discretion:

- i) To adjust the agreed price up-wards to reflect any increase either in the value or the market price, of the Bunkers.
- ii) And/or to charge the Buyer demurrage at the prevailing freight rate per day (or part thereof) for barges of the size and age of those utilised by the Seller for the purposes of storing the Bunkers from the agreed time of delivery until the time of actual delivery
- iii) And/or not to reduce the agreed price of the Bunkers in the event that the value, or the market price, of the Bunkers falls between the agreed time of delivery and the time of actual delivery.

The Seller may assign its duties, obligations, rights, benefits or privileges in whole or in part, to any party without notice to, or consent from, the Buyer. The Buyer shall not, without the prior written consent of the Seller, be entitled to assign any benefits or obligations hereunder.



## **6. SPECIFICATIONS (QUALITY):**

The Buyer shall have the absolute, exclusive, sole responsibility, liability and risk for selecting, ordering, nominating and accepting the Marine Fuels, including the determination of suitability and/or compatibility with any quantity and quality of oil already on board the Vessel to which the Marine Fuels delivered or to be delivered.

The Marine Fuels, which shall correspond to the written confirmation from the Seller, shall be of the usual quality of that grade generally offered for sale or being sold by the Seller at the time and place of delivery.

Unless otherwise agreed in writing by the Buyer and the Seller, any information provided to Buyer regarding the characteristics of Marine Fuel shall not be construed as specifications of the Marine Fuel delivered or to be delivered.

THERE ARE NO GUARANTEES NOR WARRANTIES, EXPRESSED, AS TO THE SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS OR SUITABILITY OF THE MARINE FUEL FOR ANY PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED HERE AND ANY IMPLIED GUARANTEES AND/OR WARRANTIES AND/OR CONDITIONS WHETHER STATUTORY OR OTHERWISE ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

The buyer hereby warrants that it has not relied upon any representations made by or on behalf of the seller but has relied exclusively on his own knowledge and judgment as to the fitness for its purpose of the Marine Fuels ordered.

## **7. MEASUREMENTS (QUANTITY):**

The quantity of Marine Fuels delivered shall be determined from the official gauge of the barge effecting delivery or by gauging in Seller's or Supplying Company's shore tank or by Seller's or Supplying Company's oil meter at Seller's or Supplying Company's selection. Except where government regulations determine otherwise, adjustment in volume owing to difference in temperature shall be made in accordance with ASTM Petroleum Measurement Tables.

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 or Supplying Company's determination of quantities shall be deemed to be correct. Buyer may inspect the oil delivered hereunder before it is pumped out of the Seller's or Supplying Company's shore tank or barge. Any claim by Buyer as to shortage in quantity must be noted at time of delivery. Any Surveyors appointed by the Buyer are subject to Seller's approval.

## **8. SAMPLING:**

Sampling by the Seller shall be accomplished throughout the delivery process. The seller will take a minimum of four (4) representative samples of each grade of Fuels delivered. The Buyer shall have the right (and is encouraged) to have its representative witness the drawing of the samples. The aforementioned samples shall be securely sealed and labeled by the Seller and two (2) of these samples will be given to the Buyer, one (1) of which is for MARPOL compliance purposes.

Two samples (2) shall be retained by the Seller for at least thirty days (30) following the date of delivery in a safe place for subsequent verification of the quality thereof, if required. If the Buyer issues a claim regarding the quality of the Fuel, one (1) of the two Seller retained samples shall be submitted by the Seller for relevant analysis to a mutually agreed local independent laboratory. The independent laboratory analysis shall be conclusive as to the quality of the fuel delivered absent manifest or fraud. The analysis shall be established by tests in accordance with ISO 8217. Any costs associated with the Buyer appointing a representative to witness the sample seal-breaking and/or analysis shall be the sole responsibility of the Buyer. Samples taken anywhere else than supplying vessel will not be accepted.

In case the Buyer wishes to appoint an independent surveyor, all samples and measurements must be taken on the supplying vessel.



## 9. PRICE & PAYMENT:

The price to be paid for the marine fuels to be delivered shall be the price specified in the Sales Confirmation from Seller to Buyer. In the event the vessel does not take delivery within seventy-two (72) hours of its confirmed delivery period in the confirmation telex/fax/e-mail, Seller shall be entitled in his absolute discretion (i) to adjust the agreed price upwards to reflect any upward

changes either in the value, or the market price, of the marine fuels to be delivered between the date of nomination and the date of actual delivery, or (ii) to charge the Buyer demurrage at the prevailing freight rate per day for barges of size and age comparable to that utilized by Seller/Supplier for the storage of the marine fuels to be delivered for the period from the confirmed ETA to the actual time of delivery to the vessel. Seller shall be under no obligation, however, to reduce his price in the event that the value, or the market price, of marine fuels falls between the expiry of such seventy-two (72) hours period and the date of actual delivery. All taxes, duties and additional delivery charges, if any, are for account of Buyer. Seller or its Supplier has the rights to charge, at his discretion, Buyer a cancellation charge in case Buyers cancel nomination for any reason.

Unless otherwise agreed, payment for each delivery shall be made free of any charges and without discount, deduction or set-off in United States Dollars to Seller within thirty (30) days from the date of each delivery by wire transfer as instructed by Sellers, upon receipt by Buyer, of Seller's written notification of quantities delivered and amount due. Buyer shall make payment upon receipt of such invoice and Seller shall issue a revised invoice, if necessary, upon receipt of delivery receipts and shall make adjustments to Buyer's account based upon volume actually delivered.

Any deduction for claims related to delivery shall be a breach of Buyers' obligation hereunder and all negotiation for settlement of such claim shall be suspended until Buyer makes payment in full for the quantity delivered as notified by Seller. In the event payment is not made at the time and in the manner described above, Seller shall have the right to suspend further deliveries hereunder and/or to notify Buyer that payment not yet made for any delivery hereunder is immediately due and payable. Without prejudice to any other rights of Seller, if Buyer owes the Seller any sum whatsoever, the Seller may as of right set off sums against any sum, which he may owe to the Buyer to the extent of the respective sums owing. Overdue payment shall bear interest at the rate of two percent (2%) per month or any part thereof unless Buyer and Seller have agreed in writing to some other rate in which event such other rate shall apply.

In addition to the prices payable for Bunkers, the Buyer shall pay the following charges:

- i) Any expenses incurred as a result of the Master of the vessel rejecting the whole or any part of the delivery under a bunkering commitment.
- ii) and/or - any mooring and unmooring charges or port dues, which may be incurred by the Delivering company in connection with any vessel to which Bunkers is delivered hereunder.

## 10. TITLE & RISK:

All deliveries shall be deemed to be complete and Risk shall pass from the Seller to the Buyer when the Marine Fuel has reached the flange connecting the delivery facilities provided by Supplier with the receiving facilities provided by Buyer. The Buyer hereby warrants that representatives from the Vessel shall be responsible for ensuring that the Marine Fuel is received in a safe way.

Upon Marine Fuel has reached the connecting flange, Seller's and/or Supplier's responsibility shall cease and Buyer shall assume any and all risks, including but not limited to, loss, damage caused by leakage, fire, spills, escapes, deterioration, depreciation, contamination, shrinkage or evaporation, or any other condition or incident related thereto, and responsibility and/or liability for loss, damage and harm caused by pollution or in any other manner to third parties.

Title to the Marine Fuel shall only pass to the Buyers upon full payment for the Fuels delivered. In case of non-payment the seller is entitled to take back the product without prejudice to all other rights or remedies available. In the event that the fuels have been commingled on board with other products, the seller shall have the same rights to such part of the commingled fuel.



#### **11. CLAIMS:**

Any claim by Buyer with respect to quantity must be notified to the Seller in the form of a Letter of Protest signed by the Buyer or his authorized representative at time of delivery. Within fourteen (14) days thereafter the Buyer shall provide full details of the claim in writing to the Seller. Any other claims of complaints by Buyer including price or deficiency in quality of Marine Fuels must be received by Seller in writing as soon as possible, but in no event shall Seller be responsible for such claims notified more than fourteen (14) days from date of delivery in question.

Failure to make any such complaints or claims as to quantity or quality within the time periods and manner specified above shall be deemed to be a waiver of any such complaints or claims.

Buyer shall furnish all necessary details required by Seller to satisfactorily evaluate claim.

Seller shall not be responsible for any claim arising in circumstances where there is or has been commingling of Marine Fuels delivered by Seller with other fuel or product aboard Vessel.

#### **12. INDEMNITY:**

The Buyer shall hold harmless and indemnify the Seller and/or Supplier, their officers, crew, servants or third parties acting on their behalf, against any and all claims, losses, costs (including legal costs), damages, suits or liability for damage to property, for injury or death caused to any person, fines, penalties and expenses incurred or sustained arising out of or in connection with the Contract except to the extent that such claims, losses, costs, damages, liabilities and expenses arise through the sole and proven negligent of the Seller.

#### **13. LIABILITY:**

To the extent permitted by Law the Seller shall not be liable to the Buyer for any loss or damage including loss of profit or any other consequential loss whatsoever arising from any cause whatsoever whether in contract, tort or otherwise including the negligence of the seller, its servants, agents or subcontractors.

Notwithstanding the foregoing in the event that the seller is found to be liable to the Buyer, the total amount payable by way of compensation shall not exceed the value charged to the Buyer for the products supplied under this Agreement. It is a precondition to the payment of any compensation by the Seller that all sums standing due to the Seller from the Buyer are first paid and settled.

#### **14. FORCE MAJEURE:**

In addition to any other excuses (arising out of the same or other causes) provided by law, no failure or omission by either party to carry out or observe any of the provisions or conditions hereof shall give rise to any claim against that party, if the same shall arise out of causes not reasonably within the control of that party, including (without limitation) such causes as labor disputes, strikes, governmental intervention, wars, civil commotion, fire, flood, storm, swell conditions in the Arabian Gulf or any act of God and the term "party" shall also include Supplying Company and when used with reference to Seller shall also include Seller's subsidiary and affiliated companies.

In the event that any governmental authority (or authority created by governments) imposes any form of price control, rationing, allocation or other emergency measures on Seller's sales of Marine Fuels at the Port where Buyer desires to purchase or take delivery of Marine Fuels, then Seller has the right to:-

- (i) Suspend or cancel deliveries of any Marine Fuels contracted for in accordance herewith for such period or periods as Seller may determine are required to resolve uncertainties raised by such governmental actions.
- (ii) Or allocate such quantities of Marine Fuels to the Buyer as Seller may determine to be appropriate.
- (iii) Or cancel any further commitments to make deliveries under this Agreement.



## **15. BREACH / CANCELLATION:**

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

When the Buyer or the Vessel, for whatever reason, fails to accept the Bunkers in part or in full at the place and time designated for delivery;

When the Buyer fails in part or in full to comply with its obligations to pay any amount due to the Seller whether in respect of a current or earlier transaction;

When, before the date of delivery, it is apparent in the opinion of the Seller that the financial position of the Buyer entails an unacceptable risk for the Seller, which shall be determined by the Seller in its absolute discretion;

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 shall be cancelled.

The Seller may terminate any agreement with the Buyer in whole or in part, in its full discretion, upon the breach of any provisions hereof by the Buyer.

## **16. SPILLAGE, ENVIRONMENTAL PROTECTION:**

If a spill occurs while the Bunkers are being delivered, the Buyer shall promptly take such action as is necessary to remove the spilled Bunkers and mitigate the effects of such spill. Without prejudice to the generality of the foregoing, the Seller is hereby authorised in its full discretion at the expense of the Buyer to take such measures and incur such expenses (whether by employing its own resources or by contracting with other third parties) as are 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.

The Buyer shall indemnify and hold the Seller harmless against all expenses, claims, losses, damages (including damage to the Vessel), liabilities, penalties, costs and expenses (including legal expenses) arising from any spill, leakage or overflow, except to the extent that such expense, claim, loss or damage was caused solely by the negligent act or omission of the Seller. The burden of proof to show the Seller's negligence shall be on the Buyer.

The Buyer shall provide the Seller with all documents and other information concerning any spill or any programme for the prevention thereof, which are required by the Seller, or are required by law or regulation applicable at the time and place of delivery.

## **17. LIENS:**

Sales are on the credit of the receiving vessels as well as on Buyer's promise to pay, and amounts due shall be maritime liens against such vessels and Buyer's property in favor of Seller. If the order for the Marine fuels was placed by Buyer acting as agent on behalf of a disclosed principal, buyer shall be liable for performance of all obligations of the principal, including payment.

Notwithstanding anything to the contrary herein and without prejudice to any rights or remedies otherwise available to the Seller, the Buyer, by its acceptance of these conditions expressly authorises the Seller to arrest the Vessel in question, or any other vessel owned or operated by the Buyer, under any applicable jurisdiction as security for the obligations of the Buyer. Should the Buyer fail to make any payment to the Seller immediately when due the Seller may dispose of such arrested vessel whether by sale or otherwise as applicable under the relevant jurisdiction. All costs or expenses of whatever kind incurred by the Seller in respect of such arrest shall be for the sole account of the Buyer and shall be added to the claim for which arrest is made.



## **18. LAW & ARBITRATION:**

This agreement and these terms and conditions shall be governed and construed in accordance with English law and practice.

Any dispute arising out of or in connection with this agreement and these terms and conditions shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

For the sole benefit of the Seller it is further agreed that the Seller, without prejudice to any of its rights hereunder and to any claims or proceedings instituted pursuant to clauses above, shall have the right to proceed against the Buyer, any third party or the Vessel in such jurisdiction as the Seller in its sole discretion sees fit, inter alia, for the purpose of securing payment of any amount due to the Seller from the Buyer. In such circumstances the proceedings shall be governed by the law (substantive and procedural) of such jurisdiction.

## **19. ADDITIONAL PROVISIONS:**

AS PER OUR POLICY, WE WILL NOT ACCEPT ANY REMARKS ON THE BUNKER DELIVERY NOTE/BUNKER DELIVERY RECEIPT OTHER THAN SHIP'S STAMP AND MASTER'S A/O C/OFF'S A/O C/ENG'S SIGNATURE & STAMP. IN CASE ANY REMARK, SHALL BE DEALT WITH SEPARATE "LETTER OF PROTEST", WHICH MAY SIGN BY THE MASTER OF OUR BARGE FOR RECEIPT ONLY WITHOUT PREJUDICE AND/OR ACCEPTING ANY LIABILITY.

## **20. VALIDITY DATE:**

These terms and conditions shall be valid and binding for all offers, quotations, orders, agreements, services, prices and deliveries made by Fairdeal Marine Services, its supplier, any associated company, representative or agent as of 1st April 2014 or at any later date.